

**CITY OF MONTCLAIR
AGENDA FOR CITY COUNCIL, SUCCESSOR AGENCY,
MONTCLAIR HOUSING CORPORATION, MONTCLAIR
HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY
FOUNDATION MEETINGS**

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

August 17, 2015

7:00 p.m.

As a courtesy please silence your cell phones and other electronic devices while the meeting is in session. Thank you.

The CC/SA/MHC/MHA/MCF meetings are now available in audio format on the City's website at www.cityofmontclair.org and can be accessed the day following the meeting after 10:00 a.m.

Page No.

- I. CALL TO ORDER** – City Council, Successor Agency and Montclair Housing Corporation Boards of Directors, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors

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 endorse any particular religious belief or form of invocation.

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

V. PRESENTATIONS

- A. Red Cross Battle of the Badges 2015
- B. Farewell to Police Department Volunteer Services Coordinator Theresa Schneider
- C. Montclair Crime Statistics Report
- D. Proclamation Declaring October as "Manufacturing Awareness and Appreciation Month" in the City of Montclair

VI. PUBLIC COMMENT

This section is intended to provide members of the public with an opportunity to comment on any subject that does not appear on this agenda. Each speaker will be afforded five minutes to address the City Council Members, Successor Agency Board of Directors, Montclair Housing Corporation Board of Directors, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors. (Government Code Section 54954.3)

Under the provisions of the Brown Act, the Council/Successor Agency Board/MHC Board/MHA Commission/MCF Board is prohibited from taking action on items not listed on the agenda.

VII. PUBLIC HEARINGS

- A. Consider Adoption of Resolution No. 15-3087 Approving an Amendment to the General Plan Land Use Map for 3.03 Acres at 5165 Mission Boulevard, Modifying the Land Use Designation from "General Commercial" to "Medium-Density Residential (8-14 Dwelling Units/Acre)" [CC]
 - Consider Adoption of Resolution No. 15-3088 Approving an Amendment to the City's Official Zoning Map for 3.03 Acres at 5165 Mission Boulevard, Modifying the Zoning Designation from "C-2" (Restricted Commercial) to "R-3" (Medium-High Density Residential) [CC]
 - Consider Approval of Tentative Tract Map No. 19970 for a Single-Lot Subdivision for a 31-Unit Residential Condominium Development at 5165 Mission Boulevard [CC] 6
- B. Consider Adoption of Resolution No. 15-3089 Establishing Underground District No. 7 Generally Located Along Monte Vista Avenue from Holt Boulevard to Mission Boulevard [CC] 18

VIII. CONSENT CALENDAR

- A. Approval of Minutes
 - 1. Minutes of the Regular Joint Council/Successor Agency Board/MHC Board/MHA Commission/MCF Board Meeting of August 3, 2015 [CC/SA/MHC/MHA/MCF]
- B. Administrative Reports
 - 1. Consider Receiving and Filing of Treasurer's Report [CC] 26
 - 2. Consider Approval of Warrant Register and Payroll Documentation [CC] 27
 - 3. Consider Receiving and Filing of Treasurer's Report [SA] 28
 - 4. Consider Approval of Warrant Register [SA] 29
 - 5. Consider Receiving and Filing of Treasurer's Report [MHC] 30
 - 6. Consider Approval of Warrant Register [MHC] 31
 - 7. Consider Receiving and Filing of Treasurer's Report [MHA] 32
 - 8. Consider Approval of Warrant Register [MHA] 33
 - 9. Consider Authorization of a \$1,503 Expenditure from the Federal Asset Forfeiture Fund to Purchase Additional Licensing for Existing Software to Support Remote Connectivity to Department Computers [CC] 34
- C. Agreements
 - 1. Consider Approval of Agreement No. 15-69 with the City of West Covina for Mobile Data Computer Connectivity, Data Processing Equipment, Software, and Service of Computer-Aided Dispatch and Records Management System Programs [CC] 37

- 2. Consider Approval of Agreement No. 15-70 with Kaiser Foundation Hospitals, Ontario, for the Montclair Golden Express Senior Transportation Program [CC] 51
- 3. Consider Montclair Community Foundation Board Of Directors' Approval of Agreement No. 15-71 with Kaiser Foundation Hospitals, Ontario, to Support the Montclair Online to College Program [MCF] 56
- 4. Consider Approval of Agreement No. 15-73 with the Assistance League of the Foothill Communities to Receive Teddy Bears for the Fire Department to Distribute to Children in Need of Comfort During Stressful Situations [CC] 61
- 5. Consider Approval of Agreement No. 15-74 with Bilingual Family Counseling Services to Provide Case Management Services [CC] 64
- 6. Consider Approval of Amendment No. 1 to Agreement No. 15-39 with NCM Engineering Corporation for the Preparation of Design and Construction Drawings for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project [CC] 70

D. Resolutions

- 1. Consider Adoption of Resolution No. 15-3092 Opposing Redevelopment Budget Trailer Bill AB 113, Local Government [CC] 96

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE - None

XI. COMMUNICATIONS

A. City Department Reports

- 1. Economic Development Department
 - a. 2015 State of the City Event Information
 - b. Report on North Montclair Infrastructure Study
- 2. Police Department
 - a. National Night Out Review
- 3. Fire Department
 - a. Report of Fire Response to Statewide Fires
- 4. Finance Department
 - a. Housing Authority Property Tax Report
 - b. Successor Agency State Controller's Audit

5. Public Works Department
 - a. Status Report on Public Works Projects
6. Community Development Department
 - a. Planning Commission Actions
7. Human Services Department
 - a. Online to College Activities
 - b. L.A. County Fair Tickets and Montclair Day at the Fair
8. City Clerk
 - a. Recall Petition Process Update
- B. City Attorney
 1. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation
Ward v. Montclair
 2. Closed Session Pursuant to Government Code Section 54956.9(d)(4) Regarding Potential Litigation
1 Potential Case
 3. Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with Designated Labor Negotiator Edward C. Starr
Agency: City of Montclair
Employee Management
Organizations: Montclair City Confidential Employees Association
Montclair Fire Fighters Association
Montclair Police Officers Association
San Bernardino Public Employees – Teamsters Local 1932
- C. City Manager/Executive Director
- D. Mayor/Chairman
- E. Council/SA Board/MHC Board/MHA Commissioners/MCF Board
- F. Committee Meeting Minutes *(for informational purposes only)*
 1. Minutes of the Personnel Committee Meeting of August 3, 2015 100

XII. COUNCIL WORKSHOP

- A. Discussion of Audit Responsibilities and Process with Governing Board of City (Audit Committee) by Van Lant & Fankhanel, LLP, the City of Montclair's Independent Auditing Firm
(Council may consider continuing this item to an adjourned meeting on Tuesday, September 8, 2015, at 5:45 p.m. in the City Council Chambers.)

XIII. ADJOURNMENT OF SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS OF DIRECTORS, MONTCLAIR HOUSING AUTHORITY COMMISSIONERS, AND MONTCLAIR COMMUNITY FOUNDATION BOARD OF DIRECTORS

(At this time, the City Council will meet in Closed Session regarding pending litigation and labor negotiations.)

XIV. CLOSED SESSION ANNOUNCEMENTS

XV. ADJOURNMENT OF CITY COUNCIL

The next regularly scheduled City Council, Successor Agency Board, Montclair Housing Corporation Board, and Montclair Housing Authority Commission meetings will be held on Tuesday, September 8, 2015, at 7:00 p.m. in the Council Chambers.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board after distribution of the Agenda packet are available for public inspection in the Office of the City Clerk located at 5111 Benito Street, Montclair, California, between 7:00 a.m. and 6:00 p.m., Monday through Thursday.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Deputy City Clerk at (909) 625-9416. Notification 48 hours 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. Phillips, Deputy 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 bulletin board adjacent to the north door of Montclair City Hall on August 13, 2015.

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 15-3087 APPROVING AN AMENDMENT TO THE GENERAL PLAN LAND USE MAP FOR 3.03 ACRES AT 5165 MISSION BOULEVARD, MODIFYING THE LAND USE DESIGNATION FROM "GENERAL COMMERCIAL" TO "MEDIUM-DENSITY RESIDENTIAL (8-14 DWELLING UNITS/ACRE)"

DATE: August 17, 2015

SECTION: PUBLIC HEARINGS

ITEM NO.: A

FILE I.D.: GPL100/LDU750/LDU600

DEPT.: COMMUNITY DEV.

CONSIDER ADOPTION OF RESOLUTION NO. 15-3088 APPROVING AN AMENDMENT TO THE CITY'S OFFICIAL ZONING MAP FOR 3.03 ACRES AT 5165 MISSION BOULEVARD, MODIFYING THE ZONING DESIGNATION FROM "C-2" (RESTRICTED COMMERCIAL) TO "R-3" (MEDIUM-HIGH DENSITY RESIDENTIAL)

CONSIDER APPROVAL OF TENTATIVE TRACT MAP NO. 19970 FOR A SINGLE-LOT SUBDIVISION FOR A 31-UNIT RESIDENTIAL CONDOMINIUM DEVELOPMENT AT 5165 MISSION BOULEVARD

REASON FOR CONSIDERATION: Amendments to the City's adopted General Plan Land Use Map, Official Zoning Map, and approval of tentative maps require public hearing review and approval by the City Council.

Copies of proposed Resolution No. 15-3087 and Exhibit A to Resolution No. 15-3087, Resolution No. 15-3088 and Exhibit A to Resolution No. 15-3088, and Tentative Tract Map No. 19970 are attached for the City Council's review and consideration.

BACKGROUND: The proposed amendments to the General Plan Land Use Map and Official Zoning Map and the tentative tract map, which have been recommended by the Planning Commission, were initiated by Montclair Holdings, LLC, on behalf of Crestwood Communities in connection with its desire to construct a 31-unit residential condominium development on 3.03 acres at 5165 Mission Boulevard. The applicant intends to construct the project pursuant to the City's R-3 development standards as set forth in Chapter 11.22 of the Montclair Municipal Code. The components of the project are as follows:

General Plan Amendment

The applicant is requesting that the General Plan designation for the subject 3.03 acres be changed from "General Commercial" to "Medium-Density Residential" (8-14 dwelling units per acre).

Prepared by:		Fiscal Impact Finance Review:	
Proofed by:		Reviewed and Approved By:	

Zoning Map Amendment

The applicant is also requesting an amendment to the City's Official Zoning Map for the same acreage from the current "C-2" (Restricted Commercial) designation to "R-3" (Medium-High Density Residential).

Tentative Tract Map

To facilitate development of the property, the applicant is requesting approval of Tentative Tract Map No. 19970, which would create a single lot for residential condominium purposes, along with associated common areas for driveways, parking areas, landscaped areas, walkways, and recreation facilities that would include a community swimming pool, pool house, barbecues, and tot lot.

Precise Plan of Design

At its meeting on July 27, 2015, the Planning Commission certified the environmental assessment and adopted a Mitigated Negative Declaration for the requested entitlements, and approved the associated Precise Plan of Design, including the site plan, floor plans, conceptual colors and materials, and conceptual landscape plan for the development.

History

The subject property was annexed into the City of Montclair in April 1981 as part of Annexation No. 14. Like many other parcels along Mission Boulevard, it has historically carried "Commercial" General Plan and zoning designations. However, because the bulk of east-west commuter traffic has gradually shifted away from main arterial roadways like Mission Boulevard (and Holt Boulevard) to Interstate 10 and State Route 60 over the past several decades, land uses along the south side of Mission Boulevard have gradually changed to less intensive uses. This transition has been borne out by the applicant's lack of success, despite ongoing efforts, in attracting potential commercial users to the mid-block property. The area immediately to the south of the subject site is zoned "R-3" and is developed with condominiums and townhomes constructed in the mid-1980s.

Analysis

As indicated above, the applicant has unsuccessfully attempted over an extended period of time to attract commercial development interest to the property. More recently, staff and the property owner discussed the potential of the property for multi-family development, similar to what currently exists immediately to the south. Staff indicated its support for changing the land use designation of the site for a number of reasons, including the fact that the mid-block property is less attractive to commercial credit tenants than would be a location at a major, signalized intersection; multi-family development currently exists immediately adjacent to the southerly boundary of the property; and a precedent has been established over the past decade with respect to converting mid-block properties on the south side of Mission Boulevard from commercial to residential use. Accordingly, staff supports the applicant's requests to amend the General Plan Land Use Map and the City's Official Zoning Map to accommodate the proposed development. At 10.25 units per acre, the project is consistent with the General Plan's "Medium-Density Residential" designation, which calls for 8 to 14 dwelling units per acre. Similarly, the proposed density complies with Chapter 11.22 of the Montclair Municipal Code, which allows for a density up to 20

units per acre on parcels of five acres or less.

Staff also supports the applicant's request for the Tentative Tract Map to accommodate the residential condominium development. Unlike "first generation" condominiums characterized by multiple dwelling units sharing common walls within a single building, the proposed project is designed more akin to a traditional zero-lot line development where each dwelling unit is detached from the neighboring unit. While a homeowners association would be established for the purpose of maintaining the community's common area landscaping, driveways, parking areas, and recreational facilities, each property owner would be responsible for maintaining the exterior of their respective residences, including paint and roofs, in compliance with the community's Covenants, Conditions, and Restrictions (CC&Rs).

Because of the configuration and location of the property, site planning options for the property were limited. Staff believes that the single ingress/egress point on Mission Boulevard is logical and will adequately serve the small residential development. However, the Montclair Fire Department required an emergency access gate be constructed at the easterly end of the main driveway. This gate would be locked closed at all times and not available to residents for regular ingress and egress. Because of its location along a major arterial roadway, staff supports the applicant's proposal to gate guard the community in order to limit access to residents and guests. Gate access for emergency responders will be required to be provided to the satisfaction of the Police and Fire Departments.

The Planning Commission conducted a public hearing on the requests at its regular meeting on July 27, 2015. No members of the public spoke in opposition to the proposals during the public hearing.

FISCAL IMPACT: There would be no fiscal impact to the City's General Fund as a result of adoption of Resolution Nos. 15-3087 and 15-3088 and approval of Tentative Tract Map No. 19970.

RECOMMENDATION: The Planning Commission and staff recommend the City Council take the following actions:

1. Adopt Resolution No. 15-3087 approving an amendment to the General Plan Land Use Map for 3.03 acres at 5165 Mission Boulevard, modifying the land use designation from "General Commercial" to "Medium-Density Residential (8-14 dwelling units/acre)."
2. Adopt Resolution No. 15-3088 approving an amendment to the City's Official Zoning Map for 3.03 acres at 5165 Mission Boulevard, modifying the zoning designation from "C-2" (Restricted Commercial) to "R-3" (Medium-High Density Residential).
3. Approve Tentative Tract Map No. 19970 for a single-lot subdivision for a 31-unit residential condominium development at 5165 Mission Boulevard.

RESOLUTION NO. 15-3087

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING AN AMENDMENT TO THE GENERAL PLAN LAND USE MAP, MODIFYING THE LAND USE DESIGNATION OF 3.03 ACRES OF LAND AT 5165 MISSION BOULEVARD FROM "GENERAL COMMERCIAL" TO "MEDIUM-DENSITY RESIDENTIAL (8-14 DU/AC)" TO FACILITATE CONSTRUCTION OF A 31-UNIT RESIDENTIAL CONDOMINIUM DEVELOPMENT THEREON (APN 1011-333-69)

WHEREAS, Montclair Holdings, LLC (property owner), on behalf of Crestwood Communities, has filed an application for an amendment to the General Plan Land Use Map under Case No. 2015-6; and

WHEREAS, the application for said amendment to the General Plan Land Use Map applies to a 3.03-acre site described as follows:

Parcel 1 of Parcel Map No. 6667 in the City of Montclair, County of San Bernardino, State of California, as per plat recorded in Book 64 of Parcel Maps, Pages 42 and 43, records of said County.

The above-referenced property composing the proposed amendment area and also commonly known as 5165 Mission Boulevard, is also indicated on the attached Exhibit "A," a map incorporated herein by reference; and

WHEREAS, the subject 3.03-acre site is currently designated by the General Plan as "General Commercial" and is vacant and undeveloped; and

WHEREAS, the applicant submitted concurrent applications requesting a Zoning Map Amendment, Tentative Tract Map, and Precise Plan of Design for the subject site to change the land use designation of the site from "C-2" (Restricted Commercial) to "R-3" (Medium-High Density Residential), and to subdivide the property to construct 31 detached residential condominiums; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the City prepared an Initial Study (IS) for the amendments to the General Plan Land Use Map and Official Zoning Map, Tentative Tract Map, and Precise Plan of Design and released it for public review and comment on July 6, 2015. Based on the findings of the Initial Study, staff has determined that, although the proposed project could have a significant effect on the environment, there will not be a significant effect because revisions in the project have been made by or agreed to by the project proponent. Therefore, a Mitigated Negative Declaration (MND) is proposed for the project; and

WHEREAS, on July 1, 2015, the Notice of Availability of the IS/MND was filed with the San Bernardino County Clerk of the Board; and

WHEREAS, the minimum 21-day public review period for the IS/MND commenced on July 6, 2015 and concluded on July 27, 2015; and

WHEREAS, copies of the IS/MND were available during the public review period at the Community Development counter at City Hall; and

WHEREAS, public notice of this item was advertised as a public hearing in the *Inland Valley Daily Bulletin* newspaper on July 3, 2015; and

WHEREAS, on July 27, 2015, commencing at 7:00 p.m. in the Council Chamber at Montclair City Hall, the Planning Commission conducted a public hearing at which time all persons wishing to testify in connection with the amendment to the General Plan Land Use Map were heard, and said application was fully studied; and

WHEREAS, the Planning Commission reviewed and considered the amendment to the General Plan Land Use Map along with the information contained in the IS/MND, comments received during the public review period, and responses to comments; and

WHEREAS, the Planning Commission, as the responsible agency, reviewed and considered the environmental assessment based upon the findings in the Initial Study prepared for the project, and determined that there will be no significant impact on the environment as a result of the proposed amendment to the General Plan Land Use Map; and

WHEREAS, the Planning Commission also adopted a Mitigated Negative Declaration and a finding that there will be a DeMinimis impact on fish and wildlife; and

WHEREAS, based on its review and independent judgment, the City Council finds that the amendment to the General Plan Land Use Map will not have a significant effect on the environment; and

WHEREAS, on August 17, 2015, commencing at 7:00 p.m. in the Council Chamber at Montclair City Hall, the City Council conducted a public hearing at which time all persons wishing to testify in connection with the amendment to the General Plan Land Use Map were heard, and said application was fully studied.

NOW, THEREFORE, BE IT RESOLVED that it is hereby found, determined, and resolved by the City Council of the City of Montclair as follows:

1. The City Council hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.
2. The City Council hereby approves the amendment to the General Plan Land Use Map associated with Case No. 2015-6, modifying the land use designation of the subject property from "General Commercial" to "Medium-Density Residential (8-14 dwelling units/acre)."

APPROVED AND ADOPTED this XX day of XX, 2015.

Mayor

ATTEST:

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 15-3087 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2015, and that it was adopted by the following vote, to-wit:

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

Andrea M. Phillips
Deputy City Clerk

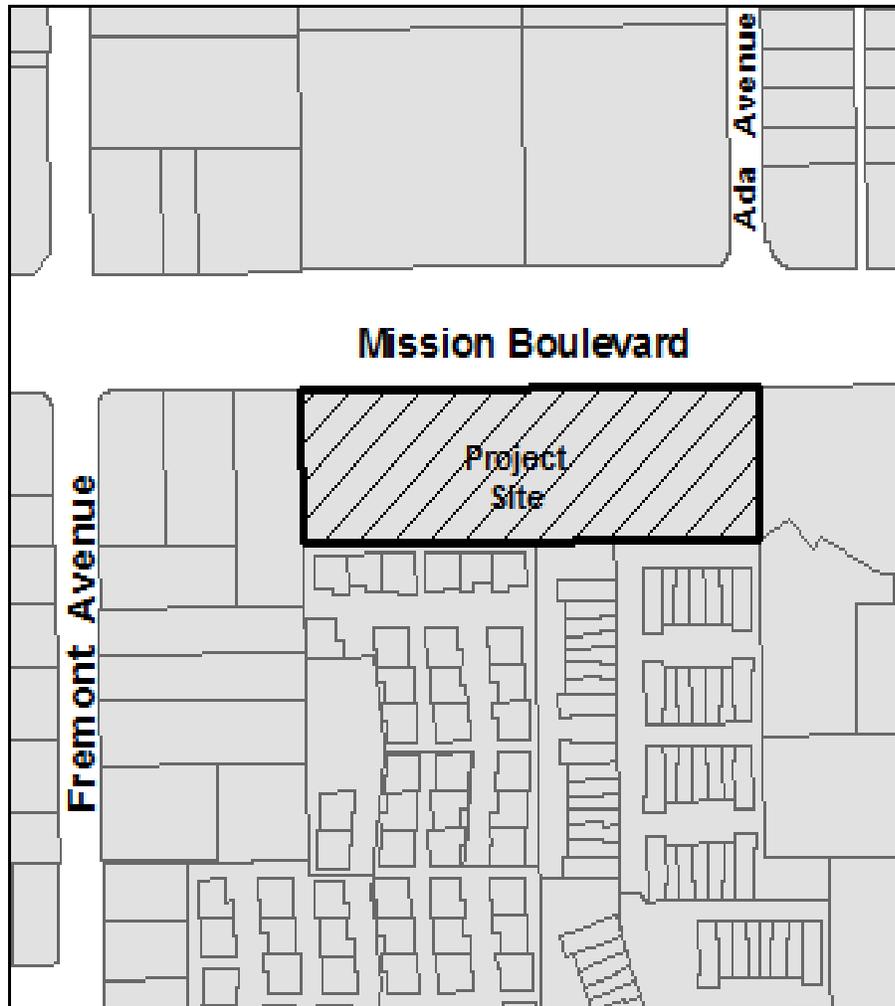
Exhibit A

CASE NUMBER: 2015-6

PROJECT LOCATION: 5165 Mission Boulevard
ASSESSOR'S PARCEL NO.: 1011-333-69

PROPERTY OWNER: Montclair Holdings, LLC

General Plan Amendment	
<i>Existing</i>	<i>Proposed</i>
"General Commercial"	Medium-Density Residential (8-14 du/ac)



RESOLUTION NO. 15-3088

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING AN AMENDMENT TO THE OFFICIAL ZONING MAP OF THE CITY OF MONTCLAIR CHANGING THE ZONING DESIGNATION OF 3.03 ACRES OF LAND AT 5165 MISSION BOULEVARD FROM "C-2" (RESTRICTED COMMERCIAL) TO "R-3" (MEDIUM-HIGH DENSITY RESIDENTIAL) TO FACILITATE CONSTRUCTION OF A 31-UNIT RESIDENTIAL CONDOMINIUM DEVELOPMENT THEREON (APN 1011-333-69)

WHEREAS, Montclair Holdings, LLC (property owner), on behalf of Crestwood Communities, has filed an application for an amendment to the Official Zoning Map of the City of Montclair under Case No. 2015-6; and

WHEREAS, the application for said amendment to the Official Zoning Map applies to a 3.03-acre site described as follows:

Parcel 1 of Parcel Map No. 6667 in the City of Montclair, County of San Bernardino, State of California, as per plat recorded in Book 64 of Parcel Maps, Pages 42 and 43, records of said County.

The above-referenced property composing the proposed amendment area and also commonly known as 5165 Mission Boulevard, is also indicated on the attached Exhibit "A," a map incorporated herein by reference; and

WHEREAS, the subject 3.03-acre site is currently designated by the Official Zoning Map as "C-2" (Restricted Commercial) and is vacant and undeveloped; and

WHEREAS, the applicant submitted concurrent applications requesting a General Plan Land Use Map Amendment, Tentative Tract Map, and Precise Plan of Design for the subject site to change the land use designation of the site from "General Commercial" to "Medium-Density Residential (8-14 dwelling units/acre)," and to subdivide the property to construct 31 detached residential condominiums; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the City prepared an Initial Study (IS) for the amendments to the General Plan Land Use Map and Official Zoning Map, Tentative Tract Map, and Precise Plan of Design and released it for public review and comment on July 6, 2015. Based on the findings of the Initial Study, staff has determined that, although the proposed project could have a significant effect on the environment, there will not be a significant effect because revisions in the project have been made by or agreed to by the project proponent. Therefore, a Mitigated Negative Declaration (MND) is proposed for the project; and

WHEREAS, on July 1, 2015, the Notice of Availability of the IS/MND was filed with the San Bernardino County Clerk of the Board; and

WHEREAS, the minimum 21-day public review period for the IS/MND commenced on July 6, 2015 and concluded on July 27, 2015; and

WHEREAS, copies of the IS/MND were available during the public review period at the Community Development counter at City Hall; and

WHEREAS, public notice of this item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on July 3, 2015; and

WHEREAS, on July 27, 2015, commencing at 7:00 p.m. in the Council Chamber at Montclair City Hall, the Planning Commission conducted a public hearing at which time all persons wishing to testify in connection with the amendment to the Official Zoning Map were heard, and said application was fully studied; and

WHEREAS, the Planning Commission reviewed and considered the amendment to the Official Zoning Map along with the information contained in the IS/MND, comments received during the public review period, and responses to comments; and

WHEREAS, the Planning Commission, as the responsible agency, reviewed and considered the environmental assessment based upon the findings in the Initial Study prepared for the project, and determined that there will be no significant impact on the environment as a result of the proposed amendment to the Official Zoning Map; and

WHEREAS, the Planning Commission also adopted a Mitigated Negative Declaration and a finding that there will be a DeMinimis impact on fish and wildlife; and

WHEREAS, based on its review and independent judgment, the City Council finds that the amendment to the Official Zoning Map will not have a significant effect on the environment; and

WHEREAS, on August 17, 2015, commencing at 7:00 p.m. in the Council Chamber at Montclair City Hall, the City Council conducted a public hearing at which time all persons wishing to testify in connection with the amendment to the Official Zoning Map were heard, and said application was fully studied.

NOW, THEREFORE, BE IT RESOLVED that it is hereby found, determined, and resolved by the City Council of the City of Montclair as follows:

1. The City Council hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.
2. The City Council hereby approves the amendment to the Official Zoning Map of the City of Montclair associated with Case No. 2015-6, modifying the zoning designation of the subject property from "C-2" (Restricted Commercial) to "R-3" (Medium-High Density Residential).

APPROVED AND ADOPTED this XX day of XX, 2015.

Mayor

ATTEST:

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 15-3088 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2015, and that it was adopted by the following vote, to-wit:

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

Andrea M. Phillips
Deputy City Clerk

Exhibit A

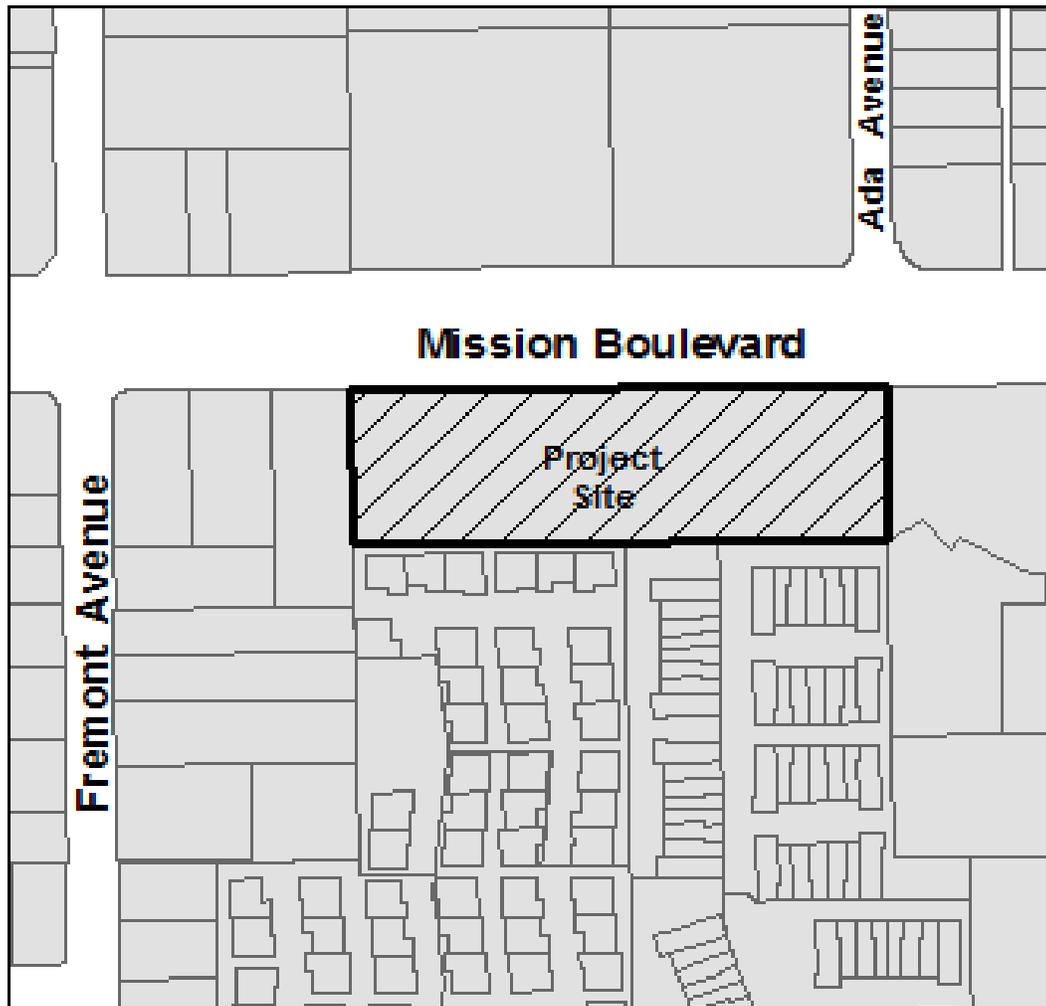
CASE NUMBER: 2015-6

PROJECT LOCATION: 5165 Mission Boulevard

ASSESSOR'S PARCEL NO.: 1011-333-69

PROPERTY OWNER: Montclair Holdings, LLC

Official Zoning Map Amendment	
<i>Existing</i>	<i>Proposed</i>
"C-2" (Restricted Commercial)	"R-3" (Medium-High Density Residential)



NOTES:

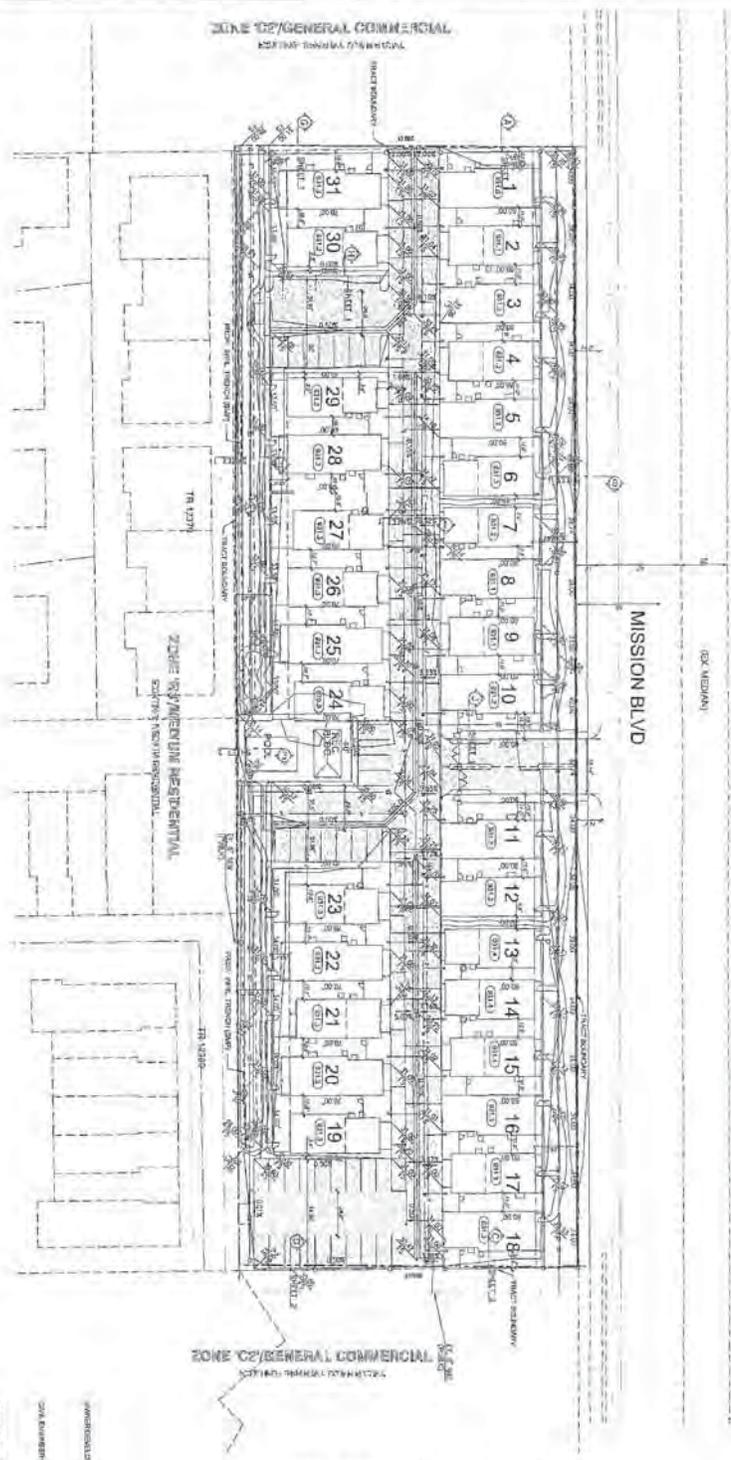
1. THIS SUBDIVISION AND EXISTING EXHAUST CHIMNEYS ARE SHOWN AS APPROXIMATE LOCATIONS. EXISTING EXHAUST CHIMNEYS ARE SHOWN AS APPROXIMATE LOCATIONS. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
2. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
3. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
4. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
5. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
6. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
7. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
8. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
9. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
10. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
11. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
12. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
13. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
14. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
15. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
16. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
17. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
18. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
19. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
20. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
21. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
22. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
23. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
24. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
25. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
26. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
27. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
28. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
29. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
30. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.
31. THE LOCATION OF EXISTING EXHAUST CHIMNEYS IS NOT GUARANTEED BY THIS MAP.

MARCH 2015
APN 101-1-333-69

TENTATIVE TRACT MAP
TENTATIVE TRACT NO. 19970

31 UNITS FOR RESIDENTIAL CONDOMINIUM PURPOSES
IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO STATE OF CALIFORNIA
BEING A SUBDIVISION OF PARCEL 1 OF PARCEL MAP 6667 AS PER MAP RECORDED IN BOOK 64 OF PARCEL MAPS, PAGES 42-43, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN BERNARDINO.

1 LOT
3.0276 ACRES (GROSS & NET)



ZONE C2/GENERAL COMMERCIAL
CRESTWOOD HOSPITAL



LEGAL DESCRIPTION

BEING A SUBDIVISION OF PARCEL 1 OF PARCEL MAP 6667 AS PER MAP RECORDED IN BOOK 64 OF PARCEL MAPS, PAGES 42-43, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN BERNARDINO.

LEGEND

- 1. LOT LINE
- 2. TRAILER SPACE
- 3. DRIVEWAY
- 4. DRIVEWAY
- 5. DRIVEWAY
- 6. DRIVEWAY
- 7. DRIVEWAY
- 8. DRIVEWAY
- 9. DRIVEWAY
- 10. DRIVEWAY
- 11. DRIVEWAY
- 12. DRIVEWAY
- 13. DRIVEWAY
- 14. DRIVEWAY
- 15. DRIVEWAY
- 16. DRIVEWAY
- 17. DRIVEWAY
- 18. DRIVEWAY
- 19. DRIVEWAY
- 20. DRIVEWAY
- 21. DRIVEWAY
- 22. DRIVEWAY
- 23. DRIVEWAY
- 24. DRIVEWAY
- 25. DRIVEWAY
- 26. DRIVEWAY
- 27. DRIVEWAY
- 28. DRIVEWAY
- 29. DRIVEWAY
- 30. DRIVEWAY
- 31. DRIVEWAY

VERSION HISTORY

NO.	DATE	DESCRIPTION
1	03/11/15	INITIAL DESIGN
2	03/11/15	REVISIONS
3	03/11/15	REVISIONS
4	03/11/15	REVISIONS
5	03/11/15	REVISIONS
6	03/11/15	REVISIONS
7	03/11/15	REVISIONS
8	03/11/15	REVISIONS
9	03/11/15	REVISIONS
10	03/11/15	REVISIONS
11	03/11/15	REVISIONS
12	03/11/15	REVISIONS
13	03/11/15	REVISIONS
14	03/11/15	REVISIONS
15	03/11/15	REVISIONS
16	03/11/15	REVISIONS
17	03/11/15	REVISIONS
18	03/11/15	REVISIONS
19	03/11/15	REVISIONS
20	03/11/15	REVISIONS
21	03/11/15	REVISIONS
22	03/11/15	REVISIONS
23	03/11/15	REVISIONS
24	03/11/15	REVISIONS
25	03/11/15	REVISIONS
26	03/11/15	REVISIONS
27	03/11/15	REVISIONS
28	03/11/15	REVISIONS
29	03/11/15	REVISIONS
30	03/11/15	REVISIONS
31	03/11/15	REVISIONS

TENTATIVE TRACT 19970
TENTATIVE TRACT MAP

DEVELOPER
CRESTWOOD CORPORATION
510 W. CITRUS EDGE ST.
GLENORA CA 91740
• 626.914.1843/FAX 626.336.5320



GRAPHIC SCALE
1" = 200' PER
1" = 200' PER



SHEET OF
1 OF **2**

AGENDA REPORT

SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 15-3089 ESTABLISHING UNDERGROUND DISTRICT NO. 7 GENERALLY LOCATED ALONG MONTE VISTA AVENUE FROM HOLT BOULEVARD TO MISSION BOULEVARD	DATE:	August 17, 2015
		SECTION:	PUBLIC HEARINGS
		ITEM NO.:	B
		FILE I.D.:	UTL170
		DEPT.:	PUBLIC WORKS

REASON FOR CONSIDERATION: The establishment of an underground utility district is permissible by California Public Utility Commission regulations and by City Ordinance No. 291. The district must be established by resolution, after holding a public hearing, to allow those affected by the district the ability to comment on it.

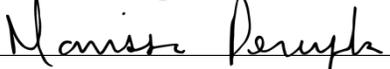
A copy of proposed Resolution No. 15-3089 is attached for the City Council's review and consideration.

BACKGROUND: The City of Montclair is in the process of preparing plans for a grade separation between Monte Vista Avenue and the Union Pacific Railroad tracks. This project will require the relocation of overhead utilities (electrical, telephone, and cable television) along Monte Vista Avenue and State Street. Under the franchise agreements with the various utility companies, the relocations would be at the utility companies' expense. Poles would most likely be set adjacent to the new bridge, tall enough to provide the required clearance measured from the top of the bridge deck.

A more aesthetically pleasing result could be achieved by placing the overhead utilities underground. This work could be accomplished through the formation of an underground utility district, at little or no cost to the City. The Public Utilities Commission issued a ruling in 1967 that, according to Southern California Edison, requires each utility to establish a fund for undergrounding utilities within their service areas. Edison sets aside approximately \$110,000 per year exclusively for use within the City of Montclair. To date, the City has a balance of \$442,597. As of January 1, 2019, it is anticipated that the City will have approximately \$900,000 available for its use. The underground utility district projects are generally referred to as "Rule 20A" projects.

Staff has approached Edison with a proposal to create an underground utility district along Monte Vista Avenue between Holt Boulevard and Mission Boulevard. The work would also include some undergrounding along State Street. The estimated cost of this work is \$900,000. Therefore, sufficient funds would be available.

The proposed project limits provide additional benefits to the City besides the obvious aesthetic improvements at the new bridge. The utilities have already been placed

Prepared by:		Fiscal Impact Finance Review:	
Proofed by:		Reviewed and Approved By:	

underground along Holt Boulevard. This new district would tie into it and then continue the undergrounding south from Holt Boulevard.

The underground district process typically requires three years from creation of the district to completion of the work, and is usually split as 18 months for design and 18 months for construction. That schedule should work well with the grade separation project as the current construction schedule shows work commencing in January 2017 and taking 18 months to construct. Temporary power lines will most likely have to be constructed to accommodate the bridge construction, but that would be required whether the City undergrounds or not.

Despite the half mile length of the project, there are only two service drops within the district. There is a communications line drop to Fire Station No. 2 and a power drop to the Union Pacific right-of-way for signals and crossing gates. The cost of converting these services to underground service will be part of the undergrounding work performed by the utility companies.

The legal description of the underground district is included with the attached Engineer's report and also in Resolution No. 15-3089.

FISCAL IMPACT: There is no fiscal impact associated with the City Council's adoption of Resolution No. 15-3089. Based on the estimated cost of undergrounding for Underground District 7, it is unlikely that the City would be able to pursue any additional Rule 20A projects until after 2020. A list of potential projects is shown on the following page.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 15-3089 establishing Underground District No. 7 generally located along Monte Vista Avenue from Holt Boulevard to Mission Boulevard.

POSSIBLE UNDERGROUNDING STREETS

Central, Monte Vista, and Ramona Avenues; Mission Boulevard; Moreno Street; and Arrow Highway

Central Avenue—

- South City limit to Palo Verde Street: Nothing much gained due to transmission lines and poles being on the east side. Can't underground as a 20A project.
- Palo Verde Street to Arrow Highway: No SCE, but a little Verizon south of Moreno to north City limit on east side of street.
- Arrow Highway intersection: Transmission lines and poles through intersection.
- Arrow Highway to Richton: Verizon on east side to north City limit. SCE on west side.
- Richton to north City limit: SCE on west side will be undergrounded as a Rule 20C project where the City will be paying the undergrounding costs. Funds have already been sent to SCE for this work.

Monte Vista Avenue—

- South City limit to Mission: SCE on east side, Verizon on west, partially in County.
- Mission Boulevard to Holt Boulevard: **Staff recommended underground district.**
- Holt Boulevard to San Bernardino Street: Verizon and SCE on east side of street.
- San Bernardino Street to Freeway: Mostly underground except for short piece north of San Bernardino Street and transmission lines at Palo Verde Street.
- Freeway to Moreno Street: Mostly underground except for short segment on west side south of Moreno Street.
- Moreno Street to Arrow Highway: Verizon on west side of street, SCE on east side, but only a short segment south of Arrow Highway.
- Arrow Highway to north City limit: Transmission lines on east side of street.

Ramona Avenue—

- Phillips Boulevard to Mission Boulevard: Overhead wires on east side of street to just south of Mission.
- Mission Boulevard to Holt: Undergrounded as part of Ramona Avenue/UPRR Grade Separation Project.

Mission Boulevard—

- West City limit to Ramona Avenue: Overhead wires south side of street.
- Ramona Avenue to Central: Spotty undergrounding based on recent developments, mostly on the south side of the street. Verizon on north side, SCE on south.

Moreno Street—

- Mills Avenue to Monte Vista: Overhead wires on north side, section probably not eligible for 20A funds.
- Monte Vista Avenue to Central Avenue: All underground
- Central Avenue to Vernon Avenue: Minor amount of SCE to underground.
- Moreno Street–Vernon Avenue to Benson Avenue: Transmission wires on south side of street.

Arrow Highway—

- West City limit to east City limit: Transmission wires on south side of street.

**ENGINEER'S REPORT
CITY OF MONTCLAIR
UTILITY UNDERGROUND DISTRICT NO. 7
MONTE VISTA AVENUE: HOLT BOULEVARD TO MISSION BOULEVARD**

The Public Utilities Commission issued a ruling in 1967 that, according to Southern California Edison, requires each utility company to establish a fund for undergrounding utilities within their service areas. Edison sets aside approximately \$110,000 per year exclusively for use within the City of Montclair. To date, the City has a balance of \$442,597. As of January 1, 2019, it is anticipated that the City will have approximately \$900,000 available for its use. The underground utility district projects are generally referred to as "Rule 20A" projects.

The City Council may, from time to time, call public hearings to ascertain whether the public necessity, health, safety, or welfare requires the removal of poles, overhead wires, and associated overhead structures within certain designated areas of the City. Such work would also require the underground installation of wires, conduits, vaults, and other related facilities for supplying electric, communication, television, and/or similar related services. Utility and property owners within the designated area are to be notified in writing of the City's intent to form the utility underground district and given an opportunity to comment.

The City is considering the establishment of Utility Underground District No. 7 along Monte Vista Avenue, more specifically described as follows:

- 50 feet east and west of the following described centerline:
Commencing at the centerline intersection of Holt Boulevard and Monte Vista Avenue, thence south along the centerline of said Monte Vista Avenue to a point on that centerline 100 feet south of its intersection with Mission Boulevard; and
- 40 feet north and south of the following described centerline:
Commencing at the centerline intersection of Monte Vista Avenue and State Street, thence west along the centerline of said State Street distant thereon 150 feet; and
- 40 feet north and south of the following described centerline:
Commencing at the centerline intersection of Monte Vista Avenue and State Street, thence east along the centerline of said State Street distant thereon 150 feet.

The procedure for the establishment of a utility underground district is set forth by Ordinance No. 291. The following information is a summary of the requirements of Ordinance No. 291:

- | | |
|-----------|---|
| Section 1 | Defines various words and phrases used in utility underground districts. |
| Section 2 | Establishes public hearing requirements. |
| Section 3 | Establishes requirements for report by City Engineer. |
| Section 4 | Provides for establishment of utility underground district by resolution. |
| Section 5 | Makes it unlawful to construct or maintain overhead utility services after the establishment of a utility underground district. |

- Section 6 Notwithstanding the requirements of Section 5, grants exceptions to undergrounding requirement under certain conditions.
- Section 7 Further grants exceptions to undergrounding requirement under certain other conditions.
- Section 8 Notice requirements to property owners and utility companies after establishment of a utility underground district.
- Section 9 Outlines responsibilities of utility companies.
- Section 10 Outlines responsibilities of property owners.
- Section 11 Outlines responsibilities of the City.
- Section 12 Provides for time extensions under certain conditions.
- Section 13 Provides penalties for non-compliance.
- Section 14 Maintains validity of remaining terms of ordinance if one or more terms are found to be unconstitutional.
- Section 15 Publication requirements for ordinance.
- Section 16 Effective date of ordinance.

Three utility companies have facilities that would be impacted by the establishment of Utility Underground District No. 7. They are Southern California Edison, Verizon, and Time Warner Cable Television. The City Engineer has consulted with all three utility companies as required by Section 3 of Ordinance 291.

Edison has estimated that its work will cost approximately \$900,000. Therefore, sufficient funds are available under the Rule 20A program. Costs for Time Warner Cable Television and Verizon have not yet been provided.

Of particular concern are the costs that could be incurred by the City and property owners. That will not be an issue with this undergrounding project. There are only two service drops within District 7 boundaries. One is a communication drop to Fire Station No. 2. The other is an electrical drop to the railroad for its safety equipment. The cost for converting the communication drop to Fire Station No. 2 will be a project cost. The electrical drop for the railroad will no longer be necessary with the signal and safety equipment going away with the elimination of the at-grade crossing.

It normally takes three years from the establishment of a utility underground district to the actual removal of overhead facilities. Timing is critical for this project inasmuch as the district limits include the Monte Vista Avenue Grade Separation project. Temporary utility poles may have to be installed in order to do the grade separation project. These poles will probably stay in place until both the underground work and the grade separation work are complete. It is critical, however, that the utility conduits that will go into the bridge structure are installed at the appropriate time during bridge construction.

This report is prepared and submitted in accordance with Section 3 of Ordinance 291.

RESOLUTION NO. 15-3089

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ESTABLISHING UTILITY UNDERGROUND DISTRICT NO. 7 ALONG MONTE VISTA AVENUE BETWEEN HOLT BOULEVARD AND MISSION BOULEVARD

WHEREAS, Ordinance No. 291 prescribes the manner and regulations by which underground utility districts shall be established in the City of Montclair; and

WHEREAS, by City Council action of August 3, 2015, a public hearing was set for August 17, 2015, at the hour of 7:00 p.m. in the Council Chambers of the City of Montclair, California, to ascertain whether public necessity, health, safety, or welfare requires removal of poles, overhead wires, and associated overhead structures and the underground installation of wires and facilities for supplying electric, communication, cable television, or similar associated service in the following described areas:

- 50 feet east and west of the following described centerline:
Commencing at the centerline intersection of Holt Boulevard and Monte Vista Avenue, thence south along the centerline of said Monte Vista Avenue to a point on that centerline 100 feet south of its intersection with Mission Boulevard; and
- 40 feet north and south of the following described centerline:
Commencing at the centerline intersection of Monte Vista Avenue and State Street, thence west along the centerline of said State Street distant thereon 150 feet; and
- 40 feet north and south of the following described centerline:
Commencing at the centerline intersection of Monte Vista Avenue and State Street, thence east along the centerline of said State Street distant thereon 150 feet

and

WHEREAS, notice of such hearing was given to all affected property owners as shown on the last equalized assessment roll and utilities concerned in the matter in the manner and for the time required by law; and

WHEREAS, such hearing has been duly and regularly held and all persons interested have been given an opportunity to be heard.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1: That the City Council of the City of Montclair does hereby find and determine that the public necessity, health, and welfare require the removal of poles, overhead wires, and associated structures and the underground installation of wires and facilities for supplying electric, communication, cable television, or similar associated services in the following described areas:

- 50 feet east and west of the following described centerline:

Commencing at the centerline intersection of Holt Boulevard and Monte Vista Avenue, thence south along the centerline of said Monte Vista Avenue to a point on that centerline 100 feet south of its intersection with Mission Boulevard; and

- 40 feet north and south of the following described centerline:
Commencing at the centerline intersection of Monte Vista Avenue and State Street, thence west along the centerline of said State Street distant thereon 150 feet; and
- 40 feet north and south of the following described centerline:
Commencing at the centerline intersection of Monte Vista Avenue and State Street, thence east along the centerline of said State Street distant thereon 150 feet;

and such area is hereby established as Underground Utility District No. 7;
and

Section 2: That the following exceptions in said Underground Utility District No. 7 are made and they are hereby authorized:

1. Any municipal facilities or equipment installed under the supervision and to the satisfaction of the City Engineer.
2. Overhead wires (exclusive of supporting structures) crossing any portion of the District within which overhead wires have been prohibited, or connecting to buildings on the perimeter of the District, when such wires originate in an area from which poles, overhead wires, and associated overhead structures are not prohibited.
3. Overhead wires attached to the exterior side of a building by means of a bracket or other fixture and extending from one location of the building to another location on the same building or to an adjacent building without crossing any public street and without being above the roof line of the building.
4. Equipment appurtenant to underground facilities, such as surface-mounted transformers, pedestal mounted terminal boxes, meter cabinets, and concealed ducts.
5. Temporary poles, overhead wires, and associated overhead structures used in conjunction with construction projects.

Section 3: That all poles, overhead wires, and associated structures shall be removed and underground installations made within this underground district within the following times:

1. Underground installation by utility companies and property owners and reconnections no later than June 30, 2018.

2. Removal of poles, overhead wires and other associated overhead structures no later than June 30, 2018.

Section 4: That the Deputy City Clerk, within ten (10) days after the adoption of this Resolution, shall mail a copy hereof and a copy of Ordinance NO. 291 to the affected property owners, as shown on the last equalized assessment roll in the City of Montclair, and to the affected utility companies; and

Section 5: That after said notification, the City Engineer shall proceed to require the construction of the underground facilities and service connections as may be required in the manner set forth by law.

APPROVED AND ADOPTED this XX day of XX, 2015.

Mayor

ATTEST:

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 15-3089 was adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council, held on the XX day of XX, 2015, and that it was adopted by the following vote, to-wit:

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

Andrea M. Phillips
Deputy City Clerk

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: August 17, 2015

SECTION: ADMIN. REPORTS

ITEM NO.: 1

FILE I.D.: FIN520

DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending July 31, 2015, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending July 31, 2015.

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 July 31, 2015.

Prepared by:

Janet Kuelbeck

Fiscal Impact
Finance Review:

Donald L. Parker

Proofed by:

Andrea M Phillips

Reviewed and
Approved By:

Donald L. Parker

AGENDA REPORT

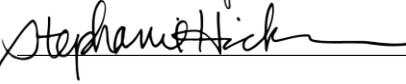
SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION **DATE:** August 17, 2015
SECTION: ADMIN. REPORTS
ITEM NO.: 2
FILE I.D.: FIN540
DEPT.: ADMIN. SVCS.

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

BACKGROUND: Mayor Pro Tem Raft has examined the Warrant Register dated August 17, 2015, and the Payroll Documentation dated August 9, 2015, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated August 17, 2015, totals \$1,027,028.29. The Payroll Documentation dated August 9, 2015, totals \$603,169.25 gross, with \$417,514.88 net being the total cash disbursement.

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

Prepared by:		Fiscal Impact Finance Review:	
Proofed by:		Reviewed and Approved By:	

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: August 17, 2015

SECTION: ADMIN. REPORTS

ITEM NO.: 3

FILE I.D.: FIN510

DEPT.: SUCCESSOR RDA

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 Treasurer's Report for the month ending July 31, 2015, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending July 31, 2015.

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

RECOMMENDATION: Staff recommends the City Council acting as Successor to the Redevelopment Agency Board of Directors receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending July 31, 2015.

Prepared by:

Michael Piotrowski

Fiscal Impact
Finance Review:

Donald L. Parker

Proofed by:

Andrea M. Phillips

Reviewed and
Approved By:

Donald L. Parker

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER **DATE:** August 17, 2015
SECTION: ADMIN. REPORTS
ITEM NO.: 4
FILE I.D.: FIN530
DEPT.: SUCCESSOR RDA

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 July 31, 2015, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Successor to the Redevelopment Agency Warrant Register dated 07.01.15-07.31.15 in the amounts of \$33,174.78 for the Combined Operating Fund; \$0.00 for the Redevelopment Obligation Retirement Funds; \$0.00 from the Tax Exempt Bond Proceeds; and \$0.00 from the Taxable Bond Proceeds and finds it to be in order.

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

RECOMMENDATION: Vice Chairperson Raft 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 July 31, 2015.

Prepared by:		Fiscal Impact Finance Review:	
Proofed by:		Reviewed and Approved By:	

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: August 17, 2015

SECTION: ADMIN. REPORTS

ITEM NO.: 5

FILE I.D.: FIN525

DEPT.: MHC

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 July 31, 2015, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending July 31, 2015.

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 July 31, 2015.

Prepared by:

Michael Piotrowski

Fiscal Impact
Finance Review:

Donald L. Parker

Proofed by:

Andrea M. Phillips

Reviewed and
Approved By:

Donald L. Parker

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER **DATE:** August 17, 2015
SECTION: ADMIN. REPORTS
ITEM NO.: 6
FILE I.D.: FIN545
DEPT.: MHC

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending July 31, 2015, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Warrant Register dated 07.01.15-07.31.15 in the amount of \$72,990.23 for the Montclair Housing Corporation and finds it to be in order.

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

RECOMMENDATION: Vice Chairperson Raft recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending July 31, 2015.

Prepared by:	<u>Michael Piotrowski</u>	Fiscal Impact Finance Review:	<u>Donald L. Parker</u>
Proofed by:	<u>Andrea M. Phillips</u>	Reviewed and Approved By:	<u>Donald L. Parker</u>

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: August 17, 2015

SECTION: ADMIN. REPORTS

ITEM NO.: 7

FILE I.D.: FIN525

DEPT.: MHA

REASON FOR CONSIDERATION: The Montclair Housing Authority Board of Directors is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending July 31, 2015, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending July 31, 2015.

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

RECOMMENDATION: Staff recommends the Montclair Housing Authority Board of Directors receive and file the Treasurer's Report for the month ending July 31, 2015.

Prepared by:

Michael Piotrowski

Fiscal Impact
Finance Review:

Donald L. Parker

Proofed by:

Andrea M. Phillips

Reviewed and
Approved By:

Donald L. Parker

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER **DATE:** August 17, 2015
SECTION: ADMIN. REPORTS
ITEM NO.: 8
FILE I.D.: FIN545
DEPT.: MHA

REASON FOR CONSIDERATION: The Montclair Housing Authority Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending July 31, 2015, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Warrant Register dated 07.01.15-07.31.15 in the amount of \$261.80 for the Montclair Housing Authority and finds it to be in order.

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

RECOMMENDATION: Vice Chairperson Raft recommends the Montclair Housing Authority Board of Directors approve the Warrant Register for the period ending July 31, 2015.

Prepared by:	<u>Michael Piotrowski</u>	Fiscal Impact Finance Review:	<u>Donald L. Parker</u>
Proofed by:	<u>Andrea M Phillips</u>	Reviewed and Approved By:	<u>Donald L. Parker</u>

AGENDA REPORT

SUBJECT: CONSIDER AUTHORIZATION OF A \$1,503 EXPENDITURE FROM THE FEDERAL ASSET FORFEITURE FUND TO PURCHASE ADDITIONAL LICENSING FOR EXISTING SOFTWARE TO SUPPORT REMOTE CONNECTIVITY TO DEPARTMENT COMPUTERS	DATE: August 17, 2015
	SECTION: ADMIN. REPORTS
	ITEM NO.: 9
	FILE I.D.: PDT362
	DEPT.: POLICE

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the use of Federal Asset Forfeiture funds to purchase site licensing for existing software that would allow executive staff to access Police Department computers remotely.

BACKGROUND: On June 15, 2015, the City Council authorized the purchase of five Samsung Galaxy Tablets to afford executive Police Department staff the convenience and flexibility of working off-site. The tablets were purchased immediately following the City Council's approval.

Remote connectivity would allow managers to access the Department's Computer Aided Dispatch/Records Management System; Higher Ground radio communications system, through which telephonic interactions in the Communications Center are recorded; and work-related files.

As with any electronic device, protection of network security is of utmost importance. To guarantee that reliable and secure remote access to the City's network is maintained, staff proposes to purchase NetMotion Mobility - Android device licenses for each tablet. NetMotion Mobility software is specifically developed for deployment of mobile devices, is the only mobile virtual private network that is self-diagnosing and healing, and is currently utilized for connectivity of the Department's mobile data computers (MDCs). It has the ability to enforce enterprise, group, device, and user-specific security policies; selectively grant access by user, device, network, or application; send alerts to matters that require attention; and allow for monitoring of usage to ensure that devices and applications are used as intended.

The Information Technology Division tested the software in excess of one month and fully supports its use for this purpose.

FISCAL IMPACT: If approved by the City Council, funding to purchase the initial site licenses would result in a \$1,503 expenditure from the Federal Asset Forfeiture Fund. Site licensing for the tablets would result in a recurring annual expenditure of \$369. Because connectivity for the tablets would be provided by the same software as that

Prepared by:		Fiscal Impact Finance Review:	
Proofed by:		Reviewed and Approved By:	

used for the Department's MDCs, the annual cost would be incorporated into the existing maintenance contract for MDC connectivity, which is customarily allocated in the Information Technology Services Budget.

RECOMMENDATION: Staff recommends the City Council consider authorizing a \$1,503 expenditure from the Federal Asset Forfeiture Fund to purchase additional licensing for existing software to support remote connectivity to Department computers.



7/27/2015 4:27 PM

Quote #: Q-77375-2
 Territory: Southwest
 Account ID: 00100000005URyW

Ship To:
 John Nguyen
 Montclair Police Department
 5111 Benito St
 Montclair, CA 91763-2808
 (909) 626-8571
 jnguyen@cityofmontclair.org

Dear John,

Thank you for your interest in NetMotion Wireless products. Below, please find the detailed quote you requested. This quote is valid until 8/31/2015.

Solution 1

Product Description	SKU	Quantity	Unit List Price	Extended List Price	Discount*	Montclair Police Department Price
NetMotion Mobility - Android Device License Includes: * Policy Module * Analytics Module	10NMAPA	5.00	\$295.00	\$1,475.00	\$147.50	\$1,327.50
License Subtotal				\$1,475.00	\$147.50	\$1,327.50
Mobility Premium Software Maintenance * 24x7 technical support * Major version upgrades * Tech notes and web based support * Cumulative quantity discounts on additional device licenses * Patch and point releases at no additional charge * Guaranteed response times (Effective from 7/27/2015 through 1/16/2016)	10NMXP25	1.00	25%	\$175.31		\$175.31
Maintenance Subtotal				\$175.31		\$175.31
Total				\$1,650.31	\$147.50	\$1,502.81

I will follow up with you to answer any questions. Until then, please do not hesitate to contact me.

Dana Luizzo
 Inside Account Executive - Southwest (AZ, CA, HI, NV)
 dana.luizzo@netmotionwireless.com
 Phone: (206) 691-5657
 Fax: (206) 691-5501

Above prices in US dollars. State and local sales tax will apply in certain states. Exempt customers must provide an official sales tax exemption certificate in compliance with state and local laws to avoid sales tax charges. Please note that pricing on this quote is subject to change if you purchase additional licenses, add new software features, or if we change our software prices. Maintenance renewals are based on current software list prices at the time of renewal and must include the total quantity of licenses, servers, and features that you own at the time of renewal. This pricing quote is confidential and may not be redistributed.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 15-69 WITH THE CITY OF WEST COVINA FOR MOBILE DATA COMPUTER CONNECTIVITY, DATA PROCESSING EQUIPMENT, SOFTWARE, AND SERVICE OF COMPUTER-AIDED DISPATCH AND RECORDS MANAGEMENT SYSTEM PROGRAMS

DATE: August 17, 2015

SECTION: AGREEMENTS

ITEM NO.: 1

FILE I.D.: PDT175

DEPT.: POLICE

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 15-69 with the City of West Covina (West Covina) for Mobile Data Computer (MDC) connectivity, data processing equipment, software, and the service of Computer-Aided Dispatch (CAD) and Records Management System (RMS) programs, all of which are administered through West Covina Police Department.

A copy of proposed Agreement No. 15-69 is attached for the City Council's review and consideration.

BACKGROUND: For many years, Montclair Police Department has relied on the services of West Covina for data processing equipment, software, and support for the Police Department's CAD and RMS programs, as well as MDC connectivity.

The services provided by West Covina offer the Police Department access to a comprehensive public safety information system without the day-to-day responsibility of system management and ongoing maintenance.

The CAD system is a computer-based module for accepting Police calls for service, dispatching public safety personnel, and tracking the status of available resources. The CAD system includes interfaces to the RMS, MDCs, emergency telephone systems (E 9-1-1), and all available external law enforcement databases.

Multiple open windows allow dispatchers to perform varied tasks while still being aware of changes that take place with field units. From within the CAD, dispatchers have full access to county databases, California Law Enforcement Telecommunications Systems, and the National Crime Information Center.

The CAD software is fully integrated into the MDC system, which provides field officers with immediate access to extensive information. The CAD is also fully integrated into the RMS system from which all available information is immediately transferred. Response time analysis, officer productivity, and free-time analysis reports are all based on the CAD data and provide an immediate and timely overview of efficiency.

Prepared by:  Fiscal Impact Finance Review: 

Proofed by:  Reviewed and Approved By: 

The RMS is a computer-based module that allows for easy data entry and retrieval of crime-related records; citation, field interview, and registrant information; and CAD information associated with crime and other incidents reported to the Communications Center. The RMS also encompasses a crime analysis system with the capability of generating statistical reports, a useful tool in crime analysis. Both facets of the program are designed to assist law enforcement in effectively handling criminal investigations.

FISCAL IMPACT: The total cost of services proposed to be provided by the City of West Covina pursuant to Agreement No. 15-69 is \$77,783. Funding in this amount for this service is appropriated in the Police Department Fiscal Year 2015-16 Budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 15-69 with the City of West Covina for mobile data computer connectivity, data processing equipment, software, and service of computer-aided dispatch and records management system programs.

STANDARD AGREEMENT

DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT

This DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT is made this 1st day of July, 2015 by and between the City of West Covina, through its Police Department, an entity organized under the laws of the State of California ("West Covina Police") and the Montclair Police Department, organized under the laws of the State of California ("Client Agency").

Recitals

- A. Client Agency has requested to lease the West Covina application software.
- B. Client Agency desires to implement and use a comprehensive public safety information system without the responsibility for day-to-day central computer system management and West Covina Police has the available central computer system capacity, implementation and system management skills and ability to implement such a system and to provide on-going support and maintenance.

In consideration of an initial processing establishment fee and annual processing and software usage/support/maintenance fees to be paid by Client Agency to the West Covina Police, the parties agree as follows:

1. Sale of Equipment and Right To Use Software. Subject to the terms and conditions hereof, West Covina Police agrees to sell to Client Agency, and Client Agency agrees to purchase from West Covina Police, the equipment and the right to use the software products described herein (collectively referred to as the "System"). West Covina Police shall obtain for delivery at the address designated for Client Agency's use of the System (the "Installation Site"), the equipment, parts, and supplies identified in Attachment 1 hereto (the "Network Equipment").

Client Agency's right to use the system software products may not be transferred, leased, assigned, or sublicensed without West Covina Police's prior written consent, except for a transfer of the right-to-use in its entirety to a successor in interest of Client Agency's entire organization who assumes the obligations of this Agreement.

2. Network Equipment Installation. West Covina Police shall be responsible for complete installation of the System and Network Equipment identified in Attachment 1 hereto.

3. Training. Client Agency shall select personnel suitable to operate and use the System and confirm that such personnel demonstrate the competence necessary to manage and operate the System. West Covina Police shall, upon Client Agency's request, provide Client Agency's personnel with training and instruction concerning the operation and use of the System by conducting a training session(s) at a mutually convenient time at Client Agency's

facility. The cost and terms of payment for providing training at Client Agency's facility is contained in Attachment 1 of this Agreement.

4.Remote Computing Services. The West Covina Police shall provide Client Agency with the data processing services described in the Processing Schedule contained in Attachment 1. The Processing Schedule sets forth standards and procedures, including form of source data, programs to be used in processing, procedures for data storage, and form of return data and output, for such services. The West Covina Police may provide remote computing services to sort and analyze such data in order to produce the return data and output. Such data, as sorted and analyzed, shall be stored in a custom database file for Client Agency to access on a confidential, "password-restricted" basis through the West Covina Police's on-line communications network. The Processing Schedule also sets forth the equipment and computer programs provided for Client Agency's use, the quantity of data storage space reserved the communication protocols and terminal specifications for equipment on Client Agency's premises, and user identification and security procedures to be employed.

5.Processing. The West Covina Police will process work in a timely manner according to the processing schedule, including computer network availability times and scheduled downtime arrangements, to be developed from time to time by Client Agency and West Covina Police and documented in additions to the Processing Schedule signed by both parties hereto. West Covina Police acknowledges that maximum availability of the computer network so undertaken is necessary for Client Agency to meet Client Agency's internal operating requirements, but West Covina Police shall not be responsible for unscheduled computer network outages attributable to causes beyond its reasonable control, including but not limited to limitations on the availability of telephone transmission facilities, failures of other communications equipment, or Client Agency's failure to prepare data properly for input into equipment of West Covina Police.

6.Backup Services. If West Covina handles Client processing, West Covina Police shall maintain adequate back-up arrangements and equipment in order to maintain services hereunder in the event of the failure of West Covina Police's equipment. West Covina Police shall, at a minimum, perform daily incremental and weekly comprehensive backups of Client Agency's database files and shall rotate a current backup copy off-site from West Covina Police's premises weekly.

7.Priority Processing. West Covina Police shall afford priority to all data processing services provided with respect to public safety information systems and shall undertake all reasonable efforts to maximize computer network availability for such data processing for Client Agency prior to any non-priority processing.

8.Ownership of Systems, Materials and Database. All systems, programs, operating instructions, and other documentation prepared by West Covina Police shall be, and remain, the property of West Covina Police. All data and source documents provided by Client Agency and all output shall be, and remain, Client Agency's property. Upon termination of this Agreement, all of Client Agency's information retained by West Covina Police in Client Agency's custom database files shall be made available to Client Agency on computer readable media, of a type suitable for use on the specified equipment, and West Covina

Police shall return to Client Agency all documents and written records of transactions belonging to Client Agency. Client Agency's custom database files shall be supplied in either native West Covina application system format or in a flat file format with all data fields unpacked or not in computational or binary form. Costs to cover such final servicing and handling of materials and custom database files are deemed to be included in the processing establishment fee.

9. Duty of Care. West Covina Police agrees to employ due care and attention in maintaining Client Agency's custom database files. Client Agency acknowledges that data processing entails the likelihood of some human and machine errors, omissions, delays, and losses, including inadvertent loss of data or damage to media, which may give rise to loss or damage.

Operation of the System and use of the products and services identified in this Agreement are the sole responsibility of Client Agency. West Covina's sole undertaking is limited to providing the products and services outlined herein in accordance with the terms and conditions of this Agreement. The provision of products sold or leased and services performed by West Covina to Client Agency shall not be interpreted, construed, or regarded, either expressly or implied, as being for the benefit of or creating any obligation toward any third party or legal entity outside of West Covina and Client Agency; West Covina's obligations under this Agreement extend solely to Client Agency.

Client Agency is responsible for adopting reasonable measures to limit Client Agency's exposure with respect to such potential losses and damages, including (without limitation) examination and confirmation of results prior to use thereof, provision for identification and correction of errors and omissions, preparation and storage of backup data, replacement of lost or damaged data or media, and reconstruction of data. Client Agency agrees to maintain at all times alternative methods capable of substitution for West Covina Police's performance under this Agreement. Client Agency is also responsible for complying with all local, state, and federal laws including those pertaining to the use and disclosure of any data.

10. Confidential Treatment of Information. West Covina Police shall maintain in confidence, and shall not disclose to any third party, unless directed to do so in writing by Client Agency's Chief of Police, or designee, all data and materials furnished by Client Agency for processing hereunder, and West Covina Police agrees that such information shall not be used by West Covina Police for any purposes other than the provision of processing services pursuant to this Agreement. West Covina Police's obligation under this Paragraph 10 is limited to diligent compliance with the same methods and procedures that West Covina Police uses to protect its own confidential information from disclosure. West Covina Police further agrees to restrict access to the custom database files created for the output of its processing of Client Agency's data. West Covina Police shall furnish Client Agency with a description of such restrictions upon Client Agency's request, BUT CLIENT AGENCY ACKNOWLEDGES THAT ACCESS RESTRICTIONS, BY THEIR NATURE, ARE CAPABLE OF BYPASS AND WEST COVINA POLICE DOES NOT AND CANNOT GUARANTEE THAT SUCH OUTPUT CANNOT BE ACCESSED BY UNAUTHORIZED PERSONS CAPABLE OF OVERCOMING SUCH RESTRICTIONS.

11. Audits and Governmental Examination. West Covina Police agrees to permit auditors or consultants retained by Client Agency to audit or review the procedures for handling and processing of data hereunder upon reasonable notice and compliance with West Covina Police's security procedures. The parties also acknowledge that certain federal and state agencies may require access to facilities of West Covina Police to audit the performance of the services by West Covina Police for Client Agency under this Agreement, and West Covina Police will cooperate with respect to all such governmental audits. West Covina Police shall provide an annual financial accounting and report of data processing operations in writing to Client Agency.

12. Modification of Procedures. West Covina Police may make changes from time to time in its standards and procedures for performing data processing services, but no substantial changes will be implemented by West Covina Police until it has furnished Client Agency with written notice thereof and a reasonable opportunity to adapt Client Agency's operations to accommodate such changes. Substantial changes are those which would force Client Agency to make significant modifications to their standard operating procedures.

13. West Covina Maintenance. West Covina Police shall maintain the application software used by Client Agency at the time of the execution of this Agreement. West Covina Police shall use its best efforts to correct any reproducible error. Response to downed systems generally will be within four hours. Suspected error conditions will be investigated and corrected by West Covina Police personnel at West Covina offices to the extent possible although visits to the Client Agency's site shall be made when necessary pursuant to Paragraph 18 of this Agreement. West Covina Police may provide Client Agency with use of unsolicited error corrections or changes to the software which West Covina Police determines are necessary for proper operation of the software.

14. New Releases. West Covina Police is continually working on improvements to application software modules. During the term of this Agreement, as these improvements are released, Client Agency will receive the right-to-use these improvements. West Covina Police reserves the right to make final determination as to whether or not newly completed or acquired enhancements, modules and/or applications are deemed separately priced products or are to be included as no-cost enhancement/new releases for the maintenance-paying Client Agency.

15. Pricing. Network Equipment Costs, Processing Establishment, Installation and Training Fees shall be paid on a one-time only basis according to the payment schedule contained in Attachment 1 of this Agreement. Processing, Software Support and Usage and Maintenance fees are billed annually and are due and payable by July 1 of each year. The amount of these annual recurring fees is presented in Attachment 1. West Covina Police may increase the amount of the annual recurring fees each year, based upon budget requirements, to a maximum of 5% in any year. Client Agency will be notified of such annual recurring fees increases by April 1 of each year.

16. Taxes. Client Agency shall report and pay all applicable federal, state, and local taxes designated, levied, or based (1) upon the Purchase Price, Service Establishment, Processing Fees, or any other amounts payable under this Agreement; (2) on account of this Agreement; or (3) with respect to the System, the Network Equipment, or the use by Client Agency of the System or the Network Equipment.

Client Agency shall indemnify and hold harmless West Covina Police from all claims and liability resulting from Client Agency's failure to report or pay such amounts.

17.Delivery. West Covina shall deliver all equipment outlined in Attachment 1 to Client Agency's facility.

18.On-Site Assistance and Billing. If a problem cannot be resolved using remote diagnostics, with the Client Agency's authorization, West Covina Police shall send a specialist to the Client Agency's site under the following terms and conditions: (1) If the problem lies solely with Client Agency's equipment, Client Agency will be responsible for all expenses associated with the resolution of the problem, and (2) if the problem is Client Agency generated, Client Agency may be responsible for all fees and expenses and will be automatically billed on a net 30 basis at West Covina Police's then-current service rate plus cost of materials. The current service rate is indicated in Attachment 1 of this Agreement.

Nonpayment of billed services shall constitute a breach of Agreement and all remote computing services and maintenance shall be withheld until such time as all back payments plus applicable late penalties and interest have been fully repaid. Client Agency generated problems include any and all hardware and/or network failures that were caused by improper use, tampering or by intentional damage to the Client Agency's Network Equipment.

19.West Covina Service Group (WCSG). Calls to WCSG will be accepted during regular business hours from 7:00 a.m. PST to 5:00 p.m. PST on Monday through Thursday, excluding announced West Covina holidays. Responses from WCSG or other West Covina Police representatives will be provided during the same hours. West Covina Police will use its best efforts to resolve problems promptly. Client Agency will select no more than two (2) of its employees to serve as official representatives of Client Agency to use the WCSG hotline support. Client Agency may also appoint alternative representatives to act in place of the official representatives in their absence. The WCSG service is not to be considered a source of training or a source of consulting. It is Client Agency's responsibility to regulate and authorize the use of this service by its employees. All WCSG services shall be coordinated in advance with the West Covina Site Manager. Client Agency's representatives shall not call programming staff directly.

After-hours support services may be provided in coordination through the Site Manager. "After hours support services" means services between 5:00 p.m. - 7:00 a.m. Monday-Friday or on West Covina holidays or on weekends. Requests for emergency support services may originate only from the Client Agency's official representative(s). The charge for emergency services shall be on a time and materials basis at the rate indicated in Attachment 1 with a two (2) hour minimum. There is no charge for technical support and calls to WCSG outside of emergency services and on-site assistance.

West Covina shall designate a Site Manager under this Agreement.

20.Client Agency Responsibilities. Client Agency's responsibilities shall include the following:

- 1 Client Agency, at its expense and prior to delivery and installation of the System at Client Agency's address, shall prepare the Installation Site in an appropriate manner and shall cause the Installation Site to conform to any utility, climate control, and communication interface specifications that West Covina Police or the manufacturers or vendors of the Network Equipment may supply.
- 2 Client Agency shall promptly inspect the Network Equipment upon its arrival at the Installation Site and shall notify West Covina Police if Client Agency finds any damage or defect in the Network Equipment.
- 3 Client Agency shall provide West Covina Police personnel with the work space necessary for the proper execution of its service obligations as necessary and required by West Covina Police.
- 4 Client Agency will be responsible for maintaining the computer hardware, communications equipment, telephone lines, cabling, modems and all other hardware equipment as necessary to operate efficiently and to industry standards.
- 5 Client Agency will make available network access time for the testing and maintenance of software as necessary and required by West Covina Police.

21. Terms of Agreement. This Data Processing Equipment and Services Agreement shall be effective until terminated as set out in paragraph 22, subject to changes in terms and conditions set out herein. This Agreement may only be modified in writing signed by both parties.

22. Termination. Either party shall have the right to terminate this Agreement without cause upon not less than one hundred eighty (180) days advance written notice.

23. Warranties.

1. West Covina Police warrants, for the benefit of Client Agency only, that at the time of completion of delivery and installation of the Network Equipment and Operating Programs at the Installation Site, the equipment shall be free of defects in materials or workmanship. West Covina Police's sole obligation, and Client Agency's exclusive remedy, for any defect or nonconformity in the Network Equipment and Operating Programs shall be to cooperate with Client Agency to provide it with the benefit, if any, of the warranty and support commitment of the third-party manufacturers and suppliers of Network Equipment and the Operating Programs. Client Agency may independently seek to obtain directly, from the manufacturers of the Network Equipment or the Operating Programs, maintenance or repair of the Network Equipment or the Operating Programs under any warranty or guarantee provided by such manufacturer. Client Agency acknowledges, unless Client Agency obtains separate service agreements with such manufacturers and suppliers or with a third-party maintenance vendor covering maintenance or repair of the Network Equipment and the Operating Programs at the Installation Site, that such manufacturers and suppliers may require Client Agency to deliver defective Network Equipment or Operating Programs to their authorized service centers for maintenance or repair.

2. THE CLIENT AGENCY UNDERSTANDS AND AGREES THAT EXCEPT FOR THE FOREGOING WARRANTY, NO WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY TO THE SOFTWARE UNDER THIS AGREEMENT, WHICH IS FOR MAINTENANCE AND SUPPORT ONLY. ALL IMPLIED WARRANTIES ARE HEREBY AND EXPRESSLY DISCLAIMED. West Covina's sole obligation for breach of this Agreement is limited to repairing and/or replacing, at Client Agency's option, the software components at West Covina's own expense, which shall be Client Agency's sole and exclusive remedy. The repair or replacement of any defective software under this warranty is conditioned upon the software not having been altered or repaired by any individual other than West Covina employees or agents, and West Covina shall not be responsible for any defects resulting from the mishandling, abuse, misuse, improper storage or improper operation, including use in conjunction with equipment which is electrically or mechanically incompatible with or of inferior quality to the System, as well as failure to maintain the environmental conditions specified by the manufacturer of the System.

24. Indemnification. Subject to the limitations set out herein each party shall indemnify and hold harmless the other party from and against claims, losses, damages, liabilities, demands, and lawsuits to the extent they arise from, or are alleged to arise from, negligent acts solely in connection with a party's performance (or failure to perform) under this Agreement or a party's use of, or operation of, the Product(s) sold, installed, and maintained under this Agreement. This indemnity extends solely to claims and lawsuits for personal injury, death, or destruction of tangible property

Notwithstanding any other provision in this Agreement, including without limitation Paragraphs 9,23,24, West Covina Police shall defend, indemnify and hold harmless the Client Agency and its elected officials, officers, employees and agents from and against any claims, losses, damages, liabilities, demands and lawsuits, of whatsoever kind or nature, including, without limitation, patent and/or copyright infringement claims arising out of or relating to West Covina Police's ownership and/or ability or right to sell or lease the software and database which are the subject of this Agreement.

25. Security and Privacy. West Covina Police agrees that to the extent allowed by law, none of its officers or employees shall use or reveal any research or statistical information furnished by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained. Copies of such information shall not, without the prior written consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit or other judicial or administrative proceedings, unless ordered by a court of competent jurisdiction. Client Agency shall be notified immediately upon receipt of any such order of court, pertaining to production of such information.

26. Changes to files and/or hardware configuration. Any changes to files and/or hardware which may affect software performance, including but not limited to changes to existing hardware configurations, network configurations, terminal and printer characteristics or

modems without the prior written consent of West Covina Police may void this Agreement. West Covina Police may provide requested support on a time and material basis only, until such time as the changes in configuration are resolved.

27.Independent Contractor. The parties hereto agree that West Covina Police Department and its employees, officers, and agents are independent contractors under this Agreement and shall not be construed for any purpose to be employees of Client Agency.

28.Notices. Any notices required or permitted under this Agreement shall be in writing and shall be effective when delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed, or by personal courier to the address set forth in this Agreement or any more recent address of which the sending party has been apprised.

29.Governing Law/Miscellaneous. This agreement shall be governed by the laws of the State of California. It may be amended only in writing signed by both parties. No waiver of any term or condition of this Agreement shall be a continuing waiver thereof.

30.Entire Agreement. This Agreement, including Attachment 1 hereto, which is hereby incorporated herein by this reference, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior and contemporaneous representations, proposals, agreements, negotiations, advertisements, statements, or understandings, whether oral or written. No amendment to this Agreement shall be binding on either party unless such amendment is in writing and executed by authorized representatives of both parties to this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized representatives.

City of Montclair

City of West Covina

By: _____

By: _____

Name: Paul M. Eaton

Name: Dave Faulkner

Title: Mayor

Title: Chief of Police

Date: _____

Date: _____

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

I. Description of Data-Processing Services:

A. Maintenance and Repair of Data Communications Lines:

All data communication lines between Client Agency and West Covina are supplied by the local telephone service company. The maintenance and repair of those lines remains the responsibility of the provider.

B. Maintenance and Repair of E-911 Connections:

All 911 communication lines are supplied by the local telephone service company. The maintenance and repair of those lines remains the responsibility of the provider.

C. Maintenance and Repair of External System Interfaces:

All external interface communication lines between Client Agency and the County or State are supplied by the County or the State. The maintenance and repair of those lines remains the responsibility of the provider.

D. Maintenance and Repair of West Covina Police supplied Third-Party Equipment:

All third party equipment provided by West Covina to Client Agency will be the property of the Client Agency. The maintenance and repair of that equipment will be the responsibility of West Covina. Any West Covina personnel costs will be billed to Client Agency at a time and materials rate of \$150 per hour.

E. Maintenance and Repair of Third-Party Software provided by West Covina Police:

All third party software provided by West Covina to Client Agency will be the property of the Client Agency. The maintenance and repair of that software will be the responsibility of West Covina. Any West Covina personnel costs will be billed to Client Agency at a time and materials rate of \$150 per hour.

F. Maintenance and Repair of West Covina Police Central Computer System:

West Covina will be responsible for all maintenance and repair of the Central Computer System with contracted maintenance coverage of 24 hours by 7 days per week, including holidays.

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

G. Client Agency copy of database backup:

At Client Agency direction, West Covina Police will rotate to Client Agency a comprehensive backup media on a monthly basis.

II. Standards and Procedures

A. Client Agencies Users' Group:

Client Agency will be a member of the West Covina User's Group and will be invited to attend all meetings of that group and will be asked to provide input into future software enhancements.

B. Procedures for Off-Site Data Storage:

West Covina will make daily backups of the entire Client Agency system. If asked to do so, West Covina will provide Client Agency, monthly, with a full backup media.

C. Network Availability Schedule:

24 hours daily, 7 days per week.

D. Scheduled Downtimes:

Downtimes are scheduled on an "as needed" basis and West Covina Police will provide, in most instances, at least one (1) day advance notice. Less notice may be provided for emergency system maintenance downtime.

E. Security Procedures:

Client Agency will have full authority and responsibility to assign passwords, terminal time-outs, user clearances, and other related security functions to all of their users on the system.

F. On-Site Assistance and Emergency Service Fees:

Normal On-Site Assistance rate is \$150.00 hour.

Emergency Services rate is \$300.00 hour.

Client Agency shall be invoiced for these services fees as they are incurred. The invoice shall indicate the date services were provided, the individual providing the services and amount of time incurred. Invoices are due and payable within 30 days.

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

Client Agency shall be invoiced for any software or hardware purchases made on their behalf, at the time of ordering. Invoices are due and payable within 30 days. Late payments are subject to a 3% monthly penalty.

The annual processing/usage fee is due and payable by July 1 of each year.

The software support and maintenance fee is due and payable by July 1 of each year.

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

ON-GOING ANNUAL FEES (due July 1st of each year, starting July 1, 2015)

ANNUAL CAD/RMS / EXTERNALS MAINTENANCE FEES	\$34,311.00
ANNUAL HOSTED LEASE / TIME-SHARE FEES	\$28,301.00
ANNUAL MDT MAINTENANCE FEES	\$6,010.00
ANNUAL CLETS FEES	\$4,244.00
ANNUAL PST RADCOM SERVER / CLIENT MAINTENANCE FEES	\$4,917.00
TOTAL WCSG ANNUAL FEES	\$77,783.00

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 15-70 WITH KAISER FOUNDATION HOSPITALS, ONTARIO, FOR THE MONTCLAIR GOLDEN EXPRESS SENIOR TRANSPORTATION PROGRAM	DATE: August 17, 2015 SECTION: AGREEMENTS ITEM NO.: 2 FILE I.D.: HSV044 DEPT.: HUMAN SVCS.
--	---

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 15-70 with Kaiser Foundation Hospitals, Ontario, to fund a portion of the operation costs associated with the Montclair Golden Express Senior Transportation Program.

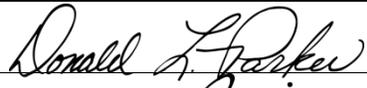
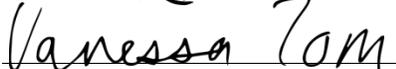
A copy of proposed Agreement No. 15-70 is attached for the City Council's review and consideration.

BACKGROUND: Kaiser Foundation Hospitals, Ontario, has provided a \$14,000 grant to the Human Services Department to be used towards the Montclair Golden Express Senior Transportation Program. The objective of the grant is to assist a minimum of 150 unduplicated senior citizens with transportation (2,600 one way trips) to obtain basic needs which includes medical appointments, senior nutrition meals, social service appointments, and educational programs.

The term of proposed Agreement No. 15-70 is July 1, 2015, through June 30, 2016.

FISCAL IMPACT: Agreement No. 15-70 would provide grant funding in the amount of \$14,000 to assist in paying costs associated with the Montclair Golden Express including staff salaries, fuel, and repairs to the vehicle as necessary.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 15-70 with Kaiser Foundation Hospitals, Ontario, to fund a portion of the costs associated with the Montclair Golden Express Program.

Prepared by:		Fiscal Impact Finance Review:	
Proofed by:		Reviewed and Approved By:	

LETTER OF AGREEMENT
KAISER FOUNDATION HOSPITALS, ONTARIO
COMMUNITY BENEFIT CHARITABLE CONTRIBUTIONS PROGRAM

This Letter of Agreement (hereinafter "Agreement") is entered into by and between **Kaiser Foundation Hospitals**, a California nonprofit, public benefit corporation (hereinafter "KFH") and **City of Montclair**, a charter city organized in the State of California and not subject to federal or state income tax.

This Agreement sets forth the understanding of the parties hereto as to the terms and conditions under which KFH shall donate funds in the amount of **\$14,000.00 for a one year funding period beginning July 1, 2015 through July 1, 2016 for Montclair Golden Express: Providing Access to Care for the Most Vulnerable**. Such terms and conditions are as follows:

1. **Tax Exemption Status**: Grantee represents that at all times relevant herein, it is a charter city organized in the State of California and not subject to federal or state income tax.
2. **Purpose of Grant**. Grantee shall use entire Grant to support the specific goals, objectives, activities, and outcomes as stated in the Grant Summary.
3. **Expenditure of Funds**. This Grant (together with any income earned upon investment of grant funds) is made for the purpose outlined in the Grantee's Work Plan and may not be expended for any other purpose without KFH's prior written approval.
4. **Prohibited Uses**. In no event shall Grantee use any of the funds from this Grant to (a) support a political campaign, (b) support or attempt to influence any government legislation, except making available the results of non-partisan analysis, study or research, or (c) grant an award to another party or for any purpose other than one specified in Section 170(c)(2)(b) of the Internal Revenue Code of 1986 as amended.
5. **Return of Funds**. KFH reserves the right to discontinue, modify or withhold payments to be made under this Agreement or to require a total or partial return of any funds, including any unexpended funds under the following conditions:
 - (a) If KFH, in its sole discretion, determines that the Grantee has not performed in accordance with this Agreement or has failed to comply with any term or condition of this Agreement.
 - (b) If Grantee loses its status as an eligible Grantee under Paragraph 1 above.
 - (c) Any portion of the funds is not used for the approved purpose
 - (d) Such action is necessary to comply with the requirements of any law or regulation applicable to Grantee or to KFH or to this Grant.
6. **Records, Audits and Site Visits**. KFH is authorized to conduct audits, including on-site audits, at any time during the term of this Grant and within four years after completion of the Grant. Grantee shall allow KFH and its representatives, at its request, to have reasonable access during regular business hours to Grantee's files, records, accounts, personnel and client or other beneficiaries for the purpose of making such audits, verifications or program evaluations as KFH deems necessary or appropriate

concerning this Grant. Grantee shall maintain accounting records sufficient to identify the Grant and to whom and for what purpose such funds are expended for at least four (4) years after the Grant has been expended.

7. No Assignment or Delegation. Grantee may not assign, or otherwise transfer, any rights or delegates any of Grantee's obligations under this Agreement without prior written approval from KFH.

8. Records and Reports. Grantee shall submit written progress report(s) to KFH in accordance with the due dates stated on the Grant Summary (Attachment).

Grantee shall be primarily responsible for the content of the evaluation report. If KFH determines IRB approval is necessary, as part of the evaluation process, Grantee shall follow KFH IRB approval processes and procedures.

9. Required Notification. Grantee is required to provide KFH with immediate written notification of any change in Grantee's tax exempt status or when Grantee is unable to expend the grant funds for the approved purposes described in the Work Plan.

10. Identification of KFH. Grantee shall identify KFH as a supporting organization in all published material relating to the subject matter of this Grant. Whenever possible and appropriate, Grantee shall publicly acknowledge KFH for this Grant.

11. Equal Employment Opportunity. Grantee agrees to comply with and be bound by the nondiscrimination and affirmative action clauses contained in: Executive Order 11246, as amended, relative to equal opportunity for all persons without regard to race, color, religion, sex or national origin; the Vocational Rehabilitation Act of 1973, as amended, relative to the employment of qualified handicapped individuals without discrimination based upon their physical or mental handicaps; the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, relative to the employment of disabled veterans and veterans of the Vietnam Era, and the implementing rules and regulations prescribed by the Secretary of Labor in Title 41, Part 60 of the Code of Federal Regulations (CFR).

12. Immigration Act Requirements. Grantee shall comply during the term of this Agreement with the provisions of the Immigration Reform and Control Act of 1986 and any regulations promulgated thereunder. Grantee hereby certifies that it has obtained a properly completed Employment Eligibility Certificate (INS Form I-9) for each worker performing services related to the program described in the Work Plan.

13. Licensing and Credentials. Grantee agrees to maintain, in full force and effect, all required governmental or professional licenses and credentials for itself, its facilities and for its employees and all other persons engaged in work in conjunction with this Grant.

14. Payment of Grant. First payment by KFH will be contingent upon a signed Agreement between KFH and Grantee. Subsequent payments (if any) are contingent upon compliance with this Agreement, including timely receipt of reports as outlined in Paragraph 8 above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Kaiser Foundation Hospitals

By: Jennifer Resch-Silvestri
Jennifer Resch-Silvestri
Senior Director of Public Affairs and Brand Communications

July 1, 2015
Date

Grantee

By: _____
Edward Starr
City Manager
City of Montclair

Date

By: _____
Paul Eaton
Mayor
City of Montclair

Date

ATTEST:

By: _____
Andrea M. Phillips
Deputy City Clerk

Date

LETTER OF AGREEMENT
Attachment

GRANT SUMMARY

GRANT NUMBER: 20643757	DATE AUTHORIZED: May 1, 2015
GRANTEE NAME: City of Montclair	AMOUNT: \$14,000.00 over 12 months
CONTACT, TITLE: Mrs. Marcia Richter, Director of Human Services	
TELEPHONE: (909) 625-9453	FAX: (909) 399-9751
CB PROJECT MANAGER: Martha Valencia, Community Benefit Health Manager Phone: Email: martha.r.valencia@kp.org	
GRANT PURPOSE: Montclair Golden Express: Providing Access to Care for the Most Vulnerable	
GRANT OBJECTIVES: To provide additional 150 seniors monthly with transportation (total 2,600 one way trips) to obtain basic needs (medical appointments, senior nutrition meals, social service appointments, educational programs, daily errands for groceries).	
GRANT REMINDERS: Track number seniors served, One Way Trips, also report on outcomes/impact resulting from "transportation " services and related to health and access. Transportation grant not for "daily errands" all else approved. Include direct and indirect reach. Include direct and indirect reach. Grant period: July 1-June 30, encouraged to begin planning/implementation of program/services (do not wait for grant check). For revisions and to request templates related to changes in expected number to serve, objectives, budget, narrative, please email SCAL.MC.Grants@kp.org (must include organization name and grant ID in all communications).	
GRANT PERIOD:	
Start date: 7/1/2015	End Date: 7/1/2016

NARRATIVE AND FINANCIAL REPORTS DUE:

Requirement	Due Date
Final Report	August 1, 2016

AGENDA REPORT

SUBJECT: CONSIDER MONTCLAIR COMMUNITY FOUNDATION BOARD OF DIRECTORS' APPROVAL OF AGREEMENT NO. 15-71 WITH KAISER FOUNDATION HOSPITALS, ONTARIO, TO SUPPORT THE MONTCLAIR ONLINE TO COLLEGE PROGRAM

DATE: August 17, 2015
SECTION: AGREEMENTS
ITEM NO.: 3
FILE I.D.: HSV044
DEPT.: MCF

REASON FOR CONSIDERATION: The City Council serves as the Board of Directors for the Montclair Community Foundation, Inc., and as such is requested to consider approval of Agreement No. 15-71 accepting a grant from the Kaiser Foundation Hospitals, Ontario, to provide funding for the Montclair Online to College (OTC) Program.

A copy of proposed Agreement No. 15-71 is attached for the City Council's review and consideration.

BACKGROUND: The Montclair Community Foundation, Inc. (MCF) is receiving funding from Kaiser Foundation Hospitals to assist in supporting the Montclair OTC Program.

The vision of MCF is to work collectively and collaboratively to strengthen services and enhance the quality of life for residents by promoting health, wellness, and economic stability for all including the most vulnerable in our community. The mission of MCF is to guarantee a quality community for all, by working together as diverse, committed individuals and organizations to make an impact that improves the overall well-being of the community. MCF strives to ensure that children, families and individuals of Montclair have an improved quality of life and know how to access needed services. One of the annual goals for 2015 is to support the highly successful Online to College Program which will provide qualifying Montclair High School students a two year scholarship to attend Chaffey College.

The term of proposed Agreement No. 15-71 is July 1, 2015 through June 30, 2016.

FISCAL IMPACT: Kaiser Foundation Hospitals has offered the Montclair Community Foundation, Inc., a grant of \$10,000 for the Montclair Online to College Program. There will be no direct fiscal impact on the City's General Fund associated with the approval of Agreement No. 15-71.

RECOMMENDATION: Staff recommends the City Council, serving as the Board of Directors for the Montclair Community Foundation, Inc., approve Agreement No. 15-71 with Kaiser Foundation Hospitals, Ontario, to support the Montclair OTC Program.

Prepared by: *M. Richter*
Proofed by: *Vanessa Tom*

Fiscal Impact
Finance Review: *Donald L. Parker*
Reviewed and
Approved By: *M. Richter*

LETTER OF AGREEMENT
KAISER FOUNDATION HOSPITALS, ONTARIO
COMMUNITY BENEFIT CHARITABLE CONTRIBUTIONS PROGRAM

This Letter of Agreement (hereinafter "Agreement") is entered into by and between **Kaiser Foundation Hospitals**, a California nonprofit, public benefit corporation (hereinafter "KFH") and **Montclair Community Foundation**, a California nonprofit, public benefit corporation, that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code.

This Agreement sets forth the understanding of the parties hereto as to the terms and conditions under which KFH shall donate funds in the amount of **\$10,000.00 for a one year funding period beginning July 1, 2015 through July 1, 2016 for Online to College: Increasing College Success and Parent Engagement**. Such terms and conditions are as follows:

1. Tax Exemption Status: Grantee represents that at all times relevant herein, it is a California nonprofit, public benefit corporation, that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code.
2. Purpose of Grant. Grantee shall use entire Grant to support the specific goals, objectives, activities, and outcomes as stated in the Grant Summary.
3. Expenditure of Funds. This Grant (together with any income earned upon investment of grant funds) is made for the purpose outlined in the Grantee's Work Plan and may not be expended for any other purpose without KFH's prior written approval.
4. Prohibited Uses. In no event shall Grantee use any of the funds from this Grant to (a) support a political campaign, (b) support or attempt to influence any government legislation, except making available the results of non-partisan analysis, study or research, or (c) grant an award to another party or for any purpose other than one specified in Section 170(c)(2)(b) of the Internal Revenue Code of 1986 as amended.
5. Return of Funds. KFH reserves the right to discontinue, modify or withhold payments to be made under this Agreement or to require a total or partial return of any funds, including any unexpended funds under the following conditions:
 - (a) If KFH, in its sole discretion, determines that the Grantee has not performed in accordance with this Agreement or has failed to comply with any term or condition of this Agreement.
 - (b) If Grantee loses its status as an eligible Grantee under Paragraph 1 above.
 - (c) Any portion of the funds is not used for the approved purpose
 - (d) Such action is necessary to comply with the requirements of any law or regulation applicable to Grantee or to KFH or to this Grant.
6. Records, Audits and Site Visits. KFH is authorized to conduct audits, including on-site audits, at any time during the term of this Grant and within four years after completion of the Grant. Grantee shall allow KFH and its representatives, at its request, to have reasonable access during regular business hours to Grantee's files, records, accounts, personnel and client or other beneficiaries for the purpose of making such

audits, verifications or program evaluations as KFH deems necessary or appropriate concerning this Grant. Grantee shall maintain accounting records sufficient to identify the Grant and to whom and for what purpose such funds are expended for at least four (4) years after the Grant has been expended.

7. No Assignment or Delegation. Grantee may not assign, or otherwise transfer, any rights or delegates any of Grantee's obligations under this Agreement without prior written approval from KFH.

8. Records and Reports. Grantee shall submit written progress report(s) to KFH in accordance with the due dates stated on the Grant Summary (Attachment).

Grantee shall be primarily responsible for the content of the evaluation report. If KFH determines IRB approval is necessary, as part of the evaluation process, Grantee shall follow KFH IRB approval processes and procedures.

9. Required Notification. Grantee is required to provide KFH with immediate written notification of any change in Grantee's tax exempt status or when Grantee is unable to expend the grant funds for the approved purposes described in the Work Plan.

10. Identification of KFH. Grantee shall identify KFH as a supporting organization in all published material relating to the subject matter of this Grant. Whenever possible and appropriate, Grantee shall publicly acknowledge KFH for this Grant.

11. Equal Employment Opportunity. Grantee agrees to comply with and be bound by the nondiscrimination and affirmative action clauses contained in: Executive Order 11246, as amended, relative to equal opportunity for all persons without regard to race, color, religion, sex or national origin; the Vocational Rehabilitation Act of 1973, as amended, relative to the employment of qualified handicapped individuals without discrimination based upon their physical or mental handicaps; the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, relative to the employment of disabled veterans and veterans of the Vietnam Era, and the implementing rules and regulations prescribed by the Secretary of Labor in Title 41, Part 60 of the Code of Federal Regulations (CFR).

12. Immigration Act Requirements. Grantee shall comply during the term of this Agreement with the provisions of the Immigration Reform and Control Act of 1986 and any regulations promulgated thereunder. Grantee hereby certifies that it has obtained a properly completed Employment Eligibility Certificate (INS Form I-9) for each worker performing services related to the program described in the Work Plan.

13. Licensing and Credentials. Grantee agrees to maintain, in full force and effect, all required governmental or professional licenses and credentials for itself, its facilities and for its employees and all other persons engaged in work in conjunction with this Grant.

14. Payment of Grant. First payment by KFH will be contingent upon a signed Agreement between KFH and Grantee. Subsequent payments (if any) are contingent upon compliance with this Agreement, including timely receipt of reports as outlined in Paragraph 8 above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Kaiser Foundation Hospitals

By: Jennifer Resch-Silvestri
Jennifer Resch-Silvestri
Senior Director of Public Affairs and Brand Communications

July 8, 2015
Date

Grantee

By: _____
Edward Starr
City Manager
Montclair Community Foundation

Date

By: _____
Paul Eaton
Mayor
City of Montclair

Date

ATTEST:

By: _____
Andrea M. Phillips
Deputy City Clerk

Date

LETTER OF AGREEMENT
Attachment

GRANT SUMMARY

GRANT NUMBER: 20643794	DATE AUTHORIZED: May 1, 2015
GRANTEE NAME: Montclair Community Foundation	AMOUNT: \$10,000.00 over 12 months
CONTACT, TITLE: Mrs. Marcia Richter, Director of Human Services	
TELEPHONE: (909) 625-9453	FAX: (909) 399-9751
CB PROJECT MANAGER: Martha Valencia, Community Benefit Health Manager Phone: Email: martha.r.valencia@kp.org	
GRANT PURPOSE: Online to College: Increasing College Success and Parent Engagement	
GRANT OBJECTIVES: To increase the college going rates and parent involvement among low income students from Montclair High School by enrolling 800 (9th-12th graders in the Montclair Online to College Program and provide student/parent workshops at all grade levels (College preparation, Future planning, Senior early assessment, Montclair Online to College Graduation, Scholarship review, Registration assistance, Support services, Chaffey College matriculation). Partners (Chaffey College, City of Montclair, Chaffey Joint Union School District).	
GRANT REMINDER/INFORMATION: Track program enrollment students in each grade, parent participation in each workshop (aggregate), include educational and parent outcomes/impact (pursuit higher education). Include direct and indirect reach. Grant period: July 1-June 30, encouraged to begin planning/ implementation of program/services (do not wait for grant check). For revisions and to request templates related to changes in expected number to serve, objectives, budget, narrative, please email SCAL.MC.Grants@kp.org (must include organization name and grant ID in all communications).	
GRANT PERIOD:	
Start date: 7/1/2015	End Date: 7/1/2016

NARRATIVE AND FINANCIAL REPORTS DUE:

Requirement	Due Date
Final Report	August 1, 2016

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 15-73 WITH THE ASSISTANCE LEAGUE OF THE FOOTHILL COMMUNITIES TO RECEIVE TEDDY BEARS FOR THE FIRE DEPARTMENT TO DISTRIBUTE TO CHILDREN IN NEED OF COMFORT DURING STRESSFUL SITUATIONS	DATE: August 17, 2015 SECTION: AGREEMENTS ITEM NO.: 4 FILE I.D.: ADM600 DEPT.: FIRE
---	--

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 15-73 with the Assistance League of the Foothill Communities (Assistance League) to receive teddy bears for the Fire Department to distribute to children in need of comfort during stressful situations.

A copy of proposed Agreement No. 15-73 is attached for the City Council's review and consideration.

BACKGROUND: The Assistance League has generously offered to donate teddy bears to the Fire Department to distribute to children in need of comfort during stressful situations.

The City Attorney has reviewed the proposed Agreement, and provided a few minor revisions. The Assistance League agreed to the proposed changes and has made the requested modifications.

FISCAL IMPACT: Should the City Council approve proposed Agreement No. 15-73 with the Assistance League, there would be no cost associated with this donation. The Assistance League shall assume all financial obligations relative to the provision or purchase of the teddy bears.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 15-73 with the Assistance League of the Foothill Communities to receive teddy bears for the Fire Department to distribute to children in need of comfort during stressful situations.

Prepared by: <u> <i>Angelic Bird</i> </u>	Fiscal Impact Finance Review: <u> <i>Donald L. Parker</i> </u>
Proofed by: <u> <i>Scott A. Sherwood</i> </u>	Reviewed and Approved By: <u> <i>Steve Jackson</i> </u>



**AGREEMENT BETWEEN
ASSISTANCE LEAGUE® OF THE FOOTHILL COMMUNITIES
AND
MONTCLAIR FIRE DEPARTMENT**

1. This agreement is entered into by Assistance League® of the Foothill Communities, hereinafter referred to as Assistance League, located at 8555/8593 Archibald Avenue, Rancho Cucamonga, CA 91730, and Montclair Fire Department located at 8901 Monte Vista Avenue, Montclair, CA 91763.

2. AL Bears is a philanthropic program, designed by Assistance League to provide comfort to those in need.

3. Obligations of Assistance League

A. Assistance League shall furnish teddy bears. Service will be provided to clients as needed until designated program funds are exhausted.

B. Assistance League shall assume all financial obligations relative to the provision or purchase of the items described in 3A. No funds shall be provided to Montclair Fire Department.

C. Financial contributions to the program by Assistance League shall be made only as stipulated in the terms of this agreement.

D. Assistance League shall maintain liability insurance coverage for this program. Assistance League shall defend, indemnify and hold Montclair Fire Department harmless against all claims and damages that arise out of the acts or omissions of Assistance League in the performance of this Agreement.

E. Assistance League shall evaluate the program every three years and ask for input from Montclair Fire Department.

4. Obligations of Montclair Fire Department

A. Maintain liability insurance coverage for this program. Montclair Fire Department shall defend, indemnify and hold Assistance League harmless against all claims and damages that arise out of the acts or omissions of Montclair Fire Department in the performance of this Agreement.

B. Montclair Fire Department shall appoint a contact person to interface with Assistance League.

C. Authorized Montclair Fire Department personnel shall screen prospective recipients and shall distribute bears to those recipients.

5. Public Relations

A. Assistance League and Montclair Fire Department shall have prominent identification with the program.

B. Assistance League and Montclair Fire Department shall each reserve the right to review and approve all publicity releases, brochures and other written material relative to the program, all of which shall mention Assistance League and Montclair Fire Department.

C. Photos and names of recipients shall not be used without written permission of those directly involved.
(Refer to **Consent Regarding Photographs**)

6. Renewal and Termination

This Agreement shall renew every three years unless terminated as provided below.

It is the intention of Assistance League to continue this program for an indefinite period of time. However, when either party determines it can no longer abide by the terms of the agreement, it may terminate this agreement by giving sixty (60) days written notice to the other party. In the case of termination, all assets shall return to the rightful owners as set forth in this agreement and neither party shall have any obligation to the other party thereafter.

7. Signatures and Dates

Assistance League of the Foothill Communities

CAROL Gedeon
President

Date: 8/3/2015

CAROL GEDEON
Printed Name

Karolyn Bragg
Secretary

Date: Aug 3, 2015

Karolyn Bragg
Printed Name

Leigh Ann VanDenBerg
Vice President Philanthropic Programs

Date: Aug 3, 2015

LEIGH ANN VANDENBERG
Printed Name

Montclair Fire Department

Signature

Title

Printed Name

Date: _____

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 15-74 WITH BILINGUAL FAMILY COUNSELING SERVICES TO PROVIDE CASE MANAGEMENT SERVICES	DATE: August 17, 2015
	SECTION: AGREEMENTS
	ITEM NO.: 5
	FILE I.D.: HSV044
	DEPT.: HUMAN SVCS.

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 15-74 with Bilingual Family Counseling Services (BFCS) to provide case management services.

A copy of proposed Agreement No. 15-74 is attached for the City Council's review and consideration.

BACKGROUND: The Montclair Community Collaborative (MCC) was organized in 1996 as a partnership of the City of Montclair, OMSD, nonprofit agencies, colleges, businesses, and residents to strengthen the community. The Collaborative works to provide "a quality community for all, by working together as diverse, committed individuals and organizations." It engages in ongoing strategic planning in order to identify resources and develop services for children, youth, and adults in the community.

The Montclair Community Collaborative's efforts resulted in the City of Montclair successfully obtaining a one-year competitive grant from the Inland Empire United Way (IEUW) to fund case management services for the community. Agreement No. 15-53 requires the delivery of services through subcontracts to partner agencies.

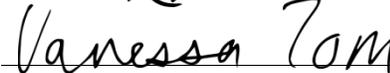
Agreement No. 15-74 would provide funding to BFCS a partner agency, for the following case management services in the Montclair community:

- Provide one case manager stationed at the City of Montclair to assist families attain financial stability, including basic needs, sustaining safe housing, and moving toward more self-sufficient circumstances
- Ongoing supervision, training support, and evaluation of the assigned case manager

The term of Agreement number 15-74 is September 1, 2015, through June 30, 2016.

FISCAL IMPACT: BFCS would be awarded \$7,000 from the \$7,500 IEUW grant. There will be no direct fiscal impact on the City's General Fund associated with the Council's approval of Agreement No. 15-74.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 15-74 with Bilingual Family Counseling Services to provide case management services.

Prepared by:		Fiscal Impact Finance Review:	
Proofed by:		Reviewed and Approved By:	

**CITY OF MONTCLAIR
5111 BENITO STREET
MONTCLAIR, CALIFORNIA 91763
(909) 626-8571**

AGREEMENT FOR CONTRACTED SERVICES

THIS AGREEMENT is made and entered into this 1st day of September 2015, by and between the City of Montclair, hereinafter referred to as the "**CITY**," and Bilingual Family Counseling Services, hereinafter referred to as the "**BFCS**."

1. Services To Be Performed by BFCS.

(a) **BFCS** agrees to perform the following services on the dates and times herein stated in accordance with directions stipulated by the **CITY**.

(b) **BFCS** may, at **BFCS's** own expense, employ such assistants as **BFCS** deems necessary to perform the services required of **BFCS** by this Agreement.

(c) **BFCS** is, and shall at all times be deemed to be an independent contractor, and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between **CITY** and **BFCS** or any of **BFCS's** agents or employees. **BFCS** assumes exclusively the responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. **BFCS**, its agents and employees, shall not be entitled to any rights and/or privileges of **CITY's** employees and shall not be considered in any manner to be **CITY's** employees.

2. Compensation.

(a) Except as otherwise provided in this Agreement, **CITY** agrees to compensate **BFCS** for services rendered under this Agreement for a maximum of \$7,000 based on the Scope of Work, Attachment A.

(b) **CITY** will pay no additional amount for travel or other expenses of **BFCS** under this Agreement.

(c) **CITY** will provide **BFCS** with forms, which **BFCS** will use to request payment under this Agreement unless **BFCS** can provide such forms. For each one-month period of service, a "Request for Payment" form must be returned to **CITY** in triplicate.

(d) **CITY** will not withhold any federal or state income tax for payment made pursuant to this Agreement. **BFCS** is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.

3. Term of Agreement.

The term of this Agreement is July 1, 2015, through June 30, 2016. Termination is pursuant to the provisions of Section 6 of this Agreement. CITY shall not be obligated to pay BFCS any additional consideration unless BFCS undertakes additional services, in which instance the consideration shall be increased as CITY and BFCS shall agree in writing.

4. Obligations of BFCS.

(a) During the term of this Agreement, BFCS agrees to diligently prosecute the work specified in the attached "Description of Services" to completion.

(b) At all times during the term of this Agreement, BFCS agrees to provide workers' compensation insurance for BFCS's employees and agents as required by law. BFCS shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.

(c) BFCS shall indemnify, pay for the defense of, and hold harmless CITY and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of BFCS's negligent or willful acts and/or omissions in rendering any services hereunder. BFCS shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning BFCS or any employee and shall further indemnify, pay for the defense of, and hold harmless CITY of and from any such payment or liability arising out of or in any manner connected with BFCS 's performance under this Agreement.

5. Obligations of City.

(a) CITY agrees to comply with all reasonable requests by BFCS and to provide access to all documents reasonably necessary for the performance of BFCS's duties under this Agreement.

(b) CITY shall indemnify, pay for the defense of, and hold harmless BFCS and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of CITY's negligent or willful acts and/or omissions in rendering any services hereunder.

6. Termination of Agreement.

(a) Unless otherwise terminated as provided below, this Agreement shall continue to be ongoing, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.

(b) Should **BFCS** default in the performance of this Agreement or breach any of its provisions, **CITY** may terminate this Agreement by giving written 30-day notification to **BFCS**.

(c) If at any time during the performance of this Agreement **CITY** determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, **CITY** shall have the right to terminate the performance of **BFCS's** services hereunder by giving written notification to **BFCS** of its intention to terminate. At any time during the performance of this Agreement the **BFCS** may terminate this Agreement by giving written 30-day notification to **CITY**.

(d) In the event that **CITY** terminates this Agreement under paragraph (b) or (c) of this Section, **BFCS** shall only be paid for those services rendered to the date of termination. All cash deposits made by **CITY** to **BFCS**, if any, shall be refundable to **CITY** in full upon termination of this Agreement unless specified to the contrary below.

7. General Provisions.

(a) Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be deemed given and served upon delivery personally, or three (3) days after depositing in the United States Mail. Mailed notices shall be addressed to the parties at the addresses set forth in this Agreement for **CITY** and **BFCS**. The foregoing addresses may be changed by written notice to the other party as provided herein.

(b) This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by **BFCS** and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, signed by both parties, except **CITY** may unilaterally amend the Agreement to accomplish the changes listed below:

- (1) Increase dollar amount
- (2) Administrative changes
- (3) Suspend funding in whole or in part if there is a reduction in availability of funds from the Inland Empire United Way
- (4) Changes as required by law or the Inland Empire United Way

(c) If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) Pursuant to and in accordance with the provisions of Government Code Section 8546.7, or any amendments thereto, all books, records and files of **CITY**, **BFCS**, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor or the State of California, at the request of **CITY** or as part of any audit of **CITY**, for a period of three (3) years after final payment is made under this Agreement. **BFCS** shall preserve and cause to be preserved such books, records and files for the audit period.

(f) Each person executing this Agreement warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind the parties hereto.

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

"CITY"
5111 Benito Street
Montclair, CA 91763
(909) 626-8571

"BFCS"
317 F Street
Ontario, CA 91762
(909) 986-7111

By: _____
Paul M. Eaton
Mayor

By: _____
Olivia Sevilla
Executive Director

Date: _____

Date: _____

ATTEST:

Andrea M. Phillips
Deputy City Clerk

Date: _____

ATTACHMENT A

Scope of Work

Services to be provided:

- One case manager stationed at the City of Montclair to assist families attain financial stability including basic needs, sustaining safe housing, and moving toward more self-sufficient circumstances.
- Ongoing supervision, training support, and evaluation of the assigned case manager.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AMENDMENT NO. 1 TO AGREEMENT NO. 15-39 WITH NCM ENGINEERING CORPORATION FOR THE PREPARATION OF DESIGN AND CONSTRUCTION DRAWINGS FOR THE MONTE VISTA AVENUE/UNION PACIFIC RAILROAD GRADE SEPARATION PROJECT

DATE: August 17, 2015

SECTION: AGREEMENTS

ITEM NO.: 6

FILE I.D.: STA110

DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: In order to comply with certain Caltrans requirements, a change is necessary to Agreement No. 15-39 with NCM Engineering Corporation. Amendments to agreements require City Council approval.

A copy of proposed Amendment No. 1 to Agreement No. 15-39 is attached for the City Council's review and consideration.

BACKGROUND: On June 1, 2015, the City Council approved Agreement No. 15-39 with NCM Engineering Corporation to develop plans and specifications for the construction of a grade separation project between Monte Vista Avenue and the Union Pacific railroad tracks. The agreement format varied from the City's standard professional services agreement in order to address issues raised during a preaward audit conducted by Caltrans. The revised format was approved by the City Attorney.

Subsequent to the Council action on June 1, it was brought to the City's attention by a consultant the City uses to assure compliance with state and federal requirements that, despite Caltrans' prior approval as to format, there were items missing from the approved agreement. On the consultant's recommendation, the original agreement should be modified. The modifications include adding page numbers to the agreement and adding Sections 38-A through 38-H following Section 38. The revised agreement is attached without the exhibits. No changes were made to the exhibits.

If the City Council concurs with the proposed changes, staff proposes substituting the revised pages with page numbers and Sections 38-A through 38-H added to the original agreement, keeping the original date of the agreement, signature page, and exhibits.

FISCAL IMPACT: There is no fiscal impact to the City for the recommended action. No changes in compensation or scope of services are required by Amendment No. 1 to Agreement No. 15-39.

RECOMMENDATION: Staff recommends the City Council approve Amendment No. 1 to Agreement No. 15-39 with NCM Engineering Corporation for the preparation of design and construction drawings for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project.

Prepared by:  Fiscal Impact Finance Review: 

Proofed by:  Reviewed and Approved By: 

CITY OF MONTCLAIR
AGREEMENT FOR CONSULTANT SERVICES
MONTE VISTA AVENUE GRADE SEPARATION AT
UNION PACIFIC RAILROAD CROSSING

1. INTRODUCTION

A. THIS AGREEMENT is made and effective as of *JUNE 2, 2015*, between the **CITY OF MONTCLAIR**, a municipal corporation ("CITY") and **NCM ENGINEERING CORPORATION**, a California corporation ("CONSULTANT") located at *4740 GREEN RIVER ROAD, SUITE 218 CORONA, CA 92880*. The Project Manager for Consultant will be **MOHAN CHAR**. The Contract Administrator for the CITY will be **MICHAEL HUDSON**.

B. The work to be performed under this contract is described in *EXHIBIT A - SCOPE OF WORK* and the approved CONSULTANT's Cost Proposal dated *MAY 19, 2015*. The approved CONSULTANT's Cost Proposal is attached hereto (*EXHIBIT B - FEE PROPOSAL AND RATE SCHEDULE*) and incorporated herein by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.

C. CONSULTANT agrees to indemnify and hold harmless CITY, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of CONSULTANT. CONSULTANT will reimburse CITY for any expenditure, including reasonable attorney fees, incurred by CITY in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of CONSULTANT.

D. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of CITY.

E. Without the written consent of CITY, this contract is not assignable by CONSULTANT either in whole or in part.

F. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

G. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

2. PERFORMANCE PERIOD

A. This contract shall go into effect on *JUNE 2, 2015*, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY'S Contract Administrator. The contract shall end on *DECEMBER 30, 2017*, unless extended by contract amendment or sooner terminated pursuant to the provisions of this Agreement. The date of completion of various phases of the Project is set forth in *EXHIBIT C - PROJECT SCHEDULE* attached hereto.

B. CONSULTANT is advised that any recommendation for contract award is not binding on CITY until the contract is fully executed and approved by the CITY.

3. LOCATION AND DESCRIPTION OF THE PROJECT

This project is located on Monte Vista Avenue at its crossing with the Union Pacific railroad tracks in the CITY of Montclair. Project limits extend generally north-south along Monte Vista Avenue from Mission Boulevard to Holt Boulevard, and east-west along State Street/Union Pacific railroad tracks and Brooks Street. The purpose of the project is to construct a grade separation between Monte Vista Avenue and the Union Pacific railroad tracks.

4. DESCRIPTION OF WORK TO BE DONE

A. Detailed Scope of Work:

This project will require preliminary design, final design, and bidding/construction support. The following are general description of scope of services required.

PHASE I - The CONSULTANT shall review all previous work done for this project, and shall provide professional and technical engineering services necessary to investigate bridge type alternatives and prepare a Bridge Study Report recommending a design alternative. Work will include, but not necessarily be limited to, preliminary engineering, field surveys, geotechnical studies, obtaining Union Pacific Railroad design requirements, geometric layouts, and order of magnitude cost estimates.

PHASE II (to be performed with explicit written authorization from the CITY) - Previous environmental work performed for this project determined the project to be Categorically Exempt under CEQA and a Categorical Exclusion under NEPA. Depending on the results of PHASE I work, additional environmental work and right-of-way acquisition may be required. The CITY shall have the option to authorize the CONSULTANT to proceed with PHASE II work.

PHASE III - The CONSULTANT shall complete the design and prepare Plans, Specifications, and Cost Estimates for the Monte Vista Avenue Grade Separation at the Union Pacific Railroad Crossing. PHASE III work is more fully described in *EXHIBIT A - SCOPE OF WORK*.

PHASE IV - The CONSULTANT shall perform assistance with bidding, construction, and other services, the scope and fee of which shall be negotiated at a later time.

B. Consultant Services-Scope of Services:

Refer to *EXHIBIT A - SCOPE OF WORK* of this Agreement for detailed CONSULTANT scope of services.

C. Subsurface Investigations:

Refer to *EXHIBIT A - SCOPE OF WORK* of this Agreement. Subsurface investigations will be required as part of this contract.

D. Surveys:

Refer to *EXHIBIT A - SCOPE OF WORK* of this Agreement. Surveys will be required as part of this contract.

E. CITY Obligations to CONSULTANT:

All data applicable to the project and in possession of CITY will be made available to CONSULTANT are referred to in the contract. The following list includes, but not limited to, the data to be furnished to the CONSULTANT.

- 1) Existing Plans and associated electronic CADD files
- 2) Existing Survey Data
- 3) Existing Technical Reports
- 4) Existing Right-of-Way Data
- 5) Existing Utilities Data
- 6) Existing Environmental Documents
- 7) Existing coordination and communication documents with Utilities, UPRR, and other stakeholders
- 8) Existing meeting minutes, teleconference notes, presentation documents, decision logs etc.

F. Conferences, Visits to Site, Inspection of Work:

The contract provides for conferences as needed, visits to the site, and inspection of the work by representatives of the state, or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

G. Consultant Services during Construction

The extent, if any, of CONSULTANT's services required during the course of construction, such as material testing, construction surveys, inspections, etc., will be determined after design functions in accordance with this contract have been completed.

H. Deliverables & Number of Copies:

The deliverables are identified in *EXHIBIT A – SCOPE OF WORK*. The number of copies of papers or documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way plots is assumed to be a maximum of 5 copies per deliverable unless noted otherwise elsewhere.

I. Milestones and Description of Work for Each:

Refer to *EXHIBIT A - SCOPE OF WORK*.

J. CONSULTANT's Endorsement on PS&E/Other Data:

The CONSULTANT shall sign all plans, specifications, estimates (PS&E), and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

5. **DISADVANTAGED BUSINESS ENTERPRISE CONSIDERATIONS:**

A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. The goal for DBE participation for this contract is 9%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Contract DBE Information (*EXHIBIT 10-O2 CONSULTANT CONTRACT DBE INFORMATION*) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis

of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as CITY deems appropriate.

D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.

E. A DBE firm may be terminated only with prior written approval from CITY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting CITY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

I. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the

LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

K. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to CITY's Contract Administrator within 30 days.

6. 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.

7. ALLOWABLE COSTS AND PAYMENTS

A. The method of payment for this contract will be based on actual cost plus a fixed fee. CITY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds CITY's approved overhead rate set forth in the Cost Proposal. In the event, that CITY determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time or actual costs reimbursable by CITY shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by contract amendment.

B. In addition to the allowable incurred costs, CITY will pay CONSULTANT a fixed fee of \$1,699,596. The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.

C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

D. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, CITY shall have the right to delay payment or terminate this Contract in accordance with the provisions of *Section 11 SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT A CAUSE*.

F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.

G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by CITY's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due CITY including any equipment purchased under the provisions of *Section 33 EQUIPMENT PURCHASE* of this contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to CITY's Contract Administrator at the following address:

Michael C. Hudson
City of Montclair
5111 Benito Street
Montclair, CA 91763

H. The total amount payable by CITY including the fixed fee shall not exceed \$1,699,596.

I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by CITY's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

J. All subcontracts in excess of \$25,000 shall contain the above provisions.

K. CITY Contract in accordance with the provisions of *Section 11 SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT A CAUSE*.

8. CITY MANAGEMENT

A. CITY ENGINEER 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 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 7 ALLOWABLE COSTS AND PAYMENTS*.

9. RECORD OF RETENTION/AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and CITY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, CITY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

10. AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by CITY'S Chief Financial Officer.

B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by CITY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by CITY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.

D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is

CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by CITY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by CITY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

The provisional ICR will apply to this contract and all other contracts executed between CITY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

11. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

A. CITY reserves the right to terminate this contract upon thirty (30) calendar days' written notice to CONSULTANT with the reasons for termination stated in the notice.

B. CITY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, CITY may proceed with the work in any manner deemed proper by CITY. If CITY terminates this contract with CONSULTANT, CITY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to CITY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

C. The maximum amount for which the Government shall be liable if this contract is terminated is unpaid CONSULTANT costs incurred from the last payment date to the termination date.

12. 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.

13. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to CITY.

D. All subcontracts in excess of \$25,000 shall contain the above provisions.

14. 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.

15. INDEMNIFICATION

A. Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

B. Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless CITY, and any and all of its employees, officials, and agents ("Indemnified Parties") from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses 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), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant. Said indemnification shall include any claim that Consultant, or Consultant's employees or agents, are considered to be 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.

C. General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant or other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of CITY to monitor compliance with these requirements imposes no additional obligations on CITY and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend CITY as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

D. Covenant against Contingent Fees. The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this contract; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent

upon or resulting from the award, or formation of this contract. For breach or violation of this warranty, the CITY shall have the right to annul this contract without liability, or at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

16. INSURANCE

A. Consultant shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall Consultant allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. Consultant shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-:

Commercial general liability at least as broad as ISO CG 0001:	
(Per Occurrence)	\$1,000,000
(General Aggregate)	\$2,000,000
Commercial auto liability at least as broad as ISO CA 0001	
(Per Accident)	\$1,000,000
Professional Liability (Per Claim and Aggregate)	\$1,000,000
Worker's compensation	Statutory

B. All insurance required by this section shall apply on a primary basis. Consultant agrees that it will not cancel or reduce said insurance coverage. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect 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.

C. At all times during the term of this Agreement, Consultant shall maintain on file with CITY a certificate of insurance, in a form acceptable to CITY showing that the aforesaid policies are in effect in the required amounts. The general liability and automobile policies shall contain or be endorsed to contain a provision including the Indemnified Parties as additional insureds. Consultant shall promptly file with CITY such certificate or certificates and endorsements if applicable. Coverage for the additional insureds shall apply to the fullest extent permitted by law. Additional Insured Endorsements shall not:

- (1) Exclude "Contractual Liability"
- (2) Restrict coverage to the "Sole" liability of Consultant
- (3) Exclude "Third-Party-Over Actions"
- (4) Contain any other exclusion contrary to the Contract

D. No policy required by this section shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the Indemnified Parties.

E. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

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

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

G. General Insurance Requirements: All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured and all subcontractors waive the right of subrogation against CITY and CITY's elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to CITY by certified mail. Consultant shall furnish CITY with copies of all such policies. Consultant may effect for its own account insurance not required under this Agreement.

17. INDEPENDENT CONTRACTOR

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

B. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement CITY shall not pay salaries, wages, or other compensation 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.

18. 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.

19. 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.

20. 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.

21. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

B. Consultant shall promptly notify CITY should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the CITY. CITY retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or

similar proceeding. Consultant agrees to cooperate fully with CITY and to provide the opportunity to review any response to discovery requests provided by Consultant. However, CITY's right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

C. Consultant covenants that neither he/she nor any office or principals 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.

22. 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:

CITY Contract Administrator:	Michael C. Hudson Public Works Director/City Engineer City of Montclair 5111 Benito Montclair, CA 91763 909-625-9441 mhudson@cityofmontclair.org
------------------------------	---

Consultant Project Manager:	Mohan Char NCM Engineering Corporation 22362 Gilberto, Suite 125 Rancho Santa Margarita, CA 92688 949-294-7358 mohan.char@ncmcivil.com
-----------------------------	--

23. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the CITY. Because of the personal nature of the services to be rendered pursuant to this Agreement, only Mohan Char shall direct the services described in this Agreement.

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

24. 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.

25. 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.

26. 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.

27. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

Consultant is bound by the contents of CITY's Request for Proposal, *EXHIBIT D - REQUEST FOR PROPOSAL (RFP)* hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Consultant, *EXHIBIT E CONSULTANT'S PROPOSAL* 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.

28. 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.

29. 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.

30. STATEMENT OF COMPLIANCE

A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

B. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under

any program or activity by the recipients of federal assistance or their assignees and successors in interest.

D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

31. SUBCONTRACTING

A. Nothing contained in this contract or otherwise, shall create any contractual relation between CITY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to CITY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from CITY'S obligation to make payments to the CONSULTANT.

B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by CITY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by CITY.

D. Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

E. Any substitution of subconsultant(s) must be approved in writing by CITY's Contract Administrator prior to the start of work by the subconsultant(s).

32. STATE PREVAILING WAGE RATES

A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

B. Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

33. RETENTION OF FUNDS

A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.

B. No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

34. EQUIPMENT PURCHASE

A. Prior authorization in writing by CITY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by CITY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased as a result of this contract is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, CITY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit CITY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established CITY procedures; and credit CITY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by CITY and CONSULTANT, if it is determined to sell the equipment, the terms and

conditions of such sale must be approved in advance by CITY." 49 CFR, Part 18, requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

D. All subcontracts in excess \$25,000 shall contain the above provisions.

35. CONFLICT OF INTEREST

A. CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this contract, or any ensuing CITY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing CITY construction project, which will follow.

B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Section.

D. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

E. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

36. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any CITY employee. For breach or violation of this warranty, CITY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

37. PROHIBITION OF EXPENDING CITY, STATE OR FEDERAL FUNDS FOR LOBBYING

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal or CITY appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

38. 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.

38-A DEBARMENT AND SUSPENSION CERTIFICATION

A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT

has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to City.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

38-B FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

B. This contract is valid and enforceable only, if sufficient funds are made available to CITY for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or CITY governing board that may affect the provisions, terms, or funding of this contract in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

D. CITY has the option to void the contract under the 30-day termination clause pursuant to *Section 11 SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE*, or by mutual agreement to amend the contract to reflect any reduction of funds.

38-C CHANGE IN TERMS

A. This contract may be amended or modified only by mutual written agreement of the parties.

B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by CITY's Contract Administrator.

C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract without prior written approval by CITY's Contract Administrator.

38-D SAFETY

A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by CITY Safety Officer and other CITY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Section 591 of the Vehicle Code, CITY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

38-E CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR

A. If claims are filed by CITY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with CITY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. CONSULTANT's personnel that CITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from CITY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this contract.

C. Services of CONSULTANT's personnel in connection with CITY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

D. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Section.

38-F NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

38-G EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by CITY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

38-H DISPUTES

A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of CITY's Contract Administrator and a person appointed by City Manager, who may consider written or verbal information submitted by CONSULTANT.

B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

39. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Paul M. Eaton
Mayor

By: _____
Mohan Char, Ph.D., PE
CEO/Principal

Attest:

By: _____
Andrea M. Phillips
Deputy City Clerk

Approved as to Form:

By: _____
Diane E. Robbins
City Attorney

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION
NO. 15-3092 OPPOSING REDEVELOPMENT
BUDGET TRAILER BILL AB 113, LOCAL
GOVERNMENT

DATE: August 17, 2015
SECTION: RESOLUTIONS
ITEM NO.: 1
FILE I.D.: STG200
DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: ABX1 26 was signed by Governor Brown on June 28, 2011 and upheld as constitutional by the California Supreme Court. On June 27, 2012, the Governor signed AB 1484. ABX1 26 and AB 1484 (together called the Dissolution Acts) eliminated California redevelopment agencies statewide, established successor agencies to pay, perform, and effectuate the enforceable obligations of the former redevelopment agencies, and to wind down the affairs of the former redevelopment agencies. AB 113, a redevelopment budget trailer bill introduced on June 18, 2015, proposes to reverse and revises key provisions of the Dissolution Acts and recent court rulings regarding redevelopment dissolution law.

A copy of proposed Resolution No. 15-3092 opposing AB 113 is attached for the City Council's review and consideration.

BACKGROUND: AB 113 contains several provisions that would tip the balance on matters of interpretation of redevelopment dissolution law in the favor of the Department of Finance (DOF) and would impose further restrictions on redevelopment successor agencies.

AB 113 would provide that any action by DOF, that occurred on or after June 28, 2011, in carrying out the department's obligations would constitute a department action for the preparation, development, or administration of the state budget and would be exempt from the Administrative Procedures Act.

AB 113 would redefine the definition of "administrative cost allowance" as the maximum amount of administrative costs that may be paid by a successor agency from the Redevelopment Property Tax Trust Fund in a fiscal year and commencing July 1, 2016, and for each fiscal year thereafter, would limit the administrative cost allowance to an amount not to exceed 3 percent of the actual property tax distributed to a successor agency for payment of approved enforceable obligations, reduced by the successor agency's administrative cost allowance and loan payments made to the city, county, or city and county that created the redevelopment agency. It would further limit a successor agency's annual administrative costs to an amount not to exceed 50 percent of the total Redevelopment Property Tax Trust Fund distributed to pay enforceable obligations.

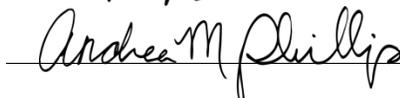
Prepared by:



Fiscal Impact
Finance Review:



Proofed by:



Reviewed and
Approved By:



AB 113 would require the redefined "administrative cost allowance" definition to be approved by successor agency oversight boards and would make the administrative cost allowance the sole funding source for any and all legal expenses related to civil actions contesting the validity of laws and actions dissolving and winding down of redevelopment agencies.

AB 113 would also attempt to overturn recent court decisions that upheld "reentered agreements" between cities and redevelopment agencies and the appropriate method of calculating interest rates on reinstated loans.

AB 113 would retroactively overturn the decision in *Emeryville v. Cohen* that validated the "reentering of agreements" entered into between cities and redevelopment agencies prior to the dissolution of redevelopment agencies. It would further retroactively undo the effects of the decision in *Glendale v. DOF* over the appropriate method of calculating interest rates on reinstated loans. In *Glendale v. DOF*, the Sacramento Superior Court issued a ruling that held that the Local Agency Investment Fund (LAIF) rate on a loan was the rate in effect over the life of a loan since origination versus that of a fixed date.

AB 113 would retroactively repeal authority for cities to make loans to successor agencies approved by successor agency oversight boards for "project-related expenses" and restricts the ability of cities to recover costs for loans made to successor agencies. AB 113 further imposes interest restrictions on other such loans and makes repayment subordinate to all other payment obligations.

AB 113 would retroactively prohibit previously authorized work associated with "winding down" of former redevelopment agency property and proposes to create a list of exclusions for the type of work successor agencies would be prohibited to hire staff for including "site remediation, removal of graffiti... and other similar work."

FISCAL IMPACT: Adoption of proposed Resolution No. 15-3092 would have no direct fiscal impact on the City's General Fund; however, if AB 113 is approved by the Legislature it will further increase the ability of DOF to impose restrictions and requirements on the City and Successor Agency. These restrictions and requirements are likely to have an undetermined but negative fiscal impact on the City and Successor Agency.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 15-3092 opposing redevelopment budget trailer bill AB 113, Local Government.

RESOLUTION NO. 15-3092

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MONTCLAIR OPPOSING
REDEVELOPMENT BUDGET TRAILER BILL
AB 113, LOCAL GOVERNMENT**

WHEREAS, the City of Montclair Redevelopment Agency was established as a redevelopment agency that was previously organized and existing under the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* and previously authorized to transact business and exercise powers of a redevelopment agency pursuant to action of the City Council of the City of Montclair ("City"); and

WHEREAS, AB X1 26 was signed by the Governor on June 28, 2011 and upheld as constitutional by the California Supreme Court. On June 27, 2012, the Governor signed AB 1484. AB X1 26 and AB 1484 (together called the Dissolution Acts) eliminated California redevelopment agencies statewide, established successor agencies to pay, perform, and effectuate the enforceable obligations of the former redevelopment agencies, and to wind down the affairs of the former redevelopment agencies; and

WHEREAS, the City of Montclair Redevelopment Agency ("Agency") is now a dissolved redevelopment agency pursuant to the Dissolution Acts; and

WHEREAS, by Resolution No. 12-2934 considered and approved by the City Council at an open public meeting, the City chose to become and serve as the "Successor Agency" to the dissolved Agency under the Dissolution Acts; and

WHEREAS, on and after February 1, 2012, the City serves and acts as the Successor Agency and is performing its functions as the successor agency under the Dissolution Acts; and

WHEREAS, on June 18, 2015, a redevelopment budget trailer bill, AB 113, Local Government, was introduced to the Legislature by the Department of Finance ("DOF"); and

WHEREAS, AB 113 proposes to reverse and revises key provisions of the Dissolution Acts and recent court rulings regarding dissolution law under the guises of administrative streamlining of DOF processes and procedures; and

WHEREAS, AB 113 contains several provisions that would tip the balance on matters of interpretation of dissolution laws in favor of DOF by exempting DOF from the Administrative Procedures Act and eliminating language in the law that was previously agreed to by the DOF and the Legislature in 2012 that enabled successor agencies to fund legal representation in the only due process forum where DOF staff decisions could be reviewed; and

WHEREAS, AB 113 would attempt to retroactively overturn recent court decisions that upheld "reentered agreements" between cities and redevelopment agencies *Emeryville v. Cohen* and the appropriate method of calculating interest rates on reinstated loans *Glendale v. DOF*; and

WHEREAS, AB 113 would retroactively repeal authority for cities to make loans to successor agencies approved by successor agency oversight boards for "project-related expenses" and restricts the ability of cities to recover costs for loans made to successor agencies; and

WHEREAS, AB 113 would retroactively prohibit previously authorized work associated with "winding down" of former redevelopment agency property and proposes to create a list of exclusions for the type of work successor agencies would be prohibited to hire staff for including "site remediation, removal of graffiti... and other similar work"; and

WHEREAS, AB 113 would increase the ability of DOF to impose monetary restrictions and requirements on the City and Successor Agency.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair oppose redevelopment budget trailer bill AB 113, Local Government.

APPROVED AND ADOPTED this XX day of XX, 2015.

Mayor

ATTEST:

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 15-3092 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2015, and that it was adopted by the following vote, to-wit:

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

Andrea M. Phillips
Deputy City Clerk

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
AUGUST 3, 2015, AT 9:16 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Raft called the meeting to order at 9:16 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Raft; Council Member Ruh; and City Manager Starr

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of July 20, 2015.

Moved by City Manager Starr, seconded by Mayor Pro Tem Raft, and carried unanimously to approve the minutes of the Personnel Committee meeting of July 20, 2015.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

At 9:17 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 9:40 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Raft stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 9:40 p.m., Mayor Pro Tem Raft adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager