

**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

February 16, 2016

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. Introduction of Promotee

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 – None

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 February 1, 2016 [CC/SA/MHC/MHA/MCF]

B. Administrative Reports	
1. Consider Receiving and Filing of Treasurer's Report [CC]	5
2. Consider Approval of Warrant Register and Payroll Documentation [CC]	6
3. Consider Receiving and Filing of Treasurer's Report [SA]	7
4. Consider Approval of Warrant Register [SA]	8
5. Consider Receiving and Filing of Treasurer's Report [MHC]	9
6. Consider Approval of Warrant Register [MHC]	10
7. Consider Receiving and Filing of Treasurer's Report [MHA]	11
8. Consider Approval of Warrant Register [MHA]	12
9. Consider Setting a Public Hearing for Monday, March 7, 2016, at 7:00 p.m. in the City Council Chambers to Consider Adoption of Resolution No. 16-3112 Establishing Permit Fees, Appeal Fees, and Other Fees Relating to Massage Establishments and Massage Technicians and Amending the Master User Fee Schedule [CC]	13
10. Consider Declaring Certain City Property as Surplus and Available for Auction or Destruction [CC]	18
11. Consider Declaring All Existing Exercise Equipment in the Recreation Facility as Surplus and Authorizing Rasmussen Brothers Construction, Inc., to Dispose of the Equipment [CC]	36
12. Consider Approval of the Memorandum of Understanding Between the City of Montclair and Montclair City Confidential Employees' Association [CC]	38
C. Agreements	
1. Consider Approval of Tract Map No. 19970 Located on the South Side of Mission Boulevard West of Central Avenue [CC]	
Consider Approval of Agreement No. 16-01, a Subdivision Agreement with Mission 31, LLC, a California Limited Liability Company [CC]	
Consider Authorizing Tract Map No. 19970 to be Recorded with the Office of the San Bernardino County Recorder [CC]	40
2. Consider Approval of Agreement Nos. 16-02, 16-03, 16-04, 16-05, and 16-06 with Montclair Golden Girls Softball League, Montclair Little League, and All Cities Youth Baseball for Use of Ball Field Facilities [CC]	68
3. Consider Approval of Agreement No. 16-07 Amending Agreement No. 00-34, a Professional Services Agreement Between the City of Montclair, the City of Montclair Successor Agency, and the Montclair Housing Authority and Stradling Yocca Carlson & Rauth [CC/SA/MHA]	98

- 4. Consider Approval of Draft Agreement No. 16-15 with San Bernardino Associated Governments Approving a Trade Corridor Improvement Fund Baseline Agreement for Construction Funds for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, Subject to Final Approval by City Attorney Robbins [CC]

Consider Authorizing City Manager Starr to Sign Agreement No. 16-15 When it is Completed [CC] 108
- 5. Consider Approval of Draft Agreement No. 16-16 with Union Pacific Railroad and San Bernardino Associated Governments for the Construction and Maintenance of a Railroad Grade Separation Project at Monte Vista Avenue, Subject to Final Approval by City Attorney Robbins [CC] 120
- 6. Consider Approval of Agreement No. 16-18 with Pacific Bell Telephone Company, a California Corporation, dba AT&T California (AT&T), for Undergrounding of Overhead Communication Lines Associated with 4875 Mission Boulevard, Subject to Any Additions Required by City Attorney Robbins [CC]

Consider Authorizing City Manager Starr to Seek Bids for Installation of Conduit and Substructures Required for the Undergrounding of Utilities Associated with AT&T and Award a Construction Contract for an Amount Not to Exceed \$50,000 [CC] 178

D. Resolutions - None

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE - None

XI. COMMUNICATIONS

A. City Department Reports

- 1. Police Department
 - a. Active Shooter Training
 - b. K-9 Program Update
- 2. Community Development Department
 - a. Development Projects Update

B. City Attorney

- 1. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation
Patton/Cunningham v. Montclair
- 2. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation
Nguyen v. Montclair

- 3. Closed Session Pursuant to Government Code Section 54956.9(d)(4) Regarding Potential Litigation

1 potential case

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 Real Estate Committee Meeting of January 19, 2016 195
- 2. Minutes of the Public Works Committee Meeting of January 21, 2016 198
- 3. Minutes of the Personnel Committee Meeting of February 1, 2016 204

XII. COUNCIL WORKSHOP

A. Midyear Budget Review

(The City Council may consider continuing this item to an adjourned meeting on Thursday, February 18, 2016, at 6:00 p.m. in the City Council Chambers.)

B. Monte Vista Avenue/Union Pacific Railroad Grade Separation Project Update

(The City Council may consider continuing this item to an adjourned meeting on Thursday, February 18, 2016, at 6:00 p.m. in the City Council Chambers, and then may again consider continuing this item to an adjourned meeting on Monday, March 7, 2016, at 5:45 p.m. in the City Council Chambers.)

XIII. ADJOURNMENT OF SUCCESSOR AGENCY BOARD OF DIRECTORS, MONTCLAIR HOUSING CORPORATION BOARD 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 and potential litigation.)

XIV. CLOSED SESSION ANNOUNCEMENTS

XV. ADJOURNMENT OF CITY COUNCIL

The next regularly scheduled City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation meetings will be held on Monday, March 7, 2016, 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 City Clerk's Office 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 February 11, 2016.

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: February 16, 2016

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 January 31, 2016, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending January 31, 2016.

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 January 31, 2016.

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

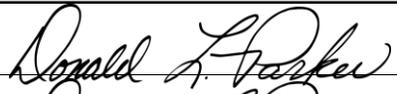
SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION **DATE:** February 16, 2016
SECTION: ADMIN. REPORTS
ITEM NO.: 2
FILE I.D.: FIN540
DEPT.: ADMIN. SVCS.

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 February 16, 2016, and the Payroll Documentation dated February 7, 2016, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated February 16, 2016, totals \$869,935.17. The Payroll Documentation dated February 7, 2016, totals \$620,083.81 gross, with \$431,777.47 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: February 16, 2016

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 January 31, 2016, 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 January 31, 2016.

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 January 31, 2016.

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:** February 16, 2016
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 January 31, 2016, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Successor to the Redevelopment Agency Warrant Register dated 01.01.16–01.31.16 in the amounts of \$121,036.77 for the Combined Operating Fund; \$3,785,741.50 for the Redevelopment Obligation Retirement Funds 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 January 31, 2016.

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: February 16, 2016

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 January 31, 2016, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending January 31, 2016.

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 January 31, 2016.

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:** February 16, 2016
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 January 31, 2016, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Warrant Register dated 01.01.16-01.31.16 in the amount of \$59,058.77 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 January 31, 2016.

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: February 16, 2016

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 January 31, 2016, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending January 31, 2016.

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 January 31, 2016.

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:** February 16, 2016
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 January 31, 2016, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Warrant Register dated 01.01.16-01.31.16 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

RECOMMENDATION: Vice Chairperson Raft recommends the Montclair Housing Authority Board of Directors approve the Warrant Register for the period ending January 31, 2016.

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 SETTING A PUBLIC HEARING FOR MONDAY, MARCH 7, 2016, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS TO CONSIDER ADOPTION OF RESOLUTION NO. 16-3112 ESTABLISHING PERMIT FEES, APPEAL FEES, AND OTHER FEES RELATING TO MASSAGE ESTABLISHMENTS AND MASSAGE TECHNICIANS AND AMENDING THE MASTER USER FEE SCHEDULE	DATE: February 16, 2016 SECTION: ADMIN. REPORTS ITEM NO.: 9 FILE I.D.: FLP280 DEPT.: ADMIN. SVCS.
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REASON FOR CONSIDERATION: In order to effectively implement and administer the purpose and intent of the Master User Fee Schedule, staff annually revises certain portions of the Master User Fee Schedule to provide more accurate user fees. On January 4, 2016, the City Council adopted Resolution No. 16-3107, the most recent review and amendment of the Master User Fee Schedule. It has since come to staff's attention that certain new permit, appeal, and other fees were not included in that amendment.

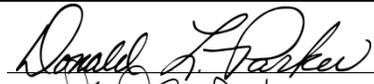
On July 6, 2015, the City Council approved Ordinance No. 15-951, which requires any individual that owns or manages any massage establishment within the City of Montclair to obtain an operator permit, which is granted by the City. In addition, each massage establishment must apply for a Certificate of Operation. However, Ordinance No. 15-951 does not address the fees associated with the implementation of this new permit process.

These user fees must be approved by the City Council in order to be added into the Master User Fee Schedule so that the City can recover the costs incurred in reviewing and processing applications for Massage Operator Permits and Certificates of Operation for massage establishments.

BACKGROUND: Ordinance No. 15-951 repealed and replaced Chapter 4.56 of the Montclair Municipal Code and provided for regulation of massage establishments. Under the ordinance, each owner and manager of a massage establishment is required to apply for a Massage Operator Permit. The process to obtain such a permit involves the filing of an application, background checks (if the proposed operator is not CAMTC certified), and the issuance of permits and identification. In addition, each massage establishment must apply for a Certificate of Operation.

Master User Fee Schedule and User Fee Cost Recovery Policy

Ordinance No. 15-951 did not establish the fees associated with the processing of applications and issuance of the Massage Operator Permits and Certificates of Operation. In 2006, the City Council adopted Resolution No. 06-2670 adopting a

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

Master User Fee Schedule as well as a User Fee Cost Recovery Policy. The User Fee Cost Recovery Policy established procedures that produce uniformity in developing City user fees and the consolidation of all City user fees into one Master User Fee Schedule for update and presentation to the City Council for approval on an annual basis.

It is the City's policy that fees be maintained to ensure associated costs for the delivery of specified services are appropriately charged to consumers to limit the cost burden on the City's General Fund. Further, cost-recovery levels for any user fee established by resolution of the City Council shall not exceed 100 percent of the actual cost for the service in question.

User fees represent a significant and growing portion of local government revenue as traditional revenue sources have decreased. As competition for tax resource allocation increases and interest in privatization of public services grows, fees and charges will continue to assume a larger role in the diversification of municipal revenue sources.

User fees are considered "special benefits" which are defined as payments made by consumers in direct exchange for government services rendered. User fees are payments for publicly provided services that benefit a specific individual or group of individuals and exhibit "public good" characteristics. Further, user fees are charged for appropriate services that are of special benefit to individuals or groups.

Implementation of Ordinance No. 15-951

In implementing Ordinance 15-951, staff has identified several user fees that need to be added in order to provide for recovery of the costs of processing and issuing the respective Massage Operator Permits in accordance with the City's User Fee Cost Recovery Policy. The respective fees proposed are as follows:

Operator Permit Application Fee:	
with CAMTC Certificate.....	\$75.00
without CAMTC Certificate.....	\$275.00
Renewal of Operator Permit Fee:	
with CAMTC Certificate.....	\$75.00
without CAMTC Certificate.....	\$275.00
Certificate of Operation Issuance Fee	\$25.00
Appeal Fee	\$200.00
Duplicate/Reissue Operator ID Card	\$50.00

The new user fees being proposed fall within the City of Montclair's statutory authority to impose fees, charges, and rates under its regulatory and police power as authorized pursuant to California Government Code Section 66000. The California Constitution allows municipalities to recover the "costs reasonably borne" for all services provided to the community.

FISCAL IMPACT: Pursuant to Resolution No. 06-2670, the City requires that fees be maintained to ensure associated costs for the delivery of specified services are appropriately charged to consumers to limit the cost burden on the General Fund.

If adopted, Resolution No. 16-3112 establishing permit fees, appeal fees and other fees relating to massage establishments and massage technicians and amending the Master User Fee Schedule would have an unknown, but positive fiscal impact related to the amount of revenue received from services for which the City charges fees.

The cost to publish a Notice of Public Hearing in the *Inland Valley Daily Bulletin* related to adoption of Resolution No. 16-3112 should not exceed \$500.

RECOMMENDATION: Staff recommends the City Council set a public hearing for Monday, March 7, 2016, at 7:00 p.m. in the City Council Chambers to consider adoption of Resolution No. 16-3112 establishing permit fees, appeal fees and other fees relating to massage establishments and massage technicians and amending the Master User Fee Schedule.

RESOLUTION NO. 16-3112

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ESTABLISHING PERMIT FEES, APPEAL FEES, AND OTHER FEES RELATING TO MASSAGE ESTABLISHMENTS AND MASSAGE TECHNICIANS AND AMENDING THE MASTER USER FEE SCHEDULE

WHEREAS, the City of Montclair has the statutory authority to impose fees, charges, and rates under its regulatory and police power as authorized pursuant to California Government Code Section 66000; and

WHEREAS, user fees are imposed for services rendered by the City of Montclair that will benefit a specific individual or group of individuals; and

WHEREAS, there is a need for the City of Montclair to recoup reasonable costs related to the provisions of specified services; and

WHEREAS, user fees are imposed to assign the cost of providing services to the specific individual or group of individuals receiving the benefits of said services, rather than funding said services from General Fund revenues; and

WHEREAS, pursuant to Ordinance No. 15-951 the City of Montclair's Municipal Code, requires any individual who owns or manages any massage establishment, in any location, within the City of Montclair to obtain a massage operator permit, and further requires that all massage establishments obtain a certificate of operation. The processing and implementation procedures necessary to grant such permits will impose additional costs on the City of Montclair which should be recovered from those individuals and businesses applying for the permits; and

WHEREAS, it is the City Council's direction that all user fees, to the extent possible, are to be reviewed and amended annually, consistent with the User Fee Cost Recovery Policy; and

WHEREAS, the City of Montclair finds it necessary to include fees relating to massage establishments and massage technicians in the Master User Fee Schedule that was adopted pursuant to Resolution No. 16-3107.

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

Section 1. Master User Fee Revisions. The Master User Fee Schedule is hereby revised to include the following new fees.

Operator Permit Application Fee:	
with CAMTC Certificate	\$75.00
without CAMTC Certificate	\$275.00

Renewal of Operator Permit Fee:	
with CAMTC Certificate	\$75.00
without CAMTC Certificate	\$275.00
Certificate of Operation Issuance Fee	\$25.00
Appeal Fee	\$200.00
Duplicate/Reissue Operator ID Card	\$50.00

Section 2. Effective Date. This Resolution shall be in full force and effect thirty (30) days after passage.

APPROVED AND ADOPTED this XX day of XX, 2016.

Mayor

ATTEST:

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 16-3112 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, 2016, 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 DECLARING CERTAIN CITY
PROPERTY AS SURPLUS AND AVAILABLE FOR
AUCTION OR DESTRUCTION

DATE: February 16, 2016

SECTION: ADMIN. REPORTS

ITEM NO.: 10

FILE I.D.: EQS051/052

DEPT.: POLICE

REASON FOR CONSIDERATION: The City Council is requested to declare certain City property as surplus in order for the property to be made available for auction or destruction.

BACKGROUND: The items included on the attached Property Auction Logs are considered as surplus City property. Upon being declared as surplus by the City Council, the items are authorized to be disposed of by auction or destruction.

FISCAL IMPACT: The sale of these items will produce a positive effect for the City's General Operating Fund; however, City staff cannot estimate the amount of proceeds to be received through the auction of these items.

RECOMMENDATION: Staff recommends the City Council declare certain City property as surplus and available for auction or destruction.

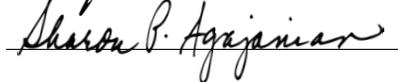
Prepared by:



Fiscal Impact
Finance Review:



Proofed by:



Reviewed and
Approved By:



CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT Info tech MONTH May2015 PAGE 3 of 17

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED	SERIAL #	CR #	PRICE SOLD FOR
16649	15-1		1	HP dc7800 Computer	MXL8210975		
16633	15-2		1	HP dc7800 Computer	MSL81510TD		
16643	15-3		1	HP dc7800 Computer	MXL7520CKT		
16621	15-4		1	HP dc7800 Computer	MXL9100GJK		
16639	15-5		1	HP dc7800 Computer	MXL821092W		
16645	15-6		1	HP dc7800 Computer	MXL821096R		
16669	15-7		1	HP dc7800 Computer	MXL821096V		
SBWESTNET0321	15-8		1	HP dc7100 Computer	2UB52506DP		
16151	15-9		1	HP dc7600 Computer	MXM634030L		
16637	15-10		1	HP dc7800 Computer	MXL821092X		
16653	15-11		1	HP dc7800 Computer	MXL7520CL2		
16632	15-12		1	HP dc7900 Computer	MXL910GJD		
16195	15-13		1	HP dc7700 Computer	MXL7110YXH		
MPD051	15-14		1	HP dc7600 Computer	MXM634030J		
16027	15-15		1	HP dc7600 Computer	MXM61305GF		

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT

Info tech

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TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED	SERIAL #	CR #	PRICE SOLD FOR
16155	15-16		1	HP dc7600 Computer	MXM634030Q		
15890	15-17		1	HP dc7600 Computer	MXM634030G		
16152	15-18		1	HP dc7600 Computer	MXM634030H		
16154	15-19		1	HP dc7600 Computer	MXM634030B		
16651	15-20		1	HP dc7800 Computer	MXL821094K		
16635	15-21		1	HP dc7800 Computer	MXL8210979		
16641	15-22		1	HP dc7800 Computer	MXL8230337		
16568	15-23		1	HP Compaq LE1911 Monitor	CNK2060NJ9		
16567	15-24		1	HP Compaq LE1911 Monitor	CNK2060NJH		
16377	15-25		1	HP Compaq LE1911 Monitor	CNK1360J0R		
16015	15-26		1	Princeton VL1918 Monitor	TVCG1101719		
16378	15-27		1	HP Compaq LE1911 Monitor	CNK1360J0P		
16570	15-28		1	HP Compaq LE1911 Monitor	CNK2060NJM		
16676	15-29		1	ViewSonic VA1916w Monitor	QN0080123655		
15909	15-30		1	Viewsonice VX1935wm-3	QXC071130321		

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT

Info tech

MONTH

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TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED	SERIAL #	CR #	PRICE SOLD FOR
16715	15-31		1	Planar PL1910M Monitor	BD817A81393		
	15-32		1	Planar PL1910M Monitor	BD817A81381		
16714	15-33		1	Planar PL1910M Monitor	BD817A81391		
16713	15-34		1	Planar PL1910M Monitor	BD817A81388		
	15-35		1	HP LP1965 Monitor	CNN8130RZ1		
	15-36		1	HP LP1965 Monitor	CNN8130RDB		
16376	15-37		1	HP Compaq LE1911 Monitor w/ Speakers	CNK1360JOS		
16569	15-38		1	HP Compaq LE1911 Monitor w/ Speakers	CNK2060NLO		
15908	15-39		1	ViewSonic VX1935wm-3 Monitor	QCX070623668		
SBWESTNET0441	15-40		1	Sony DVD/VHS SLV-D370P	0462048		
SBWESTNET0456	15-41		1	Sony DVD/VHS SLV-D370P	0462014		
SBWESTNET0006	15-42		1	HP LaserJet 6p Printer	USCC127765		
	15-43		1	HP Fax-920 Fax	MY02LE20FN		
	15-44		1	HP DeskJet 722C	MX86K1T125		
SBWESTNET0320	15-45		1	HP Scanjet 4070 Scanner	CN4BMAL6BT		

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TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED	SERIAL #	CR #	PRICE SOLD FOR
SBWESTNET0239	15-46		1	ViewSonice VA550 Monitor	90D020450818		
15682	15-47		1	Dell 1702P Monitor	BN680017cw00		
	15-48		1	Dell E178FPb Monitor	CN0RY979742 6183H3WBS		
16374	15-49		1	ViewSonice VX2235wm-3 Montior	QCZ07090411 3		
	15-50		1	Ricoh Aficio SPC220n Printer	Q9588600305		
	15-51		1	Ricoh Aficio SPC220n Printer	Q9588600310		
16704	15-52		1	HP dc7800 Computer	MXL8230316		
16690	15-53		1	HP dc7800 Computer	MXL8230325		
16699	15-54		1	HP dc7800 Computer	MXL823032M		
16697	15-55		1	HP dc7800 Computer	MXL823031K		
	15-56		1	HP L1908w Montior	3CQ8174C9Y		
	15-57		1	ViewSonic VX193WM-3 Montior	VS11444		
16647	15-58		1	HP dc7800 Computer	MXL81510TQ		
14785	15-59		1	KDS CRT 17" Montior	192009796		
16008	15-60		1	Princeton VL1958	TVCF2601790		
15018	15-61		1	Dell D1028L Monitor	66746J1JVM87		
16048	15-62		1	BenQ FP767	99L53725GA3130114 9T535GA		
15196	15-63		1	ViewSonice VE170m	A0H013800136		
	15-64		1	HP LP1965	CN492002HB		
15886	15-65		1	Princeton LCD1912	JCBF5200693		
15882	15-66		1	Princeton LCD1912	JCBF5202352		
15880	15-67		1	Princeton LCD1912	JCBF5202325		
15764	15-68		1	Aopen F70VS	44700908PV01		

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TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED	SERIAL #	CR #	PRICE SOLD FOR
	15-69		1	Dell E178FPC	CN0TP219641 807BK056C		
15762	15-70		1	Aopen F70VS	44701065PV01		
15878	15-71		1	Princeton LCD1912	JCBF5100390		
15876	15-72		1	Princeton LCD1912	JCBF5202383		
15432	15-73		1	ViewSonic VE170M	A0H013900015		
15197	15-74		1	Slyvania L17VLK	5HCC1801437		
15955	15-75		1	Princeton VL1918	TVCF4403792		
	15-76		1	Princeton LCDW1901PD	TVUH2602398		
15897	15-77		1	ViewSonic VX1935WM3	QXC07113030 6		
15879	15-78		1	Princeton LCD1912	JCBF5202385		
16158	15-79		1	Princeton LCD1912	JCBF5200634		
	15-80		1	HP LP2475W	CNC8480X2D		
	15-81		1	HP LA2205WG	3CQ22809MR		
16145	15-82		1	Princeton LCD1912	JCBF5200695		
16054	15-83		1	Princeton LCD1912	JCBF5200619		
16053	15-84		1	Princeton LCD1912	JCBF5200615		
15916	15-85		1	PC Case Knowles-Mcniff	10012		
16581	15-86		1	HP dc7800 Computer	MXL8070SRF		
16610	15-87		1	HP dc7800 Computer	MXL8411HXP		
16658	15-88		1	HP dc7800 Computer	MXL8210963		
16628	15-89		1	HP 7900 Computer	MXL9100GJH		
	15-90		1	HP dc7800 Computer	MXL82116RK		
	15-91		1	HP 6000 Computer	MXL0011976		

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TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED	SERIAL #	CR #	PRICE SOLD FOR
	15-92		1	HP 7900 Computer	MXL8411HXS		
16325	15-93		1	HP 6000 Computer	MXL0011999		
16729	15-94		1	HP 8000 Computer	MXL002020X		
16239	15-95		1	HP 5700 Computer	MXM7400BLD		
	15-96		1	HP 5700 Computer	MXM7400BKZ		
	15-97		1	HP 5700 Computer	MXM7400BLJ		
	15-98		1	HP dc7800 Computer	MXL80705VG		
16069	15-99		1	HP 7700 Computer	MXL64607F0		
	15-100		1	Acer ASPIRE Dcsticker on the side			
15793	15-101		1	Knowles- McNitt Computer		10017	
	15-102		1	Dell Optiplex 320	6DNLPD1		
	15-103		1	HP dc7700 Computer	MXL7110YY2		
16186	15-104		1	HP dc7700 Computer	MXL7110Z1G		
15899	15-105		1	HP dc7700 Computer	MXL7110Z1T		
16774	15-106		1	HP Compaq Computer			
15844	15-107		1	Dell Dimension 8250	6WPRR21		
15930	15-108		1	PC Tower			
15490	15-109		1	APC Smart 1400	AS0238311240		
15775	15-110		1	Coolmaster PC tower	C05110401721		
15958	15-111		1	E PC tower			
15768	15-112		1	Black PC tower			
16210	15-113		1	Silver PC tower			
15786	15-114		1	Knowles- McNitt Computer		10004	
16087	15-115		1	HP dc7600 Tower	MXM6340307		
16172	15-116		1	HP dc7600 Tower	MXM610063C		
16146	15-117		1	HP dc7600 Tower	MXM634030T		
	15-118		1	HP dc5700 Tower	MXM73404KL		
	15-119		1	HP dc7800 Computer	MXL821049H		

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TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED	SERIAL #	CR #	PRICE SOLD FOR
15176	15-120		1	ViewSonic VPD150	GK94710383		
14848	15-121		1	Plaza Sangoma PC Tower	19960113		
16534	15-122		1	Optquest Q91B	QYJ074802873		
16014	15-123		1	HP DeskJet5940	CN5CD1Z0NP		
	15-124		1	HP photosmart C8180	MY87AHG1G5		
15554	15-125		1	HP LaserJet 1000	CNBR225626		
16527	15-126		1	HP DeskJet 9800	MY7C62Z0DJ		
15168	15-127		1	HP DeskJet 952C	MY0C8161H7		
15835	15-128		1	HP LaserJet 1000	CNBK139608		
15748	15-129		1	HP LaserJet 1300	CNBJN32863		
15408	15-130		1	HP DeskJet 1220C	SG23D130YP		
	15-131		1	Xerox Work Centre XD105F	PNFL7068687		
	15-132		1	Panasonic DMREZ48V	VN8GQ001660		
	15-133		1	Baracuda SPAM Firewall 300	BARSF19383		
	15-134		1	8E6 R3000 Web Filter	5K0259710057		
15761	15-135		1	AOPEN F70VS	44700865PV01		
15428	15-136		1	Compaq Presario 1700	5Y1AKDJKD102		
	15-137		1	Mitel 5340 Phone	AVAGN0263		
16785	15-138		1	Sony Viao PCG-R505DL w/Base	2.83373E+14		
	15-139		1	Misc. Box of Parts			
15696	15-140		1	Neopost Si68			
	15-141		1	Projection Screen(brown) Da-Lite			
16696	15-142		1	HP 7800 Tower	MXL8230322		
16549	15-143		1	HP 7800 Tower	MXL8070550		
16626	15-144		1	HP 7900 Tower	MXL9100GJC		

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TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED	SERIAL #	CR #	PRICE SOLD FOR
14116	15-145		1	HP LaserJet 4050TN w/Envelop Tray	USCC074274		
	15-146		1	JVC AV-26575 TV	15214741		
	15-147		1	JVC HR-D670u	6531731		
	15-148		1	3m 920 Lamp Changer	928915		
11560	15-150		1	Metal TV Cart			
16680	15-151		1	ELO MPR II Monitor	727424290C		
	15-152		1	HP L1906 Monitor	CND7460LBG		
16656	15-153		1	HP L1908w Montior	3CQ8174CBF		
16552	15-154		1	HP dc7800 tower	2UA821031L		
16554	15-155		1	HP dc7800 tower	2UA821031J		
	15-156		1	Misc. Box of Parts			
16553	15-157		1	HP dc7800 tower	2UA821031K		
15772	15-158		1	HP Compaq iPaq 3950 Pocket PC	TWC3230LXC		
	15-159		1	HP dc5700 Tower	2UA7370YP1		
16016	15-160		1	Kyocera FS-3900DN with three trays	XPJ6200573		

CITY OF MONTCLAIR PROPERTY AUCTION LOG

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TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED ^{Auction}	SERIAL #	CR #	PRICE SOLD FOR
15-16-3	16606		1	HP dc 7900 Tower	MXL 8411 ^{4XM}		
164	16608		1	" " Tower	MXL 8411 HY2		
165	15789		1	Princeton LCD 19"	wcd5000616		
166	15805		✓	Princeton	wccE 4306775		
167	no		1	Elo ET2200L	F133017846		
168	16586		1	Acer V223W	ETL 84 ^{0003382910E634010}		
169	16395		1	HP L2045W	CNT734Q34B		
170	16545		1	Viewsonic VS 11755	QND0080123656		
171	16934		1	HP LV2311	6CA ^M 2230W56		
172	no		1	HP dc 7900 Tower ^{SW partly unrec locc warn}	MXL 1HZ		
173	no		1	HP Photosmart C5250	MY839G2310		
174	no		1	HP " "	MY839G2313		
	16079		1	Cal Comp Scan Plus 742XL	GP67D56015A		
	16188		1	Canon ImageRunner 7086	(21) 53D10805		

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT INFO TECH

MONTH MAY 2015

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TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE ^{Auctioned} DESTROYED	SERIAL #	CR #	PRICE SOLD FOR
1			1	KONICA MINOLTA COPIER	57AE02461		
2			2	FILE ORGANIZERS			
3			1	BROWN CABINET/SHELVING			
4			1	CORKBOARD			
5	0129 0130		2	ROLLING SIDE TABLES			
6	0115 0131		1	GREY DESK / 2 PARTS			
7			1	STEP STOOL			
8	0025		1	MAIL ORGANIZER			
9			6	GREEN SWIVLE CHAIRS			
10			7	ASSORTED CHAIRS			
11			1	LAWN CHAIR / WHITE			
12			2	BLACK SWIVEL OFFICE CHAIRS			
13			2	TALL TRASH CANS			
14			1	WOOD DESK / BROWN / 2 PIECE			
15			1	ROLLABLE WOOD DESK			

CITY OF MONTCLAIR PROPERTY AUCTION LOG

 DEPARTMENT Police

 MONTH January

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TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE ^{Auctioned}	SERIAL #	CR #	PRICE SOLD FOR
16			1	FELLOWES POWERSHRED P380	36180		
17			1	SMALL METAL CABINET			
18			1	DAHLER 20606 PAPER SHREDDER	H105		
19			1	Radio to tel ???	09655 H		
20			1	Radio to tel ???	09656 H		
21			1	Radio to tel ???	09654 H		
22			1	Plant* CML	07272 I		
23			1	Plant* CML	09196 I		
24			1	Plant* CML ?	07257 I		
25			1	Business Comm Manager 400	NT70BIOAATG		
26			1	Nec AccuSync LCD 92Vx	7XT0354NA		
27			1	HP ProLiant ML310	MX2743506T		
28			1	Nec AccuSync LCD 92Vx	59B02611NA		
29			1	Nortel Networks Phone	NNTMHPG2NGIT		
30			1	Plant* CML Emergency Comm System	01317 C		

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT Police

MONTH January

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TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE ^{Auctioned}	SERIAL #	CR #	PRICE SOLD FOR
31			1	Hp rp 5700	2UA7520M6Q		
32			1	Hp rp 5700	2UA7520M6P		
33			1	Hp rp 5700	2UA7520M6W		
34			1	Nortel Networks Phone	NNTMHPG2NG57		
35			1	Nortel Networks Phone	NNTMHPG2NG43		

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT HUMAN SERVICES MONTH March 2015 PAGE 16 of 17

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE DESTROYED ^{Abandoned}	SERIAL #	CR #	PRICE SOLD FOR
D-1	No ID	0	1	Broken OMM Table - black (medical clinic)	No ID		
D-2	No ID	0	1	Broken upright medical scale	No ID		
D-3	through D-11	0	9	Damaged 8 x 8 Fr. tables - Tan	No ID's		
D-12	#15427	0	1	Broken office chair: maroon material	ID #15427		
D-13	/	0	1	typewriter - gray (old) ^{Not working}	No ID		
D-14	/	0	1	Typewriter - tan (old) ^{Not working}	No ID		
D-15	/	0	1	office chair - No arms ^{old plumpy}	No ID		
D-16	through D-17	0	2	brown metal chairs - broken	No ID		
D-18	/	0	1	White plastic chair - broken	No ID		
D-19	/	0	1	broken canopy - white	No ID		
D-20	#10529	0	1	10ft table metal frame: ^{very heavy} broken	#10529		
D-21	through D-22	0	2	8ft x 2ft tables: ^{very old, heavy} damaged	unable to Read ID - worn away		
D-23		0	1	Black office chair broken	No ID		
D-24		0	1	gray office chair broken	No ID		
D-25		0	1	gray office chair broken	No ID		

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AGENDA REPORT

SUBJECT: CONSIDER DECLARING ALL EXISTING EXERCISE EQUIPMENT IN THE RECREATION FACILITY AS SURPLUS AND AUTHORIZING RASMUSSEN BROTHERS CONSTRUCTION, INC., TO DISPOSE OF THE EQUIPMENT

DATE: February 16, 2016

SECTION: ADMIN. REPORTS

ITEM NO.: 11

FILE I.D.: CVC060

DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: The City Council must declare City equipment that is no longer in service as surplus so it may be disposed of properly. The City Council is requested to consider declaring all existing fitness equipment in the Recreation Facility as surplus and authorize its disposal by Rasmussen Brothers Construction, Inc., the contractor performing the remodel.

BACKGROUND: The exercise room in the Recreation Facility is being remodeled through Community Development Block Grant (CDBG) funds. The exercise equipment is obsolete and in very poor shape. Staff feels that this equipment is well past its useful life and should be disposed of accordingly. Listed below are the pieces of exercise equipment in the Recreation Facility:

<u>Equipment Type</u>	<u>Serial Number</u>
Noramco™ Treadmill	None
Universal Butterfly Machine	None
Universal Leg Lift Machine Serial	10489
Life Cycle™ Stationary Bike	None
Universal Weight Set	None
Universal Back Extension Machine	None
Stairmaster™ Machine	None
Universal Seated Incline Abdominal Machine	None
Arm Curl Machine	10475

City Staff has explored several options for disposal of the aforementioned equipment, including selling at auction, metal recycling, and having the contractor remove and dispose of the equipment.

After weighing all options, the most economical option appears to be having the contractor, Rasmussen Brothers Construction, Inc., remove and dispose of all equipment.

Prepared by:



Fiscal Impact
Finance Review:



Proofed by:



Reviewed and
Approved By:



FISCAL IMPACT: The contractor has agreed to remove and dispose of the equipment at no cost to the City. Therefore, there is no fiscal impact to the City to declare the equipment as surplus.

RECOMMENDATION: Staff recommends the City Council declare all existing exercise equipment in the Recreation Facility as surplus and authorize Rasmussen Brothers Construction, Inc., to dispose of the equipment.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MONTCLAIR AND MONTCLAIR CITY CONFIDENTIAL EMPLOYEES' ASSOCIATION

DATE: February 16, 2016

SECTION: ADMIN. REPORTS

ITEM NO.: 12

FILE I.D.: MCC500

DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: The City Council is requested to consider approval of the Memorandum of Understand (MOU) between the City of Montclair and Montclair City Confidential Employees' Association (MCCEA).

A copy of the proposed MOU is included in the agenda packets for the City Council's review and consideration.

BACKGROUND: The City of Montclair and MCCEA have reached agreement on the provisions related to the terms and conditions of employment. The proposed MOU shall be effective upon date of ratification by the City Council for the period July 1, 2015, through June 30, 2018. After June 30, 2018, the existing terms, conditions, and provisions of the proposed MOU shall remain in effect; and City and employees agree to abide by those terms, conditions, and provisions unless otherwise altered by the meet-and-confer process or unless otherwise indicated in the proposed MOU.

Following is a summary of the changes in the proposed MOU related to the terms and conditions of employment:

- Article 7 (Section 7.01): This change relates to the cost of living salary adjustments provided to employees represented by MCCEA during fiscal years 2015-16 (2 percent), 2016-17 (3 percent), and 2017-18 (2 percent).
- Article 7 (Section 7.04): The change relates to an increase in the reimbursable amount under the Education Grant Program (from \$1,500 to \$2,000 per fiscal year) effective January 2016 for employees represented by MCCEA.
- Article 8 (Section 8.01): The change relates to an increase in the benefit fund contribution for employees represented by MCCEA from \$925 to \$975 per month effective October 2015, and from \$975 to \$1,050 per month effective July 2017.
- Article 11: The change relates to an increase in the CalPERS member contribution paid by employees represented by MCCEA. Effective July 2016 members will pay up to the full 8 percent of the CalPERS member contribution.

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

- Article 13 (Section 13.02): The change relates to an increase in the amount of vacation leave that can be converted to reportable compensation on an annual basis for employees represented by MCCEA. Effective July 2016 the amount will be increased from 60 hours annually to 80 hours annually.
- Article 31 (Section 31.02): The change relates to an amendment of the awards provided to employees represented by MCCEA under the Service Award Program:

Service Award Program

Years of Service	Current Award	Amended Award
5	\$ 200	\$ 500
10	\$ 400	\$1,000
15	\$ 600	\$1,500
20	\$ 800	\$2,000
25	\$1,000	\$2,500
30	\$1,000	\$2,500
35	\$1,000	\$2,500
40	\$1,000	\$2,500

- Article 43: The change relates to the term of the Agreement.

FISCAL IMPACT: There is no fiscal impact associated with ratifying the proposed MOU between the City of Montclair and MCCEA other than what has been included in the Fiscal Year 2015-16 Budget, and what will be included in the 2016-17 and 2017-18 Budgets.

RECOMMENDATION: Staff recommends the City Council approve the MOU between the City of Montclair and MCCEA.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF TRACT MAP NO. 19970 LOCATED ON THE SOUTH SIDE OF MISSION BOULEVARD WEST OF CENTRAL AVENUE

CONSIDER APPROVAL OF AGREEMENT NO. 16-01, A SUBDIVISION AGREEMENT WITH MISSION 31, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

CONSIDER AUTHORIZING TRACT MAP NO. 19970 TO BE RECORDED WITH THE OFFICE OF THE SAN BERNARDINO COUNTY RECORDER

DATE: February 16, 2016

SECTION: AGREEMENTS

ITEM NO.: 1

FILE I.D.: LDU600

DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: Land subdivisions, including parcel maps and tract maps, are allowed by the Subdivision Map Act, subject to City Council approval. Subdivision agreements require City Council approval.

Copies of Tract Map No. 19970 and Agreement No. 16-01 with Mission 31, LLC, are attached for City Council review and consideration.

BACKGROUND: The owners of a 3.03-acre property located on the south side of Mission Boulevard west of Central Avenue have submitted a request to develop the property as a one lot, 31-unit condominium project. The map received tentative map approval from the Planning Commission on July 27, 2015.

FISCAL IMPACT: Approvals of Tract Map No. 19970 and Agreement No. 16-01 are likely to create an unknown but positive fiscal impact when the property is developed.

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

1. Approve Tract Map No. 19970 located on the south side of Mission Boulevard west of Central Avenue.
2. Approve Agreement No. 16-01, a subdivision agreement with Mission 31, LLC, a California limited liability company.
3. Authorize Tract Map No. 19970 to be recorded with the Office of the San Bernardino County Recorder.

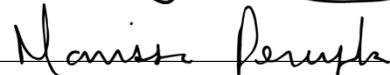
Prepared by:



Fiscal Impact
Finance Review:



Proofed by:



Reviewed and
Approved By:



TRACT NO. 19970

IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA
BEING A SUBDIVISION OF PARCEL 1 OF PARCEL MAP NO. 6667 AS SHOWN BY
MAP ON FILE IN BOOK 64, PAGES 42 AND 43 OF MAPS, IN THE
OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
FOR CONDOMINIUM PURPOSES - 31 UNITS
KELSOE AND ASSOCIATES, INC.
JUNE 2015

OWNER'S STATEMENT:

WE HEREBY STATE THAT WE ARE ALL AND THE ONLY PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND SUBDIVIDED AS SHOWN ON THIS MAP, AND WE HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS FINAL MAP.

WE HEREBY RESERVE TO OURSELVES, OUR HEIRS AND ASSIGNS THE PRIVATE ACCESS EASEMENT FOR THE USE AND BENEFIT OF LOT 1 AS DELINEATED ON SAID MAP.

WE HEREBY DEDICATE TO THE CITY OF MONTCLAIR THE ACCESS EASEMENT FOR EMERGENCY VEHICULAR ACCESS AND PUBLIC UTILITY PURPOSES AS DELINEATED ON THIS MAP, AND TO THE CITY OF MONTCLAIR THE PUBLIC UTILITY EASEMENT AS DELINEATED ON THIS MAP.

MISSION 31, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY.

U.S. BANK NATIONAL ASSOCIATION,
D/B/A HOUSING CAPITAL COMPANY, BENEFICIARY UNDER A DEED OF TRUST RECORDED
OCTOBER 14, 2015 AS INSTRUMENT NO. 2015-0446210 OF OFFICIAL RECORDS,

BY: _____
NAME: _____
TITLE: _____

NOTARY ACKNOWLEDGMENT

A NOTARY OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN BERNARDINO)

ON _____, 20____, BEFORE ME, _____, PERSONALLY APPEARED
_____ WHO PROVED TO ME ON THE BASIS OF
SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS / ARE SUBSCRIBED TO THE WITHIN
INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE / SHE / THEY EXECUTED THE SAME IN HIS / HER / THEIR
AUTHORIZED CAPACITY(IES), AND THAT BY HIS / HER / THEIR SIGNATURE(S) ON THE INSTRUMENT, THE
PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING
PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND

SIGNATURE: _____ MY PRINCIPAL PLACE OF BUSINESS IS
NOTARY PUBLIC IN AND FOR SAID STATE IN _____ COUNTY.
MY COMMISSION EXPIRES: _____

(NAME PRINTED)

NOTARY ACKNOWLEDGMENT

A NOTARY OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN BERNARDINO)

ON _____, 20____, BEFORE ME, _____, PERSONALLY APPEARED
_____ WHO PROVED TO ME ON THE BASIS OF
SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS / ARE SUBSCRIBED TO THE WITHIN
INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE / SHE / THEY EXECUTED THE SAME IN HIS / HER / THEIR
AUTHORIZED CAPACITY(IES), AND THAT BY HIS / HER / THEIR SIGNATURE(S) ON THE INSTRUMENT, THE
PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING
PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND

SIGNATURE: _____ MY PRINCIPAL PLACE OF BUSINESS IS
NOTARY PUBLIC IN AND FOR SAID STATE IN _____ COUNTY.
MY COMMISSION EXPIRES: _____

(NAME PRINTED)

SIGNATURE OMISSIONS:

THE FOLLOWING SIGNATURES HAVE BEEN OMITTED UNDER THE PROVISIONS OF SECTION 66436(3)(A)(i) OF THE GOVERNMENT CODE SINCE THEIR INTERESTS CANNOT RIPEN INTO A FEE:

1. POMONA LAND AND WATER COMPANY, A CORPORATION, HOLDER OF AN EASEMENT FOR PIPE LINES, RECORDED SEPTEMBER 07, 1891 AS NO. 9 IN BOOK 137, PAGE 384 OF DEEDS.
2. DEL MONTE IRRIGATION COMPANY, A CORPORATION, HOLDER OF AN EASEMENT FOR PIPE LINES, RECORDED APRIL 26, 1897 AS NO. 53 IN BOOK 177, PAGE 142 OF DEEDS.
3. POMONA LAND AND WATER COMPANY, A CORPORATION, HOLDER OF AN EASEMENT FOR PIPE LINES, RECORDED FEBRUARY 23, 1906 AS NO. 92 IN BOOK 376, PAGE 159 OF DEEDS.
4. MERCHANTS TRUST COMPANY, A CORPORATION, HOLDER OF AN EASEMENT FOR PIPE LINES, RECORDED JUNE 04, 1910 AS NO. 20 IN BOOK 460, PAGE 283 OF DEEDS.
5. MERCHANTS TRUST COMPANY, A CORPORATION, HOLDER OF AN EASEMENT FOR PIPE LINES, RECORDED FEBRUARY 21, 1912 AS NO. 11 IN BOOK 503, PAGE 34 OF DEEDS.
6. MERCHANTS TRUST COMPANY, A CORPORATION, HOLDER OF AN EASEMENT FOR PIPE LINES, RECORDED AUGUST 28, 1912 AS NO. 15 IN BOOK 510, PAGE 246 OF DEEDS.
7. EMIL FIRTH AND BENEVEDA S. FIRTH, HOLDER OF AN EASEMENT FOR MAINTAINING PIPE LINES AND CONDUCTS FOR CONDUCTING WATER, RECORDED OCTOBER 06, 1914 AS NO. 14 IN BOOK 556, PAGE 159 OF DEEDS.
8. MONTE VISTA COUNTY WATER DISTRICT, A BODY POLITIC, HOLDER OF AN EASEMENT FOR THE RIGHT TO LAY PIPE LINES AND MAINTENANCE, RECORDED JUNE 21, 1963 AS NO. 132 IN BOOK 5933, PAGE 379 OF OFFICIAL RECORDS.

SOILS REPORT:

PURSUANT TO THE PROVISIONS OF SECTION 66434 (f) OF THE SUBDIVISION MAP ACT, A SOILS REPORT BY LGC GEO-ENVIRONMENTAL, INC., DATED JUNE 10, 2015, HAS BEEN PREPARED FOR THIS SUBDIVISION AND IS ON FILE WITH THE BUILDING DEPARTMENT OF THE CITY OF MONTCLAIR.

SURVEYOR'S STATEMENT:

I, ROBERT T. KELSOE, HEREBY STATE THAT I AM A LICENSED LAND SURVEYOR OF THE STATE OF CALIFORNIA AND THAT THIS MAP CONSISTING OF 3 SHEETS IS A TRUE AND COMPLETE REPRESENTATION OF A SURVEY MADE UNDER MY SUPERVISION IN APRIL, 2015, AND THAT ALL THE MONUMENTS SHOWN HEREON ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR WILL BE SET IN SUCH POSITIONS WITHIN ONE (1) YEAR OF RECORDATION, IN COMPLIANCE WITH SECTIONS 66495 AND 66496 OF THE SUBDIVISION MAP ACT AND ARE OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATED: _____ ROBERT T. KELSOE, P.L.S. 6957
EXPIRES: 9/30/2017



CITY ENGINEER'S CERTIFICATE:

I HEREBY CERTIFY THAT I HAVE EXAMINED THE ANNEXED MAP AND THAT IT CONFORMS SUBSTANTIALLY TO THE TENTATIVE MAP AND ALL APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND SUBDIVISION ORDINANCES OF THE CITY OF MONTCLAIR APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH; AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

MICHAEL C. HUDSON, CITY ENGINEER DATED _____
CITY OF MONTCLAIR, CALIFORNIA
No. 27955
Exp. 03-31-16
EXPIRES 3-31-16



CITY PLANNING COMMISSION CERTIFICATE:

I DO HEREBY CERTIFY THAT THE SUBDIVISION SHOWN ON THE ANNEXED MAP IS IN SUBSTANTIAL CONFORMANCE WITH THE TENTATIVE MAP, APPROVED AT A MEETING OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, HELD ON THE 27TH DAY OF JULY, 2015.

SECRETARY OF THE PLANNING COMMISSION DATED _____
CITY OF MONTCLAIR, CALIFORNIA

MONTCLAIR CITY COUNCIL CERTIFICATE:

I HEREBY CERTIFY THAT THE CITY COUNCIL OF THE CITY OF MONTCLAIR BY A MOTION DULY SECONDED AND PASSED, APPROVED THE ATTACHED MAP ON THE _____ DAY OF _____, 2015, AND ACCEPTED FOR EMERGENCY VEHICULAR ACCESS AND PUBLIC UTILITY PURPOSES THE ACCESS EASEMENT.

ANDREA M. PHILLIPS, DEPUTY CITY CLERK DATED _____
OF THE CITY OF MONTCLAIR, CALIFORNIA

BOARD OF SUPERVISORS' CERTIFICATE:

I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$ _____ HAS BEEN EXECUTED AND FILED WITH THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, CONDITIONED UPON PAYMENT OF ALL TAXES, STATE, COUNTY, MUNICIPAL, OR LOCAL, AND ALL SPECIAL ASSESSMENTS, COLLECTED AS TAXES, WHICH AT THE TIME OF FILING OF THIS MAP WITH THE COUNTY RECORDER ARE A LIEN AGAINST SAID PROPERTY, BUT NOT YET PAYABLE AND THAT THE SUBDIVIDER HAS FILED WITH ME A CERTIFICATE BY THE PROPER OFFICER GIVING HIS ESTIMATE OF THE AMOUNT OF SAID TAXES AND ASSESSMENTS, AND SAID BOND IS HEREBY ACCEPTED.

DATED: _____ LAURA H. WELCH, CLERK OF THE BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO
BY: _____ DEPUTY

AUDITOR'S CERTIFICATE:

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE AS OF THIS DATE, THERE ARE NO LIENS AGAINST THE REAL PROPERTY SHOWN UPON THIS MAP FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS NOT YET PAYABLE ESTIMATED TO BE \$ _____.

DATED: _____ BY: _____
LARRY WALKER, AUDITOR-CONTROLLER-TREASURER-TAX COLLECTOR
COUNTY OF SAN BERNARDINO, CALIFORNIA
BY: _____ DEPUTY

SAN BERNARDINO COUNTY RECORDER'S CERTIFICATE:

THIS MAP HAS BEEN FILED UNDER THE DOCUMENT NUMBER _____
THIS _____ DAY OF _____, 20____, AT _____ M, IN,
BOOK _____ OF _____ AT PAGE _____ AT THE
REQUEST OF _____
IN THE AMOUNT OF \$ _____
BOB DUTTON
ASSESSOR-RECORDER-CLERK
COUNTY OF SAN BERNARDINO

BY: _____ DEPUTY RECORDER

TRACT NO. 19970

IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA
BEING A SUBDIVISION OF PARCEL 1 OF PARCEL MAP NO. 6657 AS SHOWN BY
MAP ON FILE IN BOOK 64, PAGES 42 AND 43 OF MAPS, IN THE
OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
FOR CONDOMINIUM PURPOSES - 31 UNITS
KELSOE AND ASSOCIATES, INC. JUNE 2015

SURVEYOR'S NOTES

1"x10" I.P. TAGGED "L.S. 6957" TO BE SET AT ALL RIGHT-OF-WAY CORNERS, ALL LOT CORNERS AND ALL INTERIOR TRACT BOUNDARY CORNERS UNLESS OTHERWISE NOTED. IN THE EVENT THIS CANNOT BE SET, A NAIL AND TACK TAGGED "L.S. 6957" WILL BE SET ON TOP OF WALL, WALL FOOTING OR SIDEWALK.

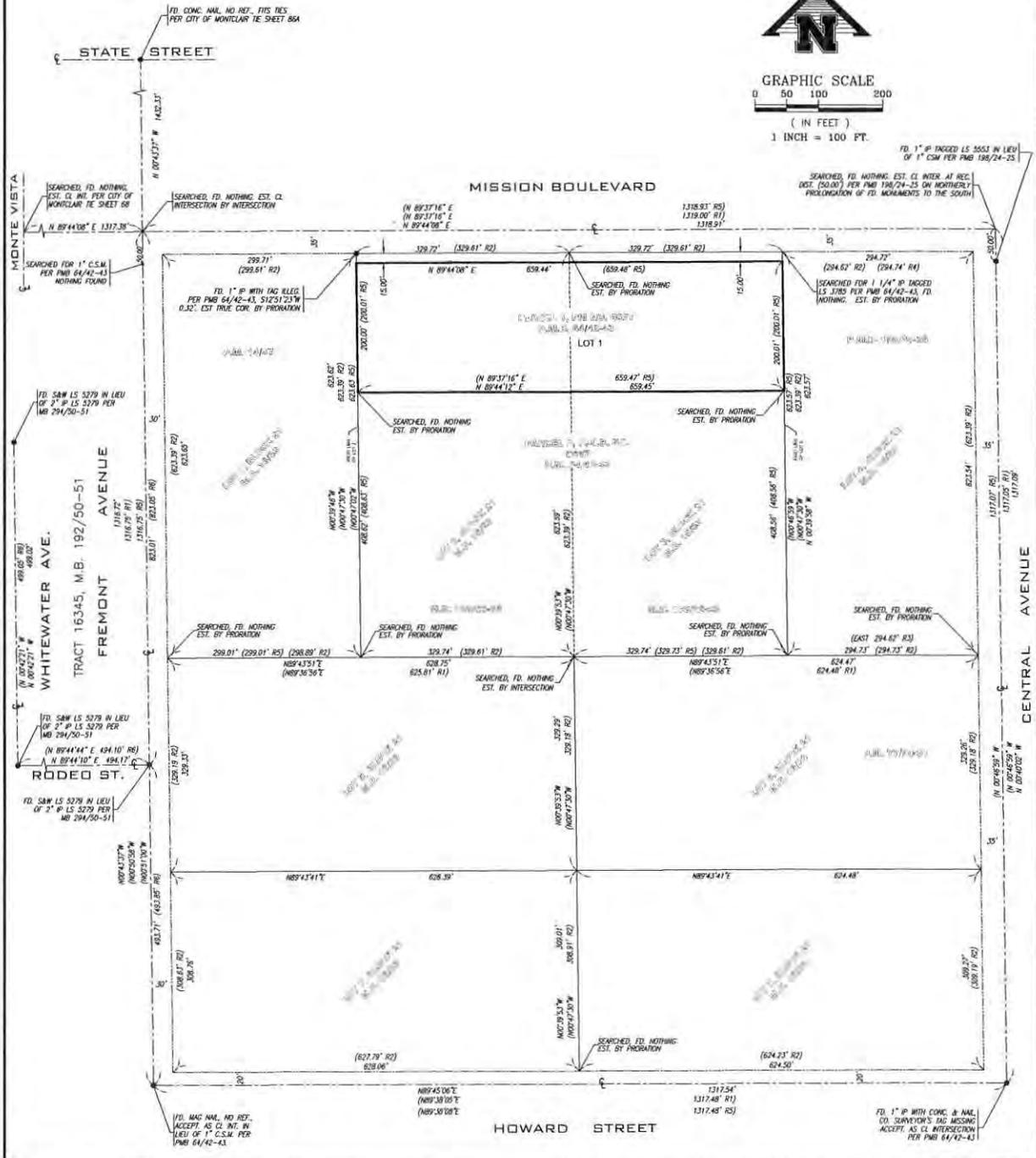
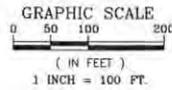
C.S.M. INDICATES SAN BERNARDINO COUNTY SURVEYOR'S MONUMENT
C.S.F.B. INDICATES SAN BERNARDINO COUNTY SURVEYOR'S FIELD BOOK

BASIS OF BEARINGS:

THE BEARINGS SHOWN HEREON ARE BASED ON THE CENTERLINE OF WHITEWATER AVENUE AS SHOWN BY MAP RECORDED IN BOOK 294, PAGES 50 AND 51 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN BERNARDINO, SHOWN AS NO 4221 W THEREON.

LEGEND:

- INDICATES FOUND MONUMENT AS NOTED
- R1 INDICATES RECORD BEARINGS & DISTANCES PER PMB 77/90-91.
- R2 INDICATES RECORD BEARINGS & DISTANCES PER MB 16/33.
- R3 INDICATES RECORD BEARINGS & DISTANCES PER INST. NO.2007-720428 O.R.
- R4 INDICATES RECORD BEARINGS & DISTANCES PER PMB 198/24-25.
- R5 INDICATES RECORD BEARINGS & DISTANCES PER PMB 64/42-43.
- R6 INDICATES RECORD BEARINGS & DISTANCES PER MB 294/50-51.

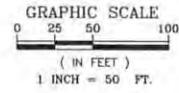


1 LOT
3.03 ACRES GROSS/NET

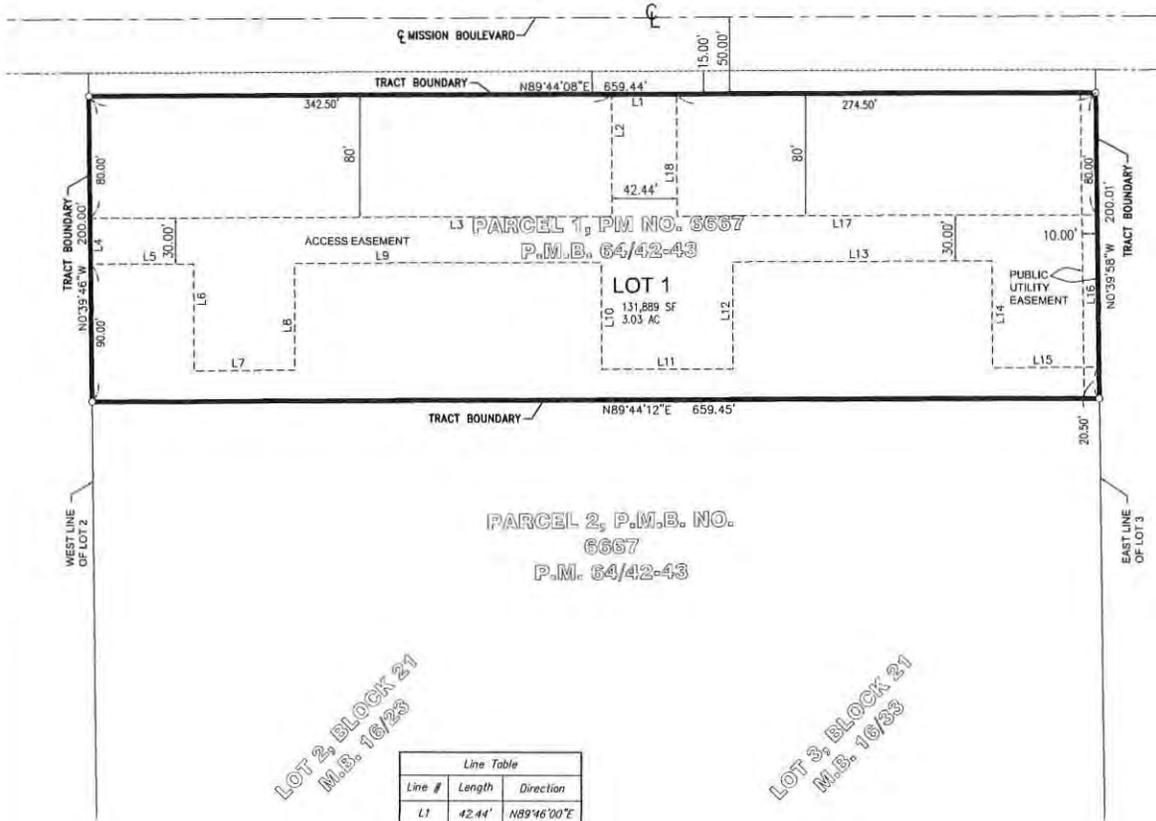
TRACT NO. 19970

SHEET 3 OF 3 SHEETS

IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA
BEING A SUBDIVISION OF PARCEL 1 OF PARCEL MAP NO. 6667 AS SHOWN BY
MAP ON FILE IN BOOK 64, PAGES 42 AND 43 OF MAPS, IN THE
OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
FOR CONDOMINIUM PURPOSES - 31 UNITS
KELSOE AND ASSOCIATES, INC. JUNE 2015



SEE SHEET 2 FOR SURVEYOR'S NOTES AND LEGEND



LOT 2, BLOCK 21
M.B. 16/23

LOT 3, BLOCK 21
M.B. 16/23

Line #	Length	Direction
L1	42.44'	N89°46'00"E
L2	80.02'	N075°52'W
L3	341.94'	N89°44'08"E
L4	30.00'	N0°39'46"W
L5	67.46'	N89°44'08"E
L6	70.00'	N075°52'W
L7	66.00'	N89°44'08"E
L8	70.00'	N075°52'W
L9	201.00'	N89°44'08"E
L10	70.00'	N075°52'W
L11	86.00'	N89°44'08"E
L12	70.00'	N075°52'W
L13	170.00'	N89°44'08"E
L14	70.00'	N075°52'W
L15	69.48'	N89°20'02"E
L16	99.52'	N0°39'58"W
L17	275.06'	N89°44'08"E
L18	80.00'	N075°52'W

SUBDIVISION AGREEMENT

for

TRACT NO. 19970

This Agreement, made and entered into by and between the City of Montclair, State of California (hereinafter called "City"), and MISSION 31, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (hereinafter called "Subdivider") on the date signed by the Mayor of the City.

A. RECITALS

(i) City has previously approved a tentative subdivision map for **Tract No. 19970** in the City of Montclair;

(ii) Subdivider wants the final subdivision map for **Tract No. 19970** recorded with the San Bernardino County Recorder's Office; and

(iii) As a condition of the approval of said tentative subdivision map and authorization for the recording of same, Subdivider is required to enter into an agreement to complete certain improvements as required by Government Code Section 66462.

B. AGREEMENT

It is agreed by and between the parties hereto as follows:

FIRST: Subdivider, for and in consideration of the approval by the City of the final map of that certain land division, or that certain other land development project, known as **Tract No. 19970**, agrees, at Subdivider's own expense, to furnish all labor, equipment, and material necessary, and within eighteen (18) months from the date this Agreement is executed, to perform and complete in a good and workmanlike manner, all of the required improvements in accordance with those improvement plans for said project which have been approved by the City Engineer, and are on file in the office of the City Engineer, and to do all work incidental thereto in accordance with the standards set forth in City ordinances and regulations, and pay all costs of engineering necessary in connection therewith, which are expressly made a part of this Agreement. All of the above required work shall be done under the inspection of and to the satisfaction of the City Engineer, and shall not be deemed complete until approved and accepted as complete by the City. In case of dispute, the good faith judgment of the City Engineer shall be final and binding upon the parties. Subdivider further agrees to guarantee the required improvements for a period of one year following acceptance by the City and during this one-year period to repair and replace, to the satisfaction of the City Engineer, any defective work or labor done or defective materials furnished. Subdivider shall complete the improvements described in this paragraph pursuant to Government Code Section 66462. Subdivider shall also complete any offsite improvements required as a condition of approval and with plans approved by the City Engineer at such time as the City acquires an interest in the land which will permit the improvements to be made, and the Subdivider waives the 120-day time limitation set forth in Government Code Section 66462.5. The estimated cost of said work and improvements, pursuant to the

Preliminary Estimate of Cost labeled Exhibit A attached hereto, is the sum of Fifteen Thousand Dollars (\$15,000).

SECOND: Should Subdivider, or his agents or employees, fail to comply with any of the terms or provisions of this Agreement, or fail to perform satisfactorily any of the provisions of the plans and specifications, the Subdivider shall be in default of this Agreement and shall be liable to City for the reasonable value of any work or improvements not completed or improperly done or performed. In the event of any such default, City shall give to Subdivider written notice thereof. Unless the work or improvements covered by said notice, including defective work and improvements, are commenced by Subdivider within fifteen (15) days of the date of said notice and diligently prosecuted to completion, the City may at its option:

(a) Collect from Subdivider the reasonable value of the work and improvements not so done and performed by Subdivider, to be measured by the anticipated costs and expenses of completing the same; or

(b) City may complete said work and improvements not so completed by Subdivider and collect its costs and expenses in completing the same; or

(c) City may, as to some of such work and improvements, proceed under remedy (a) above, and as to the remainder, under remedy (b) above.

City may change any election prior to trial of any lawsuit, and prior thereto no election of remedies shall be binding upon City. In either event, there shall be included in said "costs and expenses" the reasonable overhead expenses of the City. In addition to the foregoing, Subdivider shall be liable to City for reasonable attorney's fees and court costs incurred by City in enforcing the obligations of Subdivider under this Agreement.

The determination by the City Engineer of the questions as to whether any of the terms of the Agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon Subdivider, and any and all parties who may have any interest in the Agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to the City under law.

THIRD: Subdivider agrees to pay to the City the actual cost of such inspection of the works and improvements as may be required by the City Engineer. Subdivider further agrees that, if suit is brought upon this Agreement or any bond guaranteeing the completion of the required improvements, all costs and reasonable expenses and fees incurred by the City in successfully enforcing such obligations shall be paid by Subdivider and guaranteed by the surety in addition to the face amount of the security, including reasonable attorney's fees, and that, upon entry of judgment, such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

FOURTH: City shall not, nor shall any officer or employee of City, except for its or their sole negligence, be liable or responsible for any accident, loss, or damage happening or occurring to the works specified in this Agreement prior to the completion and approval thereof, nor shall City or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts

or omissions of Subdivider, his/her agents or employees, in the performance of the work, and all of said liabilities are assumed by Subdivider. Subdivider agrees to protect, defend and hold harmless City and the elected and appointed officials, officers, and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Subdivider, his/her agents and employees, in the performance of this Agreement.

FIFTH: The Subdivider hereby grants to the City and/or to any authorized agent or employee of the City, the irrevocable permission to enter upon the lands of the above-referenced land division for the purpose of completing the improvements. This permission shall terminate in the event that the Subdivider has completed the work within the time specified or any extension thereof granted by the City.

SIXTH: Subdivider agrees at all times, up to the completion and acceptance of the improvements by the City, to give good and adequate warning to the traveling public of each and every dangerous condition caused by the construction of the improvements, and to protect the traveling public from such defective or dangerous conditions. The Subdivider shall keep all traveled ways that are a part of, or affected by the construction of this project free and clear of mud, dirt, and debris.

SEVENTH: The Subdivider, his/her agents and employees, shall give notice to the City Engineer at least fifteen (15) days before beginning any work and shall furnish said City Engineer with the identity of the contractors performing the work and other information requested by the City Engineer.

EIGHTH: Subdivider agrees to file with City, prior to the date this Agreement is executed, a good and sufficient improvement security in an amount not less than 100 per cent of the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this Agreement, and good and sufficient security for payment of labor and materials in an amount not less than 100 per cent to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California. Subdivider agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amounts of said bond or bonds, or both, within ten (10) days after being notified by the City Engineer that the sureties or amounts are insufficient. Notwithstanding any other provision herein, if Subdivider fails to take such action as is necessary to comply with said notice, he/she shall be in default of this Agreement unless all required improvements are completed within ninety (90) days of the date on which the City Engineer notified the Subdivider of the insufficiency of the security or the amount of the bonds or both.

In lieu of a bond, Subdivider may either:

(a) Deposit with City the sum of Fifteen Thousand Dollars (\$15,000) to guarantee the performance of this Agreement. In choosing this option, Subdivider waives all right to interest on the cash deposit while the same is being held by City; or

(b) Subdivider agrees to deposit with City, in trust, the sum of Fifteen Thousand Dollars (\$15,000) in an account at _____ to guarantee the performance of this Agreement. Said account shall read "City of Montclair, as Trustee," and the interest from said account shall be paid to Subdivider.

Subdivider shall increase the sums on deposit and/or in said account within ten (10) days of notification by the City Engineer that the amounts on deposit and/or in said account are insufficient.

In the event of Subdivider's default as set forth herein, the City may utilize the sums on deposit and/or withdraw sums from the above account at its sole discretion to complete the improvements herein.

NINTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds securing this Agreement that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this Agreement, extensions of time **may** be granted by the City from time to time, either at its own option, or upon request of Subdivider, and such extensions shall in no way affect the validity of this Agreement or release the surety or sureties on said bonds. Subdivider further agrees to maintain the aforesaid bonds in full force and effect during the terms of this Agreement, including any extensions of time as may be granted therein.

TENTH: Within thirty-five (35) days after completion of all construction as certified by the City Engineer, the City Council may authorize payment to Subdivider of that portion of said deposit of money held as guarantee for faithful performance or the cancellation of the faithful performance bond. Within six (6) months after completion of all construction as certified by the City Engineer that portion of said deposit held as guarantee for payment for labor and materials or the labor and materials bond may be released, providing that at the end of said six (6) month period there have been no liens or claims filed against this work. However, cash deposits may be withdrawn in twenty-five percent (25%) increments subject to the following provisions:

(a) Partial refunds shall only be made upon written request when improvements which exceed the requested refund by at least ten percent (10%) in cost have been approved and accepted by City. Also, a surety bond guaranteeing payment for all labor and materials will be required before any said refund will be approved.

(b) Refunds will be made providing written request for same is filed with the City Engineer forty (40) working hours before a regular Council meeting.

ELEVENTH: Insurance Requirements

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

(1) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, with minimum limits of at least \$1,000,000 per occurrence for bodily injury, personal injury and property damage, and \$2,000,000 aggregate total bodily injury, personal injury and property damage. Commercial General Liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

Products-Completed Operations: Contractor shall procure and submit to City evidence of insurance for a period of at least three (3) years from the time that all work under this Contract is completed.

(2) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$1,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

(3) **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.

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

(1) The insurance coverages required by Section (a)(1) Commercial General Liability; and (a)(2) Automobile Liability Insurance shall contain the following provisions or be endorsed to provide the following:

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

Additional Insured Endorsements shall not:

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

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

(2) The policy or policies of insurance required by Section (a)(3) Workers' Compensation shall be endorsed, as follows:

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

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

(d) Waiver of Subrogation-Required insurance coverages shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all rights of subrogation against the indemnified parties and Policies shall contain or be endorsed to contain such a provision.

(e) Evidence of Insurance-The Contractor, concurrently with the execution of the contract, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention-Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

(g) Contractual Liability-The coverage provided shall apply to the obligations assumed by the Contractor under the indemnity provisions of this contract.

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

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

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

(j) Claims Made Policies-If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Contractor's Contract with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least three (3) years from termination or expiration of this Contract.

Upon expiration or termination of coverage of required insurance, Contractor shall procure and submit to City evidence of "tail" coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from the time that all work under this contract is completed.

(k) Insurance for Subcontractors-Contractor shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Contract/Agreement, including adding the City as an Additional Insured to the Subcontractor's policies.

TWELFTH: It is understood and agreed by the parties hereto that, if any part, term or provision of this Agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, item or provision held to be invalid.

THIRTEENTH: Any notice or notices required or permitted to be given pursuant to this Agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

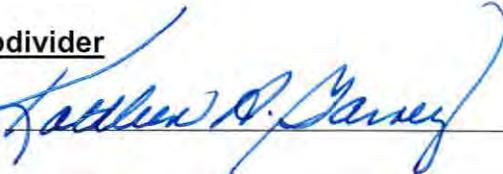
City:
Michael C. Hudson, City Engineer
City of Montclair
5111 Benito
Montclair, CA 91763

Subdivider:
Kathleen A. Garvey, Managing Member
Mission 31, LLC, a California Limited
Liability Company
510 West Citrus Edge Street
Glendora, CA 91740

IN WITNESS WHEREOF, Subdivider has affixed his name, address and seal.

Date approved by the City: _____

City
By: _____
Mayor

Subdivider
By:  _____

ATTEST:
By: _____
City Clerk

(Print Name/Title)

By: _____

APPROVED AS TO FORM:
CITY ATTORNEY
By: _____
Diane Robbins
City Attorney

(Print Name/Title)

Date: _____

NOTE: TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS UNLESS CORPORATE DOCUMENTS ARE PROVIDED THAT INDICATE OTHERWISE.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

} SS.

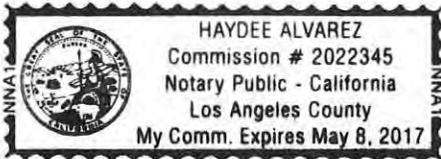
CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On January 29, 2016, before me, Haydee Alvarez - Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Kathleen A. Garvey,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

[Handwritten Signature]
Signature of Notary Public

(Seal)

OPTIONAL INFORMATION

Although the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document date _____

(Additional information)

Additional Information

Additional Signer(s)

Signer(s) Thumbprint(s)

Other

Signer's Name: _____ Signer's Name: _____

Right Thumbprint of Signer Right Thumbprint of Signer

Capacity Claimed By The Signer

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other: _____

EXHIBIT A

**CITY OF MONTCLAIR
ENGINEERING DIVISION
ESTIMATE FOR BOND PURPOSES**

Tract 19970

Prepared in the office of
Encompass Associates, Inc.

Civil Engineers
5699 Cousins Place
Rancho Cucamonga, CA 91737
(909) 684-0093 Fax 586-6979

DATE PREPARED: 12/18/2015
DATES REVISED: _____
PROJECT NAME: Tract 19970
PREPARED BY: ATS
LOTS: 31

QUANTITY	UNIT	ITEM	UNIT PRICE	AMOUNT
<u>1,000</u>	SF	Removal of AC Pavement (allowance, trenches)	\$1.00	<u>\$1,000.00</u>
<u>58</u>	LF	Removal of PCC Curb	\$4.00	<u>\$232.00</u>
<u>400</u>	SF	Removal of PCC Sidewalk	\$2.00	<u>\$800.00</u>
<u>37</u>	TON	Street AC (under 500 tons) (allowance, trenches)	\$80.00	<u>\$2,960.00</u>
<u>34</u>	TON	Street Aggregate Base	\$25.00	<u>\$850.00</u>
<u>630</u>	SF	Street Drive Approach Commercial	\$8.00	<u>\$5,040.00</u>
_____				_____
_____				_____
_____				_____

SUBTOTAL: \$10,882.00
CONTINGENCY (15% of Subtotal): \$1,632.30
TOTAL ESTIMATE: \$12,514.30

FAITHFUL PERFORMANCE BOND (100% OF Total Estimate): \$15,000.00
LABOR AND MATERIAL BOND (100% of Faithful Performance Bond): \$15,000.00
MONUMENTATION (CASH) SURETY: \$10,000.00

BOND FOR FAITHFUL PERFORMANCE
(Subdivision Agreement)

Whereas, the **CITY COUNCIL OF THE CITY OF MONTCLAIR**, State of California, and **MISSION 31, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY** (hereinafter designated as "principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 2016, and identified as Tract No. 19970, is hereby referred to and made a part hereof; and

Whereas, said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and International Fidelity Insurance Company, as surety, are held and firmly bound unto the **CITY OF MONTCLAIR**, hereinafter called ("**CITY**"), in the penal sum of Fifteen Thousand Dollars (\$15,000) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless **CITY**, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect. As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by **CITY** in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on _____ January 21, 2016.

SURETY International Fidelity Insurance Company

William Syrkin, Attorney-In-Fact

PRINCIPAL Mission 31, LLC, a California Limited Liability Company

Katherine D. Cheney
Managing Member

(SEAL) (SEAL)

<Insert/Attach Notary Certificate(s)>

POWER OF ATTORNEY

INTERNATIONAL FIDELITY INSURANCE COMPANY ALLEGHENY CASUALTY COMPANY

ONE NEWARK CENTER, 20TH FLOOR NEWARK, NEW JERSEY 07102-5207

KNOW ALL MEN BY THESE PRESENTS: That INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and ALLEGHENY CASUALTY COMPANY a corporation organized and existing under the laws of the State of Pennsylvania, having their principal office in the City of Newark, New Jersey, do hereby constitute and appoint

REBECCA HAAS-BATES, RICHARD ADAIR, OWEN M. BROWN, WILLIAM SYRKIN

Irvine, CA.

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 20th day of July, 2010 and by the Board of Directors of ALLEGHENY CASUALTY COMPANY at a meeting duly held on the 15th day of August, 2000:

"RESOLVED, that (1) the President, Vice President, Chief Executive Officer or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY have each executed and attested these presents on this 22nd day of July, 2014.



STATE OF NEW JERSEY
County of Essex

ROBERT W. MINSTER
Chief Executive Officer (International Fidelity Insurance Company) and President (Allegheny Casualty Company)



On this 22nd day of July 2014, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.



A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 16, 2019

CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this

21st

day of

January, 2016

MARIA BRANCO, Assistant Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On January 21, 2016 before me, Corinne L. Hernandez, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared William Syrkin
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Corinne L. Hernandez
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: International Fidelity
Insurance Company

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

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State of California

County of Los Angeles

} SS.

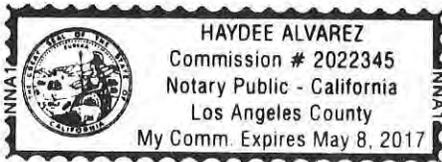
CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On January 27, 2016, before me, Haydee Alvarez - Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Kathleen A. Garvey,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

[Handwritten Signature]
Signature of Notary Public

(Seal)

OPTIONAL INFORMATION

Although the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document date _____

(Additional information)

Additional Information

Additional Signer(s)

Signer(s) Thumbprint(s)

Other

Signer's Name: _____ Signer's Name: _____

Right Thumbprint of Signer	Right Thumbprint of Signer

Capacity Claimed By The Signer

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other: _____

LABOR AND MATERIAL BOND
(Subdivision Agreement)

Whereas, the **CITY COUNCIL OF THE CITY OF MONTCLAIR**, State of California, and **MISSION 31, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY** (hereinafter designated as "principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements which said agreement, dated _____, 2016, and identified as Tract No. 19970, is hereby referred to and made a part hereof; and

Whereas, under the terms of said agreement, principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Montclair to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

Now, therefore, said principal and the undersigned as corporate surety, are held firmly bound unto the **CITY OF MONTCLAIR** and all contractors, subcontractors, laborers, material men and other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Civil Code in the sum of Fifteen Thousand Dollars (\$15,000), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by **CITY** in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

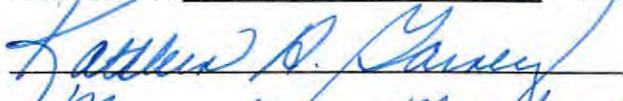
In witness whereof, this instrument has been duly executed by the principal surety above named, on _____ January 21, 2016.

SURETY International Fidelity
Insurance Company

PRINCIPAL Mission 31, LLC,
a California Limited Liability Company



William Syrkin, Attorney-In-Fact



Managing Member

(SEAL) (SEAL)

<Insert/Attach Notary Certificate(s)>

POWER OF ATTORNEY

INTERNATIONAL FIDELITY INSURANCE COMPANY ALLEGHENY CASUALTY COMPANY

ONE NEWARK CENTER, 20TH FLOOR NEWARK, NEW JERSEY 07102-5207

KNOW ALL MEN BY THESE PRESENTS: That INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and ALLEGHENY CASUALTY COMPANY a corporation organized and existing under the laws of the State of Pennsylvania, having their principal office in the City of Newark, New Jersey, do hereby constitute and appoint

REBECCA HAAS-BATES, RICHARD ADAIR, OWEN M. BROWN, WILLIAM SYRKIN

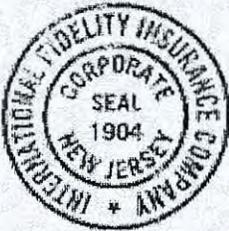
Irvine, CA.

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 20th day of July, 2010 and by the Board of Directors of ALLEGHENY CASUALTY COMPANY at a meeting duly held on the 15th day of August, 2000:

"RESOLVED, that (1) the President, Vice President, Chief Executive Officer or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognition, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY have each executed and attested these presents on this 22nd day of July, 2014.



STATE OF NEW JERSEY
County of Essex

ROBERT W. MINSTER
Chief Executive Officer (International Fidelity Insurance Company) and President (Allegheny Casualty Company)



On this 22nd day of July 2014, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.



A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 16, 2019

CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 21st day of January, 2016

MARIA BRANCO, Assistant Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On January 21, 2016 before me, Corinne L. Hernandez, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared William Syrkin
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Corinne L. Hernandez
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: International Fidelity
Insurance Company

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California
County of Los Angeles } **SS.**

On January 27, 2016, before me, Haydee Alvarez - Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Kathleen A. Garvey,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

[Handwritten Signature]
Signature of Notary Public

(Seal)

OPTIONAL INFORMATION

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(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document date _____

(Additional information)

Additional Information

Additional Signer(s)

Signer(s) Thumbprint(s)

Other

Signer's Name: _____ Signer's Name: _____

Right Thumbprint of Signer	Right Thumbprint of Signer

Capacity Claimed By The Signer

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other: _____

MONUMENT BOND
(Subdivision Agreement)

Whereas, the **CITY COUNCIL OF THE CITY OF MONTCLAIR**, State of California, (hereinafter designated as "City"), and **MISSION 31, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY** (hereinafter designated as "Principal") have entered into an agreement whereby Principal agrees to install certain improvements for Tract No. 19970; and

Whereas, under the terms of said agreement, Principal is required to set or caused to be set certain survey monuments and centerline points.

Now, therefore, said Principal and the undersigned as corporate surety, are held firmly bound unto City, and

FIRST: Principal hereby agrees at Principal's own cost and expense, to furnish all labor, material, and equipment necessary to perform and complete, within one year from the date hereof, in a good and workmanlike manner the setting of survey monuments and centerline points and furnishing to the City Engineer of said City centerline tie notes for said points according to the applicable Ordinances of said City.

SECOND: That it is further agreed that said Principal has filed a good and sufficient bond or posted cash with said City in the amount Ten Thousand Dollars (\$10,000) to guarantee the faithful performance of this agreement.

THIRD: That it is further agreed by and between City and Principal, including the Surety or Sureties on the bonds attached hereto, that in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this agreement, said extension may be granted by City and shall in no way affect the validity of this agreement or release the surety or sureties on the bonds attached hereto.

FOURTH: That it is further agreed that if the Principal fails to obtain completion of the work within the time specified or extensions thereof, City may upon written notice to the Principal and surety or sureties, cease and terminate this agreement. In the event of such termination, the surety or sureties shall have the right to take over and complete the work, provided that if the surety or sureties do not commence performance within ten days following written notice from City of such termination, City may complete the work by any means it may deem advisable at the expense of Principal and surety or sureties, and in such event, City without liability for so doing, may take possession of and utilize in completion said work such materials, equipment and other property belonging to Principal as may be on the site of the work and necessary therefor.

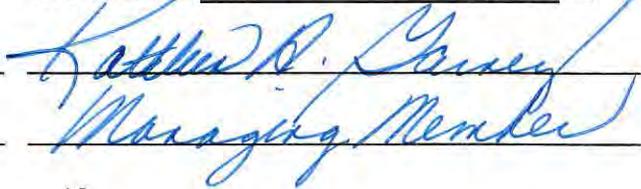
In witness whereof, this instrument has been duly executed by the principal surety above named, on _____ January 21, 2016.

International Fidelity
SURETY Insurance Company

Mission 31, LLC
PRINCIPAL a California Limited Liability Company



William Syrkin, Attorney-In-Fact



Managing Member

(SEAL) (SEAL)

<Insert/Attach Notary Certificate(s)>

POWER OF ATTORNEY

INTERNATIONAL FIDELITY INSURANCE COMPANY ALLEGHENY CASUALTY COMPANY

ONE NEWARK CENTER, 20TH FLOOR NEWARK, NEW JERSEY 07102-5207

KNOW ALL MEN BY THESE PRESENTS: That INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and ALLEGHENY CASUALTY COMPANY a corporation organized and existing under the laws of the State of Pennsylvania, having their principal office in the City of Newark, New Jersey, do hereby constitute and appoint

REBECCA HAAS-BATES, RICHARD ADAIR, OWEN M. BROWN, WILLIAM SYRKIN

Irvine, CA.

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 20th day of July, 2010 and by the Board of Directors of ALLEGHENY CASUALTY COMPANY at a meeting duly held on the 15th day of August, 2000:

"RESOLVED, that (1) the President, Vice President, Chief Executive Officer or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY have each executed and attested these presents on this 22nd day of July, 2014.



STATE OF NEW JERSEY
County of Essex

ROBERT W. MINSTER
Chief Executive Officer (International Fidelity Insurance Company) and President (Allegheny Casualty Company)



On this 22nd day of July 2014, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.



A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 16, 2019

CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 21st day of January, 2016

MARIA BRANCO, Assistant Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On January 21, 2016 before me, Corinne L. Hernandez, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared William Syrkin
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Corinne L. Hernandez
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: International Fidelity
Insurance Company

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

} SS.

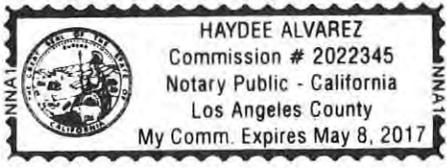
CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On January 27, 2016, before me, Haydee Alvarez - Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Kathleen A. Garvey,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

[Handwritten Signature]
Signature of Notary Public

(Seal)

OPTIONAL INFORMATION

Although the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document date _____

(Additional information)

Additional Information

Additional Signer(s)

Signer(s) Thumbprint(s)

Other

Signer's Name: _____ Signer's Name: _____

Right Thumbprint of Signer	Right Thumbprint of Signer

Capacity Claimed By The Signer

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other: _____

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NOS. 16-02, 16-03, 16-04, 16-05, AND 16-06 WITH MONTCLAIR GOLDEN GIRLS SOFTBALL LEAGUE, MONTCLAIR LITTLE LEAGUE, AND ALL CITIES YOUTH BASEBALL FOR USE OF BALL FIELD FACILITIES	DATE: February 16, 2016
	SECTION: AGREEMENTS
	ITEM NO.: 2
	FILE I.D.: ATH020/215/218
	DEPT.: HUMAN SVCS.

REASON FOR CONSIDERATION: The Golden Girls Softball League, Montclair Little League, and All Cities Youth Baseball have requested use of City facilities for their spring/summer sports activities.

Proposed Agreement Nos. 16-02, 16-03, 16-04, 16-05, and 16-06 are attached for City Council review and consideration.

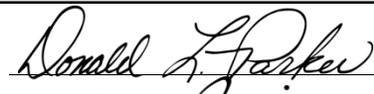
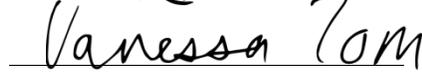
BACKGROUND: Pursuant to Agreement No. 16-02, Golden Girls Softball League would use the fields at Vernon Park for its softball activities on weekdays and Saturdays. Pursuant to Agreement Nos. 16-03 and 16-04, Montclair Little League would use the northwest field at Kingsley Park on weekdays and Saturdays; and the two southern and two northern fields at Saratoga Park on Mondays, Tuesdays, Wednesdays, Thursdays, and Saturdays for its baseball activities. Pursuant to Agreement Nos. 16-05 and 16-06, All Cities Youth Baseball would use Essex Park weekdays and Saturdays; and the two southern and two northern fields at Saratoga Park on Fridays for its baseball activities. Sunday field use by all leagues is not permitted.

The Golden Girls Softball League, Montclair Little League, and All Cities Youth Baseball have each requested the use of lights for activities that may be conducted after dark. The cost of electrical services associated with such lighting will be divided equally between the requesting league and the City of Montclair at the rate of \$20 per hour, per field, for such use.

The terms of proposed Agreement Nos. 16-02, 16-03, 16-04, 16-05, and 16-06 with Golden Girls Softball League, Montclair Little League, and All Cities Youth Baseball, respectively, are February 2, 2016, through August 31, 2016.

FISCAL IMPACT: Approval of the proposed Agreements would have no fiscal impact. Maintenance costs for the fields are incorporated in the Fiscal Year 2015-2016 Budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement Nos. 16-02, 16-03, 16-04, 16-05, and 16-06 with Golden Girls Softball League, Montclair Little League, and All Cities Youth Baseball, respectively, for use of the subject ball field facilities.

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

**AGREEMENT NO. 16-02
WITH MONTCLAIR GOLDEN GIRLS SOFTBALL LEAGUE
FOR USE OF VERNON PARK**

THIS AGREEMENT is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Montclair Golden Girls Softball League hereinafter called "LEAGUE."

WITNESSETH:

WHEREAS, CITY presently has softball fields (the east and west fields) generally located at the southeast corner of the Vernon Junior High School complex, south of the corner of Benson Avenue and San Bernardino Street, Montclair, California; and

WHEREAS, said Park has been developed to provide areas for youth sports, on which premises LEAGUE desires to use for girls softball activities at such times and hours set forth in Section 1(x). The term of this Agreement is for February 2, 2016, through August 31, 2016.

SECTION 1: LEAGUE hereby agrees as follows:

- a. Not to use the premises for any other purpose, except as above indicated.
- b. Not to permit practice sessions in the southeast quadrant of the field; to provide specific written notice to each coach and, in turn, obtain written confirmation from each coach.
- c. Not to sublet the field.
- d. Not to make any improvements or alterations on said premises.
- e. Not to charge for parking of vehicles in the parking lots located within CITY facilities and not to park in the fields or walkways.
- f. Not to erect any barriers or fences of any kind unless approved by CITY.
- g. Not to use herbicides at the park for any purpose.
- h. Not to disconnect or make changes to existing phone line account
- i. To provide the CITY with a written list of all items to be stored in park buildings. No items should be stored in rest room facilities, except rest room supplies. Any items found to be stored in buildings without prior written authorization from the CITY will be removed by city crews with or without prior notice to LEAGUE. Any cost incurred by the CITY by removing, storing, or disposal of said property shall be the responsibility of LEAGUE.
- j. To maintain rest room facilities and to furnish all supplies for the rest rooms. To police the entire premises after each day's use and pick up all paper, trash, and other debris that may have accumulated, and leave the

premises in a condition acceptable to CITY. This work shall be completed within two hours after an activity has ended. If the premises are not maintained as stated a contracted cleaning agency will be hired by the CITY and the LEAGUE will be responsible for all fees related to the service.

- k. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, countertops and utensils after each day's use and leave the snack bar in a condition acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items.
- l. The use of a barbecue is not permitted on a regular basis due to Health Department regulations; however, if a one-time fundraising day is scheduled the following guidelines must be followed: to ensure when a barbecue is used, it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used; all safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed; LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.
- m. To deposit with the CITY representative the sum of Two Hundred Dollars (\$200) as a refundable cleaning deposit to ensure the proper care and cleanup of the snack bar and equipment therein. At the end of the playing season, an inspection shall be conducted by CITY and LEAGUE representatives to ensure that all areas and CITY-owned equipment have been properly cared for and cleaned up. All non-CITY-owned equipment, with exception of refrigerators, freezers, and ice machines, shall be removed from snack bar areas. Refrigerators, freezers, and ice machines owned by LEAGUE shall be cleaned out, doors left open, and electrical turned off. Any food items left in the refrigerators and/or freezers will be discarded by the CITY.
- n. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snackbar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.
- o. To be responsible for all costs as a result of lost or stolen keys.
- p. To follow proper call-out procedures in an emergency (an urgent need for assistance or some type of immediate action) by using only telephone numbers issued for this purpose. A Contact List containing the emergency telephone numbers is attached.
- q. LEAGUE agrees to assist CITY in keeping order in the park area and to provide responsible supervision as may be necessary to prevent vandalism or malicious mischief to the property including for graffiti removal on buildings within 24 hours of notification, contact Graffiti Abatement Hotline at 625-9429 and report vandalism immediately to the Public Works

Superintendent at 625-9466. LEAGUE will not attempt to remove Graffiti or make repairs to building. LEAGUE shall furnish and supply personnel to conduct and supervise LEAGUE activities on the premises.

- r. If LEAGUE elects to use lights for activities conducted after dark, LEAGUE agrees to divide the cost of electrical services associated with such lighting equally with CITY at the rate of Twenty Dollars (\$20) per hour, per field; and LEAGUE will remit prompt payment to CITY upon receipt of monthly invoice.
- s. To provide the CITY representative with a list of the Board of Directors, including names, addresses, and telephone numbers.
- t. To provide CITY with participant rosters, practice and game schedules.
- u. To provide CITY with financial statements upon request for audit purposes.
- v. To designate one individual as the LEAGUE's representative to work with the CITY's representative.
- w. This Agreement is subject to the terms and conditions of any master lease CITY may have with another public agency, of which LEAGUE had knowledge.
- x. It is agreed that LEAGUE may use said baseball fields from February 2, 2016, through August 31, 2016, Mondays through Fridays generally commencing at 4:00 p.m. and Saturdays generally commencing at 8:00 a.m. No activities will be conducted past 9:45 p.m.
- y. **PUBLIC LIABILITY AND PROPERTY DAMAGE:** Throughout the term of this Agreement, at LEAGUE's sole cost and expense, LEAGUE shall keep, or cause to be kept, in full force and effect for the mutual benefit of CITY and LEAGUE comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property providing proof of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person or for any one accident or occurrence and at least Three Hundred Thousand Dollars (\$300,000) for property damage. All insurance required by this Agreement shall be carried only by responsible insurance companies duly admitted to transact business in the State of California and shall name as additional insured the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer and the insured waive the right of subrogation against CITY and CITY's elected officials, officers, employees, and agents; (2) the policies are primary and non contributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' notice, in writing by the insurer to CITY by certified mail. LEAGUE shall furnish CITY with copies of such policies promptly upon receipt of them or certificate(s) evidencing the insurance.
- z. **INDEMNIFICATION:** LEAGUE shall defend, indemnify and save harmless CITY, its elected and appointed officials, officers, agents, and employees

from all liability from loss, damage, or injury to persons or property including the payment by LEAGUE of any and all legal costs and attorneys' fees in any manner arising out of any negligent or intentional or willful acts or omissions of the LEAGUE in the activities, use, or occupancy of the PREMISES including, but not limited to, all consequential damages, to the maximum extent permitted by law.

- aa. It is understood and agreed that there is no relationship of employer-employee for Workers' Compensation purposes between CITY and any person connected with the LEAGUE, unless such person is otherwise regularly employed by and conducting official business of CITY.
- bb. To conduct all operations in compliance with the Americans with Disabilities Act.
- cc. LEAGUE shall provide CITY with at least two (2) weeks' notice for room reservations for use of CITY facilities for LEAGUE meetings.
- dd. LEAGUE may place banners up on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Banners are not allowed to stay up on Sundays. Banners must be no greater than 3'X 5'. Banners will be attached to outfield chain link fence using clip on rings. Banner clearance from turf is a minimum of 2". The City will determine if a banner is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said banner. The CITY has the right to remove and dispose of any banner that is not displayed following the above mentioned procedures.

SECTION 2: CITY hereby agrees as follows:

- a. To maintain the periphery of the premises, including shrubs and trees, and mow all grass on a year-round basis.
- b. To pay for all water used on premises.
- c. To have full control over watering the entire premises. LEAGUE shall not adjust or readjust or otherwise change the sprinkler system or water control facilities.
- d. To provide emergency call-out telephone numbers for use by LEAGUE. A Contact List containing the emergency telephone numbers is attached.
- e. To invoice LEAGUE monthly for the costs of separately metered field lighting related to use prior to regular season play.
- f. To refund, at the end of the agreement period and upon approval of the Director, LEAGUE's cleaning deposit.
- g. To designate a CITY representative to work with LEAGUE on all non-maintenance issues relating to the use of CITY facilities.

NOW, THEREFORE, if any terms of this Agreement are not complied with, the Agreement will become null and void and the LEAGUE will be refused use of CITY facilities.

APPROVED AND ADOPTED this _____ day of _____, 2016.

LEAGUE:

CITY:

GOLDEN GIRLS SOFTBALL

CITY OF MONTCLAIR

President

Paul M. Eaton
Mayor

Secretary

ATTEST:

Andrea M. Phillips
Deputy City Clerk

CITY OF MONTCLAIR – CONTACT LIST FOR SPORTS LEAGUES

FEBRUARY – AUGUST 2016

<i>Request Description</i>	<i>Contact Title</i>	<i>Contact Name</i>	<i>Contact Phone</i>
After Hours Emergency	Montclair Police Dept.	Contact	(909) 621-4771
Sports League Administration	Sports League Liaison	Fernando Saltos	work (909) 625-9496
Building Maintenance	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Ground Maintenance	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Graffiti Removal	Graffiti Abatement Hotline	Contact	(909) 625-9429
Vandalism	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Secondary Contact for Mike McGehee	Public Works Superintendent	Xavier Mendez	work (909) 625-9467

**AGREEMENT NO. 16-03
WITH MONTCLAIR LITTLE LEAGUE
FOR USE OF KINGSLEY PARK**

THIS AGREEMENT is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Montclair Little League, hereinafter called "LEAGUE." This Agreement is contingent upon the LEAGUE fulfilling its prior contract's financial obligations and paying any and all outstanding invoices owed to the CITY. Use of any and all facilities listed herein may not be used until all fees have been paid.

WITNESSETH:

WHEREAS, CITY presently has a baseball field generally located at the northwest end of Kingsley Elementary School at Benson Avenue and Kingsley Street, Montclair, California, and

WHEREAS, said Park has been developed to provide areas for youth sports, on which premises LEAGUE desires to use for Junior/Senior Little League baseball activities at such times and hours set forth in Section 1(y). The term of this Agreement is for February 2, 2016, through August 31, 2016.

SECTION 1: LEAGUE hereby agrees as follows:

- a. Not to use the premises for any other purpose, except as above indicated.
- b. Not to sublet the field.
- c. Not to make any improvements or alterations on said premises.
- d. Not to charge for parking of vehicles in the parking lots located within CITY facilities and not to park in the fields or walkways.
- e. Not to erect any barriers or fences of any kind unless approved by CITY.
- f. Not to use herbicides at the park for any purpose.
- g. Not to disconnect or make changes to existing phone line account.
- h. Not to allow hitting balls into the chain link fences for batting practice.
- i. To provide the CITY with a written list of all items to be stored in park buildings. No items should be stored in rest room facilities, except rest room supplies. Any items found to be stored in buildings without prior written authorization from the CITY will be removed by city crews with or without prior notice to LEAGUE. Any cost incurred by the CITY by removing, storing, or disposal of said property shall be the responsibility of LEAGUE.
- j. To maintain rest room facilities and to furnish all supplies for the rest rooms. To police the entire premises after each day's use and pick up all paper, trash, and other debris that may have accumulated, and leave the

premises in a condition acceptable to CITY. This work shall be completed within two hours after an activity has ended. If the premises are not maintained as stated a contracted cleaning agency will be hired by the CITY and the LEAGUE will be responsible for all fees related to the service.

- k. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, countertops and utensils after each day's use and leave the snack bar in a condition acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items.
- l. The use of a barbecue is not permitted on a regular basis due to Health Department regulations; however, if a one-time fundraising day is scheduled the following guidelines must be followed: to ensure when a barbecue is used, it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used; all safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed; LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.
- m. To deposit, with the CITY representative, the sum of Two Hundred Dollars (\$200) as a refundable cleaning deposit to ensure the proper care and cleanup of the snack bar, meeting areas, towers, and equipment therein. At the end of the playing season, an inspection shall be conducted by CITY and LEAGUE representatives to ensure that all areas and CITY-owned equipment have been properly cared for and cleaned up. All non-CITY-owned equipment, with exception of refrigerators, freezers, and ice machines, shall be removed from snack bar areas. Refrigerators, freezers, and ice machines owned by LEAGUE shall be cleaned out, doors left open, and electrical turned off. Any food items left in the refrigerators and/or freezers will be discarded by the CITY. Ice machines owned by CITY shall be cleaned out, serviced, and maintained by CITY.
- n. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snackbar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.
- o. To be responsible for the payment of an alarm fee at the rate of Forty Dollars (\$40) per month and to remit prompt payment to CITY upon receipt of monthly invoice.
- p. To follow proper call-out procedures in an emergency (an urgent need for assistance or some type of immediate action) by using only telephone numbers issued for this purpose. A Contact List containing the emergency telephone numbers is attached.
- q. LEAGUE agrees to assist CITY in keeping order in the park area and to provide responsible supervision as may be necessary to prevent vandalism

or malicious mischief to the property including for graffiti removal on buildings within 24 hours of notification, contact Graffiti Abatement Hotline at 625-9429 and report vandalism immediately to the Public Works Superintendent at 625-9466. LEAGUE will not attempt to remove Graffiti or make repairs to building. LEAGUE shall furnish and supply personnel to conduct and supervise LEAGUE activities on the premises.

- r. If LEAGUE elects to use lights for activities conducted after dark, LEAGUE agrees to divide the cost of electrical services associated with such lighting equally with CITY at the rate of Twenty Dollars (\$20) per hour, per field; and LEAGUE will remit prompt payment to CITY upon receipt of monthly invoice.
- s. To deposit, with the CITY representative, the sum of Five Hundred Dollars (\$500) as a security deposit, to ensure the proper and prompt payment of alarm fees, electrical services for elected use of lights, or any incurred damages to facilities associated with the LEAGUE. In the event all invoices or potential damages are paid by the end of this Agreement term, the deposit will be refunded.
- t. To provide the CITY representative with a list of the Board of Directors including names, addresses, and telephone numbers.
- u. To provide CITY with participant rosters, practice and game schedules.
- v. To provide CITY with financial statements upon request for audit purposes.
- w. To designate one individual as the LEAGUE's representative to work with the CITY's representative.
- x. This Agreement is subject to the terms and conditions of any master lease CITY may have with another public agency of which LEAGUE had knowledge.
- y. It is agreed that LEAGUE may use said baseball fields from February 2, 2016, through August 31, 2016, Mondays through Fridays generally commencing at 4:00 p.m. and Saturdays generally commencing at 8:00 a.m. No activities will be conducted past 9:45 p.m.
- z. PUBLIC LIABILITY AND PROPERTY DAMAGE: Throughout the term of this Agreement, at LEAGUE's sole cost and expense, LEAGUE shall keep, or cause to be kept in full force and effect for the mutual benefit of CITY and LEAGUE comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property providing proof of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person or for any one accident or occurrence and at least Three Hundred Thousand Dollars (\$300,000) for property damage. All insurance required by this Agreement shall be carried only by responsible insurance companies duly admitted to transact business in the State of California and shall name as additional insured the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer and the

insured 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' notice in writing by the insurer to CITY by certified mail. LEAGUE shall furnish CITY with copies of such policies promptly upon receipt of them, or certificate(s) evidencing the insurance.

- aa. INDEMNIFICATION: LEAGUE shall defend, indemnify, and save harmless CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by LEAGUE of any and all legal costs and attorneys' fees in any manner arising out of any negligent or intentional or willful acts or omissions of the LEAGUE in the activities, use, or occupancy of the PREMISES including, but not limited to, all consequential damages to the maximum extent permitted by law.
- bb. It is understood and agreed that there is no relationship of employer-employee for Workers' Compensation purposes between CITY and any person connected with the LEAGUE, unless such person is otherwise regularly employed by and conducting official business of CITY.
- cc. To conduct all operations in compliance with the Americans with Disabilities Act.
- dd. LEAGUE shall provide CITY with at least two (2) weeks' notice for room reservations for use of CITY facilities for LEAGUE meetings.
- ee. LEAGUE may place banners up on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Banners are not allowed to stay up on Sundays. Banners must be no greater than 3'X 5'. Banners will be attached to outfield chain link fence using clip on rings. Banner clearance from turf is a minimum of 2". The City will determine if a banner is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said banner. The CITY has the right to remove and dispose of any banner that is not displayed following the above mentioned procedures.

SECTION 2: CITY hereby agrees as follows:

- a. To maintain the periphery of the premises, including shrubs and trees, and mow all grass on a year-round basis.
- b. To pay for all water used on premises.
- c. To have full control over watering the entire premises. LEAGUE shall not adjust or readjust or otherwise change the sprinkler system or water control facilities.
- d. To provide emergency call-out telephone numbers for use by LEAGUE. A Contact List containing the emergency telephone numbers is attached.

- e. To provide to LEAGUE, inventory list of equipment in snack bar and meeting areas; to provide inspection of those areas and equipment at the end of the agreement period.
- f. To invoice LEAGUE monthly for the costs of separately metered field lighting related to use prior to regular season play.
- g. To refund, at the end of the agreement period and upon approval of the Director of Human Services, LEAGUE's cleaning deposit.
- h. To designate a CITY representative to work with LEAGUE on all nonmaintenance issues relating to the use of CITY facilities.

NOW, THEREFORE, if any terms of this Agreement are not complied with, the Agreement will become null and void and the LEAGUE will be refused use of CITY facilities.

APPROVED AND ADOPTED this _____ day of _____, 2016.

LEAGUE:

CITY:

MONTCLAIR LITTLE LEAGUE

CITY OF MONTCLAIR

President

Paul M. Eaton
Mayor

Secretary

ATTEST:

Andrea M. Phillips
Deputy City Clerk

CITY OF MONTCLAIR – CONTACT LIST FOR SPORTS LEAGUES

FEBRUARY – AUGUST 2016

<i>Request Description</i>	<i>Contact Title</i>	<i>Contact Name</i>	<i>Contact Phone</i>
After Hours Emergency	Montclair Police Dept.	Contact	(909) 621-4771
Sports League Administration	Sports League Liaison	Fernando Saltos	work (909) 625-9496
Building Maintenance	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Ground Maintenance	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Graffiti Removal	Graffiti Abatement Hotline	Contact	(909) 625-9429
Vandalism	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Secondary Contact for Mike McGehee	Public Works Superintendent	Xavier Mendez	work (909) 625-9467

**AGREEMENT NO. 16-04
WITH MONTCLAIR LITTLE LEAGUE
FOR USE OF SARATOGA PARK**

THIS AGREEMENT is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Montclair Little League, hereinafter called "LEAGUE." This Agreement is contingent upon the LEAGUE fulfilling its prior contract's financial obligations and paying any and all outstanding invoices owed to the CITY. Use of any and all facilities listed herein may not be used until all fees have been paid.

WITNESSETH:

WHEREAS, CITY presently has baseball fields (two northern and two southern fields) generally located at the southwest corner of Vernon Avenue and Kingsley Street, Montclair, California, and

WHEREAS, said Park has been developed to provide areas for youth sports, on which premises LEAGUE desires to use for Little League baseball (including the Challenger Division for children with disabilities) activities at such times and hours set forth in Section 1(aa). The term of this Agreement is for February 2, 2016, through August 31, 2016.

SECTION 1: LEAGUE hereby agrees as follows:

- a. Not to use the premises for any other purpose, except as above indicated.
- b. Not to sublet the field.
- c. Not to make any improvements or alterations on said premises.
- d. Not to charge for parking of vehicles in the parking lots located within CITY facilities and not to park in the fields or walkways.
- e. Not to erect any barriers or fences of any kind unless approved by CITY.
- f. Not to use herbicides at the park for any purpose.
- g. Not to disconnect or make changes to existing phone line account.
- h. Not to allow hitting balls into the chain link fences for batting practice.
- i. To provide the CITY with a written list of all items to be stored in park buildings. No items should be stored in rest room facilities, except rest room supplies. Any items found to be stored in buildings without prior written authorization from the CITY will be removed by city crews with or without prior notice to LEAGUE. Any cost incurred by the CITY by removing, storing, or disposal of said property shall be the responsibility of LEAGUE.
- j. To provide a special parking area for participants in the Challenger Division, at the times of their games, by cordoning off the southeast portion of the parking lot; to provide the equipment and personnel needed

to set up the special parking area; to see that all equipment is removed and properly stored after each use; to provide personnel to monitor the cordoned off area during its use.

- k. To maintain rest room facilities and to furnish all supplies for the rest rooms. To police the entire premises after each day's use and pick up all paper, trash, and other debris that may have accumulated, and leave the premises in a condition acceptable to CITY. This work shall be completed within two hours after an activity has ended. If the premises are not maintained as stated a contracted cleaning agency will be hired by the CITY and the LEAGUE will be responsible for all fees related to the service.
- l. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, countertops and utensils after each day's use and leave the snack bar in a condition acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items.
- m. To maintain Meeting Room located on the second floor by emptying trash and vacuuming carpet from facility after each day's use in a condition acceptable to CITY. This room is not to be used for storage (*e.g.* field equipment and baseball equipment). Storage for baseball equipment is located in the facility on the southern section of baseball fields.
- n. The use of a barbecue is not permitted on a regular basis due to Health Department regulations; however, if a one-time fundraising day is scheduled the following guidelines must be followed: to ensure when a barbecue is used, it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used; all safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed; LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.
- o. To deposit, with the CITY representative, the sum of Three Hundred Dollars (\$300) as a refundable cleaning deposit to ensure the proper care and cleanup of the snack bar, meeting areas, towers, and equipment therein. At the end of the playing season, an inspection shall be conducted by CITY and LEAGUE representatives to ensure that all areas and CITY-owned equipment have been properly cared for and cleaned up. All non-CITY-owned equipment, with exception of refrigerators, freezers, and ice machines shall be removed from snack bar areas. Refrigerators, freezers, and ice machines owned by LEAGUE shall be cleaned out, doors left open, and electrical turned off. Any food items left in the refrigerators and/or freezers will be discarded by the CITY. Ice machines owned by CITY shall be cleaned out, serviced, and maintained by CITY.
- p. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snackbar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their

original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.

- q. To be responsible for the payment of an alarm fee at the rate of Twenty-Five Dollars (\$25) per month, to remit prompt payment to CITY upon receipt of monthly invoice.
- r. To follow proper call-out procedures in an emergency (an urgent need for assistance or some type of immediate action) by using only telephone numbers issued for this purpose. A Contact List containing the emergency telephone numbers is attached.
- s. LEAGUE agrees to assist CITY in keeping order in the park area and to provide responsible supervision as may be necessary to prevent vandalism or malicious mischief to the property including for graffiti removal on buildings within 24 hours of notification, contact Graffiti Abatement Hotline at 625-9429 and report vandalism immediately to the Public Works Superintendent at 625-9466. LEAGUE will not attempt to remove Graffiti or make repairs to building. LEAGUE shall furnish and supply personnel to conduct and supervise LEAGUE activities on the premises.
- t. If LEAGUE elects to use lights for activities conducted after dark, LEAGUE agrees to divide the cost of electrical services associated with such lighting equally with CITY at the rate of Twenty Dollars (\$20) per hour, per field; and LEAGUE will remit prompt payment to CITY upon receipt of monthly invoice.
- u. To deposit, with the CITY representative, the sum of Five Hundred Dollars (\$500) as a security deposit, to ensure the proper and prompt payment of alarm fees, electrical services for elected use of lights, or any incurred damages to facilities associated with the LEAGUE. In the event all invoices or potential damages are paid by the end of this Agreement term, the deposit will be refunded.
- v. To provide the CITY representative with a list of the Board of Directors, including names, addresses, and telephone numbers.
- w. To provide CITY with participant rosters, practice and game schedules.
- x. To provide CITY with financial statements upon request for audit purposes.
- y. To designate one individual as the LEAGUE's representative to work with the CITY's representative.
- z. This Agreement is subject to the terms and conditions of any master lease CITY may have with another public agency, of which LEAGUE had knowledge.
- aa. It is agreed that LEAGUE may use said baseball fields from February 2, 2016, through August 31, 2016, Mondays through Thursdays generally commencing at 4:00 p.m. and Saturdays, generally commencing at 8:00 a.m. No activities will be conducted past 9:45 p.m.

- bb. PUBLIC LIABILITY AND PROPERTY DAMAGE: Throughout the term of this Agreement, at LEAGUE's sole cost and expense, LEAGUE shall keep, or cause to be kept, in full force and effect, for the mutual benefit of CITY and LEAGUE, comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property providing proof of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person or for any one accident or occurrence, and at least Three Hundred Thousand Dollars (\$300,000) for property damage. All insurance required by this Agreement shall be carried only by responsible insurance companies duly admitted to transact business in the State of California and shall name as additional insured the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer and the insured waive the right of subrogation against CITY and CITY's elected officials, officers, employees, and agents; (2) the policies are primary and non contributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' notice, in writing, by the insurer to CITY by certified mail. LEAGUE shall furnish CITY with copies of such policies promptly upon receipt of them or certificate(s) evidencing the insurance.
- cc. INDEMNIFICATION: LEAGUE shall defend, indemnify and save harmless CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by LEAGUE of any and all legal costs and attorneys' fees in any manner arising out of any negligent or intentional or willful acts or omissions of the LEAGUE in the activities, use, or occupancy of the PREMISES including, but not limited to, all consequential damages to the maximum extent permitted by law.
- dd. It is understood and agreed that there is no relationship of employer-employee for Workers' Compensation purposes between CITY and any person connected with the LEAGUE, unless such person is otherwise regularly employed by and conducting official business of CITY.
- ee. To conduct all operations in compliance with the Americans with Disabilities Act.
- ff. LEAGUE shall provide CITY with at least two (2) weeks' notice for room reservations for use of CITY facilities for LEAGUE meetings.
- gg. LEAGUE may place banners up on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Banners are not allowed to stay up on Sundays. Banners must be no greater than 3 feet by 5 feet. Banners will be attached to outfield chain link fence using clip on rings. Banner clearance from turf is a minimum of 2 inches. The City will determine if a banner is past its useful life due to sun fade, rips, graffiti, etc., and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said banner. The CITY has the right to remove and dispose of any banner that is not displayed following the above mentioned procedures.

SECTION 2: CITY hereby agrees as follows:

- a. To maintain the periphery of the premises, including shrubs and trees, and mow all grass on a year-round basis.
- b. To pay for all water used on premises.
- c. To have full control over watering the entire premises. LEAGUE shall not adjust or readjust or otherwise change the sprinkler system or water control facilities.
- d. To provide emergency call-out telephone numbers for use by LEAGUE. A Contact List containing the emergency telephone numbers is attached.
- e. To provide to LEAGUE, inventory list of equipment in snack bar and meeting areas; to provide inspection of those areas and equipment at the end of the agreement period.
- f. To invoice LEAGUE monthly for the costs of separately metered field lighting.
- g. To refund, at the end of the agreement period and upon approval of the Director of Human Services, LEAGUE's cleaning deposit.
- h. To designate a CITY representative to work with LEAGUE on all nonmaintenance issues relating to the use of CITY facilities.

NOW, THEREFORE, if any terms of this Agreement are not complied with, the Agreement will become null and void and the LEAGUE will be refused use of CITY facilities.

APPROVED AND ADOPTED this _____ day of _____, 2016.

LEAGUE:

CITY:

MONTCLAIR LITTLE LEAGUE

CITY OF MONTCLAIR

President

Paul M. Eaton
Mayor

Secretary

ATTEST:

Andrea M. Phillips
Deputy City Clerk

CITY OF MONTCLAIR – CONTACT LIST FOR SPORTS LEAGUES

FEBRUARY – AUGUST 2016

<i>Request Description</i>	<i>Contact Title</i>	<i>Contact Name</i>	<i>Contact Phone</i>
After Hours Emergency	Montclair Police Dept.	Contact	(909) 621-4771
Sports League Administration	Sports League Liaison	Fernando Saltos	work (909) 625-9496
Building Maintenance	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Ground Maintenance	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Graffiti Removal	Graffiti Abatement Hotline	Contact	(909) 625-9429
Vandalism	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Secondary Contact for Mike McGehee	Public Works Superintendent	Xavier Mendez	work (909) 625-9467

**AGREEMENT NO. 16-05
WITH ALL CITIES YOUTH BASEBALL
FOR USE OF ESSEX PARK**

THIS AGREEMENT is made and entered into by and between the City of Montclair, hereinafter called "CITY," and All Cities Youth Baseball (ACYB), hereinafter called "ACYB."

WITNESSETH:

WHEREAS, CITY presently has a baseball field generally located at the southwest corner of Howard Street and Essex Avenue, adjacent to and directly east of Ramona Elementary School, Montclair, California, and

WHEREAS, said Park has been developed to provide areas for youth sports, on which premises ACYB desires to use for Youth Baseball activities at such times and hours set forth in Section 1(w). The term of this Agreement is for February 2, 2016, through August 31, 2016.

SECTION 1: ACYB, a 501c(3), hereby agrees as follows:

- a. Not to use the premises for any other purpose, except as above indicated.
- b. Not to sublet the field.
- c. Not to make any improvements or alterations on said premises.
- d. Not to charge for parking of vehicles in the parking lots located within CITY facilities.
- e. Not to erect any barriers or fences of any kind unless approved by CITY.
- f. Not to use herbicides at the park for any purpose.
- g. Not to disconnect or make changes to existing phone line account.
- h. Not to allow hitting balls into the chain-link fences for batting practice.
- i. To provide the CITY with a written list of all items to be stored in park buildings. No items should be stored in rest room facilities, except rest room supplies. Any items found to be stored in buildings without prior written authorization from the CITY will be removed by city crews with or without prior notice to ACYB. Any cost incurred by the CITY by removing, storing, or disposal of said property shall be the responsibility of ACYB.
- j. To maintain the rest room facilities and to furnish all supplies for the rest rooms. To police the entire premises after each day's use and pick up all paper, trash, and other debris that may have accumulated, and leave the premises in a condition acceptable to CITY. This work shall be completed within two hours after an activity has ended. If the premises are not main-

tained as stated a contracted cleaning agency will be hired by the CITY and ACYB will be responsible for all fees related to the service.

- k. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks countertops and utensils after each day's use and leave the snack bar in a condition acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items
- l. The use of a barbecue is not permitted on a regular basis due to Health Department regulations; however, if a one-time fundraising day is scheduled the following guidelines must be followed: to ensure when a barbecue is used, it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used; all safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed; LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.
- m. To deposit with the CITY representative the sum of Three Hundred Dollars (\$300) as a refundable cleaning deposit to ensure the proper care and cleanup of the snack bar, meeting areas, towers, and equipment therein. At the end of the playing season, an inspection shall be conducted by CITY and ACYB representatives to ensure that all areas and CITY-owned equipment have been properly cared for and cleaned up. All non-CITY-owned equipment, with exception of refrigerators, freezers, and ice machines shall be removed from snack bar areas. Refrigerators, freezers, and ice machines owned by ACYB shall be cleaned out, doors left open, and electrical turned off. Any food items left in the refrigerators and/or freezers will be discarded by the CITY. Ice machines owned by CITY shall be cleaned out, serviced, and maintained by CITY.
- n. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snackbar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.
- o. To be responsible for all costs as a result of lost or stolen keys.
- p. To follow proper call-out procedures in an emergency (an urgent need for assistance or some type of immediate action) by using only telephone numbers issued for this purpose. A Contact List containing the emergency telephone numbers is attached.
- q. ACYB agrees to assist CITY in keeping order in the park area and to provide responsible supervision as may be necessary to prevent vandalism or malicious mischief to the property including for graffiti removal on buildings within 24 hours of notification, contact Graffiti Abatement Hotline at 625-9429 and report vandalism immediately to the Public Works Superintendent at 625-9466. ACYB will not attempt to remove

- Graffiti or make repairs to building. ACYB shall furnish and supply personnel to conduct and supervise ACYB activities on the premises.
- r. To provide the CITY representative with a list of the Board of Directors including names, addresses, and telephone numbers.
 - s. To provide CITY with participant rosters, practice and game schedules.
 - t. To provide CITY with financial statements upon request for audit purposes.
 - u. To designate one individual as the ACYB's representative to work with the CITY's representative.
 - v. This Agreement is subject to the terms and conditions of any master lease CITY may have with another public agency of which ACYB had knowledge.
 - w. It is agreed that ACYB may use said baseball fields from February 2, 2016, through August 31, 2016, Mondays through Fridays generally commencing at 4:00 p.m. and Saturdays generally commencing at 8:00 a.m. No activities will be conducted past daylight hours.
 - x. PUBLIC LIABILITY AND PROPERTY DAMAGE: Throughout the term of this Agreement, at ACYB's sole cost and expense, ACYB shall keep, or cause to be kept, in full force and effect for the mutual benefit of CITY and ACYB comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property providing proof of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person or for any one accident or occurrence and at least Three Hundred Thousand Dollars (\$300,000) for property damage. All insurance required by this Agreement shall be carried only by responsible insurance companies duly admitted to transact business in the State of California and shall name as additional insured the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer and the insured 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' notice, in writing, by the insurer to CITY by certified mail. ACYB shall furnish CITY with copies of such policies promptly upon receipt of them or certificate(s) evidencing the insurance.
 - y. INDEMNIFICATION: ACYB shall defend, indemnify, and save harmless CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by ACYB of any and all legal costs and attorneys' fees in any manner arising out of any negligent or intentional or willful acts or omissions of the ACYB in the activities, use, or occupancy of the PREMISES including, but not limited to, all consequential damages to the maximum extent permitted by law.

- z. It is understood and agreed that there is no relationship of employer-employee for Workers' Compensation purposes between CITY and any person connected with ACYB, unless such person is otherwise regularly employed by and conducting official business of CITY.
- aa. To conduct all operations in compliance with the Americans with Disabilities Act.
- bb. ACYB shall provide CITY with at least two (2) weeks' notice for room reservations for use of CITY facilities for ACYB meetings.

SECTION 2: CITY hereby agrees as follows:

- a. To maintain the periphery of the premises, including shrubs and trees, and mow all grass on a year-round basis.
- b. To pay for all water used on premises.
- c. To have full control over watering the entire premises. ACYB shall not adjust or readjust or otherwise change the sprinkler system or water control facilities.
- d. To provide emergency call-out telephone numbers for use by ACYB. A Contact List containing the emergency telephone numbers is attached.
- e. To refund, at the end of the agreement period and upon approval of the Director of Human Services, ACYB's cleaning deposit.
- f. To provide to ACYB, inventory list of equipment in snack bar and meeting areas; to provide inspection of those areas and equipment at the end of the agreement period.
- g. To designate a CITY representative to work with ACYB on all non-maintenance issues relating to the use of CITY facilities.

NOW, THEREFORE, if any terms of this Agreement are not complied with, the Agreement will become null and void and ACYB will be refused use of CITY facilities.

APPROVED AND ADOPTED this _____ day of _____, 2016.

**LEAGUE:
MONTCLAIR LITTLE LEAGUE**

**CITY:
CITY OF MONTCLAIR**

President

Paul M. Eaton
Mayor

Secretary

ATTEST:

Andrea M. Phillips
Deputy City Clerk

CITY OF MONTCLAIR – CONTACT LIST FOR SPORTS LEAGUES

FEBRUARY – AUGUST 2016

<i>Request Description</i>	<i>Contact Title</i>	<i>Contact Name</i>	<i>Contact Phone</i>
After Hours Emergency	Montclair Police Dept.	Contact	(909) 621-4771
Sports League Administration	Sports League Liaison	Fernando Saltos	work (909) 625-9496
Building Maintenance	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Ground Maintenance	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Graffiti Removal	Graffiti Abatement Hotline	Contact	(909) 625-9429
Vandalism	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Secondary Contact for Mike McGehee	Public Works Superintendent	Xavier Mendez	work (909) 625-9467

**AGREEMENT NO. 16-06
WITH ALL CITIES YOUTH BASEBALL
FOR USE OF SARATOGA PARK**

THIS AGREEMENT is made and entered into by and between the City of Montclair, hereinafter called "CITY," and All Cities Youth Baseball (ACYB), hereinafter called "ACYB." This Agreement is contingent upon ACYB fulfilling its prior contract's financial obligations and paying any and all outstanding invoices owed to the CITY. Use of any and all facilities listed herein may not be used until all fees have been paid.

WITNESSETH:

WHEREAS, CITY presently has baseball fields (two northern and two southern fields) generally located at the southwest corner of Vernon Avenue and Kingsley Street, Montclair, California, and

WHEREAS, said Park has been developed to provide areas for youth sports, on which premises ACYB desires to use for Youth Baseball activities at such times and hours set forth in Section 1(z). The term of this Agreement is for February 2, 2016, through August 31, 2016.

SECTION 1: ACYB hereby agrees as follows:

- a. Not to use the premises for any other purpose, except as above indicated.
- b. Not to sublet the field.
- c. Not to make any improvements or alterations on said premises.
- d. Not to charge for parking of vehicles in the parking lots located within CITY facilities and not to park in the fields or walkways.
- e. Not to erect any barriers or fences of any kind unless approved by CITY.
- f. Not to use herbicides at the park for any purpose.
- g. Not to disconnect or make changes to existing phone line account.
- h. Not to allow hitting balls into the chain link fences for batting practice.
- i. To provide the CITY with a written list of all items to be stored in park buildings. No items should be stored in rest room facilities, except rest room supplies. Any items found to be stored in buildings without prior written authorization from the CITY will be removed by city crews with or without prior notice to ACYB. Any cost incurred by the CITY by removing, storing, or disposal of said property shall be the responsibility of ACYB.
- j. To maintain rest room facilities and to furnish all supplies for the rest rooms. To police the entire premises after each day's use and pick up all paper, trash, and other debris that may have accumulated, and leave the premises in a condition acceptable to CITY. This work shall be completed

within two hours after an activity has ended. If the premises are not maintained as stated a contracted cleaning agency will be hired by the CITY and the ACYB will be responsible for all fees related to the service.

- k. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, countertops and utensils after each day's use and leave the snack bar in a condition acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items.
- l. To maintain Meeting Room located on the second floor by emptying trash and vaccuming carpet from facility after each day's use in a condition acceptable to CITY. This room is not to be used for storage (e.g. field equipment and baseball equipment).
- m. The use of a barbecue is not permitted on a regular basis due to Health Department regulations; however, if a one-time fundraising day is scheduled the following guidelines must be followed: to ensure when a barbecue is used, it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used; all safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed; LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.
- n. To deposit, with the CITY representative, the sum of Three Hundred Dollars (\$300) as a refundable cleaning deposit to ensure the proper care and cleanup of the snack bar, meeting areas, towers, and equipment therein. At the end of the playing season, an inspection shall be conducted by CITY and ACYB representatives to ensure that all areas and CITY-owned equipment have been properly cared for and cleaned up. All non-CITY-owned equipment, with exception of refrigerators, freezers, and ice machines shall be removed from snack bar areas. Refrigerators, freezers, and ice machines owned by ACYB shall be cleaned out, doors left open, and electrical turned off. Any food items left in the refrigerators and/or freezers will be discarded by the CITY. Ice machines owned by CITY shall be cleaned out, serviced, and maintained by CITY.
- o. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snackbar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.
- p. To be responsible for the payment of an alarm fee at the rate of Twenty-Five Dollars (\$25) per month and to remit prompt payment to CITY upon receipt of monthly invoice.
- q. To follow proper call-out procedures in an emergency (an urgent need for assistance or some type of immediate action) by using only telephone

numbers issued for this purpose. A Contact List containing the emergency telephone numbers is attached.

- r. ACYB agrees to assist CITY in keeping order in the park area and to provide responsible supervision as may be necessary to prevent vandalism or malicious mischief to the property including for graffiti removal on buildings within 24 hours of notification, contact Graffiti Abatement Hotline at 625-9429 and report vandalism immediately to the Public Works Superintendent at 625-9466. ACYB will not attempt to remove Graffiti or make repairs to building. ACYB shall furnish and supply personnel to conduct and supervise ACYB activities on the premises.
- s. If ACYB elects to use lights for activities conducted after dark, ACYB agrees to divide the cost of electrical services associated with such lighting equally with CITY at the rate of Twenty Dollars (\$20) per hour, per field; and ACYB will remit prompt payment to CITY upon receipt of monthly invoice.
- t. To deposit, with the CITY representative, the sum of Five Hundred Dollars (\$500) as a security deposit, to ensure the proper and prompt payment of alarm fees, electrical services for elected use of lights, or any incurred damages to facilities associated with ACYB. In the event all invoices or potential damages are paid by the end of this Agreement term, the deposit will be refunded.
- u. To provide the CITY representative with a list of the Board of Directors, including names, addresses, and telephone numbers.
- v. To provide CITY with participant rosters, practice and game schedules.
- w. To provide CITY with financial statements upon request for audit purposes.
- x. To designate one individual as an ACYB representative to work with the CITY's representative.
- y. This Agreement is subject to the terms and conditions of any master lease CITY may have with another public agency, of which ACYB had knowledge.
- z. It is agreed that ACYB may use said baseball fields from February 2, 2016, through August 31, 2016, on Fridays, generally commencing at 4:00 p.m. No activities will be conducted past 9:45 p.m.
- aa. **PUBLIC LIABILITY AND PROPERTY DAMAGE:** Throughout the term of this Agreement, at ACYB sole cost and expense, ACYB shall keep, or cause to be kept, in full force and effect, for the mutual benefit of CITY and ACYB, comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property providing proof of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person or for any one accident or occurrence, and at least Three Hundred Thousand Dollars (\$300,000) for property damage. All insurance required by this Agreement shall be carried only by responsible insurance companies duly admitted to transact business in the State of California and shall name as additional insured the CITY, its elected officials, officers, employees, and

agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer and the insured waive the right of subrogation against CITY and CITY's elected officials, officers, employees, and agents; (2) the policies are primary and non contributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' notice, in writing, by the insurer to CITY by certified mail. ACYB shall furnish CITY with copies of such policies promptly upon receipt of them or certificate(s) evidencing the insurance.

- bb. INDEMNIFICATION: ACYB shall defend, indemnify and save harmless CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by ACYB of any and all legal costs and attorneys' fees in any manner arising out of any negligent or intentional or willful acts or omissions of AYCB in the activities, use, or occupancy of the PREMISES including, but not limited to, all consequential damages to the maximum extent permitted by law.
- cc. It is understood and agreed that there is no relationship of employer-employee for Workers' Compensation purposes between CITY and any person connected with ACYB, unless such person is otherwise regularly employed by and conducting official business of CITY.
- dd. To conduct all operations in compliance with the Americans with Disabilities Act.
- ee. ACYB shall provide CITY with at least two (2) weeks' notice for room reservations for use of CITY facilities for ACYB meetings.

SECTION 2: CITY hereby agrees as follows:

- a. To maintain the periphery of the premises, including shrubs and trees, and mow all grass on a year-round basis.
- b. To pay for all water used on premises.
- c. To have full control over watering the entire premises. ACYB shall not adjust or readjust or otherwise change the sprinkler system or water control facilities.
- d. To provide emergency call-out telephone numbers for use by ACYB. A Contact List containing the emergency telephone numbers is attached.
- e. To provide to ACYB, inventory list of equipment in snack bar and meeting areas; to provide inspection of those areas and equipment at the end of the agreement period.
- f. To invoice ACYB monthly for the costs of separately metered field lighting.
- g. To refund, at the end of the agreement period and upon approval of the Director of Human Services, ACYB cleaning deposit.

- h. To designate a CITY representative to work with ACYB on all nonmaintenance issues relating to the use of CITY facilities.

NOW, THEREFORE, if any terms of this Agreement are not complied with, the Agreement will become null and void and ACYB will be refused use of CITY facilities.

APPROVED AND ADOPTED this _____ day of _____, 2016.

LEAGUE:

ALL CITIES YOUTH BASEBALL

CITY:

CITY OF MONTCLAIR

President

Paul M. Eaton
Mayor

Secretary

ATTEST:

Andrea M. Phillips
Deputy City Clerk

CITY OF MONTCLAIR – CONTACT LIST FOR SPORTS LEAGUES

FEBRUARY – AUGUST 2016

<i>Request Description</i>	<i>Contact Title</i>	<i>Contact Name</i>	<i>Contact Phone</i>
After Hours Emergency	Montclair Police Dept.	Contact	(909) 621-4771
Sports League Administration	Sports League Liaison	Fernando Saltos	work (909) 625-9496
Building Maintenance	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Ground Maintenance	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Graffiti Removal	Graffiti Abatement Hotline	Contact	(909) 625-9429
Vandalism	Facilities and Grounds Superintendent	Mike McGehee	work (909) 625-9443 cell (909) 721-1744
Secondary Contact for Mike McGehee	Public Works Superintendent	Xavier Mendez	work (909) 625-9467

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO.16-07 AMENDING AGREEMENT NO. 00-34, A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MONTCLAIR, THE CITY OF MONTCLAIR SUCCESSOR AGENCY, AND THE MONTCLAIR HOUSING AUTHORITY AND STRADLING YOCCA CARLSON & RAUTH

DATE: February 16, 2016

SECTION: AGREEMENTS

ITEM NO.: 3

FILE I.D.: LEG150/SAG080/MHA050

DEPT.: CITY MGR./SA/MHA

REASON FOR CONSIDERATION: Stradling Yocca Carlson & Rauth represents the City of Montclair, the City of Montclair Successor Agency, and the Montclair Housing Authority in matters related to the former Redevelopment Agency, the Housing Authority and the issuance of bonds. The legal firm is seeking to amend their professional services agreement.

BACKGROUND: The City of Montclair Redevelopment Agency has utilized the legal firm of Stradling Yocca Carlson & Rauth to act as Special Counsel since the late 1970's. The last amendment to the professional services agreement with Stradling Yocca Carlson & Rauth was approved by the Redevelopment Agency Board of Directors on April 17, 2000. Since that time, the City, the Redevelopment Agency, the Successor Agency, and the Montclair Housing Authority have utilized the services of the law firm to issue tax allocation bonds and notes, lease revenue bonds, to address redevelopment, city/successor agency, and housing authority issues.

The main change to the agreement involves an increase to the hourly fee schedule. Stradling Yocca Carlson & Rauth has not requested a fee increase since 2000. Therefore, although the fee increase appears significant, the current hourly fees have been in place for 16 years without increase.

The proposed increase for legal fees related to City/Successor Agency/Housing Authority matters is summarized as follows:

	<u>Current Fee</u>	<u>Proposed Fee</u>
Shareholder	\$200 per hour	\$260 per hour
Associate	\$175 per hour	\$200 per hour
Paralegal	- - -	\$115 per hour

The hourly fee for litigation and matters involving bond issuance would increase from \$200 per hour to \$450 per hour. Alternatively, when Stradling Yocca Carlson & Rauth is engaged for the issuance of bonds, a separate agreement to act as bond counsel

Prepared by: Marilyn Strato Fiscal Impact Finance Review: Donald L. Parker

Proofed by: Andrea M. Phillips Reviewed and Approved By: Marilyn Strato

could be arranged. It should be noted that Stradling Yocca Carlson & Rauth anticipate a two percent cost increase in fees occurring on July 1, 2016. However, any further future increase in fees would require authorization of the City Council, Successor Agency Board of Directors, and Montclair Housing Authority Board of Directors.

The former Redevelopment Agency rarely engaged the legal firm regarding litigation actions. Without the redevelopment process, the use of legal fees for litigation purposes is not anticipated.

The proposed Agreement could be terminated on 30 days' written notice and the parties agree to binding arbitration in the event of dispute.

FISCAL IMPACT: Agreement No. 16-07 provides for an increase in legal fees for Stradling Yocca Carlson & Rauth. The fees are summarized in the "Background" section of this report and can be found in Section 4 of the Agreement. Successor Agency legal fees are being paid as enforceable obligations from the Redevelopment Property Tax Trust Fund. Legal fees for the Montclair Housing Authority are paid from revenue in the former Redevelopment Agency Low- and Moderate-Income Housing Fund.

RECOMMENDATION: Staff recommends the City Council, Successor Agency Board of Directors, and Montclair Housing Authority Commissioners approve Agreement No. 16-07 amending Agreement No. 00-34, a Professional Services Agreement between the City of Montclair, the City of Montclair Successor Agency, and the Montclair Housing Authority and Stradling Yocca Carlson & Rauth.

AMENDED AND RESTATED AGREEMENT FOR SERVICES

THIS AMENDED AND RESTATED AGREEMENT (“Agreement”) is made and entered into as of February 1, 2016 (the “Date of Agreement”), the CITY OF MONTCLAIR, a municipal corporation (the “City”), the CITY OF MONTCLAIR acting in the capacity of the CITY OF MONTCLAIR SUCCESSOR AGENCY (the “Successor Agency”), the MONTCLAIR HOUSING AUTHORITY (the “Housing Authority”), and STRADLING YOCCA CARLSON & RAUTH, a Professional Corporation (“SYCR”).

WITNESSETH:

WHEREAS, the City and the Montclair Redevelopment Agency (the “Redevelopment Agency”) previously adopted a plan, as heretofore amended (the “Redevelopment Plan”) for the Montclair Redevelopment Project, and were engaged in the implementation of the Redevelopment Plan, including without limitation activities for commercial and industrial development, housing development (including without limitation the development of affordable housing) and the implementation of various public improvements. Upon the dissolution of all redevelopment agencies in the State of California, including without limitation the Redevelopment Agency, in addition to advising the City in relation to redevelopment dissolution matters, SYCR advises the City, the Successor Agency and the Housing Authority, in the capacity of special counsel: the City Attorney acts as general counsel for each of such entities. Each of the City, the Successor Agency, the Housing Authority and the Successor Agency desires to retain the services of SYCR, as special counsel, to advise and represent the City, the Successor Agency, and the Housing Authority in connection with such matters relating to the Successor Agency, the Housing Authority or the City as may be designated by the governing board, staff, and/or the City Manager or the Executive Director of those respective governmental entities, including, but not limited to, negotiations, document preparation, legal rendering of opinions, litigation, financing or any other facet of the practice of law as it relates to an issue of concern to the City, the Housing Authority and/or the Successor Agency, such activities including but not being limited to advisement and implementation associated with affordable housing transactions and redevelopment dissolution; and

WHEREAS, the Successor Agency as well as the Housing Authority and the City from time to time issue bonds and similar obligations in connection with the exercise of their respective governmental functions; and

WHEREAS, in connection with the exercise of their governmental functions, the City, the Housing Authority, and the Successor Agency desire to engage the services of SYCR for those activities herein set forth and such work as may from time to time be designated by the chief executive officers of the City, and the Successor Agency, respectively; and

WHEREAS, the City Manager of the City is the chief executive officer of the City and the Successor Agency; and

WHEREAS, the Executive Director of the Housing Authority is the chief executive officer of the Housing Authority; and

WHEREAS, SYCR is qualified in this field and possesses professional skills with respect to representing the City, the Housing Authority and the Successor Agency in any capacity including litigation or financing matters as directed by the City, the Housing Authority and the Successor Agency; and

WHEREAS, the City, the Housing Authority and the Successor Agency desire to designate the City Manager of the City as the contract administrator (the "Contract Administrator") for the purposes of this Agreement; and

WHEREAS, SYCR represents that it is ready, willing and able to continue to provide the legal services as required by the City, the Housing Authority and the Successor Agency.

NOW, THEREFORE, in consideration of the promises, covenants, conditions, legal detriments and agreements herein contained, it is agreed as follows:

1. **Responsibilities**: The City, the Housing Authority and the Successor Agency hereby employ SYCR, and SYCR hereby accepts such employment, to represent the City, the Housing Authority and the Successor Agency in connection with such matters relating to the Successor Agency, the Housing Authority and the City as may be designated by the governing board, staff, and/or the Contract Administrator on behalf of the City, the Housing Authority and the Successor Agency. All work performed by SYCR pursuant to this Agreement shall be commenced upon request therefor by the City, the Housing Authority and the Successor Agency as requested by the governing board, staff and/or Contract Administrator on behalf of one or more of those entities. In connection with the performance of duties by SYCR, the City, the Housing Authority and the

Successor Agency, respectively, agree to make available, in a prompt and business-like manner, all necessary available background data as may be necessary from time-to-time.

2. **Scope of Work:** SYCR, as an independent contractor and not as an agent of the City, the Housing Authority or the Successor Agency, shall provide the necessary personnel, facilities, equipment and materials (except as otherwise provided herein), to provide legal services as requested by the governing board, staff, and/or Contract Administrator on behalf of one or more of the City, the Housing Authority or the Successor Agency and agreed to be undertaken by SYCR, including, but not limited to, negotiations, document preparation, rendering legal opinions, litigation, finance or any other facet of the practice of law as it relates to an issue of concern to the City, the Housing Authority or the Successor Agency. SYCR is to attend meetings as directed by the Contract Administrator. The parties anticipate that attendance by SYCR will not be required at certain meetings in view of the regular attendance of the City Attorney who, as General Counsel to each of the City, the Housing Authority and the Successor Agency, will continue to regularly attend meetings of such entities. SYCR cannot engage in litigation adverse to the State of California in view of the current representation by certain attorneys at SYCR of certain State agencies.

3. **Period of Performance:** SYCR shall commence the performance under this Agreement as Special Counsel as of the date first herein set forth and shall continue thereafter unless terminated by the parties.

This Agreement supersedes and takes precedent over other, existing agreements between SYCR and one or more of the City, the Housing Authority and the Successor Agency concerning the provision of services.

4. **Type of Contract and Terms of Payment:** In connection with matters other than as described the in second paragraph of this Section 4, SYCR shall be entitled to a fixed hourly rate in connection with redevelopment matters not involving litigation or public finance as follows: (i) for the period commencing as of the Date of Agreement and continuing to June 30, 2016, \$260.00 per hour for Mark J. Huebsch and other shareholders of the firm, \$200 per hour for associates of the firm, and \$115 per hour for paralegals for services hereunder except to the extent other fees are otherwise expressly set forth below; (ii) for the period commencing July 1, 2016 and continuing until June 30, 2017, fees shall be increased by 2%. Subsequently, fees shall be subject to annual review as of each anniversary date. In connection with litigation matters, hourly rates shall be \$325 per hour for shareholders of the firm, \$260 per hour for associates of the firm, and \$125 per hour for paralegals

for services hereunder except to the extent other fees are otherwise expressly set forth below; such fees shall also be subject to annual adjustment by 2% for the July 1, 2016 to June 30, 2017 fiscal year, then shall be subject to annual review in the manner as generally described in the foregoing portion of this paragraph. In addition to the fees set forth in the preceding portion of this paragraph, SYCR shall be reimbursed for all expenses incurred and paid by SYCR, such as long distance telephone calls, telegrams, telecopies, reproduction of documents, word processing, travel at the request of the City, the Housing Authority or the Successor Agency, publishing or printing costs, court fees and other expenses which may be necessary in connection with the work to be undertaken. SYCR may decline to handle certain matters (which shall not effect a termination of this Agreement).

In connection with the issuance by the Successor Agency, the Housing Authority or the City of bonds or similar obligations, rates will be at the following hourly rates: \$450 for Mark J. Huebsch and \$495 for other shareholders of the firm, and \$650 per hour for Carol Lew, and \$275 to \$310 per hour for associates and \$125 per hour for paralegals; such fees shall be adjusted annually in the manner described in the preceding paragraph. Such amounts would be billed monthly and would not be contingent upon closing of a bond issue. Alternatively, where SYCR is engaged as bond counsel, the parties may agree to a separate arrangement which may take into account such factors as the complexity of the issue, the level of work and time that will be required, and whether the fee is contingent upon closing of a bond issue. In such cases, it is anticipated that charges would be consistent with fee schedules as from time to time established by SYCR; provided that SYCR will consult with the Successor Agency, the Housing Authority or the City, as applicable relative to such matters. In connection with conduit financings, the parties hereto may provide for other rates, by mutual agreement.

All rates as set forth herein are additionally subject to periodic adjustment upon notice by SYCR to the Contract Administrator.

It is understood and agreed that each of the City, the Housing Authority and the Successor Agency shall be responsible for services rendered to them or on their behalf by SYCR. Billings shall be made separately to the City, the Housing Authority and the Successor Agency to reflect the correct entity on behalf of which work is performed. Except to the extent otherwise set forth above, SYCR shall submit monthly billings to the Contract Administrator. The City, the Housing Authority and the Successor Agency shall pay billings within thirty (30) days after receipt of same.

5. **Extent of Performance:** In the performance of said Agreement, SYCR agrees to furnish labor required to accomplish the services set forth, supra, including a combination of legal consulting skills appropriate to this effort as well as any such related technical assistance services necessary for the same.

6. **Attorney's Fees:** The prevailing party in any arbitration or litigation arising out of or relating to our engagement, this agreement, any obligations created by this agreement, and/or the performance or failure to perform services (including, without limit, claims of breach of duty or professional negligence) shall be entitled to recover all attorneys' fees (including the value of time of attorneys in SYCR and/or the City Attorney at their normal billing rates), all experts' fees and expenses and all costs (whether or not such costs are recoverable pursuant to the California Code of Civil Procedure) as may be incurred in connection with either obtaining or collecting any relief to which that party may be entitled.

7. **Quality of Work:** SYCR further agrees that the performance of work and services pursuant to the requirements of this Agreement shall conform to high professional standards.

8. **Modification of Agreement:** This Agreement is subject to modification by mutual agreement as to scope and cost among all signatories hereto or their designees.

9. **Right of Termination:**

(a) This Agreement may be terminated by a party upon thirty (30) day written notice.

(b) In the event this Agreement is terminated by any party for any reason, SYCR shall be paid by the Successor Agency, the Housing Authority and/or the City (each of which shall be jointly and severally liable) for the reasonable value of services provided up to the date of notice of termination is given and there shall be no further liability; the Successor Agency shall be responsible for work performed for the Successor Agency.

10. **Contract Administration:** Contract Administrator for this Agreement on behalf of each of the City, the Housing Authority and the Successor Agency is the City Manager of the City (herein the "Contract Administrator"). The Successor Agency, the Housing Authority or the City

may, by written notification, change the Contract Administrator. SYCR will be responsible for specific performance coordinated with and at the direction of the designated Contract Administrator.

11. **Release of News Information:** No news release, including photographs, public announcements or confirmation of same, or any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written approval of the Successor Agency, the Housing Authority or the City, each acting through the Contract Administrator.

12. **Confidentiality of Reports:** To the extent allowable by law, SYCR shall keep confidential all reports, information, and data given to, prepared or assembled by SYCR pursuant to SYCR's performance hereunder which the Successor Agency, the Housing Authority or the City designates as confidential. Such information shall not be made available to any person, firm, corporation, or entity without the prior written consent of the Successor Agency, the Housing Authority or the City first obtained.

13. **Hold Harmless and Indemnification:** SYCR hereby agrees to, and shall, hold the City, the Successor Agency, the Housing Authority and their elective and appointive boards, commissions, officers and employees harmless and agrees to indemnification from any liabilities, losses, costs, obligations, including reasonable attorney fees for damages or claims for personal injury, including death, as well as from claims for property damage which may arise from SYCR's operations under this Agreement, whether such operations be by SYCR or by any one or more persons directly or indirectly employed by or acting as agent for SYCR except to the extent such liabilities, losses, costs, and obligations are caused or contributed to by the Successor Agency, the Housing Authority or the City.

14. **Assignment:** SYCR shall not assign or transfer its interest in this Agreement without the written consent of the Housing Authority or the City and, as applicable, the Successor Agency.

15. **Compliance with Applicable Laws:** In performance of this Agreement, SYCR shall abide by and conform to any and all applicable laws of the United States and the State of California.

16. **Capacity as an Independent Contractor:** Performance of SYCR services pursuant to this Agreement shall be in the capacity of an independent contractor and not as an officer, agent or employee of the Successor Agency, the Housing Authority or the City.

17. **Employment of Other Counsel Specialist or Experts:** SYCR will not employ or otherwise incur an obligation to pay other counsel, specialist or experts for services in connection with this Agreement without prior approval of the City, the Successor Agency or the Housing Authority, respectively, or the Contract Administrator.

18. **Representations:** The parties hereto mentioned enter into this Agreement in consideration of the mutual recitals and other parts of this Agreement.

19. **Arbitration:** BY SIGNING THIS AGREEMENT, ALL PARTIES ARE AGREEING TO BINDING ARBITRATION OF DISPUTES, WHETHER AS TO FEES, QUALITY OF SERVICES RENDERED, OR OTHERWISE, ARISING HEREUNDER. ALL PARTIES ARE GIVING UP THE RIGHT TO A JURY OR COURT TRIAL, OR TO PROCEED UNDER THE ARBITRATION PROVISIONS OF THE STATE BAR ACT, CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 6200, *ET SEQ.*

20. **Notices:** All notices herein required shall be in writing and delivered in person or sent by certified mail, postage prepaid, addressed as follows:

To City:	City of Montclair Attention: City Manager 5111 Benito Street Montclair, California 91763
To Successor Agency:	City of Montclair as Successor Agency Attention: City Manager 5111 Benito Street Montclair, California 91763
To Housing Authority:	Montclair Housing Authority Attention: Executive Director/City Manager 5111 Benito Street Montclair, California 91763
To SYCR:	Stradling Yocca Carlson & Rauth Attention: Mark J. Huebsch, Esq. 660 Newport Center Drive, Suite 1600 Newport Beach, California 92660-6401

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

CITY OF MONTCLAIR

By: _____
Mayor

CITY OF MONTCLAIR AS SUCCESSOR
AGENCY TO THE MONTCLAIR
REDEVELOPMENT AGENCY

By: _____
Chairman

MONTCLAIR HOUSING AUTHORITY

By: _____
Chairman

STRADLING YOCCA CARLSON & RAUTH, a
Professional Corporation

By:  _____
Mark J. Huebsch

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF DRAFT AGREEMENT NO. 16-15 WITH SAN BERNARDINO ASSOCIATED GOVERNMENTS APPROVING A TRADE CORRIDOR IMPROVEMENT FUND BASELINE AGREEMENT FOR CONSTRUCTION FUNDS FOR THE MONTE VISTA AVENUE/ UNION PACIFIC RAILROAD GRADE SEPARATION PROJECT, SUBJECT TO FINAL APPROVAL BY CITY ATTORNEY ROBBINS

DATE: February 16, 2016

SECTION: AGREEMENTS

ITEM NO.: 4

FILE I.D.: STA110

DEPT.: PUBLIC WORKS

CONSIDER AUTHORIZING CITY MANAGER STARR TO SIGN AGREEMENT NO. 16-15 WHEN IT IS COMPLETED

REASON FOR CONSIDERATION: Most of the construction funds for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project will come from or through San Bernardino Associated Governments (SANBAG). One of the sources of funds will be the Trade Corridor Improvement Fund (TCIF). In order to use these funds, an agreement between SANBAG, the City, California Department of Transportation (Caltrans), and the California Transportation Commission (CTC) is required. Agreements with the City require City Council approval.

A copy of proposed Agreement No. 16-15 with San Bernardino Associated Governments is attached for City Council review and consideration.

BACKGROUND: The City has previously entered into Agreement No. 15-64, with SANBAG acting as the San Bernardino County Transportation Authority, to jointly fund the construction of the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project. Agreement No. 15-64 did not specify funding sources for either the City or SANBAG. One of the funding sources now proposed by SANBAG is the TCIF. In order to use these funds, a four-party agreement between the City, SANBAG, Caltrans, and the CTC is required.

Attached Agreement No. 16-15 is in draft form, but mostly complete. Section 4.4 is incomplete and "Exhibit B" is missing. Both elements of the Agreement are still being developed by SANBAG and were not available at the time this report was prepared. Also, City Attorney Robbins is currently reviewing the Agreement and may have additional comments regarding both the Agreement and the missing items once they are available. Time is of the essence in having this Agreement approved and submitted to the CTC at its March meeting. It is anticipated that SANBAG's Board of Directors will consider approval of the Agreement at its March 2nd meeting. The City Council is being requested to approve Agreement No. 16-15 in draft form, subject to any comments/corrections required by City Attorney Robbins.

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

FISCAL IMPACT: Fiscal impacts to the City were previously addressed in Agreement No. 15-64. Agreement No. 16-15 creates no additional fiscal impact to the General Fund. "Exhibit A" identifies funding sources intended to be used by SANBAG and includes TCIF, Projects of National and Regional Significance, and SANBAG Measure I.

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

1. Approve draft Agreement No. 16-15 with San Bernardino Associated Governments approving a Trade Corridor Improvement Fund Baseline Agreement for construction funds for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, subject to final approval by City Attorney Robbins.
2. Authorize City Manager Starr to sign Agreement No. 16-15 when it is completed.

**TRADE CORRIDOR IMPROVEMENT FUND
PROJECT BASELINE AGREEMENT**

1. PARTIES AND DATE

- 1.1 This Project Baseline Agreement (Agreement) for the Monte Vista Grade Separation, effective on _____, is made by and between the California Transportation Commission (Commission), the California Department of Transportation (Caltrans), and the San Bernardino Associated Governments (SANBAG), and the City of Montclair (Project Sponsor), sometimes collectively referred to as the “Parties”.

2. RECITAL

- 2.1 Whereas at its March 16, 2016, meeting the California Transportation Commission amended the Trade Corridor Improvement Fund and included in this program of projects the Monte Vista Grade Separation, the parties are entering into this Project Baseline Agreement to document the project cost, schedule, scope and benefits, as detailed on the Project Programming Request Form attached hereto as Exhibit A, the Project Study Report/Project Study Report Equivalent attached hereto as Exhibit B, and the Project Benefits Form as attached hereto as Exhibit C, as the baseline for project monitoring by the California Transportation Commission and its Project Delivery Council. The undersigned Project Sponsor certifies that the funding sources cited are committed and expected to be available; the estimated costs represent full project funding; and the scope and description of benefits is the best estimate possible.

3. GENERAL PROVISIONS

The Project Sponsor and Caltrans agree to abide by the following provisions:

- 3.1 To meet the requirements of Government Code Section 8879.23(c)(1), as added by Proposition 1B, and to Government Code Section 8879.50, as enacted through implementing legislation in 2007 (Senate Bill 88 and Assembly Bill 193).
- 3.2 To adhere to the provisions of the California Transportation Commission Resolution TCIF-P-0708-01, “Adoption of Program of Projects for the Trade Corridors Improvement Fund (TCIF),” dated April 10, 2008.
- 3.3 To adhere to the California Transportation Commission’s Trade Corridor Improvement Fund Guidelines.
- 3.4 To adhere to the California Transportation Commission’s Accountability Implementation Plan and policies, and program and baseline amendment processes.
- 3.5 The Sponsoring Agency agrees to secure funds for any additional costs of the project. Any change to the funding commitments outlined in this agreement requires an amendment.

- 3.6 To report to the California Transportation Commission on a quarterly basis on the progress made toward the implementation of the project, including scope, cost, and schedule.
- 3.7 To report to the California Transportation Commission on the progress, on a quarterly basis, and outcomes, at the end of the environmental phase, of the environmental process with regard to air quality impacts due to emissions from diesel or other particulates and related mitigation strategies. Whereas the Bond Act mandates that the Commission shall allocate TCIF for trade infrastructure improvements in a manner that places emphasis on projects that improve trade corridor mobility while reducing emissions of diesel particulate and other pollutant emissions, the Department of Transportation, the Sponsoring Agency, and the Corridor Coalition understand and agree that the California Transportation Commission will only allocate TCIF to projects that can demonstrate compliance with applicable environmental requirements. If environmental clearance is conditioned to the implementation of mitigation measures, the sponsoring agency must commit, in writing, to the implementation of those mitigation measures.
- 3.8 To maintain and make available to the California Transportation Commission and/or its designated representative, all work related documents, including engineering and financial data, during the course of the project and retain those records for four years from the date of the final closeout of the project. Financial records will be maintained in accordance with Generally Accepted Accounting Principles.
- 3.9 The California Transportation Commission and/or its designated representative, has the right to audit the project records, including technical and financial data, of the Department of Transportation, the Sponsoring Agency, and any subconsultants at any time during the course of the project and for four years from the date of the final closeout of the project. Audits will be conducted in accordance with Generally Accepted Government Auditing Standards.

4. SPECIFIC PROVISIONS AND CONDITIONS

- 4.1 **Project Schedule and Cost**
See Project Programming Request Form, attached as Exhibit A.
- 4.2 **Project Scope**
See Project Study Report/Project Study Report Equivalent, attached as Exhibit B.
- 4.3 **Project Benefits**
See Project Benefits Form, attached as Exhibit C.
- 4.4 **Other Project Specific Provisions and Conditions**
To be determined.

**SIGNATURE PAGE
TO
TRADE CORRIDOR IMPROVEMENT FUND
PROJECT BASELINE AGREEMENT**

**Edward C. Starr
City Manager
City of Montclair**

Date

**Raymond Wolfe
Executive Director
San Bernardino Associated Governments**

Date

**Malcolm Dougherty
Director
California Department of Transportation**

Date

**Will Kempton
Executive Director
California Transportation Commission**

Date

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

Print

PROJECT PROGRAMMING REQUEST

DTP-0001 (Revised July 2013)

General Instructions

<input checked="" type="checkbox"/> New Project					Date:	2/3/16
District	EA	Project ID	PPNO	MPO ID	TCRP No.	
08			T0551		55.1	
County	Route/Corridor	PM Bk	PM Ahd	Project Sponsor/Lead Agency		
SBD				SANBAG		
				MPO	Element	
				SCAG	Local Assistance	
Project Manager/Contact		Phone		E-mail Address		
Brian Smith		909-884-8276		bsmith@sanbag.ca.gov		
Project Title						
Monte Vista Avenue Grade Separation at UPRR Line						
Location, Project Limits, Description, Scope of Work						<input type="checkbox"/> See page 2
In the City of Montclair construct grade separation at Monte Vista Avenue/ Union Pacific Railroad and associated roadway improvements to provide four lanes of traffic and a connector between Monte Vista Ave and State Street.						
<input type="checkbox"/> Includes ADA Improvements <input type="checkbox"/> Includes Bike/Ped Improvements						
Component	Implementing Agency					
PA&ED	City of Montclair					
PS&E	City of Montclair					
Right of Way	City of Montclair					
Construction	SANBAG					
Purpose and Need						<input type="checkbox"/> See page 2
The purpose of the work is to improve traffic flow, eliminate rail crossing delays and provide adequate levels of service through the year 2025						
Project Benefits						<input type="checkbox"/> See page 2
The project will improve safety, improve emergency vehicle response time, provide efficient movement of goods and mitigate the train/vehicular traffic conflict delays that are expected to worsen through 2025. The project will also improve air quality, lower noise and improve the quality of life for residents and motorists of both the County and the City						
<input checked="" type="checkbox"/> Supports Sustainable Communities Strategy (SCS) Goals <input checked="" type="checkbox"/> Reduces Greenhouse Gas Emissions						
Project Milestone						Proposed
Project Study Report Approved						
Begin Environmental (PA&ED) Phase						04/01/02
Circulate Draft Environmental Document				Document Type	CE/CE	
Draft Project Report						08/27/02
End Environmental Phase (PA&ED Milestone)						07/19/13
Begin Design (PS&E) Phase						01/01/03
End Design Phase (Ready to List for Advertisement Milestone)						03/01/16
Begin Right of Way Phase						01/01/03
End Right of Way Phase (Right of Way Certification Milestone)						03/01/16
Begin Construction Phase (Contract Award Milestone)						11/02/16
End Construction Phase (Construction Contract Acceptance Milestone)						01/31/19
Begin Closeout Phase						02/02/19
End Closeout Phase (Closeout Report)						08/01/19

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

Print

PROJECT PROGRAMMING REQUEST

DTP-0001 (Revised July 2013)

General Instructions

<input checked="" type="checkbox"/> New Project					Date:	2/3/16
District	EA	Project ID	PPNO	MPO ID	TCRP No.	
08			T0551		55.1	
County	Route/Corridor	PM Bk	PM Ahd	Project Sponsor/Lead Agency		
SBD				SANBAG		
				MPO	Element	
				SCAG	Local Assistance	
Project Manager/Contact		Phone		E-mail Address		
Brian Smith		909-884-8276		bsmith@sanbag.ca.gov		
Project Title						
Monte Vista Avenue Grade Separation at UPRR Line						
Location, Project Limits, Description, Scope of Work						<input type="checkbox"/> See page 2
In the City of Montclair construct grade separation at Monte Vista Avenue/ Union Pacific Railroad and associated roadway improvements to provide four lanes of traffic and a connector between Monte Vista Ave and State Street.						
<input type="checkbox"/> Includes ADA Improvements <input type="checkbox"/> Includes Bike/Ped Improvements						
Component	Implementing Agency					
PA&ED	City of Montclair					
PS&E	City of Montclair					
Right of Way	City of Montclair					
Construction	SANBAG					
Purpose and Need						<input type="checkbox"/> See page 2
The purpose of the work is to improve traffic flow, eliminate rail crossing delays and provide adequate levels of service through the year 2025						
Project Benefits						<input type="checkbox"/> See page 2
The project will improve safety, improve emergency vehicle response time, provide efficient movement of goods and mitigate the train/vehicular traffic conflict delays that are expected to worsen through 2025. The project will also improve air quality, lower noise and improve the quality of life for residents and motorists of both the County and the City						
<input checked="" type="checkbox"/> Supports Sustainable Communities Strategy (SCS) Goals <input checked="" type="checkbox"/> Reduces Greenhouse Gas Emissions						
Project Milestone						Proposed
Project Study Report Approved						
Begin Environmental (PA&ED) Phase						04/01/02
Circulate Draft Environmental Document				Document Type	CE/CE	
Draft Project Report						08/27/02
End Environmental Phase (PA&ED Milestone)						07/19/13
Begin Design (PS&E) Phase						01/01/03
End Design Phase (Ready to List for Advertisement Milestone)						03/01/16
Begin Right of Way Phase						01/01/03
End Right of Way Phase (Right of Way Certification Milestone)						03/01/16
Begin Construction Phase (Contract Award Milestone)						11/02/16
End Construction Phase (Construction Contract Acceptance Milestone)						01/31/19
Begin Closeout Phase						02/02/19
End Closeout Phase (Closeout Report)						08/01/19

EXHIBIT A

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

PROJECT PROGRAMMING REQUEST

DTP-0001 (Revised July 2013)

Date: 2/3/16

District	County	Route	EA	Project ID	PPNO	TCRP No.
08	SBD				T0551	55.1
Project Title: Monte Vista Avenue Grade Separation at UPRR Line						

Proposed Total Project Cost (\$1,000s)									Notes
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	
E&P (PA&ED)	203							203	
PS&E	1,150	1,800						2,950	
R/W SUP (CT)									
CON SUP (CT)									
R/W	8,333							8,333	
CON			22,622					22,622	
TOTAL	9,686	1,800	22,622					34,108	

Fund No. 1:	Trade Corridor Improvement Funds (TCIF)								Program Code
Proposed Funding (\$1,000s)									Funding Agency
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			2,113					2,113	
TOTAL			2,113					2,113	

Fund No. 2:	Project of National and Regional Significance (PNRS)								Program Code
Proposed Funding (\$1,000s)									Funding Agency
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			12,152					12,152	
TOTAL			12,152					12,152	

Fund No. 3:	SANBAG Measure I								Program Code
Proposed Funding (\$1,000s)									Funding Agency
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			3,501					3,501	
TOTAL			3,501					3,501	

Fund No. 4:		Local City Funds							Program Code	
Proposed Funding (\$1,000s)										
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	Funding Agency	
E&P (PA&ED)										
PS&E		360						360		
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON			3,780					3,780		
TOTAL		360	3,780					4,140		

Fund No. 5:		UPRR							Program Code	
Proposed Funding (\$1,000s)										
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	Funding Agency	
E&P (PA&ED)										
PS&E										
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON			1,076					1,076		
TOTAL			1,076					1,076		

Fund No. 6:		Traffic Congestion Relief Program (TCRP)							Program Code	
Proposed Funding (\$1,000s)										
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	Funding Agency	
E&P (PA&ED)	203							203		
PS&E	1,150							1,150		
R/W SUP (CT)										
CON SUP (CT)										
R/W	8,333							8,333		
CON										
TOTAL	9,686							9,686		

Fund No. 7:		Federal DEMO							Program Code	
Proposed Funding (\$1,000s)										
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	Funding Agency	
E&P (PA&ED)										
PS&E		1,440						1,440		
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON										
TOTAL		1,440						1,440		

EXHIBIT B

EXHIBIT C

**Trade Corridor Improvement Fund
Project Benefits Form**

Project Title: *Monte Vista Ave. Grade Separation*

Project Category: *Grade Separations*

Project Type: *Removal of at Grade Crossing*

Outputs: *One Grade Crossings eliminated*

Outcomes: *Outcome* *Performance Measure (suggested Indices)*
(EXAMPLES)

Safety	Eliminate potential accidents with at grade crossings of rail lines
Velocity	Reduction of 55.4 existing daily vehicle hours Reduction of 137 daily vehicle hours in 2035
Throughput	Elimination of current gate down time of 1.1 hours per day Eliminate of gate down time of 2.3 hours per day in 2035
Reliability	Eliminate emergency vehicle delay time up to 5 minutes
Congestion Reduction	Eliminate current at grade vehicle queue rate of 415 vehicles per hour per lane Eliminate current at grade vehicle queue rate of 512 vehicles per hour per lane in 2035
Emissions Reduction	0.00001 Reduction of Tons per Year of Particulate Matter (PM2.5, PM10) 0.17 Reduction of Tons per Year of Carbon Dioxide (CO2) 0.00012 Reduction of Tons per Year of Nitrogen Oxides (NOx) 0.00005 Reduction of Tons per Year of ROG

**Trade Corridor Improvement Fund
Project Benefits Form**

Project Title: Monte Vista Ave. Grade Separation

Project Category: Grade Separations

Project Type: Removal of at Grade Crossing

Outputs: One Grade Crossings eliminated

Outcomes:	Outcome	Performance Measure (suggested Indices) (EXAMPLES)
	Safety	Eliminate potential accidents with at grade crossings of rail lines
	Velocity	Reduction of 55.4 existing daily vehicle hours Reduction of 137 daily vehicle hours in 2035
	Throughput	Elimination of current gate down time of 1.1 hours per day Eliminate of gate down time of 2.3 hours per day in 2035
	Reliability	Eliminate emergency vehicle delay time up to 5 minutes
	Congestion Reduction	Eliminate current at grade vehicle queue rate of 415 vehicles per hour per lane Eliminate current at grade vehicle queue rate of 512 vehicles per hour per lane in 2035
	Emissions Reduction	0.00001 Reduction of Tons per Year of Particulate Matter (PM2.5, PM10) 0.17 Reduction of Tons per Year of Carbon Dioxide (CO2) 0.00012 Reduction of Tons per Year of Nitrogen Oxides (NOx) 0.00005 Reduction of Tons per Year of ROG

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF DRAFT AGREEMENT NO. 16-16 WITH UNION PACIFIC RAILROAD AND SAN BERNARDINO ASSOCIATED GOVERNMENTS FOR THE CONSTRUCTION AND MAINTENANCE OF A RAILROAD GRADE SEPARATION PROJECT AT MONTE VISTA AVENUE, SUBJECT TO FINAL APPROVAL BY CITY ATTORNEY ROBBINS	DATE: February 16, 2016
	SECTION: AGREEMENTS
	ITEM NO.: 5
	FILE I.D.: STA110
	DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: The construction of a grade separation between the Union Pacific Railroad tracks and Monte Vista Avenue requires an agreement for both construction and the continued maintenance of the bridge structure. San Bernardino Associated Governments (SANBAG), as the agency responsible for funding the construction, is included in this three-party agreement. Agreements with the City require City Council approval.

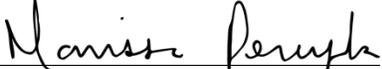
A copy of proposed draft Agreement No. 16-16 with Union Pacific Railroad and San Bernardino Associated Governments is attached for City Council review and consideration.

BACKGROUND: The City began developing plans for a grade separation between the Union Pacific Railroad tracks and Monte Vista Avenue in 2001, with funding from the Traffic Congestion Relief Program (TCRP) enacted in 2000. With design nearly complete, the City entered into Agreement No. 02-28 with Union Pacific Railroad (UPRR) which addressed both construction and maintenance of the bridge structure. Unfortunately, state provided funding for this project was rescinded in 2003 and all design and right-of-way acquisition activities were suspended. With no grade separation work starting within the time specified in Agreement No. 02-28, the Agreement expired.

TCRP funding was partially restored in 2005 and the City resumed right-of-way acquisition. The restored funding was not sufficient to complete the right-of-way acquisition, let alone to construct the bridge.

In cooperation with the federal government, SANBAG, and the City's former Redevelopment Agency, the City has now acquired sufficient funding to complete a new design required by the UPRR, acquire the remaining right-of-way, and construct the grade separation project. To that end, UPRR requires the City to enter into a new construction and maintenance agreement (CMA). With SANBAG funding the construction of the project, it desires to be a party to the agreement as well.

Most of the critical CMA details have been worked out between the City, SANBAG, and UPRR. However, UPRR is still reviewing what staff believes will be the final form of the

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

agreement. Several exhibits still need to be added to the agreement, but with the City Council's approval of the right-of-way compensation amount for right-of-way required from the UPRR, staff does not believe there are any other points to negotiate.

The time required for completion of the UPRR review is uncertain, but there is a deadline at the end of March to have the agreement signed and submitted to the state for allocation of the California Public Utilities Commission (CPUC) grade separation funds amounting to \$5 million. Therefore, staff is submitting Agreement No. 16-16 in draft form for approval, subject to final approval by City Attorney Robbins.

FISCAL IMPACT: Approval of Agreement No. 16-16 is one of the requisites for receiving CPUC grade separation funds totaling \$5 million. It also requires the UPRR to contribute approximately \$1 million to the project. Without the CMA, the grade separation cannot be built.

RECOMMENDATION: Staff recommends the City Council approve draft Agreement No. 16-16 with Union Pacific Railroad and San Bernardino Associated Governments for the construction and maintenance of a railroad grade separation project at Monte Vista Avenue, subject to final approval by City Attorney Robbins.

PUBLIC HIGHWAY OVERPASS AGREEMENT

AMONG

SAN BERNARDINO
ASSOCIATED GOVERNMENTS

AND

CITY OF MONTCLAIR, CALIFORNIA

AND

UNION PACIFIC RAILROAD COMPANY

FOR

DESIGN, CONSTRUCTION AND MAINTENANCE OF AN
OVERHEAD GRADE SEPARATION (DOT # 441154C)
REPLACING THE EXISTING AT-GRADE CROSSINGS AT
MONTE VISTA AVENUE AT MILEPOST B-517.46 ON
ALHAMBRA SUBDIVISION (DOT # 746936L) AND MILEPOST 3-
35.00 ON LOS ANGELES SUBDIVISION (DOT # 810896P),
IN THE CITY OF MONTCLAIR
SAN BERNARDINO COUNTY
STATE OF CALIFORNIA

PUBLIC HIGHWAY OVERPASS AGREEMENT

Monte Vista Avenue (DOT No. 441154C)
Milepost B-517.46 on Alhambra Subdivision (DOT No. 746936L)
Milepost 3-35.00 on Los Angeles Subdivision (DOT No. 810896P)
City of Montclair
County of San Bernardino, California

This AGREEMENT ("**Agreement**") is made and entered into as the ____ day of _____, 2016 (the "**Effective Date**"), by and among **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation to be addressed at Real Estate Department, 1400 Douglas Street, MS 1690, Omaha, Nebraska 68179 (the "**Railroad**"); **CITY OF MONTCLAIR**, a municipal corporation of the State of California to be addressed at P.O. Box 2308, Montclair, California 91763 ("**Montclair**"); and **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, the duly constituted transportation authority and transportation commission for San Bernardino County to be addressed at 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92401 ("**SANBAG**" and together with Montclair, collectively, the "**Political Bodies**").

RECITALS:

A. Montclair currently maintains, uses and repairs the existing Monte Vista Avenue at-grade public road crossings at (i) Milepost B-517.46 on the Railroad's Alhambra Subdivision (DOT No. 746936L) (the "**Alhambra At-Grade Crossing**") and (ii) Milepost 3-35.00 on the Railroad's Los Angeles Subdivision (DOT No. 810896P) (the "**Los Angeles At-Grade Crossing**") and together with the Alhambra At-Grade Crossing, collectively, the "**Existing Crossings**") at or near the City of Montclair, County of San Bernardino, State of California.

B. Montclair and the Railroad entered into that certain New Overhead Grade Separation Structure dated March 22, 2002 (the "**2002 Agreement**") covering the: (i) closure and removal of the Alhambra At-Grade Crossing; (ii) closure to the public and modification of the Los Angeles At-Grade Crossing for private access by the Railroad for maintenance, operations and exclusive use by the Railroad's tenants and permitted users; and (iii) the construction, use, maintenance and repair of a new grade separated overpass structure (the "**Structure**") that would carry vehicular traffic traversing on Monte Vista Avenue over the Existing Crossings (collectively, the "**Project**").

C. As part of the 2002 Agreement, the Railroad granted Montclair a right to establish, construct, maintain, repair, renew and use the Structure over and across a portion of the Railroad's property. Such area is hereby identified as the "**Existing License Area**" on the survey print attached hereto and made a part hereof as **Exhibit C**.

D. Work on the Project was never commenced.

E. Montclair, together with SANBAG, now desires to commence the Project. The general location of the Project area is shown on the Railroad location print attached hereto and made a part hereof as **Exhibit A**, and the type, size and location prints of the Structure are marked **Exhibit B** attached hereto and made a part hereof.

F. The Existing License Area is not sufficient to allow for the construction of the Structure as presently contemplated by the parties. Therefore, under this Agreement, the Railroad will be granting additional rights to the Political Bodies to facilitate the construction of the Structure as well as the work to be performed in connection with the overall Project. The portion of the Railroad's property that the Political Bodies need to use in connection with the Structure (which includes the Existing License Area) is shown on the survey print marked **Exhibit C** and the described in the legal description marked **Exhibit C-1**, attached hereto and made a part hereof (the "**Crossing Area**").

G. Montclair shall pursue all required approvals from the California Public Utilities Commission ("**CPUC**") in connection with the Project. As part of such obligation, the Political Bodies shall submit (i) a request to the CPUC for the permanent closure and removal of the Alhambra At-Grade Crossing, the permanent closure to the public and modification of the Los Angeles At-Grade Crossing and the construction of the Structure in the form marked **Exhibit F** attached hereto and made a part hereof ("**CPUC Request**") and (ii) an authorization from the CPUC in connection with the request submitted under (i) above in the form marked **Exhibit F-1** attached hereto and made a part hereof ("**CPUC Authorization**").

H. Given SANBAG's involvement in the Project and that additional rights are required from the Railroad to accommodate the Project, Montclair and the Railroad hereby desire to terminate the 2002 Agreement in its entirety, and the Political Bodies and the Railroad desire to enter into this Agreement to cover the items set forth above in connection with the Project.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

ARTICLE 1. EXHIBITS

Exhibits A through I are attached hereto and hereby made a part hereof.

ARTICLE 2 - PROJECT COSTS

Except as provided in Article 11 below, the Political Bodies confirm that the Political Bodies are to bear all Project costs and that the Railroad shall not be obligated to provide any funding for the Project.

ARTICLE 3 - DEFINITION OF CONTRACTOR

For purposes of this Agreement, the term "**Contractor**" shall mean the contractor or contractors hired by a Political Body to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

ARTICLE 4 - RAILROAD GRANTS RIGHTS

A. For and in consideration of _____ Dollars (\$ _____) to be paid by Montclair to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Bodies' agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Bodies the irrevocable right to establish, construct, use, maintain, renew and repair the Structure on, along and over the Crossing Area. By separate license agreement(s) the Railroad will grant the Political Bodies an irrevocable license on, over and across the Crossing Area, which will include the right to use the Railroad Property to: establish, construct, maintain, repair, renew, and relocate existing Political Bodies' utilities; and establish, construct, maintain, repair, and renew Political Bodies' utilities to be constructed pursuant to the Project all within Monte Vista Avenue and across the portions of Railroad's property that will be described in the separate license agreement(s). Pursuant to the 2002 Agreement, Montclair paid to Railroad an amount equal to Fourteen Thousand Four Hundred Eighteen Dollars (\$14,418.00) as consideration for rights in and to the Existing License Area, and Montclair and the Railroad acknowledge and agree that such amount paid by Montclair for the Original License Area shall be credited against the amount owed by Montclair to the Railroad pursuant to this Article 4.

B. For and in consideration of _____ Dollars (\$ _____), the Railroad hereby grants to the Political Bodies temporary construction rights to use the portion of the Railroad's property shown on **Exhibit C** and described in the legal description marked **Exhibit C-2**, attached hereto and made a part hereof (the "**Temporary License Area**"). The Political Bodies' use of the Temporary License Area shall be subject to the terms and conditions of this Agreement and the obligation of the Political Bodies and their Contractors to comply with such provisions. The rights to the Temporary License Area granted herein shall commence as of the Effective Date and continue for three (3) years after the Effective Date, or until the Project has been completed, whichever occurs earlier.

ARTICLE 5 - FEDERAL AID POLICY GUIDE

The Project will be funded by Federal funds, and the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B shall govern and such rules, regulations and provisions are incorporated into this Agreement by reference.

ARTICLE 6 – PLANS

A. Montclair, at its expense, shall prepare or cause to be prepared by others, the detailed plans and specifications for the Project and shall submit such plans and specifications to the Railroad for review and approval. The plans and specifications shall comply with the American Railway Engineering and Maintenance-of-Way Association ("**AREMA**") standards and guidelines. Sixty-five percent (65%) plans and specifications for the Project have been reviewed and approved by the Railroad, and the cover sheets for such approved sixty-five percent (65%) plans are attached hereto as **Exhibit B-1**, and by and through such attachment the entire design set is incorporated herein by reference. Plans and specifications at the one hundred percent (100%) design completion level shall be submitted by Montclair for the Railroad's review and approval. The plans and specifications shall include all appurtenances, associated drainage, shoring, sheeting and excavations for bents and/or abutments next to or adjacent to the Railroad's tracks. Approval by the Railroad of any plans and specifications shall not be deemed to have been given until the Railroad's Assistant Vice President Engineering-Design (or his authorized representative) has initialed or signed such designs, plans and/or specifications.

B. The final one hundred percent (100%) plans and specifications, as approved, are hereinafter referred to as the "**Plans**" and shall replace the sixty-five percent (65%) plans and any subsequent iterations of the plans. The Plans are hereby made a part of this Agreement by reference. No Project work may commence on the Railroad's property until the Plans have been approved by the Railroad.

C. Once approved by the Railroad, no changes to the Plans shall be made unless the Railroad has consented to such changes in writing in accordance with this Agreement.

D. The Railroad's review and approval of the Plans in no way relieves the Political Bodies or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranties as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Bodies or their Contractor(s) on the Plans is at the risk of the Political Bodies and/or their Contractor(s), respectively. Notwithstanding anything contained in this Agreement to the contrary, the Railroad's review will be performed solely for its own purposes and benefit, and the Railroad shall not be deemed to be liable to the Political Bodies or any other party for defects in the Plans.

ARTICLE 7 - SANBAG OBLIGATIONS

SANBAG agrees:

A. To comply and ensure that its Contractor complies, at all times when on Railroad's property, with the rules and regulations contained in Article 9 below.

B. In conjunction with Montclair, to make all necessary arrangements at Political Bodies' expense for the protection, relocation or removal of any public or private utility facilities that conflicts with the Project. Submittal of plans and specifications for protecting, encasing,

reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "**Non Railroad Facilities**") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Article 6. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, AREMA standards and guidelines. The Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with the Railroad's standard specifications and requirements. The Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on the Railroad's property. Upon the Railroad's approval of submitted Non Railroad Facilities plans and specifications, the Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. The Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for the Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by the Railroad and the Non Railroad Facilities owner or operator, or before the Railroad and the Political Bodies mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Article 6B above, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

C. To complete the Project within _____ () years after the Effective Date.

D. To perform all necessary grading for the construction of the Project. The grading performed by SANBAG shall provide for suitable drainage, both temporary and permanent, as provided for in the Plans.

E. To advise the Railroad in writing of the completion date of the Project, and construction of the Structure, within thirty (30) days after such completion, SANBAG shall further notify Railroad, in writing of the date on which the Railroad and SANBAG's Contractor will meet for the purpose of making a final inspection of the Project. The Railroad retains the right to review the work and demand satisfactory completion of the Project and the Structure in compliance with the Plans and the Railroad's Coordination Requirements marked **Exhibit E**. However, in no event shall the Railroad's review, inspection, approval or demands make the Railroad liable or responsible for any problems with the Project, and/or Structure, nor shall the Railroad be responsible to repair or remedy such problems. SANBAG and its Contractor shall bear such liability and responsibility.

ARTICLE 8 - MONTCLAIR OBLIGATIONS

Upon completion of the initial construction of the Project, Montclair shall own the Structure and any and all appurtenance related thereto, and Montclair, at its expense, agrees:

A. To maintain, repair and renew, or cause to be maintained, repaired and renewed, the entire Structure and appurtenances, including but not limited to, the superstructure, substructure, piers and abutments, walls, lighting, drainage system, roadway pavement, roadway facilities, approaches, curb and gutter, striping, signage, fencing, and all backfill and grading, as well as all graffiti removal or overpainting involving the Structure.

B. To notify the Railroad at least ten (10) working days in advance of any entry on the Railroad's property in connection with any work to be performed by Montclair and at least thirty (30) working days in advance where any such work will occur within twenty-five (25) feet of a track. In accordance with this Agreement, any Railroad flagging or inspection required to protect Railroad tracks or the traffic moving thereon in connection with any work to be performed by Montclair hereunder shall be paid for by Montclair. Montclair, at its expense, shall maintain advance warning signage and markings as required under the State of California Vehicle Code, Section 21362, and the State of California Department of Transportation's (Caltrans) Traffic Manual.

C. To provide the Railroad, as applicable, with adequate and reasonable access through property owned by Montclair for the inspection of the Project work.

D. To obtain and comply with any and all approvals, permits, licenses and other authorizations required by applicable laws, regulations, rules and ordinances, including obtaining permissions/authority from the CPUC prior to the commencement of any Project work.

E. To act as the lead agency on all planning, zoning, environmental approval and permitting activities required by state law.

F. That if any property or rights, other than the right granted herein by the Railroad to the Political Bodies, are necessary for the construction, maintenance and use of the Structure and its appurtenances, or for the performance of any work in connection with the Project, Montclair will acquire such other property and rights at its own expense and without expense to the Railroad.

G. To submit the CPUC Request and CPUC Authorization to the CPUC and work to get the CPUC's authorization in connection with the Project.

ARTICLE 9 - CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. If a Political Body will be hiring a Contractor to perform any work involving the Project (including initial construction and any subsequent relocation or maintenance and repair work), such Political Body shall require its Contractor (prior to such Contractor commencing any work in the Crossing Area or on any other Railroad property) to (i) execute the Railroad's then current Contractor's Right of Entry Agreement; (ii) obtain the insurance required in such Contractor's Right of Entry Agreement; and (iii) provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Political Bodies acknowledge receipt of a copy of the Railroad's current Contractor's Right of Entry Agreement, attached hereto and made a part hereof as **Exhibit G** and confirms that it will inform its Contractor(s) that it/they are required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will a Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement, obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
ATTN: Senior Manager-Contracts
UP Real Estate Folder No. _____

D. If a Political Body's own employees will be performing any of the Project work, such Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

ARTICLE 10 - WORK TO BE PERFORMED BY RAILROAD; BILLING; PAYMENT BY SANBAG

A. The work to be performed by the Railroad in connection with the Project, at SANBAG's expense, is described in the Railroad's Material and Force Account Estimate for \$200,000.00 dated _____, marked **Exhibit H** and the Railroad's Material and Force Account Estimate for flagging dated \$841,000.00, marked **Exhibit H-1**, each of which are attached hereto and made a part hereof (collectively, the "**Estimate**"). As set forth in the Estimate, the Railroad's total estimated cost for the Railroad's work associated with the Project is One million forty-one thousand dollars (\$1,041,000.00).

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Bodies in the event the Political Bodies do not commence construction of the Project within six (6) months after the date of the Estimate.

C. The Railroad shall send progressive billing to SANBAG during the Project and final billing to SANBAG within one hundred eighty (180) days after receiving written notice from SANBAG that all Project work affecting the Railroad's property has been completed.

D. SANBAG agrees to reimburse the Railroad within sixty (60) days after its receipt of progressive or final billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (excluding preliminary engineering review costs incurred by

the Railroad prior to the Effective Date, which will be paid by Montclair), construction, inspection, flagging, procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's customary additive rates.

E. Upon completion of the initial construction of the Project, the Railroad, at its expense, will maintain, repair and renew, or cause to be maintained, repaired and renewed the rails, ties, ballast and communication and signal facilities owned by the Railroad beneath the Structure.

F. The books, papers, records and accounts of the Railroad so far as they relate to this Project shall be open for inspection and audit at the Railroad's Headquarters Building in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of the Political Bodies and the Federal Highway Administration (FHWA) for a period of three (3) years following the date of the Railroad's final billing to SANBAG.

ARTICLE 11 - RAILROAD'S 5% CONTRIBUTION

Pursuant to the provisions of the Federal Aid Policy Guide, 23 CFR Section 646.210, the Railroad, due to the permanent closure of the Public At-Grade Crossings, shall bear five percent (5%) of the cost of a "Theoretical Structure." The Theoretical Structure Estimate is marked **Exhibit I** attached hereto and made a part hereof. It has been determined that the Railroad's five percent (5%) share is estimated to be One million seventy-six thousand three hundred nine dollars (\$1,076,309.00) (the "**Contribution Amount**"). In no event shall the Railroad's obligation herein exceed the Contribution Amount without the prior written approval of the Railroad's Assistant Vice President Engineering - Design or his authorized representative. When the Structure is one hundred percent (100%) complete and the Structure has the final acceptance of the Railroad, SANBAG shall send a billing to the Railroad in an amount equal to the Contribution Amount (as may be increased in accordance with the provisions herein). The Railroad shall pay such billing received hereunder within sixty (60) days after receipt of such billing from SANBAG.

ARTICLE 12 - RAILROAD'S COORDINATION REQUIREMENTS

The Political Bodies, at their expense, shall ensure that the Contractor complies with all of the terms and conditions contained in the Railroad's Coordination Requirements that are described in **Exhibit E**, attached hereto and hereby made a part hereof, and other special guidelines and/or requirements that the Railroad may provide to the Political Bodies for the Project.

ARTICLE 13 - EFFECTIVE DATE; TERM

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Structure remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Political Bodies in the event SANBAG does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months after the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the Political Bodies shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Plans.

ARTICLE 14 – CONDITIONS TO BE MET BEFORE COMMENCEMENT OF PROJECT WORK

Neither the Political Bodies nor a Contractor may commence any work within the Crossing Area or on any other Railroad property until:

A. The Railroad and the Political Bodies have executed this Agreement.

B. The Railroad has provided to the Political Bodies the Railroad's written approval of the Plans.

C. Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.

D. Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the railroad representative named in the Contractor's Right of Entry Agreement.

ARTICLE 15 – FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Structure shall not commence until the Railroad and Montclair agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

ARTICLE 16 – TERMINATION OF 2002 AGREEMENT

Notwithstanding any provision regarding termination in the 2002 Agreement to the contrary, the Railroad and Montclair hereby terminate the 2002 Agreement in its entirety, and the Railroad and Montclair shall be relieved of any and all outstanding and/or ongoing obligations thereunder.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in triplicate as of the Effective Date.

SANBAG

San Bernardino Association Governments,
a duly constituted transportation authority
and transportation commission for San
Bernardino County

APPROVED AS TO FORM:

General Counsel

By: _____
Name: Raymond W. Wolfe, PhD
Title: SANBAG Executive Director

By: _____
Name: Eileen Monaghan Teichert
Title: SANBAG General Counsel

RAILROAD

Union Pacific Railroad Company, a Delaware
corporation

APPROVED AS TO FORM:

Legal Counsel

By: _____
Name:
Title:

By: _____
Name:
Title:

MONTCLAIR

City of Montclair, a municipal California
corporation

APPROVED AS TO FORM:

City Attorney

By: _____
Name: Paul M. Eaton
Title: Mayor

By: _____
Name: Diane E. Robbins
Title: City Attorney

ATTEST:

By: _____
Name: Andrea M. Phillips
Title: Deputy City Clerk

EXHIBITS

Exhibit A	Railroad's location print
Exhibit B	Selected plan prints showing profile of Structure
Exhibit B-1	Cover sheet of 65% plans approved by the Railroad
Exhibit C	Survey print showing Crossing Area and Temporary License Area
Exhibit C-1	Legal description of the Crossing Area
Exhibit C-2	Legal description of the Temporary License Area
Exhibit D	General terms and conditions
Exhibit E	Railroad's coordination requirements
Exhibit F	Form of CPUC Request
Exhibit F-1	Form of CPUC Authorization
Exhibit G	Contractor's Right of Entry Agreement
Exhibit H	Railroad's Material and Force Account Estimate
Exhibit H-1	Railroad's Material and Force Account Estimate (flagging)
Exhibit I	Theoretical Structure Estimate

EXHIBIT A

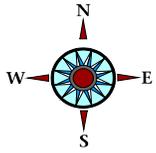


EXHIBIT A
RAILROAD LOCATION PRINT ACCOMPANYING A
CONSTRUCTION & MAINTENANCE AGREEMENT/CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT



UNION PACIFIC RAILROAD COMPANY

F) ALHAMBRA SUBDIVISION, RAILROAD MILE POST 517.36, MONTCLAIR, SAN BERNARDINO, CA

To accompany an agreement and Contractor's Right of Entry for the

G) CITY OF MONTCLAIR and its CONTRACTORS

UPRR Folder No. 2034-71

Date: January 27, 2016

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.

PHONE: 1-(800) 336-9193

EXHIBIT B

Selected plan prints showing profile of the Structure.

EXHIBIT B-1

Cover Sheet of 65% plans approved by the Railroad.

EXHIBIT C

Survey Print showing the Crossing Area and Temporary License Area.

EXHIBIT C-1

Legal description describing Crossing Area.

EXHIBIT C-2

Legal description describing the Temporary License Area.

EXHIBIT D

General Terms and Conditions.

SECTION 1 - CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Bodies shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Bodies shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Bodies for the purpose of conveying electric power or communications incidental to the Political Bodies' use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Bodies to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. The Political Bodies have coordinated with the Railroad in the planning for this grade crossing to provide for future track(s) in the Crossing Area to maximize the use of the railroad corridor in the crossing area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Bodies shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Bodies at their own expense settles with and obtain releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property and the right to cross the Crossing Area with all kinds of equipment. The Railroad further reserves the right to attach signal, communication or power lines to any highway facilities located upon the property (including the Structure), provided that such attachments shall comply with Political Bodies' specifications and will not interfere with the use of the Crossing Area.

E. So far as it lawfully may do so, the Political Bodies will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the highway and its appurtenances (including the

Structure), or for the performance of any work in connection with the Project, the Political Bodies will acquire all such other property and rights at their own expense.

SECTION 2 - CONSTRUCTION OF STRUCTURE

A. The Political Bodies, at their own expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

B. Except as may be otherwise specifically provided herein, the Political Bodies, at their own expense, will furnish all necessary labor, material, and equipment, and shall construct and complete the Structure and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right-of-way), and all necessary and proper drainage facilities, guardrails or barriers, and right of way fences between the Structure and the railroad tracks. Upon completion of the Project, the Political Bodies shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

C. All construction work of the Political Bodies upon the Railroad's property (including, but not limited to, construction of the Structure and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President-Engineering Design of the Railroad or his authorized representative and in accordance with the Plans, the Railroad's Coordination Requirements set forth in Exhibit E of this Agreement and any other guidelines furnished by the Railroad.

D. All construction work of the Political Bodies shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued, or unduly delayed without the Railroad's written consent and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Political Bodies. The Political Bodies hereby assume the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the Political Bodies and/or their Contractors.

E. The Political Bodies, at their expense, shall furnish the Railroad permanent reproducible prints of all design and shop drawings as soon as possible after final approval by the Assistant Vice President-Engineering Design of the Railroad or his authorized representative. Upon completion of construction, the Political Bodies, at their expense, shall furnish the Railroad two sets of "as constructed" plans of the Structure and, in addition, upon request of the Assistant Vice President-Engineering Design of the Railroad, "as constructed" permanent reproducible prints of all or any portion of the Structure.

SECTION 3 - INJURY AND DAMAGE TO PROPERTY

If the Political Bodies, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Bodies are responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Bodies at the Political Bodies' own expense, or by the Railroad at the expense of the Political Bodies, and to the satisfaction of the Railroad's Assistant Vice President-Engineering Design.

SECTION 4 - RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than railroad forces. The Railroad shall notify the Political Bodies of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

SECTION 5 - SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Bodies that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Bodies shall include the Political Bodies' Contractor(s) and their respective officers, agents and employees, and others acting under their authority; and all references in this Agreement to work of the Political Bodies shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Bodies.** If a Political Body's employees need to enter the Railroad's property in order to perform an inspection of the Structure, minor maintenance or other activities, such Political Body shall first provide at least ten (10) working days advance notice to the Railroad's representative. With respect to such entry on to the Railroad's property by a Political Body's employee, such Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "**Loss**") that arises from the presence or activities of such Political Body's employees on the Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of the Railroad.

C. **Flagging.**

(i) If a Political Body's employees need to enter the Railroad's property as provided in Paragraph B above, such Political Body agrees to notify the Railroad's representative at least thirty (30) working days in advance of the proposed performance of any work by such Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of the Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad's representative will determine and inform such Political Body whether a flagman need be present and whether the Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, the Railroad will bill the applicable Political Body for the expenses incurred by the Railroad. If the Railroad performs any flagging, or other special protective or safety measures are performed by the Railroad in connection with a Political Body's work, such Political Body agrees that the Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with labor agreements and schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times the current hourly rate is paid for holidays. Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, a Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to the Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad by assignment of such flagman to other work, even though a Political Body may not be working during such time. When it becomes necessary for the Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, a Political Body must provide the Railroad a minimum of five (5) days notice prior to the cessation of the need for a

flagman. If five (5) days notice of cessation is not given, a Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to the Railroad if flagging services are needed again after such five (5) day cessation notice has been given to the Railroad.

D. **Compliance With Laws.** The Political Bodies shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Bodies shall use only such methods as are consistent with safety, both as concerns the Political Bodies, the Political Bodies' agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Bodies (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Bodies to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Bodies shall reimburse and, to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost or charge, including without limitation attorney's fees, court costs and expenses. The Political Bodies further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Bodies shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** Each Political Body, at its own expense, shall adequately police and supervise all work to be performed by such Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Bodies for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by a Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Bodies will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time a Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of such Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, such Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Bodies shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Bodies at the Political Bodies' own expense or by the Railroad at the expense of the Political Bodies. The Political Bodies shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Bodies shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Bodies shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Bodies shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Bodies, at their own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Bodies in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President-Engineering Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Bodies, at the Political Bodies' own expense, shall provide and maintain suitable facilities for draining the Structure and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Bodies, at the Political Bodies' own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Bodies, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Bodies shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work on the Railroad's property, a Political Body shall provide the advance notice that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. A Political Body performing work (or causing work to be performed) on the Railroad's property shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by such Political Body. If it is, such Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 6 -INTERIM WARNING DEVICES

If at any time it is determined by a competent authority, by a Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the applicable Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the construction or reconstruction of the Structure has been completed.

SECTION 7 - OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 8 - REMEDIES FOR BREACH OR NONUSE

A. If the Political Bodies shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Structure and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Bodies shall reimburse the Railroad for the expenses thereof. Such reimbursement obligations shall be joint and several as to the Political Bodies.

B. Nonuse by the Political Bodies of the Crossing Area for public roadway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Bodies hereunder.

C. The Political Bodies will surrender peaceable possession of the Crossing Area upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 9 - MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Bodies and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Bodies shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Political Bodies and the Railroad and cancel and supersede the 2002 Agreement as well as any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

SECTION 10 - ASSIGNMENT; SUCCESSORS AND ASSIGNS

This Agreement shall not be assigned without the written consent of the Railroad. Subject hereto, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

RAILROAD COORDINATION REQUIREMENTS

1.01 DEFINITIONS

Agreement: Agreement that has been signed, or will be signed, between Railroad and Agency covering the construction and maintenance of the Project.
Agency: City of Montclair, California and San Bernardino Associated Governments
AREMA: American Railway Engineering and Maintenance-of-way Association
Contractor: The contractor or contractors hired by the Agency to perform any project work on any portion of Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.
MUTCD: Manual on Uniform Traffic Control Devices
Project: New overpass structure for Monte Vista Avenue at Railroad Milepost B-517.46 on the Alhambra Subdivision (DOT # 746936L) and Railroad Milepost 3-35.00 on the Los Angeles Subdivision (DOT # 810896P)
Railroad: Union Pacific Railroad Company
Railroad Project
Representative: Railroad's Manager of Industry and Public Projects for this Project (see Section 1.03)
Railroad MTM
Representative: Railroad's Manager of Track Maintenance for this Project (see Section 1.03)
Requirements: The Railroad Coordination Requirements set forth in this Exhibit.

1.02 DESCRIPTION

This Project includes construction work within Railroad's right-of-way. These Requirements describe coordination with the Railroad when work by the Contractor will be performed upon, over or under the Railroad right-of-way or may impact current or future Railroad operations. The Contractor will coordinate with the Railroad while performing the work outlined in this Agreement and shall afford the same cooperation with the Railroad as it does with the Agency. All submittals and work shall be completed in compliance with these Requirements, Railroad guidelines and requirements, AREMA recommendations and/or as directed by the Railroad Local Representative and/or the Railroad MTM Representative.

1.03 UPRR CONTACTS

The Railroad Project Representative for this project is:

MIPP's Name
Address
Phone Number
e-Mail Information

For Railroad flagging services and track work, contact the following Railroad MTM Representative:

MTM's Name
Address
Phone Number
e-Mail Information

1.04 PLANS / SPECIFICATIONS

The plans and specifications for this Project, affecting the Railroad, are subject to the written approval by the Railroad. Changes in the plans made after the execution of the Agreement and/or the awarding of the Project to the Contractor are subject to the prior review and written approval of the Agency and the Railroad. No construction work shall commence until final stamped plans and/or changes to final stamped plans have been reviewed and approved by the Railroad in writing. The Railroad's review and approval of the Agency's and/or Contractor's plans in no way relieves the Agency and Contractor from their responsibilities, obligations and/or liabilities under this Agreement, Agency's agreement with the Contractor for the Project and/or in the separate Contractor's Right of Entry Agreement referenced in Section 1.08. Railroad's approval will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of Agency's and/or Contractor's plans and that any reliance by the Agency or the Contractor with respect to such plans is at the risk of the Agency and the Contractor.

1.05 UTILITIES AND FIBER OPTICS

A. All installations shall be constructed in accordance with current AREMA recommendations and Railroad specifications and requirements. Railroad general guidelines and the required application forms for utility installations can be found on the Railroad website at <http://www.uprr.com/reus/pipeline/install.shtml>.

B. It shall be the responsibility of the Contractor, at its expense, to make arrangements directly with utility companies involving the protection, encasement, reinforcement, relocation, replacement, removing or abandonment in place of non-railroad facilities affected by the Project. Any facility and/or utility that crosses Railroad right of way must be covered under an agreement with the Railroad including, without limitation, any relocations of an existing facility and/or utility.

C. Any longitudinal fiber optic lines on Railroad right of way shall be treated as Railroad facilities. Project design may need to be altered to accommodate such facilities.

D. Any fiber optic relocations or protections that are required due to this Project will be at the Agency's expense.

1.06 GENERAL

A. It is essential that the proposed construction shall be performed without interference to Railroad operations and in compliance with all applicable Railroad and Federal Railroad Administration rules and regulations. The Railroad shall be reimbursed by the Contractor or Agency for train delay costs and lost revenue claims due to any delays or interruption of train operations resulting from the Contractor's construction or other activities.

B. Track protection is required for all work equipment (including rubber tired equipment) operating within 25 feet from nearest rail. All work shall be designed and executed outside the temporary construction clearance envelope defined in Section 1.12.

C. The Contractor is also advised that new facilities within the Project may be scheduled to be built by the Railroad and that certain Contractor's activities cannot proceed until that work is complete. The Contractor shall be aware of the limits of responsibilities, allow sufficient time in the schedule for that work to be accomplished and shall coordinate its efforts with the Railroad.

1.07 RAILROAD OPERATIONS

A. The Contractor shall be advised that trains and/or equipment should be expected on any track, at any time, and in either direction. The Contractor shall communicate with the Railroad MTM Representative to improve the Contractor's understanding of Railroad traffic volume and operation at the

Exhibit E

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Project site. The Contractor's bid shall be structured assuming intermittent track windows as defined in Section 1.07 C

B. All Railroad tracks within and adjacent to the Project site are to be assumed as active and rail traffic over these facilities shall be maintained throughout the Project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations can occur continuously throughout the day and night on these tracks and shall be maintained at all times as defined herein. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with Railroad's operations.

C. Work windows for this Project shall be coordinated with the Agency or Contractor and the Railroad Project Representative and the Railroad MTM Representative. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:

1. Conditional Work Window: A period of time in which Railroad's operations have priority over construction activities. When construction activities may occur on and adjacent to the railroad tracks within 25 feet of the nearest track, a Railroad flag person will be required. At the direction of the flag person, upon approach of a train and when trains are present on the tracks, the tracks must be cleared (i.e., no construction equipment, materials or personnel within 25 feet from the nearest active track or as directed by the Railroad MTM Representative). Conditional Work Windows are available for the project subject to Railroad's local operating unit review and approval.
2. Absolute Work Window: A period of time in which construction activities are given priority over Railroad's operations. During this time the designated Railroad track(s) will be inactive for train movements and may be fouled by the Contractor. Before the end of an Absolute Work Window, all Railroad tracks and signals must be completely operational for normal train operations. Also, all Railroad, Public Utilities Commission and Federal Railroad Administration requirements, codes and regulations for operational tracks must be complied with. Should the operating tracks and/or signals be affected, the Railroad will perform inspections of the work prior to placing the affected track back into service. Railroad flag persons will be required for construction activities requiring an Absolute Work Window. **Absolute Work Windows will generally not be granted. Any request will require a detailed written explanation for Railroad review and approval.**

1.08 RIGHT OF ENTRY, ADVANCE NOTICE AND WORK STOPPAGES

A. Prior to beginning any work within the Railroad right-of-way, the Contractor shall enter into an agreement with the Railroad in the form of the Contractor's Right of Entry Agreement, attached as , or latest version thereof provided by the Railroad. There is a fee for processing of the agreement which shall be borne by the Contractor. The right of entry agreement shall specify working time frames, flagging, inspection and insurance requirements and any other items specified by the Railroad.

B. The Contractor shall give advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing work in connection with construction upon or over Railroad's right-of-way and shall observe the Railroad rules and regulations with respect thereto.

C. All work upon the Railroad right-of-way shall be done at such times and in such a manner as not to interfere with or endanger the operations of the Railroad. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad MTM Representative for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor, which requires flagging service or inspection service, shall be deferred until the flagging protection required by the Railroad is available at the job site. See Section 1.21 for railroad flagging requirements.

D. The Contractor shall make requests in writing to both the Railroad Project Representative and the Railroad MTM Representative for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request must include:

1. Description of work to be done.
2. The days and hours that work will be performed.
3. The exact location of the work and proximity to the tracks.
4. The type of window and amount of time requested.
5. The designated contact person for the Contractor.

The Contractor shall provide a written confirmation notice to the Railroad MTM Representative at least fifteen (15) days prior to commencing work in connection with the approved work windows when work will be performed within **25 feet of any track center line**. All work shall be performed in accordance with previously approved work plans.

E. Should a condition arise from, or in connection with, the work which requires immediate and unusual actions to be made to protect operations and property of the Railroad, the Contractor shall undertake such actions. If, in the judgment of the Railroad MTM Representative, such actions are insufficient, the Railroad MTM Representative may require or provide such actions as deemed necessary. In any event, such actions shall be at the Contractor's expense and without cost to the Railroad. The Railroad or Agency have the right to order the Contractor to temporarily cease operations in the event of an emergency or if, in the opinion of the Railroad MTM Representative, the Contractor's operations may inhibit the Railroads operations. In the event such an order is given, the Contractor shall immediately notify the Agency of the order.

1.09 INSURANCE

The Contractor shall not begin work within the Railroad's right-of-way until the Railroad has been furnished the insurance policies, binders, certificates and endorsements required by the Contractor's Right-of-Entry Agreement, and the Railroad Project Representative has advised the Agency that such insurance is in accordance with such Agreement. The required insurance shall be kept in full force and effect during the performance of work and thereafter until the Contractor removes all tools, equipment, and material from Railroad property and cleans the premises in a manner reasonably satisfactory to the Railroad.

1.10 RAILROAD SAFETY ORIENTATION

All personnel employed by the Agency, Contractor and all subcontractors must complete the Railroad's course "Orientation for Contractor's Safety" and be registered prior to working on Railroad property. This orientation is available at www.contractororientation.com. This course is required to be completed annually. The preceding training does not apply for longitudinal fiber optic installations.

1.11 COOPERATION

The Railroad shall cooperate with the Contractor in the scheduling of Project work with the understanding that Railroad's train operations at the job site shall have priority over the Contractor's activities.

1.12 CONSTRUCTION CLEARANCES

The Contractor shall abide by the twenty-one (21) foot temporary vertical construction clearance defined in section 4.4.1.1 and twelve (12) foot temporary horizontal construction clearance defined in section 4.4.1.2 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects. It shall be the Contractor's responsibility to obtain such guidelines from the Agency or Railroad.

Reduced temporary construction clearances, which are less than construction clearances defined above, will require special review and approval by the Railroad.

Any proposed variance on the specified minimum clearances due to the Contractor's operations shall be submitted to the Railroad Project Representative through the Agency at least thirty (30) days in advance of the work. No work shall be undertaken until the variance is approved in writing by the Railroad Project Representative.

1.13 SUBMITTALS

A. Construction submittals and Requests for Information (RFI) shall be submitted per Section 3.5 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.

B. The minimum review times, as indicated in tables 3-1 and 3-2 of Section 3.5 of the BNSF and UPRR Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. The details of the construction affecting the Railroad tracks and property, not already included in the contract plans, shall be submitted by the Agency to the Railroad Project Representative for the Railroad's review and written approval before such construction is undertaken. The Railroad shall not be liable to Agency, Contractor, and or any other person or entity if the Railroad's review exceeds a four-week review time.

C. As Built Submittals shall be submitted per Section 3.6 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.

1.14 MAINTENANCE OF PROPER DRAINAGE AND DAMAGE TO RAILROAD FACILITIES

A. The Contractor, at its expense, shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from the Contractor's operations and to repair and restore any Railroad property, tracks and facilities of Railroad and/or its tenants.

B. The Contractor must submit a proposed method of erosion control and have the method reviewed and approved by the Railroad prior to beginning any grading on the project site. Erosion control methods must comply with all applicable local, state and federal regulations.

1.15 SITE INSPECTIONS BY RAILROAD PROJECT REPRESENTATIVE, RAILROAD MTM REPRESENTATIVE OR RAILROAD'S CONTRACTOR

A. In addition to the office reviews of construction submittals, site observations will be performed by the Railroad Project Representative, Railroad MTM Representative or Railroad's Contractor at significant points during construction per Section 4.11 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.

B. Site inspections are not limited to the milestone events listed in the guidelines. Site visits to check the progress of work may be performed at any time throughout the construction process as deemed necessary by the Railroad.

C. A detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed, shall be provided by the Contractor to the Agency for submittal to the Railroad's Project Representative for review and approval prior to commencement of work. This schedule shall also include the anticipated dates on which the above listed events will occur. This schedule shall be updated for all critical listed events as necessary but at least monthly so that site visits may be scheduled.

1.16 RAILROAD REPRESENTATIVES

A. Railroad representatives, conductors, flag persons or watch persons will be provided by the Railroad at the expense of the Agency or Contractor (as stated elsewhere in these bid documents) to protect Railroad facilities, property and movements of its trains and engines. In general, the Railroad will furnish such personnel or other protective services as follows:

1. When any part of any equipment or object, such as erection or construction activities, is standing or being operated within 25 feet, measured horizontally from centerline, of any track on which trains may operate.
2. For any excavation below the elevation of track subgrade when, in the opinion of the Railroad MTM Representative, the track or other Railroad facilities may be subject to settlement or movement.
3. During any clearing, grubbing, excavation or grading in proximity to Railroad facilities which, in the opinion of the Railroad MTM Representative, may affect Railroad facilities or inhibit operations.
4. During any Contractor's operations when, in the opinion of the Railroad MTM Representative, the Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.

B. The Contractor shall arrange with the Railroad Local Representative to provide the adequate number of flag persons to accomplish the work.

1.17 WALKWAYS REQUIRED

Parallel to the outer side of each exterior track of multiple operated track and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending in width not less than twelve feet (12') perpendicular from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during working hours must be covered, guarded and/or protected as soon as practical. Walkways with railings shall be constructed by the Contractor over open excavation areas when in close proximity of track, and railings shall not be closer than 9' perpendicular from the center line of tangent track or 9' – 6" horizontal from curved track.

1.18 COMMUNICATIONS AND SIGNAL LINES

If required, the Railroad, at Agency's expense, will rearrange its communications and signal lines, grade crossing warning devices, train signals, tracks and facilities that are in use and maintained by Railroad forces in connection with its operation. This work by the Railroad will be done by its own forces or by contractors under a continuing contract and may or may not be a part of the work under this contract.

1.19 TRAFFIC CONTROL

The Contractor's operations which control traffic across or around Railroad facilities shall be coordinated with and approved by the Railroad MTM Representative and shall be in compliance with the MUTCD.

1.20 CONSTRUCTION EXCAVATIONS;CALL BEFORE YOU DIG NUMBER

A. The Contractor shall be required to take special precautions and care in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls or other facilities that require shoring shall comply with requirements of OSHA, AREMA and Railroad "Guidelines for Temporary Shoring".

B. In addition to calling the "811" number and/or the local "one call center", the Contractor shall call the Railroad's "Call Before Your Dig" number at least 48 hours prior to commencing work at 1-800-336-9193 during normal business hours (6:30 a.m. to 8:00 p.m. Central Standard Time, Monday through Friday, except holidays - also a 24 hour, 7 day a week number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near Railroad property, the Contractor will co-ordinate with the Railroad and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near Railroad property. The determination of whether fiber optics will be affected by the Project shall be made during the initial design phase of the Project.

C. The Railroad does not allow temporary at grade crossings unless absolutely necessary and there is no alternative route available to contractor to access the project site. Alternative plans should be considered to avoid crossing Railroad tracks at grade.

1.21 RAILROAD FLAGGING

Performance of any work by the Contractor in which person(s) or equipment will be within twenty-five (25) feet of any track, or that any object or equipment extension (such as, but not limited to, a crane boom) will reach within twenty-five (25) feet of any track, require railroad flagging services or other protective measures. The Contractor shall give an advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing any such work, allowing the Railroad to determine the need for flagging or other protective measures which ensure the safety of Railroad's operations, employees and equipment. Contractor shall comply with all other requirements regarding flagging services covered by the Contractor's Right of Entry Agreement. Any costs associated with failure to abide by these requirements will be borne by the Contractor.

The estimated pay rate for each flag person is \$ _____ per day for a(n) ____-hour work day with time and one-half for overtime, Saturdays, Sundays; double time and one-half for holidays. Flagging rates are set by the Railroad and are subject to change due to, but not limited to, travel time, setup plus, per diem and rest time (if work is required at night).

1.22 CLEANING OF RIGHT-OF-WAY

The Contractor shall, upon completion of the work to be performed within the right-of-way and/or properties of the Railroad and adjacent to its tracks, wire lines and other facilities, promptly remove from the Railroad right-of-way all Contractor's tools, implements and other materials whether brought upon the right-of-way by the Contractor or any subcontractors employee or agent of Contractor or of any subcontractor, and leave the right-of-way in a clean and presentable condition to the satisfaction of the Railroad.

1.23 CONTRACTOR'S RESPONSIBILITY OF SUPERVISION

The Contractor, at its expense, shall adequately supervise all work to be performed by the Contractor. Such responsibility shall not be lessened or otherwise affected by Railroad's approval of plans and specifications, or by the presence at the work site of the Railroad Project Representative, Railroad MTM Representative or any other Railroad representative or Railroad contractor providing inspection services, or by the compliance by the Contractor with any requests or recommendations made by such representatives. The Contractor will give due consideration to suggestions and recommendations made by such representatives for the safety and protection of the Railroad's property and operations.

1.24 USE OF EXPLOSIVES AT PROJECT SITE PROHIBITED

The Contractor's use of explosives at the Project site is expressly prohibited unless authorized in advance in writing by the Railroad Project Representative.

Form of CPUC Request.

Form of CPUC Authorization.

EXHIBIT G

Railroad's form of Contractor's Right of Entry Agreement.

**CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT**

THIS AGREEMENT is made and entered into as of the ____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____ (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ [Subdivision] [Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, [which work is the subject of a contract dated _____ between Railroad and _____].

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on the Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company

[Insert mailing address]

Attn: _____

Folder No. _____

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9 - ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad _____ Dollars (\$_____) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 11 - EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

(Name of Contractor)

By: _____
Title: _____

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

General Location Print

(see attached)

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

b. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

b. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

c. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

d. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

e. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage); (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. Commercial General Liability Insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers' Compensation and Employers' Liability insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability insurance.** Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.
- E. Umbrella or Excess insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. Pollution Liability insurance.** Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time. If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment", with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

OTHER REQUIREMENTS

- G.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.

- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
 -
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

- D. All employees comply with the following safety procedures when working around any railroad track:
- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

EXHIBIT H

Railroad's Material and Force Account Estimate.

EXHIBIT H-1

Railroad's Material and Force Account Estimate (flagging).

Railroad's Theoretical Structure Estimate

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 16-18 WITH PACIFIC BELL TELEPHONE COMPANY, A CALIFORNIA CORPORATION, DBA AT&T CALIFORNIA (AT&T), FOR UNDERGROUNDING OF OVERHEAD COMMUNICATION LINES ASSOCIATED WITH 4875 MISSION BOULEVARD, SUBJECT TO ANY ADDITIONS REQUIRED BY CITY ATTORNEY ROBBINS

DATE: February 16, 2016
SECTION: AGREEMENTS
ITEM NO.: 6
FILE I.D.: LDU225
DEPT.: PUBLIC WORKS

CONSIDER AUTHORIZING CITY MANAGER STARR TO SEEK BIDS FOR INSTALLATION OF CONDUIT AND SUBSTRUCTURES REQUIRED FOR THE UNDERGROUNDING OF UTILITIES ASSOCIATED WITH AT&T AND AWARD A CONSTRUCTION CONTRACT FOR AN AMOUNT NOT TO EXCEED \$50,000

REASON FOR CONSIDERATION: The City previously entered into Agreement No. 15-95 with Quach Investments, which stipulated that a portion of the money generated by Quach Investments from the sale of the property located at 4875 Mission Boulevard would be deposited with the City to pay for remaining undergrounding of overhead utilities associated with the previous development of that property. Escrow closed on the sale of that property on December 31, 2015. The funds deposited in escrow for this undergrounding work was transferred to the City in accordance with Agreement No. 15-95. One of the utility companies involved with the undergrounding work is Pacific Bell Telephone doing business as AT&T California (AT&T). AT&T has asked the City to enter into Agreement No. 16-18 in order to complete the undergrounding work. Agreements with the City require City Council approval.

A copy of proposed Agreement No. 16-18 with AT&T is attached for City Council review and consideration.

BACKGROUND: Quach Investments applied to the City for approval of a development plan for the southwest corner of Monte Vista Avenue and Mission Boulevard, addressed as 4875 Mission Boulevard, in 2007. The project was approved by the Planning Commission on February 13, 2007, subject to a list of conditions. Conditions 6e and 46f addressed undergrounding of overhead utilities along both the Monte Vista Avenue and Mission Boulevard frontages of the property. The utilities include facilities owned by Southern California Edison, Verizon, Time Warner Cable Television, and AT&T.

In 2009, all property improvements had been completed as well as the undergrounding work by Southern California Edison. However, none of the communication facilities work had been completed. Calvin Quach with Quach Investments submitted evidence

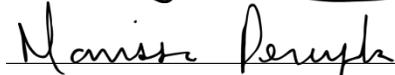
Prepared by:



Fiscal Impact
Finance Review:



Proofed by:



Reviewed and
Approved By:



that payment of all costs had been made to the utility companies by providing copies of checks purportedly written to those utility companies. Based on the evidence submitted, staff granted occupancy for the building shell and began issuing permits for tenant improvements.

Staff soon learned that none of the other utility companies had been paid, nor were there any schedules for starting the work. Further tenant improvement permits were withheld while staff attempted to work with Quach Investments to complete the utility work. Quach Investments was unable to secure funding for the remaining work, and at one point declared bankruptcy.

Last year, IRealty Development LLC became interested in purchasing the property from Quach Investments. One of the terms of escrow was that Quach had to complete the undergrounding work, or have funds from the sale given to the City to complete the work. The City entered into Agreement No. 15-95 with Quach Investments wherein Quach Investments agreed to having funds withheld from escrow and given to the City to complete the undergrounding. Escrow closed on December 31, 2015, and in January, funds from escrow were transferred to the City. The property is now owned by IRealty Development LLC.

Payment for Verizon and Time Warner Cable Television undergrounding work has already been made to these two utility companies. In addition to the payment made to AT&T, AT&T requires a separate agreement not requested by the other two utility companies. Agreement No. 16-18 was prepared by AT&T and is currently being reviewed by City Attorney Robbins. Unlike Verizon and Time Warner Cable Television, no conduit or other substructures were installed for AT&T. It will be the City's responsibility to install these facilities to complete the undergrounding.

FISCAL IMPACT: Under the terms of Agreement No. 15-95, Quach Investments was required to deposit in escrow and subsequently to the City, \$92,000 for work related to AT&T undergrounding. In addition to this amount, a 10 percent contingency was required, bringing the actual amount received to just over \$100,000. AT&T estimated its total cost for design and installation of cabling at just under \$59,000, less a deposit of \$5,005.55 previously paid by Quach Investments. However, the actual bill received by the City from AT&T was for \$37,015.75, more than \$15,000 less than expected.

Of the \$92,000 plus contingency amount received through escrow, approximately \$40,000 was identified for installation of conduit, which is also now a City responsibility. Staff will seek bids for this work and award a contract to the lowest responsible, responsive bidder in order to expedite installation.

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

1. Approve Agreement No. 16-18 with Pacific Bell Telephone Company, a California corporation, dba AT&T California, for undergrounding of overhead communication lines associated with 4875 Mission Boulevard, subject to any additions required by City Attorney Robbins.
2. Authorize City Manager Starr to seek bids for installation of conduit and substructures required for the undergrounding of utilities associated with Pacific Bell Telephone Company, a California corporation, dba AT&T California and award a construction contract for an amount not to exceed \$50,000.

**AERIAL TO UNDERGROUND CONVERSION AGREEMENT
APPLICANT TO CONSTRUCT UNDERGROUND SUPPORTING STRUCTURE
(RULE 32(A)(3))
BETWEEN
CITY OF MONTCLAIR
and
PACIFIC BELL TELEPHONE COMPANY DBA AT&T CALIFORNIA
RE:
MONTE VISTA AVE. AND MISSION BLVD.
UNDERGROUNDING**

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 Exhibit A Executive Orders and Associated Regulations

THIS AGREEMENT ("Agreement") is between CITY OF MONTCLAIR, a CALIFORNIA municipal corporation ("Applicant"), and PACIFIC BELL TELEPHONE COMPANY, a California corporation, dba AT&T California ("AT&T"), collectively the ("Parties").

I. DEFINITIONS.

As used in this Agreement, the following terms apply:

- A. The term "Tariff" refers to Schedule Cal. P.U.C. No. A2, Rule 32(A)(3).
- B. The term "Underground Supporting Structure" (hereinafter "USS") includes, but is not limited to conduit, inner duct, manholes, service boxes and related equipment.
- C. The terms "Trench" and "Trenching" include, but are not limited to, excavating, backfilling, compacting, and as necessary, breaking and replacing pavement, sidewalks, driveways, curbs and gutters; and restoring all other surface features, disturbed by underground construction, including landscaping, plus the cost of performing such work.
- D. The term "Hazardous Substance" refers to any substance, material or chemical that is or becomes regulated under applicable local, state, or federal law, regulation, or ordinance.
- E. The term "District" refers to the area in/on/along MONTE VISTA AVE. AND MISSION BLVD. where the undergrounding of existing aerial facilities is to take place.
- F. The term "Project" means all of the work required to underground existing aerial facilities within the District.
- G. The term "CPUC" refers to the California Public Utilities Commission.

II. RECITALS.

- A. Applicant has asked AT&T to replace its existing aerial communication facilities within the District with underground communication facilities.
- B. To facilitate this request, Applicant is willing to construct the USS along the public way and upon utility rights of way to AT&T and thereafter transfer ownership of it to AT&T.
- C. AT&T is willing to underground its existing aerial communication facilities within the District, subject to the terms and conditions of this Agreement.

In consideration of the above, the Parties agree as follows:

III. SPECIFIC PROVISIONS.

Tariff.

The Project will be conducted in accordance with the Tariff.

A. Construction.

1. Within sixty (60) days of receipt of a copy of this Agreement that has been executed by Applicant and the advance payments required by Section III (F), AT&T shall provide to Applicant detailed plans and specifications for the Trenching and construction of the USS.
2. Applicant shall be responsible for Trenching (including sand shading, backfilling, and compaction) and the construction and installation of the USS, which shall be in accordance with AT&T's plans and specifications. Accordingly, Applicant shall, at Applicant's expense, provide all labor and material necessary to construct the USS, including the conduit material and manholes. Conduit material includes: cast steel manhole frames and covers, precast concrete conduit, plastic conduit - type C; fiber cement conduit- type C; steel pipe of equivalent standard heavy-wall duct material acceptable to AT&T, and all associated castings, bends, fittings, and unions. **APPLICANT SHALL NOT DEVIATE FROM AT&T'S TRENCH SPECIFICATIONS WITHOUT AT&T'S PRIOR WRITTEN CONSENT.**
3. Trenching and construction and installation of the USS shall conform to the construction specifications of the City or County that has jurisdiction over the Project.
4. Within fifteen (15) days of completion of the USS, Applicant shall, in AT&T's presence, prove the integrity of the installed duct structure by pulling a mandrill through each conduit section between the manholes/splice boxes.
5. Applicant shall provide to AT&T final footages of conduit sections on an "as built" drawing prior to AT&T's conversion of the aerial communication facilities.
6. Applicant shall obtain all permits necessary for excavation from the public agency(ies) that have jurisdiction over the Project.
7. Applicant shall require all affected property owners served by the aerial facilities to be replaced within the District to provide and maintain the USS on their property.
8. If, during the installation or construction of communications facilities, AT&T employees, subcontractors, or agents encounter Hazardous Substance(s) that may be disturbed by AT&T's activities:
 - a. AT&T shall give prompt verbal and written notice of the discovery of the Hazardous Substance(s) to Applicant;

- b. AT&T shall suspend performance under this Agreement until (1) containment and removal of the Hazardous Substance(s) have been completed and approved by the appropriate governmental agency(ies) if such approval is required or approved by AT&T, if governmental agency(ies) approval is not required; or (2) Applicant reasonably demonstrates that the Hazardous Substance will not be disturbed by AT&T's activities;
- c. AT&T's performance of its obligations under this Agreement is extended for the amount of time that it takes to complete containment/removal of the Hazardous Substance(s); and,
- d. If Applicant elects not to remove/contain the Hazardous Substance(s), AT&T may terminate this Agreement without further liability by giving advance notice to Applicant no later than ten (10) days after the date the Applicant notifies AT&T of its decision not to remove/contain the Hazardous Substance(s). If AT&T terminates this Agreement in accordance with this paragraph, Applicant shall reimburse AT&T for the costs AT&T incurred prior to the effective date of termination.

C. Term.

This Agreement is effective upon execution and shall continue in effect until terminated or canceled as provided by law or this Agreement.

D. Inspection and Acceptance.

- 1. An AT&T Inspector will be provided at the job site at Applicant's cost during the construction phase of the Project to ensure that all Trenching activities and placement of conduit and manholes/splice boxes are in accordance with AT&T's plans and specification. Applicant shall notify AT&T's Construction Coordinator on (951) 359-2483 forty-eight (48) hours in advance of the start of construction to coordinate the inspection activities.
- 2. AT&T shall have the right to inspect and accept the USS prior to placing any communication facilities therein. When AT&T accepts the USS, it shall prepare, execute, and provide to Applicant a Certificate of Acceptance.

E. Placement of Facilities.

AT&T will place all cables, wires and associated equipment for the conversion of aerial communication facilities to underground after the completion and acceptance of the USS. AT&T and any other USS occupant shall jointly determine the dates and sequence of construction of each of their respective facilities in the USS. Pursuant to the notice

requirements in Section IV(G) Applicant shall provide fifteen (15) working days advance notice to AT&T prior to the start of Trenching to ensure AT&T has adequate time to order materials and coordinate the placement of its facilities.

F. Payment.

1. Applicant shall pay to AT&T within thirty (30) days after execution of this Agreement the sum of THIRTY-SEVEN THOUSAND FIFTEEN DOLLARS AND SEVENTY-FIVE CENTS, (\$37,015.75) [TOTAL COST OF FORTY-TWO THOUSAND TWENTY-ONE DOLLARS AND THIRTY CENTS, (\$42,021.30), MINUS ADVANCE PAYMENT OF \$5,005.55] which represents the estimated cost of converting the aerial facilities to underground, less the estimated net salvage value of the replaced aerial communication facilities. If applicable, Applicant shall also pay to AT&T 0% tax component \$0.00 collected for Federal and State Income Tax in accordance with CPUC decision 87-09-026. **These amounts are valid for only sixty (60) days and are therefore subject to change after January 30, 2016 (i) if Applicant has not signed this Agreement by that day, and (ii) if applicant has not completed construction within 120 days of that date.**

Applicant shall send the payment(s) to:

AT&T California
2700 Watt Avenue, Room 3012
Sacramento, CA 95821
ATTN: Debbie Beck

2. Applicant shall pay for the conversion of aerial to underground facilities project on an "Actual Cost" basis. Upon completion of the project, AT&T will compute the actual cost of the project and shall reimburse the applicant for any amount paid in excess of the estimated cost. If the estimated cost paid by the applicant was less than the actual cost incurred by AT&T, the applicant shall pay to AT&T the difference in the cost at the conclusion of the project.

G. Cancellation, Modification or Deferment. If Applicant cancels, modifies or defers its request for the conversion of the aerial facilities to underground facilities within the District, Applicant shall pay any and all charges incurred by AT&T, in accordance with the Tariff.

H. Indemnity; Limitation of Liability.

1. Applicant shall indemnify, defend at AT&T's request, and hold harmless AT&T and its officers, agents and employees, as well as its associated and affiliated companies and their respective officers, agents, and employees ("Indemnitees"), from and against any and all losses, damages, expenses, costs, penalties, fines, fees (including reasonable attorney's and consultant's fees), or liabilities

(collectively "Liabilities"), incurred as a result of any injury to or death of any person(s), or damage to any property(ies) arising out of or in connection with the materials used or the work performed by Applicant under this Agreement or the condition of the Project's property, including environmental contamination, except where such Liabilities are caused by the sole negligence or willful misconduct of Indemnitees.

2. AT&T shall notify Applicant within a reasonable time of any written claims or demand against AT&T for which Applicant is responsible under this section. Applicant shall also (a) keep AT&T fully informed as to the progress of such defense, and (b) give AT&T, at its own expense, an opportunity to participate with Applicant in the defense or settlement of such claims, demand, lawsuits or other legal proceedings.
3. AT&T shall indemnify, defend, and hold harmless Applicant, from and against any and all losses, damages, expenses, costs, penalties, fines, fees (including reasonable attorney's and consultant's fees), or liabilities (collectively "Liabilities"), incurred as a result of any injury to or death of any person(s) or damage to any property(ies) arising out of or in connection AT&T's installation of facilities in the USS, except where such Liabilities are caused by the negligence or willful misconduct of Applicant. Applicant shall notify AT&T within a reasonable time of any written claims or demand against Applicant for which AT&T is responsible under this section.
4. These indemnities shall survive the termination or cancellation of this Agreement or any provision to the contrary herein.
5. IN NO EVENT WILL AT&T BE LIABLE TO APPLICANT FOR INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER BY TORT OR CONTRACT, INCLUDING LOST REVENUES, LOSS OF PROFITS OR OTHER COMMERCIAL OR ECONOMIC LOSS ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT, INCLUDING, WITHOUT LIMITATION, NEGLIGENT PERFORMANCE OR FAILURE TO PERFORM, OR A DEFECT OR FAILURE TO PERFORM OR DEFECT OF CABLE OR WIRING, REGARDLESS OF THE FORESEEABILITY THEREOF.

I. Insurance.

1. With respect to Applicant's performance under this Agreement, and in addition to Applicant's obligation to indemnify, Applicant shall at its sole cost and expense, maintain the insurance coverages and limits required by this Section and any additional insurance and/or bonds required by law:

- i. at all times during the term of this Agreement and until completion of all work associated with this Agreement, whichever is later; and
 - ii. with respect to any coverage maintained in a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all work associated with this Agreement, whichever is later. If a "claims-made" policy is maintained, the retroactive date must precede the commencement of work under this Agreement;
2. Applicant shall also require each subcontractor who may perform work under this Agreement or enter upon the work site to maintain coverages, requirements, and limits at least as broad as those listed in this section from the time when the subcontractor begins work, throughout the term of the subcontractor's work and, with respect to any coverage maintained on a "claims-made" policy, for two (2) years thereafter;
 - a. procure the required insurance from an insurance company eligible to do business in the state or states where work will be performed and having and maintaining a Financial Strength Rating of "A-" or better and a Financial Size Category of "VII" or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies, except that, in the case of Workers' Compensation insurance, Applicant may procure insurance from the state fund of the state where work is to be performed; and
 - b. deliver to AT&T certificates of insurance stating the types of insurance and policy limits. Applicant shall provide or will endeavor to have the issuing insurance company provide at least 30 days advance written notice of cancellation, non-renewal, or reduction in coverage, terms, or limits to AT&T. Applicant shall deliver such certificates:
 - i. prior to commencement of any work;
 - ii. prior to expiration of any insurance policy required in this Section; and
 - iii. for any coverage maintained on a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all work associated with this Agreement, whichever is later.
3. The Parties agree:
 - a. the failure of AT&T to demand such certificate of insurance or failure of AT&T to identify a deficiency will not be

construed as a waiver of Applicant's obligation to maintain the insurance required under this Agreement;

- b. that the insurance required under this Agreement does not represent that coverage and limits will necessarily be adequate to protect Applicant, nor be deemed as a limitation on Applicant's liability to AT&T in this Agreement;
- c. Applicant may meet the required insurance coverages and limits with any combination of primary and Umbrella/Excess liability insurance; and
- d. Applicant is responsible for any deductible or self-insured retention.

4. The insurance coverage required by this section includes:

- a. Workers' Compensation insurance with benefits afforded under the laws of any state in which the work is to be performed and Employers Liability insurance with limits of at least:

\$500,000 for Bodily Injury – each accident

\$500,000 for Bodily Injury by disease – policy limits

\$500,000 for Bodily Injury by disease – each employee

To the fullest extent allowable by Law, the policy must include a waiver of subrogation in favor of AT&T, its affiliates, and their directors, officers and employees.

In states where Workers' Compensation insurance is a monopolistic state-run system, Applicant shall add Stop Gap Employers Liability with limits not less than \$500,000 each accident or disease.

- b. Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 12 04 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury, products/completed operations, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of at least:

\$2,000,000 General Aggregate limit;

\$1,000,000 each occurrence limit for all bodily injury or property damage incurred in any one (1) occurrence;

\$1,000,000 each occurrence limit for Personal Injury and Advertising Injury;

\$2,000,000 Products/Completed Operations Aggregate limit;

\$1,000,000 each occurrence limit for Products/Completed Operations;

\$1,000,000 Damage to Premises Rented to You (Fire Legal Liability).

The Commercial General Liability insurance policy must:

- i. include AT&T, its affiliates, and their directors, officers, and employees as Additional Insureds. Applicant shall provide a copy of the Additional Insured endorsement to AT&T. The Additional Insured endorsement may either be specific to AT&T or may be "blanket" or "automatic" addressing any person or entity as required by contract. A copy of the Additional Insured endorsement must be provided within 60 days of execution of this Agreement and within 60 days of each Commercial General Liability policy renewal;
 - ii. include a waiver of subrogation in favor of AT&T, its affiliates, and their directors, officers and employees; and
 - iii. be primary and non-contributory with respect to any insurance or self-insurance that is maintained by AT&T.
- c. Business Automobile Liability insurance with limits of at least \$1,000,000 each accident for bodily injury and property damage, extending to all owned, hired, and non-owned vehicles.
 - d. Umbrella/Excess Liability insurance with limits of at least \$1,000,000 each occurrence with terms and conditions at least as broad as the underlying Commercial General Liability, Business Auto Liability, and Employers Liability policies. Umbrella/Excess Liability limits will be primary and non-contributory with respect to any insurance or self-insurance that is maintained by AT&T.

J. Warranty.

1. Applicant warrants for a period of two (2) years following AT&T's acceptance of the USS that all work and materials furnished under this Agreement:
 - a. conform in all respects to the requirements of this Agreement;
 - b. are adequate for the purposes for which they are intended; and

- c. are free from any defects in design, materials, workmanship and title including, but not limited to, defects that will cause caving or sinking of the Trench, the USS, paving, or other materials.
2. Applicant warrants that all work it performs shall be performed by qualified personnel promptly and with diligence to AT&T's reasonable satisfaction, and that all work and materials shall be subject to all statutory and express or implied warranties.
3. Except as disclosed to and acknowledged by AT&T in writing, Applicant is not aware of the presence of any Hazardous Substance at the locations in the District where AT&T will be installing its underground facilities.
4. These warranties shall survive inspection, acceptance, termination and payment.

K. Title.

Upon the inspection and acceptance in writing of the USS by AT&T, title to the USS placed for AT&T shall vest in AT&T, provided that such is free of all liens and encumbrances.

L. Liens.

Applicant, its agents and contractors shall keep the USS free from any statutory or common law lien arising out of any work performed, materials furnished or obligations incurred by Applicant, its agents or contractors. In the event a lien is recorded against the USS and it is not removed from the record within ten (10) days after notice is given by AT&T to Applicant to do so, AT&T shall have the right to pay and discharge the lien without regard to whether the lien shall be lawful, valid or correct. Applicant shall, within thirty (30) days after written notice from AT&T, reimburse AT&T for any such claim paid by it.

M. Licenses and Easements.

Prior to construction of the Project, Applicant shall furnish AT&T with any and all licenses and grants of easements that are necessary for the construction, installation, and maintenance of AT&T's underground facilities.

N. Performance.

If Applicant should default in the performance of any work that it is obligated to perform under this Agreement within the time allowed for such work, AT&T may elect, by written notice to Applicant, to perform the work at Applicant's sole risk and expense and Applicant shall pay to AT&T upon demand AT&T's actual costs for performing the work.

O. Damage to Facilities.

Applicant, its employees, agents and contractors shall exercise special precaution and care to avoid causing damage to AT&T's facilities in performing work under the Project. Applicant shall assume responsibility for any and all losses, costs or expenses arising out of, caused by, or in any way connected with such damages, including consequential damages. Applicant shall immediately report the occurrence of any such damage to AT&T. Applicant shall, on demand, reimburse AT&T for the entire expense incurred in replacing or repairing the damage.

P. Tax Liability.

Applicant shall pay and hold AT&T harmless from and against, all penalties, interest, taxes or other charges that are levied or assessed against Applicant.

Q. Force Majeure.

AT&T shall not be held liable to Applicant for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, the presence of archeological or historical artifacts, or Hazardous Substances on, in, or near the Project, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of carriers. If any of the foregoing events occur, AT&T agrees, if requested by Applicant, to accelerate its efforts hereunder if reasonably feasible in order to regain lost time, so long as Applicant agrees to reimburse AT&T for the incremental actual costs of such efforts.

R. Compliance with Laws.

Applicant shall comply with all applicable federal, state, county, and local statutes, laws, ordinances, regulations, and codes, including the Executive Orders and regulations that are attached to this Agreement as Exhibit A. As used in Exhibit A, "Contractor" means Applicant.

IV. GENERAL PROVISIONS.

A. Assignment.

Applicant shall not wholly or partially assign this Agreement without the prior written consent of AT&T.

B. Binding Effect.

This Agreement shall be for the benefit of and is binding upon the respective successors and assigns of the parties.

C. Termination.

This Agreement automatically terminates upon completion and acceptance by AT&T of the USS. In the event of any material default or breach of this Agreement by Applicant, in addition to all other rights and remedies that AT&T may have at law or in equity, AT&T may terminate this Agreement by giving thirty (30) days prior written notice of termination. The notice shall specify the cause of termination and shall give Applicant a reasonable opportunity to cure and correct any such cause. In the event this Agreement is terminated or suspended as provided herein, AT&T shall not be liable to Applicant or any other person or entity for any losses, damages or claims which may arise as a result of termination. Applicant shall pay to AT&T all costs and expenses incurred by AT&T prior to termination of this Agreement. Any termination of this Agreement in whole or in part shall not release Applicant from any liability or obligation under this Agreement, whether of indemnity or otherwise, which may have accrued or which may be accruing or which arises out of any claim that may have accrued or may be accruing at the time of termination.

D. Entire Agreement.

This Agreement and the attached Exhibit, which is incorporated herein, constitute the entire Agreement between the parties with respect to the subject matter. All prior agreements, representations, statements, negotiations and understandings are superseded.

E. Independent Contractor.

Applicant, its agents, employees and contractors shall perform all work under this Agreement as independent contractors and not as affiliates, partners, joint ventures, agents, employees, servants or assigns of AT&T.

F. Jurisdiction.

This Agreement shall be governed by the laws of the State of California and is subject to the applicable rules, regulations and tariffs on file with the CPUC and is also subject to changes or modifications as the CPUC may order.

G. Notices.

All notices and other communications hereunder shall be in writing, addressed as follows, and deemed given when delivered in person, delivered to an agent such as an overnight or similar delivery service, or three days after deposited in the United States mail, postage prepaid.

APPLICANT	AT&T California
CITY OF MONTCLAIR	3939 E. CORONADO ST.
5111 BENITO STREET	RM. 2050
MONTCLAIR, CA 91763	ANAHEIM, CA 92807
ATTN: Michael C. Hudson	ATTN: Cliff Connors, Engineer

H. Waiver and Amendment.

The provisions of this Agreement shall not be waived, altered, or amended by any representations or promises of any party unless consented to in writing by both parties.

I. Attorney's Fees.

If any action is brought to adjudicate the rights granted in this Agreement or to enforce any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in an amount to be determined by a court or a tribunal of competent jurisdiction.

The duly authorized representatives of Applicant and AT&T have executed this Agreement by affixing their signatures on the dates indicated below.

CITY OF MONTCLAIR

PACIFIC BELL TELEPHONE COMPANY

By: _____
Printed Name: Paul M. Eaton
Title: Mayor
Date Signed: _____

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

ATTEST:

By: _____
Printed Name: Andrea M. Phillips
Title: Deputy City Clerk
Date Signed: _____

APPROVED AS TO FORM:

By: _____
Printed Name: Diane Robbins
Title: City Attorney
Date Signed: _____

Exhibit A

Executive Orders and Associated Regulations

AT&T California and AT&T Nevada, as common carriers of telecommunications services, engage in work as contractors for various departments and agencies of the United States Government. Also, certain facilities may be constructed pursuant to federally assisted construction programs. Because of the foregoing, work under this contract may be subject to the provisions of certain Executive Orders, federal laws and associated regulations. To the extent that such Executive Orders, federal laws and associated regulations apply to the work under this contract, and only to that extent, Contractor agrees to comply with the provisions of all such Executive Orders, federal laws and associated regulations as no in force or as may be amended in the future, including, but not limited to the following:

1. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS.

In accordance with Executive Order 11246, dated September 24, 1965, and 41 C.F.R. § 60-1.4, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of nonexempt contracts and subcontracts.

2. CERTIFICATION OF NONSEGREGATED FACILITIES.

In accordance with Executive Order 11246, dated September 24, 1965, and 41 C.F.R. § 60-1.8, Contractor certifies that it does not and will not maintain or provide for its employees any facilities segregated on the basis of race, color, religion, sex, or national origin at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where such segregated facilities are maintained. The term "facilities" as used herein means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, provided that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes. Contractor will obtain similar certifications from proposed subcontractors prior to the award of any nonexempt subcontract.

3. CERTIFICATION OF AFFIRMATIVE ACTION PROGRAM.

Contractor certifies that it has developed and is maintaining an Affirmative Action Plan as required by 41 C.F.R. § 60-1.40.

4. CERTIFICATION OF FILING.

Contractor certifies that it will file annually, on or before the 31st of March, complete and accurate reports on Standard Form 100 (EEO-1) or such forms as may be promulgated in its place as required by 41 C.F.R. § 60-1.7.

5. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA.

In accordance with Executive Order 11701, dated January 24, 1973, and 41 C.F.R. 60-250.20, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts.

6. AFFIRMATIVE ACTION FOR HANDICAPPED PERSONS.

In accordance with Executive Order 11758, dated January 15, 1974, and 41 C.F.R. § 60-741.20, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts.

7. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS.

48 C.F.R., Ch. 1, § 19.740(4) and 19.708(a) require that the following clause is included:

Utilization of Small Business concerns and Small Disadvantaged Business Concerns (June, 1985)

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by and Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern:

(1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned businesses, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more of such individuals.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-AT&T Americans, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

Small Business and Small Disadvantaged Business Subcontracting Plan.

Contractor, unless it is a small business concern, as defined in section 3 of the Small Business Act, agrees to adopt and comply with a small business and small disadvantaged business subcontracting plan, which shall be included in and made a part of this contract. The parties incorporate herein by this reference the regulations and contract clauses required by 48 C.F.R., Ch. 1, §§ 19.704(4) and 19.708(b) to be made a part of Government contracts and subcontracts.

8. WOMEN-OWNED SMALL BUSINESSES.

As prescribed in 48 C.F.R., Ch. 1, § 19.902, the following clause is included in solicitations and contracts when the contract amount is expected to be over the small purchase threshold, unless (a) the contract is to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands, or (b) a personal services contract is contemplated:

(a) "Woman-owned small businesses," as used in this clause, means businesses that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this clause, means exercising the power to make policy decisions.

"Operate," as used in this clause, means being actively involved in the day-to-day management of the business.

(b) Policy. It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.

(c) Order of Preference. In complying with paragraph (b) above and with paragraph (c) of the clause of this contract entitled Utilization of Small

Business Concerns and Small Disadvantaged Business Concerns, the Contractor shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(d) Definitions. "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 C.F.R. § 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern," as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus area if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

Labor Surplus Area Subcontract Program.

(a) See the Utilization of Labor Surplus Area Concerns clause of this contract for applicable definitions.

(b) The Contractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities at prices no higher than obtainable elsewhere. The contractor shall --

(1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns clause, and (iii) administer the Contractor's labor surplus area subcontracting program;

(2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;

(3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of LSA concerns;

(4) include the Utilization of Labor Surplus Area Concerns clause in subcontracts that offer substantial LSA subcontracting opportunities;

and

(5) Maintain records showing (i) the procedures adopted and (ii) the Contractor's performance, to comply with this clause. The records will be kept available for review by the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulations.

(c) The Contractor further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the Utilization of Labor Surplus Area Concerns clause, terms that conform substantially to the language of this clause, including this paragraph (c), and to notify the Contracting Officer of the names of subcontractors.

**MINUTES OF THE CITY OF MONTCLAIR REAL
ESTATE COMMITTEE MEETING HELD ON
TUESDAY, JANUARY 19, 2016 AT 5:30 P.M. IN
THE CITY HALL CONFERENCE ROOM, 5111
BENITO STREET, MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Council Member Dutrey called the meeting to order at 5:30 p.m.

II. ROLL CALL

Present: Council Member Dutrey (Chair); Mayor Eaton (Committee Member); City Manager Starr; Deputy City Manager Staats; Director of Community Development Lustro; City Planner Diaz; City Attorney Robbins; Deputy City Clerk Phillips

III. APPROVAL OF MINUTES

Minutes of the Real Estate Committee of December 21, 2015, were approved.

IV. PUBLIC COMMENT – None.

V. DISCUSSION ITEMS

A. ACCESS TO PROPOSED DEVELOPMENT ON THE SOUTHWEST CORNER OF HOLT BOULEVARD AND CENTRAL AVENUE

Public Works Director Hudson noted that late last year the City Council approved funding to perform a study of access options for extending Brooks Street to Central Avenue. He noted the recommended access option would require construction of a median break to allow left-turn access into the new development from the northbound side of Central Avenue. There would be right-turn access onto Brooks Street from southbound Central Avenue, as well as right turn access from Brooks onto southbound Central. There would be no left-turn access from Brooks onto northbound Central. Staff is also recommending an additional turnaround be constructed by the developer at the end of the frontage road to **Monte Vista Water District (MVWD)**.

The Committee reviewed plans that were submitted by the developer for access from Brooks Street to Central Avenue.

Council Member Dutrey asked how one would access **MVWD** when traveling south on Central Avenue.

Public Works Director Hudson noted one would need to travel south a short distance and make a U-turn at Mission Boulevard.

Council Member Dutrey asked if this project has been discussed with **MVWD**.

Public Works Director Hudson advised that he emailed **MVWD** with the project information. **MVWD** staff acknowledged the email and did not submit further questions or comments. He noted if this project moves forward with Council approval, there will need to be a public hearing process ordering the street vacation for right-of-way acquisition.

Council Member Dutrey requested clarification as to why a left turn from Brooks onto Central was not possible.

Public Works Director Hudson stated that kind of movement at that location would require signalization; however, there is a signal within 400 feet and the traffic engineer recommends signals be a minimum of 600 feet apart.

Deputy City Manager Staats noted the developer is planning to lease the development at the northwest corner of Central and Brooks to a grocery store chain.

Council Member Dutrey noted he has no issues with the proposal and requested **MVWD** be kept informed of the project's progress.

Public Works Director Hudson stated that staff will discuss the plan with **MVWD** before the public hearing.

B. CONCEPTUAL PROPOSAL FOR A DRIVE-THRU RESTAURANT PAD ON THE NORTHWEST CORNER OF CENTRAL AVENUE AND ARROW HIGHWAY

Community Development Director Lustro noted the owner of the property located on the northwest corner of Central Avenue and Arrow Highway, where **John's Incredible Pizza** is located, is proposing development of a small quick-serve restaurant with a drive-thru to be located at the southeast corner of the property. He advised this would typically only require a conditional use permit; however, because the property is located in the North Montclair Downtown Specific Plan (NMDSP), which does not permit drive-thru restaurants in any land use district within its boundaries, staff is requesting to know whether the committee would support one of several options to allow such a land use in this area. It is not known at this time what restaurant will likely occupy the proposed building.

Council Member Dutrey noted he feels the property owner or applicant should apply for the plan amendment when the time comes and staff can discuss options with the Committee at that time. He asked whether this would open the door to other applicants in the NMDSP for a similar exception.

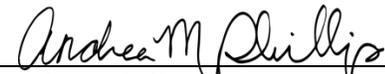
Community Development Director Lustro stated it would likely require a site-specific exception rather than designating certain land use districts within the plan area.

C. **OTHER ITEMS** - None.

VII. ADJOURNMENT

At 5:52 p.m., Council Member Dutrey adjourned the Real Estate Committee.

Submitted for Real Estate Committee approval,

A handwritten signature in cursive script that reads "Andrea M. Phillips". The signature is written in black ink and is positioned above a horizontal line.

Andrea Phillips, Deputy City Clerk

**MINUTES OF THE REGULAR MEETING OF THE PUBLIC
WORKS COMMITTEE HELD ON THURSDAY, JANUARY 21,
2016, AT 4:00 P.M. IN THE CITY MANAGER CONFERENCE
ROOM, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Chair Raft called the meeting to order at 4:00 p.m.

II. ROLL CALL

Present: Chair Raft; Committee Member Eaton; Deputy City Manager/Director of Economic Development Staats; Public Works Director/City Engineer Hudson; Director of Community Development Lustro; and Facilities and Grounds Superintendent McGehee.

Absent: City Manager Starr; Office of Public Safety/Police Chief deMoet; Public Works Superintendent Mendez.

Also Present: Police Captain Robert Avels and Joseph Rosales NPDES Environmental Compliance Inspector.

III. APPROVAL OF MINUTES

The Public Works Committee approved the minutes of the Public Works Committee Meeting of November 19, 2015.

IV. PUBLIC COMMENT

None.

V. PUBLIC WORKS DEPT. UPDATES/ITEMS

A. OPERATIONS

There were no questions or issues with the maintenance activities report.

B. FACILITIES AND GROUNDS

There were no questions or issues with the maintenance activities report.

C. ENGINEERING DIVISION ITEMS

1. PRIORITIZATION OF RDA TAX ALLOCATION BONDS AND 2014 LEASE REVENUE BONDS

A handout was provided to Committee Members and staff for the recommendations of funds for the Redevelopment Bond Proceeds and the Lease Revenue Bond Proceeds. The projects have been arranged by Staff in order of priority and funds available.

PROPOSED PROJECTS USING FORMER RDA TAX ALLOCATION BOND FUNDS

November 25, 2015

Project	Description	Cost	Status
Central Avenue Undergrounding Project	This project will underground overhead utilities between Richton Street and the north City boundary.	\$400,000	Originally designed with RDA funds and payment made to SCE but work not done. SCE is now redesigning. TMAD drawing plans.
NMDSP Conceptual Street Plans	This project will prepare conceptual plans for streets within the specific plan area.	\$275,000	MIG, Inc., is currently working on plans.
Acquisition of Hurst Property	Self explanatory. Hurst property is the first City Hall	\$10,000	Not started.
NMDSP Street Improvement Plans	Based on recommendations contained in the MIG report, street improvement plans would be developed.	\$1,000,000	Waiting for MIG report to be completed and adopted by City Council.
NMDSP Street Improvements	After street improvement plans have been developed, the recommended work would be constructed.	\$10,000,000	Waiting for MIG report to be completed and adopted by City Council.
North Montclair Freeway Landscape Project	This project would improve landscaping along the I-10 Freeway right-of-way, particularly focusing on the interchanges.	\$800,000	Not started.
Signal Improvements at Brooks Street and Central Avenue.	In conjunction with the development of the parcel at the southwest corner of Central Avenue and Brooks Street, Brooks Street would be extended to Central Avenue and the intersection signalized.	\$500,000	A study to determine the best location of the intersection along Central Avenue has been completed.
General Plan Update	Self explanatory.	\$1,000,000	Not started.
Total Cost		\$13,985,000	

PROPOSED PROJECTS USING 2014 LEASE REVENUE BOND FUNDS

Project	Description	Cost	Status
Reconstruction of Central Avenue	This project would provide reconstruction or pavement rehabilitation of Central Avenue throughout the City.	\$10,000,000	Not Started
Signal Modifications at Central Avenue and San Bernardino Street	This project will provide protected left turns in all directions.	\$50,000	Work is now under construction.
Central Avenue/UPRR Bridge Rehabilitation	This project provides repairs/restoration to the existing bridge constructed in 1967.	\$800,000	This project was originally intended to be funded by federal HBR funds and was designated for replacement. However, the state changed its evaluation of the bridge from structurally deficient to okay, making it no longer qualify for replacement funds. It is now a rehab project. The funds represent the City match only.
Acquisition of 4304 and 4324 Kingsley Street Properties	These two properties are located east of Sunset Park and would be purchased in order to expand the area of the park.	\$1,000,000	No work has started on this, and it is unclear whether the existing houses would be razed or rehabilitated to use as park buildings. Council Member Dutrey would prefer to spend the money on improvements at Saratoga Park.
Orchard Street Pavement Rehabilitation	This project would provide pavement rehabilitation between San Antonio Channel and Benson Avenue.	\$1,300,000	Not Started
San Bernardino Street Pavement Rehabilitation	This project would provide pavement rehabilitation between San Antonio Channel and Benson Avenue. It would also replace the wall on the south side of the street between Monte Vista Avenue and Fremont Avenue.	\$1,800,000	Not Started
Citywide Pavement Rehabilitation	This project will focus on residential street grinding and overlaying.	\$5,000,000	Not Started
City Facilities Improvements	Among projects that would be considered are repairs/ADA upgrades at City Hall.	\$500,000	Not Started. Council Member Martinez would like to include new office space for Human Services Director.
Total Cost		\$20,450,000	

2. DISCUSSION OF SPEED HUMPS IN ALLEY BETWEEN KIMBERLY AVENUE AND LEHIGH AVENUE SOUTH OF KINGSLEY STREET

A map of the alley was provided to the Committee and staff. A resident has requested speed humps be placed in the alley between Kimberly Avenue and Lehigh Avenue, just south of Kingsley Street. Public Works staff is not aware of any issues with vehicles speeding at this particular alley. The City adopted a new policy a few years back which set guidelines and regulations to determine if speed humps can be added. The length of the alley, the curve of the alley, and the number of vehicle citations for speeding determines the construction of additional speed humps. Captain Avels added that neither he nor the Police Department have been made aware of any speeding issues. The only issues of traffic enforcement were related to parking. Committee Member Eaton stated that there is no warrant at this time to add speed humps in this alley.

3. STORM DRAIN ART UPDATE

NPDES Environmental Compliance Inspector Joseph Rosales suggested three locations that contain a catch basin and have a high volume of pedestrian traffic flow and the presence of children. The three suggestions were Moreno Elementary School on Monte Vista Avenue and Moreno Street, Montclair High School on Benito Street and Fremont Avenue, and Monte Vista Elementary School on Orchard Street and Monte Vista Avenue. Mr. Rosales spoke with Montclair High School staff and determined that the school would like to participate in this project. He also stated that involving the local newspaper could generate positive public relations on educating the public and children regarding pollution, prevention, and how to properly maintain a catch basin. Deputy City Manager/Director of Economic Development Staats stated that Mr. Rosales should speak at a Council meeting prior to continuing with this project to determine Council's approval and set the rules and guidelines for this art project.

VI. POLICE DEPARTMENT UPDATES/ITEMS

A. TRAFFIC ENFORCEMENT AT THE 5300 BLOCK OF MORENO STREET

Montclair Police Department staff was informed by a traffic judge that future traffic citations for illegal U-turns in the 5300 block of Moreno Street will no longer be valid until a striping or signage change is made at this location. The judge ruled that it is not clear for drivers who make a right turn from the Chase Bank parking lot onto eastbound Moreno Street then proceed with making an illegal U-turn to go west on Moreno Street. A sign is properly posted in the bank parking lot informing drivers to proceed with only right turns and a cement median island stops the drivers from making a left

turn at this location. The judge suggested placing a “no U-turn” sign on Moreno Street. This area contains properly marked signage and follows the Manual on Uniform Traffic Control Devices (MTUCD). Ms. Staats stated that this area is located in the North Montclair Downtown project area and will soon have modifications made to the medians. The short term solution would be to paint diagonal lines from the point of the median where one can properly make a U-turn or add raised pavement markers. Public Works staff recommends painting the street, which is a more noticeable solution, and in the future the concrete center median island will be extended in the North Montclair Downtown improvement project.

VII. COMMUNITY DEVELOPMENT DEPARTMENT PROJECT UPDATES/ITEMS

A. IMPLEMENTATION OF SHOPPING CART CONTAINMENT ORDINANCE

This ordinance is in effect with Montclair businesses in compliance with a shopping cart containment system. The City has seen a decrease in abandoned carts on City streets.

B. FIRE AT BEST BUY

Best Buy is closed temporarily following a small fire that occurred the week of January 11th. The fire was quickly extinguished, but the sprinkler system caused significant damage to merchandise. Once the interior is dry, new carpet will be installed and the store will be restocked with merchandise. Best Buy is expected to reopen in three weeks.

C. MONTCLAIR SHOPPES UPDATE

Montclair Shoppes will soon be completed and open for business. The signals were activated at the Costco driveway and Central Avenue, allowing vehicles to enter and exit the shopping center. Having these signals operational was a condition of occupancy for the first two businesses to open. Starbucks employees began training this past weekend and the store should open next week. Sleep Number has received merchandise and will open for business in the near future.

VIII. CAPITAL PROJECT UPDATES

Public Works Director/City Engineer Hudson reported the status of the following capital improvement projects:

A. MONTE VISTA AVENUE/UPRR GRADE SEPARATION PROJECT

A meeting was held on January 21st with City staff, the consultant team, and San Bernardino Associated Governments (SANBAG) to discuss the 95% submittal of the plans. The next step is to incorporate comments into the final plans, which are due to the consultant by the end of January. The construction and maintenance agreement must be completed by March to proceed to the SANDBAG Board and California Transportation Commission for the allocation of

funds for the PUC grade separation. All this information must be submitted by April 1st.

B. RECREATION BUILDING REMODEL-PHASE TWO WEIGHT ROOM

A pre-construction meeting with the contractor and the City is scheduled for next week, with construction estimated to begin the first week of February.

C. CENTRAL AVENUE/SAN BERNARDINO STREET TRAFFIC SIGNAL

The signal poles are in the process of being replaced. The new signals should be operational by the end of the month.

D. REEDER RANCH

The City has applied for funding from Community Development Block Grants (CDBG) to repair the Reeder Ranch roof.

E. GOLD LINE

Los Angeles County will soon vote on sales tax to fund greater transportation improvements. A 2/3 vote will be required and with San Gabriel Valley support, this may be achieved to help the Gold Line segment reach Claremont. If the segment reaches Claremont, then Montclair has an agreement with SANBAG to fund the line to the Montclair Transcenter.

IX. OTHER ITEMS

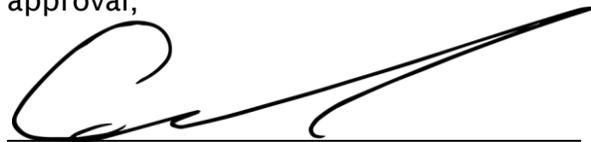
None

X. ADJOURNMENT

The next meeting of the Public Works Committee will be at 4:00 p.m. on February 18th, 2016, if there are items that need to be discussed.

At 4:36 p.m., Chair Raft adjourned the meeting.

Submitted for Public Works Committee approval,



Cenica Smith
Transcribing Secretary

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
FEBRUARY 1, 2016, AT 8:07 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 8:07 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 January 19, 2016.

Moved by City Manager Starr, seconded by Mayor Pro Tem Raft, and carried unanimously to approve the minutes of the Personnel Committee meeting of January 19, 2016.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

At 8:08 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 8:26 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 8:26 p.m., Mayor Pro Tem Raft adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager