

# CITY OF MONTCLAIR

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

### AGENDA

**Monday, August 7, 2023  
7:00 p.m.**



#### **Mayor**

Javier "John" Dutrey

#### **Mayor Pro Tem**

Tenice Johnson

#### **Council Members**

Bill Ruh

Corysa Martinez

Benjamin "Ben" Lopez

#### **City Manager**

Edward C. Starr

#### **City Attorney**

Diane E. Robbins

#### **City Clerk**

Andrea M. Myrick

#### Location

Council Chamber  
5111 Benito Street  
Montclair, CA 91763

#### Webinar Link

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

#### Dial #

1-669-900-6833

#### Meeting ID

937-1715-0550



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

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

Monday, August 7, 2023  
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 provide comments on an agenda item, including public hearing and closed session items, please complete a Speaker Card located in the Council Chambers or online at <https://www.cityofmontclair.org/public-comment/>. The Mayor/Chair (or the meeting's Presiding Officer) will call on those who submitted requests to speak at the appropriate times during the meeting. Those who did not submit a request to speak who are present at the meeting location may raise their hand during Public Comment to request to speak. Those participating remotely may request speak using the "raise hand" function in Zoom or may dial \*9 if on the phone, and then \*6 to un-mute when called on to speak. Written comments (200-word limit per agenda item, and 200-word limit for all non-agenda items combined) and requests to speak can also be emailed to [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) at least one hour before the meeting begins.*

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

## **AGENDA**

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

**II. INVOCATION**

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

**III. PLEDGE OF ALLEGIANCE**

**IV. ROLL CALL**

**V. PRESENTATIONS**

- A. Southern California Edison Wildfire Mitigation Efforts Presentation

**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 call on you to speak at the time of the item's consideration.*

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

**VII. PUBLIC HEARINGS — None**

## VIII. CONSENT CALENDAR

### A. Approval of Minutes

- |  |     |
|--|-----|
| 1. Adjourned Meeting — June 22, 2023 [CC/MHC]                | 160 |
| 2. Special Meeting — June 29, 2023 [CC/MHC]                  | 163 |
| 3. Regular Joint Meeting — July 17, 2023 [CC/SA/MHC/MHA/MCF] | 165 |

### B. Administrative Reports

- |   |   |
|---|---|
| 1. Consider Approval of Warrant Register & Payroll Documentation [CC] | 5 |
|---|---|

2. Consider Implementing a Temporary, 18-Month Montclair Hiring Bonus Incentive Program Focusing on Recruitment of Lateral Police Officers and Police Officer Trainees Funded by Personnel Savings in the Montclair Police Department Budget Related to Current Police Officer Classification Vacancies [CC]

Consider Authorizing the Following Elements of the Montclair Hiring Bonus Incentive Program: a Lateral Police Officer Hiring Incentive Bonus Program, Providing a \$30,000 Bonus to Each New Hire; a Police Officer Trainee Hiring Incentive Bonus Program, Providing a \$10,000 Bonus to Each Newly Hired, Unsponsored Police Academy Trainee; and a Montclair Employee Police Recruitment Referral Bonus Program, Which May be Terminated at Any Time Prior to the End of the 18-Month Montclair Hiring Bonus Incentive Program, Providing a \$2,500 Bonus to Each City of Montclair Employee Referring a Person who is Successfully Hired and Completes Probation as a Montclair Police Officer [CC]

Consider Authorizing the City Manager to Make Adjustments and Modifications to the Montclair Hiring Bonus Incentive Program, and to the Amount of the Hiring Incentive Bonus on a Case-By-Case Basis, Subject to Approval by the Montclair Personnel Committee to Ensure Success of the Program [CC]

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### C. Agreements

- |  |    |
|--|----|
| 1. Consider Approval of Agreement No. 23-51 with Christian Development Center to Provide Case Management Services for the City's Homeless Outreach and Assistance Program, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]             | 19 |
| 2. Consider Approval of Agreement No. 23-56 with Revenue and Cost Specialists, LLC (RCS) to Conduct a Development Impact Fee Nexus Study, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]  | 36 |
| 3. Consider Approval of Agreement No. 23-57 with Mobile Screening Solutions for Department of Transportation (DOT) Random Employee Drug and Alcohol Screening Services [CC]  | 72 |
| 4. Consider Approval of Agreement No. 23-58 Amending Agreement No. 06-175 with the County of San Bernardino for the Lease of a City-Owned Facility to Provide County Library Services, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] | 81 |

D. Resolutions

1. Consider Adoption of Resolution No. 23-3413 Authorizing Placement of Assessments on Certain Properties for Delinquent Sewer and Trash Accounts [CC]

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2. Consider Adoption of Resolution No. 23-3416 Declaring that Certain Real Property Located at 9729 Ramona Avenue, Montclair, is Exempt Surplus Land Pursuant to Government Code Section 54221 and Finding that Such Declaration is Exempt from Environmental Review Under the California Environmental Quality Act [CC]

Consider Adoption of Resolution No. 23-3417 Approving Agreement No. 23-59, an Affordable Housing Agreement with the Montclair Housing Authority and the Montclair Housing Corporation; Authorizing the Transfer of 9729 Ramona Avenue, Montclair, to the Montclair Housing Authority for Use as Affordable Housing Units [CC]

Consider Adoption of MHC Resolution No. 23-04 Approving Agreement No. 23-59, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Authority [MHC]

Consider Adoption of MHA Resolution No. 23-03 Approving Agreement No. 23-59, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Corporation, and Accepting the Transfer of Certain Real Property from the City of Montclair [MHA]

Consider Authorizing a \$20,000 Appropriation from the Housing Trust Fund for Rehabilitation of the Property Located at 9729 Ramona Avenue, Montclair [MHA]

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IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

A. Department Reports

1. Human Services — Upcoming Activities & Events
2. Police Department — National Night Out

A. City Attorney

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

*Godoy 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*

B.	City Manager/Executive Director	
C.	Mayor/Chairperson	
D.	Council Members/Directors	
E.	Committee Meeting Minutes <i>(for informational purposes only)</i>	
1.	Public Works Committee Meeting — June 15, 2023 [CC]	156
2.	Personnel Committee Meeting — July 17, 2023 [CC]	159
XI.	CLOSED SESSION	
XII.	CLOSED SESSION ANNOUNCEMENTS	
XIII.	ADJOURNMENT	

*The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, August 21, 2023 at 7:00 p.m.*

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

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

*I, Andrea M. Myrick, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at <https://www.cityofmontclair.org/agendas/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, August 3, 2023.*



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 7, 2023	<b>FILE I.D.:</b>	FIN540
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	A. VONG/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 Johnson has examined the Warrant Register dated August 7, 2023, the Payroll Documentation dated June 18, 2023, and the Payroll Documentation dated July 2, 2023, and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated August 7, 2023, totals \$1,646,963.27.

The Payroll Documentation dated June 18, 2023 totals \$989,155.26 gross, with \$656,764.11 net being the total cash disbursement.

The Payroll Documentation dated July 2, 2023 totals \$736,147.11 gross, with \$516,567.64 net being the total cash disbursement.

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



# CITY COUNCIL AGENDA REPORT

**DATE:** AUGUST 7, 2023

**FILE I.D.:** PER540

**SECTION:** CONSENT - ADMIN. REPORTS

**DEPT.:** CITY MGR.

**ITEM NO.:** 2

**PREPARER:** E. STARR

**SUBJECT:** CONSIDER IMPLEMENTING A TEMPORARY, 18-MONTH MONTCLAIR HIRING BONUS INCENTIVE PROGRAM FOCUSING ON RECRUITMENT OF LATERAL POLICE OFFICERS AND POLICE OFFICER TRAINEES FUNDED BY PERSONNEL SAVINGS IN THE MONTCLAIR POLICE DEPARTMENT BUDGET RELATED TO CURRENT POLICE OFFICER CLASSIFICATION VACANCIES

CONSIDER AUTHORIZING THE FOLLOWING ELEMENTS OF THE MONTCLAIR HIRING BONUS INCENTIVE PROGRAM: A LATERAL POLICE OFFICER HIRING INCENTIVE BONUS PROGRAM, PROVIDING A \$30,000 BONUS TO EACH NEW HIRE; A POLICE OFFICER TRAINEE HIRING INCENTIVE BONUS PROGRAM, PROVIDING A \$10,000 BONUS TO EACH NEWLY HIRED, UNSPONSORED POLICE ACADEMY TRAINEE; AND A MONTCLAIR EMPLOYEE POLICE RECRUITMENT REFERRAL BONUS PROGRAM, WHICH MAY BE TERMINATED AT ANY TIME PRIOR TO THE END OF THE 18-MONTH MONTCLAIR HIRING BONUS INCENTIVE PROGRAM, PROVIDING A \$2,500 BONUS TO EACH CITY OF MONTCLAIR EMPLOYEE REFERRING A PERSON WHO IS SUCCESSFULLY HIRED AND COMPLETES PROBATION AS A MONTCLAIR POLICE OFFICER

CONSIDER AUTHORIZING THE CITY MANAGER TO MAKE ADJUSTMENTS AND MODIFICATIONS TO THE MONTCLAIR HIRING BONUS INCENTIVE PROGRAM, AND TO THE AMOUNT OF THE HIRING INCENTIVE BONUS ON A CASE-BY-CASE BASIS, SUBJECT TO APPROVAL BY THE MONTCLAIR PERSONNEL COMMITTEE TO ENSURE SUCCESS OF THE PROGRAM

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**REASON FOR CONSIDERATION:** The Montclair Police Department is currently experiencing a decline in qualified applicants for Police Officer positions at both the recruit and lateral levels, creating a deficiency in the number of full-time Police Officers available for assignment to special details. The Police Department currently has 14 Police Officer vacancies.

Establishing a hiring incentive program is proposed as a productive approach to increasing the Police Officer recruitment hiring pool, particularly for experienced lateral Police Officer candidates. Accordingly, the City Council is requested to consider establishing a Montclair Hiring Bonus Incentive Program as discussed in this report.

**BACKGROUND:** Law enforcement recruitments have long been tilted in favor of police departments, which often had far more qualified applicants than they did job openings. However, in recent years, the COVID-19 pandemic and the social unrest of 2020 have, in part, contributed to a nationwide decline in the number applicants for police officers. In addition to a drop in police recruits, many police agencies have realized a significant exodus of experienced police officers, either through resignation or retirement, forcing police agencies to market themselves in new ways, including through the temporary use of hiring incentive programs, in order to attract sufficient candidates to adequately staff their respective departments.

Some industry analysts attribute this recent, albeit temporary disinterest in police work, to the following factors:

1. *Nationwide protests that started in May 2020 calling for the defunding of Police Departments stemming from high-profile Law Enforcement use-of-force cases:*
  - a. Many prospective police officer candidates and experienced police officers made the decision that police work could endanger their safety and cause them to be punished for the legitimate performance of their duties.
  - b. Experienced police officers also cited a perceived decline in community and organizational support for police officers as a primary reason for resigning or retiring from police work.
2. *COVID-19 pandemic and COVID protocols.*
  - a. As with many industries, police department recruitments in the immediate, post-pandemic years have realized a decline in the number of potential entry-level candidates. This decline is attributed, in part, to a percentage of the population making the decision to remain at home in order to avoid the risk of exposure to contagions.
  - b. Some experienced police officers found that pandemic protocols implemented by organizations were anathema to their personal and political beliefs and, therefore, elected to withdraw from the profession. Others resigned because of vaccination mandates.
  - c. In one state, a [Lexipol](#) study found that 68 percent of police agencies modified personnel scheduling; 62 percent of police agencies limited staff access to police facilities; and 30 percent of police agencies furloughed or reduced staffing due to COVID-19. Together, these operational changes impacted productivity, efficacy and teamwork and created an environment for declining morale and staff shortages. Similar actions occurred in other U.S. states.
  - d. According to an [NPR](#) report, COVID was the leading cause of death among active-duty law enforcement personnel during the pandemic, marking the period as the deadliest for active-duty law enforcement in nearly a century.

A [Police Executive Research Forum \(PERF\) survey](#) of 194 of the country's approximately 18,000 police agencies, conducted in 2021, showed that the hiring of new police recruits was down five percent—with larger police departments struggling more than smaller ones. At the same time, resignations of experienced police officers jumped by 18 percent over the year before, while retirement rates were up by 45 percent—a pattern that has continued into the present.

Another [recent study](#), which examines a sample of 14 police departments with more than 100 sworn officers across the U.S., found that among that sample 11 police agencies reported higher rates of resignations and retirements than what would have otherwise been expected based on pre-2020 observations; for example, Salt Lake City and Seattle saw the highest levels of decline, with between 6.7 percent and 16 percent higher losses of sworn personnel than expected from pre-2020 observations. Across all



the departments studied, an extra 1,429 officers were lost over what normal turnover would predict, equating to a loss of authorized strength that was 5.4 percent higher than expected—losses that are in addition to “normal” attrition, again based on pre-2020 observations. Montclair has seen a similar rate of attrition, with open sworn positions currently standing at a peak of 14 out of a total of 56—representing 25 percent of total sworn personnel.

The PERF report notes that declines in sworn personnel are impacting cities large and small across the U.S., although metropolitan police departments have been hit the hardest. Reasons cited by PERF for the decline in new recruits and departure of experienced police officers, include the following:

1. Increased scrutiny and criticism of police;
2. Widespread media coverage of police use of force; and
3. Protests calling for police reform/defunding the police.

The above areas of concern reported by police officers have made it difficult for many police agencies to hire new recruits and retain experienced officers. It should be noted, however, that calls to radically revamp policing and divert resources away from police departments to other agencies have largely abated, if not gone away entirely. Even in Minneapolis, seat of the “Defund the Police” movement, voters of that community resoundingly rejected a proposition to replace the city’s police department with a new Department of Public Safety. Early on in the Defund the Police movement there were only minor impacts across the U.S. in a handful of municipalities through reductions in police budgets—reductions that have, for the most part, been fully restored and, in some cases, increased beyond pre-“Defund the Police” level budgets. This restoration of confidence in police departments has resulted in some police agencies reporting a renewed interest in potential candidates and personnel retention.

Available evidence does suggest, however, that Police Departments nationwide struggled with retention of police officers well before the current hiring and retention crisis. Between 2008 and 2014, for example, California lost six percent of its police force, largely due to a weak economy and budget cuts—both stemming from the Great Recession—according to the [California Commission on Peace Officer Standards and Training](#). Furthermore, many police departments nationwide were shedding police officers during this same period.

In reviewing the pre-pandemic decline in police officers, a [2019 report](#) by PERF called the struggle to hire recruits and the sharp increase in resignations and retirements among experienced police officers a “workforce crisis.” Some departments had seen as much as a 70 percent drop in job applications since 2015, the report revealed.

Taken in perspective, PERF argues that reversing trends related to hiring declines and retention of experienced police officers goes beyond police salaries and working conditions—issues that can be addressed fairly easily. In the current climate, many experienced police officers state their reasons for leaving are burnout and a lack of trust from the communities they serve. Very few departing police officers cited economic issues as the reason or cause for their resignations.

California, in particular, can boast of police officer wages and working conditions that are generally considered superior to what is available in other states. According to the

[U.S. Bureau of Labor Statistics, May 2022 report on Occupational Employment and Wages](#), nationwide the mean annual wage for Police Officers is \$71,380.

Following is the annual mean wage for each of the following five largest U.S. states:

1. California - \$104,010
2. Texas - \$66,570
3. New York - \$81,750
4. Florida - \$73,350
5. Illinois - \$82,470

U.S states with the highest annual mean wage for Police Officers include the following:

1. California - \$104,010
2. Washington - \$92,250
3. New Jersey - \$90,520
4. Hawaii - \$89,640
5. Alaska - \$85,710

Within the Southern California region, following is the annual mean wage for the respective two metropolitan statistical areas in proximity to Montclair:

1. [Los Angeles-Long Beach-Anaheim](#) - \$104,270
2. [Riverside-San Bernardino-Ontario](#) - \$99,320

In comparison, Montclair's annual rate of pay for a police officer is currently \$104,328. Based on the above, it seems apparent, then, that Police Officer wages in California (including Montclair) are significantly higher than the annual rate of pay in other states, and should not generally function as a deterrent to recruitment and retention. Nonetheless, California is not immune to the current decline in applications for new police recruits and the departure of experienced police officers.

In relation to the decline in new recruits, at least one study at [researchgate.net](#) found that in many parts of the nation, police departments are becoming increasingly more homogenous in their personnel composition, despite a concerted effort to recruit across a broader demographic plane—due in part, to a declining interest in police work across a number of demographic groups. Furthermore, the findings indicated that when adolescents across all demographic spectrums are exposed to negative social media on policing, they become less inclined to demonstrate interest in policing careers—a major concern given that adolescents represent the future pool of police applicants. Many police departments may also limit their pool of candidates by retaining restrictive acceptance standards that can exclude otherwise qualified applicants. Cannabis use, for example, can exclude applicants at many police departments, despite its increasing acceptance by the public, even in states where it remains illegal. For many California police departments, including Montclair's, an applicant's admission to his or her past use of cannabis is generally not used to automatically exclude an applicant for police work.

What also appears to be clear is that police officer shortages are due, in part, to a larger reordering of the American economy. Low unemployment rates, ample job openings and a proliferation of remote work have emboldened people in many fields to seek better pay, new career paths or more time off to spend with family. And within policing, many departments were already facing a crush of officers nearing retirement age.

In relation to the loss of experienced police personnel, the obvious concern is that less qualified recruits take their place, giving rise to concerns related to the quality of policing provided. This predicament is exacerbated by the fact that it can take approximately 18 months from recruitment to end-of-training to transform an inexperienced recruit into a rookie police officer capable of responding to 9-1-1 service calls. On average, police officers hired after completion of an academy spend four months or longer in training before they can patrol the streets alone. The [Bureau of Justice Statistics](#) reports an average training period of approximately six to eight months.

For new recruits there is a rigorous application, background, training, physical and field evaluation process. By some estimates, only ten percent of applicants make it through the background process which includes a polygraph test, psychological evaluation, medical examination and interviews with a hiring team. Recruits who successfully clear screening hurdles and make it to a police academy where they are required to successfully complete physical agility and mental challenge requirements must then face a rigorous six-month to one-year training process, which further reduces the number of successful recruits.

Depending on the agency, the entire process of becoming a police officer—from application to the training academy, to being sworn in—can take up to one year. An academy graduate then must spend time on the streets with a training officer before they are released on their own to function as trained police officer—adding another six months to one year to the process.

As evidenced by the above training requirements for new recruits, there is a clear financial burden related to high police turnover. As departments struggle to fill the void left by departing officers, they incur a significant expense in hiring and training recruits. Costs associated with recruitment, background checks, academy training, and field training can be substantial. According to one [study](#), the cost of hiring and training a brand-new officer is estimated to cost between one and five times that officer's annual salary—depending on police agency practices, labor and training costs, and other factors. In Montclair, that cost is typically equal to twice a new Police Officer's annual wages.

### **Reversing the Decline in Police Officer Applications.**

Reversing the current decline in police officer applicants may depend on implementing a number of systemic changes to recruiting practices. In some quarters, widespread job openings and the intense competition for recruits have forced conversations about how police officers are hired and what requirements they must meet.

1. Some police agencies have implemented changes to their hiring practices, including the following:
  - The streamlining of lengthy and opaque application and background processes that can extend out for months;

- Removal of longstanding hiring policies that disqualified applicants for past use of cannabis.
  - Restrictions on the use of credit reports—e.g., examining only for failure to make child support payments, or running up expenditures prior to filing for bankruptcy;
  - Revamped fitness requirements that weeded out otherwise-qualified candidates; and
  - Eased rules on hairstyles, grooming standards and tattoos—currently under review by the Montclair Police Department.
2. Many jurisdictions are focusing on hiring experienced police officers due to their experience and quick turnaround in training. In contrast to hiring and training new recruits which, as indicated above, can take as long as 18-months to prepare for service, experienced lateral hires may take five to eight weeks to fully train to Montclair Police Department standards.
  3. Many jurisdictions, nationwide, are turning to incentives to lure experienced police officer or hire new police recruits. Of the incentives offered, signing bonuses appear be the most common enticement for both new recruits and experienced lateral officers, the latter representing those individuals who are willing to move from one agency to another.

In California, incentive bonuses range from approximately \$3,000 to \$75,000, with highest being offered by the City of Alameda, making it the largest incentive bonus program in the nation. Examples of incentive hiring bonuses paid by other cities in California include, but are not limited to, the following:

- San Diego:
  - \$15,000 hiring bonus, lateral and recruit.
- San Diego County Sheriffs (National City, San Diego, Chula Vista, Oceanside, San Diego County):
  - \$30,000 hiring bonus, lateral and recruit.
- Chula Vista:
  - \$25,000 hiring bonus, lateral.
- Oceanside:
  - \$22,000 hiring bonus, lateral.
- Pomona:
  - \$25,000 hiring bonus, lateral and recruit.
- Colton:
  - \$15,000 hiring bonus, lateral and recruit.
- Chino:
  - \$10,000 hiring bonus, lateral and recruit.
- Upland:
  - \$12,500 hiring bonus, lateral.
  - \$7,500 hiring bonus, recruit.

- Downey:
  - \$3,000 hiring bonus, lateral and recruit.
- Inglewood:
  - \$40,000 hiring bonus, lateral.
  - \$30,000 hiring bonus, recruit who completed certified police academy.
- Antioch:
  - \$30,000 hiring bonus, lateral and recruit.
- La Mesa:
  - \$15,000 hiring bonus, lateral and recruit.
- San Francisco:
  - \$5,000 hiring bonus, lateral and recruit.
- San Jose:
  - \$10,000 hiring bonus, lateral and recruit.
- Hayward
  - \$10,000 hiring bonus, lateral and recruit.
- Bart PD
  - \$15,000 hiring bonus.
- Alameda County Sheriff:
  - \$15,000 hiring bonus, lateral and recruit.
- San Mateo:
  - \$30,000 hiring bonus, lateral.
- Redding:
  - \$40,000 hiring bonus, lateral.

Outside of California, many cities and counties in other states are also paying hiring bonuses; however, nearly all of these hiring bonus programs are between \$3,000 and \$10,000, with only a few offering hiring incentives between \$15,000 and \$30,000.

Some national law enforcement experts and local police officials are opposed to incentives, likening them to professional athletes shopping around for the highest bidder, and arguing that there is little empirical evidence that incentives actually generate improvements to the recruitment dilemma.

The [Police Executive Research Forum](#) agrees that bonuses and other incentives are not the answer for struggling police agencies, arguing that the current recruitment drought is not a regional problem, but a nationwide problem that is made worse by police departments competing against each other at the same time. In effect, PERF argues that police agencies are cannibalizing each other, creating a zero-sum game where one police department gains, while another loses.

The International Association of Chiefs of Police, in a [2019 study on the law enforcement recruitment crisis](#), cited competition for the best-available recruits and lateral transfers as a problem, especially in places like Southern California. The report concludes that agencies in regions where multiple law enforcement agencies are geographically close often find themselves in fierce competition to attract and secure the best candidates in the area.

An argument can be made, however, that incentives, if they are to be considered, are functionally more relevant for lateral candidates as opposed to new recruits, primarily because recruiting for laterals represents a quick turn-around in the recruitment process.

Despite the misgivings by some, and a lack of empirical evidence that affirmatively attests to the success of incentive programs, it is clear that the relatively low cost of a lateral transfer bonus program outweighs the high cost related to the hiring and training of new recruits; although, it is likely that, as bonuses for lateral transfers become more popular, an inflation factor could raise the cost of hiring incentives. In fact, the current nationwide recruitment phenomenon has created a competitive atmosphere between police agencies, with many trying to [lure already-trained officers from other agencies](#) by offering higher salaries and better incentives, causing many industry professionals to conclude that inter-department competition worsens the high turnover problem and raises questions about the long-term sustainability of incentivization practices.

While incentives may function as a short-term and necessary solution for many jurisdictions, law enforcement agencies may need to consider other systemic or operational changes related to recruiting, including re-evaluating training models for new recruits.

Many police agencies are turning to hiring marketing firms to reach candidates through TikTok, Snapchat, Instagram and Facebook. At its July 17, 2023, meeting, the Montclair City Council approved Agreement No. 23-55 with TOC Public Relations to develop a recruitment website exclusively for the Montclair Police Department for the purpose of attracting and recruiting Police Officer candidates to fill multiple vacancies. The Agreement includes a photo and video recruitment package and a targeted social media ad campaign.

Attracting new generations of police officers from the “Millennial” and “Gen Z” population groups presents law enforcement with another set of new challenges that call for different approaches to the recruitment process—challenges that may include the following:

- [Studies](#) suggest that younger generations want a better work-life balance and more immediate gratification. They also tend to not want to remain in one profession for any prolonged duration. Moreover, a nationwide unemployment rate of approximately 3.5 percent now means more opportunities exist for young people—opportunities that do not require them to undergo up to a year or more of interviews, background checks, psychological evaluations and six months of training at police academies. Newer generations appear to want information quickly; e.g., they want to be able to apply and know right away if they have been accepted for employment; otherwise, they may quickly move on to other employment prospects.

- According to the [Pew Research Center](#) and other [studies](#), the Millennial and Gen Z populations, together, represent the largest living generation in the U.S. (in excess of 80 million), making up an ever-increasing portion of the workforce, including for law enforcement. To bring the [Millennial](#) and [Gen Z](#) population into the profession, police departments must learn to revise their [recruitment, training and retention practices](#). Hiring them into the profession must be revised to reflect their desires, interests, wants, and needs, particularly as it relates to the way they regard the workplace, and their home-work-life balance. Further, they are often driven by motivations and ideals that are different than their predecessors.

### **Montclair Hiring Bonus Incentive Program.**

It is clear that if police agency resignations continue at the current pace, or there remains a diminished number of new candidates entering the police field, public safety could be compromised for the foreseeable future, and public confidence could be eroded in the ability of municipalities and counties to provide public safety.

Making systemic or operational changes to advance recruitment practices will take time to implement and produce results. In the short-term, it is clear that the Montclair Police Department needs to address its current outreach for new hires by considering implementation of a hiring-based incentive program. For that reason, the City Manager proposes a temporary, 18-month Montclair Hiring Bonus Incentive Program that focuses on the recruitment of lateral police officers and police officer trainees—the proposed hiring bonus incentive program has the support of Montclair Police Department management and the Montclair Police Officers' Association (MPOA).

***Lateral Police Officer Hiring Incentive Bonus Program.*** As proposed, the Lateral Police Officer Hiring Incentive Bonus Program will provide a \$30,000 bonus to each new hire as follows:

1. \$10,000 at hiring;
2. \$10,000 upon completion of 18-month MOU probation period; and
3. \$10,000 at the third anniversary date following completion of probation.

The following factors would impact a Lateral Police Officer hire's eligibility to receive some or all of the payments, or would require some or all of the disbursed payments to be returned:

- A bonus recipient failing to satisfactorily complete probation would be required to pay back the initial \$10,000 bonus payment, and would not be eligible to receive the balance of the bonus payments.
- A bonus recipient self-terminating his or her service with the City at any point prior to receiving the final bonus payment would be required to pay back the initial bonus payment and, if disbursed to the employee, the bonus paid upon completion of the MOU probation period. The employee would not be eligible to receive the balance of any remaining bonus payments.

- A bonus recipient whose service is terminated by the City after probation and prior to eligibility for the final bonus payment would not receive the final bonus payment and will be required to pay back both the initial bonus payment and the bonus payment provided upon completion of the MOU probation period.
- A bonus recipient self-terminating his or her service with the City at any point prior to receiving the final bonus payment or within twelve months of receiving the final bonus payment in order to pursue a hiring bonus incentive offered by another police agency will be required to pay back the full amount of the hiring bonus incentive paid to the employee. The City reserves the right to inform the hiring agency of the employee's intent to jump from agency to agency for bonus incentive payments.

For purposes of the Lateral Police Officer Hiring Incentive Bonus Program, a lateral police officer is a person in possession of a Peace Officer's Standards and Training (P.O.S.T.) Basic Certificate, as defined by P.O.S.T.

In order to ensure the success and effectiveness of the Lateral Police Officer Hiring Incentive Bonus Program, City staff recommends the City Council provide the City Manager with authority to make adjustments to bonus payment provisions and the amount of the hiring incentive bonus on a case-by-case basis subject to approval by the Personnel Committee.

***Police Officer Trainee Hiring Incentive Bonus Program.*** As proposed, the Police Officer Trainee Hiring Incentive Bonus Program will provide a \$10,000 bonus to each newly hired, unsponsored (not hired on with a police agency) police academy trainee, as follows:

1. \$2,500 at hiring and upon successful completion of police academy training; and
2. \$7,500 upon completion of the MPOA-City MOU probation period.

The following factors would impact a Police Officer Trainee hire's eligibility to receive some or all of the payments, or would require some or all of the disbursed payments to be returned:

- A bonus recipient failing to satisfactorily complete probation would be required to pay back the initial \$2,500 bonus payment, and would not be eligible to receive the balance of the bonus payment.
- A bonus recipient self-terminating his or her service with the City at any point prior to receiving the final bonus payment would be required to pay back the initial bonus payment. The employee would not be eligible to receive the balance of any remaining bonus payments.
- A bonus recipient whose service is terminated by the City within twelve months after probation would be required to pay back the initial and post-probation bonus payment.
- A bonus recipient self-terminating his or her service with the City within twenty-four months of receiving the final bonus payment in order to pursue a hiring bonus incentive offered by another police agency will be required to pay back the full amount of the hiring bonus incentive paid to the employee. The City reserves the



right to inform the hiring agency of the employee's intent to jump from agency to agency for bonus incentive payments.

In order to ensure the success and effectiveness of the Police Officer Trainee Hiring Incentive Bonus Program, City staff recommends the City Council provide the City Manager with authority to make adjustments to bonus payment provisions, and the amount of the hiring incentive bonus on a case-by-case basis, subject to approval by the Personnel Committee.

***Montclair Employee Police Recruitment Referral Bonus Program.*** In addition to the above, the City Manager recommends a Montclair Employee Police Recruitment Referral Bonus Program, as follows:

- A \$2,500 bonus to each employee of the City of Montclair who refers, for hiring as a police officer trainee, the name of a person unaffiliated in any way with the Montclair Police Department, either past or present. For the employee to receive the \$2,500 bonus, the person referred for hiring must successfully become a sworn Montclair Police Officer by completing the hiring process, police academy, background process (including polygraph exam, psychological evaluation, medical examination and interviews with a hiring team), and probation period—at which time the bonus related to the Montclair Employee Police Recruitment Referral Bonus Program will be paid to the referring employee, provided the employee making the referral is, at the time of eligibility, an active employee on payroll with the City of Montclair.
- A \$2,500 bonus to each employee of the City of Montclair who refers, for hiring as a lateral police officer, the name of a person or former Montclair Police Officer, the latter who:
  - Has not been an employee of the City of Montclair for at least twenty-four months prior to the offering of a Montclair hiring incentive,
  - Did not leave City employment as part of a hiring incentive bonus program offered by another agency,
  - Did not retire from the City of Montclair, and
  - Whose separation from the City was for other than discipline, retirement, injury or other legal reason as determined by the City Manager.

For the employee to receive the \$2,500 bonus, the person referred for hiring must successfully become a sworn Montclair Police Officer by completing the hiring process, background process (including polygraph exam, psychological evaluation, medical examination and interviews with a hiring team), and probation period—at which time the bonus related to the Montclair Employee Police Recruitment Referral Bonus Program will be paid to the referring employee, provided the employee making the referral is, at the time of eligibility, an active employee on payroll with the City of Montclair.

- Except as otherwise authorized by the City Manager, no City of Montclair employee shall be eligible to receive more than two \$2,500 payments through the Montclair Employee Police Recruitment Referral Bonus Program.
- At the discretion of the City Manager, the Montclair Employee Police Recruitment Referral Bonus Program shall terminate at any time prior to the end of the temporary, 18-month Montclair Hiring Bonus Incentive Program.

**FISCAL IMPACT:** All bonuses, as defined in this agenda report, would be paid for through current personnel savings in the Montclair Police Department Budget related to current Police Officer classification vacancies. The Montclair Hiring Bonus Incentive Program is subject to modification as determined necessary by the City Manager.

The Montclair Police Department currently has 14 Police Officer classification vacancies out of 56 total sworn positions (51 sworn non-management positions and five sworn management positions).

1. Under the Lateral Police Officer Hiring Incentive Bonus Program, hiring 14 lateral police officers would have a potential cost impact of up to \$420,000, spread over multiple fiscal years. First year (Fiscal year 2023-24) payments under the program would be drawn from current personnel savings in the Montclair Police Department Budget related to current Police Officer classification vacancies.
2. Under the Police Officer Trainee Hiring Incentive Bonus Program, hiring 14 Police Officer Trainees would have a potential cost impact of \$140,000, spread over multiple fiscal years. First year (Fiscal year 2023-24) payments under the program would be drawn from current personnel savings in the Montclair Police Department Budget related to current Police Officer classification vacancies.
3. Costs related to the Montclair Employee Police Recruitment Referral Bonus Program are unknown; however, in the event that 14 persons are successfully recommended for hiring under this program, the cost would be \$35,000, spread over multiple fiscal years. First year (Fiscal year 2023-24) payments under the program would be drawn from current personnel savings in the Montclair Police Department Budget related to current Police Officer classification vacancies.

The actual cost of the proposed Montclair Hiring Bonus Incentive Program, if successfully implemented, is projected to fall between \$140,000 to \$455,000, spread over multiple fiscal years.

For Fiscal Year 2023-24, all bonuses, as defined in this agenda report, would be paid for through current personnel savings in the Montclair Police Department Budget related to current Police Officer classification vacancies.

Montclair Hiring Bonus Incentives will only be fully paid based on the results of recruitments for lateral Police Officers and Police Officer Trainees and the passing of probation by each person participating in the Montclair Hiring Bonus Incentive Program.

The Montclair Hiring Bonus Incentive Program will terminate after an 18-month period following the date of authorization by the City Council, or sooner based on the filling of current, vacant positions. The Montclair Hiring Bonus Incentive Program can only be extended by City Council authorization.

Except as otherwise authorized by the City Manager, no employee shall be eligible to receive more than one distribution of \$2,500 through the Montclair Employee Police Recruitment Recommendation Bonus Program.

Upon implementation of the Montclair Hiring Bonus Incentive Program, and except as otherwise authorized by the City Manager, no employee of the City of Montclair who leaves

employment of the City, or left employment of the City within the twelve months preceding the date of authorization of the Montclair Hiring Bonus Incentive Program by the City Council, will be eligible to return to City employment and qualify for a bonus under the Montclair Hiring Bonus Incentive Program.

Except for the Montclair Employee Police Recruitment Referral Bonus Program, no current employee of the City of Montclair will be eligible for participation in the Montclair Hiring Bonus Incentive Program.

**RECOMMENDATION:** Staff recommends the City Council authorize the following:

1. Implement a temporary, 18-month Montclair Hiring Bonus Incentive Program, focusing on the recruitment of lateral police officers and police officer trainees funded by personnel savings in the Montclair Police Department budget related to existing Police Officer classification vacancies.
2. Authorize the following elements of the Montclair Hiring Bonus Incentive Program:
  - a. A Lateral Police Officer Hiring Incentive Bonus Program, providing a \$30,000 bonus to each new hire;
  - b. A Police Officer Trainee Hiring Incentive Bonus Program, providing a \$10,000 bonus to each newly hired, unsponsored police academy trainee; and
  - c. A Montclair Employee Police Recruitment Referral Bonus Program, which may be terminated at any time prior to the end of the 18-month Montclair Hiring Bonus Incentive Program by the City Manager, providing a \$2,500 bonus to each City of Montclair employee referring a person who is successfully hired and completes probation as a Montclair Police Officer.
3. Authorize the City Manager to make adjustments and modifications to the Montclair Hiring Bonus Incentive Program, and to the amount of the hiring incentive bonus on a case-by-case basis, subject to approval by the Montclair Personnel Committee to ensure success of the program.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 7, 2023	<b>FILE I.D.:</b>	HSV046/GRT085
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	COMMUNITY DEV.
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	A.COLUNGA/G. FONDARIO
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 23-51 WITH CHRISTIAN DEVELOPMENT CENTER TO PROVIDE CASE MANAGEMENT SERVICES FOR THE CITY'S HOMELESS OUTREACH AND ASSISTANCE PROGRAM, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 23-51 with Christian Development Center (CDC) for case management services for the City's Homeless Outreach and Assistance Program.

**BACKGROUND:** The Special Operations Unit (SOU) of the Montclair Code Enforcement Division has primary responsibility in working with homeless individuals within the City. SOU seeks to implement its comprehensive approach to address homelessness by working with individuals to offer a variety of options, resources, and enforcement actions tailored as much as possible to their situation. As part of their daily efforts, SOU relies on assistance from other partner groups or organizations that have the same goal of helping to end homelessness, such as organizations like the CDC. The City's partnership with CDC last fiscal year, pursuant to the last fiscal year's contract, Agreement No. 22-81, assisted approximately 108 individuals with resources.

Proposed Agreement No. 23-51 would continue the relationship with the CDC from July 1, 2023 to June 30, 2024 and would enable their continued assistance with the City's implementation of the Homeless Outreach and Assistance Program. CDC is a non-profit organization led by Pastors Don and Ethel Rucker, who since January 2020 have served as key partners in providing needed case management for individuals referred to them by SOU.

CDC has demonstrated their commitment in assisting the City with the implementation of the Homeless Outreach and Assistance Program in an empathetic and effective process through the services they provide. The CDC is available 24 hours a day, seven days a week, and provides a wide-range of services. Examples of services provided by CDC includes the following: on-site interventions, counseling services, navigation of appropriate resources (including, temporary and permanent housing options as well as placement of individuals into in-house rehabilitation facilities), rental assistance, transportation services, establishing and maintaining rapport with collaborating agencies and organizations, providing food, clothing, and hygiene items to needy individuals and families, as well as responding to calls for service and/or crisis situations as needed by the SOU.

The estimated cost for case management services for a twelve-month term is \$60,000 (\$5,000 per month) funded through the City's grant award through the *Homeless Housing Assistance & Prevention, Round 2* (HHAP-2) grant and also the City's General Fund. General funds used for this agreement were allocated and approved in the fiscal year 2023-2024 budget.

**FISCAL IMPACT:** If the City Council approves Agreement No. 23-51, \$5,000 will be paid monthly for twelve months to CDC for case management services. Further, \$3,300 will be funded through the HHAP-2 grant funding and \$56,700 would be paid through the City's General Fund. General Fund monies used for this agreement were allocated and approved in the Fiscal Year 2023-24 budget. The term of Agreement No. 23-51 is July 1, 2023 through June 30, 2024.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 23-51 with Christian Development Center to provide case management services for the Homeless Outreach and Assistance Program, subject to any revisions deemed necessary by the City Attorney.

**CITY OF MONTCLAIR**

**AGREEMENT FOR CONSULTANT SERVICES**

**HOMELESS OUTREACH AND ASSISTANCE PROGRAM – CASE MANAGEMENT SERVICES**

THIS AGREEMENT is made and effective as of July 1, 2023 between the City of Montclair, a municipal corporation ("City") and Christian Development Center, a 501(c)(3) non-profit organization ("Consultant").

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

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

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

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

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

1. **TERM**

This Agreement shall commence on July 1, 2023 and shall remain and continue in effect for a period of 12 months until tasks described herein are completed, but in no event later than June 30, 2024 unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

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

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

4. CITY MANAGEMENT

City's Community Development Director shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Consultant. City's Community Development Director shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 5 hereof.

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full. This amount is subject to receipt of grant funding and shall not exceed \$50,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

## 7. DEFAULT OF CONSULTANT

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

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

## 8. OWNERSHIP OF DOCUMENTS

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

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



computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

## 9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Consultant shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Consultant herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Consultant, including its subcontractors, employees, agents, and other persons or entities performing work for Consultant.

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

(c) Subconsultants/subcontractors and Indemnification. Consultant agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with

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

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

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

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

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

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

## 10. INSURANCE

### (a) Types of Required Coverages

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

- (1) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$100,000 for bodily injury and property damage, each accident. If Consultant owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (2) **Workers' Compensation:** If applicable, Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.

### (b) Endorsements

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

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

**Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Contract. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

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

4. Exclude "Third-Party-Over Actions"
  5. Contain any other exclusion contrary to the Contract)
- (2) The policy or policies of insurance required by Section (a)(2) Workers' Compensation shall be endorsed, as follows:

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

**(c) Notice of Cancellation**

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

**11. INDEPENDENT CONTRACTOR**

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

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

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

- (1) While Consultant may perform certain services at the premises of City, Consultant is not required to do so and may perform services at its separate business location.
- (2) With the exception of agreed upon project completion dates and the agreement the Consultant will be available at reasonable business hours, the Consultant shall have the ability to set his/her own hours of operation.

- (3) Consultant represents that the services he/she performs under this Agreement are the same services Consultant is customarily engaged in his/her business. City acknowledges that Consultant does not perform services exclusively for City and that Consultant performs or is available to perform these same services to other clients.
- (4) Consultant will use his/her own discretion and independent judgment in the performance of the services rendered for City under the terms of this Agreement.

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

within the City. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

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

(c) Consultant covenants that neither he/she nor any office or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

## 16. NOTICES

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

To City:	Mike Diaz, Director of Community Development City of Montclair 5111 Benito Street Montclair, CA 91763
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To Consultant:	Donald Rucker, President Christian Development Center 5080 Kingsley Street Montclair, CA 91763
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17. ASSIGNMENT

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

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONFIDENTIALITY

Information and materials obtained by the Consultant from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement.

22. DISCRIMINATION

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

23. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF MONTCLAIR

CHRISTIAN DEVELOPMENT CENTER

By:

\_\_\_\_\_  
Javier John Dutrey, Mayor

By:

\_\_\_\_\_  
Donald Rucker, President

Attest:

By:

\_\_\_\_\_  
Andrea Myrick, City Clerk

Approved as to Form:

By:

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



## **EXHIBIT A**

### **DEFINITIONS**

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

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

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

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

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

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

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

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

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

### **SERVICES PROVIDED**

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

1. Hands-on Case Management services for individuals and/or families experiencing homelessness or at imminent risk of experiencing homelessness. CDC provides a wide-range of services and are available 24 Hours a Day/7 Days a Week. Said services include, but are not limited to:
  - Accompanies the City’s Special Operations Unit on Homeless Outreach Details a

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

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

**EXHIBIT B**

The compensation for the services provided by CDC is set at \$5,000 per month not to exceed \$60,000 for the term of the agreement. Compensation is to be provided by funds made available by the “*Homeless Housing Assistance & Prevention Grant*” (HHAP), at \$275 per month; and the City of Montclair at \$4,725 per month; in accordance with the payment rates and terms and the schedule of payment as set forth herein.

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

<b>Payment Schedule (July 1, 2023 – June 30, 2024)</b>		
<b><i>Month</i></b>	<b><i>HHAP Amount</i></b>	<b><i>City Amount</i></b>
July	\$275	\$4,725
August	\$275	\$4,725
September	\$275	\$4,725
October	\$275	\$4,725
November	\$275	\$4,725
December	\$275	\$4,725
January	\$275	\$4,725
February	\$275	\$4,725
March	\$275	\$4,725
April	\$275	\$4,725
May	\$275	\$4,725
June	\$275	\$4,725
<b><i>Sub-totals</i></b>	<b><i>\$3,300</i></b>	<b><i>\$56,700</i></b>
<b><i>TOTAL</i></b>	<b><i>\$60,000</i></b>	



# CITY COUNCIL AGENDA REPORT

**DATE:** AUGUST 7, 2023

**FILE I.D.:** FLP113

**SECTION:** CONSENT - AGREEMENTS

**DEPT.:** ECONOMIC DEV.

**ITEM NO.:** 2

**PREPARER:** M. FUENTES

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 23-56 WITH REVENUE AND COST SPECIALISTS, LLC (RCS) TO CONDUCT A DEVELOPMENT IMPACT FEE NEXUS STUDY, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 23-56 with Revenue and Cost Specialists, LLC (RCS) to conduct a comprehensive development impact fee nexus study and to provide recommendations to the City Council related to development impact fees charged by the City.

A copy of proposed Agreement No. 23-56 is attached for the City Council's review and consideration.

**BACKGROUND:** As part of the exercise in reviewing fees charged by the City, staff is recommending that the City of Montclair conduct a comprehensive development impact fee nexus study given the amount of future development that is anticipated to occur as part of the North Montclair Downtown Specific Plan, Montclair Place District Specific Plan, and the yet to be adopted General Plan Update, Arrow Highway Mixed Use District Specific Plan, and Corridors Plan.

### ***What Are Development Impact Fees?***

Development Impact Fees (DIF) are one-time fees paid by new developments to fund the cost of providing public infrastructure needed to support that development. This authorization is granted through the Mitigation Fee Act (California Government Code sections 66001 through 66025). The Mitigation Fee Act is premised on the concept that new developments have to mitigate impacts on the public infrastructure system.

A DIF is not a tax or special assessment, but rather a fee directly related to the cost of providing the public infrastructure needed to support that development. The fee amount must be reasonably related to the cost of the public infrastructure provided by the government collecting the fee; otherwise, the fee may be considered a special tax and subject to two-thirds voter approval. Therefore, DIFs may not be levied to pay for existing infrastructure deficiencies unrelated to the impacts of new development.

A jurisdiction must legislatively adopt findings of a reasonable relationship between the purpose of the fee and the impact created by the new development, as well as a proportional relationship between the amount of the fee and the amount of the impact, before enacting a DIF program.

Although local governments began levying impact fees in the 1920s as a way to finance infrastructure, in 1987 the California legislature passed the Mitigation Fee Act to establish the principles governing impact fee exactions and, to some extent, to codify existing constitutional requirements. Government Code Sections 66001-66025 establish legal requirements to implement a DIF program for fees that meet the terms of the Mitigation Fee Act.

According to the Mitigation Fee Act, to establish a DIF program a jurisdiction must legislatively accept a nexus study that identifies:

- The purpose of any fees;
- How fees will be used;
- A reasonable relationship between the fee-funded public infrastructure and the type of development paying the fee; and
- A proportional relationship between the amount of the fee and the amount of the impact, or demand created by the new development paying the fee.

DIFs are common among cities throughout California and are a well-accepted way to fund public infrastructure such as roads, sewer and water facilities, and public facilities (park buildings, libraries, and fire protection services) to accommodate the new developments.

### ***Request for Quotes for a Development Impact Fee Nexus Study***

A majority of California cities have DIFS, including the cities of Big Bear Lake, Chino, Colton, Corona, Grand Terrace, Highland, Jurupa Valley, Loma Linda, Murrieta, Ontario, Rialto, Riverside, and San Bernardino. In addition, various counties and joint powers authorities have DIFS, including Riverside County, Riverside County Transportation Department, San Bernardino County, and San Bernardino County Transportation Authority.

Many of the local agencies mentioned above have used the firm Revenue and Cost Specialists, LLC (RCS) for the creation of DIFs and to conduct development impact fee nexus studies. Staff contacted several agencies that have utilized the services of RCS to develop DIF nexus studies and received significant positive feedback regarding the firm and the services that they provided.

As a result, staff requested and obtained a quote from RCS regarding the creation of DIFs and conducting a development impact fee nexus study. RCS provided a quote of \$34,500 to conduct a DIF nexus study and provide recommendations based on the study.

The City of Montclair is currently utilizing the services of RCS to conduct a comprehensive costs of service study related to fees charged by the City of Montclair that are not subject to the Mitigation Fee Act (Agreement No. 22-80).

After careful consideration, staff has elected to use the services of RCS based on cost, the firm's familiarity with the City of Montclair, feedback from various other local government agencies who have utilized the services of RCS, and current services being provided by RCS to the City of Montclair.

### ***Scope of Work***

RCS proposes to undertake the calculation and textual support of a new DIF calculation and DIF nexus study. RCS staff will perform the following to complete the DIF calculation and quantify the costs generated by new development in terms of a development impact fee schedule for City of Montclair land uses.

RCS is proposing the creation of DIFS for the following public infrastructures:

- Law Enforcement Facilities, Vehicles, and Equipment;
- Fire Suppression Facilities, Vehicles, and Equipment;
- Traffic Circulation System, including Streets, Signals, and Bridges;
- Storm Drainage Collection System;
- Wastewater Collection System and Treatment;
- General Facilities (City Hall and City Maintenance Yard);
- Public Use Facilities (Community/Senior Center); and
- Park Land Acquisition, Open Space, and Park Improvements.

To provide the basis for the DIFs, the following steps would be taken by RCS, working with City staff and other consultants where necessary and appropriate:

- Task 1: Preliminary Research;
- Task 2: Series of Working Meetings;
- Task 3: Draft Development Impact Fee Calculation and Nexus Report; and
- Task 4: Presentation of Proposed Development Impact Fee Calculation and Nexus Report to the City Council.

RCS will also be available for ongoing consultation and any further analysis of the research data collected.

### ***About Revenue and Cost Specialists, LLC***

RCS was founded in 1980 by two former city managers and a finance director who, after the passage of Propositions 13 and 4, discovered that user fees were a legal option to recover lost municipal revenues. RCS' four principals make up the Limited Liability Company, which has been financially stable since the company started. Combined, RCS principals have over 100 years of experience in cost allocation plans and fee studies and have served over 250 municipalities. RCS has provided these services to a wide array of public agencies, from the smallest special districts to larger and more complex cities and counties.

**FISCAL IMPACT:** Proposed Agreement No. 23-56 would authorize staff to retain the services of RCS to conduct a development impact fee nexus study and to provide recommendations to the City Council. The costs of services related to proposed Agreement No. 23-56 is estimated to not exceed \$44,500, inclusive of a \$10,000 contingency. Costs associated with proposed Agreement No. 23-56 would come out of the Economic Development Fund.

**RECOMMENDATION:** Staff recommends that the City Council approve Agreement No. 23-56 with RCS to conduct a development impact fee nexus study, subject to any revisions deemed necessary by the City Attorney.

**CITY OF MONTCLAIR**  
**AGREEMENT FOR CONSULTANT SERVICES**

THIS AGREEMENT is made and effective as of August 7, 2023, between the City of Montclair, a California Municipal Corporation ("City") and Revenue & Cost Specialists, LLC, a Limited Liability Company ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on August 7, 2023 and shall remain and continue in effect until modified by the parties or terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

The parties intend Consultant to assist the City with conducting a development impact fee study. Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently and to the best of his/her ability, experience and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, and the review and approval of all products submitted by Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services to be Performed or change Consultant's compensation as provided in Section 5(b) below.

5. **PAYMENT**

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



(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.

(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. Consultant also may terminate this Agreement by serving upon the City at least thirty (10) days prior written notice.

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

#### 7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes

beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

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

## 8. OWNERSHIP OF DOCUMENTS

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

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, claims, applications, computer files, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files. Notwithstanding the above, computer software (including without limitation financial models, compilations of formulas and spreadsheet models), prepared by Consultant are Instruments of Service of Consultant and shall remain the property of Consultant. Consultant shall likewise retain all common law, statutory and other reserved rights, including the copyright thereto.

## 9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Consultant shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and

from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Consultant herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Consultant, including its subcontractors, subconsultants, employees, agents, and other persons or entities performing work for Consultant.

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

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

way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

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

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

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

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

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

## 10. INSURANCE

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

(a) Types of Required Coverages

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

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence, and \$4,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$1,000,000 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:	Mikey Fuentes, Dir. of Economic Development City of Montclair 5111 Benito Street Montclair, CA 91763
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To Consultant:	Eric S Johnson, President Revenue & Cost Specialists, LLC 1519 East Chapman, Suite C Fullerton, CA 92831
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#### 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. PRIORITY OF AGREEMENT

To the extent any provision of Consultant's Proposal attached hereto as Exhibit "A" conflicts with the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control and shall take precedence over those contained in Consultant's Proposal.

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

29. 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.

[Signatures on Following Page]

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

**CITY**

**CONSULTANT**

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

By: \_\_\_\_\_  
Eric S. Johnson President

Attest:

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

Approved as to Form:

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

## Exhibit A



# Proposal for the City of Montclair Development Impact Fee Study



1519 E Chapman Ave  
Suite C  
Fullerton, CA 92831  
(714) 992-9020  
[www.revenuecost.com](http://www.revenuecost.com)



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July 14, 2023

City of Montclair  
Attn: Mikey Fuentes, Director of Economic Development  
5111 Benito St  
Montclair, CA 91763

**Proposal for City of Montclair – Development Impact Fee Study**

Revenue & Cost Specialists, LLC (RCS) appreciates the opportunity to provide you with this Development Impact Fee Study proposal. RCS has provided such studies and other fee-costing services since 1980, making us the first and foremost authority in costing services for California. Our combined 100 years of experience and knowledge in this industry will ensure a successful project that's on time and under budget.

Our impact fee study process is straightforward, imposes minimal impact on staff, and provides proper information, allowing staff, City Council, and other stakeholders to make the best policy decisions for Montclair. We strive to ensure confidence in the information and recommendations of the final Report.

The results of our study will allow the City to identify and recover, with certainty, the maximum financial impact from future development. The terms of this proposal will be honored for 90 calendar days from the date of submission. Please contact Scott at (714) 992-9026 or [scott@revenuecost.com](mailto:scott@revenuecost.com) with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory R. Brown'.

GREGORY BROWN  
Vice President

A handwritten signature in black ink, appearing to read 'Scott Thorpe'.

SCOTT THORPE  
Principal





## **RCS Contacts**

Revenue & Cost Specialists  
1519 E Chapman Ave, Ste C  
Fullerton, CA 92831  
[www.revenuecost.com](http://www.revenuecost.com)



**Scott Thorpe**  
Principal  
714-992-9026  
[Scott@revenuecost.com](mailto:Scott@revenuecost.com)



**Gregory Brown**  
Vice President  
714-992-9022  
[Gregory@revenuecost.com](mailto:Gregory@revenuecost.com)



## ORGANIZATION QUALIFICATIONS

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### ABOUT RCS

RCS (Taxpayer ID No. 330787781) was founded in 1980 by two former City Managers and a Finance Director who, after the passage of Propositions 13 and 4, discovered that user fees were a legal option to recover lost municipal revenues. Forty-two years later, Revenue & Cost Specialists continues its focus on cost allocation and user fee calculation services. After the passage of AB 1600 in 1988, our company added impact fee calculation services to help municipalities finance public facility expansion.



In 2000, RCS created Government Software Systems to develop robust costing software that serves fee calculation needs better than spreadsheets. Our company has provided additional services to municipalities, including long-range financial planning, accounting procedures, and utility rate studies.

To this day, RCS continues to thrive through repeat business, referrals, and references. As a small business, RCS takes only a handful of new clients each year, allowing us to dedicate the appropriate number of resources to them. What's unique about RCS is the work longevity of our team members. Client cities from 20 years ago still call and speak with the RCS Partner about their project back then.

For 2023, RCS is celebrating our 43<sup>rd</sup> year in business and looking forward to another 40-plus years of partnering with municipalities.

### QUALIFICATIONS

RCS's five principals comprise the Limited Liability Company. RCS principals have over 100 years of combined experience in cost allocation plans and fee studies and served over 250 municipalities. We have provided these services to a wide array of public agencies, from the smallest special district to larger and more complex cities and counties. While based in Orange County, we engage in projects throughout the State of California.

RCS principals are municipal cost and revenue consultants specializing in the following:

- User Fee Studies
- Cost Allocation Plans
- Development Impact Fee Studies
- Special studies and reports supporting municipal financing management



These specializations allow RCS to focus on every aspect of municipal fees and be the best at what we do. We are confident in our project time estimates and do not respond to RFPs when the project workload exceeds our capacity. We have suggested new fees that are not common practice throughout the state and have challenged and removed municipal fees that were not defensible. We have assisted municipalities in streamlining their fee-based processes.

All RCS principals are knowledgeable in fund accounting, department structures, and municipal services. We stay current on pending financial and legal issues that challenge municipalities. All principals are comfortable speaking with city staff at all levels, drafting reports and resolutions, and presenting to the public, stakeholders, and City Council members.

RCS principals perform all studies in a professional and expedient manner and do not rely on junior staff to perform these vital tasks with our clients. We also don't rely on status memos because we will often be at City Hall to tell you how the project is going in person.

Rick Kermer, a Partner, was one of the founders of RCS. Rick used his CPA and audit experience to build cost allocation, user fee spreadsheets, and software that passes rigorous analysis and reporting accounting standards. Rick's work is the foundation of all the fee study work offered today. He is now semi-retired, taking only a handful of projects each year.

Eric Johnson, the President, has streamlined and perfected the process of CAP and User Fee Study engagements. With over 30 years and hundreds of completed studies, Eric has created a superior process that demands little city staff time while obtaining maximum results. Eric quickly understands complex city services and how to calculate fees for them. He relates well with elected officials because he responds with candor and brevity. If you speak to any of Eric's prior or current clients, they will tell you how easy the process was.

Scott Thorpe, a Principal, joined RCS in 1985. Before that, he spent 13 years in the cities of Chula Vista, Covina, Anaheim, and Brea, serving in various roles within the city manager's offices. Scott performed user fee studies for several years, transitioning to development impact fees when AB 1600 was enacted. He has written articles laying out the fundamentals of impact fees, and his work has generated tens of millions in fee revenues for cities.

Chu Thai, Vice President, joined RCS after 22 years of municipal experience. As a budget manager and finance director, Chu has successfully coordinated user fee increases, impact fee increases, utility rate increases, and tax ballot measures. His experience helps clients avoid the unseen perils that jeopardize municipal projects. After project completion, Chu leaves behind well-documented reports and spreadsheets for City staff. His career has focused on improving cities' financial stability and implementing operational effectiveness and efficiencies in local government.

Gregory Brown, a Vice President, is the newest team member of RCS. However, he has already performed development impact fee studies for a dozen different cities and districts. Gregory spent 20 years working in small business before joining the RCS team. He was



trained by Scott Thorpe in development impact fee and applies the same methodology Scott Thorpe developed over 35 years while also incorporating his experience in managing small businesses with a focus on efficiency.

## **RCS PROJECT MANAGER FOR MONTCLAIR**

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**Scott Thorpe, Principal, and Greg Brown, Vice President, will work together on the Development Impact Fee Study.**

RCS may assign additional specialists to the project to help maintain the proposed schedule and ensure product quality. We thoroughly understand and will be involved in every phase of the impact fee study, advising City staff when necessary. Resumes for the RCS project team are included in this proposal on the following pages.



## Scott Ian Thorpe Principal

### EDUCATION

Bachelor of Arts in Public  
Administration – San Diego  
State University

Master of Public  
Administration - California  
State University Fullerton

### AFFILIATIONS

California Society of  
Municipal Finance Officers

Government Finance Officers  
Association

Mr. Thorpe has been with RCS since 1985 and built his career and reputation on the proper establishment of development impact fees. His early publications helped shape the foundation of calculating and implementing impact fees. Scott has produced studies for projects ranging from small, single-use developments to large, master-planned communities throughout California. He is actively involved in all aspects of the projects, from kick-off, through Council adoption and beyond fee collection and reporting.

### Municipal Experience

#### **City of Brea – Management & Budget Manager**

Developed budget preparation and management information reporting systems. Established personal computer operations, including acquisition, placement, and maintenance of all equipment to initial and ongoing employee training. Created a comprehensive legislative program for reviewing all federal, state and local legislation.

#### **City of Anaheim – Budget Analyst/Management Operations Auditor**

Assisted in the preparation of a \$350,000,000 annual budget. Provided centralized management support and assistance of line departments with a variety of services including work measurement and management techniques program development, productivity improvement, internal management audits, budget review/analysis, revenue forecasting and auditing, and data processing systems development. Specialized in management assistance to public safety, stadium, convention center and golf operations. Responsible for fiscal, work-unit measurement and management training sessions required of all city management staff.

#### **City of Covina – Administrative Assistant to the City Manager**

Performed general program development with significant emphasis on the improvement of the budget process, legislative, public information, and agenda process systems. Conducted a major annexation study and effort.



## **Scott Ian Thorpe**

### **Principal**

#### **Municipal Experience** **(continued)**

##### **City of Chula Vista – Administrative Aide**

Entry level job which involved completion of a City-wide Policy and Procedure Manual, operation reviews of long-term fire vehicle equipment purchases and of the municipal bus system stop locations.

#### **Publications**

"Financing Capital Improvements", Journal American Water Works Association, August, 1991, pages 50-52

"Impact Fees: Practical Guide for Calculation and Implementation", Journal of Urban Planning and Development, Vol. 18, No. 3, September, 1992, pages 106-118

"The Missing Ingredient in State-Mandated General Plans", Public Management, International City Management Association", March 2014. Pages 21-22.

#### **Other Accomplishments**

Charter Oak Unified School District Facility Closure Committee-Board Appointee

Guest Lecturer on various municipal government/management topics at two universities



## **Gregory Ross Brown**

### **Vice President**

#### **EDUCATION**

Bachelor of Arts in History –  
Cal Poly Pomona

#### **Professional Experience**

##### **Revenue & Cost Specialists – Vice President**

(2022- Present) Assisting in meetings, gathering data, building fee structures, analyzing, and writing reports.

##### **Revenue & Cost Specialists – Associate**

(2020 – 2022) Assist in working meetings, data gathering, analysis, and input. Write and/or edit text for completed Development Impact Fee cost calculations.

##### **Simple Health Acupuncture and Wellness Center Inc. Long Beach, CA – Clinic Director**

(2012 – 2022) Oversaw all operations of a continuing multiple-modality health clinic involving seventeen employees.

#### **Project Experience**

##### Development Impact Fees

Apple Valley Fire Protection District, CA  
City of Highland, CA  
City of Shafter, CA (In Progress)  
City of Gardena, CA (In Progress)  
City of West Covina, CA (In Progress)  
City of Hercules, CA (In Progress)  
City of Corning, CA (In Progress)  
City of El Segundo, CA  
City of Farmersville, CA  
City of Livingston, CA  
City of Loma Linda, CA  
City of Morro Bay, CA  
City of Hawthorne, CA (In Progress)

##### Cost of Services Studies

City of Hawthorne, CA  
City of Laguna Beach, CA  
City of Santa Maria, CA



## SCOPE OF WORK

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### DEVELOPMENT IMPACT FEE

To make certain the City of Montclair continues to provide basic municipal services as the City grows, RCS proposes to undertake the calculation and textual support of a new Development Impact Fee Calculation and Nexus Report. RCS staff will perform the following to complete the Development Impact Fee (DIF) calculation and quantify the costs generated by new development in terms of an Impact Fee Schedule for city land uses.

Based on our preliminary review of the reports and documentation available by the City, we propose development impact fees for the following infrastructures.

- 1. Law Enforcement Facilities, Vehicles, and Equipment**
- 2. Fire Suppression Facilities, Vehicles, and Equipment**
- 3. Traffic Circulation System, including Streets, Signals, and Bridges**
- 4. Storm Drainage Collection System**
- 5. Wastewater Collection System and Treatment**
- 6. General Facilities (City Hall and City Maintenance Yard)**
- 7. Public Use Facilities (Community/Senior Center)**
- 8. Park Land Acquisition, Open Space and Park Improvements**

RCS has the experience and determination to research and identify the maximum financial impact of future developments in Montclair. With this information, staff can realize the city's best funding and implementation policies.

We plan to use a series of direct, focused meetings between RCS experts and knowledgeable City staff to produce an accurate, logical, and defensible final product. RCS' objective is to ensure that City staff feels confident about the data and the report, therefore, confident in supporting the results at public hearings.

The fee recommendations included in RCS' final Development Impact Fee Calculation and Nexus Report will be legally defensible, easy to understand, and supported by City staff. Our years of experience in impact fees and working with local government finance officers ensures this project will be completed successfully and on time.

To provide the basis for the Development Impact Fees, the following steps would be taken by the Revenue & Cost Specialist staff, working with City staff and other consultants where necessary and appropriate:





### **Task 1: Preliminary Research**

Prior to any meetings, RCS will perform a field "windshield" survey to become acquainted with the physical characteristics and general improvement needs and standards of the City. We will request and review all City maps, land-use documents, and available master plans, especially the Comprehensive General Plan, before the kick-off meeting. We will review the City's history of impact fee schedules, resolutions, ordinances, and Annual and Five-Year Reports per Government Code Sections 66006 and 66001. RCS will review recent Operating Budgets, CIP Budgets, Comprehensive Annual Financial Reports, and fixed asset reports.

RCS will meet and discuss the City's planning, capital financing process, and community development standards with the City Engineer, City Planner, and other executive staff to determine the improvements that most likely will evolve from the project planning documents and be needed to support and give validity to the City's Comprehensive General Plan.

### **Task 2: Series of Working Meetings**

RCS will meet with City staff responsible for each infrastructure to help identify all projects needed through theoretical build-out via the use of master plans, specific plans, and other service requirement studies. The more supporting documents we can find, the better the Study will be. The greatest support would be an engineer-prepared Master Plan. RCS will endeavor to increase the validity of available information if such a document is unavailable. RCS will request from the City all reports, master plans, specific plans, and other related reports identifying needed infrastructure. If needed, RCS can assist the City with developing project lists and supporting data. RCS will review project cost estimates and textual explanations for accuracy and completeness.

RCS will identify and analyze the demand drivers specific to each infrastructure or service area. The drivers are the factors of nexus demand related to each land use and would be based on the project plans or City productivity records. These demand drivers will help determine the distribution of the benefits of nexus for, and impact of each group of projects on each of the above categories of land use. The proportional analysis is necessary to identify what burdens would be placed upon the existing and future infrastructure would be undertaken.

### **Task 3: Draft Development Impact Fee Calculation and Nexus Report**

Since the Report is based on information and estimates provided by City staff, it is important that all participants are comfortable with the methodology and data presented. RCS will prepare a draft report consisting of the fee structures and the necessary relevant nexus text and report with recommended fees. This meeting will include discussions on policy issues, implementation strategies, and revenue



collection procedures. RCS will provide the draft report for staff consideration and distribution.

**Task 4:       Presentation of *Proposed Development Impact Fee Calculation and Nexus Report* to the City Council**

RCS will attend the City Council meeting to discuss the report methodology and present findings, provide a formal presentation, and answer questions about those findings. RCS will have the necessary supporting documentation for the meeting and will be the primary contact to answer all questions, following up with any City Council direction with the assistance of City staff.

## **CLIENT INPUT**

RCS will make every effort to advise, seek input from and, in general, explain the work as it is being performed. We depend on dedicated and engaged staff participation for a project to be completed successfully. Most of the staff participation is to attend working meetings with RCS.

The City should also designate a Project Coordinator for the fee study who will:

- 1) Identify key City staff and coordinate the kick-off meeting(s)
- 2) Assist in obtaining the requested information
- 3) Coordinate the review of draft reports, and
- 4) Provide project direction if needed

## **ONSITE MEETINGS AND VIDEO CONFERENCING MEETINGS**

For the project kick-off and working meetings on the same day, the City may choose to have RCS onsite or conduct the meetings through a video conferencing account.

All working meetings will be through our Zoom account or a video conferencing software of the City's choice. Our experience has determined that video conferencing is more flexible in scheduling meetings, lets City staff quickly access reports and files on their computers, and allows everyone to view and discuss the same documents at the same time.

RCS plans to participate in the City Council meetings onsite at the City of Montclair.



## PROJECT SCHEDULE

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RCS' references will attest that our timelines are ideal for impact fee studies. This schedule, of course, will require the cooperative participation of City staff. We will be having meetings with staff every two to three weeks and provide them with updates. Department meetings will be 30 minutes to two hours each.

RCS will comply with local, county, and state protocols for safely conducting meetings as the COVID-19 pandemic evolves.

<b>Development Impact Fee Study</b>	<b>Aug 2023</b>	<b>Sep 2023</b>	<b>Oct 2023</b>	<b>Nov 2023</b>	<b>Dec 2023</b>	<b>Jan 2024</b>
Land-use Database Compilation						
Determine Infrastructure LOS						
Discuss Desired Projects w. Staff						
Review Project Costs & Descriptions						
Review Demand Drivers (Nexus)						
Apply Nexus Distribution Factors						
Review Draft DIF Report with Staff						
Prepare Final DIF Report						
<b>Present DIF Study to Council</b>						



## REFERENCES

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### REFERENCES – DEVELOPMENT IMPACT FEE STUDY

We have recently completed similar *Development Impact Fee Calculation and Nexus Report* projects for the following jurisdictions. We encourage you to contact any RCS client regarding our understanding of the nature of municipalities and working relationship with city staff. Copies of recent impact fee reports can be provided upon your request.

Jurisdiction	Reference Contact
<b>City of Loma Linda</b> (909) 799-2800	Jarb Thaipejr, City Manager Lorena Matarrita, Community Development, Senior Planner
Completed an update to a prior RCS-conducted DIF Report and Master Facilities Plan. RCS' Nexus Report update will raise approximately \$333 million in Development Impact Fees for the City.	
<b>City of El Segundo</b> (909) 334-3414	Nick Liguori, Director of Finance
Completed the City's DIF Calculation and Nexus Report in 2022. RCS' Nexus Report will raise approximately \$300 million in Development Impact Fees for the City.	
<b>City of Farmersville</b> (559) 747-0458	Steve Huntley, Director of Finance & Administration
RCS was selected in September 2020 to update the City's Cost Allocation Plan, User Fees, and Impact Fees.	
<b>City of Ontario</b> (909) 395-2000	Derrick Womble, Administrative Officer
Ontario is also a long-term RCS client, with RCS conducting its first full-infrastructure DIF Nexus Report and two major updates. The City DIF Calculation and Nexus Report supports the doubling of the size and population of the City within the Ontario Ranch Specific Plan area boosting the City's housing by 59,000 dwelling units (150% increase) and its business square feet by 100,000,000 (71% increase).	



## CLIENTS SERVED

### USER FEE STUDY/COST ALLOCATION PLAN

Carpentaria-Summerland Fire District  
Chino Valley Independent Fire District  
City of Alhambra  
City of Antioch  
City of Arcadia  
City of Atascadero  
City of Azusa  
City of Banning  
City of Barstow  
City of Bend, OR  
City of Beverly Hills  
City of Big Bear Lake  
City of Brea  
City of Buena Park  
City of Carlsbad  
City of Carmel-by-the-Sea  
City of Carpentaria  
City of Carson  
City of Ceres  
City of Chino  
City of Claremont  
City of Coachella  
City of Concord  
City of Corona  
City of Cotati  
City of Cudahy  
City of Desert Hot Springs  
City of Diamond Bar  
City of Dinuba  
City of Dublin, Ohio  
City of El Cajon  
City of El Segundo  
City of Elk Grove  
City of Eureka  
City of Folsom  
City of Fontana  
City of Foster City  
City of Fountain Valley  
City of Fullerton  
City of Glendale  
City of Glendora  
City of Goodyear, Arizona  
City of Hemet  
City of Hermosa Beach  
City of Hesperia  
City of Highland  
City of Huntington Beach  
City of Kennewick, WA  
City of La Canada-Flintridge  
City of La Habra Heights  
City of La Mirada

### USER FEE STUDY/COST ALLOCATION PLAN (continued)

City of La Palma  
City of La Puente  
City of Lake Elsinore  
City of Lake Forest  
City of Lakewood  
City of Lancaster  
City of Lathrop  
City of Lawndale  
City of Lemoore  
City of Lincoln  
City of Lindsay  
City of Loma Linda  
City of Long Beach  
City of Los Altos  
City of Lynwood  
City of Mammoth Lakes  
City of Manhattan Beach  
City of Marina  
City of Menifee  
City of Merced  
City of Milpitas  
City of Monrovia  
City of Monterey  
City of Moreno Valley  
City of Morgan Hill  
City of Morro Bay  
City of Needles  
City of Norwalk  
City of Oakdale  
City of Oceanside  
City of Ontario  
City of Oroville  
City of Oxnard  
City of Palm Desert  
City of Palm Springs  
City of Palmdale  
City of Pasadena  
City of Peoria, AZ  
City of Pico Rivera  
City of Pismo Beach  
City of Pittsburg  
City of Pomona  
City of Port Hueneme  
City of Porterville  
City of Rancho Cucamonga  
City of Rancho Palos Verdes  
City of Red Bluff  
City of Redlands  
City of Rialto  
City of Richmond  
City of Ridgecrest  
City of Riverside

### USER FEE STUDY/COST ALLOCATION PLAN (continued)

City of Rocklin  
City of Salinas  
City of San Clemente  
City of San Gabriel  
City of San Juan Capistrano  
City of San Marino  
City of San Rafael  
City of Sanger  
City of Santa Clarita  
City of Santa Monica  
City of Santa Paula  
City of Scotts Valley  
City of Seal Beach  
City of Seaside  
City of Selma  
City of Shafter  
City of Sierra Madre  
City of Simi Valley  
City of Solana Beach  
City of South Gate  
City of South Lake Tahoe  
City of South Pasadena  
City of Springville, UT  
City of Stockton  
City of Suisun City  
City of Taft  
City of Thousand Oaks  
City of Tracy  
City of Tulare  
City of Turlock  
City of Upland  
City of Villa Park  
City of Vista  
City of West Covina  
City of West Jordan, UT  
City of Westminster  
City of Yuba City  
City of Rancho Mirage  
Coachella Valley Assoc of Gov't  
Contra Costa County  
County of Cobb, GA  
County of Contra Costa  
County of San Bernardino  
County of Tulare  
Imperial County  
Oceanside Harbor District  
Orange County Fire Authority  
Orange County Vector Control District  
Placer County Water Agency  
Riverside County Transport. Comm.  
San Bernardino Assoc. Gov't



**USER FEE STUDY/COST  
ALLOCATION PLAN (continued)**

South Jordan City, UT  
Town of Apple Valley  
Town of Los Gatos  
Town of Mammoth Lakes  
Town of Truckee  
Ventura County Fire District

**IMPACT FEE STUDY**

Antelope Valley Fire District  
Apple Valley Fire District  
Barstow Fire District  
Bridgeport Fire District  
Brigham City Corporation, UT  
Carpentaria-Summerland Fire District  
Chalfant Public Services (Fire) Protection District  
City of Alhambra  
City of Anaheim  
City of Atascadero  
City of Baldwin Park  
City of Barstow  
City of Big Bear Lake  
City of Calimesa  
City of Chino  
City of Coachella  
City of Colton  
City of Corona  
City of Desert Hot Springs  
City of Folsom  
City of Gilroy  
City of Glendale  
City of Gonzales  
City of Grand Terrace  
City of Greenfield  
City of Hemet  
City of Highland  
City of Huntington Beach  
City of Jurupa Valley  
City of King City  
City of Laguna Hills  
City of Lemoore  
City of Loma Linda  
City of Menifee  
City of Monterey Park  
City of Morgan Hill  
City of Murrieta  
City of Needles  
City of Newport Beach  
City of North Ogden, UT  
City of Oceanside  
City of Ontario  
City of Orange  
City of Oroville  
City of Paso Robles  
City of Petaluma  
City of Pismo Beach

**IMPACT FEE STUDY (continued)**

City of Rancho Cordova  
City of Reedley  
City of Rialto  
City of Riverside  
City of San Bernardino  
City of Santa Paula  
City of Scotts Valley  
City of Sedona, AZ  
City of Selma  
City of Sierra Madre  
City of Thousand Oaks  
City of Tracy  
City of Tulare  
City of Wheatland  
City of Whittier  
County of Monterey Sheriff's Department  
County of San Bernardino  
Feather River Recreation and Park District  
June Lake Fire District  
Lake Havasu City, AZ  
Long Valley Fire District  
North Central Fire District  
SANBAG  
South Jordan City, UT  
South Ogden City, UT  
Town of Apple Valley  
Town of Mammoth Lakes  
Town of Paradise  
Town of Truckee  
Washington Terrace City, UT  
West Jordan City, UT  
Wheeler Crest Fire District

**ACCOUNTING PROCEDURES**

City of Buena Park  
City of Compton  
City of La Habra  
City of La Palma  
City of Morgan Hill  
City of Palmdale  
Commerce Redevelopment City  
South Gate Housing Authority

**ASSISTANCE TO CITY**

**ATTORNEYS (confidential)**

Cohen and Berliner – Litigation Assistance  
Rutan and Tucker – Litigation Assistance  
San Diego City – Building & Safety Fee Litigation Assistance  
San Diego County Counsel – DIF Use Litigation Assistance

**CASH MANAGEMENT**

City of Buena Park  
City of Commerce  
City of Compton  
City of Palmdale  
La Mirada Civic Theater

**DATA PROCESSING**

City of La Palma  
City of Palmdale  
City of San Clemente  
City of South Gate  
City of Villa Park  
Ontario-Montclair School District

**LONG RANGE FINANCIAL PLAN**

City of Chino  
City of Cudahy  
City of Hesperia  
City of Lake Elsinore  
City of South Gate  
City of Turlock

**MASTER FACILITIES  
PLANS/CIPs**

Apple Valley Fire District  
Barstow Fire District  
Bridgeport Fire District  
Brigham City Corporation, UT  
Carpentaria-Summerland Fire District  
Chalfant Public Services (Fire) Protection District  
City of Anaheim  
City of Atascadero  
City of Barstow  
City of Big Bear Lake  
City of Calimesa  
City of Carpentaria  
City of Chino  
City of Corona  
City of Desert Hot Springs  
City of Folsom  
City of Gonzales  
City of Grand Terrace  
City of Greenfield  
City of Highland  
City of Huntington Beach  
City of Jurupa valley  
City of King City  
City of Lancaster  
City of Loma Linda  
City of Menifee  
City of Murrieta  
City of Needles  
City of Newport Beach  
City of Norco



**MASTER FACILITIES  
PLANS/CIPs (continued)**

City of Ontario  
City of Orange  
City of Oroville  
City of Paso Robles  
City of Rancho Cordova  
City of Riverside  
City of San Bernardino  
City of Santa Paula  
City of Sedona, AZ  
City of Selma  
City of Tracy  
City of Wheatland  
City of Whittier  
June Lake Fire District  
Lake Havasu City, AZ  
Long Valley Fire District  
North Central Fire District  
North Ogden City, UT  
South Jordan City, UT  
South Ogden City, UT  
Town of Apple Valley  
Town of Mammoth Lakes  
Town of Paradise  
Town of Truckee  
Wheeler Crest Fire District

**ORGANIZATIONAL AND  
MANAGEMENT**

City of La Mirada  
City of South Gate  
City of Vista  
Ontario-Montclair School District

**UTILITY RATE STUDY**

City of Brea  
City of Chino  
City of El Segundo

**MISCELLANEOUS PROJECTS**

Brigham City Corporation, UT –  
Closed Indian School Use  
Conversion  
City of Azusa – Plan  
Check/Inspection Process  
Review  
City of Beverly Hills – Rent  
Stabilization Fee  
City of Colton – Electric Utilities  
Collection Procedural Manual  
City of Corona – Communications  
Repeater Cost Financing  
City of Corona – Interstate 15  
Area Public Safety Facility  
Financing  
City of Fontana – General &  
Departmental Overhead Plan  
City of Garden Grove - Internal  
Service Fund Balance Study  
City of Hemet – Supplemental DIF,  
Public Peril Report  
City of Los Altos – Existing DIF  
Review  
City of Milpitas – Business License  
Ordinance Review  
City of Needles – Development  
Agreement Assistance  
City of Pico Rivera – Business  
License Ordinance Review  
City of Port Hueneme – Revenue  
Search Report  
City of Redlands – Street  
Sweeping Rate Study  
City of San Bernardino –  
Verdemont Area Financing  
Analysis

**MISCELLANEOUS PROJECTS  
(continued)**

City of San Clemente – Business  
License Review  
City of Santa Paula – General Plan  
Element  
City of Seaside – Hayes Housing  
Development Service Demands  
City of South Lake Tahoe –  
Transfer of Custody Cost  
Verification  
City of Westminster –  
Productivity Measurement  
Module  
Lake Havasu City, AZ – Capital  
Financing Plan  
Los Angeles Fire/Police  
Retirement System – Fiscal  
Review  
San Bernardino County – Special  
District Office Finance Review  
South Jordan City, UT – Business  
Regulation Costing  
Town of Windsor – Long Range  
Capital Financing Plan



## PROPOSED BUDGET

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Revenue & Cost Specialists proposes the following project costs, which will **NOT TO EXCEED AMOUNT OF \$34,500.**

Development Impact Fee			
Preliminary Research		30	4,500
Identify Land-Use Build Out	Land Use Database	35	5,250
Identify Current/Future Needs	Schedule of Capital Costs	45	6,750
Mathematical Nexus Calculation	Spreadsheets of Calculations	48	7,200
Textual Nexus	Draft & Final DIF Reports	56	8,400
Public Meetings	Presentations (2)	16	2,400
TOTAL PROJECT COST		230	\$34,500

The above costs are based on a charge of \$150 per hour. The billing rate for any additional work not covered by this proposal would be \$200 per hour. Our proposal covers all costs except for the following additional costs that the City may incur:

- Insurance coverage beyond our basic general liability and worker's compensation requiring an additional premium. RCS standard coverage includes worker's compensation pursuant to state law, comprehensive liability Insurance with a combined single limit coverage of \$2,000,000, and professional liability insurance with a combined coverage of \$2,000,000.
- Report reproduction beyond one physical master copy of the final Report.
- Excessive public meeting attendance.
- Excessive revisions to the report once the draft report has been approved by City staff.

RCS will submit five equal invoices for the Development Impact Fee Study, plus any miscellaneous costs from the previous paragraph. The first invoice will be submitted ten days after the start of each. Invoices will be due within 30 days of submission.





# CITY COUNCIL AGENDA REPORT

**DATE:** AUGUST 7, 2023

**FILE I.D.:** PER125

**SECTION:** CONSENT - AGREEMENTS

**DEPT.:** ADMIN. SVCS.

**ITEM NO.:** 3

**PREPARER:** A. MYRICK

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 23-57 WITH MOBILE SCREENING SOLUTIONS FOR DEPARTMENT OF TRANSPORTATION RANDOM EMPLOYEE DRUG AND ALCOHOL SCREENING SERVICES

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 23-57 with Mobile Screening Solutions (MSS) for Department of Transportation (DOT) random employee drug and alcohol screening services.

**BACKGROUND:** Since 1996, the City has been subject to DOT regulations requiring a drug and alcohol testing program for employees performing certain duties, including operating heavy commercial equipment and buses. These employees are placed in a pool that is periodically subject to random drug and alcohol testing, and upon reasonable suspicion of impairment on the job.

Public Works staff previously handled the administration of this program including training, random selection of employees for testing, and recordkeeping. However, after reviewing the program, the City's Human Resources Consultant recommended removing all Public Works Department staff from administering the random selection process, which prompted the program's administration to be handed over to the Personnel Division. Additionally, earlier this year in February, California Highway Patrol (CHP) performed an inspection to verify compliance with DOT testing, and the CHP inspector suggested, as a best practice, to not perform the random selection process in-house, but to contract the entire process with a third party to ensure full compliance and integrity for the random selection of employees.

In 2022, prior to the transfer of the program, Public Works Department staff was researching improvements to the program. They requested the Personnel Division continue these efforts by having on-site testing performed instead of sending employees to a medical clinic, which would save time and improve the integrity of the tests. Public Works staff initially received a proposal from MSS for on-site testing services back in March of 2022. When Personnel staff reached out to MSS, they agreed to honor the quote. Staff also contacted another mobile testing company that serves the area, PHS Mobile Health Solutions, which initially claimed they could provide the requested services; however, it was found they do not provide DOT-approved testing.

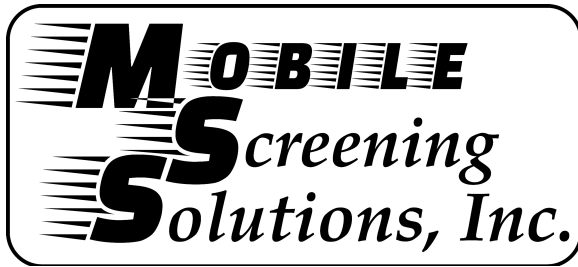
The rates outlined in the contract provided by MSS are as follows, and the total estimated cost is based on the City having 20 employees in the Program:

Service	Fee	Unit	Amount	Total
Randomizer	\$ 475	Annual	1	\$ 475
On-Site Testing	175	Per visit	4	700
DOT Drug Test	68	Per Test	20	1,360
BAT Alcohol Test	75	Per Test	4	300
Estimated Testing Total:				\$ 2,835

MSS also provides training and consulting services related to this program that the City may utilize as needed to remain compliant with DOT requirements.

**FISCAL IMPACT:** Funds to cover services to be provided by MSS were approved in the Fiscal Year 2023-24 Budget. In the Administrative Services Department, \$2,000 is budgeted for “DOT Certified Drug Testing Program Training” in Program Account No. 4311-52540 (Training), and \$20,000 is budgeted for “Physical examinations for prospective employees, drug/alcohol tests, employee annual/biannual physicals, and driver's license” in Program Account No. 4315-52510 (Medical Examinations).

**RECOMMENDATION:** Staff recommends that the City Council approve Agreement No. 23-57 with MSS for DOT random employee drug and alcohol screening services.



16155 Sierra Lakes Parkway  
Suite 160-321  
Fontana, CA 92336  
(888) 343-6673 Toll Free  
(877) 235-5056 Fax  
[www.drugfreenetwork.org](http://www.drugfreenetwork.org)

March 22, 2022

Alex Cardona  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

Dear Alex:

Per our conversation, I would like to submit the following proposal with our services and pricing in writing for your review and approval.

#### OBJECTIVE

Implement and maintain both DOT Certified and non-DOT Drug Testing program for current employees and prospective employees. Review and update current Drug Free Workplace policy and make changes as necessary to ensure compliance with the DOT and State of California Regulations.

#### SCOPE OF SERVICES

##### **1. DOT Drug Testing (Drivers)**

- i. Per DOT Guidelines, all tests must be administered in accordance with the Department of Transportation for DOT Certified drivers and DOT safety sensitive jobs per current DOT guidelines.

1. Controlled substance test must be conducted in accordance with 49 CFR Part 40 for DOT employees. The drugs tested are: Marijuana metabolites, Cocaine metabolites, Amphetamines, Opiate metabolites, and Phencyclidine.

##### **a. Lab Testing via collection center:**

- i. CITY OF MONTCLAIR may work with either Quest Diagnostics clinics or preferred clinics (non-Quest) for urine collection. CITY OF MONTCLAIR may choose which collection site the company would like to use, or we can provide a list of collection sites.

b. On-site collection services:

- ii. Drivers may also use MSS (Mobile Screening Solutions, Inc) for collections at CITY OF MONTCLAIR (On-Site), when MSS is administering tests on-site at any CITY OF MONTCLAIR location. This is best practice per FMCSA.

c. Results:

- iii. Lab results generally come back within 24 hours for negative results from receipt at laboratory. Weekends and holidays must also be taken into consideration. Negative results will be signed off by an MRO (Medical Review Officer).
- iv. Both Negative and Positive results will be sent to MRO for confirmation via Medical Doctor. Results generally come back in 48-72 hours. Weekends and holidays must also be taken into consideration.
- v. Results will be reported directly to CITY OF MONTCLAIR. Results can be reported via Fax, E-mail, online, US Mail, or any combination. MSS can also set up an online account via the internet for the DER and Assistant DER to access all results 24 hours a day, 7 days a week.

**2. Alcohol Testing:**

- i. MSS will set up an account at a local clinic for BAT (Breath Alcohol Test); we can also work with an existing clinic that CITY OF MONTCLAIR has a contract with. Should a test strip come up positive, CITY OF MONTCLAIR would require BAT confirmation (per DOT guidelines).
- ii. MSS will conduct alcohol testing on-site when collecting drug test specimens.

**3. Drug Free Workplace Program**

a. What our program offers to CITY OF MONTCLAIR:

- i. Full Compliance and Defensibility.
- ii. Full Training for Supervisors, Human Resources, Employees.
- iii. Consultation and Management of Drug Free Workplace Program as a Third-Party Administrator.
- iv. Compliance of Random Drug Testing including quarterly draw of employees.
- v. Reporting all results and MIS reports yearly.

#### 4. Support

- i. MSS can be reached 24 hours a day, 7 days a week and are also available for on-site workplace drug testing, including reasonable suspicion, post-accident, random drug testing, and BAT testing.
  1. MSS may also be available on-site for pre-employment drug testing, alcohol testing, and background check services for any new hire employment pools.

#### BILLING

1. Billing is generated monthly with detailed reports.

#### CONTRACT TERMS

1. Contract terms are **Yearly**- No long-term contracts. **MSS's goal is to deliver superior service every day**, therefore, we do not feel the need to "lock in" contracts. Our goal at MSS is to develop long-term relationships with our partner companies. We do ask that CITY OF MONTCLAIR provide a two-week notice of termination, if applicable.

#### **CITY OF MONTCLAIR RESPONSIBILITIES**

##### **For Drug Screening:**

###### a. DOT Drug Screening:

1. MSS will supply CITY OF MONTCLAIR with drug testing chain of custody forms for urine drug testing. Your company information will be pre-printed on all forms for Quest Diagnostics. **We can supply you with a list of approved locations within a 50 mile radius of your location(s).** You may also submit electronically to Quest and e-mail the chain of custody form to your employee/prospective employee to print and take to the collection center. Collection centers may also be found online by visiting:
  - i. Quest: [www.questdiagnostics.com/psc/](http://www.questdiagnostics.com/psc/)
2. All the employee/applicant needs to do is hand the collection site personnel the pre-printed form - everything else is handled by the personnel at the collection site.
3. **MSS will be happy to collect DOT drug tests on-site. The officers of CITY OF MONTCLAIR and MSS will set up quarterly dates for on-site collection services.**
4. **MSS is also available for reasonable suspicion and accidents for DOT drug tests onsite (Additional fees apply). Depending on location, a third-party clinic or collection service may be utilized for timely service.**

##### **For Alcohol Screening:**

###### a. DOT Alcohol Screening:

- a. MSS will conduct alcohol screening at the time of on-site utilizing DOT approved devices.

BENEFITS TO CITY OF MONTCLAIR

MSS will save your company money and time on drug testing, alcohol testing, and background checks. MSS provides results generally in 24 hours or less for negative, 72 hours or less for positive (due to confirmation process). **We can come to you and collect on-site**, or you can send your employee/applicant to a collection site close to CITY OF MONTCLAIR's location, yards, or the employee's home.

FEES

Drug Testing Services: \$68.00 for DOT, \$55.00 for Non- DOT Urine drug testing at **Quest Diagnostics**. Drug test includes collection, lab analysis, initial screen, confirmation, MRO review and reporting.

\*For on-site testing MSS utilizes MedTox Laboratories or Alere Toxicology and we generally have results back the same day or within 24 hours of testing.

**If you send the employee/applicant to a non-Approved lab or clinic, there may be an additional charge of \$35.00 per person. This is a pass-through charge for using out-of-network labs. The collection site may also charge a collection fee if outside Quest network.**

**Drug Free Workplace Program.** MSS will initiate the random draw to select employees on a quarterly basis utilizing a randomizer program approved by the DOT. The fee for this service is \$475.00 annually. This fee includes customized forms, customized manuals for HR Department, supervisors, employees, and administrative random selection set-up.

***We will also review your current documents for DOT compliance for no additional charge.***

BREAKDOWN OF COSTS AND FEES:**Drug Testing:**

DOT Drug Testing (urine)

Non DOT Drug Testing (urine)

**Cost:**

\$68.00 Includes Collection, MRO reporting, Results, and Compliance.

\$55.00 Includes Collection, MRO reporting, Results, and Compliance.

On-site collection

\$175.00 On-site collection fee includes 1 hour standby- overtime hours are billed at \$75.00 per hour for collector rate

After Hours Post Accident  
Collection\$275.00 Additional per Call plus cost of service called for, i.e. DOT non-DOT drug test. Depending on the location, there may be additional millage charge of 58.5 cents per mile per IRS regulations.  
(Regular hours for collection are 9am-3pm)

Non-Approved Collection Site

\$35.00 (+/-) per collection. (Preferred Quest collection centers)

Alco-Screen 4 Minute

DOT Approved Alcohol Test

\$45.00 per non-DOT employee. (Utilized for on-site collections)

Alcohol BAT tests at local  
clinics. (DOT/ non-DOT)

\$75.00 per BAT test. (Utilized on-site for confirmation of POS results)

Random Selection Set-up

\$475.00 per year. (Drug Free Workplace Program)

Training

\$950.00 plus \$12.50 per certificate. (DOT Supervisor training, Human Resource staff training, Employee training).

Consulting

\$450.00/hr. Employee manuals, Drug Free Workplace manuals, Legal Consulting, general consulting.

**Background Checks: Cost:**

Package 1 (non driver)

\$39.95. (Nationwide Criminal Summary Report, Social Security Address Trace, Social Security Number Verification, and Sexual Offender Search- all 50 States).

Package 2 (driver)

\$49.95 + DMV Access Fees (Motor Vehicle Report, Drivers License Verification Nationwide Criminal Summary Report, Social Security Address Trace, Social Security Number Verification, and Sexual Offender Search- all 50 States).

CLOSING

We at MSS understand how important it is that public entities, such as the CITY OF MONTCLAIR are offered the best possible solutions at the most reasonable prices. MSS will ensure that your organization receives the best possible services at the lowest prices available. MSS strives to be the “go to” resource for each company we work with. We are your consultants to a Drug Free Workplace. We want to be your partner, not just a vendor.

MSS will also periodically review your Drug Free Workplace program/services and suggest ways to save you money, and more importantly, time!

MSS takes great pride in what we can offer and how we can help CITY OF MONTCLAIR succeed as a Drug Free Workplace. We appreciate the opportunity to serve CITY OF MONTCLAIR and we look forward to working with you for many years to come!

Sincerely,

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

Harrison Lux  
(909) 224-0801 direct  
(888) 343-6673 toll free  
[www.drugfreetwork.org](http://www.drugfreetwork.org)

Enclosures



**RESPONSE**

This letter correctly sets forth the understanding of services offered.

<hr/>		
Accepted by (signature)	Title	Date
<hr/>	( <hr/> )	ext: <hr/>
Print Name	Phone Number/ Extension	

**Potential start date of services:**          /      /      

**Please fax to (877) 235-5056.**

Your account manager will contact you after receipt of this fax.



# CITY COUNCIL AGENDA REPORT

**DATE:** AUGUST 7, 2023

**FILE I.D.:** LIB050

**SECTION:** CONSENT - AGREEMENTS

**DEPT.:** ECONOMIC DEV.

**ITEM NO.:** 4

**PREPARER:** M. FUENTES

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 23-58 AMENDING AGREEMENT NO. 06-175 WITH THE COUNTY OF SAN BERNARDINO FOR THE LEASE OF A CITY-OWNED FACILITY TO PROVIDE COUNTY LIBRARY SERVICES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 23-58 amending Agreement No. 06-175 with San Bernardino County (County) for the lease of a City-owned facility to provide County library services.

A copy of proposed Agreement No. 23-58 is attached for the City Council's review and consideration.

**BACKGROUND:** The County has been leasing a City facility to provide County library services to the Montclair community since the early 1960s. This resource is a vital component of the Montclair Civic Center and the Montclair Community.

On December 4, 2006, the Montclair City Council approved Agreement No. 06-175 with the County to lease a City-owned facility to provide County library services. Agreement No. 06-175 superseded all previous agreements with the County for lease of the facility for library services, and included updated language related to utilities and maintenance costs, the division of the leased facility into separate sections, and division of maintenance responsibilities for the leased facility.

On November 20, 2017, the City Council approved Agreement No. 17-90 amending Agreement No. 06-175, to allow the County to exercise the first of the two five-year extended lease term periods contained in Agreement No. 06-175.

In order for the County to continue providing County library services, Agreement No. 17-90 must be amended to allow the County to exercise the second of the two five-year extended lease term periods contained in Agreement No. 06-175

## ***Proposed Amendment***

Agreement No. 06-175 includes provisions that allow for the extension of the initial term period following the expiration of the Agreement on December 31, 2017. The following includes the provisions of Agreement No. 06-175 that allow for the extension of the initial term period.

- ***Paragraph 5. Option to Extend Term:*** City gives County the option to extend the term of the lease on the same provisions and conditions, except for the monthly rent, for two (2) five-year periods ("extended terms") following the expiration of the initial term, by County giving notice of its intention to exercise the option to City prior to the expiration of the preceding term or during any holding over pursuant to *Paragraph 7, Holding Over*. The rent for each extended

term shall be adjusted by good faith negotiation of the parties to the current operational costs, to include electricity, water, trash, gas, sewer, custodial services, and grounds maintenance.

- **Paragraph 7. Holding Over:** In the event the County shall hold over and continue to occupy the premises with the consent of the City, expressed or implied, the tenancy shall be deemed to be a tenancy from month-to-month upon the same terms and conditions, including rent, as existed and prevailed at the time of the expiration of the term of this Lease.

**Paragraph 5. Option to Extend Term** of Agreement No. 06-175 allows for the extension of the Agreement for two five-year periods commencing after the initial term period, for a combined total of ten years. City Staff must be notified in writing if the County elects to exercise one or both of the five-year extended term periods.

City staff recently received a letter indicating the County's desire to exercise the second of the available five-year extended term periods of Agreement No. 06-175.

The County proposes extending the term of Agreement No. 06-175 for five (5) years commencing on September 1, 2023, through August 31, 2028.

In the letter, the County proposes an annual two percent (2%) increase during the duration of the proposed five-year extended term period. The table below indicates the proposed base year rent schedule for the five-year extended term period.

#### **Proposed Base Year Rent Schedule**

Term	Sq. Ft.	Approx. Rate (PSF)	Rent Per Month	Per Year
9/1/23 – 8/31/24	12,275	\$0.46	\$5,646.50	\$ 67,758
9/1/24 – 8/31/25	12,275	\$0.47	\$ 5,759.43	\$ 69,113
9/1/25 – 8/31/26	12,275	\$0.48	\$ 5,874.62	\$ 70,495
9/1/26 – 8/31/27	12,275	\$0.49	\$ 5,992.11	\$ 71,905
9/1/27 – 8/31/28	12,275	\$0.50	\$ 6,111.95	\$ 73,343

Adoption of proposed Agreement No. 23-58 would allow the County to continue providing library services for the next five years. All other terms, conditions, and provisions of Agreement No. 06-175 and Agreement No. 17-90, to the extent not modified in proposed Agreement No. 23-58, shall remain in full force and effect.

**FISCAL IMPACT:** Adoption of proposed Agreement No. 23-58 would allow for the extension of Agreement No. 06-175 for an additional five-year period.

Under proposed Agreement No. 23-58 the City would receive an initial annual payment from the County of \$67,758, or roughly \$5,646 per month. The annual payment would be subject to a two percent annual increase for the duration of the proposed five-year term period. At the end of the five-year term, the City would receive a maximum annual payment from the County of \$73,343, or roughly \$6,111 per month.

In all, the City would see a total increase in the annual payment received from the County of roughly \$13,824 over the five-year term period.

The City will continue to be responsible for all maintenance and custodial services for the leased City-owned facility including grounds, parking lot, and exterior lighting. The County will continue to service the fire extinguishers and provide its own internet access, data, and telecommunication services. The City will continue to pay for all other utilities and fire alarm service.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 23-58 amending Agreement No. 06-175 with the County of San Bernardino for the lease of a City facility to provide County library services, subject to any revisions deemed necessary by the City Attorney.

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY

**Contract Number**

07-147 A-2

**SAP Number****Real Estate Services Department**

<b>Department Contract Representative</b>	Terry W. Thompson, Director
<b>Telephone Number</b>	(909) 387-5000
<b>Contractor</b>	City of Montclair
<b>Contractor Representative</b>	Mikey Fuentes
<b>Telephone Number</b>	(909) 625-9497
<b>Contract Term</b>	09/1/23 – 08/31/28
<b>Original Contract Amount</b>	\$919,032.00
<b>Amendment Amount</b>	\$352,615.36
<b>Total Contract Amount</b>	\$1,271,647.36
<b>Cost Center</b>	7810001000
<b>GRC/PROJ/JOB No.</b>	60002290

**IT IS HEREBY AGREED AS FOLLOWS:**

WHEREAS, San Bernardino County ("COUNTY"), as tenant, and City of Montclair ("CITY"), as Landlord, have previously entered into Lease Agreement, Contract No. 07-147 A-1 dated December 5, 2017 ("Lease") wherein CITY leases certain premises located at 9955 Fremont Avenue, Montclair, CA 91763 as more specifically described in the Lease, to the COUNTY; which Lease expired dated December 31, 2022 and has continued on a permitted month to month holdover; and

WHEREAS, the COUNTY and CITY now desire to amend the Lease to extend the term of the Lease for five (5) years for the period of September 1, 2023 through August 31, 2028, following a permitted holdover for the period of January 1, 2023 through August 31, 2023, adjust the rental rate schedule, and amend certain other terms of the Lease as more specifically set forth in this amendment (the "Second Amendment").

NOW, THEREFORE, in consideration of mutual covenants and conditions, effective as of September 1, 2023, unless otherwise expressly provided herein, the parties hereto agree the Lease, is amended as follows:

1. Pursuant to **Paragraph 7, HOLDING OVER**, COUNTY shall, with CITY's express consent granted herein, occupy the Premises on a holdover tenancy for the period from January 1, 2023 through August 31, 2023, in the total amount of \$39,529.

2. **EXTEND** the term of the Lease as provided in **Paragraph 3, TERM**, for five (5) years from September 1, 2023 through August 31, 2028 (the "Second Extended Term"). The parties acknowledge and agree that the existing five-year option to extend the term of the Lease pursuant to **Paragraph 5, OPTION TO EXTEND TERM** remains available for future exercise by the COUNTY in accordance with said paragraph.

3. **DELETE** in its entirety the existing **Paragraph 4, RENT**, and **SUBSTITUTE** therefore the following as a new **Paragraph 4, RENT**:

**4. RENT:**

A. COUNTY shall pay to CITY the following monthly rental payments payable quarterly in advance on the first day of the first month of each calendar quarter year, commencing when the Second Extended Term commences, continuing during the Second Extended Term, subject to an approximate two percent (2%) annual increase reflected and included in the amounts as more specifically set forth below:

September 1, 2023 through August 31, 2024	\$5,646.50
September 1, 2024 through August 31, 2025	\$5,759.43
September 1, 2025 through August 31, 2026	\$5,874.62
September 1, 2026 through August 31, 2027	\$5,992.11
September 1, 2027 through August 31, 2028	\$6,111.95

B. Rent for any partial month shall be prorated based on actual number of days of the month. CITY shall accept all Rent and other payments from COUNTY under this Lease via electronic fund transfer (EFT) directly deposited into the CITY'S designated checking or other bank account. CITY shall promptly comply with directions and accurately complete forms provided to the COUNTY required to process EFT payments.

5. This Second Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same First Amendment. The parties shall be entitled to sign and transmit an electronic signature of this Second Amendment (whether by facsimile, PDF, or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Second Amendment upon request.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

6. All other terms and conditions of the Lease shall remain the same and are hereby incorporated by reference. In the event of any conflict between the Lease, and this Second Amendment, the terms and conditions of this Second Amendment shall control.

**END OF FIRST AMENDMENT.**

SAN BERNARDINO COUNTY

CITY OF MONTCLAIR

►

\_\_\_\_\_  
Dawn Rowe, Chair, Board of Supervisors

By

►

\_\_\_\_\_  
Javier John Dutrey, Mayor

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

SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Attest: \_\_\_\_\_

\_\_\_\_\_  
Andrea Myrick, City Clerk

Lynna Monell  
Clerk of the Board of Supervisors  
San Bernardino County

By

\_\_\_\_\_  
Deputy

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

Address

\_\_\_\_\_  
5111 Benito Street

\_\_\_\_\_  
Montclair, CA 91763

Approved  
as to form:

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

**FOR COUNTY USE ONLY**

Approved as to Legal Form

► *John Tubbs II*  
\_\_\_\_\_  
John Tubbs II, Deputy County Counsel

Date 7-10-23

Reviewed for Contract Compliance

►

Date \_\_\_\_\_

Reviewed/Approved by Department

►

\_\_\_\_\_  
Lyle Ballard, Real Property Manager, RESD

Date \_\_\_\_\_



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 7, 2023	<b>FILE I.D.:</b>	STB300-17
<b>SECTION:</b>	CONSENT - RESOLUTIONS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	C. GRAVES
<b>SUBJECT:</b>	CONSIDER ADOPTION OF RESOLUTION NO. 23-3413 AUTHORIZING PLACEMENT OF ASSESSMENTS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH ACCOUNTS		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider adoption of Resolution No. 23-3413 authorizing placement of assessments on certain properties for delinquent sewer and trash accounts. There are 523 outstanding liens on properties for collection of delinquent civil debts owed to the City or sewer and trash service. Placement of assessments on these properties would assist in more timely collection of these delinquent accounts.

A copy of proposed Resolution No. 23-3413 is attached for City Council review and consideration.

**BACKGROUND:** The City Council authorized the placement of 637 liens on properties for delinquent sewer and trash charges on the following dates:

<u>Date</u>	<u>No. of Liens</u>
October 6, 2022	92
November 10, 2022	113
February 9, 2023	107
March 9, 2023	127
June 8, 2023	95
July 19, 2023	+ <u>103</u>
<b>Total: 637</b>	

Of these 637 liens, 114 have been cleared.

It is recommended that assessments, which are collected with the property tax, be placed on the properties where the 523 unpaid liens remain. This would result in more timely collection of the delinquencies than the lien process, which generates payment only upon sale or refinancing of the property.

In addition to the regular bimonthly billings, the City has sent bimonthly letters to these property owners advising them of their delinquencies. They received notification when the liens were placed and were again notified on July 6, 2023, that the action proposed this evening would be considered by the City Council.

**FISCAL IMPACT:** Recoverable amount is \$207,488.60

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 23-3413 authorizing placement of assessments on certain properties for delinquent sewer and trash charges.



**RESOLUTION NO. 23-3413**

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

**WHEREAS**, Chapter 1.12 of the Montclair Municipal Code authorizes various methods by which delinquent civil debts may be collected including, but not limited to, the placement of assessments on the properties on which the debts were generated; and

**WHEREAS**, City Council has recently placed 637 property liens on properties on which there are delinquent civil debts for unpaid sewer and trash charges; and

**WHEREAS**, the lien amount was paid on 114 of these liens; and

**WHEREAS**, it is appropriate to also place assessments on these properties where the 390 liens remain outstanding as identified on Exhibit A of this Resolution to further encourage the payment of these charges owed to the City; and

**WHEREAS**, the owners of these properties have received notification of proposed actions against their properties including the date and time when such action would be considered by the City Council.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair does hereby approve the placement of assessments on the properties and in the amounts specified in Exhibit A, entitled "August 2023 – Property Assessments."

**BE IT FURTHER RESOLVED** that the City Clerk is authorized to provide the San Bernardino County Assessor's Office with the documents required to cause such assessments to be placed.

**APPROVED AND ADOPTED** this XX day of XX, 2023.

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Andrea M. Myrick City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 23-3413 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2023, and that it was adopted by the following vote, to-wit:

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

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

**Exhibit A to Resolution No. 23-3413  
August 2023 – Property Assessments**

<b>Street No.</b>	<b>Street</b>	<b>Lien 1</b>	<b>Lien 2</b>	<b>Lien 3</b>	<b>Total Assessment Amount</b>	<b>Account Type</b>
11225	Ada Avenue	364.30	366.20	372.90	1,103.40	Residential
5356	Alamitos Street	364.66	366.93	378.78	1,110.37	Residential
5366	Alamitos Street	376.49	367.60		744.09	Senior
9757	Amherst Avenue	364.61	366.92	378.78	1,110.31	Residential
9910	Amherst Avenue	364.66	366.93	378.78	1,110.37	Residential
9960	Amherst Avenue	384.37			384.37	Residential
11141	Amherst Avenue	364.48	366.22	372.90	1,103.60	Residential
11151	Amherst Avenue	364.33	366.20	372.90	1,103.43	Residential
5460	Armsley Street	444.04	308.53		752.57	Residential
5363	Arrow Hwy	743.49	491.90		1,235.39	Commercial
5102	Aspen Drive	464.52			464.52	Residential
9909	Bel Air Avenue	482.69	379.91	380.21	1,242.81	Residential
9910	Bel Air Avenue	319.12			319.12	Residential
9950	Bel Air Avenue	364.64	366.92		731.56	Residential
10045	Bel Air Avenue	443.77	387.23		831.00	Residential
10145	Bel Air Avenue	364.48	366.22	372.90	1,103.60	Residential
10283	Bel Air Avenue	398.68			398.68	Residential
10545	Belgian Place	571.54			571.54	Residential
5219	Belvedere Way	402.59			402.59	Residential
4435	Benito Street	398.95	370.71	376.21	1,145.87	Residential
4460	Benito Street	364.66	366.93	378.78	1,110.37	Residential
4553	Benito Street	485.38			485.38	Residential
4814	Benito Street	454.04			454.04	Senior
5206	Benito Street	365.58			365.58	Commercial
5233	Benito Street	334.54	336.86	346.40	1,017.80	Senior
5429	Benito Street	364.66	366.93	378.78	1,110.37	Residential
5598	Benito Street	394.03	396.28	408.81	1,199.12	Residential
4843	Berkeley Street	365.26	367.00	378.79	1,111.05	Residential
5214	Berkshire Way	295.89			295.89	Residential
9598	Bolton Avenue	364.66	366.93	378.78	1,110.37	Residential
4541	Bonnie Brae Street	364.66	366.93	378.78	1,110.37	Residential
5051	Brooks Street	359.05			359.05	Residential
11339	Brunswick Lane	396.80			396.80	Residential
11419	Brunswick Lane	353.10	395.88		748.98	Residential
11457	Brunswick Lane	396.80			396.80	Residential
9851	Camarena Avenue	364.66	366.93	378.78	1,110.37	Residential
4443	Cambridge Street	387.25	369.42	379.05	1,135.72	Residential
4853	Cambridge Street	365.65	367.04	378.79	1,111.48	Residential
5448	Cambridge Street	312.80			312.80	Residential
5470	Cambridge Street	365.65	367.04	378.79	1,111.48	Residential
5471	Cambridge Street	364.66	366.93	378.78	1,110.37	Residential
5561	Cambridge Street	584.01			584.01	Residential
5570	Cambridge Street	322.62			322.62	Residential
9242	Camulos Avenue	491.41	380.87		872.28	Residential
9243	Camulos Avenue	364.66	366.93	378.78	1,110.37	Residential
9426	Camulos Avenue	390.63	408.77		799.40	Residential
9511	Camulos Avenue	394.07	396.29	408.81	1,199.17	Residential
9540	Camulos Avenue	525.14	410.70	410.40	1,346.24	Residential
9737	Camulos Avenue	375.21			375.21	Residential
9877	Camulos Avenue	394.07	396.29	408.81	1,199.17	Residential
10060	Camulos Avenue	346.12			346.12	Residential
10234	Camulos Avenue	372.30	367.08	373.00	1,112.38	Residential
10259	Camulos Avenue	364.48	366.22	372.90	1,103.60	Residential
11409	Cannery Row	385.05	400.15		785.20	Residential
4924	Canoga Street	364.48	366.22	372.90	1,103.60	Residential
5666	Caroline Street	365.65	367.04	378.79	1,111.48	Residential
11178	Carrillo Avenue	364.48	366.22	372.90	1,103.60	Residential
4337	Clair Street	600.03	425.08		1,025.11	Residential
9795	Coalinga Avenue	364.66	366.93	378.78	1,110.37	Residential
9824	Coalinga Avenue	337.78	342.66	354.16	1,034.60	Senior
10164	Coalinga Avenue	364.47	366.22	372.90	1,103.59	Residential
10231	Coalinga Avenue	315.11			315.11	Residential

Exhibit A to Resolution No. 23-3413  
August 2023 – Property Assessments

Street No.	Street	Lien 1	Lien 2	Lien 3	Total Assessment Amount	Account Type
10276	Coalinga Avenue	417.79			417.79	Residential
11148	Coalinga Avenue	364.45	366.22	372.90	1,103.57	Residential
11465	Cobblestone Lane	287.41	387.14		674.55	Residential
11362	Cumberland Lane	382.49			382.49	Residential
11370	Cumberland Lane	392.29			392.29	Residential
11373	Cumberland Lane	399.40			399.40	Residential
11469	Cumberland Lane	396.85			396.85	Residential
11476	Cumberland Lane	398.93	401.98		800.91	Residential
11333	Dartmouth Lane	382.49			382.49	Residential
11446	Dartmouth Lane	335.45			335.45	Residential
9477	Del Mar Avenue	503.27	408.30	410.13	1,321.70	Residential
10190	Del Mar Avenue	364.48	366.22	372.90	1,103.60	Residential
10236	Del Mar Avenue	319.36	361.26	372.36	1,052.98	Residential
4405	Denver Street	394.04	396.28	408.81	1,199.13	Residential
4455	Denver Street	482.69	379.91	380.21	1,242.81	Senior
5616	Denver Street	364.66	366.93	378.78	1,110.37	Residential
5626	Denver Street	394.35	396.32	408.81	1,199.48	Residential
5168	El Morado Street	401.84	403.06	415.62	1,220.52	Residential
5357	El Morado Street	517.06	395.30		912.36	Senior
5429	El Morado Street	364.66	366.93	378.78	1,110.37	Residential
11159	Essex Avenue	364.48	366.22	372.90	1,103.60	Residential
4705	Evart Street	408.43	371.05	373.44	1,152.92	Residential
9463	Exeter Avenue	518.68	0.00	0.00	518.68	Residential
4114	Faircove Court	415.49	404.19		819.68	Residential
4219	Fauna Street	353.48	365.01	372.77	1,091.26	Residential
4267	Fauna Street	371.27	732.54	413.19	1,517.00	Residential
4291	Fauna Street	364.48	366.22	372.90	1,103.60	Residential
4432	Fauna Street	337.39	363.24		700.63	Residential
4456	Fauna Street	334.37	336.15	341.68	1,012.20	Senior
4703	Fauna Street	364.47	366.22	372.90	1,103.59	Residential
4738	Fauna Street	352.48	364.90	372.76	1,090.14	Residential
4852	Fauna Street	364.41	366.21	372.90	1,103.52	Residential
5420	Fauna Street	497.39			497.39	Residential
9367	Felipe Avenue	485.38	391.81		877.19	Residential
9793	Felipe Avenue	333.92	336.79	346.39	1,017.10	Residential
8919-21	Felipe Avenue	658.94	662.43	675.80	1,997.17	Multifamily
4639	Flora Street	376.95	367.59		744.54	Residential
4660	Flora Street	364.47	366.22	372.90	1,103.59	Residential
5382	Flora Street	379.22			379.22	Residential
9020	Fremont Avenue	364.10	366.24	376.43	1,106.77	Senior
9823	Fremont Avenue	364.65	366.93	378.78	1,110.36	Residential
10253	Fremont Avenue	364.47	366.22	372.90	1,103.59	Residential
10287	Fremont Avenue	393.85	395.58	402.60	1,192.03	Residential
11049	Fremont Avenue	583.48			583.48	Residential
10149	Galena Avenue	364.47	366.22		730.69	Residential
9985	Geneva Avenue	364.64	366.92	378.78	1,110.34	Residential
10161	Geneva Avenue	327.72			327.72	Residential
4328	Granada Street	364.66	366.93	378.78	1,110.37	Residential
4155	Grand Avenue	355.10			355.10	Residential
9772	Greenwood Avenue	316.09			316.09	Residential
3792	Hampton Drive	396.80			396.80	Residential
11418	Hartford Ln	403.57			403.57	Residential
4376	Harvard Street	364.61	366.92	378.78	1,110.31	Residential
4418	Harvard Street	364.65	366.93	378.78	1,110.36	Residential
4430	Harvard Street	365.65	463.53		829.18	Residential
5141-43	Harvard Street	658.69	663.79	687.55	2,010.03	Multifamily
9607	Helena Avenue	354.25			354.25	Residential
11353	Hickory Lane	355.10			355.10	Residential
11443	Hickory Lane	315.86			315.86	Residential
4103	Howard Street	364.48	366.22	372.90	1,103.60	Residential
4341	Howard Street	364.47	366.22	494.20	1,224.89	Residential
4705	Howard Street	396.80			396.80	Residential

**Exhibit A to Resolution No. 23-3413  
August 2023 – Property Assessments**

<b>Street No.</b>	<b>Street</b>	<b>Lien 1</b>	<b>Lien 2</b>	<b>Lien 3</b>	<b>Total Assessment Amount</b>	<b>Account Type</b>
4910	Howard Street	407.88	397.12	402.76	1,207.76	Residential
4992	Howard Street	436.57	294.48		731.05	Residential
5044	Howard Street	499.15			499.15	Residential
5190	Howard Street A & B	724.77	729.23	754.41	2,208.41	Multifamily
4585	James Street	394.05	396.29	408.81	1,199.15	Residential
9756	Kimberly Avenue	557.28			557.28	Residential
9860	Kimberly Avenue	346.12			346.12	Residential
9877	Kimberly Avenue	512.83	414.80		927.63	Residential
10236	Kimberly Avenue	364.47	366.22	372.90	1,103.59	Residential
10244	Kimberly Avenue	376.18	555.10		931.28	Residential
11065	Kimberly Avenue	363.77	366.14	372.89	1,102.80	Residential
11175	Kimberly Avenue	484.69	385.93		870.62	Residential
4671	Kingsley Street	330.36	624.01		954.37	Multifamily
5476	Kingsley Street	364.48			364.48	Residential
5400	La Deney Street	344.04			344.04	Senior
5015	Laurel Street	435.57			435.57	Residential
9744	Lehigh Avenue	331.83	363.31	378.38	1,073.52	Residential
10360-62	Lehigh Avenue	658.96	662.44	675.80	1,997.20	Multifamily
10007	Lindero Avenue	317.44			317.44	Senior
10042	Lindero Avenue	482.69	379.91	280.21	1,142.81	Residential
4595	Mane Street	331.83	362.62	372.50	1,066.95	Residential
4846	Mane Street	345.95	390.31	402.01	1,138.27	Residential
8875	Maple Avenue	397.30			397.30	Residential
9527	Marion Avenue	364.66	366.93	378.78	1,110.37	Residential
9547	Marion Avenue	349.93	366.93	378.78	1,095.64	Residential
11154	Marion Avenue	348.26			348.26	Residential
11336	Marquette Ln	271.91	385.07		656.98	Residential
11442	Marquette Ln	393.06	401.21		794.27	Residential
9595	Mills Avenue	394.01	396.28	408.81	1,199.10	Residential
10231	Mills Avenue	364.48	366.22	372.90	1,103.60	Residential
3796	Millstone Lane	362.10			362.10	Residential
11458	Millstone Lane	378.40	399.25		777.65	Residential
5239	Monte Verde Street	331.83	362.62	372.50	1,066.95	Residential
10290	Monte Vista Avenue	380.36	372.47	378.95	1,131.78	Senior
5616	Moreno Street	365.74			365.74	Residential
10163	Oak Glen Avenue	334.39	336.15	341.68	1,012.22	Senior
10594	Oak Glen Avenue	492.73			492.73	Residential
4595	Oakdale Street	335.29	363.01	372.55	1,070.85	Residential
4644	Olive Street	410.17	414.34	428.07	1,252.58	Residential
4771	Orchard Street	404.41			404.41	Residential
4779	Orchard Street	334.18	336.82		671.00	Senior
5032	Orchard Street	402.10	347.17	408.91	1,158.18	Residential
5171	Orchard Street	322.39	603.79		926.18	Senior
5422	Orchard Street	364.48	366.22	372.90	1,103.60	Residential
5690	Orchard Street	364.66	366.93	378.78	1,110.37	Residential
3765	Peachwood Drive	396.80			396.80	Residential
3971	Peachwood Drive	276.15			276.15	Residential
9633	Poulsen Avenue	500.90	0.00		500.90	Residential
9925	Poulsen Avenue	364.65	366.93	378.78	1,110.36	Residential
9935	Poulsen Avenue	360.64	404.89		765.53	Residential
10154	Poulsen Avenue	368.83	366.69	372.95	1,108.47	Residential
9375	Pradera Avenue	1,373.36	1,382.32	1,408.58	4,164.26	Multifamily
10074	Pradera Avenue	521.06			521.06	Residential
10206	Pradera Avenue	364.48	372.90		737.38	Residential
4426	Princeton Street	378.89	368.50	378.95	1,126.34	Residential
4467	Princeton Street	365.65	367.04	378.79	1,111.48	Residential
9060	Ramona Avenue	366.83	378.76		745.59	Residential
9587	Ramona Avenue	365.65	367.04	378.79	1,111.48	Residential
9706	Ramona Avenue	303.12	425.37		728.49	Residential
9801	Ramona Avenue	363.60			363.60	Senior
8981	Rose Avenue	271.91	385.07		656.98	Commercial
9413	Rose Avenue	423.34	425.63	438.84	1,287.81	Residential

**Exhibit A to Resolution No. 23-3413  
August 2023 – Property Assessments**

<b>Street No.</b>	<b>Street</b>	<b>Lien 1</b>	<b>Lien 2</b>	<b>Lien 3</b>	<b>Total Assessment Amount</b>	<b>Account Type</b>
9434	Rose Avenue	364.66	366.93	378.78	1,110.37	Residential
9441	Rose Avenue	558.96			558.96	Residential
9734	Rose Avenue	410.72			410.72	Residential
9866	Rose Avenue	334.55	336.87	346.40	1,017.82	Senior
9966	Rose Avenue	364.64			364.64	Residential
4683	Rosewood Street	365.65	367.04	378.79	1,111.48	Residential
5361	Rosewood Street	364.66	366.93	378.78	1,110.37	Residential
11076	Roswell Avenue	398.06			398.06	Residential
11078	Roswell Avenue	271.91			271.91	Residential
4164	Rudisill Street	364.61	366.92	378.78	1,110.31	Residential
4245	Rudisill Street	363.97	366.86	378.78	1,109.61	Residential
4246	Rudisill Street	481.70			481.70	Residential
4300	Rudisill Street	331.59			331.59	Residential
4711	San Bernardino Street	364.66	366.93	378.78	1,110.37	Residential
4749	San Bernardino Street	364.64	366.92	523.32	1,254.88	Residential
4843	San Bernardino Street	348.63			348.63	Residential
4844	San Bernardino Street	394.04	396.28		790.32	Residential
5216	San Bernardino Street	364.09	366.87	378.78	1,109.74	Residential
5418	San Bernardino Street	346.12			346.12	Residential
5489	San Bernardino Street	399.62	322.82	406.79	1,129.23	Residential
5412	San Jose Street	572.40	389.78		962.18	Residential
5422	San Jose Street	394.04	396.28	408.81	1,199.13	Residential
4424	San Jose Street #05	364.52	366.91	378.78	1,110.21	Residential
4424	San Jose Street #10	364.97			364.97	Residential
4424	San Jose Street #18	479.74	391.18		870.92	Residential
4424	San Jose Street #27	364.66	366.93	378.78	1,110.37	Residential
4630	San Jose Street M	276.15			276.15	Residential
4622	San Jose Street O	398.90			398.90	Residential
4622	San Jose Street R	431.24	422.43	377.41	1,231.08	Residential
4622	San Jose Street U	276.15			276.15	Residential
11020	San Pasqual Avenue	364.48	366.22	372.90	1,103.60	Residential
9820	Santa Anita Avenue	365.91			365.91	Residential
10183	Santa Anita Avenue	525.86	416.93		942.79	Residential
10204	Santa Anita Avenue	492.73			492.73	Residential
10221	Santa Anita Avenue	518.95	389.71		908.66	Residential
10298	Santa Anita Avenue	540.98			540.98	Residential
10016	Santa Anita Avenue	334.92			334.92	Residential
11011	Stallion Avenue	364.97	366.27	411.41	1,142.65	Residential
4781	State Street	394.94			394.94	Residential
5134	Sundance Drive	382.73	395.15		777.88	Residential
9514	Surrey Avenue	386.76			386.76	Residential
9617	Surrey Avenue	364.66	366.93	378.78	1,110.37	Residential
9793	Surrey Avenue	348.23	376.72		724.95	Residential
9773	Tudor Avenue	393.99			393.99	Residential
10289	Tudor Avenue	364.48	366.22	372.90	1,103.60	Residential
10115	Vernon Avenue	482.69	379.22	374.33	1,236.24	Residential
10236	Vernon Avenue	482.69	379.22	374.33	1,236.24	Residential
10373	Via Palma	398.74			398.74	Residential
11043	Wesley Avenue	365.57	366.34	372.91	1,104.82	Residential
11053	Wesley Avenue	364.64	366.23	372.90	1,103.77	Residential
11178	Whitewater Avenue	364.41	366.21	372.90	1,103.52	Residential
4878	Yale Street	390.19			390.19	Residential
5405	Yale Street	380.33	368.65	378.97	1,127.95	Residential
4515	Yosemite Drive	364.48	366.22	664.75	1,395.45	Residential
					207,488.60	



# CITY COUNCIL AGENDA REPORT

**DATE:** AUGUST 7, 2023

**FILE I.D.:** EDD100/MHA100

**SECTION:** CONSENT - RESOLUTIONS

**DEPT.:** ECONOMIC DEV./MHA

**ITEM NO.:** 2

**PREPARER:** M. FUENTES

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 23-3416 DECLARING THAT CERTAIN REAL PROPERTY LOCATED AT 9729 RAMONA AVENUE, MONTCLAIR, IS EXEMPT SURPLUS LAND PURSUANT TO GOVERNMENT CODE SECTION 54221 AND FINDING THAT SUCH DECLARATION IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

CONSIDER ADOPTION OF RESOLUTION NO. 23-3417 APPROVING AGREEMENT NO. 23-59, AN AFFORDABLE HOUSING AGREEMENT WITH THE MONTCLAIR HOUSING AUTHORITY AND THE MONTCLAIR HOUSING CORPORATION; AUTHORIZING THE TRANSFER OF 9729 RAMONA AVENUE, MONTCLAIR, TO THE MONTCLAIR HOUSING AUTHORITY FOR USE AS AFFORDABLE HOUSING UNITS

CONSIDER ADOPTION OF MHC RESOLUTION NO. 23-04 APPROVING AGREEMENT NO. 23-59, AN AFFORDABLE HOUSING AGREEMENT WITH THE CITY OF MONTCLAIR AND THE MONTCLAIR HOUSING AUTHORITY

CONSIDER ADOPTION OF MHA RESOLUTION NO. 23-03 APPROVING AGREEMENT NO. 23-59, AN AFFORDABLE HOUSING AGREEMENT WITH THE CITY OF MONTCLAIR AND THE MONTCLAIR HOUSING CORPORATION, AND ACCEPTING THE TRANSFER OF CERTAIN REAL PROPERTY FROM THE CITY OF MONTCLAIR

CONSIDER AUTHORIZING A \$20,000 APPROPRIATION FROM THE HOUSING TRUST FUND FOR REHABILITATION OF THE PROPERTY LOCATED AT 9729 RAMONA AVENUE, MONTCLAIR

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**REASON FOR CONSIDERATION:** Proposed Agreement No. 23-59 is an Affordable Housing Agreement between the City of Montclair (City), the Montclair Housing Authority (MHA), and the Montclair Housing Corporation (MHC) for the conveyance of real property located at 9729 Ramona Avenue and the subsequent leasing and operations of said property as affordable housing units.

Proposed City Council Resolution No. 23-3416 would declare the property as exempt surplus land pursuant to Government Code (GC) Section (§) 54221 and find that such declaration is exempt from environmental review under the California Environmental Quality Act.

Proposed City Council Resolution No. 23-3417 would approve entering into Agreement No. 23-59 and would authorize the transfer of Property from the City to the MHA. Proposed MHC Resolution No. 23-04 would approve entering into Agreement No. 23-59. Proposed MHA Resolution No. 23-03 would approve entering into Agreement No. 23-59 and accept the transfer of property from the City to the MHA.

A copy of the proposed resolutions and agreement are attached for review and consideration by the City Council, the MHA Commissioners, and the MHC Board.

**BACKGROUND:** In June 1987, the former Redevelopment Agency (RDA) Board of Directors adopted the *Central Avenue Single-family Acquisition Policy* (Policy) authorizing staff to make purchase offers on single-family residences along the Central Avenue corridor, subject to the former Redevelopment Agency Board of Directors' approval.

The Policy was later expanded to include areas along Central Avenue or in locations of high visibility. Pursuant to the Policy, a total of 17 single-family homes were purchased by the former RDA before its dissolution.

With the dissolution of redevelopment agencies in 2011 (AB 1X 26) and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, the City Council elected to continue the former RDA's policy of acquiring single-family residences along the Central Avenue corridor or in locations of high visibility and further expanded the Policy to included residences along all of the City's major corridors.

The properties formerly owned by the RDA were transferred to the Montclair Housing Authority (MHA), the successor housing entity, and are currently rented to low- to moderate-income families and are managed by the Montclair Housing Corporation (MHC), a nonprofit public-benefit corporation organized for the purpose of increasing, improving, and preserving affordable housing in the City of Montclair.

The rents and other income from the MHC belong to the MHA; however, they are granted to the MHC for use in covering expenses of operating the various housing units. The amount of rents collected from the renters is established by the State Department of Housing and Community Development and varies based upon income levels.

### **Surplus Land Act**

The California Surplus Land Act (SLA—GC §54220, et seq.) governs the disposition of surplus lands and requires local agencies to follow certain disposition procedures to provide opportunities for certain uses, including affordable housing development, on any land a local agency may sell, lease, or dispose of.

The SLA requires that a local agency declare land as either "surplus" or "exempt surplus" by an action of its legislative body, supported by written findings. Therefore, before the City can convey the Property to MHA, the City Council will need to determine that the conveyance of the Property to the MHA is "exempt surplus land," as that term is defined in the SLA.

If the Property is not exempt surplus land, the City would be required to advertise the availability of the property interest and engage in negotiations with parties interested in developing the property for housing, or open space uses.

Pursuant to §102(h) of the implementing regulations adopted by the California Department of Housing and Community Development (HCD Guidelines), the disposition of surplus lands means "the sale or lease of local agency-owned land formally declared surplus." The Property is not subject to sale or lease and therefore is not subject to the SLA.

Pursuant to the Surplus Land Act, specifically GC §54221(f)(1)(D), and HCD Guidelines, "exempt surplus land" includes "surplus land that a local agency is transferring to another local, state or federal agency for the agency's use." The City and the MHA are considered local agencies; accordingly, a transfer of the Property by the City to MHA would constitute a transfer of exempt surplus land from one local agency to another and satisfy the requirements of this exemption.

Proposed City Council Resolution No. 23-3416 would declare the property located at 9729 Ramona Avenue, Montclair, as exempt surplus land pursuant to GC §54221(f)(1)(D) and find that such declaration is exempt from environmental review under the California Environmental Quality Act.

Upon approval of Resolution No. 23-3416, staff would be required to notify HCD of the City's declaration of the property as exempt surplus land and wait a period of thirty days prior to the disposition and transfer of the Property to the MHA.

### ***Agreement No. 23-59 Affordable Housing Agreement***

In order to meet the City's Regional Housing Needs Assessment (RHNA), a representation of future housing needs for all income levels in a region, staff recommends the property be operated as a rental unit made available to low- to moderate-income persons. As such, staff has prepared Agreement No. 23-59, an affordable housing agreement by and between the City, MHA, and MHC.

Proposed Agreement No. 23-59 contains language related to the conveyance of the property, compliance with applicable laws, use of the property, remedies, and general provisions. The more salient points of proposed Agreement No. 23-59 relate to the conveyance of fee title of the property from the City to the MHA and leasing of the property from the MHA to the MHC for the day-to-day operation of the property, as well as the rehabilitation and rental of the property to low- to moderate-income persons.

### ***9729 Ramona Avenue***

The subject property is located on a highly visible and desirable portion of Ramona Avenue between Benito Street and San Bernardino Street, thereby meeting the criteria established in the City Council's Policy to acquire properties along the City's major corridors and areas of high visibility.

The property was built in 1984 and the lot size is 10,595 square feet. The dwelling unit includes three bedrooms and two bathroom and is 1,639 square feet.

Staff is recommending several improvements to the residential unit related to general property clean-up including: minor painting, landscaping, and fence replacement.

**FISCAL IMPACT:** Approval of Agreement No. 23-59 would produce no fiscal impact to the City of Montclair General Fund.

Staff is recommending an allocation of \$20,000 from the Housing Trust Fund in order to cover estimated costs for rehabilitation of the property.

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

1. Adopt Resolution No. 23-3416 declaring that certain real property located at 9729 Ramona Avenue, Montclair, is exempt surplus land pursuant to Government Code Section 54221 and finding that such declaration is exempt from environmental review under the California Environmental Quality Act;
2. Adopt Resolution No. 23-3417 approving Agreement No. 23-59, an Affordable Housing Agreement with the Montclair Housing Authority and Montclair Housing Corporation; authorizing transfer of certain real property located at 9729 Ramona Avenue, Montclair, to the Montclair Housing Authority for use as affordable housing units; and



Staff recommends that the Montclair Housing Corporation Board of Directors adopt Resolution. No. 23-04 approving Agreement No. 23-59, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Authority.

Staff recommends that the Montclair Housing Authority Commissioners take the following actions:

1. Adopt Resolution No. 23-03 approving Agreement No. 23-59, an Affordable Housing Agreement by and between the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation and accepting the transfer of certain real property from the City of Montclair to the Montclair Housing Authority.
2. Authorize a \$20,000 appropriation from the Housing Trust Fund for rehabilitation of the property located at 9729 Ramona Avenue, Montclair.

**RESOLUTION NO. 23-3416**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR PURSUANT TO GOVERNMENT CODE SECTION 54221 DECLARING THAT CERTAIN REAL PROPERTY LOCATED AT 9729 RAMONA AVENUE IS EXEMPT SURPLUS LAND, AND FINDING THAT SUCH DECLARATION IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, the City of Montclair (the "City") acquired property located at 9729, Ramona Avenue (APN 1009-241-43-0000), as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "Property") with funds from the City's Housing Trust Fund for the purpose of increasing, improving, and preserving the City of Montclair's supply of low- and moderate-income housing available at an affordable cost; and

**WHEREAS**, the City is the owner of that Property within the corporate limits of the City of Montclair; and

**WHEREAS**, the Surplus Land Act, Government Code sections 54220 et seq. (the "Act") applies when a local agency disposes of "surplus land," which is defined in the Act as "land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use." (Government Code section 54221(b)(1)); and

**WHEREAS**, the Act expressly does "not apply to the disposal of exempt surplus land." (Government Code section 54222.3); and

**WHEREAS**, under the Act, "exempt surplus land" includes land that a local agency is transferring to another local, state, or federal agency for the transferee agency's use. (Government Code section 54221(f)(1)(D)); and

**WHEREAS**, the Act requires local agencies such as the City to declare certain real property they own as either "surplus land" or "exempt surplus land," as supported by written findings, prior to any disposition of the real property; and

**WHEREAS**, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

**WHEREAS**, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

**WHEREAS**, the City desires to transfer the Property to the Housing Authority, which is a "local agency" under the Act, and upon acquiring of the Property, the Housing Authority intends to ensure the Property, which already contains pre-existing constructed housing unit(s) and does not require development, is utilized as an affordable rental housing resources for low- to moderate-income households; and

**WHEREAS**, the City Council has reviewed this Resolution and now desires to declare the Property as exempt surplus land under the Act, based on the findings and justifications contained in this Resolution.

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

**SECTION 1:** The above recitals are true and correct and are a substantive part of this Resolution and findings of the City Council.

**SECTION 2:** The City Council hereby declares that the Property is exempt from the Act as exempt surplus land pursuant to Government Code section 54221(f)(1)(D), based on the findings contained in this Resolution for the Property, namely that the City intends to transfer the Property to the Housing Authority, another local agency, for the Housing Authority's purposes of maintaining affordable rental housing.

**SECTION 3:** This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). City staff has determined that the designation of the Property as exempt surplus does not have the potential for creating a significant effect on the environment and is therefore exempt from further review under CEQA pursuant to State CEQA Guidelines Section 15060(c)(3), because it is not a project as defined by the CEQA Guidelines, Section 15378. Adoption of the Resolution, in and of itself, does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

**SECTION 4:** The City Manager or designee is hereby authorized and directed to send a copy of this Resolution to the California Department of Housing and Community Development in accordance with the requirements of Section 400(e) of the SLA Guidelines.

**SECTION 5:** If any section, subsection, paragraph, sentence, clause or phrase of this Resolution is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Resolution.

**SECTION 6:** The City Clerk shall certify to the adoption of this Resolution.

**APPROVED AND ADOPTED** this XX day of XX, 2023.

**ATTEST:**

---

Mayor

---

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 23-3416 was duly adopted by the Montclair City Council at a regular meeting thereof held on the XX day of XX, 2023, and that it was adopted by the following vote, to-wit:

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

---

Andrea M. Myrick  
City Clerk

**EXHIBIT A**

**LEGAL DESCRIPTION**

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APN: 1009-241-43-0000

Lot 4 of Tract 12228, in the City of Montclair, County of San Bernardino, State of California, as Shown on a Map Thereof Recorded in Book 166, Page 98 of Maps, of Miscellaneous Maps, in the Office of the County Recorder of Said County.

**RESOLUTION NO. 23-3417**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING AGREEMENT NO. 23-27, AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR HOUSING CORPORATION; AUTHORIZING TRANSFER OF CERTAIN REAL PROPERTIES LOCATED AT 9729 RAMONA AVENUE FROM THE CITY OF MONTCLAIR TO THE MONTCLAIR HOUSING AUTHORITY; AND DECLARING SUCH REAL PROPERTIES TO BE EXEMPT SURPLUS LAND**

**WHEREAS**, the City of Montclair (the "City") acquired property located at 9729, Ramona Avenue (APN 1009-241-43-0000), as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "Property") with funds from the City's Housing Trust Fund for the purpose of increasing, improving, and preserving the City of Montclair's supply of low- and moderate-income housing available at an affordable cost; and

**WHEREAS**, the City is the owner of those Property within the corporate limits of the City of Montclair; and

**WHEREAS**, the Surplus Land Act, Government Code sections 54220 et seq. (the "Act") applies when a local agency disposes of "surplus land," which is defined in the Act as "land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use." (Government Code section 54221(b)(1)); and

**WHEREAS**, the Act expressly does "not apply to the disposal of exempt surplus land." (Government Code section 54222.3); and

**WHEREAS**, under the Act, "exempt surplus land" includes land that a local agency is transferring to another local, state, or federal agency for the transferee agency's use. (Government Code section 54221(f)(1)(D)); and

**WHEREAS**, the Act requires local agencies such as the City to declare certain real property they own as either "surplus land" or "exempt surplus land," as supported by written findings, prior to any disposition of the real property; and

**WHEREAS**, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

**WHEREAS**, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

**WHEREAS**, the City desires to transfer the Property to the Housing Authority, which is a "local agency" under the Act, and upon acquiring of the Property, the Housing Authority intends to ensure the Property, which already contains pre-existing constructed housing unit(s) and does not require development, is utilized as an affordable rental housing resources for low- to moderate-income households; and

**WHEREAS**, the City Council has declared the Property as exempt surplus land under the Act, based on the findings and justifications contained in Resolution No. 23-3416; and

**WHEREAS**, the Montclair Housing Corporation (the "Housing Corporation") was formed as a 501(c)(3) to operate and maintain the housing assets including single and multi-family residential units of the Housing Authority; and

**WHEREAS**, no development of the Property is contemplated; and

**WHEREAS**, upon acquiring of the Property, the Housing Authority intends to lease the Property to the Housing Corporation for operation of the Property as an affordable rental housing resources for low- to moderate-income households; and

**WHEREAS**, Agreement No. 23-59, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements.

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

**SECTION 1:** The above recitals are true and correct and are a substantive part of this Resolution.

**SECTION 2:** The City of Montclair hereby finds and determines that the transfer of the Property to the Montclair Housing Authority will ensure the continued preservation and availability of low- and moderate-income housing is available at an affordable cost.

**SECTION 3:** The City of Montclair is hereby authorized and directed to enter Agreement 23-59, an Affordable Housing Agreement by and among the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation.

**SECTION 4:** The City of Montclair agrees to the transfer of the Property to the Montclair Housing Authority. The City Manager, or designee, is authorized to record the grant deeds and further actions that are necessary or appropriate to transfer the Properties to the Montclair Housing Authority.

**SECTION 5:** The City Clerk shall certify to the adoption of this Resolution.

**APPROVED AND ADOPTED** this XX day of XX, 2023.

---

Mayor

**ATTEST:**

---

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 23-3417 was duly adopted by the Montclair City Council at a regular meeting thereof held on the XX day of XX, 2023, and that it was adopted by the following vote, to-wit:

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

---

Andrea M. Myrick  
City Clerk

**EXHIBIT A**

**LEGAL DESCRIPTION**

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APN: 1009-241-43-0000

Lot 4 of Tract 12228, in the City of Montclair, County of San Bernardino, State of California, as Shown on a Map Thereof Recorded in Book 166, Page 98 of Maps, of Miscellaneous Maps, in the Office of the County Recorder of Said County.

# **AFFORDABLE HOUSING AGREEMENT**

by and among the

**MONTCLAIR HOUSING AUTHORITY**

and the

**CITY OF MONTCLAIR**

and the

**MONTCLAIR HOUSING CORPORATION**



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ATTACHMENT NO. 1 – LEGAL DESCRIPTION

ATTACHMENT NO. 2 – LEASE

ATTACHMENT NO. 3 – CITY DEED

## AFFORDABLE HOUSING AGREEMENT

**THIS AFFORDABLE HOUSING AGREEMENT** (the “Agreement”) is hereby entered into as of September 7, 2023 (the “Date of Agreement”), by and among the **CITY OF MONTCLAIR**, a California municipal corporation (the “City”), the **MONTCLAIR HOUSING AUTHORITY**, a public body, corporate and politic (the “Authority”), the and **MONTCLAIR HOUSING CORPORATION**, a California nonprofit public benefit corporation (the “Operator”).

### *RECITALS*

A. Authority is a housing authority duly established and operating as a local housing authority pursuant to the California Housing Authority Law, Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code (“Housing Authority Law” or “HAL”).

B. City is the owner of that certain property located within the corporate limits of the City of Montclair, located at 9729 Ramona Avenue, Montclair, California (the “Property” or “House”). The Property is further described in the Legal Description which is attached hereto as Attachment No. 1.

C. City desires to convey to Authority the Property and Authority desires to acquire the Property from the City as provided herein.

D. Upon acquiring the Property, Authority intends to lease the Property to the Operator for the operation of the Property as an affordable rental housing resources for households of “Low Income” as defined below.

E. The transaction contemplated by this Agreement is in the vital and best interest of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE**, the parties hereto agree as follows:

**1. DEFINITIONS.** The following terms shall have the following definitions for the purpose of this Agreement:

**“Additional Rent”** is defined in Section 2.2 hereof.

**“Affordable Rent”** is defined in Section 4.2(f) hereof.

**“Authority”** means the Montclair Housing Authority, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Housing Authority Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

**“Agreement”** means this Affordable Housing Agreement among Authority, City, and Operator.

**“Authority Executive Director”** means the Executive Director of the Authority or his or her designee.

**“City”** means the City of Montclair, California, a California municipal corporation.

**“City Code”** means and refers to the City of Montclair Municipal Code as revised from time to time.

**“City Deed”** means a grant deed substantially in the form of Attachment No. 3.

**“Date of Agreement”** is defined in the first paragraph of this Agreement.

**“Event of Default”** means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 5.1 hereof.

**“House”** means the single family home which is located on and constitutes part of the Property.

**“Housing Authority Law”** or **“HAL”** has the meaning set forth therefor in Recital A.

**“Low Income Household”** shall mean a household earning not greater than eighty percent (80%) of San Bernardino County median income as determined pursuant to Health and Safety Code Section 50079.5.

**“Net Profits”** shall mean all gross income from the Property, including without limitation rents and interest on security deposits, less the sum of the Operating Expenses.

**“Operating Expenses”** shall mean actual, reasonable and customary costs, fees and expenses directly incurred and attributable to the operation, maintenance, and management of the Property. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation.

**“Operator”** means the Montclair Housing Corporation, a California nonprofit public benefit corporation.

**“Parties”** means, collectively, City, Authority, and Operator.

**“Property”** means the single family house in the City of Montclair located at 9729 Ramona Avenue, Montclair, California, and described in the Legal Descriptions.

**“Property Value”** means the amount of Seven Hundred Thousand Dollars (\$700,000). The Property’s Value is mutually believed to be by each of the Parties to represent the fair market value of the Property as of the Date of Agreement.

## **2. CONVEYANCE OF THE PROPERTY.**

**2.1 Conveyance of Fee Title.** City agrees to convey to Authority the Property by City Deed. The purchase price payable by Authority to City in consideration of the conveyance of the Property shall be One Dollar (\$1.00) (the “Authority Purchase Price”); provided that City may waive receipt of Authority Purchase Price. Upon request therefor by Authority, City will, in connection with the conveyance of the Property, provide to Authority an owner’s standard ALTA policy of title insurance as to the Property by a title insurer mutually acceptable to City and Authority, with the policy to be based upon the Property Value (the “Authority Title Policy”). Any and all documentary transfer

taxes, recording fees, escrow charges, premiums for title insurance, and any costs associated with the conveyance of the Property to Authority shall be borne by City.

**2.2 Lease Terms.** Subject to the satisfaction of all of the conditions precedent to commencement of the Lease set forth in Section 2.3 hereof, the Authority shall lease the Property to the Operator for a fifteen (15) year term at a base rental amount of One Dollar (\$1.00) per year together with the “Additional Rent” as set forth below. The terms and conditions of such lease shall be set forth in a “Lease” to be executed by the Authority and the Operator in the form of Attachment No. 2 which is attached hereto and incorporated herein.

At the end of each operating year, the Operator shall calculate total gross operating revenue for that year, and shall thereupon pay to the Authority as “Additional Rent” an amount equal to Net Profits, which equals total gross operating revenue less the Operating Expenses for that year. If total gross revenue from the Property for that year is less than the Operating Expenses, no Additional Rent shall be payable and the Operator shall be responsible for such additional costs from its own funds, and shall not be entitled to additional compensation from the Authority or be entitled to reduce the required level of services. The Authority and its authorized representatives shall, at all times, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of the Operator which in any manner relate to the expenses and revenues of the Property under this Agreement and the Operator’s obligations hereunder. The Operator’s staff shall cooperate fully with authorized auditors when they conduct audits and examinations of Authority funded programs. Within thirty (30) days of the submittal of such audit report, the Operator shall provide a written response to all conditions or findings reported in such audit report. The response must discuss each condition or finding and set forth a proposed resolution, including a schedule for correcting any deficiency. All conditions or correction actions shall take place within six (6) months after receipt of the audit report unless the Authority Executive Director or designee authorizes an extension of time to submit such corrections.

**2.3 Conditions Precedent to Commencement of Lease.** Prior to and as conditions to the Authority’s execution of and the commencement of the Lease: (i) City shall have conveyed the titles of the Property to Authority; (ii) if requested by Authority, City shall have caused to be delivered to Authority the Authority Title Policy; (iii) Operator shall have executed the Lease; and (iv) Operator shall have provided proof of insurance (certificates) conforming to Section 3.7 of this Agreement.

**3. COMPLIANCE WITH LAWS.** Operator shall carry out the operation of the Property in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

#### **4. USE OF THE PROPERTY.**

**4.1 Use in Conformance with Agreement.** The Operator covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof that, during the term of this Agreement, the Operator, such successors and such assignees, shall use,

operate and maintain the Property in conformity with this Agreement and shall devote the Property to the uses specified in this Agreement for the periods of time specified therein.

#### **4.2 Affordable Rental Housing.**

(a) Number of Units. Upon the commencement of the Lease, the Operator agrees to make available, restrict occupancy to, and rent the House to Low Income Households, at an Affordable Rent.

(b) Lease Requirements. Prior to rental of the House within the Property, the Operator shall submit a standard lease form to the Authority for the Authority's approval. The Authority Executive Director, or designee, shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement. The Operator shall enter into a lease, in the form approved by the Authority, with each tenant of the House.

(c) Duration of Affordability Requirements. The House shall be subject to the requirements of this Section 4.2 for a period coextensive with the term of the Lease. The duration of this requirement shall be known as the "Affordability Period." All tenants residing in the House during the last two (2) years of the Affordability Period shall be given notice at least once every six (6) months of the expiration date of this requirement, and that the rent payable on the House may be raised to a market rate rent at the end of the Affordability Period.

(d) Selection of Tenants. The House shall be leased to tenants selected by the Operator who meet all of the requirements provided herein. The Authority may, from time to time, assist in the leasing of the House by providing to the Operator names of persons who have expressed interest in renting the House. The Operator shall adopt a tenant selection system, which shall be approved by the Authority Executive Director, or designee. The tenant selection system shall include, without limitation, a method for investigation of the credit history of proposed tenants through obtaining a credit report on the proposed tenant. Highest priority in the selection of tenants shall be given to those applicants who have been displaced by Authority projects, if any.

(e) Income of Tenants. Prior to the rental or lease of the House to tenants, and annually thereafter, the Operator shall obtain an income certification from each tenant of the Property. The Operator shall verify the income certification of the tenant in one or more of the following methods:

- (1) obtain two (2) paycheck stubs from the tenant's two (2) most recent pay periods, if any.
- (2) obtain a true copy of an income tax return from the tenant for the most recent tax year in which a return was filed.
- (3) obtain an income verification certification from the employer of the tenant.
- (4) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies.

- (5) obtain a credit report from a commercial credit reporting agency.
- (6) obtain an alternate form of income verification reasonably requested by the Operator, if none of the above forms of verification is available to the Operator.

A person or family who at the time of income certification qualified as a Low Income Household shall continue to be deemed so qualified until such time as the person or family's income is redetermined and the person or family is determined by the Operator to no longer be so qualified, even if such person or family's income has subsequently increased to an amount above the applicable income level. Upon the Operator's determination that the tenant is no longer qualified as a Low Income Household, such tenant shall no longer be eligible to rent such House and shall be given a written notice which requires such tenant to vacate the House within sixty (60) days, and the Operator shall provide assistance to such tenants in finding another appropriate rental unit in the vicinity. The tenant lease shall contain the above provisions. In addition, the Operator shall annually submit to the Authority a certification that the House are actually occupied by a Low Income Household in the form which is provided by the Authority.

(f) Determination of Affordable Rent for the Property. The House shall be rented at an "Affordable Rent" to be established by the Authority as provided herein. The maximum monthly rental amount for the House shall be established at not greater than the lesser of (a) fair market rent, as reasonably determined by the Operator, or (b) thirty percent (30%) of sixty percent (60%) of San Bernardino County median income for a household size appropriate for the House or, if greater, the amount determined pursuant to Health and Safety Code section 50053(b)(3). For purposes of this Section 4.2, "rent" means the total of monthly payments for (a) use and occupancy of the House and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Operator which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Operator. The Authority may in its discretion base the utilities allowance on a utilities allowance adopted in connection with the Section 8 program administered by the United States Department of Housing and Urban Development. Household size appropriate to the unit shall mean two persons for a one bedroom House, three persons for a two bedroom House, four persons for a three bedroom House, and five persons for a four bedroom House. Upon the approval of the Authority or the Authority Executive Director, rents may be established at amounts which are lower than the maximum monthly rental amounts set forth above.

**4.3 Occupancy Standards.** Occupancy of the House shall be limited to five (5) persons.

**4.4 Management and Maintenance.** The Operator shall manage and maintain the Property in conformity with the City Code. The following standards shall be complied with by Operator and its maintenance staff, contractors or subcontractors:

- (a) Operator shall maintain the Property in a safe and sanitary fashion and in first class condition for single family houses of their age and type.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, parking areas, driveways and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(d) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

(e) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied only by persons possessing valid California applicators licenses, and in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

(f) Operator shall make such capital repairs to the Property as are necessary, including the following: carpet and drape replacement; appliance replacement; exterior painting, hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; and lighting fixture replacement.

(g) There shall be a prohibition against the Operator from developing or demolishing the Property during the term of the Agreement except for demolition required to conduct capital repairs to the Property.

Management and maintenance shall be overseen by the Authority or its designee and, if the above standards are breached, after notice and opportunity to cure within the time set forth in this paragraph, the Authority or its designee may in its reasonable discretion direct the Operator to and the Operator shall hire a management company acceptable to the Authority to manage the Properties. If, at any time, the Operator or the management company fails to adequately maintain such areas, and such condition is not corrected immediately upon notice of an imminent threat to health and safety or after expiration of thirty (30) days from the date of written notice from the Authority for all other violations, the Authority may (but shall not be obligated to) perform the necessary maintenance and Operator shall pay such costs as are reasonably incurred for such maintenance.

**4.5 Rights of Access.** The Authority, for itself and for the City and other public agencies, at their sole risk and expense, shall have the right to inspect the Properties. Any such inspection shall be made only after reasonable notice to Operator. Upon receipt of such notice, the Operator agrees to cooperate with the Authority in making the Property available for inspection by the Authority and/or City. Operator acknowledges and agrees that in the event that if for any reason the

Operator fails to consent to such entry or inspection, the Authority may obtain an administrative inspection warrant or take such other legal actions as may be necessary to gain entry to and inspect the Properties. Authority shall indemnify and hold Operator harmless from any costs, claims, damages or liabilities pertaining to any entry.

**4.6 Nondiscrimination.** The Operator covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Properties, nor shall Operator itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof. The foregoing covenants shall run with the land.

The Operator shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, creed, religion, sex, marital status, disability, familial status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(b) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(c) In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government



Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises subject to this agreement nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises.”

The covenants established in this Agreement and the Lease for the Property shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Authority, its successors and assigns, the City and any successor in interest to the Properties. The covenants against discrimination shall remain in effect in perpetuity. However, nothing in this Section 4.6 shall give the Operator any additional rights to convey a fee or leasehold interest in the Property except as otherwise authorized by this Agreement.

**4.7 Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction.** The covenants established in this Agreement shall, without regard to technical classification and designation, be binding upon and for the benefit and in favor of the Operator and the Authority, their respective successors and assigns, as to those covenants which are for their benefit. The covenants contained in this Agreement shall remain in effect until the expiration of the Affordability Period. The covenants against discrimination shall remain in perpetuity. The Authority is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the Authority, without regard to whether the Authority has been, remains or is an owner of any land or interest therein in the Properties. The Authority shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

## **5. REMEDIES.**

**5.1 Events of Default.** An “Event of Default” shall occur under this Agreement when there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the defaulting party without the defaulting party curing such breach, or if such breach cannot reasonably be cured within such thirty (30) day period, commencing the cure of such breach within such thirty (30) day period and thereafter diligently proceeding to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of this Agreement, the specific provision shall control.

**5.2 Remedies.** The occurrence of any Event of Default shall give the nondefaulting party the right to proceed with any and all remedies set forth in this Agreement, including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.

**5.3 Force Majeure.** Subject to the party’s compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where

delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, pandemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, acts or failures to act of any public or governmental entity (except that the Authority's acts or failure to act shall not excuse performance of the Authority hereunder), or any other causes beyond the control and without the fault of the party claiming an extension of time to perform. An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause.

In addition to the foregoing, following the acquisition of the Property by Authority, the Authority Executive Director shall have the authority to extend times for performance by up to one hundred eighty (180) days in the aggregate without necessity of further action by the governing board of the Authority.

**5.4 Attorneys' Fees.** In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover from the other party its costs of suit, including without limitation expert witness fees, and reasonable attorneys' fees.

**5.5 Remedies Cumulative.** No right, power, or remedy given to the Authority by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Authority by the terms of any such instrument, or by any statute or otherwise against Operator and any other person.

**5.6 Waiver of Terms and Conditions.** The Authority may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

**5.7 Non-Liability of Authority Officials and Employees.** No member, official, employee or agent of the City or Authority shall be personally liable to Operator, or any successor in interest, in the event of any default or breach by the Authority or for any amount which may become due to Operator or its successors, or on any obligations under the terms of this Agreement.

## **6. GENERAL PROVISIONS.**

**6.1 Time.** Time is of the essence in this Agreement.

**6.2 Notices.** Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, or by personal delivery, addressed to the appropriate party at the following addresses:

Authority: Montclair Housing Authority  
5111 Benito Street  
Montclair, California 91763  
Attention: Executive Director

Lessee: Montclair Housing Corporation  
5111 Benito Street  
Montclair, California 91763  
Attention: Executive Director

City: City of Montclair  
5111 Benito Street  
Montclair, California 91763  
Attention: City Manager

**6.3 Representations and Warranties of Operator.** Operator hereby represents and warrants to the Authority as follows:

(a) Organization. Operator is a duly organized, validly existing nonprofit corporation in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Operator. Operator has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Valid Binding Agreement. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Operator enforceable against it in accordance with their respective terms.

(d) Pending Proceedings. Operator is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Operator, threatened against or affecting Operator, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Operator, materially affect Operator's ability to perform its obligations hereunder.

**6.4 Limitation Upon Change in Ownership, Management and Control of Operator.**

(a) Prohibition. The identity and qualifications of Operator are of particular concern to the Authority. It is because of this identity and these qualifications that the Authority has entered into this Agreement with Operator. No voluntary or involuntary successor in interest of Operator shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall Operator make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Property without the prior written approval of the Authority, which approval may be granted, conditionally granted, or denied at the sole and absolute discretion of the Authority Executive Director; provided that the rental of the Property by Operator to a Low Income household at Affordable Rent in conformity with the Lease shall not require the specific approval by the Authority Executive Director.

(b) Successors and Assigns. This Agreement shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon Operator and the permitted successors and assigns of Operator. Whenever the term “Operator” is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

**6.5 No Third Parties Benefited.** This Agreement is made and entered into for the sole protection and benefit of the Authority, its successors and assigns, City, successors and assigns, and Operator, its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

**6.6 Partial Invalidity.** If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

**6.7 Governing Law.** This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

**6.8 Amendment.** This Agreement may not be changed orally, but only by agreement in writing signed by Operator and the Authority.

**6.9 Approvals.** Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the Authority, such approval may be given on behalf of the Authority by the Authority Executive Director or his or her designee. The Authority Executive Director or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement. The Authority Executive Director is authorized to execute amendments of this Agreement so long as such amendments do not materially increase the costs to be incurred by the Authority hereunder or materially decrease the revenues to be received by the Authority hereunder.

**IN WITNESS WHEREOF**, the Authority, City, and the Operator have executed this Agreement as of the date set forth above.

**MONTCLAIR HOUSING AUTHORITY,**  
a public body corporate and politic

By: \_\_\_\_\_  
Authority Executive Director

**CITY OF MONTCLAIR,**  
a municipal corporation

By: \_\_\_\_\_  
City Manager

**MONTCLAIR HOUSING CORPORATION,**  
a California nonprofit public benefit corporation

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

**ATTACHMENT NO. 1**

**LEGAL DESCRIPTION**

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APN:

1009-241-43-0000

Lot 4 Of Tract 12228, In The City Of Montclair, County Of San Bernardino, State Of California,

As Shown On A Map Thereof Recorded In Book 166, Page 98 Of Maps, Of Miscellaneous Maps, In The Office Of The County Recorder Of Said County.

**ATTACHMENT NO. 2**

**LEASE**

By and Between

**THE MONTCLAIR HOUSING AUTHORITY**

and

**MONTCLAIR HOUSING CORPORATION**

## **LEASE**

**THIS LEASE** (the “Lease”) is made as of September 7, 2023, by and between the **MONTCLAIR HOUSING AUTHORITY**, a public body, corporate and politic (the “Authority” or “Lessor”), and **MONTCLAIR HOUSING CORPORATION**, a California nonprofit public benefit corporation (the “Operator” or “Lessee”).

### **SECTION 1. SUBJECT OF LEASE.**

**1.1 Purpose of the Lease.** The purpose of this Lease is to effectuate the Affordable Housing Agreement by and among the Authority, the City of Montclair, a municipal corporation (the “City”), and the Operator dated September 7, 2023 (the “Agreement”), by providing for the lease of the “Properties” (as hereinafter defined) within the City of Montclair to Lessee and the sublease of the Property to Low Income Persons. The Agreement, which is available in the offices of the Authority as a public record, is incorporated herein by reference and made a part hereof as though fully set forth herein.

### **SECTION 2. LEASE OF THE PROPERTIES.**

The Authority, for and in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Lessee to be paid, kept, performed and observed by Lessee, hereby leases to Lessee, and Lessee hereby leases from Authority, that certain real property consisting of single family house in the City of Montclair (the “City”) located at 9729 Ramona Avenue (the “House”), and having the legal description in the “Legal Description” attached hereto as Exhibit A and incorporated herein by this reference. Except as expressly provided to the contrary in this Lease, reference to the Property is to the described land, inclusive of any improvements now or hereafter located on the land.

### **SECTION 3. LEASE TERM.**

Lessee shall lease the Property from Authority and Authority shall lease the Property to Lessee for a term commencing on September 07, 2023 (the “Commencement Date”) and continuing until [September 07, 2038] (the “Term”), unless sooner terminated as provided for herein. The term “Lease Year” shall mean a period commencing on the Commencement Date or an anniversary thereof and continuing for one full calendar year thereafter.

### **SECTION 4. USE OF THE PROPERTIES.**

**4.1 Use of the Properties.** Lessee covenants and agrees for itself, its successors and assigns, that during the Term, the Property shall be devoted to those uses as set forth in the Agreement.

**4.2 Management.** Lessee shall manage or cause the Property to be managed in a prudent and business-like manner, consistent with first-class single family rental housing in San Bernardino County, California.

Lessee may contract with a management company or manager to operate and maintain the Property in accordance with the terms of this Lease; provided, however, that the selection and hiring of such management company shall be subject to approval by Authority, or its Executive Director.



Lessee may act as manager. Approval of a management company or manager by Authority shall not be unreasonably withheld. If, at any time, the management company is not performing to the reasonable satisfaction of the Authority, or its Executive Director or the City Manager of the City, and said condition is not corrected after expiration of ninety (90) days from the date of written notice from the Authority, the Authority may direct the Lessee to, and the Lessee shall, terminate immediately the management contract. Notwithstanding the above, Lessee shall use its best efforts to correct any defects in management at the earliest feasible time and, if necessary, to replace the management company prior to the elapsing of such time period.

**4.3 Only Lawful Uses Permitted.** Lessee shall not use the Property for any purpose that is in violation of any law, ordinance or regulation of any federal, state, county or local governmental agency, body or entity. Furthermore, Lessee shall not maintain or commit any nuisance, as now or hereafter defined by any applicable statutory or decisional law, on the Properties, or any part thereof.

## **SECTION 5. RENT.**

**5.1 Net Lease.** It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Authority and that Lessee shall pay all costs, charges and expenses of every kind and nature against the Property which may arise or become due during the Term and which, except for execution hereof, would or could have been payable by Authority.

### **5.2 Rent.**

(A) During the Term of this Lease, Lessee agrees to pay in advance, on the Commencement Date and thereafter on the first day of each "Lease Year" (as hereinafter defined), rent in the amount of One Dollar (\$1.00) per house. The parties understand and acknowledge that the primary consideration for this Lease is the performance of the covenants set forth in this Lease and the Agreement, particularly (without limitation, however) the covenants to rent the units to low- and moderate income tenants at an affordable rent pursuant to Section 6 hereof and Section 4.2 of the Agreement. As used herein, a "Lease Year" shall consist of twelve (12) consecutive calendar months ending on the anniversary (the "Anniversary Date") of the day immediately preceding the Commencement Date.

(B) During the Term of this Lease, Lessee agrees to pay at the end of each Lease Year the "Additional Rent," as herein defined. At the end of each Operating Year, the Lessee shall calculate total gross operating revenue for that year, and shall thereupon pay to the Authority as "Additional Rent" an amount equal to total gross operating revenue less the operating costs for that year. If total gross operating revenue for that year is less than operating costs, no Additional Rent shall be payable and the Lessee and the Authority shall negotiate in good faith for the Authority to provide additional compensation to cover such deficit. The Authority and its authorized representatives shall, at all times, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of the Lessee which in any manner relate to the expenses and revenues of the Property under this Lease and the Lessee's obligations hereunder. The Lessee's staff shall cooperate fully with authorized auditors when they conduct audits and examinations of Authority funded programs. Within thirty (30) days of the submittal of such audit report, the Lessee shall provide a written response to all conditions or findings reported in such audit report. The response must discuss each condition or finding and set forth a proposed resolution, including a schedule for correcting any deficiency. All conditions or correction actions shall take place within six (6) months after receipt of

the audit report unless the Authority Executive Director or designee authorizes an extension of time to submit such corrections.

**5.3 Payment of Rent.** All rent that becomes due and payable pursuant to this Lease shall be paid to the Authority at the address of the Authority listed in Section 26.7 or such other place as the Authority may from time to time designate by written notice to the Lessee without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension or deduction. Except as expressly provided herein, under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall the Authority be expected or required to make any payment of any kind whatsoever or to perform any act or obligation whatsoever or be under any obligation or liability hereunder or with respect to the Properties.

## **SECTION 6. AFFORDABLE HOUSING REQUIREMENTS**

**6.1 Affordable Unit.** The Lessee agrees to make available, restrict occupancy to, and rent the House to “Low Income Households” at the rents established pursuant to Section 6.6 hereof. “Low Income Household” shall mean a household earning not greater than eighty percent (80%) of San Bernardino County median income as further set forth in California Health and Safety Code Section 50079.5.

**6.2 Lease Requirements.** Prior to rental of the Properties, Lessee shall submit a standard lease form to the Authority for Authority’s approval. The Authority shall approve such lease form upon finding that such lease form is consistent with this Lease and the Agreement. The Lessee shall enter into a lease, in the form approved by the Authority, with each tenant of the House.

**6.3 Duration of Affordability Requirements.** The Property shall be subject to the requirements of this Section 6 for a period coextensive with the term of this Lease beginning on the Commencement Date. The duration of this requirement shall be known as the “Affordability Period.” All tenants residing in the House during the last two (2) years of the Affordability Period shall be given notice by the Lessee at least once every six (6) months of the expiration date of this requirement, and that the rent payable on the Property may be raised to a market rate rent at the end of the Affordability Period.

**6.4 Selection of Tenants.** The Property shall be leased to tenants selected by the Lessee who meet all of the requirements provided herein. The Authority may, from time to time, assist in the leasing of the House by providing to the Lessee names of persons who have expressed interest in renting the House. Lessee shall adopt a tenant selection system, which shall be approved by the Authority. The tenant selection system shall include, without limitation, a method for investigation of the credit history of proposed tenants through obtaining a credit report on the proposed tenant. Highest priority in the selection of tenants shall be given to those applicants who have been displaced by Authority projects, if any.

**6.5 Income of Tenants.** Prior to the rental or lease of each of the House to a tenant, and annually thereafter, the Lessee shall obtain an income certification from the tenant of the Properties. The Lessee shall verify the income certification of the tenant in one or more of the following methods:

(A) obtain two (2) paycheck stubs from the tenant’s two (2) most recent pay periods, if any.

(B) obtain a true copy of an income tax return from the tenant for the most recent tax year in which a return was filed.

(C) obtain an income verification certification from the employer of the tenant.

(D) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies.

(E) obtain a credit report from a commercial credit reporting agency.

(F) obtain an alternate form of income verification reasonably requested by the Lessee, if none of the above forms of verification is available to the Lessee.

A person or family who at the time of income certification qualified as a Low Income Household shall continue to be deemed so qualified, until such time as the person or family's income is redetermined and the person or family is determined by the Lessee to no longer be so qualified, even if such person or family's income has subsequently increased to an amount above the applicable income level. Upon the Lessee's determination that the tenant is no longer qualified as a Low Income Household, such tenant shall no longer be eligible to rent the Property and shall be given a written notice which requires such tenant to vacate the Property within sixty (60) days, and the Lessee shall provide assistance to such tenants in finding another appropriate rental unit in the vicinity. The tenant lease shall contain the above provisions. In addition, the Lessee shall annually submit to the Authority a certification that the House is actually occupied by Low-Income Households in such form as may be provided by the Authority.

**6.6 Determination of Affordable Rent for the Property.** The House shall be rented at an "Affordable Rent" to be established by the Authority as provided herein. The maximum monthly rental amount for the Property shall be established at the lesser of (a) fair market rent, as reasonably determined by the Operator, or (b) thirty percent (30%) of sixty percent (60%) of San Bernardino County median income for a household size appropriate for the unit or, if greater, the amount determined pursuant to Health and Safety Code section 50053(b)(3). Household size appropriate to the unit shall mean two persons for a one bedroom House, three persons for a two bedroom House, four persons for a three bedroom House, and five persons for a four bedroom House. The rents of the Property may be increased once per year, regardless of when particular tenants commenced occupancy of the House. The maximum monthly rental amount for the House shall include a reasonable utilities allowance to be determined by the Authority, which utilities allowance shall be set at an amount which will cover the projected charge for all utilities (whether paid for by Lessee or paid directly by the individual tenant), including gas and electrical service, water, sewer and garbage collection, but excluding telephone service and cable television. The Authority may in its discretion base the utilities allowance on a utilities allowance adopted in connection with the Section 8 program administered by the United States Department of Housing and Urban Development. Upon the approval of the Authority or Authority Executive Director, rents may be established at amounts which are lower than the maximum monthly rental amounts set forth above.

## **SECTION 7. UTILITIES AND TAXES.**

**7.1 Utilities.** Lessee shall pay or cause to be paid by the tenants all charges for gas, electricity, water, sewer, garbage collection, cable television, and other utilities furnished to the House.

## **7.2 Real Estate Taxes.**

(A) As used herein, the term “real estate taxes” shall mean all real estate taxes, assessments for improvements to the House, municipal or county water and sewer rates and charges which shall be levied against the House, or any interest therein, and which become a lien thereon and accrues during the Term.

(B) The Property shall be assessed and taxed in the same manner as privately owned property, provided, however, that Lessee may apply for and obtain a full or partial exemption from property taxes. The Authority shall provide notice to the San Bernardino County Assessor within thirty (30) days of the commencement of this Lease as required by Health and Safety Code Section 33673.1. Lessee shall pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes levied against any and all interests in the Property during the Term, and not merely the assessed value of the leasehold interest in the Property.

(C) Any real estate taxes which are payable by Lessee hereunder shall be prorated between Authority and Lessee as of the Commencement Date and then again at the expiration or earlier termination of the Term.

(D) Lessee shall have the right to apply for the “welfare exemption” and any other applicable exemption from real property taxes, and shall further have the right to contest the amount or validity of any real estate taxes, in whole or in part, by appropriate administrative and legal proceedings, without any costs or expense to Authority. Lessee may postpone payment of any such contested real estate taxes pending the prosecution of such proceedings and any appeals so long as such proceedings shall operate to prevent the collection of such real estate taxes and the sale of the Property to satisfy any lien arising out of the nonpayment of the same, and Lessee furnishes a bond to Authority securing the payment of the same in the event a decision in such contest shall be adverse to Lessee.

**7.3 Personal Property Taxes.** Lessee covenants and agrees to pay before delinquency all personal property taxes, assessments and liens of every kind and nature upon all personalities as may be from time to time situated within the Property.

## **SECTION 8. OWNERSHIP OF IMPROVEMENTS, FIXTURES AND FURNISHINGS.**

The Property shall, during the Term, be and remain the property of the Authority. Upon termination of this Lease, whether by expiration of the Term or otherwise, all fixtures and furnishings within the Property shall, without compensation to Lessee, be Authority’s property, free and clear of all claims to or against them by Lessee or any third person, firm or entity.

## **SECTION 9. INDEMNIFICATION: FAITHFUL PERFORMANCE.**

Lessee shall not suffer or permit any liens to be enforced against the fee simple estate as to the Property, nor against Lessee’s leasehold interest therein by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone holding the Property, or any part thereof, through or under Lessee, and Lessee agrees to defend, indemnify and hold Authority harmless against such liens. If any such lien shall at any time be filed against the Property, Lessee shall, within thirty (30) days after notice to Lessee of the filing thereof, cause the same to be discharged of record; provided, however, that Lessee shall have the right to contest the amount or validity, in whole or in

part, of any such lien by appropriate proceedings but in such event, Lessee shall notify Authority and promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of California or provide other security acceptable to Authority. Lessee shall prosecute such proceedings with due diligence. Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of Authority, express or implied, by inference or otherwise, to any person, firm or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Property or any part thereof. Prior to commencement of any repair or alteration to the Property, Lessee shall give Authority not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws; provided that a shorter notice may be given in cases of emergency.

## **SECTION 10. MAINTENANCE AND REPAIR.**

Lessee agrees to assume full responsibility for the management, operation and maintenance of the Property throughout the Term without expense to Authority, and to perform all repairs and replacements necessary to maintain and preserve the Property in a clean and safe condition reasonably satisfactory to Authority and in compliance with all applicable laws. Lessee agrees that Authority shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Property. Lessee hereby waives all rights to make repairs or to cause any work to be performed at the expense of Authority as provided for in Section 1941 and 1942 of the California Civil Code. The Lessee shall manage and maintain the Property in conformity with the Montclair Municipal Code.

The following standards shall be complied with by Lessee and its maintenance staff, contractors or subcontractors:

(A) Lessee shall maintain the Property in a safe and sanitary fashion in a first class condition.

(B) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(C) Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, parking areas, driveways and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(D) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

(E) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied only by persons possessing valid California applicators licenses,

and in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

(F) Lessee shall make such capital repairs to the Property as are necessary, including the following: carpet and drape replacement; appliance replacement; exterior painting, hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; and lighting fixture replacement.

(G) There shall be a prohibition against the Operator from developing or demolishing the Property during the term of the Agreement except for demolition required to conduct capital repairs to the Property.

Management and maintenance shall be overseen by the Authority or its designee and, if the above standards are breached, after notice and opportunity to cure within the time set forth in this paragraph, the Authority or its designee may in its reasonable discretion direct the Lessee to and the Lessee shall hire a management company acceptable to the Authority to manage the Property. If, at any time, the Lessee or the management company fails to adequately maintain such areas, and such condition is not corrected immediately upon notice of an imminent threat to health and safety or after expiration of thirty (30) days from the date of written notice from the Authority for all other violations, the Authority may (but shall not be obligated to) perform the necessary maintenance and Lessee shall pay such costs as are reasonably incurred for such maintenance.

## **SECTION 11. ENVIRONMENTAL MATTERS.**

**11.1 Definitions.** For the purposes of this Lease, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

(A) The term “Hazardous Materials” shall mean (i) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, *et seq.*), as amended from time to time, and regulations promulgated thereunder; (ii) any “hazardous substance” as defined by the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Sections 25300, *et seq.*), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) petroleum, oil, gasoline (refined and unrefined) and their respective by products and constituents; and (vi) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any “Governmental Requirements” (as defined in Subparagraph c of this Section 11.1) either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment.

(B) The term “Hazardous Materials Contamination” shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Date of Lease) emanating from the Property.

(C) The term “Governmental Requirements” shall mean all past, present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property are located, and any other state, county city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over Authority, Lessee or the Property.

**11.2 Responsibility for Contamination.** Lessee assumes any and all responsibility and Liabilities (as defined in Section 11.4 of this Lease) for all Hazardous Materials Contamination, which occurs during the Term of this Lease.

**11.3 Indemnification.** Lessee shall save, protect, defend, indemnify and hold harmless Authority and its officers, directors, shareholders, employees and agents from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants’ fees, investigation and laboratory fees, reasonable attorneys’ fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as “Liabilities”) which may now or in the future be incurred or suffered by Authority and its officers, directors, shareholders, employees or agents by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (1) the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or Hazardous Materials Contamination after the commencement of this Lease, including any Liabilities incurred under any Governmental Requirements relating to such Hazardous Materials or Hazardous Materials Contamination, (2) the performance by Lessee of any acts, including, but not limited to, the performance of any act required by this Lease, and (3) the performance by the Authority of any act required to be performed by the Lessee under this Lease. Lessee’s obligations under this Section 11.3 shall survive the expiration of this Lease.

Authority shall save, protect, defend, indemnify and hold harmless Lessee and its officers, directors, shareholders, employees and agents from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants’ fees, investigation and laboratory fees, reasonable attorneys’ fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as “Liabilities”) which may now or in the future be incurred or suffered by Lessees and its officers, directors, shareholders, employees or agents by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (1) the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Authority of any Hazardous Materials or Hazardous Materials Contamination prior to the commencement of this Lease, including any Liabilities incurred under any Governmental Requirements relating to such Hazardous Materials or Hazardous Materials Contamination, (2) the performance by Authority of any acts, including, but not limited to, the performance of any act required by this Lease, and (3) the performance by the Lessee of any act required to be performed by the Authority under this Lease. Authority’s obligations under this Section 11.3 shall survive the expiration of this Lease.

**11.4 Duty to Prevent Hazardous Material Contamination.** Lessee shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Lessee shall install and utilize such equipment and implement and adhere to

such procedures as are consistent with the highest standards generally applied by residential developments as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

**11.5 Obligation of Tenant to Remediate Premises.** Notwithstanding the obligation of Lessee to indemnify Authority pursuant to Section 11.3 of this Lease, Lessee shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state or local governmental agency or political subdivision or any Governmental Requirements and (ii) all actions necessary to make full economic use of the Property for the purposes contemplated by this Lease and the Agreement, which requirements or necessity arise from the presence upon, about or beneath the Property of any Hazardous Materials or Hazardous Materials Contamination no matter when occurring. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. Lessee shall take all actions necessary to promptly restore the Property to an environmentally sound condition for the uses contemplated by this Lease and the Agreement notwithstanding any lesser standard of remediation allowable under applicable Governmental Requirements. Lessee shall nevertheless obtain the Authority's written approval prior to undertaking any activities required by this Section 11.5 during the Term of this Lease, which approval shall not be unreasonably withheld so long as such actions would not adversely affect the Property or be harmful to any other person or property. The Authority's obligations under this Section 11.5 shall survive the expiration of this Lease.

**11.6 Right of Entry.** Notwithstanding any other term or provision of this Lease, Lessee shall permit the Authority or its agents or employees to enter the Property at any time during normal business hours (except in the event of an emergency ), without prior notice in the event of an emergency, and with not less than forty-eight hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency or long-term remedial action with respect to Hazardous Materials and Hazardous Materials Contamination on or affecting the Property, or to discharge Lessee's obligations hereunder with respect to such Hazardous Materials and Hazardous Materials Contamination when Lessee has failed to do so. All costs and expenses incurred by the Authority in connection with performing Lessee's obligations hereunder shall be reimbursed by Lessee to the Authority within ten (10) days of Lessee's receipt of written request therefor.

**11.7 Storage or Handling of Hazardous Materials.** Lessee, at its sole cost and expense, shall comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials. In the event Lessee does store, use, transport, handle or dispose of any Hazardous Materials, Lessee shall notify Authority in writing at least ten (10) days prior to their first appearance on the Property and Lessee's failure to do so shall constitute a material default under this Lease. Lessee shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by the Authority in its reasonable judgment, the Authority may require Lessee, at Lessee's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Property. Lessee's monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials on the Property, shall be satisfactory to Authority, in Authority's reasonable discretion. Lessee shall further be solely responsible, and shall reimburse Authority, for all costs and expenses incurred by Authority arising out of or connected with the removal, clean-up and/or restoration work and materials necessary to return the Property and any property adjacent to the Property affected by Hazardous



Materials emanating from the Property to their condition existing at the time of the Commencement Date. Lessee's obligations hereunder shall survive the termination of this Lease.

**11.8 Environmental Inquiries.** Lessee shall notify Authority, and provide to Authority a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: Notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Lessee shall report to the Authority, as soon as possible after each incident, any unusual, potentially important incidents, including but not limited to, the following:

- (A) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Requirement;
- (B) All fires;
- (C) All instances where asbestos has been or may be disturbed by repair work, tenant improvements or other activities in buildings containing asbestos;
- (D) All notices of suspension of any permits;
- (E) All notices of violation from Federal, State or local environmental authorities;
- (F) All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding federal statutes, concerning investigation, compliance schedules, clean up, or other remedial actions;
- (G) All orders under the Porter-Cologne Act, including corrective action orders, cease and desist orders, and clean-up and abatement orders;
- (H) Any notices of violation from OSHA or Cal-OSHA concerning employees' exposure to Hazardous Materials;
- (I) All complaints and other pleadings filed against Lessee and/or Authority relating to Lessee's storage, use, transportation, handling or disposal of Hazardous Materials on the Property.

In the event of a release of any Hazardous Materials into the environment, Lessee shall, as soon as possible after the release, furnish to the Authority a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Authority, Lessee shall furnish to the Authority a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

## **SECTION 12. ALTERATION OF IMPROVEMENTS.**

Lessee shall not make or permit to be made any structural alteration of, addition to or change in the Property, nor demolish all or any part of the Property without the prior written consent of

Authority; provided, however, that the foregoing shall not prohibit or restrict the repair and/or replacement of the Property by Lessee. In requesting such consent Lessee shall submit to Authority detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. This provision shall not limit or set aside any obligation of Lessee under this Lease to maintain the Property in a clean and safe condition, including structural repair and restoration of damaged Property. Authority shall not be obligated by this Lease to make any improvements to the Property or to assume any expense therefor. Lessee shall not commit or suffer to be committed any waste or impairment of the Property, or any part thereof, except as otherwise permitted pursuant to this Lease.

### **SECTION 13. DAMAGE OR DESTRUCTION.**

Lessee agrees to give notice to Authority of any fire or other damage (collectively “casualty”) that may occur on the Property within ten (10) days of such fire or damage. In the event of such casualty Lessee agrees, to the extent of any insurance proceeds available therefor, to make or cause to be made full repair of such casualty, or Lessee agrees, to the extent of any insurance proceeds available therefor, to clear and remove from the Property all debris resulting from such casualty and rebuild the Property in accordance with plans and specifications previously submitted to Authority and approved in writing in order to replace in kind and scope the Property which existed prior to such damage. In the event of a casualty in which the Property are not required to be repaired, restored or rebuilt by Lessee pursuant to the terms of this Section 13, and provided Lessee does not nevertheless elect to repair, restore or rebuild the Property although Lessee has no obligations to do so, Authority may terminate this Lease.

### **SECTION 14. SALE, ASSIGNMENT, SUBLEASE OR OTHER TRANSFER.**

Except for (a) the lease of the Property to a tenant, and (b) transfers made pursuant to Section 6.4 of the Agreement, Lessee shall not sell, assign, sublease or otherwise transfer this Lease or any right therein, nor make any total or partial sale, assignment, sublease or transfer in any other mode or form of the whole or any part of the Property (each of which events is referred to in this Lease as an “Assignment”), without prior written approval of Authority, which approval shall not be unreasonably withheld as more particularly set forth below in this Section 14.2. Notwithstanding anything else herein contained, the term “Assignment” shall not be deemed to include the obtaining of any “Capital Improvement Loan(s)” (all as hereinafter defined), but shall be deemed to include all refinancing thereof and any other loans approved by Authority. Any purported assignment without the prior written consent of Authority shall render this Lease absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee. The approval of Authority to any Assignment shall not be unreasonably withheld if the proposed purchaser, assignee, sublessee or transferee has reasonably demonstrated to the Authority, at least sixty (60) days prior to the effective date of such Assignment, such proposed purchaser’s, assignee’s, sublessee’s or transferee’s financial capability and overall competence and experience to construct and operate the Property. Review of experience in operating similar projects shall not be required with respect to institutional lenders providing financing pursuant to Section 15 hereof so long as the original Lessee (or a successor that has been expressly approved in writing by the Authority) remains responsible for operating the Property and performing as Lessee pursuant to this Lease. Approval by Authority of any sale, assignment, sublease or transfer shall be conditioned upon such purchaser, assignee, sublessee or transferee agreeing in writing to assume the rights and obligations thereby sold, assigned, subleased or transferred, and to keep and perform all covenants, conditions and provisions of this Lease which are applicable to the rights acquired. In the absence of specific written agreement by Authority, no such sale, assignment, sublease

or transfer of this Lease or the Property (or any portion thereof), or approval by Authority of any such sale, assignment, sublease or transfer shall be deemed to relieve Lessee or any other party from any obligation under this Lease.

Notwithstanding anything else contained in this Section 14, this Lease may be assigned, without the consent of Authority, to the purchaser at any foreclosure sale, whether judicial or non-judicial, or to the beneficiary or mortgagee under any Permitted Encumbrance (as defined in Section 15), pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of this Lease to such beneficiary or mortgagee in lieu thereof, and may thereafter be assigned by such beneficiary or mortgagee without Authority's consent, and any such purchaser, beneficiary, mortgagee or assignee shall be liable to perform the obligations herein imposed on Lessee, other than as set forth in Sections 15 of this Lease, only for and during the period that such purchaser, beneficiary, mortgagee or assignee is in possession or ownership of the leasehold estate created hereby.

## **SECTION 15. FINANCING.**

Lessee may, at any time and from time to time during the Term, upon prior written notice to the Authority and subject to the requirements of Sections 5.3 and 14 hereof, request that the Authority authorize Lessee to mortgage, pledge, hypothecate or otherwise encumber to a federally or state chartered bank or savings and loan, a life insurance company, a mortgage company, a pension fund, investment trust or similar institutional lender (herein called "Lender") by deed of trust or mortgage or other security instrument all or any portion of Lessee's right, title and interest pursuant to this Lease and the leasehold estate hereby, following thirty (30) days prior written notice to Authority (which notice shall include an itemization of and budget for the capital improvements to be financed), to secure financing of capital improvements to the Property ("Capital Improvement Loan(s)"). The Authority shall consider such request in good faith, and may approve, disapprove or conditionally approve in Authority's reasonable discretion. The encumbrances securing the Capital Improvement Loan(s), together with refinancing of the Capital Improvement Loan(s) approved by the Authority pursuant to Section 14, and any other loan or encumbrance approved by the Authority pursuant to this Lease shall be deemed to be "Permitted Encumbrances."

The proceeds of any Capital Improvement Loan(s) shall be used solely to pay (i) the costs of construction of capital improvements to the Property, and (ii) the costs of obtaining the Capital Improvement Loan(s).

Authority and Lessee acknowledge and agree that neither Authority's interest or fee ownership of the Property nor Authority's right to receive Rent hereunder shall be subordinate to any Permitted Encumbrance or any other lien, mortgage, deed of trust, pledge or other encumbrance of Lessee's leasehold interest hereunder.

## **SECTION 16. INDEMNITY.**

During the Term, Lessee agrees that Authority and City, their agents, officers, representatives and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, Property or effects of Lessee, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether caused by or resulting from any act or omission of Lessee or its sublessees or any other person on or about the Property, or in connection with the operation thereof, or from any defect in the Property. Lessee agrees to indemnify and save free and harmless Authority

and City and their authorized agents, officers, representatives and employees against any of the foregoing liabilities and any costs and expenses incurred by Authority or City on account of any claim or claims therefor. Lessee shall not be responsible for (and such indemnity shall not apply to) any acts, errors or omissions of Authority, City, or their respective agents, officers, representatives or employees.

## **SECTION 17. INSURANCE.**

**17.1 Insurance to be Provided by Lessee.** During the Term, Lessee, at its sole cost and expense, shall:

(A) Maintain or cause to be maintained a policy or policies of insurance against loss or damage to the Property of all property of an insurable nature located upon the Property, resulting from fire, lightning, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage fire insurance policies. Such policy or policies shall be required to provide coverage against loss or damage resulting from flood and/or earthquake only to the extent such coverage is available at commercially reasonable rates and is required by any lender making a loan to Lessee which is secured by the Property. Such insurance policy shall name Authority as an additional insured and shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Property, as defined herein in this Section 17.

(B) Maintain or cause to be maintained public liability insurance issued by a company with a Best's rating of not less than A, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Lessee or its sublessees, or any person acting for Lessee, or under their respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Lessee or its sublessees, or any person acting for Lessee, or under their respective control or direction. Such property damage and personal injury insurance shall also provide for and protect against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the entire term of this Lease in the amount of at least One Million Dollars (\$1,000,000) combined single limit, naming Authority and City as additional insured. If the operation under this Lease results in an increased or decreased risk in the reasonable determination of Authority, then Lessee agrees that the minimum limit hereinabove designated shall be changed accordingly upon request by Authority. Lessee agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, activities of its sublessees or the activities of any other person or persons for which Lessee is otherwise responsible. Pollution liability insurance provided in compliance with the indemnification provision required by Section 11.3 hereof shall be required only to the extent such coverage is available at commercially reasonable rates.

(C) Maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Lessee in connection with the Property

and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Lessee.

**17.2 Definition of “Full Insurable Value”.** The term “full insurable value” as used in this Section 17 shall mean the actual replacement cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of the Property, including the cost of construction of the Property, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Lessee shall cause the full insurable value to be determined from time to time by appraisal by the insurer or, if no such appraisal is available, by an appraiser mutually acceptable to Authority and Lessee, not less often than once every three (3) years.

**17.3 General Insurance Provisions.** All liability policies of insurance provided for in this Section 17 shall name Lessee as the insured and Authority as an additional insured, as their respective interests may appear. All property casualty insurance policies shall include the interest of any Lessee’s Mortgagee, and may provide that any loss is payable jointly to Lessee and Lessee’s Mortgagee in which event such policies shall contain standard mortgage loss payable clauses. Lessee agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance.

Lessee agrees to submit policies of all insurance required by this Section 17 of this Lease, or certificates evidencing the existence thereof, to Authority on or before the effective date of this Lease, indicating full coverage of the contractual liability imposed by this Lease. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Authority.

All insurance provided for under this Section 17 shall be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California, approved by Authority.

All policies or certificates of insurance shall: (i) provide that such policies shall not be cancelled or limited in any manner without at least thirty (30) days prior written notice to Authority; (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by the Authority and shall contain a waiver of subrogation for the benefit of the City and the Authority; and (iii) name the City, Authority, and their respective officers, agents, and employees as additional insured under such policies.

**17.4 Failure to Maintain Insurance.** If Lessee fails or refuses to procure or maintain insurance as required by this Lease, Authority shall have the right, at Authority’s election, and upon ten (10) days prior notice to Lessee, to procure and maintain such insurance. The premiums paid by Authority shall be treated as added rent due from Lessee, to be paid on the first day of the month following the date on which the premiums were paid. Authority shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

**17.5 Insurance Proceeds Resulting from Loss or Damage to Property.** All proceeds of insurance with respect to loss or damage to the Property during the term of this Lease shall be payable, under the provisions of the policy of insurance, to Lessee, and said proceeds shall constitute a trust fund to be used for the restoration, repair and rebuilding of the Property in accordance with plans and specifications approved in writing by Authority. To the extent that such proceeds exceed the cost of

such restoration, repair or rebuilding, then such additional proceeds shall be distributed to the Authority. Notwithstanding the foregoing, within the period during which there is an outstanding mortgage upon the Property, such proceeds shall be payable in accordance with Section 17.3 of this Lease.

In the event this Lease is terminated by mutual agreement of Authority and Lessee and said Property are not restored, repaired or rebuilt, the insurance proceeds shall be jointly retained by the Authority and Lessee and shall be applied first to any payments due under this Lease from Lessee to Authority, second to restore the Property to its original condition and to a neat and clean condition, and finally any excess shall be apportioned between Lessee and Authority as their interests may appear; provided, however, that within any period when there is an outstanding mortgage upon the Property, such proceeds shall be applied first to discharge the debt secured by the mortgage and then for the purposes and in the order set forth above in this paragraph. The value of each interest for the purpose of apportioning excess proceeds under this Section 17.5 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

## **SECTION 18. EMINENT DOMAIN.**

In the event that the Property or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then, as between Authority and Lessee (or mortgagee, if a mortgage is then in effect), the interests of Authority and Lessee (or mortgagee) in the award and the effect of the taking upon this Lease shall be as follows:

(A) In the event of such taking of only a part of the Property, leaving the remainder of the Property in such location and in such form, shape and size as to be used effectively and practicably for the conduct thereon of the uses permitted hereunder, this Lease shall terminate and end as to the portion of the Property so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Property not so taken.

(B) In the event of taking of only a part of the Property, leaving the remainder of the Property in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, for the conduct thereon of the uses permitted hereunder, this Lease and all right, title and interest thereunder shall cease on the date title to the Property or the portion thereof so taken vests in the condemning authority.

(C) In the event the Property is so taken, this Lease and all of the right, title and interest thereunder, shall cease on the date title to the Property vests in the condemning authority.

(D) Promptly after a partial taking, at Lessee's expense and in the manner specified in provisions of this Lease related to maintenance, repairs, alterations, Lessee shall restore the Property, to the extent of condemnation proceeds received by Lessee, so as to place them in a condition suitable for the uses and purposes for which the Property was leased.

(E) In the event of any taking under subparagraphs (a), (b) or (c) hereinabove, that portion of any award of compensation attributable to the fair market value of the Property or portion thereof taken, valued as subject to this Lease, shall belong to Authority. That portion of any award attributable to the fair market value of Lessee's leasehold interest in the Property pursuant to this Lease shall belong to Lessee. That portion of any award attributable to the fair market value of the Property or portion thereof taken shall belong to Authority and Lessee, as their interests may appear, except that

in the event of a partial taking, where the Lease remains in effect and Lessee is obligated to restore or repair the Property, then Lessee shall be entitled to any portion of the award attributable to severance damages to the remaining Property. Said award shall be used for the restoration, repair or rebuilding of the Property in accordance with plans and specifications approved in writing by Authority. To the extent that said award for severance damages exceeds the cost of such restoration, repair or rebuilding, then such award shall be apportioned between Lessee and Authority as their interests may appear. The value of each interest for the purpose of apportionment under this Section shall be the fair market value of such interests at the time of the taking.

(F) Provided, however, that within the period during which there is an outstanding mortgage on the Property, the mortgagee shall be entitled to any portion of the award attributable to the Property, to the extent of its interest therein. The mortgagee may at its option apply said portions of the award to restoration of the Property or to reduction of the mortgage. Any excess portion of the award attributable to the condemnation of the Property shall be apportioned between Lessee and Authority as their interests may appear.

(G) Notwithstanding the foregoing provisions of this Section, Authority may, in its discretion and without affecting the validity and existence of this Lease, transfer Authority's interests in the Property in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by Authority, Lessee (or mortgagee if a mortgage is then in effect) and Authority shall retain whatever rights they may have to recover from said authority the fair market value of their respective interests in the Property taken by the authority.

(H) All valuations to be made pursuant to this Section 18 shall be made by mutual agreement of Authority and Lessee.

## **SECTION 19. OBLIGATION TO REFRAIN FROM DISCRIMINATION.**

There shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property, and Lessee itself or any person claiming under or through it shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees thereof or any portion thereof, or in the providing of goods, services, facilities, privileges, advantages and accommodation.

Lessee shall refrain from restricting the rental, sale or lease of the Property, or any portion thereof, on the basis of sex, marital status, race, color, creed, religion, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(A) In Leases: "The lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, religion, disability, familial status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under

or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(B) In Contracts:

“There shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, creed, religion, disability, familial status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

## **SECTION 20. NONDISCRIMINATION IN EMPLOYMENT.**

Lessee, for itself and its successors and assigns, agrees that during the operation of the Property provided for in this Lease, and during any work of repair or replacement, Lessee will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, physical or mental disability, sexual orientation, ancestry or national origin.

## **SECTION 21. LABOR STANDARDS.**

Lessee shall comply, and require all contractors and subcontractors employed pursuant to this Lease to comply with all applicable labor standards provisions of the California Labor Code and federal law, including payment of prevailing wages for off-site work. Lessee shall comply with all bidding requirements applicable pursuant to the California Public Contracts Code or other applicable law.

## **SECTION 22. COMPLIANCE WITH LAW.**

Lessee agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Property, as well as operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Property, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees, if any, assessor levied upon Lessee or the Property, including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the Property. The judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee in any action or proceeding against them, or any of them, whether Authority be a party thereto or not, that Lessee, sublessee or permittee has violated any such ordinance or statute in the use of the Property shall be conclusive of that fact as between Authority and Lessee, or such sublessee or permittee.

## **SECTION 23. ENTRY AND INSPECTION.**

Authority reserves and shall have the right during reasonable business hours (except in cases of emergency), upon forty-eight (48) hours prior notice (except in cases of emergency) to Lessee by the Executive Director of Authority, to enter the Property for the purpose of viewing and ascertaining



the condition of the same, or to protect its interests in the Property or to inspect the operations conducted thereon.

## **SECTION 24. RIGHT TO MAINTAIN.**

In the event that the entry or inspection by Authority pursuant to Section 23 hereof discloses that the Property are not in a decent, safe, and sanitary condition, Authority shall have the right, after thirty (30) days written notice to Lessee (except in case of emergency, in which event no notice shall be necessary), to have any necessary maintenance work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and all costs incurred by Authority in having such necessary maintenance work done in order to keep the Property in a decent, safe and sanitary condition. The rights reserved in this Section shall not create any obligations or Authority or increase obligations elsewhere in this Lease imposed on Authority.

## **SECTION 25. EVENTS OF DEFAULT AND REMEDIES.**

### **25.1 Events of Default by Lessee.**

- (A) Lessee shall abandon or surrender the Property; or
- (B) Lessee shall fail or refuse to pay, within ten (10) days of notice from Authority that the same is due, any installment of rent or any other sum required by this Lease to be paid by Lessee; or
- (C) Lessee shall fail to perform any covenant or condition of the Agreement and/or this Lease other than as set forth in subparagraphs (a) or (b) above, and any such failure shall not be cured within thirty (30) days following the service on Lessee of a written notice from Authority specifying the failure complained of, or if it is not practicable to cure or remedy such failure within such thirty (30) day period, within such longer period as shall be reasonable under the circumstances; or
- (D) Lessee shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the same shall not be dismissed within sixty (60) days thereafter; or
- (E) Lessee shall be adjudicated a bankrupt; or
- (F) Lessee shall make a general assignment for the benefit of creditors in violation of the terms of this Lease; then such event shall constitute an event of default under this Lease.

**25.2 Remedies of Authority.** In the event of any such default as described in Section 25.1, Authority may, at its option:

- (1) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by Authority in enforcing this provision) to the account of Lessee, which charge shall be due and payable within fifteen (15) days after presentation by Authority of a statement of all or part of said costs;

(2) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by Authority in enforcing this provision) from the proceeds of any insurance; or in the event that Lessee has obtained a faithful performance bond indemnifying Authority, Authority may call upon the bonding agent to correct said default or to pay the costs of such correction performed by or at the direction of Authority;

(3) Exercise its right to maintain any and all actions at law or suits in equity to compel Lessee to correct or cause to be corrected said default;

(4) Have a receiver appointed to take possession of Lessee's interest in the Property, with power in said receiver to administer Lessee's interest in the Property, to collect all funds available to Lessee in connection with its operation and maintenance of the Property; and to perform all other consistent with Lessee's obligation under this Lease as the court deems proper;

(5) Maintain and operate the Property, without terminating this Lease;

(6) With respect to a monetary default or material non-monetary default, terminate this Lease by written notice to Lessee of its intention to do so.

**25.3 Right of Authority in the Event of Termination of Lease.** Upon termination of this Lease pursuant to Section 25.2, it shall be lawful for Authority to re-enter and repossess the Property and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Property peaceably to Authority immediately upon such termination in good order, condition and repair, except for reasonable wear and tear. Lessee agrees that upon such termination, title to all the Property on the Property shall vest in Authority. Even though Lessee has breached the Lease and abandoned the Property, this Lease shall continue in effect for so long as Authority does not terminate Lessee's right to possession, and Authority may enforce all of its right and remedies under this Lease, including, but not limited to, the right to recover the rent as it becomes due under this Lease. No ejectment, re-entry or other act by or on behalf of Authority shall constitute a termination unless Authority gives Lessee notice of termination in writing. Termination of this Lease shall not relieve or release Lessee from any obligation incurred pursuant to this Lease prior to the date of such termination. Termination of this Lease shall not relieve Lessee from the obligation to pay any sum due to Authority or from any claim for damages against Lessee.

**25.4 Damages.** Damages which Authority recovers in the event of default under this Lease shall be those which are then available under applicable California case and statutory law to lessors for leases in the State of California including, but not limited to, any accrued but unpaid rent and the worth at the time of award of the amount by which the unpaid rent for the balance of the term of this Lease after the date of award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

**25.5 Rights and Remedies are Cumulative.** The remedies provided by this Section 25 are not exclusive and shall be cumulative to all other rights and remedies possessed by Authority. The exercise by Authority of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Lessee.

**25.6 Limitation of Lessee's Liability.** Notwithstanding anything to the contrary herein contained, following completion of the construction of the Property, (i) the liability of Lessee shall be

limited to its interest in the Property, and any rents, issues and profits arising from any subleases of the Property which are misapplied, or which have accrued but are not yet due and payable, at the time of any default hereunder and which are misapplied by Lessee when collected, and, in addition, with respect to any obligation to hold and apply insurance proceeds, proceeds of condemnation or other monies hereunder, any such monies received by it to the extent not so applied; (ii) no other assets of Lessee shall be affected by or subject to being applied to the satisfaction of any liability which Lessee may have to Authority or to another person by reason of this Lease; and (iii) any judgment, order, decree or other award in favor of Authority shall be collectible only out of, or enforceable in accordance with, the terms of this Lease by termination or other extinguishment of Lessee's interest in the Property. As a condition to protection under the provisions of this Section 25.6, Lessee covenants not to collect more than one (1) month's rent in advance, exclusive of reasonable security deposits, under the terms of any subleases of the Property that Lessee may enter into.

Notwithstanding the foregoing, it is expressly understood and agreed that the aforesaid limitation on liability shall in no way restrict or abridge Lessee's continued personal liability for:

- (1) fraud or willful or grossly negligent misrepresentation made by Lessee in connection with this Lease;
- (2) misapplication of (i) proceeds of insurance and condemnation or (ii) rentals received by Lessee under subleases subsequent to the date Authority is entitled to re-enter the Property by reason of Lessee's default pursuant to the terms hereof and applicable law;
- (3) the retention by Lessee of all advance rentals and security deposits of sublessees not refunded to or forfeited by such sublessees;
- (4) the indemnification undertakings of Lessee under Section 16; and
- (5) Material waste by Lessee with respect to the Property.

**25.7 Events of Default by Authority.** If the Authority shall fail to perform any covenant or condition of the Agreement and/or this Lease, and any such failure shall not be cured within thirty (30) days following the service on Authority of a written notice from Lessee specifying the failure complained of, or if it is not practicable to cure or remedy such failure within such thirty (30) day period, within such longer period as shall be reasonable under the circumstances, the such event shall constitute an event of default under this Lease.

**25.8 Remedies of Lessee.** In the event of any such default as described in Section 25.6, Authority may, at its option:

- (1) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by Lessee in enforcing this provision) as an operating expense for the current year;
- (2) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by Lessee in enforcing this provision) from the proceeds of any insurance; or in the event that Authority has obtained a faithful performance bond indemnifying Lessee, Lessee may call upon the bonding agent to correct said default or to pay the costs of such correction performed by or at the direction of Lessee;

(3) Exercise its right to maintain any and all actions at law or suits in equity compel Authority to correct or cause to be corrected said default;

(4) Maintain and operate the Property, without terminating this Lease;

(5) With respect to a monetary default or material non-monetary default, terminate this Lease by written notice to Authority of its intention to do so.

## **SECTION 26. MISCELLANEOUS.**

**26.1 Governing Law.** The laws of the State of California shall govern the interpretation and enforcement of this Lease.

**26.2 Legal Actions.** In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted in the Superior Court of San Bernardino County, State of California, in any other appropriate court in that County, or in the Federal District Court in the Central District of California.

**26.3 Acceptance of Service of Process.** In the event that any legal action is commenced by Lessee against Authority, service of process on Authority shall be made by personal service upon the Chairman or Executive Director of Authority, or in such other manner as may be provided by law.

In the event that any legal action is commenced by Authority against Lessee, service of process on Lessee shall be made by personal service upon any officer of Lessee or in such other manner as may be provided by law, whether made within or without the State of California.

**26.4 Attorneys' Fees And Court Costs.** In the event that either Authority or Lessee shall bring or commence an action to enforce the terms and conditions of this Lease or to obtain damages against the other party arising from any default under or violation of this Lease, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

**26.5 Inspection of Books And Records.** Authority has the right (at Lessee's office, upon not less than forty-eight (48) hours' notice, and during normal business hours) to inspect the books and records of Lessee pertaining to the Property as pertinent to the purposes of this Lease. Lessee also has the right (at Authority's office, upon not less than forty-eight (48) hours' notice, and at all reasonable times) to inspect the books and records of Authority pertaining to the Property as pertinent to the purposes of this Lease.

**26.6 Interest.** Any amount due Authority that is not paid when due shall bear interest from the date such amount becomes due until it is paid. Interest shall be at a rate equal to the lesser of the discount rate established by the San Francisco office of the Federal Reserve Bank, plus two percent (2%), on the first day of the month such amount becomes due, and the maximum rate permitted by applicable law.

**26.7 Notices.** All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, upon personal

delivery or five (5) days after deposit within California in the United States mail, certified or registered mail, return receipt requested, postage prepaid and addressed as follows:

Authority: Montclair Housing Authority  
5111 Benito Street  
Montclair, California 91763  
Attention: Executive Director

Lessee: Montclair Housing Corporation  
5111 Benito Street  
Montclair, California 91763  
Attention: Executive Director

or to such other address as either party shall later designate for such purposes by written notice to the other party.

**26.8 Time is of the Essence.** Time is of the essence in the performance of the terms and conditions of this Lease.

**26.9 Non-Merger of Fee And Leasehold Estates.** If both Authority's and Lessee's estates in the Property or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except at the express election of Authority and Lessee's Mortgagee. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work as a merger and shall, at the option of Authority, terminate all or any existing sublease or subtenancies or may, at the option of Authority, operate as an assignment to Authority of any or all such existing subleases or subtenancies.

**26.10 Holding Over.** The occupancy of the Property after the expiration of the Term of this Lease shall be construed to be a tenancy from month to month, and all other terms and conditions of this Lease shall continue in full force and effect.

**26.11 Conflict of Interest.** No member, official or employee of Authority shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to the Lease which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

Lessee warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

**26.12 Non-Liability of Authority Officials And Employees.** No member, official or employee of Authority shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by Authority or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

**26.13 Relationship.** The relationship between the parties hereto shall at all times be deemed to be that of landlord and tenant. The parties do not intend nor shall this Lease be deemed to create a partnership or joint venture.

**26.14 Transactions with Affiliates.** Lessee shall have the right to enter into transactions with subsidiaries, affiliates and other related entities for the purpose of leasing space, providing cleaning, maintenance and repair services, insurance policies and other purposes related to the use and development of the Property, provided that all such costs, charges and rents are competitive with the costs, charges, rent and other sums which would be paid by or to, as the case may be, an unrelated third party.

**26.15 Waivers And Amendments.** All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of Authority or Lessee.

The waiver by Authority of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Authority shall not be deemed to be a waiver of any preceding breach of Lessee of any term, covenant or condition of this Lease, regardless of Authority's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of Authority to require or exact full and complete compliance with any of the covenants or conditions of this Lease shall not be construed as in any manner changing the terms hereof and shall not prevent Authority from enforcing any provision hereof. All amendments hereto must be in writing and signed by the appropriate authorities of Authority and Lessee. The Lessee's Mortgagee permitted by this Lease shall not be bound by any waiver or amendment to this Lease without Lessee's Mortgagee giving its prior written consent.

**26.16 Non-Merger With Agreement.** None of the terms, covenants or conditions agreed upon in writing in the Agreement and other instruments between the parties to this Lease with respect to obligations to be performed, kept or observed by Lessee or Authority in respect to the Property or any part thereof, shall be deemed to be merged with this Lease.

**26.17 Duplicate Originals.** This Lease is executed in three (3) duplicate originals, each of which is deemed to be an original.

**26.18 Severability.** If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

**26.19 Terminology.** All personal pronouns used in this Lease, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of sections are for convenience only, and neither limit nor amplify the provisions of the Lease itself. Except for terms expressly defined in this Lease, all terms shall have the same meaning as set forth in the Agreement.

**26.20 Binding Effect.** This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

**26.21 Estoppel Certificate.** Each of the parties shall at any time and from time to time upon not less than twenty (20) days' prior notice by the other, execute, acknowledge and deliver to such other party a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there shall have been modifications that this Lease is in full force and effect as modified and

stating the modifications), and the dates to which the rent has been paid, and stating whether or not to the best knowledge of the signer of such certificate such other party is in default in performing or observing any provision of this Lease, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other party may reasonably request, it being intended that any such statement delivered by Lessee may be relied upon by Authority or any successor in interest to Authority or any prospective mortgagee or encumbrancer thereof, and it being further intended that any such statement delivered by Authority may be relied upon by any prospective assignee of Lessee's interest in this Lease or any prospective mortgagee or encumbrancer thereof. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge.

**26.22 Force Majeure.** The time within which Authority or Lessee is obligated herein to perform any obligation hereunder, other than an obligation that may be performed by the payment of money, shall be extended and the performance excused when the delay is caused by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot, insurrection or other cause beyond the control of the applicable party.

**26.23 Quiet Enjoyment.** Landlord does hereby covenant, promise and agree to and with Tenant that Tenant, for so long as it is not in default hereof, shall and may at all times peaceable and quietly have, hold, use, occupy and possess the Property throughout the Term.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed by their lawfully authorized officers.

**AUTHORITY:**

**MONTCLAIR HOUSING AUTHORITY**, a public body corporate and politic

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

**LESSEE:**

**MONTCLAIR HOUSING CORPORATION**, a California nonprofit public benefit corporation

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



**EXHIBIT A TO ATTACHMENT NO. 2**

**PROPERTY MAP**

[To Be Attached]

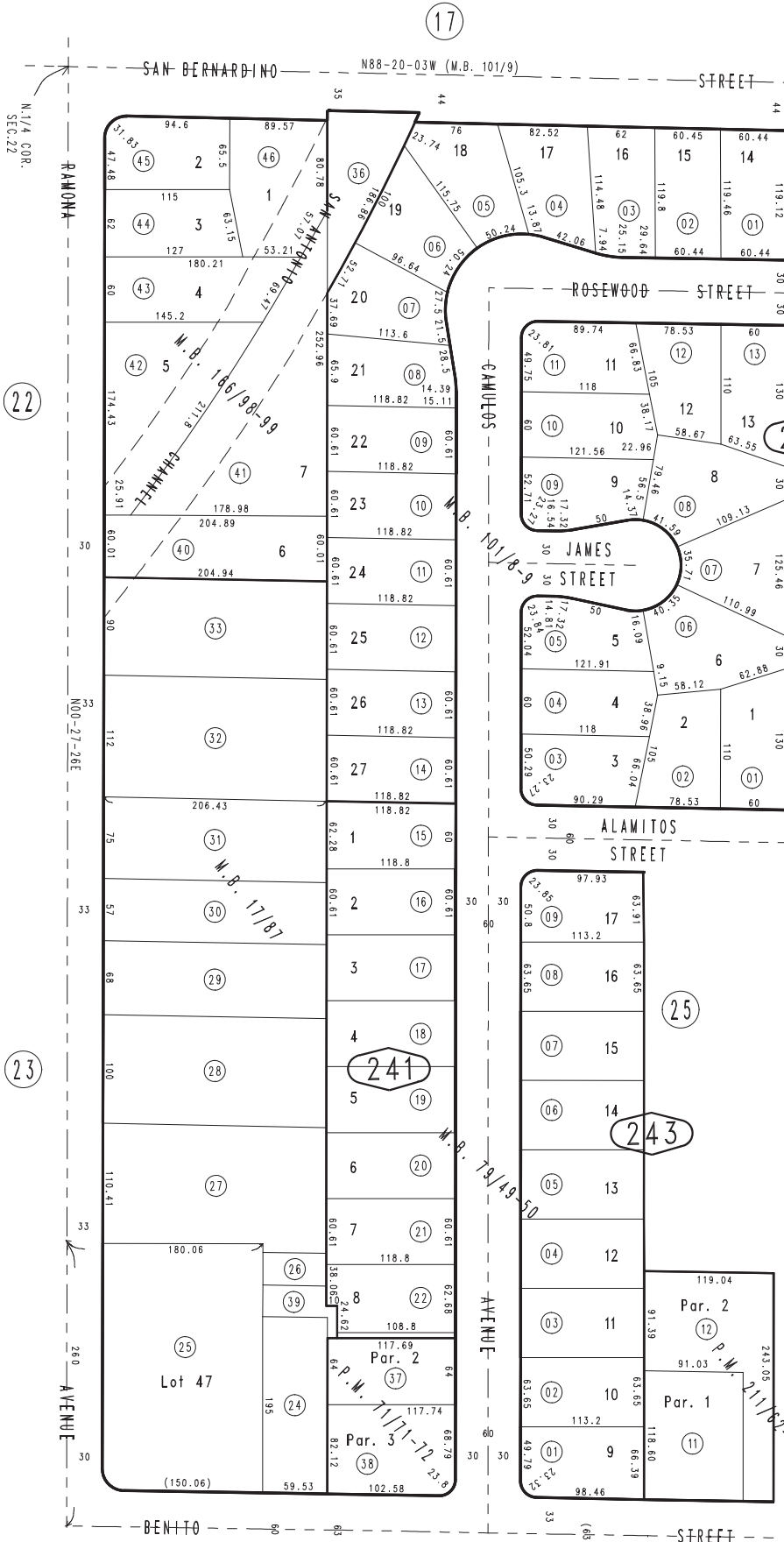
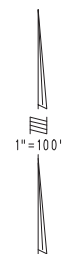
THIS MAP IS FOR THE PURPOSE  
OF AD VALOREM TAXATION ONLY.



Ptn. Claremont Orange Tract  
M.B. 17/87

City of Montclair  
Tax Rate Area  
11008

1009 - 24



February 2004

Parcel Map No. 17462, P.M. 211/62-63  
Tract No. 12228, M.B. 166/98-99  
Ptn. Parcel Map No. 6781, P.M. 71/71-72  
Tract No. 7570, M.B. 101/8-9  
Tract No. 6366, M.B. 79/49-50

Ptn. N.E.1/4, Sec.22  
T.1S.,R.8W.

Assessor's Map  
Book 1009 Page 24  
San Bernardino County

## **EXHIBIT B TO ATTACHMENT NO. 2**

### **LEGAL DESCRIPTION**

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APN:

1009-241-43-0000

Lot 4 Of Tract 12228, In The City Of Montclair, County Of San Bernardino, State Of California,

As Shown On A Map Thereof Recorded In Book 166, Page 98 Of Maps, Of Miscellaneous Maps, In The Office Of The County Recorder Of Said County.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s)      ☐ Limited      ☐ General  
☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)  
\_\_\_\_\_  
\_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

**ATTACHMENT NO. 3**

**CITY DEED**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Montclair Housing Authority  
5111 Benito Street  
Montclair, California 91763  
Attn: Executive Director

APNS: 1009-241-43-0000

[Space above for recorder.]

Exempt from recording fee and documentary transfer  
tax pursuant to Government Code Section 27383 and  
Revenue and Taxation Code Section 11928.

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF MONTCLAIR, a municipal corporation (“Grantor”), hereby grants to the MONTCLAIR HOUSING AUTHORITY, a public body, corporate and politic, that certain real property located in the County of San Bernardino, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

**CITY OF MONTCLAIR,**  
a municipal corporation

By: \_\_\_\_\_  
City Manager

## **EXHIBIT A TO ATTACHMENT NO. 3**

### **LEGAL DESCRIPTION**

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

APN:

1009-241-43-0000

Lot 4 Of Tract 12228, In The City Of Montclair, County Of San Bernardino, State Of California,

As Shown On A Map Thereof Recorded In Book 166, Page 98 Of Maps, Of Miscellaneous Maps, In The Office Of The County Recorder Of Said County.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

)

) ss.

COUNTY OF \_\_\_\_\_

)

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s)      ☐ Limited      ☐ General  
☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

## **CERTIFICATE OF ACCEPTANCE**

This is to certify that the fee interest in real property conveyed under the foregoing Grant Deed by the City of Montclair, a municipal corporation, as to the following property:

Real property in the City of Montclair, County of San Bernardino, State of California, described as follows:

1009-241-43-0000

Lot 4 Of Tract 12228, In The City Of Montclair, County Of San Bernardino, State Of California,

As Shown On A Map Thereof Recorded In Book 166, Page 98 Of Maps, Of Miscellaneous Maps, In The Office Of The County Recorder Of Said County.

is hereby accepted by the Executive Director of the Montclair Housing Authority (“Authority” and “Grantee”) on behalf of the governing board of the Authority pursuant to authority conferred by action of the governing board of the Authority on \_\_\_\_\_, \_\_\_\_\_, and the Grantee consents to recordation thereof by its duly authorized officer.

**MONTCLAIR HOUSING AUTHORITY,**  
a public body, corporate and politic

By: \_\_\_\_\_  
Executive Director



**RESOLUTION NO. 23-04**

**A RESOLUTION OF THE MONTCLAIR HOUSING CORPORATION  
APPROVING AGREEMENT NO. 23-59, AN AFFORDABLE HOUSING  
AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR,  
MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR HOUSING  
CORPORATION**

**WHEREAS**, the City of Montclair (the "City") acquired properties located at 9729 Ramona Avenue (the "Property") with funds from the City's Housing Trust Fund for the purpose of increasing, improving, and preserving the City of Montclair's supply of low- and-moderate income housing available at an affordable cost; and

**WHEREAS**, the City is the owner of that Property within the corporate limits of the City of Montclair; and

**WHEREAS**, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

**WHEREAS**, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

**WHEREAS**, the Montclair Housing Corporation (the "Housing Corporation") was formed as a 501(c)(3) to operate and maintain the housing assets including single and multi-family residential units of the Housing Authority; and

**WHEREAS**, the City desires to convey to the Housing Authority the Property and the Housing Authority desires to acquire the Property from the City; and

**WHEREAS**, upon acquiring of the Property, the Housing Authority intends to lease the Property to the Housing Corporation for operation of the Property as an affordable rental housing resources for low- to moderate-income households; and

**WHEREAS**, Agreement No. 23-59, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, BE IT RESOLVED** that the Montclair Housing Corporation Board of Directors does hereby find, determine, and order as follows:

**SECTION 1:** The above recitals are true and correct and are a substantive part of this Resolution.

**SECTION 2:** The Montclair Housing Corporation hereby finds and determines that the transfer of the Properties to the Montclair Housing Authority will ensure the continued preservation and availability of low- and moderate-income housing is available at an affordable cost.

**SECTION 3:** The Montclair Housing Corporation is hereby authorized and directed to enter Agreement 23-59, an Affordable Housing Agreement by and among the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation.

**SECTION 4:** The Montclair Housing Corporation Secretary shall certify to the adoption of this Resolution.

**APPROVED AND ADOPTED** this XX day of XX, 2023.

**ATTEST:**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

I, Andrea M. Myrick, Secretary of the Montclair Housing Corporation, DO HEREBY CERTIFY that Resolution No. 23-04 was duly adopted by the Montclair Housing Corporation Board at a regular meeting thereof held on the XX day of XX, 2023, and that it was adopted by the following vote, to-wit:

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

---

Andrea M. Myrick  
Secretary

**RESOLUTION NO. 23-03**

**A RESOLUTION OF THE MONTCLAIR HOUSING AUTHORITY  
APPROVING AGREEMENT NO. 23-59, AN AFFORDABLE  
HOUSING AGREEMENT BY AND BETWEEN THE CITY OF  
MONTCLAIR, MONTCLAIR HOUSING AUTHORITY, AND  
MONTCLAIR HOUSING CORPORATION, AND ACCEPTING  
THE TRANSFER OF CERTAIN REAL PROPERTY LOCATED AT  
9729 RAMONA AVENUE FROM THE CITY OF MONTCLAIR**

**WHEREAS**, the City of Montclair (the "City") acquired properties located at 9729 Ramona Avenue (the "Property") with funds from the City's Housing Trust Fund for the purpose of increasing, improving, and preserving the City of Montclair's supply of low- and-moderate income housing available at an affordable cost; and

**WHEREAS**, the City is the owner of that Property within the corporate limits of the City of Montclair; and

**WHEREAS**, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

**WHEREAS**, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

**WHEREAS**, the Montclair Housing Corporation (the "Housing Corporation") was formed as a 501(c)(3) to operate and maintain the housing assets including single and multi-family residential units of the Housing Authority; and

**WHEREAS**, the City desires to convey to the Housing Authority the Property and the Housing Authority desires to acquire the Property from the City; and

**WHEREAS**, upon acquiring of the Property, the Housing Authority intends to lease the Property to the Housing Corporation for operation of the Property as an affordable rental housing resources for low- to moderate-income households; and

**WHEREAS**, Agreement No. 23-59, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, BE IT RESOLVED** that the Montclair Housing Authority Board of Directors does hereby find, determine, and order as follows:

**SECTION 1:** The above recitals are true and correct and are a substantive part of this Resolution.

**SECTION 2:** The Montclair Housing Authority hereby finds and determines that the transfer of the Property to the Montclair Housing Authority will ensure the continued preservation and availability of low- and moderate-income housing is available at an affordable cost.

**SECTION 3:** The Montclair Housing Authority is hereby authorized and directed to enter Agreement 23-59, an Affordable Housing Agreement by and among the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation.

**SECTION 4:** The Montclair Housing Authority agrees to accept the transfer of Property from the City of Montclair. The Executive Director of the Montclair Housing Authority, or designee, is authorized to record the grant deeds and further actions which are necessary or appropriate to transfer the Property to the Montclair Housing Authority.

**SECTION 5:** The Montclair Housing Authority Secretary shall certify to the adoption of this Resolution.

**APPROVED AND ADOPTED** this XX day of XX, 2023.

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Chair

**ATTEST:**

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Secretary

I, Andrea M. Myrick, Secretary of the Montclair Housing Authority, DO HEREBY CERTIFY that Resolution No. 23-03 was duly adopted by the Montclair Housing Authority Board at a regular meeting thereof held on the XX day of XX, 2023, and that it was adopted by the following vote, to-wit:

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

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Andrea M. Myrick  
Secretary

**MINUTES OF THE REGULAR MEETING OF THE PUBLIC WORKS  
COMMITTEE HELD ON THURSDAY, JUNE 15, 2023, AT 4 P.M. IN THE  
THEATER CONFERENCE ROOM 9955 FREMONT AVENUE,  
MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Chair Johnson called the meeting to order at 4:01 p.m.

**II. ROLL CALL**

Present: Mayor Pro Tem Johnson (Chair); Council Member Martinez (Committee Member); City Manager Starr; Director of Economic Development Agency Fuentes; Director of Public Works/City Engineer Heredia, Executive Director of Engineering/Major Projects Manager Hoerning; Director of Community Development Diaz, Project Manager Ortega

Absent: Acting Chief of Police Reed

**III. APPROVAL OF MINUTES**

The Committee approved the minutes of the meeting of May 18, 2023.

**IV. PUBLIC COMMENT — None**

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

**A. OPERATIONS**

**1. MAINTENANCE ACTIVITIES**

An Operations Activities Report for May 2023 was included with the agenda. There were no questions or issues with the report.

**2. ADDITIONAL ITEMS — None**

**B. FACILITIES**

**1. MAINTENANCE ACTIVITIES**

A Facilities Activities Report for May 2023 was included with the agenda. There were no questions or issues with the report.

**2. SPLASH PAD UPDATE**

Director of Public Works/City Engineer Heredia reported that staff is waiting for parts for the controllers. Additionally, staff is addressing the flooring surface of the Splash Pad.

## **C. ENGINEERING DIVISION**

### **1. California Uniform Public Construction Cost Accounting Act (CUPCAA)**

Director of Public Works/City Engineer Heredia reported that **CUPCAA** streamlines the procurement process of development and fast-tracks small public projects resulting in a saving of time and personnel resources.

Director of Public Works/City Engineer Heredia continued that specifically, under the Act, projects between \$60,000 to \$200,000 no longer would have to go to bid. For projects greater than \$200,000, shall continue to observe the formal bidding process. The act also allows the City Manager's authority to immediately award public works projects under \$60,000.

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

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

Director of Community Development Diaz reported the Alexan Kendry Project on the southwest corner of Arrow Highway and Monte Vista Avenue will soon be obtaining building permits. The demo permits and grading permits have already been obtained. All the previous tenants, with the exception of one, of the previous location have relocated.

Director of Community Development Diaz reported that staff is also currently working on plan check review for the Montclair Station project.

Director of Community Development Diaz reported that **Kalaveras** will be going to Planning Commission on June 26, 2023, to address their Conditional Use Permit (CUP) and Precise Plan and Design (PPD) for the complete remodel of the building.

## **VIII. CAPITAL PROJECT UPDATES**

### **A. LOCAL PROJECTS**

#### **1. Alleyway Improvements**

Director of Public Works Heredia reported that fourteen alleyways would be improved throughout the City. She estimates the project will go out to bid in July or August and construction will begin sometime in Fall 2023.

#### **2. Flashing Stop Sign Replacement Program**

Director of Public Works Heredia reported that the materials would arrive at the end of June. Once materials arrive, the installment of the flashing stop signs will commence.

### **B. REGIONAL PROJECTS**

#### **1. I-10 Corridor Project**

Director of Public Works Heredia reported that **Caltrans** will be closing Benson Avenue from June 19, 2023, to August 22, 2023. **Caltrans** continues to work on the median and the center of the bridge. The project will take eight to nine months to address.

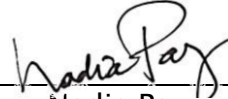
**IX. COMMITTEE AND CITY MANAGER ITEMS**

City Manager Starr reported that the state legislature has approved a \$1,000,000,000 budget for operations of transit programs impacted by the COVID Pandemic. **Metrolink** and other transit services that saw a ridership loss during the pandemic will continue to receive state funding to offset those losses. If **LA Metro** receives money from the state, the City is hopeful **LA Metro** will prioritize the **Foothill Gold Line** as they have previously stated.

**X. ADJOURNMENT**

At 4:21 p.m., Chair Johnson adjourned the meeting of the Public Works Committee. The next meeting of the Public Works Committee is scheduled to be held at 4:00 p.m. on Thursday, July 20, 2023.

Submitted for Public Works Committee  
approval,

A handwritten signature in black ink, appearing to read 'Nadia Paz', is written over a horizontal line.

Nadia Paz

Transcribing Secretary

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
JULY 17, 2023, AT 6:25 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Mayor Pro Tem Johnson called the meeting to order at 6:25 p.m.

**II. ROLL CALL**

Present: Mayor Pro Tem Johnson, Council Member Ruh, 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 June 19, 2023.**

Moved by Council Member Ruh, seconded by Mayor Pro Tem Johnson, and carried unanimously to approve the minutes of the Personnel Committee meeting on June 19, 2023.

**IV. PUBLIC COMMENT – None**

**V. CLOSED SESSION**

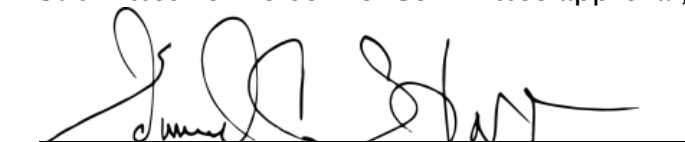
At 6:26 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:56 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Johnson stated that no announcements would be made at this time.

**VI. ADJOURNMENT**

At 6:56 p.m., Mayor Pro Tem Johnson adjourned the Personnel Committee.

Submitted for Personnel Committee approval,

  
\_\_\_\_\_  
Edward C. Starr  
City Manager



MINUTES OF THE ADJOURNED JOINT MEETING OF THE  
MONTCLAIR CITY COUNCIL AND MONTCLAIR HOUSING  
CORPORATION BOARD HELD ON THURSDAY, JUNE 22, 2023, AT  
6:00 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 6:00 p.m.

**II. ROLL CALL**

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

City Manager/Executive Director Starr; Finance Director Kulbeck; Human Services Director Richter; Community Development Director Diaz; City Clerk Myrick

**III. COUNCIL/MHC BOARD WORKSHOP**

**A. Fiscal Year 2023–24 Preliminary Budget Review Presentation**

Finance Director Kulbeck discussed the FY 2023–24 Preliminary Budgets for the City of Montclair and the Montclair Housing Corporation with the aid of a PowerPoint presentation.

During the first segment of her presentation, Finance Manager Kulbeck noted a \$3,785,229 surplus exists in the preliminary General Fund Revenues Budget, and the General Unassigned Reserve is at \$8 million—approximately 22.45 percent of the preliminary General Fund Operating Appropriations Budget, nearing compliance with the Council's Unassigned Reserve Ratio goal of 25 percent. She reviewed significant revenue components of the budget, including property, sales and use, and transactions and use taxes. She then presented the 2023–24 Preliminary Budget Appropriations for the departments and General Fund transfers.

Council Member Lopez received information about which Fire Station would be using the LifePak and what area would be enclosed for the Community Development Department.

Council Member Ruh received clarification from City Manager Starr that betterments would have to come from the City from the Gold Line Betterment Fund, and that the County of San Bernardino does not provide assistance. Council Member Ruh asked if there are plans to build something within the City for homelessness, and it was explained that it would be decided at a later time dependent on available land and funding.

In the next segment of the presentation, Finance Director Kulbeck discussed personnel services for the upcoming Fiscal Year including reclassification of the Deputy Fire Chief to Fire Chief, and reactivation of the Medic Squad.

In the portion titled "Building a Better Montclair," Finance Director Kulbeck discussed efforts the City has undertaken and future strategies identified to improve fiscal and quality of life conditions in the City including:

- Forming a new Transactions and Use Tax District with the passage of Measure L at the 2020 Election, which significantly improved revenues;
- Evaluating service contracting for specified programs for cost savings; considering a Proposition 64 Commercial Cannabis Compliance program including potentially bringing forth a ballot measure at the 2022 General Municipal Election;
- Promote Development in North Montclair pursuant to the Amended North Montclair Specific Plan (NMDSP).

At 6:48 p.m., Mayor Dutrey left City Council Chambers.

At 6:50 p.m., Mayor Dutrey returned to City Council Chambers.

Other goals discussed for “Building a Better Montclair” included:

- The Expanding Role in Promoting Economic Development, by the Montclair Economic Development Agency (EDA), which plans to provide and enhance the City through the Economic Development Assets Fund (EDAF) which has a balance of \$5,623,917 after a proposed transfer in of \$785,229. These funds will be used to provide and enhance funding within the EDA for real property acquisition, affordable housing development, homeless assistance, and economic development activities.

At 7:06 p.m. Council Member Lopez left City Council Chambers.

- In April 2022, the Montclair Housing Authority (MHA) became the beneficiary of \$3.2 million in repaid residual receipt loans that had been provided to Augusta Communities. These funds are restricted for affordable housing programs.

At 7:10 p.m. Council Member Lopez returned to City Council Chambers.

- In 2021 there was an issuance of Lease Revenue Bonds, these were slated to be used in the following four years to complete infrastructure projects identified by City Council for improvement including; Reeder Ranch Park, Parks Master Plan, Flashing Stop Sign Replacement Program

At 7:14 p.m. Council Member Ruh left City Council Chambers.

Mayor Dutrey asked for clarification on improvements to the Saratoga Park baseball field amenities.

At 7:16 p.m. Council Member Ruh returned to City Council Chambers.

City Manager Starr said LD King is working on the proposal.

Council Member Martinez inquired about Opportunity Zones, and City Manager Starr provided clarification on the program.

Council Member Ruh expressed his concerns about how he believes the homelessness issue will be handled by the City.

Mayor Dutrey stated that addressing homelessness issues within the City should be executed at the County level.

In the final segment of her presentation on the City’s budget, Finance Director Kulbeck reviewed Special Purpose Funds established to address current and future liabilities, programs, projects, and goals requiring a commitment of funds not incorporated in the General Fund Operation Budget; and debt service on the 2014 and 2021 issues of Lease Revenue Bonds and 2021 Pension Obligation Bonds.

Council Member Lopez wanted to know if parking would be including in the \$5.6 million request for the Gold Line Betterment Fund. He also noted concerns about the installation of new bike lanes reducing or restricting street parking for residents who do not have driveways.

Mayor Dutrey noted during his absence from the June 19th City Council meeting, the City Council discussed Juneteenth and gave direction to staff. He advised this is a matter that requires a meet and confer process with represented employees and requested the City Council discuss the addition of Juneteenth as a recognized City holiday in a future closed session under labor negotiations.

ACTION	
ACTING:	City Council
MOTION:	Place an item on the agenda to discuss the inclusion of Juneteenth as an official City holiday under labor negotiations during a future regular meeting closed session.

ACTION	
<b>MADE BY:</b> <b>SECOND BY:</b>	Mayor Dutrey Council Member Ruh
<b>AYES:</b> <b>NOES:</b> <b>ABSTAIN:</b> <b>ABSENT:</b>	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
<b>RESULT:</b>	Motion carried 5-0.

**IV. PUBLIC COMMENT — None**

**V. ADJOURNMENT**

At 7:59 p.m., Mayor/Chair Dutrey adjourned the City Council and Montclair Housing Corporation Board, and announced a special meeting would be held on Thursday, June 29, 2023, at 6:00 p.m. in the City Council Chambers to consider adoption of the Fiscal Year 2023-24 City and MHC Budgets and to consider actions on other related matters.

Submitted for City Council/Montclair Housing Corporation Board approval,



Andrea Myrick  
City Clerk

MINUTES OF THE SPECIAL JOINT MEETING OF THE MONTCLAIR CITY COUNCIL AND MONTCLAIR HOUSING CORPORATION BOARD HELD ON THURSDAY, JUNE 29, 2023, AT 6:04 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 6:04 p.m.

**II. PLEDGE OF ALLEGIANCE**

Mayor/Chair Dutrey led meeting participants in the Pledge.

**III. ROLL CALL**

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

City Manager/Executive Director Starr; Finance Manager Kulbeck; Director of Human Services Richter; Director of Community Development Diaz; City Clerk Myrick

**IV. COMMISSION APPOINTMENTS**

**A. Consider Making Appointments to Three (3) Scheduled Vacancies on the Planning Commission for Full Four-Year Terms Ending June 30, 2027**

ACTION - Commission Appointments	
<b>ACTING:</b>	City Council
<b>MOTION:</b>	Reappoint <b>Jaso Sanchez</b> and <b>Sergio Sahagun Sr.</b> , and appoint <b>Xavier Mendez</b> , to the three scheduled vacancies on the Planning Commission for full four-year terms ending June 30, 2027.
<b>MADE BY:</b> <b>SECOND BY:</b>	Mayor Pro Tem Johnson Council Member Lopez
<b>AYES:</b> <b>NOES:</b> <b>ABSTAIN:</b> <b>ABSENT:</b>	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
<b>RESULT:</b>	Motion carried 5-0.

**V. CONSENT CALENDAR**

ACTION - Consent Calendar	
<b>ACTING:</b>	City Council Montclair Housing Corporation Board
<b>MOTION:</b>	Approve the Consent Calendar as presented.
<b>MADE BY:</b> <b>SECOND BY:</b>	Mayor Pro Tem/Vice Chair Johnson Council Member/Director Lopez
<b>AYES:</b> <b>NOES:</b> <b>ABSTAIN:</b> <b>ABSENT:</b>	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
<b>RESULT:</b>	Motion carried 5-0.

**A. Resolutions**

1. **Adoption of Resolution No. 23-3410 Authorizing Approval of the Change in Population in San Bernardino County During 2022 for the Purpose of Calculating the Gann Spending Limit for Fiscal Year 2023-24**

ACTION – Consent Calendar – Item A-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

2. **Adoption of Resolution No. 23-3411 Establishing an Appropriations Limit for Fiscal Year 2023-24 Pursuant to Article 13-B of the California Constitution and to Section 7910 of the Government Code**

ACTION – Consent Calendar – Item A-2	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

3. **Adoption of Resolution No. 23-3412 Adopting the City of Montclair Fiscal Year 2023-24 Annual Budget**

ACTION – Consent Calendar – Item A-3	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

4. **Adoption of Resolution No. 23-02 Adopting the Fiscal Year 2023-24 Budget for the Montclair Housing Corporation**

The Montclair Housing Corporation Board of Directors adopted Resolution No. 23-02 adopting the Fiscal Year 2023-24 Budget for the Montclair Housing Corporation.


ACTION – Consent Calendar – Item A-4	
ACTING:	Montclair Housing Corporation Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**VI. PULLED CONSENT CALENDAR ITEMS — None**

**VII. ADJOURNMENT**

At 6:10 p.m., Mayor/Chair Dutrey adjourned the City Council and Montclair Housing Corporation Board.

Submitted for City Council/Montclair Housing Corporation 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, JULY 17, 2023, 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 Police Chaplain/Pastor Vicki Brobeck, Grace Fellowship Foursquare Church, gave the invocation.

III. PLEDGE OF ALLEGIANCE

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

IV. ROLL CALL

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

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

V. PRESENTATIONS

A. Recognition of Outgoing Planning Commissioner Ginger Eaton

Mayor Dutrey presented a Certificate of Recognition to outgoing Planning Commissioner **Ginger Eaton** for her 4 years of dedicated service on the Planning Commission.

Mayor Pro Tem Johnson presented **Mrs. Eaton** with an award commemorating her service to the City of Montclair.

**Mrs. Eaton** was also presented with certificates from the offices of **Senator Susan Rubio** and **Congresswoman Norma Torres**.

B. Community Activities Commission Presentation of 2023 Home Beautification Awards

CAC Vice Chair Escalante led a visual presentation of the winning homes of the 2023 Home Beautification Contest.

Mayor Dutrey presented awards to the following winners:

***Traditional Home of the Year***

10215 Vernon Avenue — **Vanessa and Nick Rodriguez**

***Drought Tolerant Home of the Year***

11185 Shetland Avenue — **Irene and Humberto Chavez**

VI. PUBLIC COMMENT

- **Carolyn Raft, Board Trustee, West Valley Mosquito and Vector Control District**, reminded the public that in August, sterile male mosquitoes will be released to help control the mosquito population in surrounding areas. She recognized that **Joseph Govea** passed away and offered her condolences to his family. She wished City Manager Starr a happy birthday.
- **Joana Lubmann, Neware**, stated she was speaking for businesses located on Brooks Street, explaining they are experiencing significant issues regarding theft, threats, and vandalism. They requested that these issues be taken seriously and that the City help to prevent them.

- **Abel Benitez**, resident, stated he is a participant in the Community Garden and requested the program rules be revised to allow families to utilize more than one plot.
- **Joan Lindhorst**, resident, expressed frustration with a lack of communication from the Code Enforcement Division regarding her recent complaints about a neighbor's unkempt yard.
- **Herman Janssen** expressed his support for **Bill Kaufman** operating a commercial cannabis business in the City.
- **Bill Kaufman** provided an update on his unsuccessful attempts to get a business license from City Hall for a commercial cannabis business out of the **Shoe City** building on Central Avenue and Moreno Street.

**VII. PUBLIC HEARINGS — None**

**VIII. CONSENT CALENDAR**

<b>ACTION – Consent Calendar</b>	
<b>ACTING:</b>	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
<b>MOTION:</b>	Approve the Consent Calendar with a revision to A-1.
<b>MADE BY:</b> <b>SECOND BY:</b>	Council Member/Director Lopez Council Member/Director Ruh
<b>AYES:</b> <b>NOES:</b> <b>ABSTAIN:</b> <b>ABSENT:</b>	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
<b>RESULT:</b>	Motion carried 5-0.

**A. Approval of Minutes**

**1. Regular Joint Meeting — June 19, 2023**

<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 Calendar; motion carried 5-0, with a revision to include a comment by Council Member Lopez that was inadvertently omitted.

**B. Administrative Reports**

**1. Consider Receiving and Filing City Treasurer's Report – May 2023**

<b>ACTION – Consent Calendar – Item B-1</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

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

ACTION – Consent Calendar – Item B-2	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**3. Consider Receiving and Filing SA Treasurer's Report – May 2023**

ACTION – Consent Calendar – Item B-3	
ACTING:	Successor Agency Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**4. Consider Approval of SA Warrant Register – May 2023**

ACTION – Consent Calendar – Item B-4	
ACTING:	Successor Agency Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**5. Consider Receiving and Filing MHC Treasurer's Report – May 2023**

ACTION – Consent Calendar – Item B-5	
ACTING:	Montclair Housing Corporation Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**6. Consider Approval of MHC Warrant Register – May 2023**

ACTION – Consent Calendar – Item B-6	
ACTING:	Montclair Housing Corporation Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**7. Consider Receiving and Filing of MHA Treasurer's Report – May 2023**

ACTION – Consent Calendar – Item B-7	
ACTING:	Montclair Housing Authority Commissioners
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**8. Consider Approval of MHA Warrant Register – May 2023**

ACTION – Consent Calendar – Item B-8	
ACTING:	Montclair Housing Authority Commissioners
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**9. Consider Authorizing a \$151,164 Appropriation from California Department of Parks and Recreation Per Capita Grant Funds and a \$3,174,739 Appropriation from 2021 Lease Revenue Bond Funds for Costs Related to Construction of the Sunset Park Beautification Project**



**Consider Approving the Plans and Specifications and Authorizing Staff to Advertise for Bid Proposals for construction of the Sunset Park Beautification Project**

Councilmember Lopez received clarification from City Manager Starr on the project cost.

ACTION – Consent Calendar – Item B-9	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

10. **Consider Authorizing the Use of 2018 and 2019 Justice Assistance Grant Funds Totaling \$29,884 Toward the Cost of Transitioning to a Records Management System Compliant with the National Incident-Based Reporting System**

ACTION – Consent Calendar – Item B-10	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

11. **Consider Authorizing the Receipt of \$15,717 from the FY 2021 State Homeland Security Grant Program to Purchase Eleven AccuRad Personal Radiation Detectors**

**Consider Authorizing a \$15,717 Appropriation from the Public Safety Grant Capital Outlay Machinery and Tools Account to Purchase Eleven AccuRad Personal Radiation Detectors from Mirion Technologies**

Mayor Pro Tem Johnson received clarification from Chief Pohl on what a personal radiation detector was.

ACTION – Consent Calendar – Item B-11	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

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

ACTION – Consent Calendar – Item B-10	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**C. Agreements**

1. **Consider Approval of Agreement No. 23-42 with Liebert Cassidy Whitmore for Participation in the East Inland Empire Employment Relations Consortium and Premium Liebert Library Subscription, Subject to Any Revisions Deemed Necessary by the City Attorney**

ACTION – Consent Calendar – Item C-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

2. **Consider Approval of Agreement No. 23-43 with Civic Publications, Inc., for Public Education and Community Outreach Services, Subject to Any Revisions Deemed Necessary by the City Attorney**

ACTION – Consent Calendar – Item C-2	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

3. **Consider Ratifying Agreement No. 23-44 with Colts Landscape, Inc. for Landscape Maintenance Services**  
**Consider Authority City Manager Edward C. Starr to Sign Said Agreement**

ACTION – Consent Calendar – Item C-3	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

4. **Consider Awarding a Contract to Hyper Electric in the Amount of \$154,350 for the Electric Vehicle Charging Stations Project**

**Consider Authorizing a \$15,500 Construction Contingency for the Project**

**Consider Approval of Agreement No. 23-45 with Hyper Electric for Construction of the Project, Subject to Any Revisions Deemed Necessary by the City Attorney**

ACTION – Consent Calendar – Item C-4	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

5. **Consider Approval of Agreement No. 23-46 with BFK Architecture + Planning for Engineering Design Services for the Montclair Branch Public Library Restrooms, Courtyard, and Fire Stations Remodel Project, Subject to Any Revisions Deemed Necessary by the City Attorney**

**Consider Authorizing a \$185,000 Appropriation from 2021 Lease Revenue Bond Proceeds for Costs Related to Agreement No. 23-46**

**Consider Authorizing a \$16,760 Design Services Contingency for the Project**

ACTION – Consent Calendar – Item C-5	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

6. **Consider Approval of Agreement No. 23-47 With Nutrition Ink to Provide Nutrition Education Services for the City's Senior Citizen Nutrition Program, Subject to Any Revisions Deemed Necessary by the City Attorney**

ACTION – Consent Calendar – Item C-6	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

7. **Consider Approval of Agreement No. 23-48 with Suzanne Yoakum to Provide Case Management Services for the Senior Center, Subject to Any Revisions Deemed Necessary by the City Attorney**

ACTION – Consent Calendar – Item C-7	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

8. **Consider Approval of Agreement No. 23-49 with Misha L. Penn to Provide Grant Management and Fiscal Compliance Services for the Human Services Department, Subject to Any Revisions Deemed Necessary by the City Attorney**

ACTION – Consent Calendar – Item C-8	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

9. **Consider Approval of Agreement No. 23-52 with ZPR's House of Car Wash for Car Wash Services for City Vehicles**

ACTION – Consent Calendar – Item C-9	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

10. **Consider Approval of Agreement No. 23-53 with the Montclair Chamber of Commerce to Provide Services to Promote Local Economic Development, Subject to Any Revisions Deemed Necessary by the City Attorney**

Mayor Pro Tem/Vice Chair Johnson declared her abstention on Item C-10.

ACTION – Consent Calendar– Item C-10	
ACTING:	City Council
MOTION:	Approve Item C-10.
MADE BY: SECOND BY:	Council Member/Director Lopez Council Member/Director Martinez
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Martinez, Ruh, Dutrey None Johnson None
RESULT:	Motion carried 4-0-1.

11. **Consider Approval of Agreement No. 23-55 with TOC Public Relations to Develop a Recruitment Website Exclusively for the Police Department, Including a Photo and Video Recruitment Package and a Social Media Ad Campaign for the Purpose of Attracting and Recruiting Police Officer Candidates, Subject to Any Revisions Deemed Necessary by the City Attorney**

**Consider Authorizing Acting Police Chief Jason Reed to Sign Said Agreement**

**Consider Authorizing a \$40,000 Appropriation from the Federal Asset Forfeiture Fund for Costs Associated with Agreement No. 23-55**

ACTION – Consent Calendar – Item C-11	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**D. Resolutions**

- 1. Consider Adoption of Resolution No. 23-3409 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges**

ACTION – Consent Calendar – Item D-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

- 2. Consider Adoption of Resolution No. 23-3415 Approving Agreement No. 23-54, an Affordable Housing Agreement with the Montclair Housing Authority and the Montclair Housing Corporation; Authorizing the Transfer of 10053 Central Avenue, Montclair, to the Montclair Housing Authority for use as Affordable Housing; and Declaring Such Real Property to be Exempt Surplus Land**

ACTION – Consent Calendar – Item D-2	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**Consider Adoption of MHC Resolution No. 23-03 Approving Agreement No. 23-54, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Authority**

ACTION – Consent Calendar – Item D-2	
ACTING:	Montclair Housing Corporation Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**Consider Adoption of MHA Resolution No. 23-02 Approving Agreement No. 23-54, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Corporation, and Accepting the Transfer of Certain Real Property from the City of Montclair**

ACTION – Consent Calendar – Item D-2	
ACTING:	Montclair Housing Authority Commissioners
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**IX. PULLED CONSENT CALENDAR ITEMS — None**

## **X. COMMUNICATIONS**

### **A. Department Reports**

#### **1. Police Department — National Night Out**

Acting Police Chief Reed provided information on this year's National Night Out that will be held on August 1st from 6:30 p.m.–10 p.m. at Alma Hofman Park. It will give the community the opportunity to learn more about the Montclair Police Department. Police Officers will be there to speak to the public and allow kids the opportunity to see and handle some of the tools of the trade. There will be different booths, including food vendors, and free face painting for the kids. The movie, "Jungle Cruise," will be played at 8:15 p.m. The American Red Cross will be set-up for blood donations at the Senior Center from 2:00 p.m.–8:00 p.m.

### **B. City Attorney**

City Attorney Robbins requested the City Council meet in closed session concerning the following:

#### **1. Request for City Council to Meet in Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with Designated Labor Negotiator Edward C. Starr**

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

#### **2. Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations**

*Property: APN 1009-241-43-0-000*  
*Negotiating Parties: City of Montclair and Chen Sandy Living Trust*  
*Agency Negotiator: Edward C. Starr, City Manager*  
*Under Negotiations: Recommendations Regarding Purchase Price*

### **C. City Manager/Executive Director**

City Manager Starr made the following comments:

1. He congratulated former Deputy Fire Chief Pohl on his appointment to Fire Chief, and former Police Captain Jason Reed on his appointment to Acting Police Chief.
2. In relation to **Mr. Kaufman's** public comments, he advised that commercial cannabis activities are not legal in the City of Montclair.

### **D. Mayor/Chair**

Mayor/Chair Dutrey made the following comments:

1. He recognized the month of July for the following: Canada Day and Bastille Day.
2. He recognized Independence Day taking place on July 4th, and thanked the Police and Fire Departments for their efforts controlling illegal fireworks.
3. He requested staff schedule a workshop to update the City Council on the bond funds that have been spent and future bond allocation plans.

#### E. Council Members/Directors

1. Mayor Pro Tem/Vice Chair Ruh commented that he did not notice many illegal fireworks in his area on the Fourth of July. He reminded the public of local street closures due to construction. He reported his attendance at an Open House event held by **Assembly Member Freddie Rodriguez**. He acknowledged the passing of **Juan Campos**, a local pastor, and expressed his condolences.
2. Council Member/Director Lopez commented that phone lines were busy on the Fourth of July do to concerned residents calling in, and expressed his hope that the community takes into consideration the mental wellbeing of veterans and pets next year when contemplating lighting illegal fireworks. He commended **Montclair Little League's** All Stars team and Montclair's Travel Ball team on their accomplishments this season.
3. Mayor Pro Tem/Vice Chair Johnson reminded the community that an E-waste event hosted by the **Montclair Chamber of Commerce** is coming up. She also announced that on August 17th the **Chamber** will be holding a *Night Under the Stars* event at the **Chino Basin Water Conservation District**.

#### F. Committee Meeting Minutes

The following committee minutes were received and filed for informational purposes:

1. Public Works Committee – May 18, 2023
2. Personnel Committee – June 19, 2023

#### XI. CLOSED SESSION

At 8:40 p.m., the City Council went into closed session to discuss labor negotiations and real property negotiations.

#### XII. CLOSED SESSION ANNOUNCEMENTS

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

#### XIII. ADJOURNMENT

At 9:26 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

*The meeting was adjourned in memory of Joseph Govea and Pastor Juan Campos.*