

CITY OF MONTCLAIR

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

AGENDA

Monday, May 15, 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, May 15, 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 at least one hour before the meeting begins.*

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

AGENDA

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

II. INVOCATION

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

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

V. PRESENTATIONS — None

VI. PUBLIC COMMENT

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

*If you did not submit a Speaker Card and would like to speak on an item on the **Consent Calendar**, please raise your hand during Public Comment to announce the agenda item you would like to provide comments on. The presiding officer will 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

	<u>Page No.</u>
A. Approval of Minutes	
1. Adjourned Meeting — May 1, 2023 [CC]	155
2. Regular Joint Meeting — May 1, 2023 [CC/SA/MHC/MHA/MCF]	156
B. Administrative Reports	
1. Consider Receiving and Filing of Treasurer’s Report [CC]	4
2. Consider Approval of Warrant Register & Payroll Documentation [CC]	5
3. Consider Receiving and Filing of Treasurer’s Report [SA]	6
4. Consider Approval of Warrant Register [SA]	7
5. Consider Receiving and Filing of Treasurer’s Report [MHC]	8
6. Consider Approval of Warrant Register [MHC]	9
7. Consider Receiving and Filing of Treasurer’s Report [MHA]	10
8. Consider Approval of Warrant Register [MHA]	11
9. Consider Authorizing the City to Opt-In to Additional Opioid Settlements and Permitting the City Manager to Sign Formal and Binding Documents on Behalf of the City Related to Participation in the Settlements [CC]	12
10. Consider Declaring a 2006 Chevrolet Malibu as Surplus and Available for Parts or for Sale at Auction in Lieu of a 2015 Ford Interceptor Utility Vehicle Already Approved for Surplus in the Fiscal Year 2022-23 Budget [CC]	14
11. Consider Authorizing the Purchase of two Prefabricated Restroom Units for Sunset Park from Exeloo Corporation in the Total Amount of \$588,600 [CC]	
Consider Authorizing \$590,000 from 2021 Lease Revenue Bond Proceeds for the Purchase of two Exeloo Prefabricated Restroom Units to Support the Sunset Park Beautification Project [CC]	
Consider Authorizing a \$1,400 Contingency for Miscellaneous Unforeseen Expenses [CC]	15
C. Agreements	
1. Consider Approval of Agreement No. 23-31 with L.D. King, Inc. to Provide Plan Check, Engineering, Design, and Land Surveying Services on an As-Needed Basis, Subject to any Revisions Deemed Necessary by the City Attorney [CC]	36
2. Consider Approval of Agreement No. 23-32 with Blais & Associates, Inc. for Grant Writing Services [CC]	56
3. Consider Approval of Agreement No. 23-33 with Omnitrans for Operation and Maintenance of the West Valley Connector Bus Rapid Transit Project [CC]	74

D. Resolutions

1. Consider Adoption of Resolution No. 23-3403 Approving Agreement No. 23-27, an Affordable Housing Agreement with the Montclair Housing Authority and the Montclair Housing Corporation; Authorizing the Transfer of 9814, 9875, and 9878 Monte Vista Avenue, Montclair, to the Montclair Housing Authority for use as Affordable Housing Units; and Declaring Such Real Property to be Exempt Surplus Land [CC]

Consider Adoption of MHC Resolution No. 23-01 Approving Agreement No. 23-27, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Authority [MHC]

Consider Adoption of MHA Resolution No. 23-01 Approving Agreement No. 23-27, 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 \$75,000 Appropriation from the Housing Trust Fund for Rehabilitation of Certain Real Property [MHA]

93

IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

A. Department Reports

1. Public Works — Update on Alma Hofman Park Maintenance
2. Human Services — Upcoming Events and Programs

B. City Attorney

C. City Manager/Executive Director

D. Mayor/Chairperson

1. Announcement of Vacancies on Planning Commission (3)
Apply at www.cityofmontclair.org by May 23, 2023, at 5:30 p.m.

E. Council Members/Directors

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

1. Personnel Committee Meeting — May 1, 2023 [CC]

154

XI. 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, June 5, 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 in the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. Please call the City Clerk's Office at (909) 625-9416 or send an e-mail to cityclerk@cityofmontclair.org to request documents via e-mail.

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

I, Andrea M. Myrick, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at <https://www.cityofmontclair.org/agendas/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, May 11, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 15, 2023	FILE I.D.:	FIN520
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	1	PREPARER:	J. KULBECK
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending April 30, 2023.

BACKGROUND: Included in the City Council's agenda packet is a copy of the Treasurer's Report for the period ending April 30, 2023.

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

RECOMMENDATION: Staff recommends the City Council receive and file the Treasurer's Report for the month ending April 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 15, 2023	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	2	PREPARER:	A. VONG/V. FLORES
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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

BACKGROUND: Mayor Pro Tem Johnson has examined the Warrant Register dated May 15, 2023, and the Payroll Documentation dated March 26, 2023, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated May 15, 2023, totals \$1,295,749.42.

The Payroll Documentation dated March 26, 2023 totals \$732,537.05 gross, with \$507,057.87 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:	MAY 15, 2023	FILE I.D.:	FIN510
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	3	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The City Council acting as Successor to the Redevelopment Agency Board of Directors (Successor Agency Board) is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending April 30, 2023, pursuant to state law.

BACKGROUND: Included in the Successor Agency Board's agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending April 30, 2023.

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

RECOMMENDATION: Staff recommends the Successor Agency Board receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending April 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 15, 2023	FILE I.D.:	FIN530
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	4	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending April 30, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Successor to the Redevelopment Agency Warrant Register dated 04.01.23-04.30.23 in the amounts of \$7,627.60 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds, and finds it to be in order.

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

RECOMMENDATION: Vice Chair Johnson recommends the City Council as Successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending April 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 15, 2023	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	5	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending April 30, 2023, pursuant to state law.

BACKGROUND: Included in the Montclair Housing Corporation Board agenda packet is a copy of the Treasurer's Report for the period ending April 30, 2023.

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

RECOMMENDATION: Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending April 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 15, 2023	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	6	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending April 30, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Warrant Register dated 04.01.23-04.30.23 in the amount of \$173,070.47 for the Montclair Housing Corporation and finds it to be in order.

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

RECOMMENDATION: Vice Chair Johnson recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending April 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 15, 2023	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	7	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The Montclair Housing Authority Commission is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending April 30, 2023, pursuant to state law.

BACKGROUND: Included in the Montclair Housing Authority Commission's agenda packet is a copy of the Treasurer's Report for the period ending April 30, 2023.

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

RECOMMENDATION: Staff recommends the Montclair Housing Authority Commission receive and file the Treasurer's Report for the month ending April 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 15, 2023	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	8	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The Montclair Housing Authority Commission is requested to consider receiving and filing the Warrant Register for the month ending April 30, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Warrant Register dated 04.01.23-04.30.23 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

RECOMMENDATION: Vice Chair Johnson recommends the Montclair Housing Authority Commission approve the Warrant Register for the period ending April 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE: MAY 15, 2023 **FILE I.D.:** LIT200
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** CITY MGR.
ITEM NO.: 9 **PREPARER:** J. KULBECK
SUBJECT: CONSIDER AUTHORIZING THE CITY TO OPT-IN TO ADDITIONAL OPIOID SETTLEMENTS AND PERMITTING THE CITY MANAGER TO SIGN FORMAL AND BINDING DOCUMENTS ON BEHALF OF THE CITY RELATED TO PARTICIPATION IN THE SETTLEMENTS

REASON FOR CONSIDERATION: At the November 15, 2021, Council Meeting the City Council agreed to opt-in to two national opioid settlements with pharmaceutical distributors, McKesson, Cardinal Health, and AmerisourceBergen; and one manufacturer, Janssen Pharmaceuticals, Inc., and its parent company Johnson & Johnson. The State of California has elected to participate in five additional national settlements related to the opioid crisis. Additional settlements that would resolve all opioid litigation brought by states and local political subdivisions have been reached against three more pharmaceutical distributors of opioids and two manufacturers. Each subdivision in the state may participate and potentially receive a distribution of funds from the settlements.

The City Council is requested to consider authorizing the City to opt-in to the additional national opioid settlements and permit the City Manager to sign all related documents.

BACKGROUND: As the United States continues to address the ongoing public health crisis of opioid abuse, addiction, overdose, and death, settlement negotiations have continued with pharmaceutical distributors and manufacturers. In late 2022, additional settlement agreements were reached with three pharmaceutical distributors, CVS, Walgreens, and Walmart; and two manufacturers, Allergan and Teva.

The proposed settlements require the pharmaceutical distributors to pay up to \$13.16 billion over a term of 15 years and the manufacturers to pay up to \$5.6 billion over 13 years, for a total of \$18.76 billion. Of the settlement amount, \$16.2 billion is reserved for state and subdivision participants to remedy and lessen the impacts of the opioid crisis.

Each of the proposed settlements has two key participations steps:

1. Each state must first decide whether to participate in the Settlements. California has joined both settlements.
2. Subdivisions within each state must then decide whether to participate in the settlements. Generally, if more subdivisions participate, a more significant share of settlement funds will flow to that state and its subdivisions. City staff is recommending Montclair's participation in the settlements.

City staff has determined that the City is eligible to participate in these settlements. If the City Council approves the City's participation in the opioid settlements, City staff will complete the documents required to participate.

The State Attorney General will develop a formula for the distribution of funds to the participating states. The formula considers population and the severity of harm caused by the opioid epidemic in each participating state. Each state then allocates funds from the settlements to subdivisions based either on an allocation agreement between the respective state and its subdivisions, applicable state allocation legislation, or default provisions contained in the settlements. California is proposing a state-subdivision allocation agreement, which will be available on the national settlement website.

While all subdivisions in a state may participate in the settlements, not all subdivisions will be eligible to receive direct payments if the disbursement is considered too small to add a meaningful abatement response.

While insufficient to abate the opioid epidemic fully, the amounts paid under these additional settlements will allow the state and its subdivisions to commence meaningful change to curb opioid addiction, overdose, and death. The prompt distribution of settlement funds would enable governments to address the epidemic in their respective states and communities as soon as practicable. Further, failure by subdivisions to participate could result in failure to finalize the settlements and return each case in the class action to their home states for separate litigation. Approximately sixty-percent of the abatement funds are in the form of “incentive payments” to states with higher subdivision participation.

Additional actions by the City Council may be required based on the final determination by the California State Attorney General. These may include entering into a Participation Agreement, executing a Release, and adopting a Resolution.

The City Attorney will continue to monitor requirements related to participation in the opioid settlements.

FISCAL IMPACT: There would be no direct fiscal impact to the General Fund should the City Council authorize the City to opt-in to the opioid settlements; however, failure to participate will result in the City receiving no funding from the settlements when such funding is available for distribution.

Participation in the settlements may result in an undetermined distribution of funds to the City to assist with abatement of the opioid crisis in Montclair, and provide relief to local participants impacted by the crisis.

RECOMMENDATION: Staff recommends the City Council authorize the City to opt-in to these additional National Opioid Settlements and permit the City Manager to sign formal and binding documents on behalf of the City related to participation in the settlements.



CITY COUNCIL AGENDA REPORT

DATE: MAY 15, 2023 **FILE I.D.:** PRK 650
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 11 **PREPARER:** R. HOERNING

SUBJECT: CONSIDER AUTHORIZING THE PURCHASE OF TWO PREFABRICATED RESTROOM UNITS FOR SUNSET PARK FROM EXELOO CORPORATION IN THE TOTAL AMOUNT OF \$588,600

CONSIDER AUTHORIZING \$590,000 FROM 2021 LEASE REVENUE BOND PROCEEDS FOR THE PURCHASE OF TWO EXELOO PREFABRICATED RESTROOM UNITS TO SUPPORT THE SUNSET PARK BEAUTIFICATION PROJECT

CONSIDER AUTHORIZING A \$1,400 CONTINGENCY FOR MISCELLANEOUS UNFORESEEN EXPENSES

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the purchase of two prefabricated restroom units for the Sunset Park Beautification Project.

Copies of the quotes are attached for City Council review and consideration.

BACKGROUND: The City is working on preparing construction documents and acquiring a United State Army Corp of Engineers (USACE) permit for the construction of the Sunset Park Beautification Project, including a segment of the San Antonio Creek Trail adjacent to the park. The project includes the construction of two restroom units strategically located on the north and south side of the park to service the two playground areas and major park amenities like the outside theater area and shaded picnic cluster areas. These two restrooms are similar to the recently implemented self-cleaning restroom at the Montclair Transcenter. The Sunset Park restroom facilities will each consist of one standard and one American Disability Act (ADA) compliant restroom and a separate IT/equipment room. This IT/equipment room will support the park and San Antonio Creek Trail security system.

Two comparable quotes were received from known manufacturers of prefabricated public restroom facilities, the Public Restroom Company and Exeloo Company. Providing a single structure that could address the separate IT/equipment room to house the park security system was an important consideration. The Public Restroom Company was not able to easily accommodate the IT/equipment room. As such, an additional separate facility would have been required. This would have increased costs, and required separate siting of this independent structure, which may have made it more prone to vandalism. The Exeloo Company manufacturer had a restroom/attendant room facility that it supplied to the City of Denver, Colorado. This facility was easily adjusted to meet the City's security system room needs within the restroom facility footprint. Co-locating these functions minimized the number of structures improving the overall efficiency of the park facility layout. The cost for this restroom modification was reasonable. Additionally, the recently constructed Transcenter Exeloo restroom unit is providing services to a significant number of users (202 average daily users or approximately 6,000 monthly) and is performing satisfactorily. For these reasons, staff is recommending the Exeloo Company facility.

Fabrication and delivery of the restroom units are long lead items. Purchase of these units is necessary to ensure the units will be delivered and installed by the Sunset Park Beatification Project Contractor within the Clean California Grant project delivery.

FISCAL IMPACT: The estimated construction cost for the Sunset Park improvements exceeds the awarded California Park & Recreation Grants and Clean California Grant funding. The cost associated with the purchase of the two Exeloo Restroom Units is \$588,600. Staff is requesting an additional \$1,400 contingency for unforeseen expenses. Funds for this purchase would be provided from 2021 Lease Revenue Bond funds.

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

1. Authorize the purchase of two prefabricated restroom units for Sunset Park from Exeloo Corporation in the total amount of \$588,600.
2. Authorize a \$590,000 appropriation from 2021 Lease Revenue Bond Proceeds for the purchase of two Exeloo Prefabricated Restroom Units to support the Sunset Park Beautification Project.
3. Authorize a \$1,400 contingency for miscellaneous unforeseen expenses.

Infrastructure Fund Capital Project Funding Information

Project Name: Sunset Park Improvement Project

Project Details: Design and Construction of Sunset Park. Improvements includes a bicycle trail, walking pathways, exercise equipment, playground equipment, restrooms, shade structures, picnic tables, parking lot improvements, lighting, irrigation and landscape improvements.

Preparation Date: May 9, 2023

Department: Public Works/Engineering Department

Project No. (Assigned by Finance): _____

Contact/Ext.: R. Hoerning / 446

Phase	Fiscal Years					Total	Fund/Program
	Prior Years	2019/2020	2020/2021	2021/2022	2022/2023		
Environmental							
Design				50,388.00 198,602.00	590,000.00	50,388.00 788,602.00	Per Capita 2021 LRB
Construction							
Total	0.00	0.00	0.00	248,990.00	590,000.00	4,325,261.00	151,164.00 4,174,097.00 5,164,251.00

Approvals:

Department: Public Works/Engineering

Date: _____

Finance By: _____

Date: _____

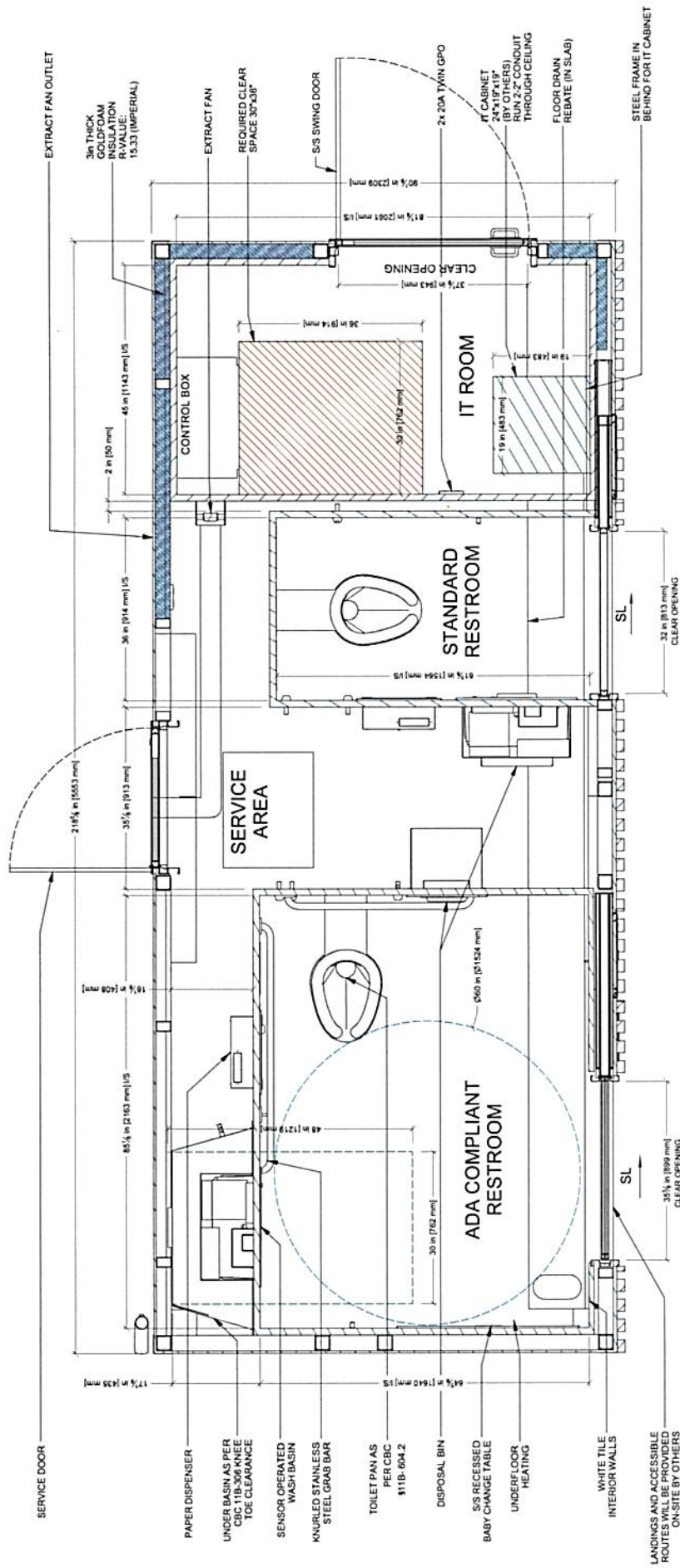
City Council Date: _____

Total Project Cost: 5,164,251.00

Revision Number: _____

Exhibit A

FLOOR PLAN



exeloo

New Zealand - Exeloo LTD
 20/23 1st Street, North Sydney, NSW 2060
 PO Box 84-120, Wairoa 0687
 Auckland, New Zealand
 T: (0623) 393 268

Australia - Exeloo PTY
 1015 Anderson Drive, Suite 100
 San Luis Obispo, CA 93401
 PO Box 13312, San Luis Obispo, CA 93408
 T: (805) 978-3333, 335-3525

USA - Exeloo CORP

Project: **JUPITER PLATINUM 23DSA TRIPLE ACCESSIBLE, STANDARD & IT ROOM, SUNSET PARK, MONTCLAIR, USA**

Scale: **NOT FOR CONSTRUCTION**

Check by: **JJG** 18/08/2020 6 / 9

Drawn by: **1-A** 27/04/2023

Approved by: **AS-JUP23DSA-US**

Specification Subject to Change Without Notice

Restroom Facility Footprint

Exhibit A



Front Restroom View (Photo Film Wrap – Sample Concept Image)

Exhibit A



Rear Service Entrance View (Photo Film Wrap – Sample Concept Image)

Exhibit A



Side IT Entrance View (Photo Film Wrap – Sample Concept Image)

Exhibit A



Front Restroom View (Wood Slat Exterior – Montclair Transcenter)

Exhibit A



Side IT Entrance View (Wood Slat Exterior – Montclair Transcenter)

QUOTATION DETAIL



PROPOSED EXELOO JUPITER FULLY AUTOMATED TWIN CUBICLE RESTROOM w/ IT ROOM

FOR: SUNSET PARK SOUTH, MONTCLAIR

9-May-23

1	Jupiter 22DA+IT Room	238,100	238,100
---	----------------------	---------	---------

Selected Optional Items

1	Baby Change Recessed Stainless Steel	2,600	2,600
2	Disposal Chute - Large	1,400	2,800
1	Photofilm Cladding	8,900	8,900
2	2" Conduit to IT room + Prewire	1,250	2,500
2	Twin GPO IT Room - 20amp	500	1,000
1	Insulation IT Room + Ceiling	4,000	4,000
1	Extract Fan	800	800

UNIT TOTAL	260,700
-------------------	----------------

Delivery

1	Delivery to Site excluding Cranage	6,500
---	------------------------------------	-------

DELIVERED TOTAL	267,200
------------------------	----------------

Costs exclude all taxes

Exhibit B

Inclusions | Exeloo Responsibility

Toilet Unit	Jupiter 22DA+IT Room
	Structural design and engineering of toilet
	Building consent information pack
	Design and associated drawings

Exclusions | Customer Responsibility

Building consents costs
Site plan
Foundations
Installation of toilet unit + roof
Supply and installation of power, water, sewerage and stormwater facilities
Associated existing building alterations and restorations
Delay or disruption resulting from compliance to directives issued under section 11 of the COVID-19 Public Health Response Act 2020
Delay or disruption from industrial action beyond the reasonable control of Exeloo

Delivery

Delivery to site or depot excluding crantage, GC to provide delivery access

Construction

Floor	Reinforced concrete
Frame	DuraGal steel frame
Roof	No roof due to under storage building, Fibre board use above ceiling.
Exterior Walls	Compressed fiber cement sheet with epoxy paint

Exhibit B

Control Level - FULLY AUTOMATED

Control System	Full electronic command with Programmable Logic Controller (PLC)
Touch Screen Controller	Touch screen controller interface located in the service bay to access unit statistics, diagnostics and program settings
Usage Statistics	Touch screen access to enhanced usage, servicing and cubicle opening statistics as well as system diagnostics for improved asset management and control
Door Locking	Electric locking with illuminated electric buttons
Electric Buttons	Illuminated buttons for electric sliding door operation
Auto-wash	5-stage automatic cubicle wash and refresh system
Automated Flush	Toilet pan automatically flushes after use
Electric Buttons	Illuminated buttons for electric sliding door operation
Auto-wash	5-stage automatic cubicle wash and refresh system
Night Time Locking on Time Lock	Adjustable lock up and unlock function to manage opening and closing times
Timed Occupation	Programmable use time control to reduce loitering and vandalism
Loiter Alarm	Pre-programmed voice messages to deter vagrancy and extended occupation
Voice Messages	Pre-programmed voice messages to explain unit operation and to guide sight impaired users
Music / Announcements	USB enabled music option to improve user experience and option to include public announcements

Fit Out Level - Fully Automated

Interior Floors	Ceramic slip resistant tiles - Charcoal
Interior Walls	Ceramic tiles - White
Door System	Electric operation of sliding door - Stainless Steel
Door Closer	Electric sliding door closer
Door Locking	Electric locking with automatic doors and illuminated electric buttons
Emergency Button	Internal emergency door release button in each cubicle - standard on all Exeloo electric door models
Interior Ceiling	Underside of roof

Exhibit B

Ventilation	Louvered air gap around top of unit
Flush System	Flush valve actuated automatically after each use
Interior Lighting	Surface mounted Light Emitting Diode (LED) lighting
Exterior Lighting	Surface mounted Light Emitting Diode (LED) lighting
Basin	Recessed 3 in 1 Integrated Sensor Operated Basin
Soap Dispenser	Incorporated in the recessed 3 in 1 integrated sensor operated basin
Hand Dryer	Incorporated in the recessed 3 in 1 integrated sensor operated basin
Paper Dispenser	Recessed Electric and Manual Twin Jumbo Paper Dispenser
Toilet Pan	Stainless steel wall hung toilet pan with molded hinged seat
Signage	Compliant signage including braille

Selected Optional Items

Baby Change Recessed	Recessed to retain circulation space with durable stainless steel case. Straps to keep infants safe
Disposal Chute - Large	Discrete Recessed stainless chute into a fire retardant bin. XL size to cope with adult diapers and baby nappies.

Clarifications

Validity	Pricing is valid for sixty (60) days from date of this quotation
Optional Items	Options on the itemized price sheet are excluded from the project total. These are to be added to the project total if selected.
Disposal	If a disposal bin is included in your order, please ensure that arrangements are made to have this bin emptied regularly by a suitable waste contractor or, ensure that the cleaning contractor is willing to provide plastic bin liners to be removed and replaced on a weekly basis.
Color Scheme Exterior	Exterior paint coating is Carbothane two pack, which is graffiti resistant. Colors to be chosen from an approved color chart.
Color Scheme Roof	Surf Mist White
Color Interior	White walls and charcoal floors.
Power Requirements	63 amp single phase, two leg supply . Termination points are supplied and located inside the service bay.
Water Requirements	Heavy duty flush valves are fitted as standard. Key features and information below:

Exhibit B

IMPORTANT

Water Consumption	<p>Flush consumption is the same as a conventional cistern however, water is not stored in a reservoir so it will need to draw significant water in a short period.</p> <p>Water supply at the connection point must have a minimum flow rate of 25 gallons per minute / per pan and a minimum dynamic pressure of 40psi.</p> <p>A 1" water meter coupled to a 1-1/4" ID (1-1/2" OD) supply from the meter to the Exeloo unit is usually sufficient but this should be confirmed on-site. Meter size and pipe diameter will need to be increased for multiple buildings. Exeloo cannot accept responsibility for loss or damage associated with inadequate water supply.</p> <p>Flush valves can be damaged by water pressure above 75psi and so a pressure limiter is included on the water supply line.</p> <p>Where a Reduced Pressure Zone (RPZ) valve is required on the main supply feed there may be a negative impact on the flow rate. As a result a larger meter and supply pipe might be required.</p> <p>If adequate flow rate and pressure cannot be achieved Exeloo can provide a cistern system. Contact Exeloo to discuss supply.</p>
Sewer Outlet	<p>A standard 4" sewer connection socket is located in the service bay. CAUTION: The unit must be sited on its foundations before connection is made to the sewer outlet.</p>
Floor Drains	<p>A 2" NPT socket floor waste drain is incorporated into the floor of each cubicle. Each floor drain will require a gully. One of the floor wastes should be connected to the Overflow Relief Gully (ORG).</p>
Stormwater Outlet	<p>The 3-1/2" stormwater pipe supplied in the service bay must be connected to the stormwater system through the services hole located in the floor of the service bay.</p>
Foundations	<p>Foundation structure are mat concrete foundation per Foundation Plans.</p>
Remote Monitoring Capability	<p>This quotation covers the hardware necessary to enable web based remote monitoring</p> <p>A broadband connection is required to ensure stable internet access</p> <p>This quotation includes 24 months of access to the ExeWeb control website. After 24 months a monthly monitoring access fee will be charged to access site information on the ExeWeb control website .</p> <p>A monthly monitoring access fee will be charged to access site information on the ExeWeb control website.</p>

Exhibit B

Storage	Exeloo will store units free of charge for up to 10 days from date of arrival. After 10 days any costs of storage and insurance will be charged. Please contact Exeloo to make alternative storage arrangements if longer term storage is required.
Insurance	Exeloo provides for up to 10 days static insurance cover. If longer storage is needed the customer must insure stored units after 10 days from date of arrival.
Construction Period	Normal ex-factory lead times are within 24 weeks of a purchase order being accepted.

Payment Terms

Exeloo Corporation	30% of total order value on acceptance of purchase order. 70% Due on delivery or 10 days of storage. Storage fees and craneage surcharges will apply for periods exceeding agreed delivery schedule
Terms of Payment	All funds are payable on public restroom or, if held in storage for more than 10 days, either by Exeloo or, others as a result of delays by others. The Exeloo Public Restroom supplied is to be paid in full and will not carry any part of the clients retention responsibility. This is because the Exeloo Public Restroom is a completed and tested product and performance is covered under law. Acceptance of your Purchase Order is conditional on your signed PO containing payment terms for performance of our-subcontract to build and supply. All invoices to be paid net 30.
Storage Insurance	Care of purchaser
Tax	This quotation includes provision for the prevailing tax at time of quotation in the prescribed jurisdiction. Changes to tax conditions are the responsibility of the purchaser

Company Details

Exeloo Corporation
EIN: 36-4811797
P O Box 13310 San Luis Obispo, CA 93401
Ph: 1 (800) 676 5290

QUOTATION DETAIL



PROPOSED EXELOO JUPITER FULLY AUTOMATED TWIN CUBICLE RESTROOM w/ IT ROOM

FOR: SUNSET PARK NORTH, MONTCLAIR

9-May-23

1	Jupiter 22DA+IT Room	238,100	238,100
---	----------------------	---------	---------

Selected Optional Items

1	Baby Change Recessed Stainless Steel	2,600	2,600
2	Disposal Chute - Large	1,400	2,800
1	Futurewood Battens Vertical - Slate Gray	14,700	14,700
2	2" Conduit to IT room + Prewire	1,150	2,300
2	Twin GPO IT Room - 20amp	500	1,000
1	Insulation IT Room + Ceiling	4,000	4,000
1	Extract Fan	800	800

UNIT TOTAL		266,300
-------------------	--	----------------

Delivery

1	Delivery to Site excluding Cranage	6,500
---	------------------------------------	-------

DELIVERED TOTAL		272,800
------------------------	--	----------------

Costs exclude all taxes

Exhibit C

Inclusions | Exeloo Responsibility

Toilet Unit	Jupiter 22DA+IT Room Structural design and engineering of toilet Building consent information pack Design and associated drawings
-------------	---

Exclusions | Customer Responsibility

Building consents costs
Site plan
Foundations
Installation of toilet unit + roof
Supply and installation of power, water, sewerage and stormwater facilities
Associated existing building alterations and restorations
Delay or disruption resulting from compliance to directives issued under section 11 of the COVID-19 Public Health Response Act 2020
Delay or disruption from industrial action beyond the reasonable control of Exeloo

Delivery

Delivery to site or depot excluding crantage, GC to provide delivery access

Construction

Floor	Reinforced concrete
Frame	DuraGal steel frame
Roof	No roof due to under storage building, Fibre board use above ceiling.
Exterior Walls	Compressed fiber cement sheet with epoxy paint

Exhibit C

Control Level - FULLY AUTOMATED

Control System	Full electronic command with Programmable Logic Controller (PLC)
Touch Screen Controller	Touch screen controller interface located in the service bay to access unit statistics, diagnostics and program settings
Usage Statistics	Touch screen access to enhanced usage, servicing and cubicle opening statistics as well as system diagnostics for improved asset management and control
Door Locking	Electric locking with illuminated electric buttons
Electric Buttons	Illuminated buttons for electric sliding door operation
Auto-wash	5-stage automatic cubicle wash and refresh system
Automated Flush	Toilet pan automatically flushes after use
Electric Buttons	Illuminated buttons for electric sliding door operation
Auto-wash	5-stage automatic cubicle wash and refresh system
Night Time Locking on Time Lock	Adjustable lock up and unlock function to manage opening and closing times
Timed Occupation	Programmable use time control to reduce loitering and vandalism
Loiter Alarm	Pre-programed voice messages to deter vagrancy and extended occupation
Voice Messages	Pre-programmed voice messages to explain unit operation and to guide sight impaired users
Music / Announcements	USB enabled music option to improve user experience and option to include public announcements

Fit Out Level - Fully Automated

Interior Floors	Ceramic slip resistant tiles - Charcoal
Interior Walls	Ceramic tiles - White
Door System	Electric operation of sliding door - Stainless Steel
Door Closer	Electric sliding door closer
Door Locking	Electric locking with automatic doors and illuminated electric buttons
Emergency Button	Internal emergency door release button in each cubicle - standard on all Exeloo electric door models
Interior Ceiling	Underside of roof

Exhibit C

Ventilation	Louvered air gap around top of unit
Flush System	Flush valve actuated automatically after each use
Interior Lighting	Surface mounted Light Emitting Diode (LED) lighting
Exterior Lighting	Surface mounted Light Emitting Diode (LED) lighting
Basin	Recessed 3 in 1 Integrated Sensor Operated Basin
Soap Dispenser	Incorporated in the recessed 3 in 1 integrated sensor operated basin
Hand Dryer	Incorporated in the recessed 3 in 1 integrated sensor operated basin
Paper Dispenser	Recessed Electric and Manual Twin Jumbo Paper Dispenser
Toilet Pan	Stainless steel wall hung toilet pan with molded hinged seat
Signage	Compliant signage including braille

Selected Optional Items

Baby Change Recessed	Recessed to retain circulation space with durable stainless steel case. Straps to keep infants safe
Disposal Chute - Large	Discrete Recessed stainless chute into a fire retardant bin. XL size to cope with adult diapers and baby nappies.

Clarifications

Validity	Pricing is valid for sixty (60) days from date of this quotation
Optional Items	Options on the itemized price sheet are excluded from the project total. These are to be added to the project total if selected.
Disposal	If a disposal bin is included in your order, please ensure that arrangements are made to have this bin emptied regularly by a suitable waste contractor or, ensure that the cleaning contractor is willing to provide plastic bin liners to be removed and replaced on a weekly basis.
Color Scheme Exterior	Exterior paint coating is Carbothane two pack, which is graffiti resistant. Colors to be chosen from an approved color chart.
Color Scheme Roof	Surf Mist White
Color Interior	White walls and charcoal floors.
Power Requirements	63 amp single phase, two leg supply . Termination points are supplied and located inside the service bay.
Water Requirements	Heavy duty flush valves are fitted as standard. Key features and information below:

Exhibit C

IMPORTANT

Water Consumption

Flush consumption is the same as a conventional cistern however, water is not stored in a reservoir so it will need to draw significant water in a short period.

Water supply at the connection point must have a minimum flow rate of 25 gallons per minute / per pan and a minimum dynamic pressure of 40psi.

A 1" water meter coupled to a 1-1/4" ID (1-1/2" OD) supply from the meter to the Exeloo unit is usually sufficient but this should be confirmed on-site. Meter size and pipe diameter will need to be increased for multiple buildings. Exeloo cannot accept responsibility for loss or damage associated with inadequate water supply.

Flush valves can be damaged by water pressure above 75psi and so a pressure limiter is included on the water supply line.

Where a Reduced Pressure Zone (RPZ) valve is required on the main supply feed there may be a negative impact on the flow rate. As a result a larger meter and supply pipe might be required.

If adequate flow rate and pressure cannot be achieved Exeloo can provide a cistern system. Contact Exeloo to discuss supply.

Sewer Outlet

A standard 4" sewer connection socket is located in the service bay. CAUTION: The unit must be sited on its foundations before connection is made to the sewer outlet.

Floor Drains

A 2" NPT socket floor waste drain is incorporated into the floor of each cubicle. Each floor drain will require a gully. One of the floor wastes should be connected to the Overflow Relief Gully (ORG).

Stormwater Outlet

The 3-1/2" stormwater pipe supplied in the service bay must be connected to the stormwater system through the services hole located in the floor of the service bay.

Foundations

Foundation structure are mat concrete foundation per Foundation Plans.

Remote Monitoring Capability

This quotation covers the hardware necessary to enable web based remote monitoring

A broadband connection is required to ensure stable internet access

This quotation includes 24 months of access to the ExeWeb control website. After 24 months a monthly monitoring access fee will be charged to access site information on the ExeWeb control website .

A monthly monitoring access fee will be charged to access site information on the ExeWeb control website.

Exhibit C

Storage	Exeloo will store units free of charge for up to 10 days from date of arrival. After 10 days any costs of storage and insurance will be charged. Please contact Exeloo to make alternative storage arrangements if longer term storage is required.
Insurance	Exeloo provides for up to 10 days static insurance cover. If longer storage is needed the customer must insure stored units after 10 days from date of arrival.
Construction Period	Normal ex-factory lead times are within 24 weeks of a purchase order being accepted.

Payment Terms

Exeloo Corporation	30% of total order value on acceptance of purchase order. 70% Due on delivery or 10 days of storage. Storage fees and craneage surcharges will apply for periods exceeding agreed delivery schedule
Terms of Payment	All funds are payable on public restroom or, if held in storage for more than 10 days, either by Exeloo or, others as a result of delays by others. The Exeloo Public Restroom supplied is to be paid in full and will not carry any part of the clients retention responsibility. This is because the Exeloo Public Restroom is a completed and tested product and performance is covered under law. Acceptance of your Purchase Order is conditional on your signed PO containing payment terms for performance of our-subcontract to build and supply. All invoices to be paid net 30.
Storage Insurance	Care of purchaser
Tax	This quotation includes provision for the prevailing tax at time of quotation in the prescribed jurisdiction. Changes to tax conditions are the responsibility of the purchaser

Company Details

Exeloo Corporation
EIN: 36-4811797
P O Box 13310 San Luis Obispo, CA 93401
Ph: 1 (800) 676 5290



CITY COUNCIL AGENDA REPORT

DATE:	MAY 15, 2023	FILE I.D.:	EDD100/CDV115/PUB115
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ECONOMIC DEV.
ITEM NO.:	1	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-31 WITH L.D. KING, INC. TO PROVIDE PLAN CHECK, ENGINEERING, DESIGN, AND LAND SURVEYING SERVICES ON AN AS-NEEDED BASIS, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: Agreement No. 23-31 would authorize staff to retain the services of L.D. King, Inc. as the City of Montclair's Engineering Consultant to provide services on an as-needed basis as it relates to plan check, engineering, design, and land surveying services.

A copy of proposed Agreement No. 23-31 with L.D. King, Inc. is attached for City Council review and consideration.

BACKGROUND: The City of Montclair has utilized the services of L.D. King, Inc. for plan check, engineering, design, and survey services for various residential, commercial, and industrial developments projects throughout the City of Montclair, as well as for public improvements projects sponsored by the City.

To utilize the services of L.D. King, Inc. staff has been required to enter into separate agreements for plan check, engineering, design, and survey services for each development project that is submitted for review by developers.

As a means to streamline the review process and to provide developers with quicker access to the services provided by L.D. King, Inc. staff is proposing to retain the services of L.D. King, Inc. as the City of Montclair's Engineering Consultant to provide services on an as-needed basis.

Staff performed a comparison of engineering service rate schedules from several firms who provide plan check, engineering, design, and survey services. After careful consideration staff has elected to continue to use the services of L.D. King, Inc. based on cost, familiarity with the City of Montclair, and prior services provided to the City of Montclair.

Proposed Agreement No. 23-31 includes the full scopes of services to be provided by L.D. King, Inc. The services that will be covered by proposed Agreement No. 23-31 may include the following:

- Plan Check services related to parcel/tract maps, map traverse calculations and closures, site plans, lot mergers, lot splits, easements, legal descriptions, street vacations, rough/precise grading, public improvements plans, and hydrology/hydraulic studies.
- Design Engineering related to public improvements plans, rough grade and precise grading plans, hydrology/hydraulic reports, sewer studies, domestic

water hydraulic reports, engineer cost estimates, preparation of legal descriptions and plats, exhibits, and construction support.

- Surveying Services related to record research, field surveys, boundary surveys, construction surveys, set monuments, set benchmarks

L.D. King, Inc.

L.D. King, Inc. is a full-service civil engineering, planning and land surveying firm serving Southern California. Founded in 1965, L.D. King, Inc. has a long history of providing high-quality professional consulting services. L.D. King, Inc. longevity is based on their commitment to provide exceptional service.

L.D. King, Inc. design team is a multi-disciplinary team of professional, technical and support staff dedicated to getting the job done. L.D. King, Inc. works well under pressure and within time lines. L.D. King, Inc. staff has the experience, technical skills, sub consultant relationships and commitment to make projects a success.

L.D. King, Inc. has worked extensively with public agencies and counts the following cities as clients: Banning, Blythe, Chino, Chino Hills, Claremont, Coachella, Colton, Corona, Indio, Ontario, Pomona, Rancho Cucamonga, Redlands, Ridgecrest, Upland and West Hollywood.

FISCAL IMPACT: Proposed Agreement No. 23-31 would authorize staff to retain the services of L.D. King, Inc. as the City of Montclair's Engineering Consultant to provide plan check, engineering, and land surveying services on an as-needed basis.

Fees for services performed by L.D. King, Inc. related to a development project would be paid for through reimbursement agreements that developers are required to enter into with the City of Montclair as a condition of project approval for residential, commercial, and industrial developments.

Any work conducted by L.D. King, Inc. for services rendered that are not in relation to a development project will be paid for out of the General Fund.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 23-31 with L.D. King, Inc. to provide plan check, engineering, design, and land surveying services on an as-needed basis, subject to any revisions deemed necessary by the City Attorney.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

PLAN & MAP CHECKING, AND
ENGINEERING/SURVEY SERVICES

THIS AGREEMENT is made and effective as of May 16, 2023, between the City of Montclair, a municipal corporation ("City") and LD King, Inc., a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on May 16, 2023 and shall remain and continue in effect, until terminated pursuant to the provisions of this Agreement.

2. SERVICES

Consultant shall perform map and plan checking and miscellaneous engineering consulting work as requested by City in accordance professional standards and governmental requirements. Consultant shall complete any and all tasks requested by City in accordance with the schedule of performance agreed upon between City and Consultant for each assignment required.

3. PERFORMANCE

Consultant shall at all times faithfully, and competently perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement. Consultant shall have the duty to prepare any design documents free from defects.

4. CITY MANAGEMENT

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement and shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 5 hereof.

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment 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. The fees and reimbursables set forward in Exhibit A may be subject to annual adjustment.

(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.

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

7. DEFAULT OF CONSULTANT

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

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

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

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

(a) Non-design, non-construction Professional Services:
To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), CONSULTANT shall indemnify, defend, and hold harmless the CITY, and its elected officials, officers, employees, volunteers, and agents ("CITY Indemnitees"), from and against any and all causes of action, claims, liabilities,

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

(b) Non-design, construction Professional Services:

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

(c) Design Professional Services:

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

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

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

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

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

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

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

10. INSURANCE

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

(a) Types of Required Coverages

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

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

(b) Endorsements

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

(1) Commercial General Liability

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

Additional Insured Endorsements shall not:

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

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

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

(2) Auto Liability

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

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

(3) Workers' Compensation

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

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

(e) Evidence of Insurance

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

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

(k) Insurance for Subcontractors

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

11. INDEPENDENT CONTRACTOR

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

whatever against City, or bind City in any manner. Consultant shall be solely responsible and hold the City harmless for all matters relating to the payment of Consultant's employees, including compliance with Social Security withholdings and all other regulations governing such matters.

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless

requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

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

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

16. NOTICES

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

addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City:

City Engineer
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant:

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

17. ASSIGNMENT AND SUBCONTRACTING

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are

merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. CONTENTS OF PROPOSAL

These are "on-call" engineering and survey services. Consultant is bound by the requirements of this Agreement shall take precedence over those contained in the Consultant's proposals.

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Javier John Dutrey
Mayor

By: _____
Name: Carla Berard
Title: CEO

Attest:

By: _____
Andrea M. Myrick
City Clerk

Approved as to Form:

By: _____
Diane E. Robbins
City Attorney



May 4, 2023

Rosemary Hoerning
City of Montclair
5111 Benito Street
Montclair CA 91763

Subject: Scope of Work Plan Checking, Design Services and Surveying Services for
the City of Montclair

Dear Rosemary,

L.D. King, Inc. is pleased to provide this Scope of Work for professional Engineering Services to the City. The Scope of Services and Rate Schedule are attached for your review.

Should you have any questions or need additional information regarding this Scope of Work please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Carla Berard". The signature is written in a cursive style.

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

attachments

**PLAN CHECKING, ENGINEERING DESIGN SERVICES AND SURVEYING SERVICES
FOR THE
CITY OF MONTCLAIR**

SCOPE OF SERVICES

The Scope of Work to be provided by L.D. King, Inc. shall include the plan checking, engineering design services and surveying services as requested by the City. The Scope of Services is more specifically defined but not limited to the tasks listed below:

Plan Check Services for the following Plans/Maps/Studies

- Parcel/Tract Map
- Map Traverse Calculations & Closure
- Site Plan
- Lot Merger
- Lot Split
- Easements
- Legal Descriptions
- Street Vacation
- Rough/Precise Grading
- Public Improvement Plan Plans (Street/Sewer/Water/Rec. Water/Storm Drain/Signing & Striping/Park/Other)
- Hydrology/Hydraulic Studies

Design Engineering / Consulting Work

- Public Improvement Plans (Street/Sewer/Water/Rec. Water/Storm Drain/Signing & Striping/Park/Other)
- Rough Grade and Precise Grading Plans
- Hydrology/Hydraulic Reports
- Sewer Studies
- Domestic Water Hydraulic Reports
- Engineers Cost Estimates
- Preparation of Legal Descriptions and Plats
- Exhibits
- Construction Support

Surveying Services

- Record Research
- Field Surveys
- Boundary Surveys
- Construction Surveys
- Set Monuments
- Set Benchmarks

L.D. King, Inc. Rate Schedule

October 1, 2022 – September 30, 2023

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

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



975 N. Haven Avenue, Suite 200 Ontario, CA 91764 (909) 945-0526



CITY COUNCIL AGENDA REPORT

DATE:	MAY 15, 2023	FILE I.D.:	GRT125
SECTION:	CONSENT - AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	2	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-32 WITH BLAIS & ASSOCIATES, INC. FOR GRANT WRITING SERVICES		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-32 with Blais & Associates, Inc. (Blais) for grant writing services.

BACKGROUND: In March 2019, the City of Montclair began utilizing Blais for their grant writing services. The City has seen much success in working with Blais, with two major grant awards that will transform the City; the City has successfully applied for and obtained a \$5.1 million dollar grant for the Reeder Ranch Park and a \$4.7 million dollar grant for Sunset Park. In total, the City of Montclair has applied for eleven grants utilizing Blais services. The return on investment to the City is \$110 in funding received for every dollar spent.

The City would like to continue to pursue grant funding when possible to address a variety of needs in the community. There are current funding announcements that staff would like to pursue, along with announcements of future opportunities. Each of these funding opportunities requires an extraordinary amount of time and specific expertise.

Although there are no guarantees stipulated in the agreement for future expenditures or awards, it is anticipated that aggregate expenses for future services through Agreement No. 23-32 will be approximately \$50,000. Blais services over the past four years has been outstanding. Before the execution of the original agreement with Blais, City staff went through a vetting process to make sure that Blais was the best value for the City. Therefore, proposals from other firms were not sought and Blais continues to be the best value for the City. Staff recommends it is in the best interest and value of the City to continue utilizing Blais to provide grant writing services.

FISCAL IMPACT: Staff estimates preparing future grant applications will cost approximately \$50,000. Funds for grant writing services were included in the 2022-2023 budget. The term of Agreement 23-32 is May 15, 2023 through June 30, 2024.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 23-32 with Blais & Associates, Inc. for grant writing services.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

GRANT WRITING

THIS AGREEMENT is made and effective as of May 15, 2023, between the City of Montclair, a municipal corporation ("City") and Blais & Associates, Inc. a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on May 15, 2023 and shall remain and continue in effect for a period of 14 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 City Manager 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 City Manager 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 6 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed

\$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, but in no event shall total compensation exceed Ten Thousand Dollars (\$10,000.00). Any additional work in excess of this amount shall be approved by the City Council.

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is 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 6(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.

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Contractor 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 Contractor herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Contractor, including its subcontractors, employees, agents, and other persons or entities performing work for Contractor.

(b) Contractual Indemnity. To the fullest extent permitted under California law, Contractor 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 Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to Contractor's officers, agents, representative, employees, independent contractors, 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 Contractor, including its subcontractors, employees, agents and other persons or entities performing work for Contractor. Indemnification shall include any claim that Contractor, or Contractor'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. Contractor'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 and Indemnification. Contractor 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 Contractor in the performance of any aspect of this Agreement. In the event Contractor fails to obtain such indemnity

obligations, Contractor 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 Contractor 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. Contractor 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 Contractor or of Contractor'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. Contractor 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 Contractor under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Contractor begins the work and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Contractor. The indemnity obligations of Contractor 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 Contractor, or for the City to dispute Contractor's refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Contractor 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 Contractor 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 Contractor expressly waives any statutory immunity under such statutes or laws as to the Indemnified Parties. The Contractor'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 Contractor pursuant to this Agreement.

(h) The Contractor'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 Contractor 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, Contractor 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 \$3,000,000 per occurrence, and \$5,000,000 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 \$5,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$3,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(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 Contractor 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 Contractor from waiving the right of subrogation prior to a loss. Contractor 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, Contractor 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 Contractor 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 Contractor or the City.

(g) Contractual Liability/Insurance Obligations

The coverage provided shall apply to the obligations assumed by the Contractor 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 Contractor; 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 Contractor under this Agreement.

(h) Failure to Maintain Coverage

Contractor 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 Contractor until Contractor 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 Contractor's expense, the premium thereon.

In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor 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 Contractor'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

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

11. INDEPENDENT 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:	Alyssa Colunga Assistant Director of Human Services & Grants Manager City of Montclair 5111 Benito Montclair, CA 91763
----------	---

To Consultant: Blais & Associates, LLC
 Attn: Jordan P. Carter
 2807 Allen Street, Suite 2050
 Dallas, TX 75204

17. ASSIGNMENT AND SUBCONTRACTING

The Contractor 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 Contractor 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 Contractor 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 Contractor shall not subcontract any performance required under this Agreement without the City's prior written consent.

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF REQUEST FOR PROPOSALS

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

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

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

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

CITY OF MONTCLAIR

Blais & Associates, Inc.

By: _____
Javier John Dutrey, Mayor

By: _____
President & CEO

Attest:

By: _____
Andrea Myrick, City Clerk

By: _____
Founder

Approved as to Form:

Date: _____

By: _____
Diane E. Robbins, City Attorney

Date: _____

COST PROPOSAL

B&A provides services on a customized basis, tailored to specifically meet your needs. This means the City will only pay for desired services as requested. Below provides B&A's proposed compensation by task for a 12-month period.

Task 1: Grant Research and Support Services (Ongoing). B&A can also provide grant intelligence and monitoring services for all applicable federal, state, regional, and foundation (project-specific) grant funding opportunities and we will alert staff when an announcement is released. This effort includes notification of open grant solicitations utilizing our proprietary Fact Sheets. B&A will also maintain a Grant Activity Report (GAR) and organize monthly grant coordination conference calls. The GAR ensures that all are aware of the specifics of each prospective grant program. B&A will provide key decision-making guidance regarding the "go" or "no-go" determinations on specific grant programs, as well as respond to various questions from staff. Direct consultation time with B&A supports your ability to achieve a high return on investment for grant program efforts.

Task 2: Grant Application Development (Quoted upon request). Grant application development activity levels are based on the availability of applicable grant programs, status, and availability of competitive projects for those programs, and independent determination of the grant agencies. B&A will submit grant applications in a timely manner and in accordance with all program guidelines. *B&A will only charge as grant writing projects are requested and approved to proceed.*

Task 3: Grant Reporting and Management Services (Quoted upon request). B&A has a dedicated and experienced grant management team standing ready to administer all requirements and deadlines for any grants that you have been awarded. A scope of work is defined, and an estimate is provided and reviewed before receiving authorization to proceed. B&A reviews the draft grant contract/agreement to ensure it aligns with the grant application (no major deviations in scope of work, schedule, and budget), helps identify rules and regulations that may warrant increased attention and focus, and assists with progress reporting and reimbursement requests. B&A proactively ensures the grant agreement is successfully executed on-time, that you can successfully administer and utilize a grant (given the conditions and requirements of the award), and the agreement correctly articulates the scope of work, budget, and schedule. *B&A will only charge as grant management projects are requested and approved to proceed.*

Task 4: Grant and Project Management Software (Quoted upon request). B&A developed a proprietary grant and project management software system to significantly improve and make more efficient the entire project management, coordination, reporting, and administration process from beginning-to-closeout of managing the full life of a grant award. This allows our clients the option to manage your own grants in a more efficient manner or to collaboratively work with B&A as desired on awarded grants. Please see www.bgapstech.com or request a demo to discuss your needs and how BGAPS can help. *B&A will offer a FREE 6-month trial period (with a small fee to upload up to three current grant agreements).*

SCHEDULE OF ESTIMATED FEES – 12-MONTH PROGRAM

Task	Description	Frequency	Estimated Total Cost
1 Grant Monitoring, Intelligence, Fact Sheets, and Grant Activity Reports Grant Research Consultation Requests	Monitor/send targeted grant opportunities using our proprietary and proactive grant research methodologies; Develop summaries; Pros/cons; Attend workshops/webinars; Develop Monthly Grant Activity Reports (GARs); Monthly calls to review opportunities and grants in-progress. Go/no-go consultation; Liaison with funding agencies; Participate in coordination calls with client; Develop Year-End Grant Roll-Up Reports.	Monthly Fixed Fee	\$35,250
2 Grant Proposal Development	Full turnkey or collaborative grant writing development to include submission (cost will vary by application complexity and client involvement).	Estimate of two grant applications at \$7,000 each.*	\$14,000
3 Grant Reporting & Mgmt. Services	Grant Reporting and Management Services.	Quoted upon request**	TBD
4 Grant Reporting & Mgmt. Services	B&A BGAPS Grant and Project Management Software (6-month FREE trial).	6-month FREE trial	TBD
TOTAL			\$49,250

*All grant proposal development projects are quoted upon request based on specific project requirements (costs typically range between \$5,000 – \$18,000 per grant application). Budget optional.

**All grant reporting and management projects are quoted upon request based on specific project requirements. Budget optional.

STANDARD FEE SCHEDULE

Description	Fee
Professional Services	Fixed Fee based on \$125/hour blended rate
External Consultants (e.g., BCA analysis)	Cost – no markup
Mileage	Prevailing standard IRS rate
Travel (tolls, taxi, airfare, hotel)	Cost – no markup
Printing, Copying, Binding, etc.	Cost – no markup
Shipping, Express Mail, or Courier	Cost – no markup

B&A performs work on a fixed-fee, not-to-exceed basis. Each project is independently and carefully analyzed to determine a projected scope of work. B&A then provides a fixed-fee, not-to-exceed quote for client review and approval prior to beginning work. Any additional one-off requests or activities that fall outside of the scope of work are performed and billed at a blended billing rate of \$125 per hour. This streamlined approach enables B&A to serve as a good steward of the City’s capital resources and be the most efficient and effective grant services provider possible. B&A reserves the right to adjust rates annually to align with the cost of doing business. All external consultant fees and direct out-of-pocket direct expenses are billed at cost (no markup).

Our proposed rates shall remain firm for a period of 90 calendar days from the date of submission of this fee schedule. Invoices are provided monthly, payable within 30 days after receipt.

B&A actively integrates the following “cost saving” practices into its operational procedures:

- All out-of-pocket expenses are billed at cost, with zero markup to our clients.
- B&A utilizes company discounted commercially available printing services (e.g., Staples), as needed, for bulk printing, copying, and binding support, which significantly reduces required direct costs.
- B&A utilizes company discounted commercially available shipping and delivery services (e.g., FedEx, UPS, or USPS), as needed, for delivery of hard copy materials, which significantly reduces required direct costs.
- B&A can, at your request, provide receipts for all direct expenses.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 15, 2023	FILE I.D.:	STA817
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	3	PREPARER:	M. HEREDIA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-33 WITH OMNITRANS FOR OPERATION AND MAINTENANCE OF THE WEST VALLEY CONNECTOR BUS RAPID TRANSIT PROJECT		

REASON FOR CONSIDERATION: The design of the West Valley Connector Bus Transit Project (Project) is complete and Omnitrans has requested to execute an agreement for the operations and maintenance of the two stations in the City of Montclair.

A copy of proposed Agreement No. 23-33 with Omnitrans is attached for the City Council's review and consideration.

BACKGROUND: On November 2, 2020, the City Council approved Agreement 20-90 with the San Bernardino County Transportation Authority (SBCTA) for the joint participation in the West Valley Connector Project (WVC). As part of this agreement, the City committed to enter into an agreement with Omnitrans to set forth the mutual commitments to operate and maintain certain facilities and improvements installed as part of the Project.

The WVC is a 35-mile-long bus rapid transit (BRT) project that travels from Pomona to Fontana through the cities of Montclair, Ontario, and Rancho Cucamonga. It is expected to decrease travel times and improve the existing public transit system within the West Valley of San Bernardino County.

The West Valley Connector BRT is a premium transit service, and one of its features is the proposed enhanced bus service along Holt Boulevard (one of Omnitrans' most highly utilized routes). The BRT would generally operate from 6:00 a.m. to 8:00 p.m. with peak headways for four hours and off-peak headways for ten hours per day for a total span of service of 14 hours per day, Monday through Friday. Service frequency is 10-minute peak headways and 15-minute off-peak headways.

Two side-running stations will be constructed in the City at the intersections of Holt Boulevard at Ramona Avenue and Holt Boulevard at Central Avenue. Staff will continue coordinating with SBCTA and issue related permits for building the two stations. The City is responsible for maintaining everything outside the station areas and within the public right-of-way.

Omnitrans will be responsible for repairing, maintaining, and operating each station area, including new structures, equipment, and amenities such as the digital kiosk and related pylon, emergency telephone, and equipment pad. Additionally, Omnitrans will provide trash disposal, cleaning/pressure washing, graffiti removal, replacement of amenities, and repair and maintenance of all signage in the station area.

FISCAL IMPACT: There is no fiscal impact to the City's General Fund as a result of the City Council's approval of Agreement No. 23-33. The construction of the Project is funded through the Los Angeles County Metropolitan Transportation Authority, Omnitrans, SBCTA, and state, and federal sources.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 23-33 with Omnitrans for the operation and maintenance of the West Valley Connector Bus Rapid Transit Project.

**AGREEMENT BETWEEN OMNITRANS AND CITY OF MONTCLAIR
FOR THE OPERATIONS AND MAINTENANCE OF WEST VALLEY
CONNECTOR BUS RAPID TRANSIT PROJECT**

This AGREEMENT FOR THE OPERATIONS AND MAINTENANCE OF THE WEST VALLEY CONNECTOR BUS RAPID TRANSIT PROJECT (“Agreement”) by and between OMNITRANS, a joint powers authority duly organized and existing under Section 6500 et seq. of the Government Code, and the City of Montclair (“City”) is made and entered into as of _____ (“Effective Date”). Omnitrans and City are sometimes individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

- A. The San Bernardino County Transportation Authority (“SBCTA”) is in the process of completing work to implement the West Valley Connector (“WVC”) Project, as described in Exhibit A, to deliver Bus Rapid Transit (“BRT”) operated by Omnitrans and serving the City (“Project”).
- B. Omnitrans entered into a Cooperative Agreement with SBCTA dated December 14, 2017, that establishes Omnitrans’ satisfactory continuing control over Project Property as that term is defined herein.
- C. City entered into a Cooperative Agreement No. 20-1002421 with SBCTA dated January 28, 2021, that describes their mutual responsibilities to develop the Project, and in that Cooperative Agreement, City committed to enter into an agreement with Omnitrans to set forth the mutual commitments to operate and maintain certain facilities and improvements installed as part of the Project.
- D. The Parties now wish to enter into an operations and maintenance agreement as required by the Cooperative Agreement to establish their respective rights and obligations in connection with the ongoing operations and maintenance of the Project Property.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter contained and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions

Capitalized terms not otherwise defined in this Agreement will have the following meanings:

“City streets,” “City rights-of-way” and “public rights-of-way” mean those existing streets and rights-of-way that are either held by the City in fee or pursuant to an easement, but do not include the Station Areas.

“Project Property” means all improvements including equipment and structures installed as part of the Project and the real property rights acquired for the Project, including without limitation all Stations.

“SBCTA” means the San Bernardino County Transportation Authority.

“Stations” or “Station Areas” means the improvements as described in the City-approved design plans and specifications and as generally depicted in Exhibit B, Depiction of Station Areas.

“TSP” means transit signal priority, which is a system in which equipment on the vehicle requests permission to proceed through the intersection according to certain programmed parameters, by communicating with equipment in the traffic signal control cabinet that grants the authority for the vehicle to proceed by controlling the traffic signal according to certain programmed parameters. The purpose of TSP is to ensure delivery of bus rapid transit service with quicker, consistent run times as anticipated for this Project.

2. Use and Control of Project Property

2.1. General

Omnitrans shall have the right to exercise satisfactory continuing control over the Project Property in accordance with the requirements and grant conditions of the Federal Transit Administration (FTA).

2.2. Period of Control

Omnitrans’ right to exercise control over the Project Property shall continue as long as the Project Property is needed in the judgment of Omnitrans for the appropriate Project purposes for the duration of the useful life of the Project Property, as required by the FTA, and for such time period as is necessary to dispose of the Project Property under FTA requirements and procedures.

2.3. Use

The Parties agree to use the Project Property for appropriate Project purposes to support public transportation activities. City agrees to notify Omnitrans no less than 30 days prior to withdrawal of any Project Property from Project use.

2.4. Maintenance

City agrees to maintain the Project Property identified in, and in accordance with, the terms of Section 4, and Omnitrans agrees to maintain the Project Property identified in, and in accordance with, the terms of Section 3. The Parties agree that the performance of this Agreement will ensure that the entirety of the Project Property within the City boundary will be maintained in good operating order, in compliance with any applicable Federal laws and regulations, and in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

2.5. Records

Notwithstanding Section 7 of this Agreement, City agrees to keep satisfactory records pertaining to the use of the Project Property and submit to Omnitrans upon request such information as may be required by the FTA to assure compliance with FTA’s Master Agreement.

2.6. Incidental Use

Any incidental use of Project Property will not exceed that permitted under applicable Federal laws or regulations in accordance with applicable Federal directives. Any incidental use must be approved by Omnitrans in writing in advance.

2.7. Transfer or Lease of Property

City shall not transfer any obligation pertaining to the Project Property that would affect Omnitrans' continuing interest in the Project Property, nor impair such interest without the prior written consent of Omnitrans. Any transfer or lease must be approved in writing, in advance, by Omnitrans.

3. Obligations of Omnitrans

3.1. Maintenance of Station Areas

Omnitrans shall be responsible for the repair, maintenance and operation of Project Property within each Station Area and new structures and equipment located in the Station Area, as depicted in Exhibit B, including Project Station amenities such as the digital kiosk and related pylon, emergency telephone, and equipment pad, identified as the responsibility of Omnitrans in the Checklist of Maintenance Responsibilities, Exhibit C. At the Station Areas, Omnitrans shall provide trash disposal, cleaning/pressure washing, graffiti removal, and replacement of amenities, all according to the standards determined by Omnitrans in its sole discretion. Omnitrans shall be responsible for repairing and maintaining all signage in the Station Area.

3.2. Security Systems

As part of the Project, Omnitrans will install, operate, and maintain a security system at the Stations. The security system may include surveillance cameras and emergency telephones. Omnitrans will reasonably cooperate with the City in a manner consistent with Omnitrans' procedures and applicable law to allow City's police department to access video recordings and other product of the security system.

3.3. System Service

Omnitrans reserves its right to modify or adjust schedules of transit bus service as necessary to provide optimal, efficient and cost-effective service to its patrons.

4. Obligations of the City

4.1. Grant of Access to Right-of-Way, Station Location

City hereby grants to Omnitrans the rights of continuous use of Station Areas and right of way for purposes of providing transit service, as well as access to transit service by transit users. Such right of use shall also include, but not be limited to, use of Project Stations.

4.2. Landscaping and Irrigation

If applicable, City shall repair and maintain, at its sole cost and expense, all new landscaping installed as part of the Project and located on City-owned property or within City public rights of way, provided that the new landscaping was installed pursuant to the City-approved landscape plan for the Project. City shall be solely responsible for all costs associated with the repair and maintenance of such landscaping and irrigation, including but not limited to, payment of water usage charges, electrical charges and landscaping servicing fees.

4.3. Dedicated Right-of-Way

City shall repair and maintain, at its sole cost and expense, all elements installed as part of the Project and located within City streets and City right-of-way as described in Exhibit C. City shall maintain, as part of the right-of-way, curbs, sidewalks, and medians adjoining the Station Areas.

4.4. Lighting in Public Right of Way

City shall operate, repair, and maintain all City street lighting installed or relocated as part of the Project, pursuant to Exhibit C. City shall be solely responsible for all costs associated with the maintenance of street lighting, including but not limited to, payment of all electrical usage charges.

4.5. Signage in Public Right of Way

City shall repair and maintain all City signage located on, upon, inside or within City-owned property or any City public right-of-way along the Project Property installed as part of the City-approved plans and specifications, as described in Exhibit C. City will be solely responsible for all costs associated with the repair and maintenance of said signage.

5. Transit Signal Priority

5.1. On-Vehicle Equipment

Omnitrans will own, operate, repair, maintain and replace, if necessary, at its cost, all TSP equipment installed on Omnitrans-owned buses as part of the Project.

5.2. Traffic Signal

City will own, operate, repair, maintain and replace, if necessary, all traffic control signals located at City public rights-of-way intersections or crossings along the Project. City will be solely responsible for all costs associated with the operation, repair and maintenance of traffic control signals, and will be responsible for payment of all electrical usage charges for the traffic control signal and the TSP equipment located inside the signal cabinet.

5.3. TSP Equipment in Traffic Signal

The vendor selected to provide the TSP system for the Project (“TSP Vendor”) by SBCTA will install the equipment into the City’s traffic control signal cabinet, traffic signal pole, mast arm and cables, and thereafter the TSP Vendor, Omnitrans or its contractor will maintain that TSP equipment. Omnitrans will determine whether and how to repair, maintain or replace, if necessary, the TSP equipment installed in the traffic control signal. If Omnitrans determines that the TSP equipment must be replaced, the City will have an opportunity to review and comment on the design and specifications of the new equipment.

City will allow the TSP Vendor, Omnitrans or its contractor access to the traffic control signal in order to install, inspect, operate, maintain, repair or replace the TSP equipment in the traffic control signal. City may impose reasonable conditions for access to the traffic control signal, such as providing reasonable advance notice; having an inspector present; and requiring proof of insurance.

5.4. Start-Up and Commissioning

Omnitrans and City agree to reasonably cooperate with SBCTA and its contractor to complete the start-up, testing and acceptance of the TSP system, to coordinate programming of the TSP system and to make any

adjustments to the TSP system, including but not limited to adjustment of preemption parameters, to ensure delivery of bus rapid transit service as anticipated for this Project.

5.5. Updating Signal Parameters and Performance Monitoring

Omnitrans and City agree that the purpose of TSP is to ensure delivery of bus rapid transit service with quicker, consistent run times as anticipated for this Project; to that end, Omnitrans intends to monitor the overall end-to-end run time of the transit service. The Parties will reasonably cooperate with each other to (1) develop a mutually agreeable method of capturing, sharing and reviewing data collected by the TSP system, (2) conduct periodic performance monitoring of the TSP system, and (3) adjust preemption parameters as necessary to ensure delivery of bus rapid transit service as anticipated for this Project. The TSP Vendor will provide regular inspection and audits of the TSP equipment, and City will allow the TSP Vendor access to the traffic control signal cabinet, if necessary, in order to complete these audits. City will allow Omnitrans or its contractor to modify or revise the TSP parameters by remotely accessing the TSP equipment located in the traffic control signal cabinet as reasonably necessary to enhance or improve the timing of bus rapid transit service. Neither Party will make any changes to the TSP system that may affect the traffic control signal without both Parties first agreeing on such change in advance in writing. City will promptly notify Omnitrans of any changes to any intersection along the corridor that may impact traffic or transit service run times. If necessary, a reasonable notification process will be agreed between staff for the City and Omnitrans.

6. Mutual Indemnification

To the furthest extent permitted by law, City shall defend, indemnify and hold Omnitrans, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses, to the extent that they arise out of, pertain to, or are incident to (1) the negligence, recklessness or willful misconduct of City, its officials, officers, employees, subcontractors, consultants or agents in the performance of the Project or this Agreement, or (2) City's breach of this Agreement. . City's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, Omnitrans, or their respective officials, officers, employees, agents, or volunteers.

To the furthest extent permitted by law, Omnitrans shall defend, indemnify and hold City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses, to the extent that they arise out of, pertain to, or are incident to (1) the negligence, recklessness or willful misconduct of Omnitrans, its officials, officers, employees, subcontractors, consultants or agents in the performance of the Project or this Agreement, or (2) Omnitrans' breach of this Agreement. . Omnitrans' obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Omnitrans, City, or their respective officials, officers, employees, agents, or volunteers.

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

7. Audit and Inspection of Records

7.1. The Parties agree that their respective records, which shall include, but not be limited to, Project files,

accounting records, written policies and procedures, public bid documents, engineering and construction contracts, consultant contracts and payment history, contract files (including plans and specifications), original estimates, correspondence, change order files (including documentation covering negotiated settlements), invoices, and any other supporting evidence relied upon to substantiate charges related to the Project (collectively referred to as the “Records”), shall be open to inspection and subject to audit and reproduction by each other Party’s auditors or other authorized representatives at all reasonable times, in order for the other Party to enforce their rights under this Agreement and permit evaluation of expended costs. The cost of said audit shall be at the expense of the Party requesting the audit.

- 7.2. Each Party, through any of its duly authorized representatives, upon providing at least forty-eight (48) hours prior written notice, shall be afforded access to all Records of the other Party related to the Project during normal business hours and shall be allowed to interview any employee, consultant or contractor of the other, subject to reasonable limitations, throughout the term of this Agreement and for three (3) years thereafter, or for any longer period required by law.
- 7.3. To the furthest extent permitted by law, information contained in the Records or other matters discovered during such audits or inspections shall not be disclosed to third parties except as reasonably necessary to enforce (1) this Agreement or (2) the Parties respective rights and obligations whether relating to this Agreement or otherwise.
- 7.4. All Records pertaining to the Project must be retained by the Parties for three (3) years following termination or expiration of this Agreement, or for any longer period required by law.

8. Exhibits

The following exhibits are hereby incorporated into and made a part of this Agreement wherever referred to as though set forth at length, except where certain portions of specific exhibits have been deleted or superseded by sections of this Agreement:

Exhibit “A” Project Description

Exhibit “B” Depiction of Station Area

Exhibit “C” Checklist of Maintenance Responsibilities

9. Dispute Resolution

9.1. Negotiation

In the event of a dispute, claim or controversy arising from or in relation to this Agreement, the Parties agree to undertake good-faith attempts to resolve said dispute, claim or controversy within seven (7) calendar days after the receipt of written notice from the Party alleging that a minor dispute, claim or controversy exists. The Parties additionally agree to cooperate with the other Party in scheduling negotiation sessions. However, if said matter is not resolved within 30 calendar days after conducting the first negotiation session, either Party may then request that the matter be submitted for mediation pursuant to Section 9.2 below.

9.2. Mediation

If either Party, in accordance with Section 9.1 above, requests that an unresolved dispute, claim or controversy be

submitted to mediation, the Parties agree to undertake good-faith efforts to settle the dispute through non-binding mediation administered by JAMS pursuant to its Comprehensive Mediation Rules and Procedures.

9.3. Legal Action

Compliance with the provisions of this section shall be a condition precedent to any legal action, provided that nothing herein shall limit the Parties' right to terminate this Agreement pursuant to the other terms of this Agreement.

9.4. Fees and Costs

The parties agree to share the fees of the mediator, and all costs associated with mediation; provided, however, each Party shall be responsible for its own legal costs, including attorneys' fees and the costs associated with experts.

10. Default

10.1. Notice of Default

Failure or delay by either Party to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided, however, that if the Party who is otherwise claimed to be in default by the other Party commences to cure, correct or remedy the alleged default within thirty (30) calendar days after receipt of written notice specifying such default and thereafter diligently undertakes efforts to complete such cure, correction or remedy, such Party shall not be deemed to be in default hereunder for such time and if the default is cured. The Party claiming that a default has occurred shall give written notice of default to the defaulting Party, specifying the deficiencies causing the alleged default. Delay in giving such written notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the non-defaulting Party shall have no right to exercise any remedy for a default hereunder without first delivering the written default notice as specified herein.

10.2. Failure to Cure

In the event that the defaulting Party fails to commence to cure, correct or remedy a default within thirty (30) calendar days following receipt of written notice, or thereafter fails to diligently complete such cure, correction or remedy, a breach of this Agreement shall be deemed to have occurred. In the event of a breach, the non-defaulting Party may terminate this Agreement through a written notice of termination. Disputes regarding the facts that may have given rise to termination under this section shall be subject to the dispute resolution provisions provided above, but the right to terminate for such reason shall not be subject to review.

10.3. Termination of Funding

Omnitrans shall retain its right to terminate this Agreement and the Project at any time due to the lack of adequate federal or state funding or the lack of or denial of any required approval from any federal, state, or local agency. Disputes regarding the facts that may have given rise to termination under this Section or the right of Omnitrans to terminate pursuant to this Section shall not be subject to the dispute resolution provisions provided in this Agreement.

10.4. Changed Conditions

In the event that either Party to this Agreement, despite its best efforts, cannot, for reasons beyond the control of

the Party, timely satisfy a contingency or condition required by this Agreement, that Party shall provide immediate written notification to the other Party within seven (7) calendar days after the occurrence of the event specifying the reasons for which the requirements cannot be met. As soon as practically possible thereafter, the Parties shall meet and confer in good faith to consider the changed conditions and the potentially adverse impacts upon this Agreement. Both Parties shall work in good faith to resolve the problem and if this meet-and-confer process results in a recommended restructured form of this Agreement, representatives of both Parties will recommend such changes as necessary to the individual, Party or governing body authorized to amend this Agreement. Any approval of such restructured Agreement shall be subject to the amendment provisions provided below.

11. Force Majeure

In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default, or considered to be a default, where delays or defaults are due to the force majeure events of war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes or lack of transportation, weather-caused delays, inability to secure necessary labor, materials or tools, delays of any contractors, subcontractor or supplier, which are not attributable to the fault of the Party claiming an extension of time to prepare or acts or failure to act of any public or governmental agency or entity not a Party to this Agreement. Delays encountered by either Party in obtaining governmental actions, reviews, approvals, and permits shall not be deemed to be an enforced delay or a force majeure event pursuant to this Section. An extension of time for any such force majeure event shall be for the period of the enforced delay and shall commence to run from the date of occurrence of the delay; provided, however, that the Party that claims the existence of the delay has first provided the other Party with written notice of the occurrence of the delay within seven (7) calendar days after the commencement of such occurrence or delay. A Party's failure to timely or adequately submit such notice of the occurrence of the delay pursuant to this Section is an absolute waiver and release of that Party's right to prosecute or otherwise assert such delay in the future by means of litigation, arbitration, mediation, government claims, or otherwise.

12. Attorneys' Fees

Except as otherwise expressly provided herein or by applicable law, each Party shall bear its own costs and fees in connection with any action or proceeding that arises out of or relates to this Agreement.

13. Laws and Regulations

Each Party shall keep itself fully informed of and satisfy its obligations pursuant to this Agreement in compliance with all local, state, and federal laws, rules and regulations in any manner affecting the performance of this Agreement or any work related to the Project, including all Cal/OSHA requirements, and shall give all notices required by law. All landscape maintenance, irrigation and pressure washing of Project Property by either the City or Omnitrans will be completed in compliance with stormwater management best practices under the existing Storm Water Pollution Prevention Plans and permits in accordance with California's General Permit for Storm Water Discharges Associated with Industrial Activities.

14. Approvals

Approvals required of Omnitrans or the City, or any officers, agents, or employees of either Party, shall not be unreasonably withheld and approval or disapproval shall be given within a reasonable time.

15. Miscellaneous Terms

15.1. Notices, Demands and Communications Between the Parties

15.1.1. Notices, demands, and communications between Omnitrans and City shall be deemed sufficiently given if: (i) dispatched by registered or certified mail or delivery service with tracking; or (ii) personal delivery with signature or receipt; or (iii) by electronic transmittal (e-mail), with receipt. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by written notice to the other Party.

15.1.2. All notices, demands and communications shall be sent, as follows:

Monica Heredia, P.E.
Public Works Director/City Engineer
City of Montclair
5111 Benito Street
Montclair, CA 91763
(909) 625-9441
Mheredia@cityofmontclair.org

Omnitrans
Attn: Erin Rogers, CEO/General Manager
1700 W. Fifth St.
San Bernardino CA 92411
erin.rogers@omnitrans.org (with a copy to Araceli.barajas@omnitrans.org)

15.2. Amendment

This Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing signed by both Parties.

15.3. Further Actions and Instruments

Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement.

15.4. Counterparts

This Agreement may be signed in counterparts, each of which shall constitute an original.

15.5. Time is of the Essence

For each provision of this Agreement which states a specific amount of time within which the requirements thereof are to be satisfied, time shall be deemed of the essence. For each provision of this Agreement which does not state a specific amount of time within which the requirements thereof are to be satisfied, such requirements are to be satisfied within a reasonable time and such time shall be deemed of the essence.

15.6. Third Party Beneficiaries

This Agreement and the performance of Omnitrans' and the City's obligations hereunder are for the sole and exclusive benefit of Omnitrans and City. No person or entity who or which is not a signatory to this Agreement shall be deemed to be benefited or intended to be benefited by any provision hereof, and no such person or entity shall acquire any rights or causes of action against either Omnitrans or City hereunder resulting from Omnitrans' or City performance or nonperformance of their respective obligations under this Agreement.

15.7. Governing Law

This Agreement shall be governed by the laws of the State of California without regard to conflicts of laws principles. This Agreement shall be deemed to have been made in the County of San Bernardino, California, regardless of the order of the signatures of the Parties affixed hereto. Any litigation or other legal proceedings which arise under or in connection with this Agreement shall be conducted in a federal or state court located within or for San Bernardino County, California. The Parties consent to the personal jurisdiction and venue in federal or state court located within or for the County of San Bernardino, California and hereby waive any defenses or objections thereto including defenses based on the doctrine of forum non conveniens.

15.8. Construction; References; Captions

Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

15.9. Waiver

No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Either Parties' consent or approval of any act by the other Party requiring its consent or approval shall not be deemed to waive or render unnecessary its consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

15.10. Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of 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 the other Party. All warranties and promises to indemnify shall survive the termination, abandonment, or completion of this Agreement.

15.11. Legal Counsel

Each Party acknowledges that: (i) it has read this Agreement; (ii) it has had the opportunity to have this Agreement explained to it by legal counsel of its choice; (iii) it is aware of the content and legal effect of this Agreement; and (iv) it is not relying on any representations made by the other Party or any of the employees, agents,

representatives, or attorneys of the other Party, except as expressly set forth in this Agreement.

15.12. Severability

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder.

15.13. Binding Effect

The terms of this Agreement shall inure to the benefit of, and shall be binding upon, each of the Parties and their respective successors and assigns.

15.14. Authorized Representatives

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

15.15. Entire Agreement

This Agreement constitutes the entire and integrated agreement of Omnitrans and City with respect to the subject matter hereof and supersedes any and all prior and contemporaneous oral or written negotiations, representations or agreements.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto as of the day and year first written above.

OMNITRANS

By: _____
Name: _____
Title: _____
Date: _____

CITY OF MONTCLAIR

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____
Date: _____

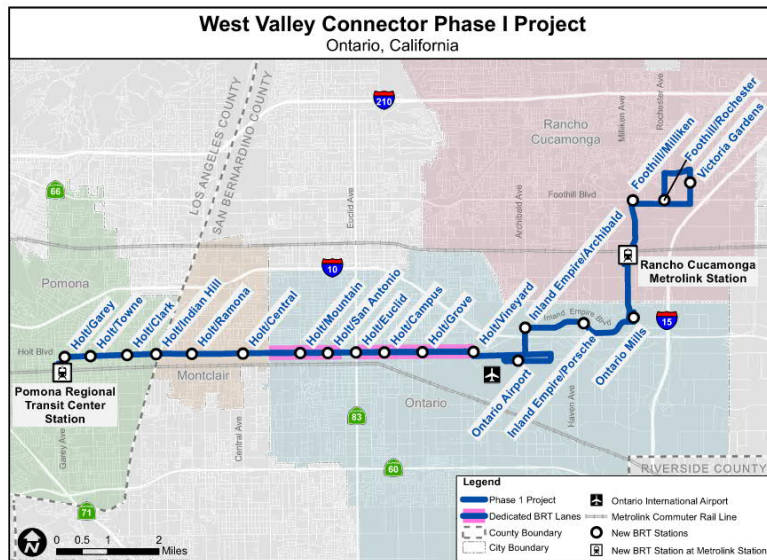
EXHIBIT A PROJECT DESCRIPTION

The San Bernardino County Transportation Authority (SBCTA), in cooperation with the cities of Pomona, Montclair, Ontario, and Rancho Cucamonga, and Omnitrans, is constructing Phase 1 of the West Valley Connector BRT Project (“Project”). The Project is a 19-mile corridor from downtown Pomona to Victoria Gardens in Rancho Cucamonga located primarily along Holt Avenue/Boulevard and Foothill Boulevard in the counties of Los Angeles and San Bernardino, California. The Project proposes limited stops, providing speed and quality improvements to the public transit system within the corridor.

The Project includes approximately 3.5 miles of dedicated BRT lanes with center-running stations on Holt Boulevard in Ontario. In addition, Transit Signal Priority (TSP) are included. The BRT system will be operated by Omnitrans and scheduled for operation in the Fall of 2024.

Project Alignment

In Pomona, the alignment starts from the Pomona Transit Center/MetroLink station (with a layover), along Holt Avenue and into the City of Montclair. The alignment runs through the entire City limits of Montclair along Holt Boulevard. In Ontario, the alignment continues on Holt Boulevard and then turns onto Vineyard Avenue and into Ontario International Airport (loop through Terminal Way), stopping at both terminals. From the airport, it heads north on Archibald Avenue to Inland Empire Boulevard and turns right to go east on Inland Empire Boulevard. On Inland Empire Boulevard, the alignment goes straight into Ontario Mills (loop through Mills Circle), and then heads north on Milliken Avenue into the City of Rancho Cucamonga. In Rancho Cucamonga, the alignment makes a loop into the Rancho Cucamonga MetroLink Station off Milliken Avenue and then continues up Milliken Avenue and turns east onto Foothill Boulevard. The alignment then turns north onto Day Creek Boulevard, and then terminates with a layover on Day Creek at Main Street at Victoria Gardens. The alignment makes a return route by continuing north on Day Creek Boulevard, turning west onto Church Street, then south onto Rochester Avenue, and then west back onto Foothill Boulevard, then down Milliken.



Project Stations

The BRT stations are located at 22 locations/major intersections and include five center platform stations, denoted below with an “*”.

City	Stations
Pomona	Pomona Regional Transit Center Station
	Holt Ave/Garey Ave
	Holt Ave/Towne Ave
	Holt Ave/Clark Ave
	Holt Ave/Indian Hill Blvd
Montclair	Holt Blvd/Ramona Ave
	Holt Blvd/Central Ave
Ontario	Holt Blvd/Mountain Ave*
	Holt Blvd/San Antonio Ave*
	Holt Blvd/Euclid Ave*
	Holt Blvd/Campus Ave*
	Holt Blvd/Grove Ave*
	Holt Blvd/Vineyard Ave
	Ontario International Airport (Two stations)
	Inland Empire Blvd/Archibald Way
	Inland Empire Blvd/Porsche Way
	Ontario Mills
Ranch Cucamonga	Rancho Cucamonga Metrolink Station
	Foothill Blvd/Milliken Ave
	Foothill Blvd/Rochester Ave
	Victoria Gardens between North and South Main St

Project Fleet and Maintenance Facilities

The Project’s fleet is comprised of 40-foot-long electric battery powered zero emission buses with sbX branding. The buses have a third door on the left side for boarding at center station platforms. On-route charging infrastructure will be constructed at Pomona Transit Center. Overhead charging infrastructure will also be constructed at Omnitrans’ West Valley maintenance facility in Montclair.

EXHIBIT B

TYPICAL STATION AREA

(Pages to follow)

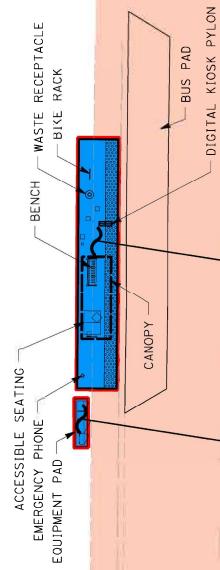
LEGEND:



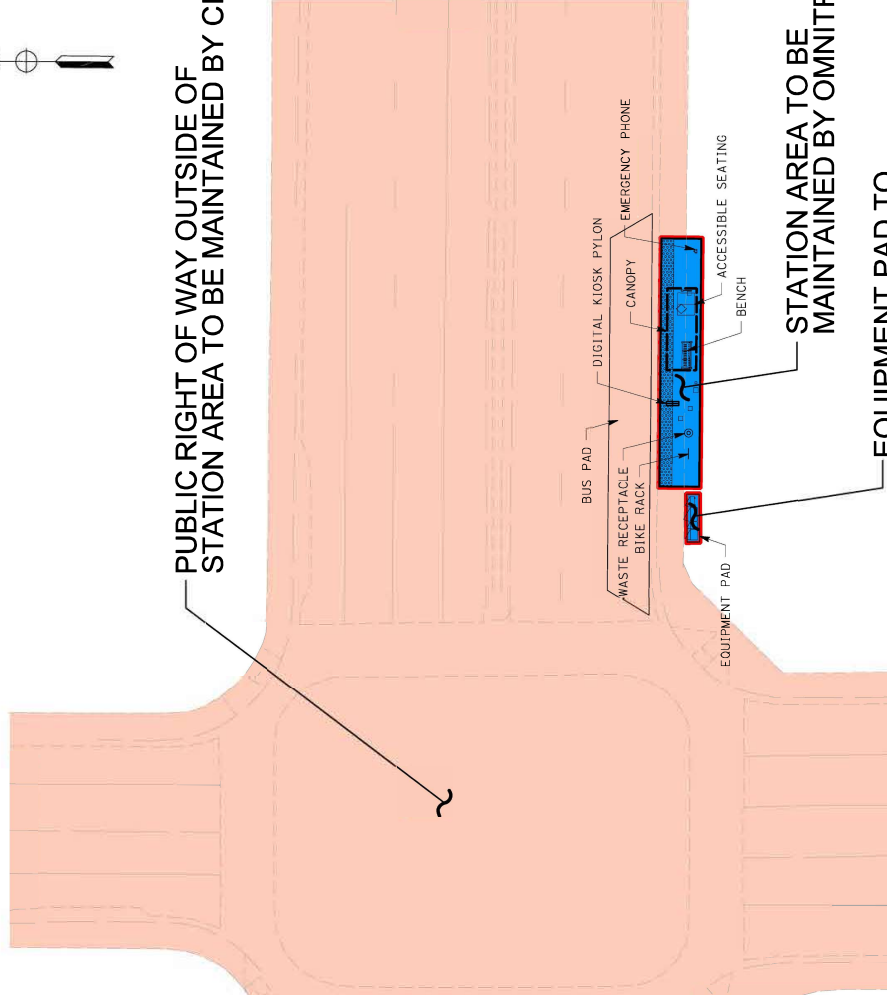
STATION AREA & EQUIPMENT PAD
- OMNITRANS TO OPERATE & MAINTAIN



PUBLIC RIGHT OF WAY OUTSIDE OF STATION AREA - CITY TO OPERATE & MAINTAIN



PUBLIC RIGHT OF WAY OUTSIDE OF STATION AREA TO BE MAINTAINED BY CITY

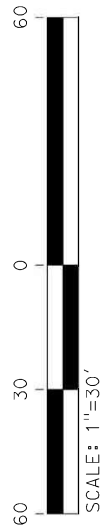


EQUIPMENT PAD TO BE MAINTAINED BY OMNITRANS

STATION AREA TO BE MAINTAINED BY OMNITRANS

STATION AREA TO BE MAINTAINED BY OMNITRANS

EQUIPMENT PAD TO BE MAINTAINED BY OMNITRANS



WEST VALLEY CONNECTOR PROJECT

PARSONS

EXHIBIT B Page 1 - Montclair

TYPICAL STATION AREA (SIDE)

**EXHIBIT C - MAINTENANCE RESPONSIBILITY CHECKLIST FOR PROJECT PROPERTY
INSTALLED AS PART OF THIS PROJECT**

	Omnitrans	City
Station Area		
Platforms including pavers and concrete	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pylons	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pylon for Digital Kiosk	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Digital Kiosks	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Signage	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fencing	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Handrails	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Detectible Warning Strips	<input checked="" type="checkbox"/>	<input type="checkbox"/>
New Canopies	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cameras	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Public Address System	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Emergency Telephones	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lighting at Stations	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Benches	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Trash Receptacles	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bike Racks	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Planters	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Equipment boxes	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cleaning/Pressure Washing	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Graffiti	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Curbs, ramps & vehicle pull-out areas within station	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Public Announcement System at Station	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Electrical cabinets & electrical usage fees for meter at station	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Water Usage at Station [Irrigation and power washing.]	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other station amenities or equipment in the station	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transit Signal Priority		
Transit Signal Priority Equipment – on bus	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transit Signal Priority mechanism – located inside traffic signal cabinet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Traffic signal cabinet	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Public Right of Way & City Property		
Street Lighting	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Electrical meters and usage fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Landscaping outside Station	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Paved surfaces	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Striping	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Permanent Pavement markers	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Curbs leading to and outside Station	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sidewalks	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Medians	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Water Usage Outside the Station [Irrigation and power washing.]	<input type="checkbox"/>	<input checked="" type="checkbox"/>



CITY COUNCIL AGENDA REPORT

DATE: MAY 15, 2023 **FILE I.D.:** EDD100/MHA100

SECTION: CONSENT - RESOLUTIONS **DEPT.:** ECONOMIC DEV./MHA/MHC

ITEM NO.: 1 **PREPARER:** M. FUENTES

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 23-3403 APPROVING AGREEMENT NO. 23-27, AN AFFORDABLE HOUSING AGREEMENT WITH THE MONTCLAIR HOUSING AUTHORITY AND THE MONTCLAIR HOUSING CORPORATION; AUTHORIZING THE TRANSFER OF 9814, 9875, AND 9878 MONTE VISTA AVENUE, MONTCLAIR, TO THE MONTCLAIR HOUSING AUTHORITY FOR USE AS AFFORDABLE HOUSING UNITS; AND DECLARING SUCH REAL PROPERTY TO BE EXEMPT SURPLUS LAND

CONSIDER ADOPTION OF MHC RESOLUTION NO. 23-01 APPROVING AGREEMENT NO. 23-27, AN AFFORDABLE HOUSING AGREEMENT WITH THE CITY OF MONTCLAIR AND THE MONTCLAIR HOUSING AUTHORITY

CONSIDER ADOPTION OF MHA RESOLUTION NO. 23-01 APPROVING AGREEMENT NO. 23-27, 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 \$75,000 APPROPRIATION FROM THE HOUSING TRUST FUND FOR REHABILITATION OF CERTAIN REAL PROPERTY

REASON FOR CONSIDERATION: Proposed Agreement No. 23-27 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 properties located at 9814, 9875, and 9878 Monte Vista Avenue and the subsequent leasing and operations of said properties as affordable housing units.

Proposed City Council Resolution No. 23-3403 would approve entering into Agreement No. 23-27, and would authorize the transfer of Properties from the City to the MHA.

Proposed MHC Resolution No. 23-01 would approve entering into Agreement No. 23-27.

Proposed MHA Resolution No. 23-01 would approve entering into Agreement No. 23-27, and accept the transfer of Properties from the City to the MHA.

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

Agreement No. 23-27 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 properties be operated as rental units made available to low-to-moderate-income persons. As such, staff has prepared Agreement No. 23-27 an affordable housing agreement by and between the City, MHA, and MHC.

Proposed Agreement No. 23-27 contains language related to the conveyance of the Properties, compliance with applicable laws, use of the properties, remedies, and general provisions. The more salient points of proposed Agreement No. 23-27 relate to the conveyance of fee title of Properties from the City to the MHA and leasing of the properties from the MHA to the MHC for the day-to-day operation of the properties, as well as the rehabilitation and rental of the properties to low-to-moderate-income persons.

9814, 9875, and 9878 Monte Vista Avenue

The subject Properties are located on a highly visible and desirable portion of Monte Vista 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 properties were built between 1953 and 1957 and the lot sizes range from 7,272 - 7,420 square feet. The dwelling units range from 1,612 - 1,769 square feet with three to four bedrooms and two bathrooms.

Due to the age of the properties, and in order to bring the properties up to code, staff is recommending several improvements to the residential units. The bulk of the improvements to the properties would address general property clean-up, paint, fence replacement, updates to bathrooms, and new landscaping. Due to current and projected future drought conditions, simple water-efficient landscape-planting design for the rear and front yards are also being recommended.

The proposed improvements alone would have an immediate positive impact to the neighborhood. Staff is requesting that a \$75,000 appropriation from the Housing Trust Fund be authorized to fund the recommended repairs to the properties.

FISCAL IMPACT: Adoption of Agreement No. 23-27 would produce no fiscal impact to the City of Montclair General Fund.

Staff is recommending an allocation of \$75,000 from the Housing Trust Fund in order to cover estimated costs for rehabilitation of the properties.

RECOMMENDATION: Staff recommends that the City Council adopt Resolution No. 23-3403 approving Agreement No. 23-27, an Affordable Housing Agreement with the Montclair Housing Authority and Montclair Housing Corporation; authorizing transfer of certain real property located at 9814, 9875, and 9878 Monte Vista Avenue, Montclair, to the Montclair Housing Authority for use as affordable housing units; and declaring such real property to be exempt surplus land.

Staff recommends that the Montclair Housing Corporation Board of Directors adopt Resolution No. 23-01 approving Agreement No. 23-27, 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. 23-01 approving Agreement No. 23-27, 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 \$75,000 appropriation from the Housing Trust Fund for rehabilitation of certain real property.

RESOLUTION NO. 23-3403

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 9814, 9875, AND 9878 MONTE VISTA 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 properties located at 9814, 9875, and 9878 Monte Vista Avenue (the "Properties") 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 Properties 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 Properties and the Housing Authority desires to acquire the Properties from the City; and

WHEREAS, no development of the Properties is contemplated; and

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

WHEREAS, Agreement No. 23-27, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements; and

WHEREAS, Assembly Bill 1486 ("AB 1486") expanded the Surplus Land Act (Government Code section 54220 et seq.) (the "SLA") requirements for local agencies prior to the disposition and disposal of any "surplus land" or "exempt surplus land"; and

WHEREAS, the Properties meet the definition of "surplus land," as it is no longer necessary for the City's use and the City seeks to dispose of the Properties; and

Whereas, even if the SLA were to apply, the Properties would be exempt surplus land, pursuant to section 54221(f)(1)(D) of the SLA, because it is being transferred to the MHA, another government agency, for its use.

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

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

SECTION 2: The City of Montclair hereby finds and determines that the transfer of the 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 City of Montclair is hereby authorized and directed to enter Agreement 23-27, 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 Properties 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 of Montclair hereby finds and declares that the Properties are no longer necessary for the City's use and are surplus land, as defined in California Government Code section 54221, based on the true and correct written findings found in this Resolution and incorporated herein by reference. The City is authorized to transfer the Properties without regard to the SLA pursuant to Government Code section 54221(f)(1)(D), so long as the transfer is to another government agency, the Montclair Housing Authority, for their use.

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

APPROVED AND ADOPTED this XX day of XX, 2023.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 23-3403 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

RESOLUTION NO. 23-01

A RESOLUTION OF THE MONTCLAIR HOUSING CORPORATION APPROVING AGREEMENT NO. 23-27, 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 9814, 9875, and 9878 Monte Vista Avenue (the "Properties") 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 Properties 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 Properties and the Housing Authority desires to acquire the Properties from the City; and

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

WHEREAS, Agreement No. 23-27, 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 23-27, 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. 23-01 was duly adopted by the Montclair Housing Corporation Board of Directors 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. 23-01

A RESOLUTION OF THE MONTCLAIR HOUSING AUTHORITY APPROVING AGREEMENT NO. 23-27, 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 PROPERTIES LOCATED AT 9814, 9875, AND 9878 MONTE VISTA AVENUE FROM THE CITY OF MONTCLAIR

WHEREAS, the City of Montclair (the "City") acquired properties located at 9814, 9875, and 9878 Monte Vista Avenue (the "Properties") 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 Properties 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 Properties and the Housing Authority desires to acquire the Properties from the City; and

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

WHEREAS, Agreement No. 23-27, 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 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 Authority is hereby authorized and directed to enter Agreement 23-27, 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 Properties 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 Properties 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.

Chairman

ATTEST:

Secretary

I, Andrea M. Myrick, Secretary of the Montclair Housing Authority, DO HEREBY CERTIFY that Resolution No. 23-01 was duly adopted by the Montclair Housing Authority Board of Directors 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

AFFORDABLE HOUSING AGREEMENT

by and among the

MONTCLAIR HOUSING AUTHORITY

and the

CITY OF MONTCLAIR

and the

MONTCLAIR HOUSING CORPORATION

TABLE OF CONTENTS

1. DEFINITIONS 1

2. CONVEYANCE OF THE PROPERTY **Error! Bookmark not defined.**

 2.1 Conveyance of Fee Title 2

 2.2 Lease Terms 3

 2.3 Conditions Precedent to Commencement of Lease 3

3. COMPLIANCE WITH LAWS 3

4. USE OF THE PROPERTY 3

 4.1 Use In Conformance with Agreement 3

 4.2 Affordable Rental Housing 4

 4.3 Occupancy Standards 5

 4.4 Management and Maintenance 5

 4.5 Rights of Access 6

 4.6 Nondiscrimination 7

 4.7 Effect of Violation of the Terms and Provisions of this Agreement After
 Completion of Construction 8

5. REMEDIES 8

 5.1 Events of Default 8

 5.2 Remedies 8

 5.3 Force Majeure 8

 5.4 Attorneys’ Fees 9

 5.5 Remedies Cumulative 9

 5.6 Waiver of Terms and Conditions 9

 5.7 Non-Liability of Authority Officials and Employees 9

6. GENERAL PROVISIONS 9

 6.1 Time 9

 6.2 Notices 9

 6.3 Representations and Warranties of Operator 10

 6.4 Limitation Upon Change in Ownership, Management and Control of Operator 10

 6.5 No Third Parties Benefited 11

 6.6 Partial Invalidity 11

 6.7 Governing Law 11

 6.8 Amendment 11

 6.9 Approvals 11

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 May 16, 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 properties located within the corporate limits of the City of Montclair, located at 9814, 9875, and 9878 Monte Vista Avenue, Montclair, California (the “Properties” or “Houses”). The Properties are further described in the Legal Description which is attached hereto as Attachment No. 1.

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

D. Upon acquiring the Properties, Authority intends to lease the Properties to the Operator for the operation of the Properties as 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 homes which are located on and constitute part of the Properties.

“**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 Properties, 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 Properties. 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.

“**Properties**” means the single family houses in the City of Montclair located at 9814, 9875, and 9878 Monte Vista Avenue, Montclair, California, and described in the Legal Descriptions.

“**Properties Value**” means the amount of One Million Eight Hundred Forty Seven Thousand Dollars (\$1,847,000.00). The Properties’s Value is mutually believed to be by each of the Parties to represent the fair market value of the Properties as of the Date of Agreement.

2. CONVEYANCE OF THE PROPERTY.

2.1 Conveyance of Fee Title. City agrees to convey to Authority the Properties by City Deed. The purchase price payable by Authority to City in consideration of the conveyance of the Properties shall be One Dollar (\$1.00) (the “Authority Purchase Price”) for each house; provided that City may waive receipt of Authority Purchase Price. Upon request therefor by Authority, City will, in connection with the conveyance of the Properties, provide to Authority an owner’s standard ALTA policy of title insurance as to the Properties 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 Properties 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 Properties to the Operator for a fifteen (15) year term at a base rental amount of One Dollar (\$1.00) per year, per house, 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 Properties 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 Properties 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 Properties 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 Properties 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 Properties or any part thereof that, during the term of this Agreement, the Operator, such successors and such assignees, shall use,

operate and maintain the Properties in conformity with this Agreement and shall devote the Properties 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 Houses to Low Income Households, at an Affordable Rent.

(b) Lease Requirements. Prior to rental of the Houses within the Properties, 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 Houses.

(c) Duration of Affordability Requirements. The Houses 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 Houses 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 Houses may be raised to a market rate rent at the end of the Affordability Period.

(d) Selection of Tenants. The Houses 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 Houses by providing to the Operator names of persons who have expressed interest in renting the Houses. 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 Houses to tenants, and annually thereafter, the Operator shall obtain an income certification from each tenant of the Properties. 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 Houses and shall be given a written notice which requires such tenant to vacate the Houses 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 Houses 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 Houses shall be rented at an "Affordable Rent" to be established by the Authority as provided herein. The maximum monthly rental amount for the Houses 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 Houses 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 Houses 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 Houses shall be limited to five (5) persons.

4.4 Management and Maintenance. The Operator shall manage and maintain the Properties 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 Properties 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 Properties as are necessary, including the following: carpet and drape replacement; appliance replacement; exterior painting, hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; and lighting fixture replacement.

Management and maintenance shall be overseen by the Authority or its designee and, if the above standards are breached, after notice and opportunity to cure within the time set forth in this paragraph, the Authority or its designee may in its reasonable discretion direct the Operator to and the Operator shall hire a management company acceptable to the Authority to manage the 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 Properties 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 Properties 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 Properties 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 Properties 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 Properties 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 Properties 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:

APNS:

1009-273-19-0000
Tract 5156 Lot 159

1010-021-03-0000
Tract 3932 Lot 43

1009-273-25-0000
Tract 5156 Lot 165

ATTACHMENT NO. 2

LEASE

By and Between

THE MONTCLAIR HOUSING AUTHORITY

and

MONTCLAIR HOUSING CORPORATION

LEASE

THIS LEASE (the “Lease”) is made as of May 16, 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 May 16, 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 Properties 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 houses in the City of Montclair (the “City”) located at 9814, 9875, and 9878 Monte Vista Avenue (the “Houses”), 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 Properties is to the described land, inclusive of any improvements now or hereafter located on the land.

SECTION 3. LEASE TERM.

Lessee shall lease the Properties from Authority and Authority shall lease the Properties to Lessee for a term commencing on May 16, 2023 (the “Commencement Date”) and continuing until [May 16, 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 Properties shall be devoted to those uses as set forth in the Agreement.

4.2 Management. Lessee shall manage or cause the Properties 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 Properties 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 Properties 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 Properties 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 Properties 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 Houses 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 Houses.

6.3 Duration of Affordability Requirements. The Properties 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 Houses 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 Properties may be raised to a market rate rent at the end of the Affordability Period.

6.4 Selection of Tenants. The Properties 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 Houses by providing to the Lessee names of persons who have expressed interest in renting the Houses. 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 Houses 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 Properties and shall be given a written notice which requires such tenant to vacate the Properties 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 Houses 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 Properties. The Houses shall be rented at an "Affordable Rent" to be established by the Authority as provided herein. The maximum monthly rental amount for the Properties 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 Properties may be increased once per year, regardless of when particular tenants commenced occupancy of the Houses. The maximum monthly rental amount for the Houses 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 Houses.

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 Houses, municipal or county water and sewer rates and charges which shall be levied against the Houses, or any interest therein, and which become a lien thereon and accrues during the Term.

(B) The Properties 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 Properties 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 Properties 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 Properties, 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 Properties, 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 Properties, 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 Properties or any part thereof. Prior to commencement of any repair or alteration to the Properties, 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 Properties throughout the Term without expense to Authority, and to perform all repairs and replacements necessary to maintain and preserve the Properties 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 Properties. 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 Properties 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 Properties 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 Properties as are necessary, including the following: carpet and drape replacement; appliance replacement; exterior painting, hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; and lighting fixture replacement.

Management and maintenance shall be overseen by the Authority or its designee and, if the above standards are breached, after notice and opportunity to cure within the time set forth in this paragraph, the Authority or its designee may in its reasonable discretion direct the Lessee to and the Lessee shall hire a management company acceptable to the Authority to manage the Properties. 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 Properties 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 Properties.

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 Properties 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 Properties for the purposes contemplated by this Lease and the Agreement, which requirements or necessity arise from the presence upon, about or beneath the Properties 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 Properties, 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 Properties 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 Properties 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 Properties, 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 Properties 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 Properties. 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 Properties, 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 Properties and any property adjacent to the Properties affected by Hazardous Materials emanating from the Properties 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 Properties: 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 Properties.

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 Properties 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 Properties, nor demolish all or any part of the Properties without the prior written consent of Authority; provided, however, that the foregoing shall not prohibit or restrict the repair and/or replacement of the Properties 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 Properties in a clean and safe condition, including structural repair and restoration of damaged Properties. Authority shall not be obligated by this Lease to make any improvements to the Properties or to assume any expense therefor. Lessee shall not commit or suffer to be committed any waste or impairment of the Properties, 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 Properties 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 Properties all debris resulting from such casualty and rebuild the Properties in accordance with plans and specifications previously submitted to Authority and approved in writing in order to replace in kind and scope the Properties which existed prior to such damage. In the event of a casualty in which the Properties 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 Properties 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 Properties 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 Properties (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 Properties. 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 Properties 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 Properties (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 Properties ("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 Properties nor Authority's right to receive Rent hereunder shall be subordinate to any Permitted Encumbrance or any other lien, mortgage, deed of trust, pledge or other encumbrance of Lessee's leasehold interest hereunder.

SECTION 16. INDEMNITY.

During the Term, Lessee agrees that Authority and City, their agents, officers, representatives and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Lessee, its sublessees or representatives, agents, employees, guests,

licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether caused by or resulting from any act or omission of Lessee or its sublessees or any other person on or about the Properties, or in connection with the operation thereof, or from any defect in the Properties. 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 Properties of all property of an insurable nature located upon the Properties, 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 Properties. 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 Properties, 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 Properties, 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 Properties, 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 Properties 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 Properties, including the cost of construction of the Properties, 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 Properties. All proceeds of insurance with respect to loss or damage to the Properties 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 Properties 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 Properties, 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 Properties 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 Properties 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 Properties, 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 Properties 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 Properties, leaving the remainder of the Properties 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 Properties 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 Properties not so taken.

(B) In the event of taking of only a part of the Properties, leaving the remainder of the Properties 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 Properties or the portion thereof so taken vests in the condemning authority.

(C) In the event the Properties is so taken, this Lease and all of the right, title and interest thereunder, shall cease on the date title to the Properties 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 Properties, 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 Properties 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 Properties 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 Properties pursuant to this Lease shall belong to Lessee. That portion of any award attributable to the fair market value of the Properties 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 Properties, then Lessee shall be entitled to any portion of the award attributable to severance damages to the remaining Properties. Said award shall be used for the restoration, repair or rebuilding of the Properties 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 Properties, the mortgagee shall be entitled to any portion of the award attributable to the Properties, to the extent of its interest therein. The mortgagee may at its option apply said portions of the award to restoration of the Properties or to reduction of the mortgage. Any excess portion of the award attributable to the condemnation of the Properties 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 Properties 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 Properties 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 Properties, 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 Properties, 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 Properties 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 Properties, as well as operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Properties, 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 Properties, 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 Properties. 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 Properties 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 Properties for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Properties 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 Properties 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 Properties 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 Properties; 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 Properties, to collect all funds available to Lessee in connection with its operation and maintenance of the Properties; and to perform all other consistent with Lessee's obligation under this Lease as the court deems proper;

(5) Maintain and operate the Properties, 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 Properties and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Properties 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 Properties on the Properties shall vest in Authority. Even though Lessee has breached the Lease and abandoned the Properties, 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 Properties, (i) the liability of Lessee shall be limited to its interest in the Properties, and any rents, issues and profits arising from any subleases of the Properties 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 Properties. 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 Properties 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 Properties 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 Properties.

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 Properties, 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 Properties 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 Properties 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 Properties, 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 Properties 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 Properties 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

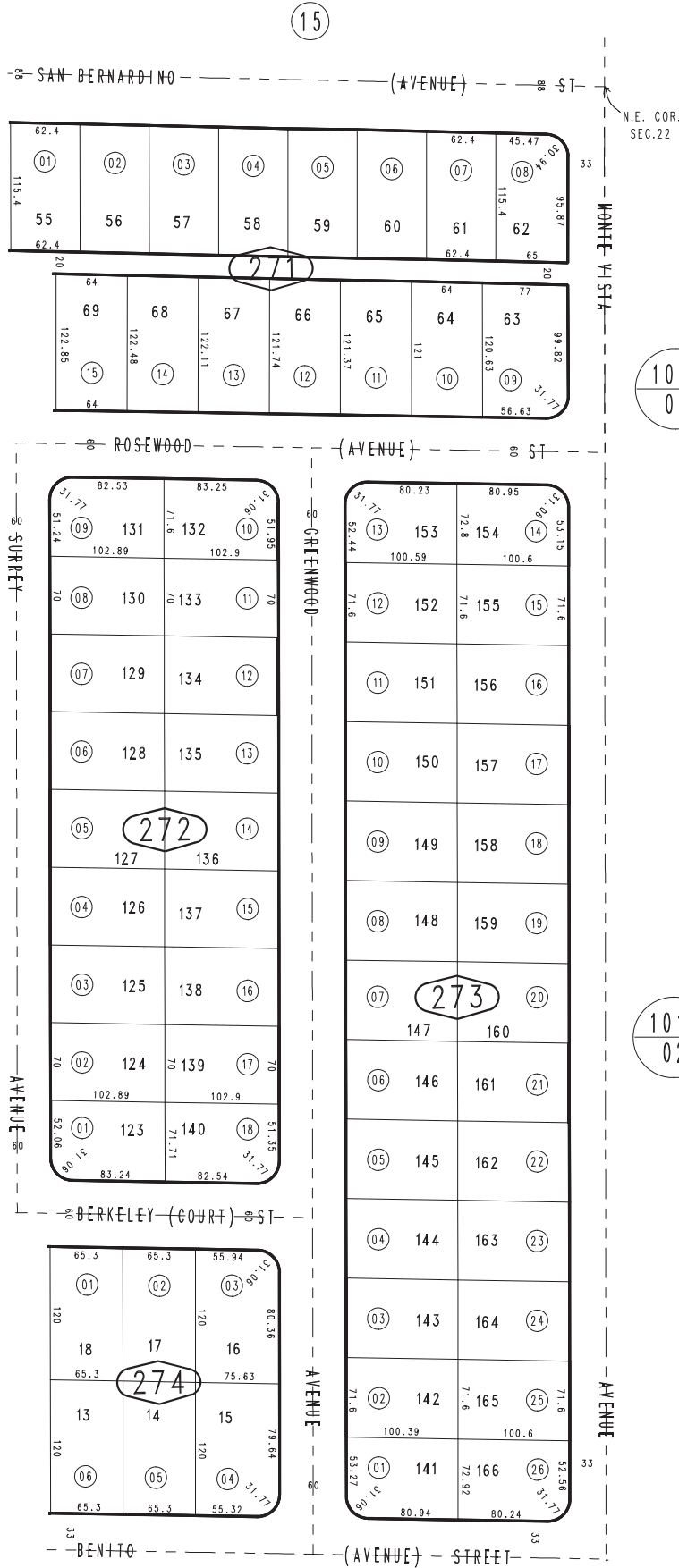
PROPERTY MAP

[To Be Attached]

THIS MAP IS FOR THE PURPOSE
OF AD VALOREM TAXATION ONLY.



February 2004



1010
01

1010
02

Ptn. Tract No. 5156, M.B. 68/82-86

City of Montclair
Tax Rate Area
11008

1009 - 27

Ptn. N.E.1/4, Sec.22
T.1S.,R.8W.

Assessor's Map
Book 1009 Page 27
San Bernardino County

REVISED

THIS MAP IS FOR THE PURPOSE
OF AD VALOREM TAXATION ONLY.

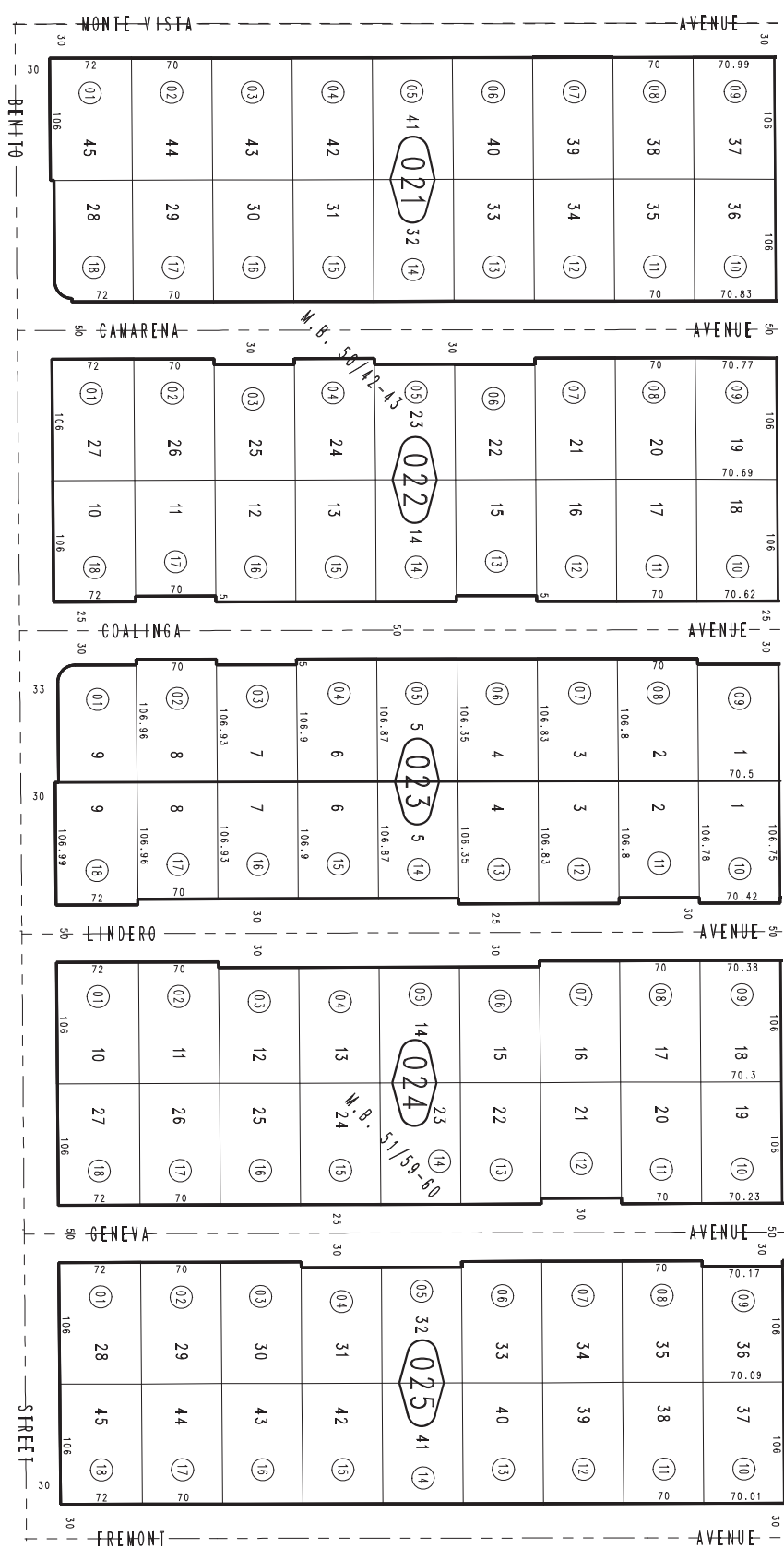


Tract No. 3932, M.B. 50/42-43
Tract No. 3862, M.B. 51/59-60

City of Montclair 1010 - 02
Tax Rate Area 11008

APN 1010-021-03-0000

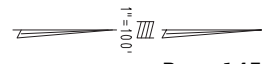
1009
27



01

31

03



October 2004

Ptn. N.W.1/4, Sec.23
T.1S.,R.8W.

Assessor's Map
Book 1010 Page 02
San Bernardino County

REVISED

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:

APNS:

1009-273-19-0000
Tract 5156 Lot 159

1010-021-03-0000
Tract 3932 Lot 43

1009-273-25-0000
Tract 5156 Lot 165

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: 1009-273-19-0000
1010-021-03-0000
1009-273-25-0000

[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 properties 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:

APNS:

1009-273-19-0000
Tract 5156 Lot 159

1010-021-03-0000
Tract 3932 Lot 43

1009-273-25-0000
Tract 5156 Lot 165

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 properties:

Real property in the City of Montclair, County of San Bernardino, State of California, described as follows:

APNS:

1009-273-19-0000
Tract 5156 Lot 159

1010-021-03-0000
Tract 3932 Lot 43

1009-273-25-0000
Tract 5156 Lot 165

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

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
MAY 1, 2023, AT 5:10 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Johnson called the meeting to order at 5:10 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Johnson, 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 April 3,
2023.**

Moved by Mayor Pro Tem Johnson, seconded by City Manager Starr,
and carried unanimously to approve the minutes of the Personnel
Committee meeting on April 3, 2023.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION


At 5:11 p.m., the Personnel Committee went into Closed Session
regarding personnel matters related to appointments, resignations/
terminations, and evaluations of employee performance.

At 5:40 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 5:40 p.m., Mayor Pro Tem Johnson adjourned the Personnel
Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager

MINUTES OF THE ADJOURNED MEETING OF THE MONTCLAIR
CITY COUNCIL HELD ON MONDAY, MAY 1, 2023, AT 5:45 P.M.
IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor Dutrey called the meeting to order at 5:45 p.m.

II. ROLL CALL

Present: Mayor Dutrey; Mayor Pro Tem Johnson; Council Members Ruh,
Martinez, and Lopez

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; Captain Reed; City Attorney
Robbins; City Clerk Myrick

III. COUNCIL WORKSHOP

A. Proposed Ordinance Regulating the Parking of Oversized and
Recreational Vehicles on Public Streets

Jim Eckart, Special Legal Counsel, presented a PowerPoint detailing
the safety issues caused by oversized vehicles parking on public
streets and providing options for regulations used by other cities.
Options included issuing limited time permits and restricting the
number of permits issued per year, tying the issuance of permits to
residents only, designating only certain areas for parking, or not
requiring permits but greatly restricting the amount of time a
recreational or oversized vehicle can be parked.

Mayor Pro Tem Johnson agreed that sight line interference caused
by parked RVs and other oversized vehicles is a safety issue.

Council Member Martinez raised the question of how this would
affect current recreational vehicle owners and if they would be
granted exceptions to the new regulation. It was clarified that no
exemptions would be made for current RV owners.

Council Member Ruh stated that the City should offer alternative
places for recreational vehicles to park such as a parking lot. He
mentioned some residents live in these vehicles and so they should
not be affected with this regulation being put in place.

Council Member Lopez stated opposition to restricting public access
and the use of public streets by residents. He raised concerns
regarding residences that do not have driveways and that rely on
street parking.

Assistant Code Enforcement Manager Fondario provided insight
regarding neighborhood discord and enforcement issues.

Mayor Dutrey concurred that restrictions are necessary after
surrounding cities have implemented similar parking limitations,
causing Montclair to become a parking destination for RVs.

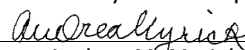
It was determined that the City Council would like to further study
the issue.

IV. PUBLIC COMMENT— None

V. ADJOURNMENT

At 6:49 p.m., the City Council was adjourned.

Submitted for City Council approval,



Andrea M. 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, MAY 1, 2023, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

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

II. INVOCATION

Carolyn Preschern, Inland Empire Prayer Breakfast Committee, gave the invocation.

III. PLEDGE OF ALLEGIANCE

Mayor Pro Tem/Director Johnson led meeting participants in the Pledge.

IV. ROLL CALL

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

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; Captain Reed; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS

A. **Presentation of Annual Donation by the Montclair Chamber of Commerce to the Montclair Community Foundation for the Montclair to College Program**

Board Chair **Steve Hammitt, Montclair Chamber of Commerce**, presented a \$1,579.60 check raised from its Military Banner Program to Mayor Dutrey as a donation to the Montclair to College Program.

B. **Southern California Edison Presentation of 2023 Edison Scholar Award and \$50,000 Scholarship to Montclair High School Student Antonio Camarillo**

Jennifer Shaw and Melissa Boyd, Government Relations Managers, **Southern California Edison (SCE)**, presented a scholarship of \$50,000 to **Montclair High School** student **Antonio Camarillo** and recognized him as one of the 2023 Edison Scholars selected for this prestigious distinction.

Antonio Camarillo was presented with Certificates of Recognition from the offices of **San Bernardino County Fourth District Supervisor Curt Hagman, California Assembly Member Freddie Rodriguez, California Senator Susan Rubio**, and U.S. Representative **Norma Torres**.

C. **Proclamation Declaring May 4, 2023 as National Day of Prayer in the City of Montclair**

Carolyn Preschern, Inland Empire Prayer Breakfast Committee, announced the annual breakfast would be taking place on May 4th at the **Ontario DoubleTree Hotel**.

D. **Proclamation Declaring Montclair as a Purple Heart City**

Mayor Dutrey presented a proclamation declaring Montclair as a Purple Heart City. He noted the proclamation would be provided to **Military Order of the Purple Heart, Chapter 2929** Adjutant **Raymond Wetzels**, who was unable to attend to accept in-person.

VI. PUBLIC COMMENT

- **Jennifer Shaw**, Government Relations Manager, **SCE**, announced she would be leaving her position and thanked the Council for their support.
- **Melissa Boyd**, Government Relations Managers, **SCE**, announced she would be taking over for **Jennifer Shaw**, and looks forward to assisting the City of Montclair moving forward.
- **Jordi Ubaldo** and **Kaliah Redwood**, Event Coordinators, **Montclair Chamber of Commerce**, announced upcoming Chamber events **Networking Breakfast** on May 11th at 8:30 a.m. at **Aqua Ridge Senior Living**; an electronic waste event May 27 to 28, 2023 from 9:00 a.m. to 2:00 p.m.; and a *Night Under the Stars* on August 17, 2023, from 6:00 – 8:30 p.m. at the **Chino Basin Water Conservation District**.
- **Jose Perez** requested that the City provide safe routes to schools, particularly in the area he resides. He commented that the Montclair Police Department has been patrolling the area, but more frequently patrols could be helpful to deter driving violations.
- **Carolyn Raft**, **West Valley Mosquito and Vector Control District** Board Secretary and Montclair representative, warned the number of green pools are up this year, which contributes to mosquito breeding.

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

ACTION - Consent Calendar	
ACTING:	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
MOTION:	Approve the Consent Calendar as presented.
MADE BY: SECOND BY:	Mayor Pro Tem/Vice Chair Johnson Council Member/Director Lopez
AYES: NOES: ABSTAIN: ABSENT:	Martinez, Ruh, Johnson, Dutrey, Lopez None None None
RESULT:	Motion carried 5-0.

A. Approval of Minutes

1. Adjourned Meeting — April 3, 2023

ACTION - Consent Calendar - Item A-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

2. Regular Joint Meeting — April 3, 2023

ACTION - Consent Calendar - Item A-2	
ACTING:	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

B. Administrative Reports

1. Consider Receiving and Filing City Treasurer's Report - March 2023

ACTION - Consent Calendar - Item B-1	
ACTING:	City Council
RESULT:	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 - March 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 - March 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 - March 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 - March 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 - March 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 – March 2023

ACTION – Consent Calendar – Item B-8	
ACTING:	Montclair Housing Authority Commissioners
RESULT:	Approved on Consent Calendar; motion carried 5-0.

9. Consider Receiving and Filing Annual Reports from Independent Auditing Firm for the City of Montclair and the Successor Agency for the City of Montclair Redevelopment Agency

ACTION – Consent Calendar – Item B-9	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

10. Consider Authorizing a \$471,710.04 Appropriation from Lease Revenue Bond Proceeds for Excess Costs Associated with the Zone 5-6 Street Rehabilitation Project

Consider Approval of the Filing of a Notice of Completion with the San Bernardino County Recorder for the Zone 5-6 Street Rehabilitation Project Constructed by Gentry Brothers, Inc.

Consider Authorizing Release of Retention 30 Days after Recordation of the Notice of Completion

ACTION – Consent Calendar – Item B-10	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

11. Consider Receiving and Filing the Montclair Police Department 2022-23 Military Equipment Annual Report Pursuant to GC §7072

Consider Authorizing the Scheduling of a Follow-up Police Department Community Engagement Meeting on Wednesday, May 17, 2023, at 5:00 p.m. in the Police Department’s Emergency Operations Center Community Room at 4870 Arrow Highway, Montclair

Mayor Pro Tem Johnson received clarification that some equipment will be available for viewing at the event.

ACTION – Consent Calendar – Item B-11	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

C. Agreements

1. Consider Approval of Agreement No. 23-21 with Southern California Transcription Services for Transcription of Digital, Audio-Recorded Material, subject to any revisions deemed necessary by the City Attorney

Council Member Lopez received clarification regarding the number of intersections that would receive flashing stop signs.

ACTION – Consent Calendar – Item C-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

2. **Consider Approval of Agreement Nos. 23-22 and 23-23 with Ontario-Montclair School District to Support Expanding the Montclair After-School Summer Program Through July 2023 at Kingsley Elementary and Serrano Middle School**

ACTION - Consent Calendar - Item C-2	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

3. **Consider Approval of Agreement Nos. 23-24 and 23-25 with Ontario-Montclair School District to Support the Montclair After-School Program at Various Sites for the 2023-2024 School Year**

ACTION - Consent Calendar - Item C-3	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

4. **Consider Rejecting the Bid Received from Great Western Installation, Inc. for the Alma Hofman Park Playground Surface Replacement Project**

Consider Awarding a Contract to Spectraturf, Inc. in the Amount of \$180,599.50 for the Alma Hofman Park Playground Surface Replacement Project

Consider Approval of Agreement No. 23-26 with Spectraturf, Inc. for the Alma Hofman Park Playground Surface Replacement Project, Subject to Any Revisions Deemed Necessary by the City Attorney

Consider Authorizing a \$180,599.50 Appropriation from 2021 Lease Revenue Bond Proceeds to Cover Costs Related to Agreement No. 23-26

Mayor Pro Tem Johnson received clarification that this project would not affect the splash pad opening date.

Councilmember Lopez questioned why the other bid proposal was not accepted.

ACTION - Consent Calendar - Item C-4	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

5. **Consider Authorizing a \$41,397.45 Appropriation from the Contingency Fund to Participate in a Public/Private Emergency Ambulance and Interfacility Transport Service Bidding for the County Contract**

Consider Approval of Agreement No. 23-28, a Memorandum of Understanding with CONFIRE Agreeing to Become a Contracting Agency in the EMS Division

Consider Authorizing City Manager Edward C. Starr to Sign Agreement No. 23-28 and a Declaration of Intent to Participate in the CONFIRE EMS Division Contract

Carolyn Raft, resident, spoke in support of the CONFIRE agreement, and recommended the Council approve it.

Mayor Pro Tem Johnson received clarification that the response time should be 10 minutes or under, however it is currently 20 minutes with AMR since private vendors have more leniency.

Councilmember Lopez spoke in support of the agreement.

ACTION - Consent Calendar - Item C-5	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

IX. PULLED CONSENT CALENDAR ITEMS

D. Resolutions

- 1. Consider Adoption of Resolution No. 23-3403 Approving Agreement No. 23-27, an Affordable Housing Agreement with the Montclair Housing Authority and the Montclair Housing Corporation; Authorizing the Transfer of 9814, 9875, and 9878 Monte Vista Avenue, Montclair, to the Montclair Housing Authority for use as Affordable Housing Units; and Declaring Such Real Property to be Exempt Surplus Land**

Consider Adoption of Resolution No. 23-01 Approving Agreement No. 23-27, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Authority

Consider Adoption of Resolution No. 23-01 Approving Agreement No. 23-27, 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 \$75,000 Appropriation from the Housing Trust Fund for Rehabilitation of Certain Real Property

City Manager Starr pulled this item for staff to make technical revisions to the agenda report. It will be placed on a future agenda for discussion.

X. COMMUNICATIONS

A. Department Reports

- 1. Human Services Department — Upcoming Events & Programs**

Assistant City Manager/Director of Human Services Richter provided information on upcoming programs and events including the Summer Day Camp that will be held at the Youth Center, with pre-registration having starting today. She provided a reminder that the Senior Center will be hosting two Cinco de Mayo activities on Friday, May 5th. She also announced that the weight room and racquetball courts in the Recreation Center will be reopening on May 8th. There will be a food distribution event on May 18th in the Community Center. The Summer Kick-Off will be held on May 27th from 12:00 p.m. to 3:00 p.m. at Alma Hofman Park. The Community Activities Commission's Memorial Day Program will take place on Monday, May 29th, in the Memorial Garden. The 9th Annual Country Fair Jamboree will be taking place on June 3rd.

B. City Attorney

City Attorney Robbins requested the City Council meet in closed session concerning the following:

1. **Closed Session Pursuant to Government Code §54956.9(d)(1) Regarding Pending Litigation**

City of Montclair v. Monte Vista Water District

2. **Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations**

Property: APN 1008-611-15-0000
Negotiating Parties: City of Montclair and Yum Yum Donut Shop Inc.
Agency Negotiator: Edward C. Starr, City Manager
Under Negotiations: Recommendations Regarding Purchase Price

3. **Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations**

Properties: APN 1008-611-18-0000, 1008-611-19-0000
Negotiating Parties: City of Montclair and Fonseca, Ricardo R. Trust
Agency Negotiator: Edward C. Starr, City Manager
Under Negotiations: Recommendations Regarding Purchase Price

Mayor Dutrey announced his intent to recuse himself during Closed Session Item B-3 due to a family member being a client of one of the businesses operating at the property.

C. **City Manager/Executive Director — None**

D. **Mayor/Chair**

1. **Announcement of Vacancies on Planning Commission (3)**

Mayor/Chair Dutrey announced there are 3 vacancies on the Planning Commission. The deadline to apply is by May 23rd at 5:30 p.m.

2. Mayor Dutrey announced that several Council Members went to Washington, D.C. to meet with legislators regarding large projects that the City is aiming to accomplish. He recognized May as Jewish American Heritage Month, Asian American Pacific Islander Heritage Month, International Nurses Day, Memorial Day, Armed Forces Day, and Mother's Day.

E. **Council Members/Directors**

1. Council Member/Director Ruh attended the **Montclair to College** graduation event and commended what great things are being provided for the students of Montclair. He announced his opposition to any parking fees for mass transit because he believes people will be more encouraged to use public transportation if parking is free. He noted that Prop 13 has saved a lot of homes and he would oppose any repeal efforts.

2. Council Member/Director Lopez stated on May 12th **Montclair Little League** is attending a Family Feast Night at the **Quakes Stadium**. He announced the first Thursday of May is recognized as the National Day of Prayer.

3. Mayor Pro Tem/Vice Chair Johnson stated she also wanted to commend the **Montclair to College** graduates and stated the Human Services Department did a great job on the event. She reported the Easter Eggstravaganza was a success last month.

4. Council Member/Director Martinez commended the **Montclair to College** graduation event and congratulated all the graduates. She also commented on how great the Washington, D.C. trip was and how grateful she was to speak with elected representatives and their staff. She reported **the Women's Club of Montclair**, of which she is a member, awarded a \$500 scholarship to a very deserving **Montclair High School** student.

F. Committee Meeting Minutes

The following committee minutes were received and filed for informational purposes:

1. Personnel Committee – April 3, 2023

XI. CLOSED SESSION

At 8:16 p.m., the City Council went into closed session to discuss pending litigation and real property negotiations (APN 1008-611-15-0000).

At 8:35 p.m., Mayor Dutrey left the meeting.

At 8:36 p.m., the City Council discussed real property negotiations (APNs 1008-611-18-0000 and 1008-611-19-0000)

XII. CLOSED SESSION ANNOUNCEMENTS

At 8:45 p.m., the City Council returned from closed session.

At 8:45 p.m., Mayor Dutrey returned to the meeting.

Mayor Dutrey announced the City Council met in closed session to discuss pending litigation and real property negotiations (APN 1008-611-15-0000), information was received and direction given to staff; and no further announcements would be made at this time.

Mayor Pro Tem Johnson announced the City Council met in closed session to discuss real property negotiations (APNs 1008-611-18-0000, 1008-611-19-0000), information was received and direction given to staff; and no further announcements would be made at this time.

XIII. ADJOURNMENT

At 8:46 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

CITY OF MONTCLAIR

TREASURER'S REPORT

FOR THE MONTH ENDING

APRIL 30, 2023

TABLE OF CONTENTS

SCHEDULE 1

STATEMENTS OF COMPLIANCE WITH INVESTMENT POLICY AND INVESTMENT STRATEGY FOR APRIL 30, 2023

SCHEDULE 2

STATEMENT OF CASH AND INVESTMENTS BY FUND

SCHEDULE 3

STATEMENT OF CASH AND INVESTMENT ACCOUNTS

GRAPH

CASH AND INVESTMENTS BY TYPE

**CITY OF MONTCLAIR
STATEMENTS OF COMPLIANCE WITH THE INVESTMENT POLICY
AND INVESTMENT STRATEGY**

APRIL 30, 2023

COMPLIANCE STATEMENT

The City has the following amount invested in various financial instruments. This conforms with the investment policy approved by the City Council.

Total Investments \$ 33,380,111

During the current month the City was in compliance with the internal control procedures set forth in the Investment Policy.

INVESTMENT STRATEGY FOR THE UPCOMING MONTH

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund and other investments authorized in the Investment Policy. The City has sufficient monies available to meet expenditures during the next six month period.

CITY OF MONTCLAIR
STATEMENT OF CASH AND INVESTMENTS BY FUND
AS OF APRIL 30, 2023

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance
General Fund	\$ 5,944,332.79	\$ 4,991,788.81	\$ 2,613,475.68	-	\$ 8,022,645.92 (1)
Gas Tax Fund	(81,989.36)	67,138.87	108,250.04	-	(123,100.53) (2)
Road Maintenance - Section 2032	1,831,262.33	71,852.15	-	-	1,903,114.48
Measure I Fund	5,398,175.25	69,738.57	-	-	5,467,913.82
Traffic Safety	77,336.07	12,168.53	-	-	89,504.60
Disability Access Fund - Bus. License	51,289.30	816.00	-	-	52,105.30
Park Maintenance	20,808.03	3,204.14	3,260.15	-	20,752.02
Park Development	1,156,207.06	-	-	-	1,156,207.06
CDBG	(183,044.43)	-	8,790.63	-	(191,835.06) (2)
SB2 Planning Grant	(58,642.50)	1,767.50	-	-	(56,875.00) (2)
Air Quality Improvement Trust	117,342.62	-	-	-	117,342.62
Senior Nutrition Program	(63,547.35)	2,793.53	10,157.69	-	(70,911.51) (2)
American Rescue Plan	4,794,353.00	-	-	-	4,794,353.00
Forfeiture Fund - State	113,953.63	3,077.18	15,786.33	-	101,244.48
Proposition 30/SB 109	88,029.95	-	566.67	-	87,463.28
SB 509 Public Safety	360,118.18	41,445.00	17,362.73	-	384,200.45
Forfeiture Fund-Federal/DOJ	576,692.31	5,372.74	-	-	582,065.05
Asset Seizure Fund	0.93	0.29	-	-	1.22
Section 11489 Subfund	35,448.75	543.02	524.70	-	35,991.77
Fed Asset Forfeiture-Treasury	126,897.52	-	-	-	126,897.52
School District Grant Fund	329,994.05	-	41,417.62	-	288,576.43
State Supplemental Law Enforce	18.67	-	-	-	18.67
Local Law Enforcement Block Gr	2,353.72	11.25	-	-	2,364.97
PC 1202.5 Crime Prevention	130,221.51	127.95	-	-	130,349.46
Recycling Grant Fund	174,976.00	-	-	-	174,976.00
Statewide Park Dev Grant	19,584.43	-	3,960.00	-	15,624.43 (2)
Homeless Housing Assist Preven	(58,976.25)	-	20,705.00	-	(79,681.25) (2)
LEAP Grant	(570,331.29)	-	116,771.72	-	(687,103.01) (2)
After School Program Fund	1,290.78	-	-	-	1,290.78
City of Hope	512,745.36	2,790.64	-	-	515,536.00
Safety Dept. Grants	1,370.50	-	-	-	1,370.50 (2)
OSMD Immunization Grant	2,886.87	-	-	-	2,886.87
Kaiser Permanente Grant	26,639.54	-	2,349.16	-	24,290.38
Resource Center Grant - OMSD	(9,302.23)	2,133.71	2,577.54	-	(9,746.06) (2)
Title IIB Sr Support Services	14,823.19	-	-	-	14,823.19
Healthy Community Strategic Plan	84,633.84	-	-	-	84,633.84
ASES Supplemental Grant	4,208.04	7,491.78	1,542.46	-	10,157.36 (3)
E.M.S. - Paramedic Fund	2,352,795.01	-	14,875.29	-	2,337,919.72
Economic Development	500.00	-	-	-	500.00
City Contributions/Donations Fund	2,477,601.99	379,788.01	333,767.14	-	2,523,623.86
Sewer Operating Fund	2,439,666.85	-	-	-	2,439,666.85
Sewer Replacement Fund	198,405.70	52,144.56	727.84	-	249,822.42
CFD 2011-1 (Pascoos)	108,913.44	18,083.66	966.04	-	126,031.06
CFD 2011-2 (Arrow Station)	4,051,622.84	674.88	-	-	4,052,297.72
Inland Empire Utility Agency	869,951.34	67.49	-	-	870,018.83
Sewer Expansion Fee Fund	1,282,267.12	-	-	-	1,282,267.12
Developer Impact Fees - Local	278,389.82	-	-	-	278,389.82
Developer Impact Fees - Regional	216,595.38	25,526.68	-	-	242,122.06
Burttex Pavement Impact Fees	262,502.41	-	-	-	262,502.41
PUC Reimbursement Fund-HVGS	383,396.52	-	-	-	383,396.52
Utility Underground In-Lieu	110,123.39	461.19	-	-	110,584.58
General Plan Update Fee	555,708.20	-	-	-	555,708.20
Housing Fund	113,981.64	-	-	-	113,981.64
Public Education/Govt. PEG Fee Fund	(551,841.06)	-	1,176.05	-	(553,017.11) (4)
Infrastructure Fund	(92,796.73)	-	-	-	(92,796.73)
COVID-19	4,853,146.40	32,709.42	-	-	4,885,855.82
Successor Agency Bonds-Taxable	7,988,931.97	54,300.72	13,880.90	-	8,029,351.79
Successor Agency Bonds-Tax Exempt	(1,855,354.38)	483.88	97,266.06	(483.88)	(1,952,620.44)
2021 Lease Revenue Bond Proceeds	(928,872.36)	245,831.20	-	-	(683,041.16) (5)
2014 Lease Revenue Bond Debt Svc	(5,763.96)	-	483.88	483.88	3,664,452.49
2021 Lease Revenue Bond Debt Svc	3,664,452.49	-	45.93	45.93	3,664,452.49
Pension Obligation Bond Debt Svc	0.96	-	-	-	0.96 (1)
Contingency Fund	19,536,066.83	22,953.01	13,603.20	-	19,545,436.84 (1)
Assigned General Fund Reserves	\$ 69,282,572.62	\$ 5,817,287.36	\$ 3,444,290.45	\$ 45.93	\$ 71,655,615.46
TOTALS					

Negative Cash Notes follow this presentation.

Notes on Negative Cash Balances

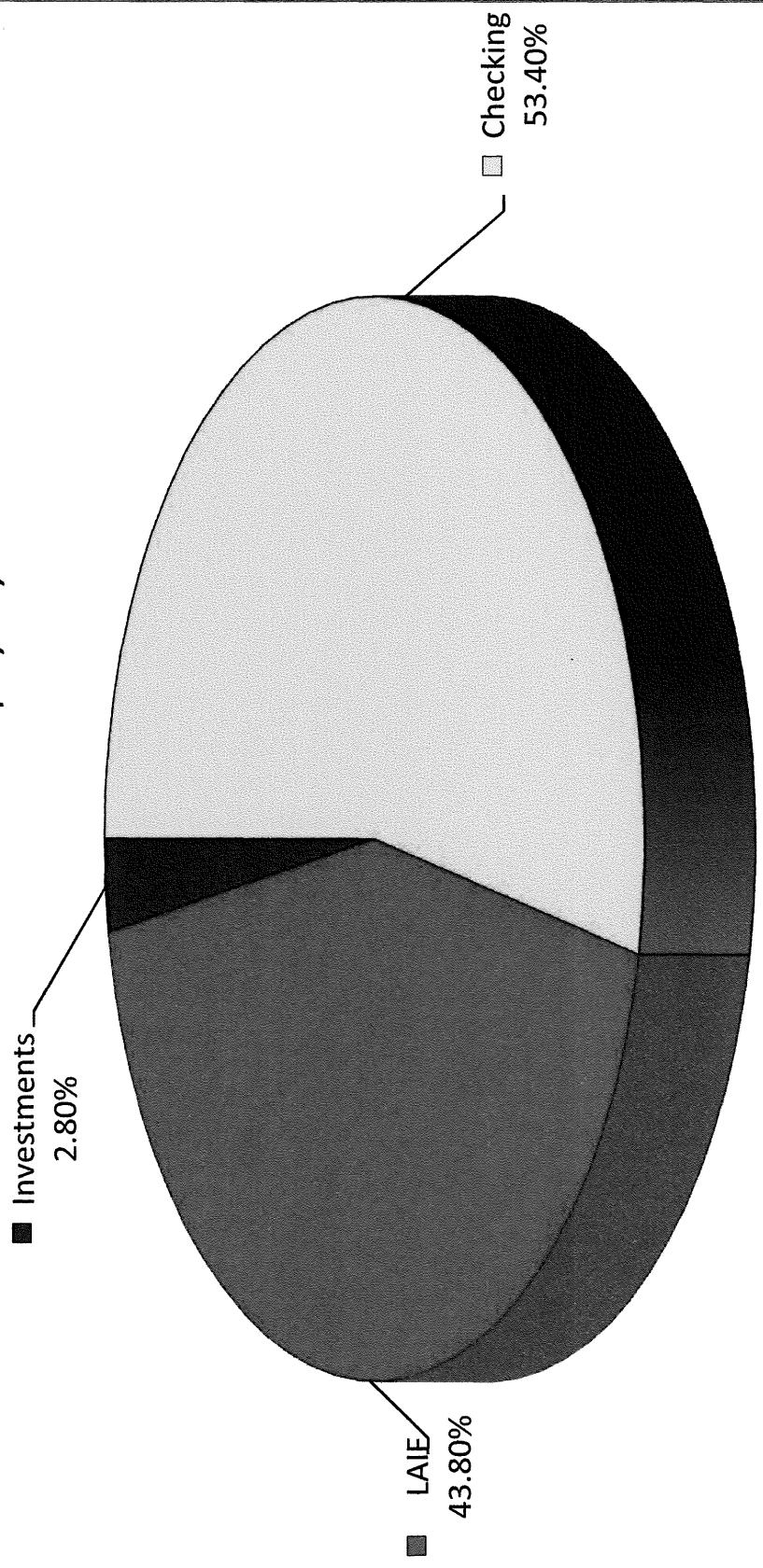
- (1)** The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this negative, the City is not utilizing restricted resources.
- (2)** These are reimbursable grant funds that utilize general pool monies initially to cover expenditures pending reimbursement from the granting agencies. Therefore, it is not uncommon for these to be negative until that reimbursement is received.
- (3)** This fund has operational deficits annually. At the end of the fiscal year it is restored by a General Fund Transfer.
- (4)** The Infrastructure Fund receives transfers from other funds to accomplish infrastructure projects. Those transfers are usually recorded when the projects nears completion or prior to mid-year budget preparation. Any negative in that fund will be eliminated at those times. Transfers from these funds (C.D.B.G., Gas Tax, Measure I, etc.) may go negative on cash pending collections of these revenues. In this way we can determine if obligations for projects are exceeding current resources.
- (5)** This debt service operation utilizes transaction and use taxes which are part of the sales tax and Successor Agency property taxes. These have been sufficient in prior fiscal years to cover the necessary debt service; however, they are not completely received until fiscal year-end. Once debt service is covered the excess will be transferred to the General Fund.

**CITY OF MONTCLAIR
STATEMENT OF CASH AND INVESTMENT ACCOUNTS
AS OF APRIL 30, 2023**

	Par Value	Purchase Date	Maturity Date	Coupon Interest Rate	Current Market Value	Balance at Cost	Totals
CHECKING ACCOUNT							
Checking Account							\$ 38,273,035.05
Asset Seizure Account							\$ 2,469.87
CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES							
Local Agency Investment Fund (LAIF)				2.890%	30,776,387.34	31,380,110.54	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 32,776,387.34</u>		\$ 33,380,110.54
U.S. AGENCY SECURITIES							
					\$ -		\$ -
TOTAL							<u>\$ 71,655,615.46</u>

Current market values obtained from US Bank.

CITY OF MONTCLAIR
CASH AND INVESTMENTS BY TYPE
April 30, 2023
Total Cash & Investments \$71,655,616



**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
TREASURER'S REPORT
FOR THE MONTH ENDING**

April 30, 2023

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH BY FUND
April 30, 2023**

COMBINED OPERATING FUND

Operating	<u>(10,518.64)</u>	\$ (10,518.64)
-----------	--------------------	----------------

LRPRP Fund

Operating	<u>0.00</u>	\$ 0.00
-----------	-------------	---------

RORF

	632,875.34	
RORF Area I	0.00	
RORF Area II	0.00	
RORF Area III	0.00	
RORF Area IV	0.00	
RORF Area V	0.00	
RORF Area VI	0.00	\$ 632,875.34

TOTAL CASH

\$ 622,356.70

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH
April 30, 2023**

Checking Account

US Bank

622,356.70

TOTAL CASH

622,356.70

NOTE:

In accordance with State law, the Successor Agency receives the monies necessary to cover its obligations for the upcoming six month period. The monies are received in January and June of each year.

The Successor Agency has sufficient funds available to meet expenditures during the upcoming six-month period.

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
WARRANT REGISTER**

FOR THE MONTH ENDING

April 30, 2023

City of Montclair
 Final Warrant Register
 Council Date 05/15/2023
 Regular Warrants
 Checking Account: Successor to the RDA

	Warrants	US Bank transfers	Area Totals
SRDA Combined Operating Fund	0.00	7,627.60	7,627.60
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	0.00
	0.00	7,627.60	
April 2023 Total			7,627.60

Note: Reimburse City for 04/13 payrolls
 Reimburse City for 04/27 payrolls

Vice Chair Johnson

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 04/03/2023 To 04/28/2023

Printed on 05/03/2023 at 1:08 PM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
04/27/2023	\$3700.45	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimb City for 04/27/23 Payroll
Initiate Date 04/27/2023
Initiate Time 07:39PM CDT
Initiated By JKULBECK
Completed Date 04/27/2023
Completed Time 07:39PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
04/13/2023	\$3927.15	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimb City for 04/13/23 Payroll
Initiate Date 04/13/2023
Initiate Time 03:26PM CDT
Initiated By JKULBECK
Completed Date 04/13/2023
Completed Time 03:26PM CDT

Total Number of Book Transfers: 2
Total Amount of Book Transfers: \$7,627.60

--- End of Report ---

**CITY OF MONTCLAIR
HOUSING CORPORATION
TREASURER'S REPORT
FOR THE MONTH ENDING**

April 30, 2023

TABLE OF CONTENTS

SCHEDULE 1 - STATEMENT OF CASH AND INVESTMENTS

CASH AND INVESTMENTS GRAPH

Schedule 1

**CITY OF MONTCLAIR
HOUSING CORPORATION
STATEMENT OF CASH AND INVESTMENTS
April 30, 2023**

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
Checking Account			
US Bank			117,340.03
Investments			
LAIF	2.85%	1,712,416.22	<u>1,744,889.91</u>
TOTAL CASH & INVESTMENTS			<u><u>1,862,229.94</u></u>

NOTE:

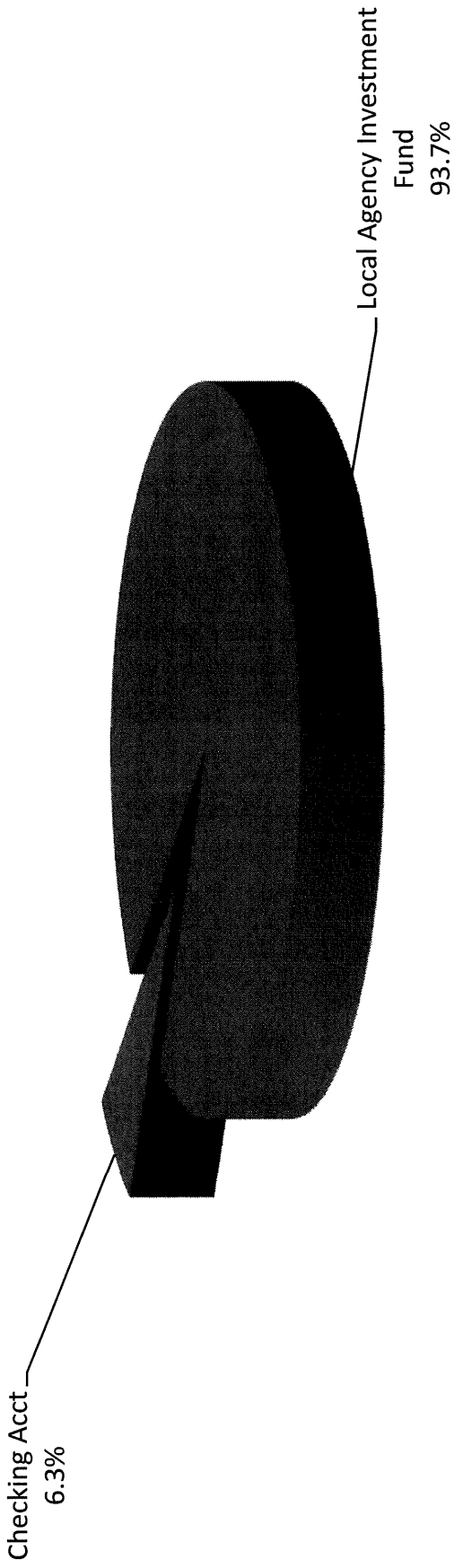
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

The Corporation has sufficient funds available to meet expenditures during the upcoming six-month period.

The Corporation is in compliance with the internal control procedures set forth in its Investment Policy.

**CITY OF MONTCLAIR
HOUSING CORPORATION
CASH AND INVESTMENTS GRAPH
April 30, 2023**

Total Cash & Investments - \$1,862,230



**CITY OF MONTCLAIR
HOUSING CORPORATION
WARRANT REGISTER
FOR THE MONTH ENDING**

April 30, 2023

City of Montclair
Final Warrant Register
Council Date 05/15/2023
Regular Warrants
Checking Account: MHC

<u>Warrants</u>	<u>ACH Transfers</u>	<u>Voided Checks</u>	<u>US Bank transfers</u>	<u>Totals</u>
0.00	0.00	0.00	173,070.47	173,070.47

April 2023 Total 173,070.47

US Bank transfers:

Vice Chair Johnson

Accounts Payable

Checks by Date - Summary by Check Number

User: cramirez
Printed: 5/3/2023 12:36 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5452	ACI0001	ACI Flooring, Inc.	04/03/2023	9,641.27
5453	buch002	Buchbinder Maintenance, Inc.	04/03/2023	2,444.27
5454	land012	Landscape Maintenance Unlimited	04/03/2023	4,710.00
5455	mont074	Monte Vista Water District	04/03/2023	853.48
5456	Perf003	Performance Construction & Remodeling I	04/03/2023	33,850.00
5457	Sout018	Southern California Edison Co	04/03/2023	25.91
5458	Sout021	Southern California Gas Co	04/03/2023	1,433.70
5459	Arti005	Artic Plumbing And Drain Cleaning	04/13/2023	468.00
5460	Denk001	Denkers Garage Doors	04/13/2023	775.00
5461	Hugo001	Hugo Jaramillo	04/13/2023	23,500.00
5462	mont002	City of Montclair	04/13/2023	11,331.60
5463	mont074	Monte Vista Water District	04/13/2023	884.01
5464	Perf003	Performance Construction & Remodeling I	04/13/2023	13,200.00
5465	Sout018	Southern California Edison Co	04/13/2023	388.27
5466	ACI0001	ACI Flooring, Inc.	04/27/2023	5,751.23
5467	Arti005	Artic Plumbing And Drain Cleaning	04/27/2023	1,906.00
5468	land012	Landscape Maintenance Unlimited	04/27/2023	4,710.00
5469	mont074	Monte Vista Water District	04/27/2023	4,403.62
5470	Perf003	Performance Construction & Remodeling I	04/27/2023	29,140.00
5471	Sout018	Southern California Edison Co	04/27/2023	371.49
5472	sout021	Southern California Gas Co	04/27/2023	974.64
5473	obli001	The Obliterator	04/27/2023	2,057.98
5474	JarCo001	Jaramillo Construction	04/27/2023	20,250.00

Report Total (23 checks):

173,070.47

**CITY OF MONTCLAIR
HOUSING AUTHORITY
TREASURER'S REPORT
FOR THE MONTH ENDING
April 30, 2023**

Schedule 1

**CITY OF MONTCLAIR
HOUSING AUTHORITY
STATEMENT OF CASH
April 30, 2023**

	<u>Amount</u>
Checking Account	
US Bank	3,179,582.44
TOTAL CASH	\$ <u>3,179,582.44</u>

NOTE:

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund. The MHA has sufficient monies available to meet expenditures during the next six month period.

**CITY OF MONTCLAIR
HOUSING AUTHORITY
WARRANT REGISTER
FOR THE MONTH ENDING
April 30, 2023**

City of Montclair
Final Warrant Register
Council Date 05/15/2023
Regular Warrants
Checking Account: MHA

<u>Warrants</u>	<u>Voided Checks</u>	<u>US Bank transfers - out.</u>	<u>Totals</u>
0.00	0.00	0.00	0.00
April 2023 Total			<u><u>0.00</u></u>

Vice Chair Johnson