

# CITY OF MONTCLAIR

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

## AGENDA

MONDAY, NOVEMBER 21, 2022  
7:00 p.m.



**Mayor**

Javier "John" Dutrey

**Mayor Pro Tem**

Bill Ruh,

**Council Members**

Tenice Johnson

Corysa Martinez

Benjamin "Ben" Lopez

**City Manager**

Edward C. Starr

**City Attorney**

Diane E. Robbins

**City Clerk**

Andrea M. Myrick

Location

Council Chamber  
5111 Benito Street  
Montclair, CA 91763

Webinar Link

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

Dial #

1-669-900-6833

Meeting ID

937-1715-0550



**REGULAR JOINT MEETING OF THE  
CITY COUNCIL, SUCCESSOR AGENCY, MONTCLAIR HOUSING CORPORATION,  
MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY FOUNDATION**

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

Monday, November 21, 2022  
7:00 p.m.

*Remote Participation Information:*

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

*If you want to submit a public comment or speak on an agenda item, including public hearing and closed session items, please complete a Speaker Card in the Council Chambers or online at <https://www.cityofmontclair.org/public-comment/>. The Mayor/Chair (or the meeting's Presiding Officer) will call on those who submitted requests to speak at the appropriate times during the meeting. Those who did not submit a request to speak who are present at the meeting location may raise their hand during Public Comment to request to speak. Those participating remotely may request speak using the "raise hand" function in Zoom or may dial \*9 if on the phone, and then \*6 to un-mute when called on to speak. Written comments (200-word limit per agenda item, and 200-word limit for all non-agenda items combined) and requests to speak can also be emailed to [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) at least one hour before the meeting begins.*

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

## **AGENDA**

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

**II. INVOCATION**

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

**III. PLEDGE OF ALLEGIANCE**

**IV. ROLL CALL**

**V. PRESENTATIONS** — None

**VI. PUBLIC COMMENT**

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

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

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

**VII. PUBLIC HEARINGS**

- A.** Consider Adoption of Resolution No. 22-3381, a Resolution of Necessity for the Acquisition of an Easement of Interest in Certain Real Property, by Eminent Domain, Located in the City of Montclair, San Bernardino County, California (APN 1009-383-17) for the City of Montclair's San Antonio Creek Pedestrian Bike Path Project [CC]

**VIII. CONSENT CALENDAR**

A. Approval of Minutes	
1. Regular Joint Meeting — November 7, 2022 [CC/SA/MHC/MHA/MCF]	141
B. Administrative Reports	
1. Consider Receiving and Filing of Treasurer’s Report [CC]	23
2. Consider Approval of Warrant Register & Payroll Documentation [CC]	24
3. Consider Receiving and Filing of Treasurer’s Report [SA]	25
4. Consider Approval of Warrant Register [SA]	26
5. Consider Receiving and Filing of Treasurer’s Report [MHC]	27
6. Consider Approval of Warrant Register [MHC]	28
7. Consider Receiving and Filing of Treasurer’s Report [MHA]	29
8. Consider Approval of Warrant Register [MHA]	30
9. Consider Authorizing a \$7,500 Appropriation from the State Asset Forfeiture Fund for the Purchase of Materials and Hardware for Repairs to the Police Department Firearms Shooting Range [CC]	31
C. Agreements	
1. Consider Approval of the First Amendment to Agreement No. 22-36 with Sewer Service Providers Within the Inland Empire Utilities Agency Service Area for Additional Costs Related to Negotiations for Revisions to the Chino Basin Regional Sewage Service Contract [CC]	
Consider Authorizing a \$4,286 Appropriation from the Sewer Fund for Costs Related to the First Amendment to Agreement No. 22-36 [CC]	32
2. Consider Approval of Agreement No. 22-101 with the San Bernardino County Office of Emergency Services Authorizing the Receipt of \$17,275 from the FY 2021 Homeland Security Grant Program [CC]	
Consider Authorizing City Manager Starr to Sign Agreement No. 22-101 [CC]	
Consider Authorizing a \$17,275 Appropriation from the Public Safety Grant Fund to Purchase an Electronic Message Board Trailer [CC]	
Consider Authorizing a \$1,390 Appropriation from the State Asset Forfeiture Fund to Cover the Remaining Balance of the Electronic Message Board Trailer [CC]	37
3. Consider Approval of Agreement No. 22-108 with Lexipol, LLC for Continued Maintenance of the Police Department’s Policy and Procedures Manual, Law Enforcement Daily Training Bulletins (DTB), and DTB Management Services [CC]	48
4. Consider Approval of Agreement No. 22-109 with Lexipol, LLC for Continued Maintenance of the Fire Department’s Policy and Procedures Manual and Fire Service Daily Training Bulletins [CC]	58

- 5. Consider Awarding a Contract to Arnold Fields Painting in the Amount of \$29,000 with a \$5,000 Contingency for City Hall Interior Painting Services [CC]

Consider Approval of Agreement No. 22-111 with Arnold Fields Painting for City Hall Interior Painting Services Subject to Any Revisions Deemed Necessary by the City Attorney [CC]

Consider Authorizing a \$34,000 Appropriation from the Building Maintenance Reserve Fund for City Hall Interior Painting Services [CC]

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- 6. Consider Approval of Agreement No. 22-112 with LD King, Inc. for Engineering Design Services for Street and Storm Drain Improvements for the Arrow Highway and Fremont Avenue Improvement Project, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]

Consider Authorizing an \$8,286 Engineering Design Services Contingency for Agreement No. 22-112 [CC]

Consider Authorizing a \$53,000 Appropriation from the Redevelopment Project Area No. III Tax Allocation Bond Fund for Costs Related to Agreement No. 22-112 [CC]

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D. Resolutions — None

**IX. PULLED CONSENT CALENDAR ITEMS**

**X. BUSINESS ITEMS**

- A. Consider Authorizing the Preparation of Action Minutes as the Official Record of City Council and Commission Meetings [CC]

Consider Revising the Retention Period for Video/Audio Recordings of Meetings to “Permanent” for Those with Action Minutes Prepared [CC]

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**XI. COUNCIL WORKSHOP**

- A. David Turch & Associates, Federal Legislative Advocate Presentation

*(The City Council may consider continuing this item to an adjourned meeting on Monday, December 5, 2022, at 5:45 p.m. in the City Council Chambers)*

**XII. COMMUNICATIONS**

- A. Department Reports

- 1. Human Services Department — Upcoming Holiday Activities & Events
- 2. Police Department — Dashing Through Montclair

- B. City Attorney

- 1. 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.*

*Kresback v. Hamilton, City of Montclair, et al.*

*Dowser v. City of Montclair*

- 2. Request for City Council to Meet in Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with Designated Labor Negotiator Edward C. Starr [CC]

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

- 3. Request for City Council to Meet in Closed Session Pursuant to Government Code §54956.9(d)(4) Regarding Potential Litigation [CC]

*1 Potential Case*

- C. City Manager/Executive Director
- D. Mayor/Chairperson
- E. Council Members/Directors
- F. Committee Meeting Minutes *(for informational purposes only)*
  - 1. Personnel Committee Meeting — November 7, 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, December 5, 2022, at 7:00 p.m.*

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

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

*I, Andrea M. Myrick, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at <https://www.cityofmontclair.org/agendas/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, November 17, 2022.*



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	LDU075
<b>SECTION:</b>	PUBLIC HEARINGS	<b>DEPT.:</b>	ECONOMIC DEV.
<b>ITEM NO.:</b>	A	<b>PREPARER:</b>	M FUENTES
<b>SUBJECT:</b>	CONSIDER ADOPTION OF RESOLUTION NO. 22-3381, A RESOLUTION OF NECESSITY FOR THE ACQUISITION OF AN EASEMENT OF INTEREST IN CERTAIN REAL PROPERTY, BY EMINENT DOMAIN, LOCATED IN THE CITY OF MONTCLAIR, SAN BERNARDINO COUNTY, CALIFORNIA (APN 1009-383-17) FOR THE CITY OF MONTCLAIR'S SAN ANTONIO CREEK PEDESTRIAN BIKE PATH PROJECT		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider adoption of a resolution of necessity for the acquisition of an easement of interest in Assessor Parcel No. 1009-383-17. This easement interest is required for the City of Montclair's San Antonio Creek Pedestrian Bike Path Project (Project). The Project will construct a multimodal transit corridor to service pedestrians and cyclists, as well as allowing for activities such as walking, jogging, hiking, and exercising.

A copy of proposed Resolution No. 22-3381 is attached for City Council review and consideration.

**BACKGROUND:** The San Antonio Creek Pedestrian Bike Path (Project) is envisioned to be a vibrant, connected, and safe multi-use greenway path that will run north-south through the entire western area of the City of Montclair, originating from the Pacific Electric Trail near Monte Vista Avenue and Richton Street, and continuing three miles south to Montclair's City limits at Mission Boulevard. When complete, the trail will provide new connections between neighborhoods, parks, schools, and other community destinations.

There are several existing City plans that establish a vision and need for the Project. A major pillar of the update to the *General Plan Update* is its vision to implement a city-wide green network of trails, green streets, open spaces, and parks. The proposed General Plan acknowledges the San Antonio Creek Channel as an important ecological feature that has the potential to offer a great new asset to the City of Montclair and the region's daily life.

The General Plan positions the San Antonio Creek Channel as the backbone connecting other parks and open spaces throughout the City. Actionable items detailed in the General Plan include the development of a trail along the San Antonio Creek Channel.

Additionally, the *Montclair Active Transportation Plan*, adopted by the City Council at the December 7, 2020 City Council Meeting, proposes the creation of an active transportation network and provided a list of prioritized corridors. The San Antonio Creek Channel was ranked 7 out of 23 corridors. The bicycle network detailed in the *Montclair Active Transportation Plan* includes a proposed Class I bike path along the channel from the Pacific Electric Trail to the southern City limits. Lastly, the *Montclair Safe Routes to School Plan*, also adopted by the City Council at the December 7, 2020 City Council Meeting, provides a framework for the City to improve the health, safety, and equity of students, parents, and the community in areas surrounding schools. The four goals employed by the *Safe Routes to School Plan* includes safety, accessibility,

public health, and equity. The San Antonio Creek Channel is within a walkable distance as identified by the *Safe Routes to School Plan* from four schools Lehigh Elementary School, Montclair High School, Serrano Middle School, and Moreno Elementary School in Montclair. The *Safe Routes to School Plan* identifies the channel as an opportunity to create a multi-use trail.

In addition, many communities throughout the region have developed trails along waterways like the San Antonio Creek Channel, such as the Santa Ana River Trail, Los Angeles River Trail, the Rio Hondo Trail, and the San Gabriel River Trail.

### ***Appraisal of Assessor Parcel No. 1009-383-17***

City staff obtained appraisals of the affected property from Bradford Thomson, MAI, AI-GRS, SR/WA, of Thompson & Thompson and made an offer of just compensation to the property owner pursuant to California Government Code section 7267.2. Title reports from Orange Coast Title Company of Southern California - Inland Empire Division Title Company and property research from Data Tree were ordered to determine the identity of the record owners.

In this case of Assessor Parcel No. 1009-383-17 an offer of just compensation has been made to the owner for the full Fair Market Value as determined by the appraisal conducted by Thompson & Thompson in the amount of \$7,600. City staff attempted to negotiate a voluntary acquisition in good faith, and will continue to do so throughout the process.

California's definition of Fair Market Value is one of the most inclusive definitions in the United States and requires the appraiser to consider the highest and best use of the property and the appraiser to consider the highest price a willing buyer and seller would agree to. The City's appraisals must use this definition of Fair Market Value.

### ***Eminent Domain Power***

The power of eminent domain is used by cities only as a last resort to obtain interests necessary for projects after the following:

1. Negotiations have stalled; or
2. The owner has requested that the City proceed directly to eminent domain for tax or other advantages; or
3. The eminent domain process is necessary to clear the title to the property.

California eminent domain law provides that a public entity may not commence with eminent domain proceedings until its governing body has adopted a Resolution of Necessity by a two-thirds vote of all the members of a governing body, which may only be adopted after the governing body has given each party with an interest in the affected property, or their representatives, a reasonable opportunity to appear and be heard on the following matters:

1. The public interest and necessity require the proposed project;
2. The project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
3. The real property to be acquired is necessary for the project; and

4. The offers of just compensation have been made to the property owner.

Since an agreement has not been reached with the owner of the Assessor Parcel No. 1009-383-17, acquisition by eminent domain is the City's last option. The initiation of the eminent domain process is accomplished by the City's adoption of a resolution of necessity for the affected property.

Following standard public records and due diligence searches for ownership information, a notice of this public hearing was mailed to the property owner.

The record owner must be afforded an opportunity to appear at the hearing and lodge objections.

A notice of this public hearing and resolution of necessity, was sent by first class mail on November 7, 2022, to the recorded owner in accordance with Section 1245.235 of the California Code of Civil Procedure. The notice stated the City's intent to consider the adoption of a resolution, the right of the property owner to appear and be heard on these issues, and that failure to file a written request to appear would result in a waiver of the right to appear and be heard.

The City scheduled this hearing at which all persons who filed a written request in compliance with applicable law may appear and be heard.

### ***Description of Property to be Acquired***

The property affected by the proposed acquisition is described as follows:

*Flood Control Channel/San Antonio Creek, North Side of Kingsley Street, West of Sunset Park, Montclair, California 91763, more particularly described as Assessor Parcel No. 1009-383-17. This property is owned by Boyce & Green, Inc. The proposed acquisition consists of one (1) permanent easement interest in a portion of the real property. The subject property is partially improved with a concrete flood control channel, which contains drainage and storm water flows, known as the San Antonio Creek/Channel. Additional site improvements include chain-link fencing. The subject property is encumbered and improved with a flood control channel and sanitary sewer easement. The legal definitions, descriptions and depictions are attached hereto as Exhibit 1 to Resolution No. 22-3381.*

### ***Hearings and Required Findings***

The recommended action of the City Council pertains to the acquisition of one (1) easement interest in certain real property, more particularly known as Assessor Parcel 1009-383-17 (Property).

The above four required findings related to use of eminent domain are addressed as follows:

- **Finding 1: Public Interest and Necessity Require the Project**

The City proposes to construct and maintain a 3-mile multimodal transit corridor to service pedestrians and cyclists, as well as allow for activities such as walking, jogging, hiking, and exercising. The Project will add parkland space to the community.



The City's population is currently underserved by park and open spaces. The Project will provide citizens with a safe path that connects to parks, open spaces, businesses, and schools. The trail will promote healthy commerce to businesses along the path. It will also enable the residents of Montclair a safe place to exercise and come together.

The Project is envisioned to be a vibrant, connected, and safe multi-use greenway path that will run north-south through the entire City, originating from the Pacific Electric Trail near Monte Vista Avenue and Richton Street, and continuing 3-miles south to Montclair's City limits at Mission Boulevard. When complete, the trail will provide new connections between neighborhoods, parks, schools, and other community destinations. The Project will permit walking access for parents and students from four surrounding schools including Lehigh Elementary School, Montclair High School, Serrano Middle School, and Moreno Elementary School. The public interest will greatly benefit from this Project.

- **Finding 2: The Project is Planned or Located in a Manner Most Compatible with Greatest Public Good and Least Private Injury**

At the February 16, 2021, City Council Meeting, the City Council approved Agreement No. 21-05 with Alta Planning & Design, Inc. for Alta to prepare the San Antonio Creek Channel Multimodal Connectivity Plan. The "San Antonio Creek Trail Feasibility Study" was completed in April 2022. The Feasibility Study deeply looks into all aspects of the proposed Project, including all alternatives for the City's acquisition of properties needed to complete the Project. To determine the most feasible alignment for the San Antonio Creek Trail, the project team:

- Established qualitative and quantitative criteria to evaluate each alignment alternative's relationship to the project goals and objectives;
- Identified all possible alignments drawing each alternative route (29 in total) on a map; and
- Applied the evaluation criteria to each alignment alternative to determine which alignments best support the project goals and objectives, leading to a preferred alignment.

The Feasibility Study determined the preferred alignment of the Project as determined through the evaluation process outlined above. Because the San Antonio Creek Channel has two existing maintenance paths, one on each bank, the City can make use of both spaces for the trail. There is one primary alignment envisioned as a multi-use trail for people walking and biking, and where feasible, a walking path may be located on the opposite bank from the primary trail alignment. The Project is envisioned to be constructed in segments, commencing with Segment 1. Currently, the City is seeking right-of-way for Segment 1 of the Project as part of funding received from the California Department of Transportation (Caltrans) Clean California Local Grant program of \$4,174,097.

After the completion of the Feasibility Study, the City has held two public workshops, one held on May 2, 2022, and the second on June 28, 2022, wherein members of the public were able to learn about the proposed Project and provide input.

Additionally, the City has been able to learn from communities throughout the region that have built and maintained similar trails and parks adjacent to flood control facilities, such as the CV Link in Coachella Valley, the Santa Ana River Trail in Anaheim, and the San Antonio Creek Channel in Upland.

To move this Project elsewhere would cause a greater impact in the new location as well as to nearby residents, and would be much more costly at the expense of local taxpayers. Notification of street closures and alternate route alternatives, if any, will be provided in advance to all residents in close proximity of the project. All efforts will be made to pursue Project completion as quickly as possible once work is begun.

- **Finding 3: The Real Property to be Acquired is Necessary for the Project**

The acquisition of the Property is needed to facilitate the construction of the Project. Specifically, the Property is located along the San Antonio Creek Channel, and is needed to commence Segment 1 of the Project. As the Property is located along the proposed path, there are no alternative locations the City can acquire to complete Segment 1 of the Project.

- **Finding 4: The Offer of Just Compensation Has Been Made**

Appropriate sources, including title reports from Orange Coast Title Company of Southern California – Inland Empire Division Title Company and property research from Data Tree, were used to confirm and identify the party with an interest in the property affected by the Project. The City obtained appraisals of the affected property from Thompson and Thompson.

The City made the following offer of just compensation to the following property owner, as established by the approved appraisals and as required by Section 7267.2 of the California Government Code:

On September 14, 2022 an offer to Boyce Green Services LLC was made for one (1) permanent easement interest in property located at the North Side of Kingsley Street, West of Sunset Park in Montclair, California 91763, more particularly described as Assessor Parcel No. 1009-383-17, in the amount of \$7,600.

### ***Environmental Analysis***

The acquisition of a fee interest for a public park is exempt from environmental review under the California Environmental Quality Act (“CEQA”, Pub. Resources Code, § 21000 et seq.). Specifically, State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) Section 15316 (transfer of ownership of land to create parks) exempts the acquisition of land in order to establish a park where the land is in a natural condition and a management plan for the park has not yet been prepared. The subject property is vacant except for the large power transmission poles located within the southerly 110 feet of the parcel. A review to determine environmental consistency with CEQA will be

performed if and when a future management plan, land use changes, or physical improvements are proposed for the site. None of the exceptions to the categorical exemption listed above apply to the project. No further environmental review or findings are required prior to the City's action on the proposed Resolution of Necessity.

**FISCAL IMPACT:** Adoption of proposed Resolution No. 22-3381 would result in a fiscal impact of \$7,600 for the acquisition of easement interest payable from the Economic Development Fund.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 22-3381, a Resolution of Necessity for the acquisition of easement interests in certain real property, by eminent domain, located in the City of Montclair, San Bernardino County, California (APN 1009-383-17) for the City of Montclair's San Antonio Creek Pedestrian Bike Path Project.

NOTICE OF HEARING TO PROPERTY OWNERS

Pursuant to Section 1245.235 of the California Code of Civil Procedure, you are hereby notified that at a regular meeting to be held on **Monday, November 21, 2022, at 7:00 p.m.**, at the City of Montclair’s Council Chambers, located at 5111 Benito Street, Montclair, California 91763, the City Council of Montclair (“City”) intends to consider adopting a Resolution of Necessity, authorizing the commencement of eminent domain proceedings for the acquisition of real property interests in property that, according to the last equalized county assessment roll, is owned by you. The public use for which this resolution of necessity will be considered is for the City of Montclair’s San Antonio Creek Pedestrian Bike Path (“Project”). The description of the property to be acquired is attached as Exhibit “A” to this notice.

A hearing will be held at the time and place mentioned above. You have the right to appear and be heard on the following matters:

1. Whether the public interest and necessity require the project for which the property is sought to be acquired.
2. Whether the project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
3. Whether the property is necessary for the proposed project.
4. Whether the offer required by Section 7267.2 of the California Government Code has been made.

Please note that your failure to file a written request to appear and be heard after the mailing of this notice may result in the waiver of your right to appear and be heard.

ALL COMMUNICATIONS SHOULD BE ADDRESSED TO:

Andrea Myrick  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763  
Office: (909) 625-9416  
E-mail: amyrick@cityofmontclair.org

DATE OF HEARING: Monday, November 21, 2022  
7:00 p.m.

PLACE OF HEARING: City of Montclair's Council Chambers  
5111 Benito Street,  
Montclair, California 91763

DATED: November 7, 2022

BEST BEST & KRIEGER LLP

By:   
Mark Easter  
Attorney for Montclair

PROOF OF MAILING NOTICE

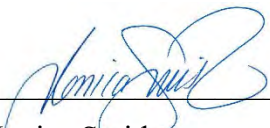
I, Monica Smith, acting on behalf of Montclair, hereby certify that on October 19, 2022, I mailed a copy of the attached notice by first-class mail to the following owners of real property located in the County of Riverside, State of California, more particularly described as Assessor Parcel No. 1009-383-17.

Boyce Green Services LLC  
1412 Kent Way  
Fairfield, CA 94533

Boyce Green Services LLC  
c/o Brandon A. Boyce  
397 Buckeye Street  
Vacaville, CA 95688

Boyce & Green, Inc.  
608 R Del C Ests,  
New Port Richey, FL 33552

DATED: October 19, 2022

  
\_\_\_\_\_  
Monica Smith

# EXHIBIT A

### Legal Definitions of Property to be Acquired

**“Pedestrian Bike Path Easement”** refers to a non-exclusive permanent and perpetual easement and right of way in favor of City of Montclair, its successors and assigns, together with the right to construct, reconstruct, repair, extend, provide lighting for and maintain a pedestrian and bike path easement for the public use and enjoyment for riding, walking, jogging, running, biking, electric vehicles and similar uses in, on, over and across that portion of property that is legally described in Exhibit "A", which is attached hereto and by this reference incorporated herein, and graphically depicted on Exhibit "B", which is attached hereto and by this reference incorporated herein (collectively, the "Easement") for the City of Montclair’s Pedestrian Bike Path Project (“Project”).

The Easement will include the right of the City of Montclair to access, construct and maintain a paved path within the area described and depicted on Exhibits A and B, as well as utility installations, lighting, rest areas, exercise stations and such other facilities as are reasonable or desirable for the public use of the Project.

City of Montclair shall be solely responsible for the construction, operation, maintenance and use of the Project facilities within the area described on Exhibits A and B.

Property Owner shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over, or under any portion of the easement, or plant trees or any other vegetation on any portion of the easement except with the prior written consent of City of Montclair, its successors and assigns.

City of Montclair shall have the right to trim, cut or clear away any trees, brush, or other vegetation from time to time as determined in its sole discretion, without payment of additional compensation.

No other surface easements shall be granted on the area of the easement without the prior written consent of City of Montclair, its successors and assigns. Property Owner is permitted to grant subsurface easement rights.

Property Owner shall not cause, directly, indirectly or negligently, any interference with or harm to the rights conveyed hereunder.



EXHIBIT "A"  
EASEMENT DEED OF RIGHT OF WAY DEDICATION  
LEGAL DESCRIPTION

A.P.N. 1009-383-17

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

THAT PORTION OF LOT 22 OF THE SAN ANTONIO TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON MAP RECORDED IN BOOK 3, PAGE 16 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WITHIN A STRIP OF LAND 80 FEET IN WIDTH, LYING 37.50 FEET ON THE NORTHEASTERLY SIDE AND 42.50 FEET ON THE SOUTHEASTERLY SIDE OF THE FOLLOWING DESCRIBED LINE, SAID LINE BEING CALLED LINE "A":

COMMENCING AT A POINT IN THE SOUTH LINE OF SAID LOT 22, SAID POINT BEING SOUTH 88° 42' 17" EAST, A DISTANCE OF 1243.32 FEET FROM THE INTERSECTION OF SAID SOUTH LINE WITH THE COUNTY LINE BETWEEN LOS ANGELES AND SAN BERNARDINO COUNTIES, AS SHOWN ON SAID MAP OF THE SAN ANTONIO TRACT;

THENCE NORTH 34° 42' 23" EAST, A DISTANCE OF 640.64 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 3000 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17° 06' 19", A DISTANCE OF 895.63 FEET TO THE POINT OF ENDING IN THE CENTER LINE OF ORCHARD STREET, 70 FEET WIDE, SAID POINT OF ENDING BEING SOUTH 88° 20' 33" EAST, A DISTANCE OF 1506.06 FEET FROM THE INTERSECTION OF SAID CENTER LINE WITH SAID COUNTY LINES.

THE SIDE LINES OF SAID STRIP OF LAND SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE IN THE LINES IN WHICH THE ABOVE DESCRIBED LINE BEGINS AND ENDS;

EXCEPTING THERE FROM A STRIP OF LAND 27 FEET IN WIDTH LYING 13.5 FEET ON THE NORTHEASTERLY SIDE AND 13.5 FEET ON THE SOUTHEASTERLY SIDE OF SAID DESCRIBED LINE "A".

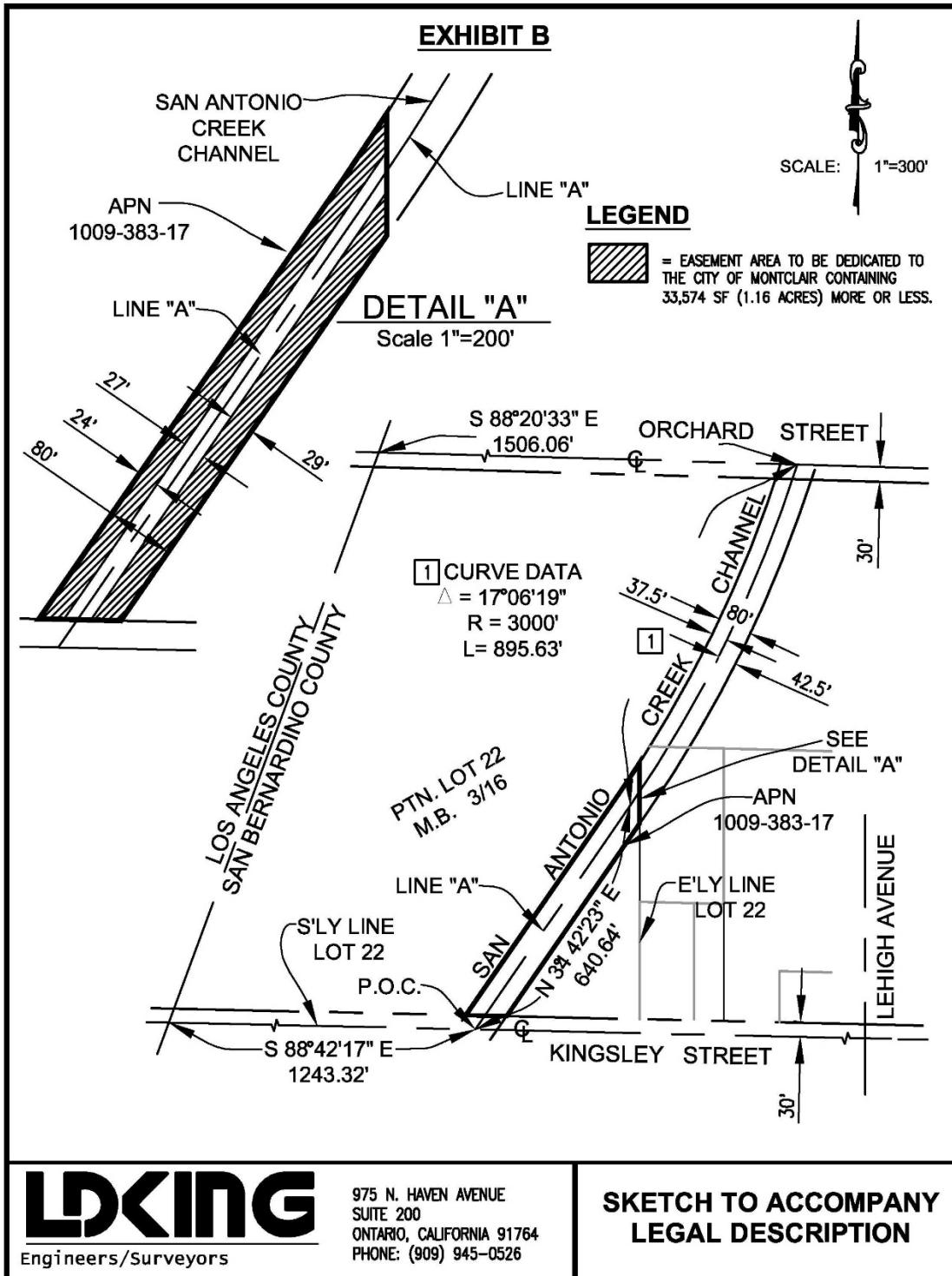
CONTAINING 33,574 SQUARE FEET (1.16 ACRES), MORE OR LESS.

SEE EXHIBIT B ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.



\_\_\_\_\_  
CARLA E. BERARD, P.L.S.

\_\_\_\_\_  
DATE



Last Opened: Jun 09, 2022 - 4:06pm ; File: E:\100-199\100-Montclair\SUNSET PARK\Legal Descriptions\APN 1009\_383\_17.dwg ; By: Carla

RESOLUTION NO. 22-3381

**A RESOLUTION OF NECESSITY FOR THE ACQUISITION OF EASEMENT INTEREST IN CERTAIN REAL PROPERTY, BY EMINENT DOMAIN, LOCATED IN THE CITY OF MONTCLAIR, SAN BERNARDINO COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NO. 1009-383-17, IN SAN BERNARDINO COUNTY, CALIFORNIA, FOR THE CITY OF MONTCLAIR'S SAN ANTONIO CREEK PEDESTRIAN BIKE PATH PROJECT, IN SAN BERNARDINO COUNTY, CALIFORNIA**

**WHEREAS**, the City of Montclair ("City") proposes to acquire an easement interest in certain real property located in the City of Montclair, San Bernardino County, California, more particularly described as Assessor Parcel Number 1009-383-17, for the City of Montclair's San Antonio Creek Pedestrian Bike Path Project in the City of Montclair, San Bernardino County, California, pursuant to the authority granted to it by section 37350.5 of the California Government Code; and

**WHEREAS**, pursuant to section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for November 21, 2022, at 7:00 p.m., at the City of Montclair City Council Chambers, located at City Hall, 5111 Benito Street, Montclair, California 91763, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in section 1240.030 of the California Code of Civil Procedure; and

**WHEREAS**, said hearing has been held by the City, and the affected property owners were afforded an opportunity to be heard on said matters; and

**WHEREAS**, the City may now adopt a Resolution of Necessity pursuant to section 1240.040 of the California Code of Civil Procedure.

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

**SECTION 1: Compliance with the California Environmental Quality Act.** Compliance with California Code of Civil Procedure and California Environmental Quality Act. There has been compliance by the City with the requirements of Section 1245.235 of the California Code of Civil Procedure and the California Environmental Quality Act.

**SECTION 2: Compliance with California Code of Civil Procedure.** There has been compliance by the City with the requirements of section 1245.235 of the California Code of Civil Procedure regarding notice and hearing.

**SECTION 3: Public Use.** The public use for the easement interest in certain real property to be acquired is for the construction, development and maintenance of a pedestrian and bike path easement for public use and enjoyment for riding, walking, jogging, running, biking, electric vehicles and similar uses, known as the City of Montclair's San Antonio Creek Pedestrian Bike Path Project in the City of Montclair, San Bernardino County, California. Section 37350.5 of the California Government Code authorizes the City to acquire, by eminent domain, property necessary for such purposes.

**SECTION 4: Description of Property.** Attached and marked as Exhibit "1" is the legal definition, and legal description, of the interest to be acquired by the City, which describes the general location and extent of the property with sufficient detail for reasonable identification.

**SECTION 5: Findings.** The City hereby finds and determines each of the following:

- (a) The public interest and necessity require the proposed project;
- (b) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

- (c) The property defined, described and depicted in Exhibit "1" is necessary for the proposed project; and
- (d) The offers required by section 7267.2 of the California Government Code was made.

**SECTION 6: Use Not Unreasonably Interfering with Existing Public Use.** Some or all of the real property affected by the interest to be acquired is subject to easements and rights-of-way appropriated to existing public uses. The legal description of the easements and rights-of-way are on file with the City and describe the general location and extent of the easements and rights-of-way with sufficient detail for reasonable identification. In the event the herein described use or uses will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, counsel for the City is authorized to acquire the herein described property subject to such existing public use(s) pursuant to section 1240.510 of the California Code of Civil Procedure.

**SECTION 7: More Necessary Public Use.** Some or all of the real property affected by the interest to be acquired is subject to easements and rights-of-way appropriated to existing public uses. To the extent that the herein described use or uses will unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, the City finds and determines that the herein described use or uses are more necessary than said existing public use. Counsel for the City is authorized to acquire the herein described real property appropriated to such existing public uses pursuant to section 1240.610 of the California Code of Civil Procedure. Staff is further authorized to make such improvements to the affected real property that it determines are reasonably necessary to mitigate any adverse impact upon the existing public use.

**SECTION 8: Further Activities.** Counsel for the City is hereby authorized to acquire the hereinabove described real property in the name of and on behalf of the City by eminent domain, and counsel is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time. Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action, or other proceedings or transactions required to acquire the subject real property.

**SECTION 9: Effective Date.** This Resolution shall take effect upon adoption.

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

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3381 was duly adopted by the Montclair City Council at a regular meeting thereof held on the XX day of XX, 2022, and that it was adopted by the following vote, to-wit:

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

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

Legal Definitions of Property to be Acquired

Assessor Parcel No. 1009-383-17

**“Pedestrian Bike Path Easement”** refers to a non-exclusive permanent and perpetual easement and right of way in favor of City of Montclair, its successors and assigns, together with the right to construct, reconstruct, repair, extend, provide lighting for and maintain a pedestrian and bike path easement for the public use and enjoyment for riding, walking, jogging, running, biking, electric vehicles and similar uses in, on, over and across that portion of property that is legally described in Exhibit "A", which is attached hereto and by this reference incorporated herein, and graphically depicted on Exhibit "B", which is attached hereto and by this reference incorporated herein (collectively, the "Easement") for the City of Montclair’s Pedestrian Bike Path Project (“Project”).

The Easement will include the right of the City of Montclair to access, construct and maintain a paved path within the area described and depicted on Exhibits A and B, as well as utility installations, lighting, rest areas, exercise stations and such other facilities as are reasonable or desirable for the public use of the Project.

City of Montclair shall be solely responsible for the construction, operation, maintenance and use of the Project facilities within the area described on Exhibits A and B.

Property Owner shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over, or under any portion of the easement, or plant trees or any other vegetation on any portion of the easement except with the prior written consent of City of Montclair, its successors and assigns.

City of Montclair shall have the right to trim, cut or clear away any trees, brush, or other vegetation from time to time as determined in its sole discretion, without payment of additional compensation.

No other surface easements shall be granted on the area of the easement without the prior written consent of City of Montclair, its successors and assigns. Property Owner is permitted to grant subsurface easement rights.

Property Owner shall not cause, directly, indirectly or negligently, any interference with or harm to the rights conveyed hereunder.

EXHIBIT "A"  
EASEMENT DEED OF RIGHT OF WAY DEDICATION  
LEGAL DESCRIPTION

A.P.N. 1009-383-17

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

THAT PORTION OF LOT 22 OF THE SAN ANTONIO TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON MAP RECORDED IN BOOK 3, PAGE 16 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WITHIN A STRIP OF LAND 80 FEET IN WIDTH, LYING 37.50 FEET ON THE NORTHEASTERLY SIDE AND 42.50 FEET ON THE SOUTHEASTERLY SIDE OF THE FOLLOWING DESCRIBED LINE, SAID LINE BEING CALLED LINE "A":

COMMENCING AT A POINT IN THE SOUTH LINE OF SAID LOT 22, SAID POINT BEING SOUTH 88° 42' 17" EAST, A DISTANCE OF 1243.32 FEET FROM THE INTERSECTION OF SAID SOUTH LINE WITH THE COUNTY LINE BETWEEN LOS ANGELES AND SAN BERNARDINO COUNTIES, AS SHOWN ON SAID MAP OF THE SAN ANTONIO TRACT;

THENCE NORTH 34° 42' 23" EAST, A DISTANCE OF 640.64 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 3000 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17° 06' 19", A DISTANCE OF 895.63 FEET TO THE POINT OF ENDING IN THE CENTER LINE OF ORCHARD STREET, 70 FEET WIDE, SAID POINT OF ENDING BEING SOUTH 88° 20' 33" EAST, A DISTANCE OF 1506.06 FEET FROM THE INTERSECTION OF SAID CENTER LINE WITH SAID COUNTY LINES.

THE SIDE LINES OF SAID STRIP OF LAND SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE IN THE LINES IN WHICH THE ABOVE DESCRIBED LINE BEGINS AND ENDS;

EXCEPTING THERE FROM A STRIP OF LAND 27 FEET IN WIDTH LYING 13.5 FEET ON THE NORTHEASTERLY SIDE AND 13.5 FEET ON THE SOUTHEASTERLY SIDE OF SAID DESCRIBED LINE "A".

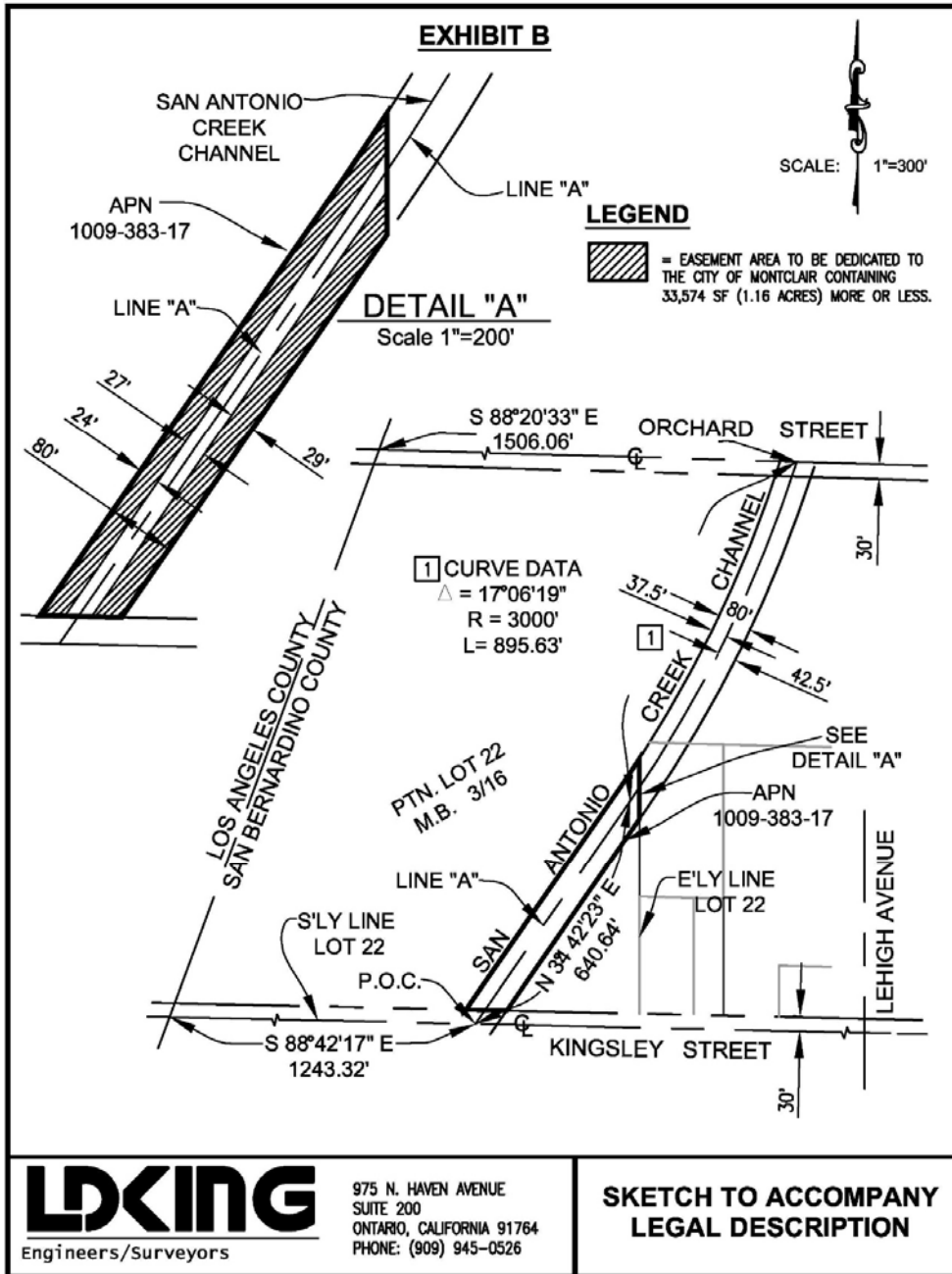
CONTAINING 33,574 SQUARE FEET (1.16 ACRES), MORE OR LESS.

SEE EXHIBIT B ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF



CARLA E. BERARD, P.L.S.

DATE



**LDKING**  
 Engineers/Surveyors

975 N. HAVEN AVENUE  
 SUITE 200  
 ONTARIO, CALIFORNIA 91764  
 PHONE: (909) 945-0526

**SKETCH TO ACCOMPANY  
 LEGAL DESCRIPTION**

Last Opened: Jun 09, 2022 - 4:06pm : File: E:\100-199\100-Montclair\SUNSET PARK\Legal Descriptions\APN 1009\_383\_17.dwg : By: Carla



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	FIN520
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	J. KULBECK
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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

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

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

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





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	FIN540
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	L. LEW/V. FLORES
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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

**BACKGROUND:** Mayor Pro Tem Ruh has examined the Warrant Register dated November 21, 2022; and the Payroll Documentation dated November 6, 2022, and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated November 21, 2022, totals \$765,596.01.

The Payroll Documentation dated November 6, 2022 totals \$749,309.44 gross, with \$500,940.67 net being the total cash disbursement.

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	FIN510
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	SA
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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

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

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

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	FIN530
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	SA
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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

**BACKGROUND:** Vice Chair Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 10.01.22-10.31.22 in the amounts of \$7,154.39 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds, and finds it to be in order.

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

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	FIN525
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHC
<b>ITEM NO.:</b>	5	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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

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

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

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	FIN545
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHC
<b>ITEM NO.:</b>	6	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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

**BACKGROUND:** Vice Chair Ruh has examined the Warrant Register dated 10.01.22-10.31.22 in the amount of \$53,560.78 for the Montclair Housing Corporation and finds it to be in order.

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

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	FIN525
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHA
<b>ITEM NO.:</b>	7	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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

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

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

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	FIN545
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHA
<b>ITEM NO.:</b>	8	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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

**BACKGROUND:** Vice Chair Ruh has examined the Warrant Register dated 10.01.22-10.31.22 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	PDT362
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	9	<b>PREPARER:</b>	J. MICHEL
<b>SUBJECT:</b>	CONSIDER AUTHORIZING A \$7,500 APPROPRIATION FROM THE STATE ASSET FORFEITURE FUND FOR THE PURCHASE OF MATERIALS AND HARDWARE FOR REPAIRS TO THE POLICE DEPARTMENT FIREARMS SHOOTING RANGE		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider authorizing a \$7,500 appropriation from the State Asset Forfeiture Fund to complete repairs to the Department's Firearms Shooting Range ceiling baffles, add additional lighting, and add conduit wiring for a target system. Regular range use has caused wear and tear to the wood and acoustic panels overlaying the ceiling baffles and are in need of replacement. Additional lighting is needed on the backside of the range, and conduit and wiring will need to be purchased and installed to facilitate the use of a replacement target system. The City Council is requested to consider authorizing the use of State Asset Forfeiture funds to purchase the materials and hardware essential for the project, which will be completed by the City's Public Works Department.

**BACKGROUND:** The Police Department's Firearms Shooting Range is collectively used by Department personnel and members of outside agencies several times per month. Over the last several years, fired projectiles during regular use of the range has caused wear and tear to the wood and acoustic panels overlaying the ceiling baffles and are in need of replacement. The materials in need of replacement will include sheets of plywood, two by four inch boards, and acoustic panels. Additionally, miscellaneous hardware in the form of screws and fasteners will be needed to complete the install.

During an examination of the range, it was discovered there is reduced lighting at the 25-yard line, which is the area of the range with the most distance between the shooters and the targets they engage. A strip of fluorescent lighting is needed in this section of the range to help with its overall illumination, and will include the need for additional conduit and wiring. The Police Department is also working on securing a contract with a vendor for the replacement and upgrade of its current target system. Part of the upgrade will include the need to purchase and install conduit and wiring essential to accommodate the newer target system.

Should the City Council approve the expenditure for materials and hardware needed for the range repairs, the City's Public Works Department would complete the labor for the project.

**FISCAL IMPACT:** If approved by the City Council, funding for the purchase of materials and hardware for repairs to the Police Department Firearms Shooting Range would result in an expenditure of \$7,500 from the Asset Forfeiture State Fund (1140).

**RECOMMENDATION:** Staff recommends that the City Council authorize a \$7,500 appropriation from the State Asset Forfeiture Fund for the purchase of materials and hardware for repairs to the Police Department Firearms Shooting Range.





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	SEW500
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	M. HEREDIA

**SUBJECT:** CONSIDER APPROVAL OF THE FIRST AMENDMENT TO AGREEMENT NO. 22-36 WITH SEWER SERVICE PROVIDERS WITHIN THE INLAND EMPIRE UTILITIES AGENCY SERVICE AREA FOR ADDITIONAL COSTS RELATED TO NEGOTIATIONS FOR REVISIONS TO THE CHINO BASIN REGIONAL SEWAGE SERVICE CONTRACT

CONSIDER AUTHORIZING A \$4,286 APPROPRIATION FROM THE SEWER FUND FOR COSTS RELATED TO THE FIRST AMENDMENT TO AGREEMENT NO. 22-36

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**REASON FOR CONSIDERATION:** On May 2, 2022, the City Council approved Agreement 22-36, an interagency cost-sharing agreement among Contracting Agencies within Inland Empire Utilities Agency's (IEUA) service area (the Cities of Chino, Chino Hills, Fontana, Montclair, Ontario, and Upland; and the Cucamonga Valley Water District) for costs related to negotiations for revisions to the upcoming renewal of the Chino Basin Regional Sewage Service Contract. A copy of the proposed First Amendment to Agreement No. 22-36 is attached for the City Council's review and consideration.

**BACKGROUND:** The Chino Basin Regional Sewage Service Contract (Contract) dated October 19, 1994 expires on January 2, 2023. This Contract provides sewer Contracting Agencies with the right to deliver all sewage collected by their respective community sewer systems to IEUA's Regional Sewerage System. IEUA has an obligation to receive all sewage produced by the Contracting Agencies into the Regional Sewerage System.

The Contracting Agencies desire to negotiate, revise, amend, and restate the Contract terms. Cucamonga Valley Water District is serving as the lead agency in this process. The cost-sharing agreement ensures payment for attorney's fees and costs, consultant fees and expenses, and the preparation of documents and data to be used during said negotiations and the potential drafting and execution of Contract revisions.

The City works in close partnership with other retail agencies and regional entities responsible for providing high-quality and low-cost water, wastewater, and recycled water services for residents and businesses to support public health, quality of life, and economic growth. The cost-sharing agreement and First Amendment will ensure continued sewer services in the City and its sphere of influence.

**FISCAL IMPACT:** The Contracting Agencies agree to split the cost evenly between the agencies providing sewer services. The City's share of the First Amendment to Agreement No. 22-36 is \$4,286 and would be funded with an appropriation from the Sewer Fund.

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

1. Approve the First Amendment to Agreement No. 22-36 with sewer service providers within the IEUA service area for additional costs related to negotiations for revisions to the Chino Basin Regional Sewage Service Contract.
2. Authorize a \$4,286 appropriation from the Sewer Fund for costs related to the First Amendment to Agreement No. 22-36.

**FIRST AMENDMENT  
TO  
INTERAGENCY COST SHARING AGREEMENT**

This First Amendment To Interagency Cost Sharing Agreement ("First Amendment") is dated as of October 1, 2022, by and between the Cucamonga Valley Water District, a public agency ("CVWD") and the following municipal corporations: City of Ontario ("Ontario"); City of Fontana ("Fontana"); City of Chino ("Chino"); City of Chino Hills ("Chino Hills"); City of Upland ("Upland"); and City of Montclair ("Montclair"). All of said parties are hereinafter sometimes collectively referred to as the "Parties" or individually as a "Party."

RECITALS

A. The Parties are parties to that certain Chino Basin Regional Sewage Service Contract dated as of October 19, 1994 ("Regional Contract"). The Regional Contract provides that the parties thereto shall have the right to deliver all sewage collected by their respective community sewer systems to the Regional Sewerage System and the Inland Empire Utilities Agency ("IEUA") shall have the obligation to receive into the Regional Sewerage System all sewage so delivered by the contracting parties. The term of the Regional Contract is due to expire on January 2, 2023. In addition, the Regional Contract provides for its periodic review and update;

B. The Parties are negotiating a revised, amended, and/or restated Regional Contract in order to address issues including, but not limited to, use of recycled water generated by the Regional Sewerage System and Chino Basin groundwater management ("Regional Contract Revisions");

C. The Parties entered into that certain Interagency Cost Sharing Agreement, dated as of April 1, 2022 ("Agreement"), in order to set forth the terms and conditions for the sharing of costs to be incurred during the negotiation of the Regional Contract Revisions including, but not necessarily limited to, attorney's fees and costs; consultant fees and costs; and the preparation of documents and data to be used during said negotiation and the potential drafting and execution of Regional Contract Revisions (collectively, "Negotiation Costs"); and

D. The Parties desire to enter into this First Amendment in order to amend the not-to-exceed total amount of Negotiation Costs set forth in the Agreement. As required by Section 1(d) of the Agreement, the not-to-exceed amount of Negotiation Costs of Seventy Thousand Dollars (\$70,000.00) shall not be exceeded without the prior written consent of all Parties as indicated by an amendment to the Agreement. The Parties desire to increase the not-to-exceed amount by Thirty Thousand Dollars (\$30,000.00) for a new not-to-exceed amount of One Hundred Thousand Dollars (\$100,000.00) pursuant to this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth in this First Amendment, and for other good, valuable, and adequate consideration, the Parties hereto agree as follows:

04342.00000\40750363.1

1. Not-To-Exceed Amount

Section 1(d) Not-To-Exceed of the Agreement is hereby deleted and replaced, in its entirety, with the following:

(d) Not-To-Exceed The total amount of Negotiation Costs shall not exceed One Hundred Thousand Dollars (\$100,000.00) without the prior written consent of all Parties as indicated by an amendment to this Agreement. It is hereby acknowledged and agreed that as of October 1, 2022, the amount of Negotiation Costs incurred is approximately Sixty-Five Thousand Dollars (\$65,000.00).

2. Incorporation of Recitals The Recitals set forth above are incorporated herein and made an operative part of this Amendment.

3. Capitalized Terms Except as may be otherwise specifically set forth in this Amendment, all capitalized terms herein shall have the same meaning as set forth in the Agreement.

4. Balance of Agreement Except as specifically set forth in this Amendment, the balance of the provisions in the Agreement shall remain in full force and effect.

5. Counterparts This Amendment may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, each of the Parties have caused this Amendment to be executed by its respective duly authorized officers. The effective date of this Amendment shall be the date first above written.

(signatures are on the following pages)

CUCAMONGA VALLEY WATER DISTRICT

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

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

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

CITY OF ONTARIO

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

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

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

CITY OF FONTANA

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

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

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

CITY OF CHINO

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

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

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

CITY OF CHINO HILLS

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

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

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

CITY OF UPLAND

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

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

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

CITY OF MONTCLAIR

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

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

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



# CITY COUNCIL AGENDA REPORT

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**DATE:** NOVEMBER 21, 2022                      **FILE I.D.:** PDT362  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** POLICE  
**ITEM NO.:** 2                                              **PREPARER:** D. MALDONADO

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 22-101 WITH THE SAN BERNARDINO COUNTY OFFICE OF EMERGENCY SERVICES AUTHORIZING THE RECEIPT OF \$17,275 FROM THE FY 2021 HOMELAND SECURITY GRANT PROGRAM

CONSIDER AUTHORIZING CITY MANAGER STARR TO SIGN AGREEMENT NO. 22-101

CONSIDER AUTHORIZING A \$17,275 APPROPRIATION FROM THE PUBLIC SAFETY GRANT FUND TO PURCHASE AN ELECTRONIC MESSAGE BOARD TRAILER

CONSIDER AUTHORIZING A \$1,390 APPROPRIATION FROM THE STATE ASSET FORFEITURE FUND TO COVER THE REMAINING BALANCE OF THE ELECTRONIC MESSAGE BOARD TRAILER

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 22-101 with the San Bernardino County Office of Emergency Services (County OES) authorizing the receipt of \$17,275 from the FY 2021 Homeland Security Grant Program (HSGP). Council approval of this agreement ensures authorization of all aspects of the proof of authority section contained within the agreement. Staff proposes to purchase an electronic message board trailer with HSGP funds, which would require a \$17,275 appropriation from the Public Safety Grant Fund and a \$1,390 appropriation from the State Asset Forfeiture Fund. The Public Safety Grant Fund would be reimbursed \$17,275 by the FY 2021 HSGP.

A copy of proposed Agreement No. 22-101 is attached for the City Council’s review and consideration.

**BACKGROUND:** The State HSGP is designed to assist organizations, government agencies, and communities in implementing programs and measures to prevent, prepare for, protect against, mitigate against, respond to, and recover from all terror-related hazards and acts of terrorism. It is administered and funded by the California Governor’s Office of Emergency Services (Cal OES). County OES is a subgrantee of the HSGP and oversees the administration of grant funds for the San Bernardino County Operational Area. In its capacity as subgrantee, County OES is tasked with applying for HSGP funds on behalf of regional jurisdictions. Through this process, on August 29, 2022, the Montclair Police Department was approved to receive \$17,275 in FY 2021 HSGP funds. After procurement of equipment is completed, a request for reimbursement would be submitted to County OES.

The Police Department has received approval to use FY 2021 HSGP funds to procure an electronic message board trailer, which would allow effective delivery of information to the public. This message board would assist in relaying information to the public regarding significant threats, hazards, emergencies, and disasters, and thus help protect citizens from such events that pose a great risk. The full-matrix display would allow staff to display messages using text and/or graphic symbols that would direct the public and first responders to supplies during disasters, re-route vehicles when major

transportation roads and routes have been compromised, and deliver other such pertinent information during major events. The message board is highly visible and legible in both day and night conditions, the display automatically adjusts to ambient light conditions, it is light weight and easily towed, and its highly efficient solar panel system keeps the long-life batteries charged. Also included is a built-in radar to monitor and internally record traffic patterns on roadways in virtually any location and weather condition.

Bid quotations for the purchase of an electronic message board trailer were received from the following vendors:

<u>Vendor</u>	<u>Bid Amount</u>
Hi-Way Safety, Inc.	\$18,665
Full Traffic Maintenance, Inc.	\$19,202
Right of Way, Inc.	\$23,502

Hi-Way Safety, Inc. is the selected vendor for the purchase of the message board trailer. This vendor has the lowest bid offering competitive pricing and has provided reliable, professional service in the past. When the Department originally received these quotes in FY 2021, the quote received by Hi-Way Safety, Inc. was below the amount awarded by County OES. Due to the current state of the economy and cost of goods, the current quote exceeds the awarded amount by \$1,390. Therefore, the City Council is requested to authorize an appropriation of \$1,390 from the State Asset Forfeiture Fund to cover the difference.

**FISCAL IMPACT:** If approved by the City Council, the purchase of an electronic message board trailer would result in an appropriation from the Public Safety Grant Fund (1163) in the amount of \$17,275 and \$1,390 from the Asset Forfeiture State Fund 1140. The City would receive reimbursement in the amount of \$17,275 from the FY 2021 HSGP.

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

1. Approve Agreement No. 22-101 with the San Bernardino County Office of Emergency Services authorizing the receipt of \$17,275 from the FY 2021 Homeland Security Grant Program
2. Authorize City Manager Starr to sign Agreement No. 22-101.
3. Authorize a \$17,275 appropriation from the Public Safety Grant Fund to purchase an electronic message board trailer.
4. Authorize a \$1,390 appropriation from the State Asset Forfeiture Fund to cover the remaining balance of the electronic message board trailer.

County of San Bernardino  
FY2021 Homeland Security Grant Program  
CFDA 97.067

Subrecipient Assurances  
Grant No. 2021-0081

Name of Applicant: Montclair Police Department (hereafter "Applicant" or "Subrecipient")  
Address: 4370 Arrow Highway  
City: MONTCLAIR State: CA Zip Code: 91703  
Telephone Number: 909-449-3600 Fax Number: 909-1020-4892  
E-Mail Address: RAVELSE.CITYOFMONTCLAIR.ORG

\*\*\*The Applicant becomes the Subrecipient after obtaining award authorization and approval of these assurances by both Applicant and the County of San Bernardino (hereafter "County")\*\*\*

As the duly authorized representative of the Applicant, I hereby certify that the Applicant has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management and completion of the project described in this application, within prescribed timelines.

Applicant further acknowledges that Applicant is responsible for reviewing and adhering to all requirements within the:

- a) Applicable Federal Regulations (see below);
- b) Federal Program Notice of Funding Opportunity (NOFO);
- c) Federal Preparedness Grants Manual;
- d) California Supplement to the NOFO; and
- e) Federal and State Grant Program Guidelines
- f) Subrecipient Application Workbook

**Federal Regulations**

Government cost principles, uniform administrative requirements and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (C.F.R.). Updates are issued by the Office of Management and Budget (OMB) and can be found at <http://www.whitehouse.gov/omb/>.

State and federal grant award requirements are set forth below. The Applicant hereby agrees to comply with the following:

**1. Proof of Authority**

The Applicant will obtain proof of authority from the city council, governing board, or authorized body in support of this project. This written authorization must specify that the Applicant and the city council, governing board, or authorized body agree:

- a) To provide all matching funds required (if applicable) for the grant project and that any cash match will be appropriated as required;
- b) Any liability arising out of the performance of this agreement shall be the responsibility of the Applicant and the city council, governing board, or authorized body;
- c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board or authorized body;
- d) Applicant is authorized by the city council, governing board, or authorized body to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay



the non-federal share of project cost, if any) to ensure proper planning, management and completion of the project described in this application; and

- e) The official executing this agreement is authorized by the Applicant.

This Proof of Authority must be maintained on file and readily available upon request.

## 2. Period of Performance

The period of performance is specified in the Award. The Applicant is only authorized to perform allowable activities approved under the award, within the period of performance.

## 3. Lobbying and Political Activities

As required by Section 1352, Title 31 of the U.S. Code (U.S.C.), for persons entering into a contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, the Application certifies that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

The Applicant will also comply with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and §§7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

Finally, the Applicant agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from the California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

## 4. Debarment and Suspension

As required by Executive Orders 12549 and 12689, and 2 C.F.R. §200.214 and codified in 2 C.F.R. Part 180, Debarment and Suspension, the Applicant will provide protection against waste, fraud, and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the federal government. The Applicant certifies that it and its principals, recipients, or subrecipients:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

- d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where the Applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

#### 5. Non-Discrimination and Equal Employment Opportunity

The Applicant will comply with all state and federal statutes relating to non-discrimination, including:

- a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. §2000d et. Seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
- b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on basis of sex in any federally funded educational program or activity;
- c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794), which prohibits discrimination against those with disabilities or access and functional needs;
- d) Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. §§12101-12213), which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs;
- e) Age Discrimination Act of 1975, (42 U.S.C §§6101-6107), which prohibits discrimination on the basis of age;
- f) Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-2), relating to confidentiality of patient records regarding substance abuse treatment;
- g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);
- h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin;
- i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
- j) California Public Contract Code § 10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;
- k) DHS policy to ensure the equal treatment of faith-based organizations, under which all applicants and recipients must comply with equal treatment policies and requirements contained in 6 C.F.R Part 19;
- l) The Applicant will comply with California's Fair Employment and Housing Act (FEHA) (California Government Code §§ 12940, 12945, 12945.2), as applicable. FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave, military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions;

- m) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
- n) The requirements of any other nondiscrimination statute(s) which may apply to this application.

#### 6. Drug-Free Workplace

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), the Applicant certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

#### 7. Environmental Standards

The Applicant will comply with state and federal environmental standards, including:

- a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000-21177), to include coordination with the city or county planning agency;
- b) CEQA Guidelines (California Code of Regulation, Title 14, Division 6, Chapter 3, §§ 15000-15387);
- c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;
- d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;
- e) Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
- f) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
- g) Executive Order 11514 which sets forth the national environmental standards;
- h) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;
- i) The Safe Drinking Water Act of 1974, (P.L. 93-523);
- j) The Endangered Species Act of 1973, (P.L. 93-205);
- k) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- l) Conformity of Federal Actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); and
- m) Wild and Scenic Rivers Act of 1968 (16 U.S.C § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

The Applicant shall not be: 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.

#### 8. Audits

For subrecipients expending \$750,000 or more in federal grant funds annually, the Applicant will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

#### 9. Cooperation and Access to Records

All Applicants must cooperate with any compliance reviews or investigations conducted by DHS. In accordance with 2 C.F.R § 200.337, the Applicant will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. The Applicant will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.

**10. Conflict of Interest**

The Applicant will establish safeguards to prohibit the Applicant's employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

**11. Financial Management**

False Claims for Payment – The Applicant will comply with 31 U.S.C. §§ 3729-3733 which sets forth that no subgrantee, recipient or subrecipient shall submit a false claim for payment, reimbursement or advance.

**12. Reporting and Accountability**

The Applicant agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating \$30,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 C.F.R. Part 170 Reporting Subaward and Executive Compensation Information.

**13. Whistleblower Protections**

The Applicant also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.

**14. Human Trafficking**

The Applicant will comply with the requirement of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; (3) using forced labor in the performance of the award or subawards under the award.

**15. Labor Standards**

The Applicant will comply with the following federal labor standards:

- a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts, and
- b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

**16. Worker's Compensation**

The Applicant must comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

**17. Property-Related**

If applicable to the type of project funded by this federal award, the Applicant will:

- a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchase;

- b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;
- c) Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C §469a-1 et seq.); and
- d) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

**18. Certifications Applicable Only to Federally-Funded Construction Projects**

For all construction projects, the Applicant will:

- a) Not dispose of, modify the use of, or change the terms of the real property title of other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;
- b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and
- c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

**19. Use of Cellular Device While Driving is Prohibited**

Applicants are required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving a motor vehicle while using an electronic wireless communication device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.

**20. California Public Records Act and Freedom of Information Act**

The Applicant acknowledges that all information submitted in the course of applying for funding under this program, or provided in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Act, California Government Code section 6250 et seq. The Applicant should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

**HOMELAND SECURITY GRANT PROGRAM (HSGP) – PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS**

**21. Acknowledgment of Federal Funding from DHS**

All subrecipients must acknowledge their use of federal funding when issuing statements, press releases, request for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

**22. Activities Conducted Abroad**

All subrecipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

**23. Best Practices for Collection and Use of Personally Identifiable Information (PII)**

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All subrecipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Subrecipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template a useful resource respectively.

**24. Copyright**

All subrecipients must affix the applicable copyright notices of 17 U.S.C §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including award number) to any work first produced under federal financial assistance awards.

**25. Duplication of Benefits**

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude subrecipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

**26. Energy Policy and Conservation Act**

All subrecipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

**27. Federal Debt Status**

All subrecipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefits overpayments. See OMB Circular A-129.

**28. Fly America Act of 1974**

All subrecipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B-138942.

**29. Hotel and Motel Fire Safety Act of 1990**

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all Applicants must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.

**30. Non-supplanting Requirement**

All subrecipients who receive federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

**31. Patents and Intellectual Property Rights**

Unless otherwise provided by law, subrecipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All subrecipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14

**32. SAFECOM**

All subrecipients who receive federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for

Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

**33. Terrorist Financing**

All subrecipients must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Subrecipients are legally responsible to ensure compliance with the Order and laws.

**34. Reporting of Matters Related to Recipient Integrity Performance**

If the total value of the subrecipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, the subrecipient must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

**35. USA Patriot Act 2001**

All subrecipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175-175c.

**36. Use of DHS Seal, Logo and Flags**

All subrecipients must obtain permission, from their DHS Financial Assistance Office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

**37. Performance Goals**

In addition to the Biannual Report submission requirements outlined in the Preparedness Grants Manual, subrecipients must demonstrate how the grant-funded project addresses the core capability gap associated with each project and identified in the Threat and Hazard Identification and Risk Analysis or Stakeholder Preparedness Review or sustains existing capabilities, as applicable. The capability gap reduction or capability sustainment must be addressed in the Project Description for each project.

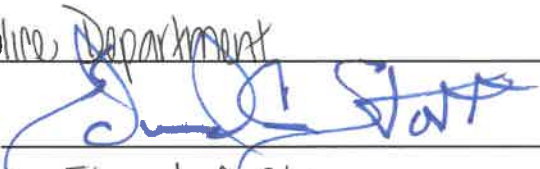
**IMPORTANT**

The purpose of the assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. The Applicant recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.


All appropriate documentation, as outlined above, must be maintained on file by the Applicant and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both, and the subrecipient may be ineligible for award of any future grants if the Cal OES determines that any of the following has occurred: (1) the subrecipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of language contained within this document must be included in the award documents for all subawards at all tiers. All subrecipients are bound by the Department of Homeland Security Standard Terms and Conditions 2021, Version 11.4, hereby incorporated by reference, which can be found at: <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

The Undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the said Applicant.

Applicant: Montclair Police Department  
Signature of Authorized Agent:   
Printed Name of Authorized Agent: Edward C. Starr  
Title: City Manager Date: 08/17/2022

The Undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the County. The undersigned is the appropriate contact for all notices and documents to be provided under this agreement.

County of San Bernardino  
Signature of Authorized Agent:   
Printed Name of Authorized Agent: Daniel Munoz  
Title: Deputy Executive Officer Date: 10.14.22





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	PDT175
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	M. BUTLER

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 22-108 WITH LEXIPOL, LLC FOR CONTINUED MAINTENANCE OF THE POLICE DEPARTMENT'S POLICY AND PROCEDURES MANUAL, LAW ENFORCEMENT DAILY TRAINING BULLETINS (DTB), AND DTB MANAGEMENT SERVICES

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 22-108 with Lexipol, LLC for continued maintenance of the Police Department's Policy and Procedures Manual, Law Enforcement Daily Training Bulletins (DTB), and DTB management services.

A copy of proposed Agreement No. 22-108 is attached for the City Council's review and consideration.

**BACKGROUND:** The Police Department has utilized Lexipol, LLC for continued maintenance of the Police Department's Policy and Procedures Manual for 14 years and would like to renew its agreement. Lexipol provides fully developed, state-specific policies researched and written by subject-matter experts and vetted by attorneys. These policies are based on nationwide standards and best practices while also incorporating state and federal laws and regulations where appropriate. Lexipol's legal and content development teams follow a rigorous multi-step process to evaluate thousands of legislative changes annually and ensure changes are made to the Police Department's Policy and Procedures Manual commensurate with the changes. This service is utilized in the continual updating of the Department's over-750-page Policy and Procedures Manual. Command Staff monitors updates to the Manual recommended by Lexipol, analyzes the updates for applicability, customizes the updates if necessary, and issues the new updated Manual through Lexipol's Knowledge Management System (KMS)—a web-based delivery platform and mobile app. The KMS pushes updates to members of the Police Department online. Members must log in, review updates to the Manual, and electronically accept the updates by the assigned deadline.

Beginning in January 2020, Lexipol, LLC started providing an additional training program through Daily Training Bulletins (DTB). The DTB program is designed by the team of public safety lawyers and policy experts employed by Lexipol, LLC to continually monitor national and California-specific policy changes. The DTBs are utilized as a daily training exercise by employees of the Police Department to reinforce the understanding of policies and procedures, help minimize risk, and increase the effectiveness of service to the community. DTBs are designed to help personnel learn and apply policy and procedure content through two-minute online training exercises, which are scenario-based and tie Department policies to real-world applications. These training exercises can be completed via desktop or laptop computers, smartphones, tablets, or other mobile devices such as the Mobile Data Computers installed in the Police vehicles. Upon completion of the DTBs, a report shows completion by the agency member and the topic instructed. Command Staff has found DTBs to be an effective tool to assist with the proper application of policies and would like to continue this service.

Lexipol, LLC has also been providing DTB management services. This service customizes the DTB scenarios based on the changes made by Command Staff during the policy update process. This service analyzes DTB master content compared to Montclair Police Department's customized policies, adapts monthly DTB packages to fit the parameters of the Department's policy content, issues the monthly DTB training packages, and customizes the DTB completion reports as well as agency-specific year-end data analysis. Without DTB management service, these procedures would have to be completed by a member of Command Staff, who has found this service to be a vital component of the DTB program and would like to continue the service.

**FISCAL IMPACT:** The subscription services included in Agreement No. 22-108 with Lexipol, LLC are for the 2023 calendar year and would cost \$13,887.72. Included in the Police Department's Fiscal Year 2022-23 Budget in Special Contract Services is \$9,959 for policy and procedural manual updates and DTBs, and \$2,900 for DTB management services from the SB 509 Fund (1143-4421-52450-400-00000). For 2023, Lexipol, LLC issued a standard 8 percent increase for all services. If necessary, staff will request additional funds in the amount of \$1,028.72 at midyear to cover the remaining balance.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 22-108 with Lexipol, LLC for continued maintenance of the Police Department's Policy and Procedures Manual, Law Enforcement Daily Training Bulletins, and DTB management services.



MASTER SERVICE AGREEMENT

Agency's Name: Montclair Police Department  
Agency's Address: 4870 Arrow Hwy POB 2308  
Montclair, California 91763

Attention: Chief Robert Avels

Lexipol's Address: 2611 Internet Boulevard, Suite 100  
Frisco, Texas 75034

Effective Date: \_\_\_\_\_  
(to be completed by Lexipol upon receipt of signed Agreement)

This Master Service Agreement (the "Agreement") is entered into by and between Lexipol, LLC, a Delaware limited liability company ("Lexipol"), which may include one or more Lexipol subsidiary entities, and the Agency identified above.

This Agreement consists of:

- (a) this **Cover Sheet**
- (b) **Exhibit A** - Selected Services and Associated Fees
- (c) **Exhibit B** - Terms and Conditions Specific to this Agreement

Each individual signing below represents and warrants that they have full and complete authority to bind the party on whose behalf they are signing to all terms and conditions contained in this Agreement.

**Montclair Police Department**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**Lexipol, LLC**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**Exhibit A**

**SELECTED SERVICES AND ASSOCIATED FEES**

**Agency is purchasing the following:**

<b>QTY</b>	<b>DESCRIPTION</b>	<b>UNIT PRICE</b>	<b>EXTENDED</b>
1	Annual Law Enforcement Policy Manual & Daily Training Bulletins (12 Months)	USD 10,755.72	USD 10,755.72
1	Annual Law Enforcement Daily Training Bulletin Management (12 Months)	USD 3,132.00	USD 3,132.00
	<b>Subscription Line Items Total</b>		<b>USD 13,887.72</b>
			<b>USD 13,887.72</b>
		<b>TOTAL:</b>	<b>USD 13,887.72</b>

\*Law Enforcement pricing is based on 54 Law Enforcement Sworn Officers.

\*The above subscription services, and when applicable, implementation services, shall be invoiced by Lexipol (or one of its subsidiaries, where applicable) upon the execution of this Agreement.

**Exhibit B  
Terms and Conditions of Service**

**1. Definitions.** For purposes of Lexipol’s Terms and Conditions of Service (the “Terms”), each of the following capitalized terms will have the meaning included in this Section. Other capitalized terms are defined within their respective sections below. Depending on the selected Service(s), Agency may receive support from, and be invoiced by, a Lexipol subsidiary, including The Praetorian Group and/or Cordico Inc.

**1.1 “Agency”** means the department, agency, office, company, or other entity purchasing and/or otherwise subscribing to Lexipol products or services.

**1.2 “Agreement”** means the combination of (a) the cover sheet to which these Terms are attached; (b) Lexipol’s subscription and pricing information sheets, which are typically included as an Exhibit A (“Services Being Purchased and Related Fees”) or as set forth in any similar pricing sheet (including by way of addendum); and (c) these Terms.

**1.3 “Derivative Work(s)”** means work(s) based on Lexipol’s Subscription Materials, or any substantive portion thereof. Derivative Works include revision, modification, abridgement, condensation, expansion, or any other form in which the Subscription Materials or any portion thereof are recast, transformed, or adapted. For purposes of the Agreement, a Derivative Work also includes any compilation that incorporates any portion of the Subscription Materials. Further, “Derivative Work” includes any work considered a “derivative work” under United States copyright law.

**1.4 “Effective Date”** means the date specified on the cover sheet to which these Terms are attached, or as otherwise expressly set forth and agreed upon by Lexipol and Agency in a writing and defined as the “Effective Date.”

**1.5 “Initial Term”** means the period commencing on the Effective Date and continuing for the length of time indicated on the cover sheet or subscription and pricing sheet provided by Lexipol. If the Initial Term is not so indicated, the default Initial Term is one (1) year from the Effective Date.

**1.6 “Service(s)”** means all Lexipol product(s) or service(s), including one-time and recurring (subscription) services, as may be offered by Lexipol and/or its subsidiaries and affiliates from time to time.

**1.7 “Subscription Materials”** means all policy manuals, supplemental publications, daily training bulletins, written content, images, videos, and all other data and multimedia provided by Lexipol and/or its licensors through the Services.

**2. Term.** The Agreement becomes enforceable upon signature by Agency’s authorized representative. Following the Initial Term, the Agreement shall renew in successive one-year periods thereafter (each a “Renewal Term”) unless one party provides written notice of non-renewal to the other party at least thirty (30) days prior to expiration of the then-current term. The Initial Term and all Renewal Terms collectively comprise the “Term” of the Agreement.

**3. Termination.**

**3.1 For Cause.** The Agreement may be terminated by either party, effective immediately, (a) in the event that the other party fails to discharge any obligation or remedy any default under the Agreement for a period of more than thirty (30) calendar days after it has been given written notice of such failure or default; or (b) in the event that the other party makes an assignment for the benefit of creditors or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to the bankruptcy laws of any applicable jurisdiction.

**3.2 For Convenience.** The Agreement may be terminated for convenience (including lack of appropriation of funds by Agency) upon sixty (60) days written notice. Note: fees already paid for Services are not eligible for refund, proration or offset in the event of Agency’s termination for convenience.

**4. Effect of Expiration or Termination.** Upon the expiration or termination of the Agreement for any reason, Agency's access to Lexipol's Services shall cease. Termination or expiration of the Agreement shall not, however, relieve either party from any obligation or liability that has accrued under the Agreement prior to the date of such termination or expiration, including payment obligations. The right to terminate the Agreement shall be in addition to, and not in lieu of, any other remedy, legal or equitable, to which the parties are entitled at law or in equity. The provisions of Sections 1 (Definitions), 6 (Service-Specific Terms), 8 (Privacy Policy), 8 (Warranty Disclaimer), 9 (Confidentiality), 10 (Warranty Disclaimer), 11 (Limitation of Liability), 12 (General Terms), and this Section 4 shall survive the expiration or termination of the Agreement for any reason.

**5. Fees and Invoicing.** Unless otherwise agreed upon in writing, Lexipol (or, if applicable, The Praetorian Group or Cordico Inc.) will invoice Agency at the commencement of the Initial Term and thirty (30) days prior to each Renewal Term. Agency will pay to Lexipol the fee(s) specified on each invoice within thirty (30) days following receipt of the invoice. All invoices will be sent to Agency at the address specified on the cover sheet to which these Terms are attached or as otherwise designated by Agency in writing. All payments will be made by electronic transfer of immediately available funds or by mailing a check to Lexipol at 2611 Internet Blvd, Ste 100, Frisco, TX 75034 (Attn: Accounts Receivable). Lexipol reserves the right to increase fees for Renewal Terms. All amounts required to be paid under the Agreement are exclusive of taxes and similar fees now in force or enacted in the future. Unless otherwise exempt, Agency is responsible for and will pay in full all taxes properly imposed related to its receipt of Lexipol's Services, except for taxes based on Lexipol's net income. In the event any amount owed by Agency is not paid when due, and such failure is not cured within ten (10) days after written notice thereof, then in addition to any other amount due, Agency shall pay a late payment charge on the overdue amount at a rate equal to the lower of (a) one percent (1%) per month, or (b) the highest rate permitted by applicable law.

**6. Service-Specific Terms.** The following sections apply to specific Lexipol Services:

**6.1 Policy.** Lexipol's policy Subscription Materials and Knowledge Management System ("KMS") are proprietary, protected under U.S. copyright, trademark, patent, and/or other applicable laws, and Lexipol reserves all rights not expressly granted in these Terms. Agency may prepare Derivative Works using Lexipol's Subscription Materials, but Lexipol shall remain the sole owner of all right, title and interest in and to them, including all copyrights, intellectual property rights, and other proprietary rights therein or pertaining thereto. Agency shall retain a perpetual, personal, non-sublicensable and non-assignable right to use the Subscription Materials for Agency's internal purposes but will not remove any copyright notice or other proprietary notice of Lexipol appearing thereon. Agency acknowledges and agrees that Lexipol shall have no responsibility to update such Subscription Materials beyond the Term of the Agreement and shall have no liability whatsoever for Agency's creation or use of Derivative Works. Lexipol's Subscription Materials are to be treated as Confidential Information (per Section 9 herein), but Agency may disclose Subscription Materials pursuant to a valid court order, lawful government agency request, Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request. Agency acknowledges and agrees that all policies and procedures it implements have been individually reviewed and adopted by Agency, that neither Lexipol nor any of its agents, employees, or representatives shall be considered "policy makers" in any legal or other sense, and that Agency's highest-ranking official shall, for all purposes, be considered the "policy maker" with regard to same. Lexipol's KMS Service is subject to the Service Level Agreement attached to these Terms.

**6.2 Learning.** Lexipol's Learning Management System ("LMS"), offered by Praetorian Digital, is a proprietary Service protected under U.S. copyright, trademark, patent, and other laws. Lexipol and its licensors retain all rights, title, and interest in and to the LMS (including, without limitation, all intellectual property rights), including all copies, modifications, extensions, and Derivative Works thereof. Agency's right to use the LMS is limited to the rights expressly granted in the Agreement. Agency Data, defined as data owned by Agency prior to the Effective Date or which Agency provides during the Term for purposes of identifying authorized users, confirming agency or department information, or other purposes that are ancillary to receipt of the Service, remains Agency's property. Lexipol retains no right or interest in Agency Data and shall return or destroy Agency Data following termination of the Agreement. Lexipol's LMS Service is subject to the Service Level Agreement attached to these Terms.

**6.3 Wellness.** This Section applies when Agency subscribes to Lexipol's Wellness Application ("Wellness App") offered by Cordico®. All Subscription Materials delivered by the Wellness App, including but not limited to all object and source code, all information created, developed, or reduced to practice, and all written, image-based, or video-based content underlying the Wellness App that is not specifically provided by Agency is the proprietary intellectual property of Lexipol and/or its suppliers or licensors, protected to the maximum extent permitted by trademark, copyright, and patent laws. Agency is granted a nonexclusive limited right to access the Wellness App during the Term. If the Agreement is terminated or expires for any reason, Agency shall lose access to the Wellness App and to all associated Subscription Materials and shall discontinue all use of the same for any purpose. Nothing in this section or these Terms shall be construed as conferring any right of ownership or use to the Wellness App, whether by estoppel, implication or otherwise.

**6.4 Grants.** This Section applies when Agency selects Lexipol's Grant Writing, Consulting, and/or GrantFinder services. For Grant Writing services, Agency takes full responsibility for submitting information reasonably required by Lexipol's grant writing team in a timely manner (at least five (5) days prior to the applicable grant application close date). Agency is responsible for all submissions of final grant applications by grant deadlines, but Lexipol shall be considered Agency's duly authorized representative for submissions where applicable. Failure to submit requested materials to write grant applications on time will result in rollover of project services and fees to next grant application cycle; not a refund of the fees. Requests for cancellation of Grant Writing services will result in a 50% fee of the total value of the service. Invoices for Grant Writing services will be sent as soon as work begins for the applicable target grant. Complete payment must be received no later than thirty (30) days after receipt of invoice. In the event Agency has not made timely payment on an invoice, Lexipol reserves the right to suspend all grant Services to Agency until past-due payments are received in full, and may terminate Agency's access to GrantFinder, if applicable. Invoices over thirty (30) days past due may be charged a twenty-five dollar (\$25) late fee.

**6.5 Generally; Injunctive Relief.** Nothing in the Agreement shall be construed as conferring any rights or license to Lexipol's trade secrets, intellectual property, Confidential Information, Subscription Materials, KMS, LMS, Wellness App, or the software underlying such products and services, whether by estoppel, implication or otherwise. Agency may not, and may not assist others to, decompile, disassemble, reverse engineer, or otherwise attempt to discover any object code, source code, or proprietary data underlying the Services. Agency grants all rights and permissions in or relating to Agency Data as are necessary to Lexipol to enforce the Agreement, exercise Lexipol's rights, and perform Lexipol's obligations hereunder. Agency acknowledges that a breach or threatened breach of any portion of this Section may cause irreparable harm and shall entitle Lexipol to injunctive relief in addition to any other available remedy.

**7. Account Security.** The rights to access and use the Services under the Agreement are personal and unique to Agency and Agency shall not assign or otherwise transfer any such rights to any other person or entity. Except as set forth herein, Agency remains solely responsible for maintaining the confidentiality of Agency's username(s) and password(s) and the security of Agency's account(s), meaning the account by which Agency accesses the Services. Agency will not permit access to Agency's account(s) or use of Agency's username(s) and/or password(s) by any person or entity other than authorized Agency personnel. Agency will immediately notify Lexipol if Agency becomes aware that any person or entity other than authorized Agency personnel has used Agency's Account or Agency's username(s) and/or password(s).

**8. Privacy Policy.** Lexipol will hold Agency Data in confidence unless required to provide access in accordance with a court order, government agency request, or other legal process such as a Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request. Lexipol will use commercially reasonable efforts to ensure the security of all Agency Data. Lexipol's systems use the Secure Socket Layer (SSL) Protocol for Lexipol Services, which encrypts information as it travels between Lexipol and each Agency. However, Agency acknowledges and agrees that data transmission on the internet is not always 100% secure and Lexipol cannot and does not warrant that information Agency transmits to or through the Services is 100% secure. Agency acknowledges that Lexipol may provide view-only access and summary information (which may include number of policies developed or in development, percentage of staff reviews of developed policies and DTBs) to Agency's affiliated Risk Management Authority, Insurance Pool or Group, or Sponsoring Association if they are actively funding member Agency Subscription Fees.

**9. Confidentiality.** During the term of the Agreement, either party may be required to disclose information to the other party that is marked “confidential” or is of such a type that the confidentiality thereof is reasonably apparent (collectively, “Confidential Information”). The receiving party will: (a) limit disclosure of any Confidential Information of the other party to the receiving party’s directors, officers, employees, agents and other representatives (collectively “Representatives”) who have a need to know such Confidential Information in connection with the Services; (b) advise its personnel and agents of the confidential nature of the Confidential Information and of the obligations set forth in the Agreement; (c) keep all Confidential Information confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information to any third party unless expressly authorized by the disclosing party. Notwithstanding the foregoing, a party may disclose Confidential Information pursuant to a valid governmental, judicial, or administrative order, subpoena, discovery request, regulatory request, Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request, or similar method, provided that the party proposing to make any such disclosure will promptly notify, to the extent practicable, the other party in writing of such demand for disclosure so that the other party may, at its sole expense, seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information. Each party shall be responsible for any breach of this section by any of such party’s personnel or agents.

**10. Warranty Disclaimer.** ALL SERVICES AND SUBSCRIPTION MATERIALS ARE PROVIDED "AS-IS" AND LEXIPOL DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AS WELL AS ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

**11. Limitation of Liability.** Lexipol’s cumulative liability resulting from any claims, demands, or actions arising out of or relating to the Agreement, the Services, or the use of any Subscription Materials shall not exceed the aggregate amount of subscription fees actually paid to Lexipol by Agency for the associated Services during the twelve-month period immediately prior to the assertion of such claim, demand, or action. In no event shall Lexipol be liable for any indirect, incidental, consequential, special, exemplary damages, or lost profits, even if Lexipol has been advised of the possibility of such damages. The limitations set forth in this Section shall apply whether the subject claim is based on breach of contract, tort, strict liability, product liability or any other theory or cause of action.

**12. General Terms.**

**12.1 General Interpretation.** The language used in the Agreement and these Terms shall be deemed to express the mutual intent of Lexipol and Agency. The Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the Agreement.

**12.2 Invalidity of Provisions.** Each of the provisions contained in the Agreement and these Terms is distinct and severable. A declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. Further, if a court of competent jurisdiction finds any provision of the Agreement to be invalid or unenforceable, the parties agree that the court should endeavor to give effect to the parties’ intention as reflected in such provision to the maximum extent possible.

**12.3 Waiver.** Either party’s failure to exercise, or delay in exercising, any right or remedy under any provision of the Agreement shall not constitute a waiver of such right or remedy.

**12.4 Governing Law.** The Agreement shall be construed in accordance with, and governed by, the laws of the State in which Agency is located, without giving effect to any choice of law doctrine that would cause the law of any other jurisdiction to apply.



**12.5 Compliance with Laws.** Each party shall maintain compliance with all applicable laws, rules, regulations, and orders promulgated by any federal, state, or local government body or agency relating to its obligations pursuant to the Agreement and these Terms.

**12.6 Attorney's Fees.** If any action is brought by either party to the Agreement against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorneys' fees and expenses of litigation.

**12.7 Notices.** Any notice required by the Agreement or given in connection with it shall be in writing and shall be made by certified mail (postage prepaid), recognized overnight delivery service, or (if mutually agreed upon) by email to authorized recipients at such address as each party may indicate from time to time. Alternatively, electronic mail or facsimile notice to established and authorized recipients is acceptable when acknowledged by the receiving party.

**12.8 Entire Agreement.** The Agreement, including these Terms, embodies the entire agreement and understanding of the parties hereto and expressly supersedes all prior written and oral agreements and understandings with respect to the subject matter hereof. No representation, promise, or statement of intention has been made by any party hereto that is not embodied in the Agreement. Terms and conditions set forth in any purchase order or any other form or document that are inconsistent with or in addition to the terms and conditions set forth in the Agreement are hereby objected to and rejected in their entirety, regardless of when received, without further action or notification, and shall not be considered binding unless specifically agreed to in writing by both parties. No amendment, modification, or supplement to the Agreement shall be binding unless it is in writing and signed by the party sought to be bound thereby.

**12.9 Counterparts.** The Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document for purposes of the Agreement.

**12.10 Indemnification.** Subject to the limitations set forth in this Agreement, Lexipol, at its own expense, shall defend, indemnify, and hold Agency harmless from any claim made or threatened or any suit or proceeding brought against Agency insofar as it is based on an allegation that any Subscription Materials furnished to or utilized by Agency under this Agreement infringes any copyright or patent.

**Lexipol Service Level Agreement for Cloud-Based Services**

1. **Response Times.** For issues relating to Lexipol's online, cloud-based Services (e.g. KMS, LMS, Wellness), Lexipol will make an industry standard and commercially reasonable effort to respond promptly (via Lexipol's Normal Support Channels) within two (2) Business Days after receipt.
2. **Uptime Commitment.** The Uptime Percentage for the Service will be ninety-nine and five-tenths percent (99.5%) (the "Uptime Commitment"). Subject to the exclusions described in below, "Uptime Percentage" is calculated by subtracting from 100% the percentage of 1-minute periods during any annual billing cycle in which Agency's selected Service(s) are unavailable out of the total number of minutes in that billing cycle. "Unavailable" and "Unavailability" mean that, in any 1-minute period, all connection requests received by Agency failed to process (each a "Failed Connection"); provided, however, that no Failed Connection will be counted as a part of more than one such 1-minute period (i.e. a Failed Connection will not be counted for the period 12:00:00-12:00:59 and the period 12:00:30-12:01:29). The Yearly Uptime Percentage will be measured based on the industry standard monitoring tools.
3. **Exclusions from Uptime Percentage.** All Service Unavailability resulting from the following will be excluded from calculation of Uptime Percentage: (a) Regularly-scheduled maintenance of the Service that does not exceed six (6) hours per 3-month period and is communicated by Lexipol at least twenty-four (24) hours in advance via Lexipol's support channels (Lexipol typically schedules such regularly scheduled maintenance once per month); (b) Any failures of the Lexipol Standard and Custom Reporting Services that does not exceed six (6) hours per 3-month period and is communicated by Lexipol at least twenty-four (24) hours in advance via Lexipol's Normal Support Channels; (c) Any issues with a third-party service to which Agency subscribes but does not control; (d) Any problems not caused by Lexipol that result from, computing

or networking hardware, other equipment or software under Agency's control, the Internet, or other issues with electronic communications; (e) Lexipol's suspension or termination of the Service in accordance with the Terms; (f) Exceeding Lexipol's published Concurrent Request Limits; (g) Software that has been subject to unauthorized modification by Agency; (h) Negligent or intentional misuse of the Service by Agency.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	FRD215
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	FIRE
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	M. BUTLER
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 22-109 WITH LEXIPOL, LLC FOR CONTINUED MAINTENANCE OF THE FIRE DEPARTMENT'S POLICY AND PROCEDURES MANUAL AND FIRE SERVICE DAILY TRAINING BULLETINS		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 22-109 with Lexipol, LLC for continued maintenance of the Fire Department's Policy and Procedures Manual and fire service Daily Training Bulletins (DTB).

A copy of proposed Agreement No. 22-109 is attached for the City Council's review and consideration.

**BACKGROUND:** Lexipol was founded in 2003 by public safety experts to provide public safety agencies with policy management, online training, wellness resources, and grant assistance aimed at keeping personnel safe and healthy and reducing risk. Since then, Lexipol has grown to serve more than 8,100 agencies and municipalities and 2 million public safety and governmental professionals.

In January 2022, Lexipol, LLC implemented a Policy and Procedures Manual for the Fire Department, providing fully developed, constitutionally sound, state-specific fire service policies researched and written by subject-matter experts and public safety attorneys. These policies are based on the latest standards and nationwide best practices that incorporate state and federal laws and regulations where appropriate. If proposed Agreement No. 22-109 is approved, Lexipol's legal and content development teams would continue to update these policies by continuously reviewing state and federal laws and regulations, court decisions, and evolving best practices. Lexipol would also continue to provide fire procedures based on national best practices augmenting safe, effective, and consistent emergency responses and operations, including tactical and administrative procedures. Fire Department staff would continue to monitor updates for applicability, customize the updates if necessary, and issue the new updated Manual through Lexipol's Knowledge Management System (KMS)—a web-based delivery platform and mobile app. The KMS would continue to provide secure storage, easy access to all policies, and push updates to members of the Fire Department online, in which members would log in, review updates to the Policy Manual, and electronically accept the updates by the assigned deadline.

Staff would also like to continue the training program offered by Lexipol, LLC through Daily Training Bulletins (DTB). The DTB program is designed by a team of public safety attorneys and policy experts employed by Lexipol, LLC to continually monitor national and California-specific policy changes. The DTBs are used as a daily training exercise by employees of the Fire Department to reinforce their understanding of policies and procedures, help minimize risk, and increase the effectiveness of service to the community. DTBs help personnel learn and apply policy and procedure content through two-minute online training exercises, which are scenario-based that tie Department policy to real-world applications. The training exercises can be completed via desktop

or laptop computers or from smartphones, tablets, or other mobile devices such as the Mobile Data Computers installed in the Fire vehicles. On-line training makes it easy to track and report training hours, keeps personnel up-to-date on new laws and best practices, enhances safety, and assists with applying proper policy. Upon completing the training bulletins, a report shows completion by the agency member and the topic instructed.

Lexipol also currently provides a supplemental publication service, which electronically links Department-specific procedural or supplemental content to the Policy and Procedures Manual. This gives Fire Department staff the ability to access standard operating procedures, guidelines, training guides, or secondary policy manuals all in one place on Lexipol's online content delivery platform, KMS.

**FISCAL IMPACT:** The subscription services included in Agreement No. 22-109 with Lexipol, LLC are for the 2023 calendar year and would cost \$7,960.53. Included in the Fire Department's Fiscal Year 2022-23 Budget in Special Contract Services is \$8,000 to contract with Lexipol for these services (Account No. 1000-4533-52450-400-0000).

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 22-109 with Lexipol, LLC for continued maintenance of the Fire Department's Policy and Procedures Manual and fire service Daily Training Bulletins.



MASTER SERVICE AGREEMENT

Agency's Name: Montclair Fire Department  
Agency's Address: 8901 Monte Vista Ave POB 2308  
Montclair, CA 91763

Attention:

Lexipol's Address: 2611 Internet Boulevard, Suite 100  
Frisco, Texas 75034

Effective Date:

\_\_\_\_\_  
(to be completed by Lexipol upon receipt of signed Agreement)

This Master Service Agreement (the "Agreement") is entered into by and between Lexipol, LLC, a Delaware limited liability company ("Lexipol"), which may include one or more Lexipol subsidiary entities, and the Agency identified above.

This Agreement consists of:

- (a) this **Cover Sheet**
- (b) **Exhibit A** - Selected Services and Associated Fees
- (c) **Exhibit B** - Terms and Conditions Specific to this Agreement

Each individual signing below represents and warrants that they have full and complete authority to bind the party on whose behalf they are signing to all terms and conditions contained in this Agreement.

**Montclair Fire Department**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**Lexipol, LLC**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**Exhibit A**

**SELECTED SERVICES AND ASSOCIATED FEES**

**Agency is purchasing the following:**

<b>QTY</b>	<b>DESCRIPTION</b>	<b>UNIT PRICE</b>	<b>EXTENDED</b>
1	Annual Fire Policy Manual & Daily Training Bulletins	USD 6,206.90	USD 6,206.90
1	Annual Fire Supplemental Manual(s)	USD 1,057.24	USD 1,057.24
1	Annual Fire Procedures	USD 696.39	USD 696.39
	<b>Subscription Line Items Total</b>		<b>USD 7,960.53</b>
			<b>USD 7,960.53</b>
		<b>TOTAL:</b>	<b>USD 7,960.53</b>

\*The above subscription services, and when applicable, implementation services, shall be invoiced by Lexipol (or one of its subsidiaries, where applicable) upon the execution of this Agreement.

**Exhibit B**  
**Terms and Conditions of Service**

**1. Definitions.** For purposes of Lexipol's Terms and Conditions of Service (the "Terms"), each of the following capitalized terms will have the meaning included in this Section. Other capitalized terms are defined within their respective sections below. Depending on the selected Service(s), Agency may receive support from, and be invoiced by, a Lexipol subsidiary, including The Praetorian Group and/or Cordico Inc.

**1.1 "Agency"** means the department, agency, office, company, or other entity purchasing and/or otherwise subscribing to Lexipol products or services.

**1.2 "Agreement"** means the combination of (a) the cover sheet to which these Terms are attached; (b) Lexipol's subscription and pricing information sheets, which are typically included as an Exhibit A ("Services Being Purchased and Related Fees") or as set forth in any similar pricing sheet (including by way of addendum); and (c) these Terms.

**1.3 "Derivative Work(s)"** means work(s) based on Lexipol's Subscription Materials, or any substantive portion thereof. Derivative Works include revision, modification, abridgement, condensation, expansion, or any other form in which the Subscription Materials or any portion thereof are recast, transformed, or adapted. For purposes of the Agreement, a Derivative Work also includes any compilation that incorporates any portion of the Subscription Materials. Further, "Derivative Work" includes any work considered a "derivative work" under United States copyright law.

**1.4 "Effective Date"** means the date specified on the cover sheet to which these Terms are attached, or as otherwise expressly set forth and agreed upon by Lexipol and Agency in a writing and defined as the "Effective Date."

**1.5 "Initial Term"** means the period commencing on the Effective Date and continuing for the length of time indicated on the cover sheet or subscription and pricing sheet provided by Lexipol. If the Initial Term is not so indicated, the default Initial Term is one (1) year from the Effective Date.

**1.6 "Service(s)"** means all Lexipol product(s) or service(s), including one-time and recurring (subscription) services, as may be offered by Lexipol and/or its subsidiaries and affiliates from time to time.

**1.7 "Subscription Materials"** means all policy manuals, supplemental publications, daily training bulletins, written content, images, videos, and all other data and multimedia provided by Lexipol and/or its licensors through the Services.

**2. Term.** The Agreement becomes enforceable upon signature by Agency's authorized representative. Following the Initial Term, the Agreement shall renew in successive one-year periods thereafter (each a "Renewal Term") unless one party provides written notice of non-renewal to the other party at least thirty (30) days prior to expiration of the then-current term. The Initial Term and all Renewal Terms collectively comprise the "Term" of the Agreement.

**3. Termination.**

**3.1 For Cause.** The Agreement may be terminated by either party, effective immediately, (a) in the event that the other party fails to discharge any obligation or remedy any default under the Agreement for a period of more than thirty (30) calendar days after it has been given written notice of such failure or default; or (b) in the event that the other party makes an assignment for the benefit of creditors or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to the bankruptcy laws of any applicable jurisdiction.

**3.2 For Convenience.** The Agreement may be terminated for convenience (including lack of appropriation of funds by Agency) upon sixty (60) days written notice. Note: fees already paid for Services are not eligible for refund, proration or offset in the event of Agency's termination for convenience.

**4. Effect of Expiration or Termination.** Upon the expiration or termination of the Agreement for any reason, Agency's access to Lexipol's Services shall cease. Termination or expiration of the Agreement shall not, however, relieve either party from any obligation or liability that has accrued under the Agreement prior to the date of such termination or expiration, including payment obligations. The right to terminate the Agreement shall be in addition to, and not in lieu of, any other remedy, legal or equitable, to which the parties are entitled at law or in equity. The provisions of Sections 1 (Definitions), 6 (Service-Specific Terms), 8 (Privacy Policy), 8 (Warranty Disclaimer), 9 (Confidentiality), 10 (Warranty Disclaimer), 11 (Limitation of Liability), 12 (General Terms), and this Section 4 shall survive the expiration or termination of the Agreement for any reason.

**5. Fees and Invoicing.** Unless otherwise agreed upon in writing, Lexipol (or, if applicable, The Praetorian Group or Cordico Inc.) will invoice Agency at the commencement of the Initial Term and thirty (30) days prior to each Renewal Term. Agency will pay to Lexipol the fee(s) specified on each invoice within thirty (30) days following receipt of the invoice. All invoices will be sent to Agency at the address specified on the cover sheet to which these Terms are attached or as otherwise designated by Agency in writing. All payments will be made by electronic transfer of immediately available funds or by mailing a check to Lexipol at 2611 Internet Blvd, Ste 100, Frisco, TX 75034 (Attn: Accounts Receivable). Lexipol reserves the right to increase fees for Renewal Terms. All amounts required to be paid under the Agreement are exclusive of taxes and similar fees now in force or enacted in the future. Unless otherwise exempt, Agency is responsible for and will pay in full all taxes properly imposed related to its receipt of Lexipol's Services, except for taxes based on Lexipol's net income. In the event any amount owed by Agency is not paid when due, and such failure is not cured within ten (10) days after written notice thereof, then in addition to any other amount due, Agency shall pay a late payment charge on the overdue amount at a rate equal to the lower of (a) one percent (1%) per month, or (b) the highest rate permitted by applicable law.

**6. Service-Specific Terms.** The following sections apply to specific Lexipol Services:

**6.1 Policy.** Lexipol's policy Subscription Materials and Knowledge Management System ("KMS") are proprietary, protected under U.S. copyright, trademark, patent, and/or other applicable laws, and Lexipol reserves all rights not expressly granted in these Terms. Agency may prepare Derivative Works using Lexipol's Subscription Materials, but Lexipol shall remain the sole owner of all right, title and interest in and to them, including all copyrights, intellectual property rights, and other proprietary rights therein or pertaining thereto. Agency shall retain a perpetual, personal, non-sublicensable and non-assignable right to use the Subscription Materials for Agency's internal purposes but will not remove any copyright notice or other proprietary notice of Lexipol appearing thereon. Agency acknowledges and agrees that Lexipol shall have no responsibility to update such Subscription Materials beyond the Term of the Agreement and shall have no liability whatsoever for Agency's creation or use of Derivative Works. Lexipol's Subscription Materials are to be treated as Confidential Information (per Section 9 herein), but Agency may disclose Subscription Materials pursuant to a valid court order, lawful government agency request, Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request. Agency acknowledges and agrees that all policies and procedures it implements have been individually reviewed and adopted by Agency, that neither Lexipol nor any of its agents, employees, or representatives shall be considered "policy makers" in any legal or other sense, and that Agency's highest-ranking official shall, for all purposes, be considered the "policy maker" with regard to same. Lexipol's KMS Service is subject to the Service Level Agreement attached to these Terms.

**6.2 Learning.** Lexipol's Learning Management System ("LMS"), offered by Praetorian Digital, is a proprietary Service protected under U.S. copyright, trademark, patent, and other laws. Lexipol and its licensors retain all rights, title, and interest in and to the LMS (including, without limitation, all intellectual property rights), including all copies, modifications, extensions, and Derivative Works thereof. Agency's right to use the LMS is limited to the rights expressly granted in the Agreement. Agency Data, defined as data owned by Agency prior to the Effective Date or which Agency provides during the Term for purposes of identifying authorized users, confirming agency or department information, or other purposes that are ancillary to receipt of the Service, remains Agency's property. Lexipol retains no right or interest in Agency Data and shall return or destroy Agency Data following termination of the Agreement. Lexipol's LMS Service is subject to the Service Level Agreement attached to these Terms.



**6.3 Wellness.** This Section applies when Agency subscribes to Lexipol's Wellness Application ("Wellness App") offered by Cordico®. All Subscription Materials delivered by the Wellness App, including but not limited to all object and source code, all information created, developed, or reduced to practice, and all written, image-based, or video-based content underlying the Wellness App that is not specifically provided by Agency is the proprietary intellectual property of Lexipol and/or its suppliers or licensors, protected to the maximum extent permitted by trademark, copyright, and patent laws. Agency is granted a nonexclusive limited right to access the Wellness App during the Term. If the Agreement is terminated or expires for any reason, Agency shall lose access to the Wellness App and to all associated Subscription Materials and shall discontinue all use of the same for any purpose. Nothing in this section or these Terms shall be construed as conferring any right of ownership or use to the Wellness App, whether by estoppel, implication or otherwise.

**6.4 Grants.** This Section applies when Agency selects Lexipol's Grant Writing, Consulting, and/or GrantFinder services. For Grant Writing services, Agency takes full responsibility for submitting information reasonably required by Lexipol's grant writing team in a timely manner (at least five (5) days prior to the applicable grant application close date). Agency is responsible for all submissions of final grant applications by grant deadlines, but Lexipol shall be considered Agency's duly authorized representative for submissions where applicable. Failure to submit requested materials to write grant applications on time will result in rollover of project services and fees to next grant application cycle; not a refund of the fees. Requests for cancellation of Grant Writing services will result in a 50% fee of the total value of the service. Invoices for Grant Writing services will be sent as soon as work begins for the applicable target grant. Complete payment must be received no later than thirty (30) days after receipt of invoice. In the event Agency has not made timely payment on an invoice, Lexipol reserves the right to suspend all grant Services to Agency until past-due payments are received in full, and may terminate Agency's access to GrantFinder, if applicable. Invoices over thirty (30) days past due may be charged a twenty-five dollar (\$25) late fee.

**6.5 Generally; Injunctive Relief.** Nothing in the Agreement shall be construed as conferring any rights or license to Lexipol's trade secrets, intellectual property, Confidential Information, Subscription Materials, KMS, LMS, Wellness App, or the software underlying such products and services, whether by estoppel, implication or otherwise. Agency may not, and may not assist others to, decompile, disassemble, reverse engineer, or otherwise attempt to discover any object code, source code, or proprietary data underlying the Services. Agency grants all rights and permissions in or relating to Agency Data as are necessary to Lexipol to enforce the Agreement, exercise Lexipol's rights, and perform Lexipol's obligations hereunder. Agency acknowledges that a breach or threatened breach of any portion of this Section may cause irreparable harm and shall entitle Lexipol to injunctive relief in addition to any other available remedy.

**7. Account Security.** The rights to access and use the Services under the Agreement are personal and unique to Agency and Agency shall not assign or otherwise transfer any such rights to any other person or entity. Except as set forth herein, Agency remains solely responsible for maintaining the confidentiality of Agency's username(s) and password(s) and the security of Agency's account(s), meaning the account by which Agency accesses the Services. Agency will not permit access to Agency's account(s) or use of Agency's username(s) and/or password(s) by any person or entity other than authorized Agency personnel. Agency will immediately notify Lexipol if Agency becomes aware that any person or entity other than authorized Agency personnel has used Agency's Account or Agency's username(s) and/or password(s).

**8. Privacy Policy.** Lexipol will hold Agency Data in confidence unless required to provide access in accordance with a court order, government agency request, or other legal process such as a Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request. Lexipol will use commercially reasonable efforts to ensure the security of all Agency Data. Lexipol's systems use the Secure Socket Layer (SSL) Protocol for Lexipol Services, which encrypts information as it travels between Lexipol and each Agency. However, Agency acknowledges and agrees that data transmission on the internet is not always 100% secure and Lexipol cannot and does not warrant that information Agency transmits to or through the Services is 100% secure. Agency acknowledges that Lexipol may provide view-only access and summary information (which may include number of policies developed or in development, percentage of staff reviews of developed policies and DTBs) to Agency's affiliated Risk Management Authority, Insurance Pool or Group, or Sponsoring Association if they are actively funding member Agency Subscription Fees.

**9. Confidentiality.** During the term of the Agreement, either party may be required to disclose information to the other party that is marked “confidential” or is of such a type that the confidentiality thereof is reasonably apparent (collectively, “Confidential Information”). The receiving party will: (a) limit disclosure of any Confidential Information of the other party to the receiving party’s directors, officers, employees, agents and other representatives (collectively “Representatives”) who have a need to know such Confidential Information in connection with the Services; (b) advise its personnel and agents of the confidential nature of the Confidential Information and of the obligations set forth in the Agreement; (c) keep all Confidential Information confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information to any third party unless expressly authorized by the disclosing party. Notwithstanding the foregoing, a party may disclose Confidential Information pursuant to a valid governmental, judicial, or administrative order, subpoena, discovery request, regulatory request, Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request, or similar method, provided that the party proposing to make any such disclosure will promptly notify, to the extent practicable, the other party in writing of such demand for disclosure so that the other party may, at its sole expense, seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information. Each party shall be responsible for any breach of this section by any of such party’s personnel or agents.

**10. Warranty Disclaimer.** ALL SERVICES AND SUBSCRIPTION MATERIALS ARE PROVIDED "AS-IS" AND LEXIPOL DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AS WELL AS ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

**11. Limitation of Liability.** Lexipol's cumulative liability resulting from any claims, demands, or actions arising out of or relating to the Agreement, the Services, or the use of any Subscription Materials shall not exceed the aggregate amount of subscription fees actually paid to Lexipol by Agency for the associated Services during the twelve-month period immediately prior to the assertion of such claim, demand, or action. In no event shall Lexipol be liable for any indirect, incidental, consequential, special, exemplary damages, or lost profits, even if Lexipol has been advised of the possibility of such damages. The limitations set forth in this Section shall apply whether the subject claim is based on breach of contract, tort, strict liability, product liability or any other theory or cause of action.

**12. General Terms.**

**12.1 General Interpretation.** The language used in the Agreement and these Terms shall be deemed to express the mutual intent of Lexipol and Agency. The Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the Agreement.

**12.2 Invalidity of Provisions.** Each of the provisions contained in the Agreement and these Terms is distinct and severable. A declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. Further, if a court of competent jurisdiction finds any provision of the Agreement to be invalid or unenforceable, the parties agree that the court should endeavor to give effect to the parties’ intention as reflected in such provision to the maximum extent possible.

**12.3 Waiver.** Either party’s failure to exercise, or delay in exercising, any right or remedy under any provision of the Agreement shall not constitute a waiver of such right or remedy.

**12.4 Governing Law.** The Agreement shall be construed in accordance with, and governed by, the laws of the State in which Agency is located, without giving effect to any choice of law doctrine that would cause the law of any other jurisdiction to apply.

**12.5 Compliance with Laws.** Each party shall maintain compliance with all applicable laws, rules, regulations, and orders promulgated by any federal, state, or local government body or agency relating to its obligations pursuant to the Agreement and these Terms.

**12.6 Attorney's Fees.** If any action is brought by either party to the Agreement against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorneys' fees and expenses of litigation.

**12.7 Notices.** Any notice required by the Agreement or given in connection with it shall be in writing and shall be made by certified mail (postage prepaid), recognized overnight delivery service, or (if mutually agreed upon) by email to authorized recipients at such address as each party may indicate from time to time. Alternatively, electronic mail or facsimile notice to established and authorized recipients is acceptable when acknowledged by the receiving party.

**12.8 Entire Agreement.** The Agreement, including these Terms, embodies the entire agreement and understanding of the parties hereto and expressly supersedes all prior written and oral agreements and understandings with respect to the subject matter hereof. No representation, promise, or statement of intention has been made by any party hereto that is not embodied in the Agreement. Terms and conditions set forth in any purchase order or any other form or document that are inconsistent with or in addition to the terms and conditions set forth in the Agreement are hereby objected to and rejected in their entirety, regardless of when received, without further action or notification, and shall not be considered binding unless specifically agreed to in writing by both parties. No amendment, modification, or supplement to the Agreement shall be binding unless it is in writing and signed by the party sought to be bound thereby.

**12.9 Counterparts.** The Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document for purposes of the Agreement.

**12.10 Indemnification.** Subject to the limitations set forth in this Agreement, Lexipol, at its own expense, shall defend, indemnify, and hold Agency harmless from any claim made or threatened or any suit or proceeding brought against Agency insofar as it is based on an allegation that any Subscription Materials furnished to or utilized by Agency under this Agreement infringes any copyright or patent.

### **Lexipol Service Level Agreement for Cloud-Based Services**

1. **Response Times.** For issues relating to Lexipol's online, cloud-based Services (e.g. KMS, LMS, Wellness), Lexipol will make an industry standard and commercially reasonable effort to respond promptly (via Lexipol's Normal Support Channels) within two (2) Business Days after receipt.
2. **Uptime Commitment.** The Uptime Percentage for the Service will be ninety-nine and five-tenths percent (99.5%) (the "Uptime Commitment"). Subject to the exclusions described in below, "Uptime Percentage" is calculated by subtracting from 100% the percentage of 1-minute periods during any annual billing cycle in which Agency's selected Service(s) are unavailable out of the total number of minutes in that billing cycle. "Unavailable" and "Unavailability" mean that, in any 1-minute period, all connection requests received by Agency failed to process (each a "Failed Connection"); provided, however, that no Failed Connection will be counted as a part of more than one such 1-minute period (i.e. a Failed Connection will not be counted for the period 12:00:00-12:00:59 and the period 12:00:30-12:01:29). The Yearly Uptime Percentage will be measured based on the industry standard monitoring tools.
3. **Exclusions from Uptime Percentage.** All Service Unavailability resulting from the following will be excluded from calculation of Uptime Percentage: (a) Regularly-scheduled maintenance of the Service that does not exceed six (6) hours per 3-month period and is communicated by Lexipol at least twenty-four (24) hours in advance via Lexipol's support channels (Lexipol typically schedules such regularly scheduled maintenance once per month); (b) Any failures of the Lexipol Standard and Custom Reporting Services that does not exceed six (6) hours per 3-month period and is communicated by Lexipol at least twenty-four (24) hours in advance via Lexipol's Normal Support Channels; (c) Any issues with a third-party service to which Agency subscribes but does not control; (d) Any problems not caused by Lexipol that result from, computing

or networking hardware, other equipment or software under Agency's control, the Internet, or other issues with electronic communications; (e) Lexipol's suspension or termination of the Service in accordance with the Terms; (f) Exceeding Lexipol's published Concurrent Request Limits; (g) Software that has been subject to unauthorized modification by Agency; (h) Negligent or intentional misuse of the Service by Agency.



# CITY COUNCIL AGENDA REPORT

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**DATE:** NOVEMBER 21, 2022                      **FILE I.D.:** PUB355  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** PUBLIC WORKS  
**ITEM NO.:** 5                                              **PREPARER:** M. PARADIS  
**SUBJECT:** CONSIDER AWARDING A CONTRACT TO ARNOLD FIELDS PAINTING IN THE AMOUNT OF \$29,000 WITH A \$5,000 CONTINGENCY FOR CITY HALL INTERIOR PAINTING SERVICES

CONSIDER APPROVAL OF AGREEMENT NO. 22-111 WITH ARNOLD FIELDS PAINTING FOR CITY HALL INTERIOR PAINTING SERVICES SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A \$34,000 APPROPRIATION FROM THE BUILDING MAINTENANCE RESERVE FUND FOR CITY HALL INTERIOR PAINTING SERVICES

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**REASON FOR CONSIDERATION:** The City Council is requested to consider awarding a contract to and approval of Agreement No. 22-111 with Arnold Fields Painting in the amount of \$29,000 with a \$5,000 contingency for City Hall interior painting services. The total contract amount for this maintenance project is estimated at \$34,000. A copy of proposed Agreement No. 22-111 is attached for the City Council’s review and consideration.

**BACKGROUND:** Recent renovations to City Hall, including the addition of electronic door locks and skim coating over wallpaper, has left the walls in need of painting. Staff obtained quotes for City Hall interior painting services as follows:

<i>Contractor</i>	<i>Bid Amount</i>
Arnold Fields Painting	\$29,000
Astro Painting	\$38,000

Staff reviewed the two quotes for completeness and accuracy. Arnold Fields Painting was deemed the lowest responsible and responsive contractor for the project.

The anticipated duration of this project is 30 working days. The work is expected to begin in November 2022 and be completed in December 2022.

**FISCAL IMPACT:** The Building Maintenance Reserve Fund has sufficient funds to cover the costs of this maintenance project.

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

1. Award a contract to Arnold Fields Painting in the amount of \$29,000 with a \$5,000 contingency for City Hall interior painting services.
2. Approve Agreement No. 22-111 in the amount of \$34,000 with Arnold Fields Painting for City Hall interior painting services, subject to any revisions deemed necessary by the City Attorney.
3. Authorize a \$34,000 appropriation from the Building Maintenance Reserve Fund for City Hall interior painting services.

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

**A. Recitals.**

- (i) Pursuant to City of Montclair Purchasing Manual, written quotes for services were obtained.
- (ii) CITY did accept the bid of CONTRACTOR.
- (iii) CITY has authorized the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of:
- (iv)

**CITY HALL INTERIOR PAINTING SERVICES**

"PROJECT" hereinafter.

**B. Resolution.**

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

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

2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written Agreement, the provisions of this written Agreement shall control.

3. TERMS OF CONTRACT: The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of PROJECT within 30 calendar days. CONTRACTOR agrees further to the assessment of liquidated damages in the amount of \$500 for each calendar day PROJECT remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due the CONTRACTOR under this contract. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

4. GOVERNING LAW: The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Montclair.

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

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

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

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

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

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

c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:

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

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



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

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

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

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

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

9. CONTRACT PRICE AND PAYMENT: CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated November 3, 2022.

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

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

**CONTRACTOR**

**CITY**

**ARNOLD FIELDS PAINTING**  
1140 S. Serena Drive  
West Covina, CA 91791

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

By: \_\_\_\_\_  
Arnold Fields  
Owner

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

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**APPROVED AS TO FORM:**

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



# CITY COUNCIL AGENDA REPORT

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**DATE:** NOVEMBER 21, 2022                      **FILE I.D.:** STA919A  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** PUBLIC WORKS  
**ITEM NO.:** 6                                              **PREPARER:** R. HOERNING

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 22-112 WITH LD KING, INC. FOR ENGINEERING DESIGN SERVICES FOR STREET AND STORM DRAIN IMPROVEMENTS FOR THE ARROW HIGHWAY AND FREMONT AVENUE IMPROVEMENT PROJECT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING AN \$8,286 ENGINEERING DESIGN SERVICES CONTINGENCY FOR AGREEMENT NO. 22-112

CONSIDER AUTHORIZING A \$53,000 APPROPRIATION FROM THE REDEVELOPMENT PROJECT AREA NO. III TAX ALLOCATION BOND FUND FOR COSTS RELATED TO AGREEMENT NO. 22-112

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**REASON FOR CONSIDERATION:** The City Council is requested to consider taking actions related to the design of street and storm drain improvements for Arrow highway and Fremont Avenue. 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. 22-112 with LD King, 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.

Arrow Highway is part of the North Montclair revitalization effort, which includes incorporating complete streets concepts and street beautification elements. In advance of the planned Arrow Highway street improvements, a number of underground utilities need to be constructed such as a new Edison circuit system, sewer main line capacity upgrades, and storm drain pipeline improvements, delaying the full Arrow Highway street improvements. These proposed professional engineering services are necessary, in advance of the full Arrow Highway street improvements to coordinate with the Village Partners Development project that is currently under construction and located on the north side of Arrow Highway at its intersection with Fremont Avenue.

LD King, Inc. currently provides on-call plan checking services for the City and is able to efficiently perform the services needed to prepare the plans and specifications for the storm drain pipeline extension and needed street improvements to support the storm drain facilities, traffic signal modifications, and coordinate with related Village Partner development improvements. At the request of the City staff and to adhere scheduling constraints, LD King is presently working on the necessary plans. This agreement formalizes the needed work program for these improvements.

**FISCAL IMPACT:** The cost associated with Agreement No. 22-112 with LD King, Inc. is \$44,714. Staff is requesting an additional \$8,286 appropriation as a contingency if additional work is required beyond the scope of services for a total request of \$53,000.

Funds for this contract would be provided by the Redevelopment Project Area No. III Tax Allocation Bond Fund account: 1251-0000-52260-400-19036.

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

1. Approve Agreement No. 22-112 with LD King, Inc. for engineering design services for street and storm drain improvements for the Arrow Highway and Fremont Avenue Improvement Project, subject to any revisions deemed necessary by the City Attorney;
2. Authorize an \$8,286 engineering design services contingency for Agreement No. 22-112; and
3. Authorize a \$53,000 appropriation from the Redevelopment Project Area No. III Tax Allocation Bond Fund for costs related to Agreement No. 22-112.

**CITY OF MONTCLAIR**

**AGREEMENT FOR CONSULTANT SERVICES**

**ENGINEERING SERVICES FOR ARROW HIGHWAY AND FREMONT AVENUE  
STREET AND STORM DRAIN IMPROVEMENTS**

THIS AGREEMENT is made and effective as of November 22, 2022, between the City of Montclair, a municipal corporation ("City") and LD King, 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 May 11, 2022 and shall remain and continue in effect for a period of 20 months until tasks described herein are completed, but in no event later than December 31, 2023, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform the tasks described and set forth in Exhibits A1 & A2, 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 Exhibits A1 & A2.

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 Exhibits A1 & A2, 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 **forty four thousand seven hundred fourteen and zero cents (\$44,714.00)** for the

total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed eight thousand two hundred and eighty six dollars (\$8,286.00). Any additional work in excess of this amount shall be approved by the City Council.

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

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

## 6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is 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) Non-design, non-construction Professional Services:  
To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), CONSULTANT shall indemnify, defend, and hold harmless

the CITY, and its elected officials, officers, employees, volunteers, and agents (“CITY Indemnitees”), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels’ fees and costs of litigation (“claims”), arising out of the CONSULTANT’s performance or CONSULTANT’s failure to perform its obligations under this AGREEMENT or out of the operations conducted by CONSULTANT, including the CITY’s active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the CITY. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from VENDOR’s performance of this AGREEMENT, the CONSULTANT shall provide a defense to the City Indemnitees or at the CITY’s option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

(b) Non-design, construction Professional Services:

To the extent the Scope of Services involve a “construction contract” as that phrase is used in Civil Code Section 2783, this paragraph shall apply in place of paragraph A. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), CONSULTANT shall indemnify, defend, and hold harmless the CITY, and its elected officials, officers, employees, volunteers, and agents (“CITY Indemnitees”), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels’ fees and costs of litigation (“claims”), arising out of the CONSULTANT’s performance or CONSULTANT’s failure to perform its obligations under this AGREEMENT or out of the operations conducted by CONSULTANT, except for such loss or damage arising from the active negligence, sole negligence or willful misconduct of the CITY. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from CONSULTANT’s performance of this AGREEMENT, the CONSULTANT shall provide a defense to the City Indemnitees or at the CITY’s option, reimburse the CITY Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

(c) Design Professional Services:

In the event CONSULTANT is a “design professional”, and the Scope of Services require CONSULTANT to provide “design professional services” as those phrases are used in Civil Code Section 2782.8, this paragraph shall apply in place of paragraphs A or B. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8) CONSULTANT shall indemnify, defend and hold harmless the CITY and its elected officials, officers, employees, volunteers and agents (“City Indemnitees”), from and against all claims, damages, injuries, losses, and expenses including costs, attorney fees, expert consultant and expert witness fees arising out of, pertaining to or relating to, the negligence, recklessness or willful misconduct of CONSULTANT, except to the extent caused by the sole negligence, active negligence or willful misconduct of the CITY. Negligence, recklessness or willful misconduct of any subcontractor employed by CONSULTANT shall be conclusively deemed to be the negligence, recklessness or willful misconduct of CONSULTANT unless adequately corrected by CONSULTANT. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from CONSULTANT’s performance of this Agreement, the CONSULTANT shall provide a



defense to the City Indemnitees or at the CITY's option, reimburse the CITY Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims. In no event shall the cost to defend charged to CONSULTANT under this paragraph exceed CONSULTANT's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, CONSULTANT shall meet and confer with other parties regarding unpaid defense costs.

(d) Payment by CITY is not a condition precedent to enforcement of the indemnities in paragraph A, B, or C. In the event of any dispute between CONSULTANT and CITY, as to whether liability arises from the active negligence, sole negligence or willful misconduct of the CITY or its officers, employees, or agents, CONSULTANT will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as having been actively negligent, solely negligent or as having engaged in willful misconduct. Except as otherwise required by Civil Code Section 2782.8, CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation. The provisions of this Section 9 shall survive completion of CONSULTANT's services or the termination of this Agreement.

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

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

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

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

## 10. INSURANCE

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

### (a) Types of Required Coverages

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

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$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 \$2,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

### (b) Endorsements

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

(1) Commercial General Liability

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

Additional Insured Endorsements shall not:

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

Additional Insured Endorsements shall be at least as broad as ISO Forms CG 20 10 11 85; or CG 20 and 10 and CG 2037.

Primary Insurance: This insurance shall be primary and any other insurance, whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement, shall be in excess of, and shall not contribute with, this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(2) Auto Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents, and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor.

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

(3) Workers' Compensation

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

(c) Notice of Cancellation

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(d) Waiver of Subrogation

Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

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

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

The coverage provided shall apply to the obligations assumed by the Consultant under the indemnity provisions of this Agreement. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Consultant; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Consultant under this Agreement.

(h) Failure to Maintain Coverage

Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance

provisions of this Contract. In addition, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

(k) Insurance for Subcontractors

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

## 11. INDEPENDENT CONTRACTOR

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

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

## 12. LEGAL RESPONSIBILITIES

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

## 13. UNDUE INFLUENCE

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

## 14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

## 15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

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

## 16. NOTICES

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

To City:

City Engineer  
City of Montclair  
5111 Benito  
Montclair, CA 91763

To Consultant: Carla Berard, CEO  
LD King, Inc.  
975 N. Haven Avenue, Suite 200  
Ontario, CA. 91764

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, Exhibits A1 & A2 hereto. In the event of conflict, the requirements of this Agreement shall take precedence over those contained in the Consultant's proposals.



22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

Attest:

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

Approved as to Form:

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



**ARROW HIGHWAY INTERIM STREET IMPROVEMENTS  
CITY OF MONTCLAIR**

**EXHIBIT "A"**

**ARROW HIGHWAY INTERIM STREET IMPROVEMENTS  
ENGINEERING AND SURVEYING**

**SCOPE OF SERVICES**

Agreement for Civil Engineering Services to provide Civil Engineering and Surveying Services for Interim Street Improvement Plans on Arrow Highway in the City of Montclair, California

**GENERAL**

In general, this Scope of Services is for design engineering and surveying services for the preparation of a base file and preliminary grades on the north side of Arrow Highway, and an interim street improvement plan for the south side of Arrow Highway at Fremont Avenue in the City of Montclair.

The Scope of Services is more specifically defined in the task descriptions below:

**FINAL ENGINEERING SERVICES:**

**TASK 1      FIELD SURVEY**

Conduct a field survey to collect topo along the north side of Arrow Highway for use in setting preliminary grades at Fremont Ave and Station Ave for connection by The Village, as well at the topo surrounding the proposed catch basin east of Fremont Ave, and also to obtain elevations of the existing top of curb, edge of gutter, and AC grades at the south side of Arrow Highway at Fremont Ave. Estimated as 8 hours for a 1-man crew plus associated office support.

**TASK 2      INTERIM STREET IMPROVEMENT PLANS – DESIGN PHASE**

Prepare one set of plan view street improvement plans at 1" = 10' scale on 24" x 36" sheets in accordance with the City of Montclair Engineering Department standards, submit to the City for plan check and effect corrections as necessary for approval by the City. The street improvements are located on the south side of Arrow Highway at the Arrow Highway/Fremont Avenue intersection. The plans will include traffic calming curb alignments at the returns, ADA ramps, Title Sheet, Plan View Sheet, Intersection Detail Sheet, and design of a catch basin to be constructed along the northerly curb of Arrow Highway east of Fremont Avenue.

Also includes preparation of base file and interim street grades for the north side of Arrow Highway at Fremont Avenue and Station Avenue to provide design information to The Village for their use in matching On Site design.



**ARROW HIGHWAY INTERIM STREET IMPROVEMENTS  
CITY OF MONTCLAIR**

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- A field walk will be conducted to review existing conditions against the existing KOA plans to determine if any updates or changes are needed.
- Provide street light standard placement and street light standard callouts per lighting consultant information.
- Provide base file for SCE use in designing street light systems. Revise all layers to correspond to SCE standards.
- Provide exhibits as required for the traffic signal engineer for the traffic signal poles, and for interim striping.

**TASK 3            STREET DESIGN REVISIONS**

- Revise southerly returns to reflect Fremont Avenue widening for bike lanes. Revise design to new returns.
- Quantities and Cost Estimate: An itemized cost estimate will be prepared, including a bid item list to be used with the bid documents.

**TASK 4            SPECIAL PROVISIONS**

Any special provisions for the project will be prepared and provided to the City for inclusion in the project bid documents. Estimated as 20 hours for Project Manager plus associated office support.

**TASK 5            MEETINGS AND COORDINATION**

Attend meetings as necessary during the design phase, including meetings with the City of Montclair and representatives "The Village", Landscape Architect, and AGA. This includes up to sixteen (16) hours for meetings and coordination by Sr. Project Manager, Project Manager and Designers.

**TASK 6            REIMBURSABLE EXPENSES**

Client shall reimburse Consultant for the cost of all items such as blueprinting, reproductions, overnight delivery charges, fees, permits, bond premiums, and title company charges not specifically covered by the terms of this Agreement. In the event such items are paid directly by the consultant, then charges and expenses will be invoiced at direct cost plus 15%.

Client shall reimburse Consultant for the cost of delivering plan sets, reports, or any other items pertaining to the project to City offices, County offices, subconsultant offices, and client offices. All time will be billed at the hourly rates set forth in the attached Rate Schedule.



**ARROW HIGHWAY INTERIM STREET IMPROVEMENTS  
CITY OF MONTCLAIR**

**EXHIBIT "B"**

**FINAL ENGINEERING**

**COMPENSATION**

**FINAL ENGINEERING SERVICES:**

<b>TASK</b>	<b>DESCRIPTION</b>	<b>FEE</b>
Task 1	Field Survey	\$1,660.00
Task 2	Interim Street Improvement Plans	\$14,800.00
Task 3	Street Design Revisions	\$1,944.00
Task 4	Special Provisions	\$3,800.00
Task 5	Meetings and Coordination	\$2,880.00
Task 6	Reimbursable Expenses (estimate)	\$500.00
<b>TOTAL</b>		<b>\$25,584.00</b>

**PROFESSIONAL FEE FOR SERVICES**

Client agrees to compensate Consultant for civil engineering services for a fixed fee amount of \$25,084.00, and on a Time and Materials basis of \$500.00.

**EXTRA WORK**

Client agrees to pay Consultant compensation for all authorized extra work at the hourly rates set forth in the attached Rate Schedule. All such extra work shall be authorized by the Client prior to commencing such work.

**FEE ADJUSTMENTS**

Client understands and agrees that the fees quoted for the services to be performed are subject to an annual increase on October 1<sup>st</sup> of each year, beginning in 2023. The percentage increases (if any) shall apply only to the unexpended portion of the total Agreement amount remaining on each such October adjustment date. The adjustment will be in accordance with adjustments in the Master Agreement between the Civil Engineers and Land Surveyors of Southern California and the International Union of Operating Engineers Local No. 12, AFL-CIO.



**ARROW HIGHWAY INTERIM STREET IMPROVEMENTS  
CITY OF MONTCLAIR**

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**PROPOSAL SUBMITTED BY:**

Carla Berard, P.E., P.L.S.  
CEO

***THIS PROPOSAL DATED NOVEMBER 14, 2022, IS ACCEPTED BY:***

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name Printed

# L.D. King, Inc. Rate Schedule

October 1, 2022 – September 30, 2023

Principal .....	\$186.00
Sr. Engineer Designer .....	\$184.00
Sr. Project Manager .....	\$184.00
Project Manager .....	\$164.00
Project Engineer .....	\$145.00
Engineer/Designer III .....	\$131.00
Engineer/Designer II .....	\$115.00
Engineer/Designer I .....	\$105.00
CAD Drafter III .....	\$105.00
CAD Drafter II .....	\$ 95.00
CAD Drafter I .....	\$ 70.00
Administrative Assistant .....	\$ 70.00
Intern .....	\$ 49.00
<b><u>Surveying Services</u></b>	
Director of Survey .....	\$185.00
Senior Survey Calculator .....	\$154.00
Survey Calculator .....	\$136.00
3-Man Survey Crew .....	\$356.00
2-Man Survey Crew .....	\$309.00
1-Man Survey .....	\$198.00
<b><u>Travel Time</u></b>	
3-Man Survey Crew .....	\$356.00
2-Man Survey Crew .....	\$309.00
1-Man Survey .....	\$198.00
<b><u>Overtime Rates</u></b>	
3-Man Survey Crew .....	\$469.00
2-Man Survey Crew .....	\$410.00
1-Man Survey .....	\$293.00
<b><u>Subsistence</u></b>	
3-Man Survey Crew .....	\$488.00
2-Man Survey Crew .....	\$324.00
<b><u>Construction Services</u></b>	
Sr. Resident Engineer .....	\$142.00
Resident Engineer .....	\$136.00
Senior Inspector .....	\$126.00
Inspector .....	\$109.00
Car/Truck for Construction Services Personnel .....	\$ 71.00/Day
<b><u>Reimbursable Costs</u></b>	
In-House Printing .....	Cost
Outsourced Printing Expenses .....	Cost + 15%
Express Mail & Delivery .....	Cost + 15%
Subconsultant Services .....	Cost + 10%

**NOTE:** L.D. King, Inc. reserves the right to change hourly rates on October 1, due to labor agreements, salary adjustments, and changes in operating expenses. All billings will be at the current billing rates.



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## EXHIBIT "A"

### ARROW HIGHWAY STORM DRAIN EXTENSION ENGINEERING AND SURVEYING

#### SCOPE OF SERVICES

#### Agreement for Civil Engineering Services and Surveying Services for the Arrow Highway Storm Drain Extension Project in the City of Montclair

#### GENERAL

In general, this Scope of Services is for surveying and engineering services for the preparation of construction plans for the Arrow Highway Storm Drain Extension Project. It includes improvement plans for the 36-inch storm drain to be constructed in Arrow Highway from 300 feet west of Fremont Avenue to 300 feet east of Fremont Avenue. The work will also include design of intersections at Station Avenue and at Fremont Avenue, on the north side of Arrow Highway.

The Scope of Services is more specifically defined in the task descriptions below

#### TASK 1 SURVEY

- The survey crew will tie projects into a common Benchmark to confirm that the projects tie in properly. Supplemental field surveys will be provided as needed to pick up additional information where required. Estimated as 8 hours for a 2-man survey crew plus associated office support.

#### TASK 2 ENGINEERING - DESIGN PHASE

- Prepare construction plans (plan and profile), for the storm drain extension from the existing 63-inch storm drain; the extension will be 36-inch and 24-inch RCP. The construction plans will be based on preliminary plans prepared by KOA for Arrow Highway Improvements.
- Construction plans will be provided for intersections on the north side of Arrow Highway at Station Avenue and at Fremont Avenue. The intersection designs will be based on preliminary plans prepared by KOA for Arrow Highway Improvements and will be coordinated with plans prepared by CDR for "The Village". The plans will take into consideration the interim condition with streets to be constructed for "The Village" prior to proposed street improvements on Arrow Highway.
- A field walk will be conducted to review existing conditions against the existing KOA plans to determine if any updates or changes are needed.
- Attend meetings as necessary during the design phase, including meetings with the City of Montclair and representatives from "The Village". This includes up to twelve hours for meetings and coordination by Sr. Project Manager, Project Manager and Designers.



- Utility Coordination will consist only of visible verification of existing utilities as utility notification has been done by KOA.
- Quantities and Cost Estimate: An itemized cost estimate will be prepared, including a bid item list to be used with the bid documents.
- Special Provisions: Any special provisions or special conditions for the project will be prepared and provided to the City for inclusion in the project bid documents.
- 

**TASK 3 REIMBURSABLE EXPENSES**

Client shall reimburse Consultant for the cost of all items such as blueprinting, reproductions, overnight delivery charges, fees, permits, bond premiums, and title company charges not specifically covered by the terms of this Agreement. In the event such items are paid directly by the consultant, then charges and expenses will be invoiced at direct cost plus 15%.

Client shall reimburse Consultant for the cost of delivering plan sets, reports, or any other items pertaining to the project to City offices, County offices, subconsultant offices, and client offices. All time will be billed at the hourly rates set forth in the attached Rate Schedule.

**EXHIBIT "B"**

**ARROW HIGHWAY STORM DRAIN EXTENSION  
ENGINEERING AND SURVEYING**

**COMPENSATION**

<b>TASK</b>	<b>DESCRIPTION</b>	<b>FEE</b>
Task 1	Survey	\$3,250.00
Task 2	Engineering- Design Phase	\$ 15,380.00
Task 3	Reimbursable Expenses (Estimate)	\$ 500.00
		<b>\$19,130.00</b>

**PROFESSIONAL FEE FOR SERVICES**

Client agrees to compensate Consultant for Survey and Civil Engineering services for a fixed fee amount of \$18,630.00, and for Reimbursable Expenses on a Time and Materials basis for \$500.00.

**EXTRA WORK**

Client agrees to pay Consultant compensation for all authorized extra work at the hourly rates set forth in the attached Rate Schedule. All such extra work shall be authorized by the Client prior to commencing such work.

**FEE ADJUSTMENTS**

Client understands and agrees that the fees quoted for the services to be performed are subject to an annual increase on October 1<sup>st</sup> of each year, beginning in 2022. The percentage increases (if any) shall apply only to the unexpended portion of the total Agreement amount remaining on each such October adjustment date. The adjustment will be in accordance with adjustments in the Master Agreement between the Civil Engineers and Land Surveyors of Southern California and the International Union of Operating Engineers Local No. 12, AFL-CIO.

**PROPOSAL SUBMITTED BY:**

*Carla*

Carla E. Beard, P.E., P.L.S.  
CEO

**THIS PROPOSAL DATED MAY 10, 2022, IS ACCEPTED BY:**

Dated:

Signature

\_\_\_\_\_

\_\_\_\_\_

Name Printed

\_\_\_\_\_

Agency Name

\_\_\_\_\_

# L.D. King, Inc. Rate Schedule

October 1, 2021 – September 30, 2022

Principal .....	\$177.00
Sr. Engineer Designer .....	\$175.00
Sr. Project Manager .....	\$175.00
Project Manager .....	\$156.00
Project Engineer .....	\$136.00
Engineer/Designer III .....	\$125.00
Engineer/Designer II .....	\$109.00
Engineer/Designer I .....	\$ 99.00
CAD Drafter III .....	\$ 99.00
CAD Drafter II .....	\$ 91.00
CAD Drafter I .....	\$ 66.00
Administrative Assistant .....	\$ 66.00
Intern .....	\$ 46.00
<b><u>Surveying Services</u></b>	
Director of Survey .....	\$175.00
Senior Survey Calculator .....	\$125.00
Survey Calculator .....	\$109.00
3-Man Survey Crew .....	\$348.00
2-Man Survey Crew .....	\$261.00
1-Man Survey .....	\$174.00
<b><u>Travel Time</u></b>	
3-Man Survey Crew .....	\$235.00
2-Man Survey Crew .....	\$160.00
1-Man Survey .....	\$ 85.00
<b><u>Overtime Rates</u></b>	
3-Man Survey Crew .....	\$392.00
2-Man Survey Crew .....	\$310.00
1-Man Survey .....	\$221.00
<b><u>Subsistence</u></b>	
3-Man Survey Crew .....	\$465.00
2-Man Survey Crew .....	\$309.00
<b><u>Construction Services</u></b>	
Sr. Resident Engineer .....	\$135.00
Resident Engineer .....	\$130.00
Senior Inspector .....	\$120.00
Inspector .....	\$104.00
Car/Truck for Construction Services Personnel .....	\$ 68.00/Day
<b><u>Reimbursable Costs</u></b>	
In-House Printing .....	Cost
Outsourced Printing Expenses .....	Cost + 15%
Express Mail & Delivery .....	Cost + 15%
Subconsultant Services .....	Cost + 10%

**NOTE:** L.D. King, Inc. reserves the right to change hourly rates on October 1, due to labor agreements, salary adjustments, and changes in operating expenses. All billings will be at the current billing rates.



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# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 21, 2022	<b>FILE I.D.:</b>	CCK127
<b>SECTION:</b>	BUSINESS ITEMS	<b>DEPT.:</b>	ADMIN. SVCS.
<b>ITEM NO.:</b>	A	<b>PREPARER:</b>	A. MYRICK
<b>SUBJECT:</b>	CONSIDER AUTHORIZING THE PREPARATION OF ACTION MINUTES AS THE OFFICIAL RECORD OF CITY COUNCIL AND COMMISSION MEETINGS		

CONSIDER REVISING THE RETENTION PERIOD FOR VIDEO/AUDIO RECORDINGS OF MEETINGS TO “PERMANENT” FOR THOSE WITH ACTION MINUTES PREPARED

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**REASON FOR CONSIDERATION:** After discussing this item at the October 17, 2022 meeting, the City Council directed this item be continued to the November 7, 2022 meeting.

Currently, Montclair staff prepares detailed, summary-style minutes for legislative body meetings. With the recent transition to live-streamed video-recorded Council and Commission meetings, staff feels it is a good time to consider the action minute format for the written minutes memorializing actions of the City Council. Changing to action minutes would simplify the preparation of the minutes, making available more time for staff to focusing on other identified projects and goals of the City. When necessary, such as for public hearing and business items, a very brief statement summarizing the points of discussion would still be provided in the action minutes.

The City Council is requested to consider authorizing the preparation of action minutes as the official record of City Council and Commission meetings, and to revise the retention period for video and audio recordings of meetings to “permanent” for those with action minutes prepared.

**BACKGROUND:** California Government Code Sections 36814 and 40801 state that the City Clerk shall maintain a journal of proceedings or minutes of City Council meetings. The Government Code does not specify in what form or style the minutes must be as long as the subject of the proceedings and the final actions are recorded. Similarly, Section 2.12.110 of the Montclair Municipal Code states that the City Council “shall direct the City Clerk to keep a record of its proceedings.” *The Standard Code of Parliamentary Procedure*, 4th Edition, states, “In general, minutes are a record of all actions and proceedings but not a record of discussion.”

Draft minutes are reviewed and approved by the City Council before they are considered final. Once approved, the minutes become the official record of what took place at a meeting. Minutes may be subpoenaed as evidence for court purposes, and auditors depend on them for proof of authorization for important expenditures.

Minutes can be prepared in several different formats, including action, summary, or verbatim. Minutes are not meant to be transcriptions and are not intended to be a record of discussions and conversations; they are regarded as the instrument that records the actions and proceedings of a legislative body.

At a minimum, all minutes must contain the following information, which solely comprise the action minute format:

- Date of the meeting
- Indication of whether it is a regular, regular adjourned, or special meeting
- Location of meeting
- Starting and ending times of the meeting
- Names of members and staff present at the meeting
- Description of items being discussed
- Names of speakers and whether they were in favor or opposed to an item
- A statement of action for each item and how the members of the legislative body voted

### ***Minutes in Montclair***

The style of minutes is not a new topic in Montclair. The issue was discussed at Council meetings in 1985 and 1996, at which times those City Councils expressed their preference for detailed summary minutes. In a memo to the City Council dated August 8, 2011 (Attachment 1), the City Manager/City Clerk advised the City Council of staff's intention to transition to action minutes due to staff attrition during the recession. There was no opposition by Council Members to the proposal; however, the newly-appointed Deputy City Clerk, having prepared summary-style Council Meeting minutes for over a decade, felt the expectation for the format had been long established and did not wish to discontinue the practice of preparing summary minutes.

Currently, the City Council's summary minutes are extensive and include all of the items contained in action minutes with the addition of detailed, summarized commentary by members of the legislative body, staff, and public. The summarized comments of each speaker range from a few sentences to a few paragraphs.

While detailed summary minutes can provide more context to a reader about what led to a decision, the format has some inherent challenges.

- The preparation of detailed summary minutes is a significant drain on limited administrative staff time and resources.
- Depending on the length of the meeting and the complexity of the items, senior-level staff tend to be relied upon as the summary minute composers. Newer and entry-level staff do not typically understand the context or history of matters being discussed enough to effectively summarize the discussions and, as a result, take more time and prepare even longer summaries that are essentially verbatim style.
- It can be difficult to distill 30 minutes of commentary, questions, and answers while providing the appropriate context.
- There is the potential for the minute composer to misinterpret comments or misrepresent the intended message of a speaker.

The video and/or audio recording of the meeting serves as the best method available to capture the nuances of discussion during a meeting for assessing legislative intent and an individual legislator's thoughts. Adding time stamps to the minutes for items with discussion prior to the vote is another simple way to direct those interested in hearing the discussion to the relevant location in the video or audio recording.

After the August 15, 2022 City Council meeting, which was particularly long and contained extensive discussions and public comments, City Clerk Myrick prepared action format minutes, including abbreviated summaries of non-agenda public comments and City Council communications, prior to expanding them into the usual detailed summary minutes that were approved at the following meeting. After recording the amount of time it took to prepare the action format, and then the additional time it took to create the summary version, it was found that the action version took 2.5 hours for the City Clerk to prepare, whereas the full summary minutes took just over 7 hours. In addition, having two staff members proof-read the summary minutes took a combined 2.5 hours, totaling over nine hours of staff time for the final draft of summary minutes.

In the traditionally prepared summary minutes, motions and actions are part of a discussion's narration, making it difficult to locate actions when comments are made before and after a motion, or if there is additional discussion between a motion being made and the vote on that motion being taken. The proposed format of action minutes highlights the actions for each item in a table that identifies the body or bodies acting, the motion, the names of those who made and seconded the motion, the vote, and the result.

A copy of the approved summary minutes of the August 15, 2022 City Council meeting, followed by the action version prepared by the City Clerk, are attached to this report as Attachment 2. Also included as Attachment 3 is an action version of the October 17, 2022 minutes.

Staff in the Community Development and Human Services Departments were also queried on how long it takes to prepare minutes for the Planning and Community Activities Commission meetings. For Planning Commission, minutes are first prepared by the department's Administrative Secretary in verbatim format, and then are pared down into summary format by the Community Development Director. The verbatim transcription takes about 2 to 3 times the length of the actual meeting, and the summarizing takes 4 to 6 hours. A typical planning commission meeting is two hours, meaning it could take up to 12 hours for staff to prepare the summary minutes of a Planning Commission meeting. Minutes of Community Activities Commission (CAC) meetings are composed in summary format by an entry-level staff member, revised by a higher-level staff member, and finalized by the Human Services Director. The process is estimated to take about 6 to 8 hours of staff time. CAC meetings involve few actions aside from approving minutes and recommendations for the allocation of community benefit funds. Action minutes for the CAC would note the final result of a discussion on non-action items.

### ***Additional Considerations for Transition to Action Minutes***

In League of California Cities surveys conducted over the past several years, the trend shows that cities have been transitioning to action minutes rather than summary minutes for formal meeting body records. In a 2021 survey of California cities regarding the type of minutes prepared, 70 percent of the 146 respondents answered that they prepare action minutes. The main reasons given for this trend include the following:

- New information technologies such as real-time cable and internet broadcasts, as well as audio, video, and digital copies of the meetings provide multiple methods by which officials, staff, and the public can access verbatim records of discussions.

Currently, the City of Montclair broadcasts the City Council meetings live on YouTube and Zoom and the video recordings of recent Council meetings are available on the City’s website. These electronic records are required to be kept for a minimum of 3 years under the City’s adopted Records Retention Schedule; however, Council meeting audio back to 2010 has not been destroyed in anticipation of transitioning to action minutes. With action minutes, interested parties can either receive a link to a web-hosted video or audio file upon request, purchase recordings of meetings saved to a storage media for a fee established in the City’s Master Fee Schedule, or request to view or listen to archived meetings in the City Clerk’s Office at no charge.

- Many City Attorneys prefer action minutes over summary minutes, especially with the availability of video and/or digital copies, because summary minutes are more subjective, as they are the minute taker’s paraphrased version of the testimony, discussion, debate and action taken. Action minutes are more defensible and removes the issue of “he said/she said” dialogue regarding or leading to City Council actions. In addition, while not a common situation in Montclair, many cities found that approving summary minutes rather than action minutes took up much more time at Council meetings, as the subjective nature of paraphrasing resulted in additional Council Member debate and discussion regarding what “he said/she said” (and in many cases what he or she “meant”).
- Providing extensive summary minutes requires significantly more City resources. The City Clerk generally uses notes to prepare the minutes, but often times has to refer back to audio tapes to verify and transcribe certain comments.
- The City Clerk can have verbatim minutes for any discussion or comment prepared upon request.

Among nearby agencies, the types of minutes prepared are as follows:

Action	Summary
City of Chino Hills City of Colton City of Fontana City of Glendora City of Grand Terrace City of Hesperia City of Ontario City of Pomona City of Rancho Cucamonga City of San Dimas City of Upland City of Victorville County of San Bernardino	City of Chino City of Claremont City of La Verne City of San Bernardino

Based on the survey results, there is an apparent shift toward preparing action minutes. In addition, an increasing number of public agencies are televising and/or webcasting their meetings and archiving those video and audio files on their websites—a trend that has accelerated since the pandemic, which persuaded many cities to adopt protocols for remote public participation. As a result, the public has access to the meeting recording 24 hours of the day if they want to hear the specifics of what was said during a discussion.



**FISCAL IMPACT:** There would be no direct fiscal impact as a result of preparing action minutes as opposed to summary; however, a great deal of staff time will be saved by converting to the preparation of action minutes rather than summary.

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

1. Authorize the preparation of action minutes as the official record of City Council, Planning Commission, and Community Activities Commission meetings; and
2. Revise the retention period for video/audio recordings of meetings to “permanent” for those with action minutes prepared.



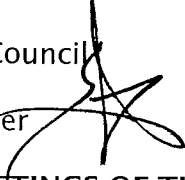
MONTCLAIR

# MEMORANDUM

ATTACHMENT 1 - 2011 MEMO

**Date:** August 22, 2011

**To:** Honorable Mayor and City Council

**From:** Edward C. Starr, City Manager 

**Subject:** ACTION MINUTES FOR MEETINGS OF THE CITY COUNCIL AND REDEVELOPMENT AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS OF DIRECTORS

City Council Members are aware that personnel attrition is one approach that has been utilized in addressing the current economic recession and its adverse impacts on the City's fiscal capacity to maintain a viable program of services. Since 2006, employment numbers in the City of Montclair declined from a high of 216 to the current 193.

One position recently left vacant through attrition is City Clerk. Former City Clerk Donna Jackson retired December 31, 2010, and Departmental Secretary Yvonne Smith was subsequently reclassified to Deputy City Clerk. The official title of City Clerk now rests with the City Manager, though most of the duties of the City Clerk position reside with the Deputy City Clerk. Deputy City Clerk Smith does not currently have the full range of credentials necessary to qualify for the position of City Clerk; however, she possesses the necessary experience and skill level to perform the duties. Ms. Jackson remains available to provide election-related services on a contract basis.

The reduction of personnel in the City Clerk Program to one full-time employee and one part-time employee now limits the program's capacity to address fluctuating demands and evolutionary changes. To address this lack of flexibility, I am requesting City Council Members consider authorizing migration to a hybrid form of action minutes for City Council and Redevelopment Agency/Montclair Housing Corporation meeting transcripts—deployment of action minutes would significantly reduce the allotment of time now required to complete summary minutes transcripts of meetings, thereby equipping the City Clerk Program with the time necessary to address current, fluctuating, and evolving demands.

Unlike summary minutes, which are effectively a transcript of comments made and actions taken, action minutes simply track outcomes. Attached to this memorandum for City Council review is a sample of the action minutes format utilized by the City of East Palo Alto. As indicated by this format, transcription of action minutes for meetings of the City Council and Redevelopment Agency/Montclair Housing Corporation Boards of Directors would significantly reduce preparation time. The abbreviated

Page 2  
August 22, 2011

format would also reduce the time necessary for City Council/Agency Board Members to complete their review of agendas.

Under the recommended hybrid form of action minutes, comments made under the "Communications" section of the agenda would continue to be reported in summary format.

The complete audio of City Council/Redevelopment Agency/Montclair Housing Corporation meetings would continue to be archived and available for review on the City's website, and verbatim transcripts of specific portions of meetings could be prepared at a City Council Member's request.

Should transition to action minutes prove unsatisfactory for City Council Members, addressing the current staffing level in the City Clerk Program would become a first priority once the City's fiscal health is satisfactorily restored, thereby allowing transition back to the existing summary format for records of meetings.

With concurrence of City Council Members, I propose making the transition to action minutes no later than the January 2, 2012 regular joint meeting.

Please contact me at your earliest convenience if any member of the City Council has concerns or questions or is opposed to the proposed transition to an action minutes format for meetings of the City Council and Redevelopment Agency/Montclair Housing Corporation Boards of Directors.

ECS:ecs

Attachment

- c Department Heads
- Deputy City Clerk Smith
- Departmental Secretary Dalton

# ACTION MINUTES

**REGULAR CITY COUNCIL/REDEVELOPMENT AGENCY MEETING  
&  
COUNCIL RE-ORGANIZATION RECEPTION  
*Tuesday, December 7, 2004*  
Regular Meeting & Reception : 7:30P.M.  
CITY COUNCIL CHAMBERS, 2415 UNIVERSITY AVENUE**

(Incumbents)

MAYOR/VICE-CHAIR: Donna Rutherford

VICE-MAYOR/CHAIR: David Woods

COUNCIL/AGENCY MEMBERS: Duane Bay, Patricia Foster

(Elect):

Ruben Abrica, A. Peter Evans

**7:30P.M. Regular City Council/Redevelopment Agency Meeting**

CALL TO ORDER: 7:30p.m.

ROLL CALL: All Present

**1. APPROVAL OF AGENDA**

Action: Motion/Second Bay/Foster Vote: 4-0

**2. Certification of Election and Recognition of Outgoing Councilmember; Oath of Office Ceremony and Seating of Newly Elected Councilmembers**

**A. Policy and Action Resolution**

1. **Res. # 2404-** Declaring and Certifying the Results of the General Municipal Election Held in the City of East Palo Alto on Tuesday, November 2, 2004.

**Recommendation:** Approve the Resolution Certifying the November 2, 2004 General Municipal Election

Action: Motion/Second: Bay/Foster Vote: 4-0

**B. Oath of Office**

1. Ruben Abrica
2. A. Peter Evans
3. Patricia Foster
4. Donna Rutherford

**ACTION:** Mr. Evans requested that his Oath of Office be performed by his wife, Keisha Evans and friend, Sandra Webster, this "ceremonial" oath was allowed and completed.

Note" Deputy City Clerk Warren explained that Mr. Evans would take an "Official Oath" given by her. The official oath was completed on Wednesday morning, December 8, 2004 at 8:45a.m. in the City Clerk's Office.

**ACTION:** Mr. Abrica, Mrs. Foster and Mrs. Rutherford was given the Official Oath of Office during the Council meeting/Reception by Deputy City Clerk Warren.

**3. Council Reorganization****A. Selection of Mayor**

**ACTION:** Councilmember Rutherford nominated Vice Mayor Woods  
There were no further nominations, nominations closed  
Councilmember Evans seconded nomination  
Vote taken: 5-0

**B. Selection of Vice Mayor**

**ACTION:** Councilmember Foster nominated Councilmember Abrica  
There were no further nominations, nominations closed  
Councilmember Rutherford seconded nomination  
Vote taken: 5-0

Mayor Woods' term – 2004/2005  
Vice Mayor Abrica's term -2004/2005

**C. Recognition of Outgoing Council Member****1. Proclamation****A. Duane Bay**

A proclamation for outgoing Councilmember Duane Bay from the City was presented to him by Council along with a bouquet of flowers and gift of a commemorative clock.

**D. Special Presentations**

- 1. Dignitaries and Public Recognitions
- 2. Acknowledgments – City Council/Redevelopment Agency

Other Proclamations for outgoing Councilmember Bay and welcome to new councilmembers.

U. S. Congresswoman Anna Eshoo’s office – presented by Aide Seth Fisher

Thank you and other welcoming speeches: Millbrae Mayor Marc Hershman; Palo Alto Vice Mayor Jim Burch; other dignitaries and public.

**4. Joint Community Forum**

12 members of the public spoke on various city issues and welcomed new council, acknowledged and thank outgoing Councilmember Bay for his service to the city.

**5. CONSENT CALENDAR**

**A. Ordinances: 2nd Reading**

- 1. Ord. No. 289 - An Ordinance Adopting the 2001 Editions of the California Building Codes, California Fire Code, the 1997 Editions of the Uniform Housing Code and Uniform Code for the Abatement of Dangerous Buildings and Excluding Certain Portions Thereof; and Amending Chapter 15 of the City of East Palo Alto Municipal Code to Reflect Changes

**Recommendation:** That Council Adopt the Ordinance

**ACTION:** MOTION/SECOND: Rutherford/Woods Vote: 5-0

**B. City Council/Redevelopment Informational Reports and Resolutions**

- 1. Authorization for the City Manager to Enter into a Contract for Community Health Surveys and Related Activities using \$7, 824 in Grant Funds Awarded From the US Environmental Protection Agency (USEPA)

**ACTION:** Pulled for review by Councilmember Evans, discussed and continued to 12/21/04 meeting

MOTION/SECOND: Evans/Woods Vote: 5-0

- 2. Approval of the Establishment of a List of Qualified Planning Consultants

**Recommendation:** That Council/RDA Approve the Resolutions

**ACTION:** MOTION/SECOND: Foster/Rutherford Vote: 5-0

.....**End of Consent Calendar**.....

**6. Oral Reports (Requests to Speak on Items 3 and 4 Will be Heard Under Community Forum)**

A. Council/Redevelopment Agency Reports

1. Discussion of Council/Redevelopment Agency Members Committee Assignments Regarding City and City-related Outside Governmental Agency Appointments

This item was not addressed and was continued to 12/21/04 meeting.

**ADJOURNMENT & RECEPTION: 8:35p.m.**

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, AUGUST 15, 2022 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

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I. CALL TO ORDER

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

II. INVOCATION

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

III. PLEDGE OF ALLEGIANCE

Mayor/Chair Dutrey led meeting participants in the Pledge.

IV. ROLL CALL

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

City Manager/Executive Director Starr; Director of Community Development Diaz; Assistant City Manager/Director of Human Services Richter; Executive Director of Public Safety/Police Chief Avels; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS

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

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

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

Each honoree received a City of Montclair Certificate of Recognition.

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

VI. PUBLIC COMMENT

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

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

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

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



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

## VII. PUBLIC HEARINGS

- A. **Consider Adoption of Resolution No. 22-3366 Making Findings Pursuant to the California Environmental Quality Act and Approving Tentative Parcel Map No. 20474 and a Precise Plan of Design for a Proposed 302-Unit Residential Apartment Development Within the North Montclair Downtown Specific Plan on 9.96 Acres Located Approximately 200 Feet West of the Intersection of Monte Vista Avenue and Richton Street, West of the San Antonio Creek Channel at 4700 Huntington Drive**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Moved by Council Member Martinez, seconded by Council Member Johnson, and carried 5-0, the City Council adopted Resolution No. 22-3366 making findings pursuant to the California Environmental Quality Act and approving Tentative Parcel Map No. 20474 and a Precise Plan of Design for a proposed 302-unit residential apartment development within the North Montclair Downtown Specific Plan on 9.96 acres located approximately 200 feet west of the intersection of Monte Vista Avenue and Richton Street, west of the San Antonio Creek channel at 4700 Huntington Drive, incorporating the changes proposed by the applicant to Exhibit A.

**B. Second Reading — Consider Adoption of Ordinance No. 22-999 Adding Chapter 4.76 to Title 4 of the Montclair Municipal Code Related to Imposing a Cannabis Business License Tax (Subject to Final Approval by the Voters at the November 8, 2022 General Municipal Election)**

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

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

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

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

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

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

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

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

**VIII. CONSENT CALENDAR**

Item C-2 was pulled from the Consent Calendar.

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

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

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

**A. Approval of Minutes**

**1. Regular Joint Meeting — August 1, 2022**

The City Council, Successor Agency Board of Directors, Montclair Housing Corporation Board of Directors, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors approved the minutes of the August 1, 2022 regular joint meeting.

**B. Administrative Reports****1. Receiving and Filing of City Treasurer's Report**

The City Council received and filed the City Treasurer's Report for the month ending July 31, 2022.

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

The City Council approved the Warrant Register dated August 15, 2022, totaling \$2,743,764.37; and the Payroll Documentation dated July 3, 2022, amounting to \$712,817.94 gross, with \$498,513.69 net being the total cash disbursement; and the Payroll Documentation dated July 17, 2022, amounting to \$657,648.47, with \$461,573.44 net being the total cash disbursement.

**3. Receiving and Filing of Successor Agency Treasurer's Report**

The City Council acting as successor to the Redevelopment Agency Board received and filed the Successor to the Redevelopment Agency Treasurer's Report for the month ending July 31, 2022.

**4. Approval of Successor Agency Warrant Register**

The City Council acting as successor to the Redevelopment Agency Board approved the Successor to the Redevelopment Agency Warrant Register dated 07.01.22-07.31.22 in the amounts of \$6,121.49 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds.

**5. Receiving and Filing of MHC Treasurer's Report**

The MHC Board received and filed the MHC Treasurer's Report for the month ending July 31, 2022.

**6. Approval of MHC Warrant Register**

The MHC Board approved the MHC Warrant Register dated 07.01.22-07.31.22 in the amount of \$32,000.79.

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

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

**8. Approval of MHA Warrant Register**

The MHA Commissioners approved the MHA Warrant Register dated 07.01.22-07.31.22 in the amount of \$0.00.

**9. Authorizing the Destruction of Certain Obsolete Public Records Pursuant to the City of Montclair Records Retention Schedule**

The City Council authorized the destruction of certain obsolete public records pursuant to the City of Montclair Records Retention Schedule.

**10. Authorizing the Purchase of a Vactor CNG 2110 Plus Sewer Cleaner Truck from Haaker Equipment Co.****Declaring a 2004 International Combo Sewer Truck (Unit 314) as Surplus and Available for Auction**

The City Council took the following actions:

- (a) Authorized the purchase of a Vactor CNG 2110 Plus Sewer Cleaner Truck from Haaker Equipment Co.
- (b) Declared a 2004 International Combo Sewer Truck (Unit 314) as surplus and available for auction.

**C. Agreements**

**1. Amending the 2019–2024 Capital Improvement Program to Include the Holt Boulevard Median and Street Rehabilitation Project**

**Approval of *Agreement No. 22-84* with HR Green Pacific for the Preparation of Plans and Specifications for the Construction of Median and Street Rehabilitation Improvements on Holt Boulevard from Ramona Avenue to Benson Avenue, Subject to Any Revisions Deemed Necessary by the City Attorney**

**Approval of *Agreement No. 22-85* with AGA Engineers, Inc. for the Preparation of Plans and Specifications for the Construction of Traffic Signals Upgrades and Traffic Signal Interconnect and Broadband Fiber Optic Improvements, Subject to Any Revisions Deemed Necessary by the City Attorney**

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

**Authorizing a \$45,829.25 Design Services Contingency for the Project**

Council Member Martinez noted this is a significant project for the south end of the community and expressed her appreciation for the coming improvements.

The City Council took the following actions:

- (a) Amended the 2019–2024 Capital Improvement Program to include the Holt Boulevard Median and Street Rehabilitation Project.
- (b) Approved *Agreement No. 22-84* with HR Green Pacific for the preparation of plans and specifications for the construction of median and street rehabilitation improvements on Holt Boulevard from Ramona Avenue to Benson Avenue, subject to any revisions deemed necessary by the City Attorney.
- (c) Approved *Agreement No. 22-85* with AGA Engineers, Inc. for the preparation of plans and specifications for the construction of traffic signals upgrades and traffic signal interconnect and broadband fiber optic improvements, subject to any revisions deemed necessary by the City Attorney.
- (d) Authorized a \$503,000 appropriation from 2021 Lease Revenue Bond proceeds for costs related to *Agreement Nos. 22-84* and *22-85*.
- (e) Authorized a \$45,829.25 design services contingency for the Project.

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

**Authorizing Executive Director of Public Safety/Police Chief Robert Avels to Sign *Agreement No. 22-89***

The City Council took the following actions:

- (a) Approved *Agreement No. 22-89* with San Bernardino County for access to the Sheriff's Automated Systems, subject to any revisions deemed necessary by the City Attorney.
- (b) Authorized Executive Director of Public Safety/Police Chief Robert Avels to sign *Agreement No. 22-89*.

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

**Authorizing the City Manager to Sign *Agreement No. 22-90* and Any Other Related Documents to Effectuate Related Programs**

The City Council took the following actions:

- (a) Approved *Agreement No. 22-90* with the San Bernardino County Office of Homeless Services to accept an award for the Homeless Housing, Assistance, and Prevention Program Round 2 (HHAP2), subject to any revisions deemed necessary by the City Attorney.
- (b) Authorized the City Manager to sign *Agreement No. 22-90* and any other related documents to effectuate related programs.

#### D. Resolutions

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

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

**Adoption of Montclair Housing Corporation Resolution No. 22-02 Approving *Agreement No. 22-26*, an Affordable Housing Agreement**

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

City Manager Starr advised staff recommends the City Council, Montclair Housing Authority (MHA), and Montclair Housing Corporation (MHC) approve the addition of the following recital to each of the three proposed resolutions: ***“WHEREAS, no development of the Property is contemplated;”***

The City Council took the following actions:

- (a) Amended Resolution No. 22-3342 by adding the following recital: “WHEREAS, no development of the Property is contemplated; and”.
- (b) Adopted Resolution No. 22-3342, as amended, approving *Agreement No. 22-26*, an Affordable Housing Agreement between the City, MHC, and MHA; authorized the transfer of certain real property located at 5072 Moreno Street to the Montclair Housing Authority; and declaring the real property to be exempt surplus land.

The Montclair Housing Authority took the following actions:

- (a) Amended MHA Resolution No. 22-01 by adding the following recital: “WHEREAS, no development of the Property is contemplated; and”.
- (b) Adopted MHA Resolution No. 22-01, as amended, approving *Agreement No. 22-26*, an Affordable Housing Agreement, and accepting the transfer of certain real property from the City of Montclair.

The Montclair Housing Corporation took the following actions:

- (a) Amended MHC Resolution No. 22-02 by adding the following recital: "WHEREAS, no development of the Property is contemplated; and".
- (b) Adopted MHC Resolution No. 22-02, as amended, approving *Agreement No. 22-26*, an Affordable Housing Agreement.
- (c) Authorized a \$40,000 appropriation from the Housing Trust Fund for rehabilitation of the property located at 5072 Moreno Street.

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

The City Council adopted Resolution No. 22-3376 making factual findings in compliance with AB 361 for the continuation of public meeting teleconferencing during public health emergencies for the period of August 15, 2022, through September 14, 2022.

**IX. PULLED CONSENT CALENDAR ITEMS**

**C. Agreements**

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

Council Member Lopez stated his understanding that the contracts approved earlier this year were to cover the full year.

Director of Human Services Richter advised the prior contracts ended in August and new contracts would cover the upcoming season through December.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Johnson, and carried 5-0, the City Council approved *Agreement Nos. 22-86, 22-87, and 22-88* with Montclair Little League and Golden Girls Softball League for use of ball field facilities, subject to any revisions deemed necessary by the City Attorney.

**X. COMMUNICATIONS**

**A. Department Reports — None**

**B. City Attorney**

City Attorney Robbins requested the City Council meet in closed session concerning the following:

**1. Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations**

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

**C. City Manager/Executive Director — None**

**D. Mayor/Chair**

Mayor/Chair Dutrey made the following comments:

- 1. He commended the successful National Night Out event and thanked all staff involved.



2. He acknowledged upcoming days and months of recognition, holidays, and celebrations:
  - August 14 — Victory in Japan Day
  - August 26 — Women’s Equality Day
  - September 5 — Labor Day
  - September 11 — National Grandparents Day
  - September 16 — Mexican Independence Day
  - September 16 — National POW/MIA Recognition Day
  - September 17 — Constitution Day
  - September 23 — Native American Day
  - September 25-27 — Rosh Hashanah
  - Sept. 15 - Oct. 15 — National Hispanic Heritage Month
3. He recognized all candidates for the upcoming General Municipal Election: himself and **Oscar Miranda** running for Mayor; and Mayor Pro Tem Ruh, Council Member Martinez, **Xavier Mendez**, and **Juliet Orozco** running for City Council; and wished everyone luck on their campaigns.

#### E. Council Members/Directors

1. Mayor Pro Tem/Vice Chair Ruh made the following comments:
  - (a) He thanked veterans who fought during the Victory Day in Japan marking the end of World War II.
  - (b) He stated 60 percent of water is used outdoors and that mowed green turf is the most irrigated crop. He noted the state may soon outlaw green landscapes if things get too drastic. He urged residents to conserve water as much as possible.
2. Council Member/Director Lopez made the following comments:
  - (a) He and all other Council Members attended the **Montclair High School (MHS)** booster club’s spaghetti dinner fundraiser event for the football team.
  - (b) He announced the **MHS Cavaliers** will have its first football game of the season on Friday, August 19th, playing against the **Village Christian Challengers**. He encouraged the community to come and support their team.
3. Council Member/Director Johnson announced her attendance at the **National League of Cities Women in Municipal Government** conference last week in Sacramento, which covered issues from childcare to education. She stated a fascinating seminar was presented on disaster preparedness. She indicated her interest in learning about the City’s disaster preparedness plans that are in place.
4. Council Member/Director Martinez shared that her sister had just completed her first day of classes at **Chaffey College**. She added that her sister received a *Montclair to College (MTC)* scholarship, which provides two years of free tuition at **Chaffey** for **MHS** graduates. She noted their mother also attended **Chaffey**, while she attended **Mt. San Antonio College**, where she also served on the student government board.

#### F. Committee Meeting Minutes

1. **Minutes of Personnel Committee Meeting of August 1, 2022**  
The City Council received and filed the minutes of the Personnel Committee meeting of August 1, 2022, for informational purposes.

#### XI. CLOSED SESSION

At 9:30 p.m., the City Council went into closed session to discuss real property negotiations.

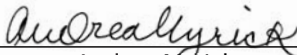
**XII. CLOSED SESSION ANNOUNCEMENTS**

At 9:42 p.m., the City Council returned from closed session. Mayor Dutrey announced that the City Council met in closed session to discuss real property negotiations; information was received and direction given to staff; and no further announcements would be made at this time.

**XIII. ADJOURNMENT**

At 9:42 p.m., Mayor/Chair Dutrey adjourned the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/ Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



Andrea Myrick,  
City Clerk

**MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, AUGUST 15, 2022 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

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

**II. INVOCATION**

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

**III. PLEDGE OF ALLEGIANCE**

Mayor/Chair Dutrey led meeting participants in the Pledge.

**IV. ROLL CALL**

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

City Manager/Executive Director Starr; Director of Community Development Diaz; Assistant City Manager/Director of Human Services Richter; Executive Director of Public Safety/Police Chief Avels; City Attorney Robbins; City Clerk Myrick

**V. PRESENTATIONS**

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

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

**VI. PUBLIC COMMENT**

- **Kati Parker** – Introduction as Board Member Candidate for the **Chino Basin Water Conservation District**.
- **Carolyn Raft** – Provided an update as the City's representative to the **West Valley Mosquito and Vector Control District (WVMVCD)** Board of Trustees.
- The following individuals spoke on the addition of a public restroom in Montclair along the **Pacific Electric Trail**:

**Al Villanueva** spoke in opposition.

**Donald DeBoen** spoke in opposition.

**Bruce Culp** spoke in support

**Michael Keenan** spoke in opposition.

**VII. PUBLIC HEARINGS**

**A. Consider Adoption of Resolution No. 22-3366 Making Findings Pursuant to the California Environmental Quality Act and Approving Tentative Parcel Map No. 20474 and a Precise Plan of Design for a Proposed 302-Unit Residential Apartment Development Within the North Montclair Downtown Specific Plan on 9.96 Acres Located Approximately 200 Feet West of the Intersection of Monte Vista Avenue and Richton Street, West of the San Antonio Creek Channel at 4700 Huntington Drive**

**Mr. Reese Peterson, Trammel Crow Residential**, provided an overview of the project and proposed the following revisions to the Conditions of Approval (Exhibit A to Resolution No. 22-3366):

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

Mayor Dutrey opened the public hearing.

The following individuals spoke in support of the project:

- Al Villanueva
- Carolyn Raft

The following individuals spoke in opposition to the project:

- Lydia Henry
- Michael Keenan
- Bruce Culp
- Amin Nash

Written comments on the project were received from the following:

- City of Claremont
- City of Upland

Mayor Dutrey closed the public hearing and the City Council discussed the matter. Discussion focused on concerns related to traffic impacts, pedestrian safety, parking, maintaining the historic integrity of the area, modifications to Huntington Drive, and the potential future conversion of Huntington Drive into a through-street.

ACTION – Public Hearings – Item A	
<b>ACTING:</b>	City Council
<b>MOTION:</b>	Adopt Resolution No. 22-3366 incorporating changes proposed by the applicant to Exhibit A.
<b>MADE BY:</b> <b>SECOND BY:</b>	Council Member Martinez Council Member Johnson
<b>AYES:</b> <b>NOES:</b> <b>ABSTAIN:</b> <b>ABSENT:</b>	Lopez, Martinez, Johnson, Ruh, Dutrey None None None
<b>RESULT:</b>	Motion carried 5-0

**B. Second Reading — Consider Adoption of Ordinance No. 22-999 Adding Chapter 4.76 to Title 4 of the Montclair Municipal Code Related to Imposing a Cannabis Business License Tax (Subject to Final Approval by the Voters at the November 8, 2022 General Municipal Election)**

Mayor Dutrey opened the public hearing. No members of the public provided comments.

Mayor Dutrey closed the public hearing.

The City Council discussed the matter and received clarification that the ordinance only relates to the taxing authority of the City Council and not regulations for cannabis businesses.

<b>ACTION – Public Hearings – Item B</b>	
<b>ACTING:</b>	City Council
<b>MOTION:</b>	Direct the City Clerk to read Ordinance No. 22-999 for a second time by number and title only, waive further reading, and adopt Ordinance No. 22-999.
<b>MADE BY:</b> <b>SECOND BY:</b>	Council Member Lopez Council Member Johnson
<b>AYES:</b> <b>NOES:</b> <b>ABSTAIN:</b> <b>ABSENT:</b>	Lopez, Martinez, Johnson, Ruh, Dutrey None None None
<b>RESULT:</b>	Motion carried 5-0

**VIII. CONSENT CALENDAR**

<b>ACTION – Consent Calendar</b>	
<b>ACTING:</b>	City Council Successor Agency Montclair Housing Corporation Montclair Housing Authority Montclair Community Foundation
<b>MOTION:</b>	Pull Item C-2 from the Consent Calendar. Approve Item D-1 with staff's recommended changes. Approve the remainder of the Consent Calendar as presented.
<b>MADE BY:</b> <b>SECOND BY:</b>	Council Member/Director Johnson Council Member/Director Lopez
<b>AYES:</b> <b>NOES:</b> <b>ABSTAIN:</b> <b>ABSENT:</b>	Lopez, Martinez, Johnson, Ruh, Dutrey None None None
<b>RESULT:</b>	Motion carried 5-0

**A. Approval of Minutes****1. Regular Joint Meeting – August 1, 2022**

<b>ACTION – Consent Calendar – Item A-1</b>	
<b>ACTING:</b>	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
<b>RESULT:</b>	Approved on Consent

**B. Administrative Reports****1. Receiving and Filing of City Treasurer's Report – July 2022**

<b>ACTION – Consent Calendar – Item B-1</b>	
<b>ACTING:</b>	City Council

<b>ACTION - Consent Calendar - Item B-1</b>	
<b>RESULT:</b>	Approved on Consent

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

<b>ACTION - Consent Calendar - Item B-2</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent

**3. Receiving and Filing of SA Treasurer's Report - July 2022**

<b>ACTION - Consent Calendar - Item B-3</b>	
<b>ACTING:</b>	Successor Agency Board
<b>RESULT:</b>	Approved on Consent

**4. Approval of SA Warrant Register - July 2022**

<b>ACTION - Consent Calendar - Item B-4</b>	
<b>ACTING:</b>	Successor Agency Board
<b>RESULT:</b>	Approved on Consent

**5. Receiving and Filing of MHC Treasurer's Report - July 2022**

<b>ACTION - Consent Calendar - Item B-5</b>	
<b>ACTING:</b>	Montclair Housing Corporation Board
<b>RESULT:</b>	Approved on Consent

**6. Approval of MHC Warrant Register - July 2022**

<b>ACTION - Consent Calendar - Item B-6</b>	
<b>ACTING:</b>	Montclair Housing Corporation Board
<b>RESULT:</b>	Approved on Consent

**7. Receiving and Filing of MHA Treasurer's Report - July 2022**

<b>ACTION - Consent Calendar - Item B-7</b>	
<b>ACTING:</b>	Montclair Housing Authority Commissioners
<b>RESULT:</b>	Approved on Consent

**8. Approval of MHA Warrant Register - July 2022**

<b>ACTION - Consent Calendar - Item B-8</b>	
<b>ACTING:</b>	Montclair Housing Authority Commissioners
<b>RESULT:</b>	Approved on Consent

**9. Authorizing the Destruction of Certain Obsolete Public Records Pursuant to the City of Montclair Records Retention Schedule**

ACTION - Consent Calendar - Item B-9	
ACTING:	City Council
RESULT:	Approved on Consent

10. **Authorizing the Purchase of a Vactor CNG 2110 Plus Sewer Cleaner Truck from Haaker Equipment Co.**

**Declaring a 2004 International Combo Sewer Truck (Unit 314) as Surplus and Available for Auction**

ACTION - Consent Calendar - Item B-10	
ACTING:	City Council
RESULT:	Approved on Consent

**C. Agreements**

1. **Amending the 2019-2024 Capital Improvement Program to Include the Holt Boulevard Median and Street Rehabilitation Project**

**Approval of *Agreement No. 22-84* with HR Green Pacific for the Preparation of Plans and Specifications for the Construction of Median and Street Rehabilitation Improvements on Holt Boulevard from Ramona Avenue to Benson Avenue, Subject to Any Revisions Deemed Necessary by the City Attorney**

**Approval of *Agreement No. 22-85* with AGA Engineers, Inc. for the Preparation of Plans and Specifications for the Construction of Traffic Signals Upgrades and Traffic Signal Interconnect and Broadband Fiber Optic Improvements, Subject to Any Revisions Deemed Necessary by the City Attorney**

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

**Authorizing a \$45,829.25 Design Services Contingency for the Project**

ACTION - Consent Calendar - Item C-1	
ACTING:	City Council
RESULT:	Approved on Consent

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

**Authorizing Executive Director of Public Safety/Police Chief Robert Avels to Sign *Agreement No. 22-89***

ACTION - Consent Calendar - Item C-3	
ACTING:	City Council
RESULT:	Approved on Consent

4. **Approval of *Agreement No. 22-90* with the San Bernardino County Office of Homeless Services to Accept an Award for the Homeless Housing, Assistance, and Prevention Program**

**Round 2 (HHAP2), Subject to Any Revisions Deemed Necessary by the City Attorney**

**Authorizing the City Manager to Sign *Agreement No. 22-90* and Any Other Related Documents to Effectuate Related Programs**

ACTION - Consent Calendar - Item C-4	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent

**D. Resolutions**

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

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

**Adoption of Montclair Housing Corporation Resolution No. 22-02 Approving *Agreement No. 22-26*, an Affordable Housing Agreement**

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

ACTION - Consent Calendar - Item D-1	
<b>ACTING:</b>	City Council Montclair Housing Corporation Board Montclair Housing Authority Commissioners
<b>RESULT:</b>	Approved on Consent, with the following recital added to Resolution No. 22-3342, MHA Resolution No. 22-01, and MHC Resolution No. 22-02: "WHEREAS, no development of the Property is contemplated; and"

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

ACTION - Consent Calendar - Item D-2	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent

**IX. PULLED CONSENT CALENDAR ITEMS**

**C. Agreements**

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

The City Council discussed and received clarification from staff on Item C-2.



<b>ACTION – Pulled Consent Calendar Items – Item C-2</b>	
<b>PULLED BY:</b>	Mayor Dutrey
<b>ACTING:</b>	City Council
<b>MOTION:</b>	Approve Item C-2 as presented.
<b>MADE BY:</b> <b>SECOND BY:</b>	Mayor Pro Tem Ruh Council Member Johnson
<b>AYES:</b> <b>NOES:</b> <b>ABSTAIN:</b> <b>ABSENT:</b>	Lopez, Martinez, Johnson, Ruh, Dutrey None None None
<b>RESULT:</b>	Motion carried 5-0

#### X. COMMUNICATIONS

##### A. Department Reports — None

##### B. City Attorney

City Attorney Robbins requested the City Council meet in closed session concerning the following:

##### 1. Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations

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

##### C. City Manager/Executive Director — None

##### D. Mayor/Chair

Mayor/Chair Dutrey commented on the National Night Out event, announced upcoming days and months of recognition for August and September, and recognized candidates for the upcoming General Municipal Election.

##### E. Council Members/Directors

1. Mayor Pro Tem/Vice Chair Ruh thanked veterans of Victory Day in Japan and spoke on the state's current drought and water conservation efforts.
2. Council Member/Director Lopez stated he and all other Council Members attended the **Montclair High School** booster club's spaghetti dinner fundraiser event for the football team.
3. Council Member/Director Johnson announced her attendance at the **National League of Cities'** Women in Municipal Government conference last week in Sacramento.
4. Council Member/Director Martinez commented on her sister's first day at **Chaffey College**, which she is attending on a *Montclair to College* scholarship.

##### F. Committee Meeting Minutes

The following committee minutes were received and filed for informational purposes:

##### 1. Minutes of Personnel Committee Meeting of August 1, 2022

**XI. CLOSED SESSION**

The City Council entered closed session at 9:30 p.m. to discuss real property negotiations.

**XII. CLOSED SESSION ANNOUNCEMENTS**

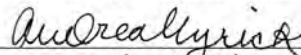
The City Council returned from closed session at 9:42 p.m.

Mayor Dutrey announced the City Council met in closed session to discuss real property negotiations; information was received and direction given to staff; and no further announcements would be made at this time.

**XIII. ADJOURNMENT**

At 9:42 p.m., the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board were adjourned.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/ Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



\_\_\_\_\_  
Andrea Myrick,  
City Clerk

DRAFT  
ACTION  
MINUTES

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, OCTOBER 17, 2022 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

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I. CALL TO ORDER

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

II. INVOCATION

**Pastor Joe McTarsney, Calvary Montclair**, gave the invocation.

III. PLEDGE OF ALLEGIANCE

Council Member/Director Johnson 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; Director of Finance Kulbeck; Executive Director of Public Safety/Police Chief Avels; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS

A. **Proclamation Declaring November 1, 2022 as “Family Literacy Day” in the City of Montclair**

Mayor Dutrey declared November 1, 2022 as “Family Literacy Day” in the City of Montclair, and presented a proclamation to **Ms. Kathy Holloway**, Regent, **Daughters of the American Revolution – San Antonio Chapter**.

B. **Proclamation Declaring November 2022 as “Family Court Awareness Month” in the City of Montclair**

Mayor Dutrey declared November 2022 as “Family Court Awareness Month” in the City of Montclair, and presented a proclamation to **Ms. Sandy Ross**, Executive Director and Chief Operations Officer, **Family Court Awareness Month Committee**.

VI. PUBLIC COMMENT

- The following individuals spoke in opposition to the proposed installation of a new public restroom on the **Pacific Electric Trail** by the **San Bernardino County Transportation Authority**:

**Al Villanueva**, founder of the **Arbol Verde Preservation Committee**  
**Lorraine Campos**, resident  
**Steve Shulz**, resident  
**Vera Wilson**, resident  
**Florencia Garcia**, resident  
**Mohammad Nash**, resident

- **Pat Westrope**, resident, asked when drainage pipes would be repaired on Rudisill street, and reported parking violations near her home.
- **Janine Boscoe-Ohoiner**, and **Janice Boscoe**, residents, voiced their concerns regarding the homeless population.
- **Bruce Culp**, resident, proposed alternative locations for a public restroom on the **Pacific Electric Trail**; spoke in support of renewing City Manager Starr’s contract; and requested an update on costs related to harassment allegations against Council Member Lopez.

**VII. PUBLIC HEARINGS — None****VIII. CONSENT CALENDAR**

<b>ACTION - Consent Calendar</b>	
<b>ACTING:</b>	City Council Successor Agency Montclair Housing Corporation Montclair Housing Authority Montclair Community Foundation
<b>MOTION:</b>	Approve the Consent Calendar as presented.
<b>MADE BY:</b> <b>SECOND BY:</b>	Council Member/Director Johnson Council Member/Director Lopez
<b>AYES:</b> <b>NOES:</b> <b>ABSTAIN:</b> <b>ABSENT:</b>	Lopez, Martinez, Johnson, Ruh, Dutrey None None None
<b>RESULT:</b>	Motion carried 5-0

**A. Approval of Minutes****1. Regular Joint Meeting — October 3, 2022**

<b>ACTION - Consent Calendar - Item A-1</b>	
<b>ACTING:</b>	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
<b>RESULT:</b>	Approved on Consent

**B. Administrative Reports****1. Receive and File City Treasurer's Report - September 2022**

<b>ACTION - Consent Calendar - Item B-1</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent

**2. Approve City Warrant Register and Payroll Documentation**

<b>ACTION - Consent Calendar - Item B-2</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent

**3. Receive and File SA Treasurer's Report - September 2022**

<b>ACTION - Consent Calendar - Item B-3</b>	
<b>ACTING:</b>	Successor Agency Board
<b>RESULT:</b>	Approved on Consent

**4. Approve SA Warrant Register – September 2022**

<b>ACTION – Consent Calendar – Item B-4</b>	
<b>ACTING:</b>	Successor Agency Board
<b>RESULT:</b>	Approved on Consent

**5. Receive and File MHC Treasurer's Report – September 2022**

<b>ACTION – Consent Calendar – Item B-5</b>	
<b>ACTING:</b>	Montclair Housing Corporation Board
<b>RESULT:</b>	Approved on Consent

**6. Approve MHC Warrant Register – September 2022**

<b>ACTION – Consent Calendar – Item B-6</b>	
<b>ACTING:</b>	Montclair Housing Corporation Board
<b>RESULT:</b>	Approved on Consent

**7. Receive and File MHA Treasurer's Report – September 2022**

<b>ACTION – Consent Calendar – Item B-7</b>	
<b>ACTING:</b>	Montclair Housing Authority Commissioners
<b>RESULT:</b>	Approved on Consent

**8. Approve MHA Warrant Register – September 2022**

<b>ACTION – Consent Calendar – Item B-8</b>	
<b>ACTING:</b>	Montclair Housing Authority Commissioners
<b>RESULT:</b>	Approved on Consent

**9. Authorizing the Receipt of \$9,878.76 from the Fiscal Year 2022 Patrick Leahy Bulletproof Vest Partnership Program to Assist with the Purchase of Ballistic Vests**

<b>ACTION – Consent Calendar – Item B-9</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent

**10. Approving the Purchase of Shopping Carts, Whole Turkeys, and Assorted Items for the Montclair Holiday Food and Toy Basket Program**

<b>ACTION – Consent Calendar – Item B-10</b>	
<b>ACTING:</b>	Montclair Community Foundation Board
<b>RESULT:</b>	Approved on Consent

**C. Agreements**

1. **Approval of Amendment No. 1 to *Agreement No. 22-58* and Amendment No. 1 to *Agreement No. 22-59* with the Ontario-Montclair School District for the Montclair After-School Program and Summer Expanded Learning Program to Remove the Vaccine Verification and Testing Policy**

<b>ACTION – Consent Calendar – Item C-1</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent

**D. Resolutions**

1. **Adoption of Resolution No. 22-3384 Making Factual Findings in Compliance with AB 361 for the Continuation of Public Meeting Teleconferencing During Public Health Emergencies for the Period of October 17, 2022, through November 17, 2022**

<b>ACTION – Consent Calendar – Item D-2</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent

**IX. PULLED CONSENT CALENDAR ITEMS — None****X. BUSINESS ITEMS****A. Consider Authorizing the Preparation of Action Minutes as the Official Record of City Council and Commission Meetings**

**Consider Revising the Retention Period for Video/Audio Recordings of Meetings to “Permanent” for Those with Action Minutes Prepared**

City Clerk Myrick presented the report and fielded questions about the item.

Mayor Pro Tem Ruh received clarification of how residents currently access the minutes and audio from meetings.

Council Member Lopez expressed concerns that residents may not understand why decisions were made if the discussions are not summarized in the minutes, and that comments made by Council Members “for the record” would not be provided in the minutes.

City Manager Starr advised audio of the meetings would be retained as a permanent record should anyone want to hear the full discussion that led to a decision.

Council Member Johnson suggested a hybrid of summary and action minutes, where the discussion summaries are not as detailed.

<b>ACTION – Business Items – Item X-1</b>	
<b>ACTING:</b>	City Council
<b>MOTION:</b>	Continue item to the next regular meeting.
<b>MADE BY:</b> <b>SECOND BY:</b>	Mayor Dutrey Council Member Johnson
<b>RESULT:</b>	With no opposition, motion carried 5-0.

## XI. COMMUNICATIONS

### A. Department Reports

#### 1. Human Services Department — Upcoming Events & Programs

Assistant City Manager/Director of Human Services Richter advised the Candidate's Forum held last week is now available to view on the City's YouTube and Facebook pages; provided information about youth basketball sign-ups; announced that appointments must be made by Friday to sign up for receiving a Holiday Food and Toy Basket; stated the Montclair After-School Program's Lights On After School will take place this Thursday in the Community Center at 6:30 p.m.; and noted this year's Halloween Spooktacular event will take place at **Montclair Place** on Saturday, October 29th, from 5:00 to 8:00 p.m.

### B. City Attorney

City Attorney Robbins requested the City Council meet in closed session concerning the following:

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

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

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

### C. City Manager/Executive Director — None

### D. Mayor/Chair

Mayor/Chair Dutrey noted staff made recommendations to **SBCTA** to ease traffic congestion; reported an upcoming 55-hour weekend closure of three lanes on the westbound side of the I-10 Freeway from Monte Vista Avenue starting November 4th; and announced the City would be funding the purchase of a new fire truck because he was just informed by staff the City was not successful in obtaining a grant from the state for the purchase.

### E. Council Members/Directors

1. Mayor Pro Tem/Vice Chair Ruh reported his attendance at the Gold Line Joint Powers Authority meeting last week and complained of traffic congestion caused by the construction on Monte Vista and Central Avenues.
2. Council Member/Director Lopez reported he attended the **Soroptimist** Casino Night event and the **Montclair Chamber of Commerce** monthly networking breakfast; noted the **I-10 Towing & Recovery** ribbon cutting event is this Thursday; requested vintage car owners to participate in the upcoming family festival and antique car show hosted by **Hasco Outlet** on November 5th; commented on his own observance of homeless in the community; received information about the City's ban on livestock; and requested residents be notified before alleyway construction begins.
3. Council Member/Director Johnson stated voters should have received their mail-in ballots and encouraged them to vote early if they cannot on Election Day; announced the Chamber of Commerce is hiring an event planner; and invited the community to attend the **I-10 Towing & Recovery** grand opening event this Thursday.
4. Council Member/Director Martinez encouraged the community to support the **Montclair High School** water polo team at its upcoming game tomorrow; wished Assistant City Manager/Director of Human Services Richter an early "Happy Birthday; and announced a Women's Health Fair will be hosted

by **Assemblymember Freddie Rodriguez** in Pomona on Saturday, October 29th from 10:00 a.m. to 1:00 p.m.

**F. Committee Meeting Minutes**

The following committee minutes were received and filed for informational purposes:

1. Minutes of Personnel Committee Meeting of October 3, 2022

**XII. CLOSED SESSION**

The City Council entered closed session at 8:28 p.m. to discuss pending litigation.

**XIII. CLOSED SESSION ANNOUNCEMENTS**

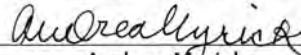
The City Council returned from closed session at 9:00 p.m.

Mayor Dutrey announced the City Council met in closed session to discuss pending litigation; information was received and direction given to staff; and no further announcements would be made at this time.

**XIV. ADJOURNMENT**

At 9:00 p.m., the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board were adjourned.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/ Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



Andrea Myrick,  
City Clerk



**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
NOVEMBER 7, 2022, AT 6:18 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 6:18 p.m.

**II. ROLL CALL**

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

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of October 17, 2022.**

Moved by Council Member Martinez, seconded by Mayor Pro Tem Ruh, and carried unanimously to approve the minutes of the Personnel Committee meeting of October 17, 2022.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

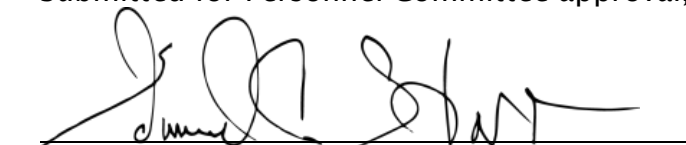
At 6:19 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:43 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 6:43 p.m., Mayor Pro Tem Ruh adjourned the Personnel Committee.

Submitted for Personnel Committee approval,

  
\_\_\_\_\_  
Edward C. Starr  
City Manager

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, NOVEMBER 7, 2022 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

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I. CALL TO ORDER

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

II. INVOCATION

Montclair Fire Chaplain Jimmy Crowell gave the invocation.

Mayor Dutrey thanked Chaplain Crowell, wished his family sincere condolences on behalf of the City Council, and noted tonight's meeting would be adjourned in memory of his son, **Thomas M. Rojas**.

III. PLEDGE OF ALLEGIANCE

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

IV. ROLL CALL

Present: Mayor/Chair Dutrey; Mayor Pro Tem/Vice Chair Ruh; Council Members/Directors 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

Absent: Council Member/Director Johnson

V. PRESENTATIONS — None

VI. PUBLIC COMMENT

**Ms. Ruby Long**, Field Representative for **San Bernardino County Fourth District Supervisor Curt Hagman**, 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.

**Ms. Lisa Wallen**, resident, sought assistance to find a friend who was evicted from his home and is currently in the care of Adult Protective Services.

**Ms. Rosemarie Rosa**, resident, requested the City pave a driveway approach in front of her property so that she does not have to continue using her neighbor's driveway. She was directed to speak with Public Works Director Heredia regarding the process for obtaining a sidewalk construction easement.

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

Mayor Dutrey took public comment and discussion on Item B-2, and staff provided clarification to Council Member Lopez on Item D-1.

The motion to adopt the Consent Calendar was made by Council Member/Director Lopez and seconded by Mayor Pro Tem/Vice Chair Ruh.

Support for the motion was recorded electronically as follows:

AYES: Lopez, Martinez, Ruh, Dutrey

NOES: None

ABSTAIN: None

ABSENT: Johnson

Mayor/Chair Dutrey declared the motion carried 4-0.

**A. Approval of Minutes**

**1. Regular Joint Meeting — October 17, 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 October 17, 2022 regular joint meeting.

**B. Administrative Reports**

**1. Approval of City Warrant Register and Payroll Documentation**

The City Council approved the City Warrant Register dated November 7, 2022, totaling \$2,326,514.79; and the Payroll Documentation dated October 23, 2022, amounting to \$749,309.44 gross, with \$500,940.67 net being the total cash disbursement.

**2. Authorizing the Purchase of One KME Custom Type-1 Pumper Apparatus in the Total Amount of \$838,070.48**

**Authorizing an \$838,070.48 Appropriation from the Equipment Replacement Fund for the Purchase of one KME Custom Type-1 Pumper Apparatus**

**Mr. Bruce Culp**, resident, expressed doubts as to the necessity for this purchase based on limited justification and evidence, and considering a new fire engine was purchased in 2018. He added the timing of having this item on the agenda before the election makes it look politically motivated.

Mayor Dutrey countered **Mr. Culp's** claim that political bias is involved, noting this subject has been repeatedly discussed for over a year and the City Council directed the purchase be made from the General Fund if the grant is not successful in the budget review meetings. He noted staff has just learned the grant was unsuccessful, prompting the purchase being placed on tonight's agenda.

Council Member Martinez received clarification that a grant could not be sought for reimbursement after purchase of the truck, and that the fire station is equipped with an HVAC system to protect personnel from emissions.

Council Member Lopez stated all the engines need to be updated and this is just the first step.

Mayor Pro Tem Ruh noted the City of Rancho Cucamonga recently received a grant to purchase an electric fire engine.

The City Council took the following actions:

- (a) Authorized the purchase of one KME custom Type-1 pumper apparatus in the total amount of \$838,070.48.
- (b) Authorized an \$838,070.48 appropriation from the Equipment Replacement Fund for the purchase of one KME custom Type-1 pumper apparatus.

**3. Approval of the Filing of a Notice of Completion with the San Bernardino County Recorder for the Fire Station No. 2 Landscaping Project Constructed by Mariposa Landscapes, Inc.**

**Authorizing Release of Retention 30 Days After Recordation of Notice of Completion, Reduction of Faithful Performance Bond to 10 Percent, and Release of Payment Bond After Nine Months Subject to City Attorney Approval**

The City Council took the following actions:

- (a) Approved the filing of a notice of completion with the San Bernardino County Recorder for the Fire Station No. 2

Landscaping Project constructed by Mariposa Landscapes, Inc.

- (b) Authorized release of retention 30 Days after recordation of Notice of Completion, reduction of faithful performance bond to 10 Percent, and release of payment bond after nine months subject to City Attorney approval.

**4. Authorizing the Purchase of Perpetual Award Plaques, Frames, and an Organizational Chart for the Police Department in the Total Amount of \$15,000**

**Authorizing a \$15,000 Appropriation from the State Asset Forfeiture Fund for the Purchase of Said Items**

The City Council took the following actions:

- (a) Authorized the purchase of perpetual award plaques, frames, and an organizational chart for the Police Department in the total amount of \$15,000.
- (b) Authorized a \$15,000 appropriation from the State Asset Forfeiture Fund for the purchase of said items.

**C. Agreements**

**1. Award of Contract to G&S Carpet Mills, Inc. in the Amount of \$64,451.72 with a \$9,548.28 Contingency for City Hall Flooring Services**

**Approval of Agreement No. 22-98 with G&S Carpet Mills, Inc., for City Hall Flooring Services, Subject to Any Revisions Deemed Necessary by the City Attorney**

**Authorizing a \$74,000 Appropriation from the Building Maintenance Reserve Fund for City Hall Flooring Services**

The City Council took the following actions:

- (a) Award a contract to G&S Carpet Mills, Inc. in the amount of \$64,451.72 with a \$9,548.28 contingency for City Hall flooring services.
- (b) Approved *Agreement No. 22-98* with G&S Carpet Mills, Inc., for City Hall flooring services, subject to any revisions deemed necessary by the City Attorney.
- (c) Authorized a \$74,000 appropriation from the Building Maintenance Reserve Fund for City Hall flooring services.

**2. Approval of Agreement No. 22-102 with Graffiti Tracker Inc. for Continued Use of its Database to Track and Analyze Graffiti, Subject to Any Revisions Deemed Necessary by the City Attorney**

**Authorizing a \$3,300 Appropriation from the Prop 30/AB 109 Fund for Costs Associated with Agreement No. 22-102**

The City Council took the following actions:

- (a) Approved *Agreement No. 22-102* with Graffiti Tracker Inc. for continued use of its database to track and analyze graffiti, subject to any revisions deemed necessary by the City Attorney.
- (b) Authorized a \$3,300 appropriation from the Prop 30/AB 109 fund for costs associated with *Agreement No. 22-102*.

**D. Resolutions**

**1. Adoption of Resolution No. 22-3385 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges**

Council Member Lopez asked if property owners who are repeatedly on this list are notified and given the opportunity to pay the owed amounts before it goes to lien.

City Manager Starr advised many property owners rent out their properties and prefer to pay for their trash and sewer service on their annual tax bill through the lien process. He added notices are mailed and staff works with those who contact the City to avoid the liens.

The City Council adopted Resolution No. 22-3385 authorizing placement of liens on certain properties for delinquent sewer and trash charges.

**2. Adoption of Resolution No. 22-3386 Making Factual Findings in Compliance with AB 361 for the Continuation of Public Meeting Teleconferencing During Public Health Emergencies for the Period of November 7, 2022, through December 7, 2022**

The City Council adopted Resolution No. 22-3386 making factual findings in compliance with AB 361 for the continuation of public meeting teleconferencing during public health emergencies for the period of November 7, 2022, through December 7, 2022.

**IX. PULLED CONSENT CALENDAR ITEMS — None**

**X. BUSINESS ITEMS — None**

**XI. 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 54956.9(d)(1) Regarding Pending Litigation**

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

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

*Kresback v. Hamilton, City of Montclair, et al.*

*Borra v. City of Montclair*

*Wheeler v. City of Montclair*

**2. Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with Designated Labor Negotiator Edward C. Starr**

Agency: City of Montclair

Employee: Management

Organizations: Montclair City Confidential Employees Assn.  
Montclair General Employees Association  
Montclair Fire Fighters Association  
Montclair Police Officers Association

**C. City Manager/Executive Director — None**

**D. Mayor/Chair**

Mayor/Chair Dutrey recognized all who served in honor of Veterans Day; announced upcoming days and months of recognition for November including National Native American Heritage Month; commended the success of the Human Services Department's Halloween Spooktacular and Lights On After School events; thanked the Fire Department for quickly addressing a large house fire on Camulos Avenue last night; recognized the Montclair Firefighters Association for replacing a resident's broken wheelchair; and expressed his confidence in the people of Montclair to vote tomorrow.

**E. Council Members/Directors**

1. Mayor Pro Tem/Vice Chair Ruh thanked the Community Activities Commission as well as Montclair Fire and Police Departments for their involvement in the successful Halloween event; noted his attendance at **Hasco Outlet's** First Annual Family Fun Festival and Car Show on Saturday; noted the passing of **Mr. Roger Lambert**, a longtime Montclair resident, and **Mrs. Barbara "Barbee" Pearson**, who owned and operated **Midway Building Supply** in Montclair with her husband, **Mr. Richard "Ric" Harold Pearson**, from 1952 to 1998; urged residents to vote tomorrow using any of the many available methods; and commemorated Veterans Day by reflecting on what it used to be called, Armistice Day, which marked the end of World War I at the Battle of Normandy.
2. Council Member/Director Lopez shared a compliment from a resident for Assistant Code Enforcement Manager Fondario; stated he attended the **Hasco Outlet** event as well as some **Montclair High School (MHS)** water polo games; attended the **I-10 Towing & Recovery** grand opening event with his Council colleagues; attended the **MHS Homecoming**; expressed the importance of Election Day and urged residents to not let the rainy forecast deter them; wished all candidates luck; and thanked residents who have served in the **U.S. Military**.
3. Council Member/Director Martinez commended the City's Halloween event; announced the **Women's Club of Montclair** is holding its **See's Candy** fundraiser; and wished her father, Planning Commissioner Manny Martinez, a happy birthday.

**F. Committee Meeting Minutes**

The following committee minutes were received and filed for informational purposes:

1. **Public Works Committee Meeting – August 18, 2022**
2. **Personnel Committee Meeting – October 17, 2022**

Council Member Lopez left the meeting at 7:57 p.m.

**XII. CLOSED SESSION**

The City Council entered closed session at 7:57 p.m. to discuss pending litigation.

Council Member Lopez joined the City Council in closed session at 8:12 p.m.

The City Council resumed discussion of pending litigation and discussed labor negotiations.

**XIII. CLOSED SESSION ANNOUNCEMENTS**

The City Council returned from closed session at 8:37 p.m.

Mayor Dutrey announced 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.

**XIV. ADJOURNMENT**

At 8:37 p.m., the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board were adjourned in memory of **Roger Lambert, Barbara Pearson, and Thomas M. Rojas**.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/ Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



Andrea Myrick,  
City Clerk

**CITY OF MONTCLAIR  
TREASURER'S REPORT  
FOR THE MONTH ENDING  
OCTOBER 31, 2022**

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**SCHEDULE 3**

STATEMENT OF CASH AND INVESTMENT ACCOUNTS

**GRAPH**

CASH AND INVESTMENTS BY TYPE



**CITY OF MONTCLAIR  
STATEMENTS OF COMPLIANCE WITH THE INVESTMENT POLICY  
AND INVESTMENT STRATEGY**

**OCTOBER 31, 2022**

**COMPLIANCE STATEMENT**

The City has the following amount invested in various financial instruments. This conforms with the investment policy approved by the City Council.

Total Investments \$ 33,008,045

During the current month the City was in compliance with the internal control procedures set forth in the Investment Policy.

**INVESTMENT STRATEGY FOR THE UPCOMING MONTH**

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund and other investments authorized in the Investment Policy. The City has sufficient monies available to meet expenditures during the next six month period.

CITY OF MONTCLAIR  
STATEMENT OF CASH AND INVESTMENTS BY FUND  
AS OF OCTOBER 31, 2022

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance
General Fund	\$ 1,713,078.72	\$ 978,029.62	\$ 2,828,593.68	\$ (1,256,542.84)	\$ (1,394,028.18) (1)
Gas Tax Fund	(335,655.65)	84,858.49	73,583.60	296,482.17	(28,912.59) (2)
Road Maintenance - Section 2032	1,444,024.68	71,387.87	-	(239,774.76)	1,275,637.79
Measure I Fund	4,880,681.98	80,398.44	-	-	4,961,080.42
Traffic Safety	139,894.04	2,200.19	-	-	142,094.23
Disability Access Fund - Bus License	47,642.60	637.20	369.50	-	47,910.30
Park Maintenance	39,238.63	-	6,886.13	-	32,352.50
Park Development	1,154,807.06	-	-	-	1,154,807.06
CDBG	(52,725.10)	2,662.07	15,372.14	3,989.95	(61,435.22) (2)
SB2 Planning Grant	(20,642.50)	-	-	-	(20,642.50) (2)
Air Quality Improvement Trust	108,184.20	-	13,385.71	-	94,798.49
SB City Cares Act Infrastructure	(24,354.65)	-	-	-	(24,354.65) (2)
Senior Nutrition Program	(59,255.37)	11,625.79	18,972.75	26,335.73	(40,066.60) (2)
American Rescue Plan	4,780,264.57	-	-	-	4,780,264.57
Forfeiture Fund - State	117,165.99	1,098.54	-	-	118,264.53
Proposition 30/5B 109	97,245.16	-	568.67	-	96,676.49
SB 509 Public Safety	278,731.36	44,797.00	28,917.96	-	294,610.40
Forfeiture Fund-Federal/DOJ	313,142.67	-	-	-	313,142.67
Asset Seizure Fund	0.13	0.01	-	-	0.14
Section 11489 Subfund	35,246.66	184.04	135.45	-	35,305.25
Fed Asset Forfeiture-Treasury	121,781.72	-	-	-	121,781.72
School District Grant Fund	96,315.00	-	-	-	96,315.00
State Supplemental Law Enforcement	422,680.10	93,270.50	-	-	515,950.60
Local Law Enforcement Block Gr	15,023.67	-	-	-	15,023.67
PC 1202.5 Crime Prevention	2,311.49	11.46	-	-	2,322.95
Recycling Grant Fund	71,156.51	52,942.00	-	-	124,098.51
Homeless Emergency Aid Program	(261.41)	-	-	-	(261.41) (2)
Bureau of Justice Assistance	(111.00)	-	-	-	(111.00) (2)
Statewide Park Dev Grant	180,634.00	174,976.00	-	(180,634.40)	174,975.60
Homeless Housing Assist Preven	18,911.62	-	11,566.58	-	7,345.04 (2)
LEAP Grant	(68,426.50)	-	401.25	-	(68,025.25) (2)
After School Program Fund	189,429.35	159,056.48	157,999.91	109,846.00	300,330.92
OTS Grant	-	-	-	-	-
City of Hope	1,290.78	-	-	-	1,290.78
Safety Dept. Grants	275,996.87	-	4,310.10	-	271,686.77
OSMD Immunization Grant	1,370.50	-	-	-	1,370.50 (2)
Kaiser Permanente Grant	3,450.37	-	-	-	3,450.37
Resource Center Grant - OMSD	11,603.57	28,500.00	2,042.30	-	38,061.27
Title III B St Support Services	(7,968.87)	4,343.31	3,041.49	1,419.48	(5,237.57) (2)
Healthy Community Strategic Plan	15,107.19	-	125.00	-	14,982.19
ASES Supplemental Grant	144,691.56	14,105.64	-	(109,846.00)	48,951.20
E.M.S. - Paramedic Fund	8,937.17	1,843.56	-	-	(724.19) (3)
Economic Development	4,394,538.03	-	164,765.51	-	4,229,772.52
City Contributions/Donations Fund	500.00	-	-	-	500.00
Sewer Operating Fund	2,531,078.55	463,168.91	327,107.59	(223,456.54)	2,443,683.33
Sewer Replacement Fund	2,247,404.32	-	-	192,262.53	2,439,666.85
CFD 2011-1 (Paseos)	117,639.38	-	2,726.00	-	114,913.38
CFD 2011-2 (Arrow Station)	87,541.74	-	1,005.35	-	86,536.39
Inland Empire Utility Agency	4,028,281.24	52,279.51	-	-	4,080,560.75
Sewer Expansion Fee Fund	887,646.87	5,224.24	-	-	892,871.11
Developer Impact Fees - Local	1,281,968.12	-	-	-	1,281,968.12
Developer Impact Fees - Regional	325,211.89	-	32.20	(47,459.87)	277,719.82
Burntec Pavement Impact Fees	177,796.22	19,657.88	-	-	197,654.10
PUC Reimbursement Fund-MVGS	324,111.38	-	-	(61,608.97)	262,502.41
Utility Underground In-Lieu	393,396.52	-	-	-	393,396.52
General Plan Update Fee	105,924.02	926.89	-	-	106,850.91
Housing Fund	555,706.20	-	-	-	555,706.20
Public Education/Govt. PEG Fee Fund	87,327.67	-	-	-	87,327.67
Infrastructure Fund	(2,264,477.41)	-	521,888.28	541,977.52	(2,244,388.17) (4)
COVID-19	(152,010.61)	-	4,340.81	-	(156,351.42)
Successor Agency Bonds-Taxable	4,811,553.53	16,371.95	704.00	-	4,827,925.48
Successor Agency Bonds-Tax Exempt	7,982,027.54	27,205.51	-	-	8,009,233.05
2014 Lease Revenue Bond Proceeds	(284,588.74)	-	-	-	(284,588.74)
2021 Lease Revenue Bond Proceeds	(419,819.43)	-	-	-	(419,819.43)
2014 Lease Revenue Bond Debt Svc	(1,607,279.47)	165,252.35	-	-	(1,442,027.12) (5)
2021 Lease Revenue Bond Debt Svc	2,580,823.28	630,360.67	747,206.25	-	2,463,977.70
Pension Obligation Bond Debt Svc	1,196,624.76	1,176,559.37	-	-	2,373,184.13
Contingency Fund	0.96	-	-	-	0.96 (1)
Assigned General Fund Reserves	18,797,465.47	24,001.53	79,327.99	948,000.00	19,667,139.42 (1)
TOTALS	\$ 64,316,802.90	\$ 4,389,447.02	\$ 5,167,459.85	\$ -	\$ 63,539,790.07

Negative Cash Notes follow this presentation.

### **Notes on Negative Cash Balances**

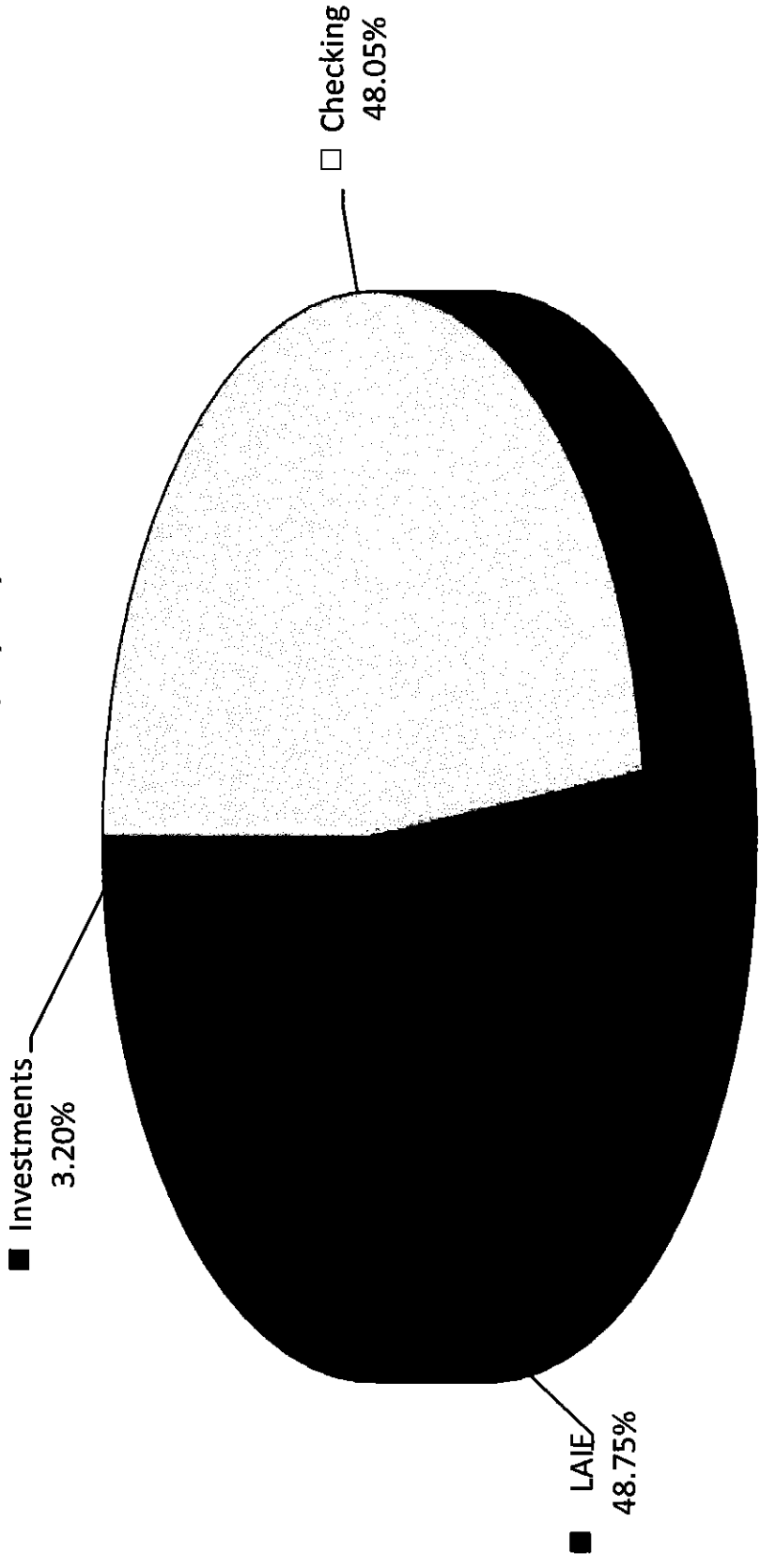
- (1)** The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this negative, the City is not utilizing restricted resources.
- (2)** These are reimbursable grant funds that utilize general pool monies initially to cover expenditures pending reimbursement from the granting agencies. Therefore, it is not uncommon for these to be negative until that reimbursement is received.
- (3)** This fund has operational deficits annually. At the end of the fiscal year it is restored by a General Fund Transfer.
- (4)** The Infrastructure Fund receives transfers from other funds to accomplish infrastructure projects. Those transfers are usually recorded when the projects nears completion or prior to mid-year budget preparation. Any negative in that fund will be eliminated at those times. Transfers from these funds (C.D.B.G., Gas Tax, Measure I, etc.) may go negative on cash pending collections of these revenues. In this way we can determine if obligations for projects are exceeding current resources.
- (5)** This debt service operation utilizes transaction and use taxes which are part of the sales tax and Successor Agency property taxes. These have been sufficient in prior fiscal years to cover the necessary debt service; however, they are not completely received until fiscal year-end. Once debt service is covered the excess will be transferred to the General Fund.

**CITY OF MONTCLAIR  
STATEMENT OF CASH AND INVESTMENT ACCOUNTS  
AS OF OCTOBER 31, 2022**

	Par Value	Purchase Date	Maturity Date	Coupon Interest Rate	Current Market Value	Balance at Cost	Totals
<b>CHECKING ACCOUNT</b>							
Checking Account							\$ 30,529,276.69
Asset Seizure Account							\$ 2,468.79
<b>CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES</b>							
Local Agency Investment Fund (LAIF)				1.910%	30,411,479.58	31,008,044.59	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 32,411,479.58</u>		<u>\$ 33,008,044.59</u>
<b>U.S. AGENCY SECURITIES</b>							
					\$ -		\$ -
<b>TOTAL</b>							<u><u>\$ 63,539,790.07</u></u>

Current market values obtained from US Bank.

**CITY OF MONTCLAIR**  
**CASH AND INVESTMENTS BY TYPE**  
October 31, 2022  
Total Cash & Investments \$63,539,790



**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
TREASURER'S REPORT**

**FOR THE MONTH ENDING**

**October 31, 2022**

**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
STATEMENT OF CASH BY FUND  
October 31, 2022**

**COMBINED OPERATING FUND**

Operating	<u>(50,286.93)</u>	\$ (50,286.93)
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**LRPRP Fund**

Operating	<u>0.00</u>	\$ 0.00
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**RORF**

	1,122,307.84	
RORF Area I	0.00	
RORF Area II	0.00	
RORF Area III	0.00	
RORF Area IV	0.00	
RORF Area V	0.00	
RORF Area VI	0.00	\$ 1,122,307.84

**TOTAL CASH**

**\$ 1,072,020.91**

**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
STATEMENT OF CASH  
October 31, 2022**

**Checking Account**

US Bank

**1,072,020.91**

**TOTAL CASH**

**1,072,020.91**

**NOTE:**

In accordance with State law, the Successor Agency receives the monies necessary to cover its obligations for the upcoming six month period. The monies are received in January and June of each year.

The Successor Agency has sufficient funds available to meet expenditures during the upcoming six-month period.



**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
WARRANT REGISTER**

**FOR THE MONTH ENDING**

**October 31, 2022**

City of Montclair  
 Final Warrant Register  
 Council Date 11/21/2022  
 Regular Warrants  
 Checking Account: Successor to the RDA

	Warrants	US Bank transfers	Area Totals
SRDA Combined Operating Fund	0.00	7,154.39	<b>7,154.39</b>
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	<b>0.00</b>
	0.00	7,154.39	
<b>October 2022 Total</b>			<b>7,154.39</b>

**Note:** Reimburse City for 10/13 payrolls  
 Reimburse City for 10/27 payrolls

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**Vice Chair Ruh**

# Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 10/03/2022 To 10/31/2022

Printed on 11/02/2022 at 1:23 PM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
10/27/2022	\$3281.04	153499275813	153499275805	Completed

**Debit Account Name** CITY OF MONTCLAIR SUCCESSOR AGENCY  
**Debit Account Type** DDA  
**Credit Account Name** CITY OF MONTCLAIR GENERAL ACCOUNT  
**Credit Account Type** DDA  
**Template Name** .  
**Memo** Reimburse City for 10/27/22 Payroll  
**Initiate Date** 10/27/2022  
**Initiate Time** 08:03PM CDT  
**Initiated By** JKULBECK  
**Completed Date** 10/27/2022  
**Completed Time** 08:03PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
10/13/2022	\$3873.35	153499275813	153499275805	Completed

**Debit Account Name** CITY OF MONTCLAIR SUCCESSOR AGENCY  
**Debit Account Type** DDA  
**Credit Account Name** CITY OF MONTCLAIR GENERAL ACCOUNT  
**Credit Account Type** DDA  
**Template Name** .  
**Memo** Reimb City for 10/13/22 Payroll  
**Initiate Date** 10/13/2022  
**Initiate Time** 10:12AM CDT  
**Initiated By** JKULBECK  
**Completed Date** 10/13/2022  
**Completed Time** 10:12AM CDT

**Total Number of Book Transfers:** 2  
**Total Amount of Book Transfers:** \$7,154.39

--- End of Report ---

**CITY OF MONTCLAIR  
HOUSING CORPORATION  
TREASURER'S REPORT**

**FOR THE MONTH ENDING**

**October 31, 2022**

**TABLE OF CONTENTS**

**SCHEDULE 1 - STATEMENT OF CASH AND INVESTMENTS**

**CASH AND INVESTMENTS GRAPH**

CITY OF MONTCLAIR  
HOUSING CORPORATION  
STATEMENT OF CASH AND INVESTMENTS  
October 31, 2022

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
<b>Checking Account</b>			
US Bank			272,338.36
<b>Investments</b>			
LAIF	1.91%	1,696,231.16	<u>1,718,354.27</u>
<b>TOTAL CASH &amp; INVESTMENTS</b>			<u><u>1,990,692.63</u></u>

**NOTE:**  
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

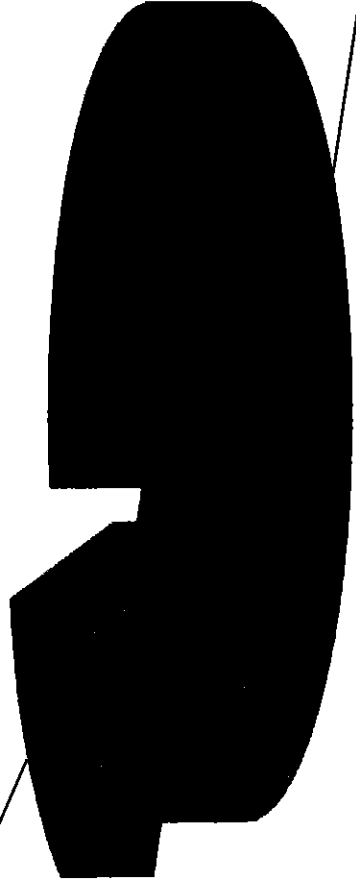
The Corporation has sufficient funds available to meet expenditures during the upcoming six-month period.

The Corporation is in compliance with the internal control procedures set forth in its Investment Policy.

**CITY OF MONTCLAIR  
HOUSING CORPORATION  
CASH AND INVESTMENTS GRAPH  
October 31, 2022**

**Total Cash & Investments - \$1,990,693**

Checking Acct  
13.7%



Local Agency Investment  
Fund  
86.3%

**CITY OF MONTCLAIR  
HOUSING CORPORATION  
WARRANT REGISTER**

**FOR THE MONTH ENDING**

**October 31, 2022**



City of Montclair  
Final Warrant Register  
Council Date 11/21/2022  
Regular Warrants  
Checking Account: MHC

<u>Warrants</u>	<u>ACH Transfers</u>	<u>Voided Checks</u>	<u>US Bank transfers</u>	<u>Totals</u>
53,420.02	0.00	0.00	140.76	<b>53,560.78</b>

**October 2022 Total** 53,560.78

US Bank transfers:  
Reimburse City for MHC CalCard Purchase-Housing Exterior Paint Project  
MHC-9010 Fremont House Numbers Sign

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**Vice Chair Ruh**

# Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 10/03/2022 To 10/31/2022

Printed on 11/02/2022 at 1:23 PM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
10/27/2022	\$103.55	153499275821	153499275805	Completed

**Debit Account Name** MONTCLAIR HOUSING CORPORATION  
**Debit Account Type** DDA  
**Credit Account Name** CITY OF MONTCLAIR GENERAL ACCOUNT  
**Credit Account Type** DDA  
**Template Name** .  
**Memo** MHC-9010 Fremont House Numbers Sign, Charged to City CC  
**Initiate Date** 10/27/2022  
**Initiate Time** 01:06PM CDT  
**Initiated By** RBADAWI  
**Completed Date** 10/27/2022  
**Completed Time** 01:06PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
10/11/2022	\$37.21	153499275821	153499275805	Completed

**Debit Account Name** MONTCLAIR HOUSING CORPORATION  
**Debit Account Type** DDA  
**Credit Account Name** CITY OF MONTCLAIR GENERAL ACCOUNT  
**Credit Account Type** DDA  
**Template Name** .  
**Memo** Reimb City for MHC CalCard Purchase-Housing Exterior Paint Proj  
**Initiate Date** 10/10/2022  
**Initiate Time** 10:39AM CDT  
**Initiated By** JKULBECK  
**Modify Date** 10/11/2022  
**Modify Time** 08:06AM CDT  
**Modified By** .  
**Completed Date** 10/11/2022  
**Completed Time** 08:06AM CDT

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**Total Number of Book Transfers:** 2  
**Total Amount of Book Transfers:** \$140.76

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--- End of Report ---

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
TREASURER'S REPORT  
FOR THE MONTH ENDING  
October 31, 2022**

**Schedule 1**

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
STATEMENT OF CASH  
October 31, 2022**

	<u>Amount</u>
<b>Checking Account</b>	
US Bank	3,179,582.44
<b>TOTAL CASH</b>	<b>\$ <u>3,179,582.44</u></b>

**NOTE:**

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund. The MHA has sufficient monies available to meet expenditures during the next six month period.

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
WARRANT REGISTER  
FOR THE MONTH ENDING  
October 31, 2022**

City of Montclair  
Final Warrant Register  
Council Date 11/21/2022  
Regular Warrants  
Checking Account: MHA

<u>Warrants</u>	<u>Voided Checks</u>	<u>US Bank transfers - out.</u>	<u>Totals</u>
0.00	0.00	0.00	0.00
<b>October 2022 Total</b>			<b><u><u>0.00</u></u></b>

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**Vice Chair Ruh**