

**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

April 18, 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 Board of Directors, Montclair Housing Corporation Board 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. 2016 Volunteer of the Year Awards
- B. Fire Department Report on the April 4, 2016 Recycling Center Fire on State Street
- C. Introduction of a New Employee
- D. Omnitrans West Valley Connector Bus Rapid Transit Project Public Scoping Meeting Times Announcement

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 (Acting Bodies). (Government Code Section 54954.3)

Under the provisions of the Brown Act, the Acting Bodies are 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 April 4, 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 to Consider Ordinance No. 16-956 Amending Sections 9.20.460 and 9.20.465 of the Montclair Municipal Code Related to the Equivalent Dwelling Unit Value on Monday, May 2, 2016, at 7:00 p.m. in the City Council Chambers [CC]	13
10.	Consider Adoption of the City of Montclair City Council Policy and Appointment Process Manual, 2016 Edition [CC]	17
11.	Consider Vacation of a Sanitary Sewer Easement at 4545 Brooks Street [CC]	19
C.	Agreements	
1.	Consider Award of Contract for the Eastern Zone 3 Montclair Street Rehabilitation Project to Gentry Brothers, Inc., in the Amount of \$1,207,495 [CC]	
	Consider Approval of Agreement No. 16-30 with Gentry Brothers, Inc., for Construction of the Eastern Zone 3 Montclair Street Rehabilitation Project [CC]	
	Consider Authorization of a \$120,000 Construction Contingency for the Eastern Zone 3 Montclair Street Rehabilitation Project [CC]	23
2.	Consider Approval of Agreement No. 16-31, a Consulting Agreement with David Taussig & Associates, Inc., for Formation and Administration of Community Facilities District No. 2016-1 [CC]	
	Consider Approval of Agreement No. 16-32, a Reimbursement Agreement with CFC-Montclair, LLC Regarding Property at 8949 Monte Vista Avenue [CC]	31

- 3. Consider Approval of Agreement No. 16-33, a Consulting Agreement with Dudek Related to Preparation of an Environmental Impact Report for the First Amendment to the North Montclair Downtown Specific Plan [CC]

Consider Appropriation of \$117,000 from Redevelopment Project Area No. III Tax Allocation Bonds to Finance a Portion of the Costs for the Preparation of an Environmental Impact Report and for Related Legal Fees for the First Amendment to the North Montclair Downtown Specific Plan [CC] 91
- 4. Consider Approval of Agreement No. 16-34, a Consulting Agreement with David Taussig & Associates, Inc., for Formation and Administration of Community Facilities District No. 2016-2 [CC]

Consider Approval of Agreement No. 16-35, a Reimbursement Agreement with Maple Multi Family Land CA, L.P., Regarding Property Generally Located on the Southwest Corner of Arrow Highway and Monte Vista Avenue [CC] 150
- D. Resolutions
 - 1. Consider Adoption of Resolution No. 16-3117 Adjusting the Equivalent Dwelling Unit Monthly Fee for Sewer Service [CC] 196

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE - None

XI. COMMUNICATIONS

A. City Department Reports

1. Human Services Department

a. Human Services Announcements and Events

B. City Attorney

C. City Manager/Executive Director

D. Mayor/Chairman

1. Designate Alternate Voting Member to Attend Southern California Association of Governments 2016 Regional Conference and General Assembly Meeting from May 5 - 6, 2016 [CC]

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 March 21, 2016 199

2. Minutes of the Personnel Committee Meeting of April 4, 2016 203

XII. COUNCIL WORKSHOP

A. Human Services Department Update

(The City Council may consider continuing this item to an adjourned meeting on Monday, May 2, 2016, at 5:45 p.m. in the City Council Chambers.)

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

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, May 2, 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 Acting Bodies 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 April 14, 2016.

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: April 18, 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 March 31, 2016, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending March 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 March 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

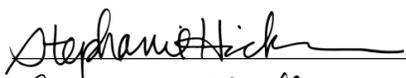
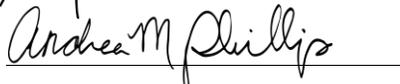
SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION **DATE:** April 18, 2016
SECTION: ADMIN. REPORTS
ITEM NO.: 2
FILE I.D.: FIN540
DEPT.: ADMIN. SVCS.

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 April 18, 2016, and the Payroll Documentation dated April 3, 2016, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated April 18, 2016, totals \$718,347.69. The Payroll Documentation dated April 3, 2016, totals \$571,770.32 gross, with \$400,030.64 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: April 18, 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 March 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 March 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 March 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:** April 18, 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 March 31, 2016, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Successor to the Redevelopment Agency Warrant Register dated 03.01.16-03.31.16 in the amounts of \$11,051.63 for the Combined Operating Fund; \$0.00 for the Redevelopment Obligation Retirement Funds and finds it to be in order.

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

RECOMMENDATION: Vice 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 March 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: April 18, 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 March 31, 2016, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending March 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 March 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:** April 18, 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 March 31, 2016, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Warrant Register dated 03.01.16-03.31.16 in the amount of \$56,366.75 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 March 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: April 18, 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 March 31, 2016, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending March 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 March 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 APPROVAL OF WARRANT REGISTER **DATE:** April 18, 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 March 31, 2016, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Warrant Register dated 03.01.16-03.31.16 in the amount of \$1,324.50 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 March 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 TO CONSIDER ORDINANCE NO. 16-956 AMENDING SECTIONS 9.20.460 AND 9.20.465 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO THE EQUIVALENT DWELLING UNIT VALUE ON MONDAY, MAY 2, 2016, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS

DATE: April 18, 2016

SECTION: ADMIN. REPORTS

ITEM NO.: 9

FILE I.D.: SEW125

DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: Inland Empire Utilities Agency has proposed new rates for connections to sewer systems that discharge to its sewage treatment facilities. Adjustments to the fee currently charged by the City are now required. Since the connection fee is set by the Montclair Municipal Code, adjustments to the fee must be made by ordinance. An ordinance requires a public hearing and consideration by the City Council.

BACKGROUND: The Regional Sewage Supplemental Capital Outlay Fee for residential, commercial, and industrial structures, commonly known as the connection fee, is set forth in Chapter 9.20.460 of the Montclair Municipal Code. This fee, which is established by the Inland Empire Utilities Agency (IEUA) and assessed by the City at the time a building permit is issued, must be paid to IEUA for each new building connected to a sewer. In addition, the City also charges a fee for connection to the sewer system to assist with future expansion of the system.

IEUA has proposed a multiple-year step increase. Corresponding to the rates, the staff proposes increases to existing City rates as well. The rates and effective dates as adopted by the IEUA Board of Directors are as follows:

Adopted IEUA Rate	Proposed City Rate	Effective Date
\$5,415	\$540	January 1, 2016
\$6,009	\$600	January 1, 2017
\$6,309	\$630	July 1, 2017
\$6,624	\$660	July 1, 2018
\$6,955	\$700	July 1, 2019

The connection fee is a pass through fee collected by the City and then sent to IEUA when a call is made for them. The interest earned on these fees until a call is made is kept by the City and can be used by the City for any sewer related purpose. All agencies served by IEUA are able to do this. In addition to the interest earned on the connection fees, a few agencies, including the City of Montclair, add on a surcharge to the connection fee in order to expand their own facilities.

Prepared by:  Fiscal Impact Finance Review: 

Proofed by:  Reviewed and Approved By: 

FISCAL IMPACT: Advertising this matter for public hearing is anticipated to cost under \$1,000. After the public hearing, the City Council may consider adoption of Ordinance No. 16-956 to permit the City to collect the higher fees being assessed by IEUA and continue a fund that can be used to expand the existing sewer system. Should Ordinance No. 16-956 not be adopted by the Council, the City would be liable for the difference between the fee assessed by IEUA and the amount collected by the City on all new connections to the Montclair Sewer System.

RECOMMENDATION: Staff recommends the City Council set a public hearing to consider Ordinance No. 16-956 amending Sections 9.20.460 and 9.20.465 of the Montclair Municipal Code related to the equivalent dwelling unit value on Monday, May 2, 2016, at 7:00 p.m. in the City Council Chambers.

ORDINANCE NO. 16-956

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING SECTIONS 9.20.460 AND 9.20.465 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO THE REGIONAL SEWAGE SUPPLEMENTAL CAPITAL OUTLAY FEE

THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES ORDAIN AS FOLLOWS:

Section I. Amendment to Code. Section 9.20.460 of Title 9 of the Montclair Municipal Code is hereby amended as follows:

Section 9.20.460: Equivalent dwelling unit value.

The Regional Sewage Supplemental Capital Outlay Fee for residential, commercial, and industrial structures shall be the equivalent dwelling unit (EDU) number multiplied by the EDU value of Five Thousand Four Hundred Fifteen Dollars (\$5,415) as established by the Inland Empire Utilities Agency effective January 1, 2016; Six Thousand Nine Dollars (\$6,009) as established by the Inland Empire Utilities Agency effective January 1, 2017; Six Thousand Three Hundred Nine Dollars (\$6,309) as established by the Inland Empire Utilities Agency effective July 1, 2017; Six Thousand Six Hundred Twenty-Four Dollars (\$6,624) effective July 1, 2018; and Six Thousand Nine Hundred Fifty-Five Dollars (\$6,955) as established by the Inland Empire Utilities Agency effective July 1, 2019. The EDU value is based on construction costs and takes into consideration the current Engineering News-Record Construction Cost Index nationwide using the 20-city average.

Section 9.20.465 is hereby is hereby amended as follows:

Section 9.20.465: Sanitary Sewer Expansion Fee

The Sanitary Sewer Expansion Fee for residential, commercial, and industrial structures shall be the equivalent dwelling unit (EDU) number multiplied by the EDU value of Five Hundred Forty Dollars (\$540) effective January 1, 2016; Six Hundred Dollars (\$600) effective January 1, 2017; Six Hundred Thirty Dollars (\$630) effective July 1, 2017; Six Hundred Sixty Dollars (\$660) effective July 1, 2018; and Seven Hundred Dollars (\$700) effective July 1, 2019.

Section II. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

Section III. Effective Date.

This Ordinance shall be in full force and effect thirty (30) days after passage.

Section IV. Posting.

The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 20XX.

Mayor

ATTEST:

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 16-956 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 20XX, and finally passed not less than five (5) days thereafter on the XX day of XX, 20XX, by the following vote, to-wit:

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

Andrea M. Phillips
Deputy City Clerk

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF THE CITY OF MONTCLAIR CITY COUNCIL POLICY AND APPOINTMENT PROCESS MANUAL, 2016 EDITION

DATE: April 18, 2016
SECTION: ADMIN. REPORTS
ITEM NO.: 10
FILE I.D.: ADM110
DEPT.: CITY MGR.

REASON FOR CONSIDERATION: It is necessary to update the City Council Policy and Appointment Process Manual periodically in order to keep the information current and to revise appointment processes.

A copy of the proposed City Council Policy and Appointment Process Manual, 2016 Edition is included in the City Council's agenda packet for review and consideration.

BACKGROUND: On March 4, 1996, the City Council formalized the appointment process for various commissions, boards, and committees by adopting the City Council Policy and Appointment Process Manual. The manual was amended on August 16, 1999, to add other City Council policies and state laws regulating the conduct of public meetings in order to make it a more complete and useful resource; however, it has not been updated since. Many items are now outdated and some advertisement procedures included newspaper publications, which have become exceedingly costly over the years.

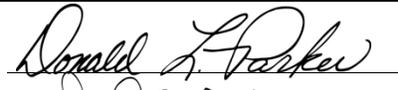
Proposed amendments in this update include:

- Information related to compensation for serving on City Council and advisory bodies
- Advertisement process for Community Action Committee (CAC) and Planning Commission (PC) vacancy notices
- Revised information related to active, ad hoc, inactive, and dissolved committees
- Departments and staff members assigned to specific duties in relation to appointment processes and meeting procedures
- Government Code section references that have changed since the Policy's last amendment in 1999, including the most recent version of the Ralph M. Brown Act

Prepared by:



Fiscal Impact
Finance Review:



Proofed by:



Reviewed and
Approved By:



- Forms used during appointment processes
- Election/Appointment histories, Local Appointment List, and City Council Liaison Assignments

The advertisement guideline changes eliminate the requirement to publish notices of vacancy for CAC and PC in the *Inland Valley Daily Bulletin* and increase the number of posting outlets to include the City's Facebook and Twitter social media pages in addition to posting to the City's website, the City Manager's Weekly Report, all City facilities, the Montclair Branch Library, the Chamber of Commerce, public access cable television, and the City's announcement slideshow on display in the City Hall lobby.

FISCAL IMPACT: The proposed changes to the posting guidelines for vacancy notices would save the City approximately \$4,000 per year in newspaper advertisement costs.

RECOMMENDATION: Staff recommends that the City Council adopt the City of Montclair City Council Policy and Appointment Process Manual, 2016 Edition.

AGENDA REPORT

SUBJECT: CONSIDER VACATION OF A SANITARY SEWER EASEMENT AT 4545 BROOKS STREET **DATE:** April 18, 2016
SECTION: ADMIN. REPORTS
ITEM NO.: 11
FILE I.D.: LDA550
DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: A request has been made for the City to vacate or quitclaim a sanitary sewer easement at 4545 Brooks Street. Such action requires City Council approval.

BACKGROUND: A request has been made by the buyer of property located at 4545 Brooks Street, at the southeast corner of Ramona Avenue and Brooks Street, to vacate a sewer easement along the southerly property line. The property was recently developed with a warehouse constructed by Bill Fox. There are two encroachments into the sewer easement for stairs, for which an encroachment permit was previously issued by the City. The title company for the buyer has stated that because the encroachment permit is revocable, it will not insure title for the portion of the building encroaching into the easement. The buyer has requested the City vacate or quitclaim the sewer easement.

There is no sewer within the sewer easement, nor is it likely one will ever be constructed. The City began acquiring a ten-foot sewer easement along the southerly ten feet of properties abutting the Union Pacific Railroad back in the late 1950s in order to provide sewer service to those properties backing up against the Union Pacific Railroad and fronting on Holt Boulevard between Monte Vista Avenue and Ramona Avenue. Sometime after the City began acquiring easements as these properties developed, Brooks Street was constructed between Monte Vista Avenue and Ramona Avenue, along with a sewer. Properties not already developed were able to connect to the sewer in Brooks Street. Roughly half of the properties are so connected. The remaining properties are on septic system.

With the construction of the Ramona Avenue Grade Separation project six years ago, it would be difficult to construct a sewer in the sewer easement east of Ramona Avenue and connect to the sewer in Ramona Avenue. With at least half of the properties that could be served by such a sewer already connected to the sewer in Brooks Street, and with the remaining properties on Brooks Street able to connect to the sewer line should they so desire, the easement is unnecessary.

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

The sewer easement has been discussed with the Public Works Committee three times, the most recent discussion at the meeting on February 18, 2016. The Committee had no objection to the vacation. Since no policy or procedure currently exists for vacating a sewer easement, staff recommended that the City follow the procedure outlined in the Streets and Highways Code for a summary vacation of a street or alley. A summary vacation is allowed when a street easement does not contain any improvements nor is used by the public for the intended purpose.

Section 8333 of the Streets and Highways Code authorizes a City Council to summarily vacate a public service easement under specified conditions if the easement is unused. The vacation is allowed by way of resolution, with no public hearing required.

FISCAL IMPACT: Minimal fiscal impact to the City is associated with the vacation of the sanitary sewer easement. When the quitclaim document is prepared, it will be given to the property owner/buyer for recordation, saving the City the recordation fee.

RECOMMENDATION: Staff recommends the City Council vacate the sanitary sewer easement at 4545 Brooks Street.

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of Montclair)
5111 Benito Street)
P. O. Box 2308)
Montclair, CA 91763)
Attention: City Clerk)

This document is exempt from payment of a recording fee pursuant to Government Code Section 27383

Exempt from payment of Documentary Transfer Tax pursuant to Revenue and Taxation Code Section 11922

QUITCLAIM DEED

FOR VALUE RECEIVED, THE CITY OF MONTCLAIR, A CALIFORNIA MUNICIPAL CORPORATION,

does hereby remise, release, and forever quitclaim to:

BROOKS RAMONA PROPERTIES, LLC

all rights, title, and interest in and to that certain easement located in the City of Montclair, County of San Bernardino, State of California, and recorded in Book 4433, Page 281; Book 5341, Page 173; and Book 8553, Page 575 in the office of the County Recorder, County of San Bernardino, State of California, more particularly described in Exhibit A attached hereto and incorporated herein.

IN WITNESS WHEREOF, grantor has executed this Quitclaim Deed as of _____, 2016.

CITY OF MONTCLAIR, A CALIFORNIA MUNICIPAL CORPORATION

By: _____
Paul M. Eaton, Mayor

This is to certify that the interest in real property conveyed by the within instrument by the City of Montclair, State of California, a Municipal Corporation, is hereby quitclaimed by order of the Montclair City Council made on _____.

Dated: _____

By: _____
Andrea M. Phillips, Deputy City Clerk

Exhibit "A"
Legal Description

The Southerly 10.00 feet of that portion of the East 10 acres of the West 20 acres of Lot 29, San Antonio Tract as per map recorded in Book 3 page 16 of Maps in the office of the County Recorder of said County lying Northerly of the Northerly line of the 200 foot wide right-of-way granted to the Southern Pacific Railroad Company by Act of Congress of March 3, 1871 (16 Stat. 573 Chapter 122).

EXCEPT therefrom the East 260 feet thereof.

NOTE: The above described parcel of land provides for a sanitary sewer and storm drain easement along the Southern Pacific Railroad right-of-way, Easterly of Ramona Avenue.

AGENDA REPORT

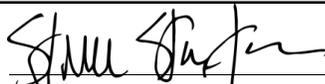
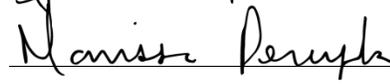
<p>SUBJECT: CONSIDER AWARD OF CONTRACT FOR THE EASTERN ZONE 3 MONTCLAIR STREET REHABILITATION PROJECT TO GENTRY BROTHERS, INC., IN THE AMOUNT OF \$1,207,495</p> <p>CONSIDER APPROVAL OF AGREEMENT NO. 16-30 WITH GENTRY BROTHERS, INC., FOR CONSTRUCTION OF THE EASTERN ZONE 3 MONTCLAIR STREET REHABILITATION PROJECT</p> <p>CONSIDER AUTHORIZATION OF A \$120,000 CONSTRUCTION CONTINGENCY FOR THE EASTERN ZONE 3 MONTCLAIR STREET REHABILITATION PROJECT</p>	<p>DATE: April 18, 2016</p> <p>SECTION: AGREEMENTS</p> <p>ITEM NO.: 1</p> <p>FILE I.D.: STA650</p> <p>DEPT.: PUBLIC WORKS</p>
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REASON FOR CONSIDERATION: Awards of contracts and agreements with the City require City Council approval.

BACKGROUND: The Eastern Zone 3 Montclair Street Rehabilitation Project is intended to repair uplifted curb, gutter, and sidewalk, as well as resurface residential streets throughout a large area of eastern Montclair. Project limits are from San Bernardino Street on the north, Benson Avenue on the east, Orchard Street on the south, and Central Avenue on the west.

On Thursday, March 31, 2016, Deputy City Clerk Phillips received and opened eight bid proposals for construction of the Eastern Zone 3 Montclair Street Rehabilitation Project. The bid results are shown on the following page. Following the bid opening, the eight bid proposals were reviewed for completeness and accuracy. The bid proposal of the apparent low bidder, Gentry Brothers, Inc., provided all required documents and was deemed the lowest responsible, responsive bidder for the project. Gentry Brothers, Inc., has performed several street improvement projects within the City and is known to have the personnel, equipment, and job experience necessary to complete this contract in accordance with the plans and specifications.

This project is a 30 working-day project, with work expected to begin prior to May 1, 2016, and be completed no later than June 2016.

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

Bid results are as follows:

<i>Bidder</i>	<i>Bid Amount</i>
Gentry Brothers, Inc.	\$1,207,495.00
Hardy & Harper, Inc.	\$1,234,000.00
All American Asphalt, Inc.	\$1,234,800.00
Hillcrest Contracting, Inc.	\$1,268,089.00
Sequel Contracting, Inc.	\$1,268,287.50
<i>Engineer's Estimate</i>	<i>\$1,300,000.00</i>
Excel Paving Company	\$1,354,859.00
R.J. Nobel Company	\$1,457,197.75
Sully-Miller Company	\$1,564,960.00

The pavement rehabilitation work requires the removal of several trees that have uplifted curb, gutter, sidewalk, and pavement. Rather than include the removal of these trees as part of the construction contract, the City will use West Coast Arborist, already under contract with the City, to do the removals.

FISCAL IMPACT: The subject project was added to the Fiscal Years 2015–2018 Capital Improvement Program (CIP) and 2014 Lease Revenue Bond Proceeds were identified as the funding source.

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

1. Award contract for the Eastern Zone 3 Montclair Street Rehabilitation Project to Gentry Brothers, Inc., in the amount of \$1,207,495.
2. Approve Agreement No. 16–30 with Gentry Brothers, Inc., for construction of the Eastern Zone 3 Montclair Street Rehabilitation Project.
3. Authorize a \$120,000 construction contingency for the Eastern Zone 3 Montclair Street Rehabilitation Project.

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

A. Recitals.

- (i) Pursuant to Notice Inviting Sealed Bids or Proposals, bids were received, publicly opened, and declared on the date specified in said notice.
- (ii) CITY did accept the bid of CONTRACTOR.
- (iii) CITY has authorized the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of:
- (iv)

EASTERN ZONE 3 MONTCLAIR STREET REHABILITATION PROJECT

"PROJECT" hereinafter.

B. Resolution.

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

1. GENERAL SCOPE OF WORK: CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for and do all work contemplated and embraced for the PROJECT. Said PROJECT to be performed in accordance with specifications and standards on file in the Office of the City Engineer and in accordance with bid prices hereinafter mentioned and in accordance with the instructions of the Engineer.
2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: The aforesaid specifications are incorporated herein by reference thereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, the Notice Inviting Bids, the Instructions to Bidders, the Proposal and any City-issued addenda, together with this written Agreement, shall constitute the contract between the parties. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written Agreement, the provisions of this written Agreement shall control.
3. TERMS OF CONTRACT: The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of PROJECT within the time specified in the Special Provisions. CONTRACTOR agrees further to the assessment of liquidated damages in the amount specified in the Special Provisions or the Standard Specifications, whichever is higher,

AGREEMENT

for each calendar day PROJECT remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due the CONTRACTOR under this contract. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

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

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

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

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

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

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

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

AGREEMENT

- (5) Automobile - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
 - (6) Automobile - Property Damage \$500,000 each accident.
 - c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:
 - (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;
 - (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.
 - d. Each such policy of insurance provided for in paragraph b. shall:
 - (1) Be issued by an insurance company approved in writing by CITY, which is qualified to do business in the State of California;
 - (2) Name as additional insureds the CITY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;
 - (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
 - (4) Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."
 - (5) Otherwise be in form satisfactory to CITY.
 - e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraphs a. and b., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.
6. CONTRACTOR'S LIABILITY: The City of Montclair and its respective officers, agents and employees shall not be answerable or accountable in any manner for any loss or damage that may happen to the project or any part thereof, or for any of the

AGREEMENT

materials or other things used or employed in performing the project; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors or the public, whatsoever arising out of or in connection with the performance of the project. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the project or at any time before its completion and final acceptance.

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

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

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

AGREEMENT

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

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

9. **CONTRACT PRICE AND PAYMENT:** CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **March 31, 2016**.

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

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

CONTRACTOR

CITY

Gentry Brothers, Inc.
384 Live Oak Ave.
Irwindale, CA. 91706

CITY OF MONTLAIR, CALIFORNIA

By: _____

Paul M. Eaton
Mayor

Title

ATTEST:

By: _____

Name

Andrea M. Phillips
Deputy City Clerk

Title

APPROVED AS TO FORM:

City Attorney

Infrastructure Fund Capital Project Funding Information

1952-000-60020-400-19001

Project Name: Eastern Monclair Street Rehabilitation Project Zone 3

Project Details: This project will resurface residential streets within an area generally bound by San Bernardino Street on the north, Benson Ave. on east, Orchard Street on the south and Central Avenue on the west. Scope of work includes PCC repairs and ADA pedestrian ramp upgrades.

Preparation Date: February 24, 2015 Department: Public Works / Engineering

Project No. (Assigned by Finance): 19001 Contact/Ext.: M. Hudson X.411

Phase	Fiscal Years						Total	Fund/Program
	Prior Years	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020		
Environmental								
Design								
R/W Acquisition								
Construction		1,500,000.00					1,500,000.00	2014 Lease Rev.
								Bond Proceeds
Total	0.00	1,500,000.00	0.00	0.00	0.00	0.00	1,500,000.00	

Approvals:

Department: Public Works/Engineering By: *M. O'Connell* Date: _____

Finance By: *MP* Date: 3/14/16

City Council Date: 3/7/16

Revision Number: _____

Total Project Cost: \$1,500,000.00

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 16-31, A CONSULTING AGREEMENT WITH DAVID TAUSSIG & ASSOCIATES, INC., FOR FORMATION AND ADMINISTRATION OF COMMUNITY FACILITIES DISTRICT NO. 2016-1	DATE: April 18, 2016 SECTION: AGREEMENTS ITEM NO.: 2 FILE I.D.: CFD050
CONSIDER APPROVAL OF AGREEMENT NO. 16-32, A REIMBURSEMENT AGREEMENT WITH CFC-MONTCLAIR, LLC REGARDING PROPERTY AT 8949 MONTE VISTA AVENUE	DEPT.: ECONOMIC DEV./ COMMUNITY DEV.

REASON FOR CONSIDERATION: In considering projects within the North Montclair Downtown Specific Plan (NMDSP) area, community facilities districts are seen as a method to ensure projects have a limited impact on the City's General Fund. Agreement No. 16-31 would authorize staff to retain the services of David Taussig & Associates, Inc. David Taussig & Associates, Inc., would develop the documentation necessary for establishment of Community Facilities District (CFD) No. 2016-1 relating to the proposed project by CFC-Montclair, LLC.

Developers within in the NMDSP area are requested to enter into a Reimbursement Agreement with the City whereby the developer provides the City with a deposit of funds to offset consultant and legal fees associated with development of the CFD and preparation of other legal documents. Agreement No. 16-32 is the proposed Reimbursement Agreement with CFC-Montclair, LLC.

Agreement No. 16-31 with David Taussig & Associates, Inc., and Agreement No. 16-32 with CFC-Montclair, LLC, are included in the agenda packet for consideration by the City Council.

BACKGROUND: The City Council adopted the NMDSP on May 16, 2006. The intent of the Specific Plan was to encourage pedestrian oriented, mixed-use development. The NMDSP also included certain areas for parks and other public open space. However, as a land use document, the Specific Plan did not provide guidance on how the City should deal with legal, environmental, and maintenance issues involved with build-out of the Specific Plan. Therefore, the City Council directed that projects in the NMDSP area form CFDs for public facilities maintenance and public safety to offset impact on the City's General Fund.

CFC-Montclair, LLC is in the process of pursuing entitlements for the property located at 8949 Monte Vista Avenue. The proposed project consists of a single three-story, U-shaped building surrounding an exterior landscaped courtyard. The building would be approximately 21,162 square feet in height, and be set back 17 feet from the face of

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

the curb on Monte Vista Avenue. In order to facilitate the development processes by CFC-Montclair, LLC, the City Council is requested to consider an Agreement with David Taussig & Associates, Inc., regarding formation services for a CFD. In addition, a Reimbursement Agreement is provided for consideration whereby the developer becomes responsible for reimbursing the City for the costs of retaining Taussig & Associates, Inc., and outside legal counsel. Any consultants retained pursuant to the Reimbursement Agreement would be exclusive contractors of the City.

The services of David Taussig & Associates, Inc., were used to assist in the formation of CFDs related to the Paseos and Arrow Station projects. In order to retain consistency in the establishment of assessments related to each CFD, it is recommended that David Taussig & Associates, Inc., be used to provide the necessary consulting services. As indicated, the CFD will be used to finance certain annual maintenance and public safety costs. Proposed Agreement No. 16-31 is the standard consultant agreement prepared by the City Attorney. The more salient points in the proposed agreement include the following:

- The total amount of the agreement related to formation of CFD No. 2016-1 would not exceed \$16,000 unless additional payment is approved. The Agreement also provides for David Taussig & Associates, Inc., to prepare the annual assessment that is presented to the County of San Bernardino for collection. The current annual cost of this service would be \$3,500 subject to future adjustment.
- The City would be able to suspend or terminate the agreement, with or without cause, by serving the consultant with thirty days written notice.
- Any work or documents prepared by the consultant would become the sole property of the City.
- The consultant would provide the City with the appropriate forms of indemnification and insurance.

The formation of a CFD was a condition of approval in the application for development submitted by CFC-Montclair, LLC that was considered by the Planning Commission on April 11, 2016.

Proposed Agreement No. 16-32 contains the terms of the developer's reimbursement of certain City-incurred costs associated with formation of the CFD and legal fees related to implementation of procedures for the CFD. A synopsis of the proposed agreement includes the following points:

- The City would retain the services of certain consultants and have the right to amend the scope of work. The consultants would be contractors exclusively of the City and not of the developer. The work product produced by the consultants, subject to financial reimbursement by the developer, would be photocopied for the information of the developers unless that work would be considered privileged or confidential under law.
- The City would retain the services of David Taussig & Associates, Inc., regarding formation of a CFD to pay for items such as street maintenance and certain public safety costs. Best, Best & Krieger, LLP (BBK) would be retained regarding legal services for the formation of the CFD and regulatory agreements. BBK is currently under contract with the City. The estimated total costs for these

services would be \$32,000. These costs would be borne by the developer.

- By May 2, 2016, the developer would be required to submit the sum of \$10,000 to the City. This amount would be held by the City in a separate account as the "Project Deposit Account." When consultants invoice the City for fees, costs, and expenditures associated with the project, City staff would concurrently provide a duplicate invoice to the developer. The developer would have five days to approve or disapprove the invoice. In the event the developer disputed an invoice, the City and developer would communicate to resolve the objections. If the parties were unable to resolve the objections and the City paid the invoice, the developer could take action to terminate the agreement and would reimburse the City for all costs incurred to the date of the termination. When the developer deposit drops below \$5,000, the City would make a written demand to the developer to replenish the deposit to the \$10,000 amount.
- The City would not exceed the estimated \$32,000 of costs without first informing the developer in writing regarding the need for additional services. The City would be required to provide the developer with appropriate documentation of the reason for the excess costs so the developer may reasonably evaluate such costs. The City would also be required to inform the developer in writing prior to amending the scope of work for any consultant service and the estimated cost thereof. Once the City had provided such notice to the developer, the developer would be obligated to pay the excess cost in the same manner as the estimated costs. However, if the developer objected to the excess costs, the developer must provide the City with a written objection no later than five days after receipt of the City's written notice. The City and developer would communicate in an attempt to resolve the objection. If the parties were unable to resolve the objection, the developer would have the sole and exclusive right to terminate the agreement and reimburse the City for all costs incurred to the date of termination.
- The City would be required to maintain accurate records of invoices received from, and payments made to, the consultants. The City would be required to provide a payment summary to the developer within a reasonable time upon request.
- The term of the Agreement would commence on May 2, 2016 and would terminate in twelve months unless extended. The developer's obligation to reimburse the City would survive the termination of the Agreement.
- The City would be able to terminate the Agreement prior to the terms set forth above, without cost or liability, upon 30 days' written notice to the developer in the event the developer fails to satisfy any material obligation of the agreement or fails to prosecute its applications for the project. The developer would be able to terminate the Agreement upon 30 days' prior written notice provided that the developer gives the City written notice withdrawing its application for the project and the developer would be required to satisfy all of its obligations under the Agreement through the effective date of the termination.
- The Agreement would not be assignable by either party without the prior written consent of the other party.

FISCAL IMPACT: Proposed Agreement No. 16-31 would authorize staff to retain the services of David Taussig & Associates, Inc., to form and administer proposed CFD

2016-1. As indicated, the purpose of the CFD would be to finance certain City maintenance and public safety costs related to the project proposed by CFC-Montclair, LLC. The cost to retain David Taussig & Associates, Inc., would be approximately \$16,000. The annual fee to prepare and levy the assessment would be approximately \$3,500 subject to increase. The fee is paid from the CFD proceeds.

Through the proposed Reimbursement Agreement (Agreement No. 16-32), the City would be able to retain legal counsel and consulting services related to the City's implementation of a CFD and development of other legal documents. The developer would provide the funds to the City for such needed legal and consulting services. At this time, these estimated legal costs would not be expected to exceed \$16,000.

In proposing the Reimbursement Agreement, staff is attempting to see that the City's consulting fees related to formation of the CFD and legal fees related to the proposed development remain revenue neutral to the General Fund. Furthermore, creating the CFD, staff hopes to see that maintenance costs related to public facilities within the NMDSP area also largely remain revenue neutral.

FISCAL IMPACT: Approval of Agreement No. 16-31 and Agreement No. 6-32 would create no fiscal impact for the City. The City would retain the services of David Taussig & Associates, Inc., to form a CFD for the proposed development by CFC-Montclair, LLC. Through the approval of Agreement No. 16-32, the developer would agree to reimburse the City for the services of David Taussig & Associates, Inc., and for legal fees associated with formation of the CFD.

The cost of the services to form the CFD is anticipated to cost approximately \$16,000. The estimated annual cost to prepare the documentation to collect the levied assessment is \$3,500 annually subject to increase. The collection cost of the assessment is paid by through the CFD.

CFC-Montclair LLC, would be expected to reimburse the City the actual costs for formation of the CFD by David Taussig & Associates, Inc., and for legal fees through the terms of the Reimbursement Agreement. These total costs are anticipated to be \$32,000.

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

1. Approve Agreement No. 16-31, a consulting agreement with David Taussig & Associates, Inc., for formation and administration of Community Facilities District No. 2016-1.
2. Approve Agreement No. 16-32, a reimbursement agreement with CFC-Montclair, LLC regarding property at 8949 Monte Vista Avenue.

AGREEMENT NO. NO. 16-31
CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES
COMMUNITY FACILITIES DISTRICT 2016-1

THIS AGREEMENT is made and effective as of May 2, 2016, between the City of Montclair, a municipal corporation (“City”) and David Taussig & Associates (“Consultant”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

That portion of the Agreement relating to formation of the Community Facilities District, shall commence on May 2, 2016 and shall remain and continue in effect for a period of twelve months until tasks described herein are completed, but in no event later than May 2, 2017 unless sooner terminated pursuant to the provisions of this Agreement. That portion of the Agreement related to the annual administration of the Community Facilities District No. 2016-1 related to the establishment of the tax rates has remain in effect until terminated pursuant to the provisions of the Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

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

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibits A and B to Attachment A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Sixteen Thousand Dollars for the twelve month term of the Agreement related to formation of the Community Facilities District unless additional payment is approved as provided in this Agreement. The payment amount related to the annual administration of the Community Facilities District will be approximately \$3,500 annually subject to adjustment.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed Ten Thousand Dollars (\$10,000.00). Any additional work in excess of this amount shall be approved by the City Council.

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least Thirty (30) days prior written notice. Upon receipt of said notice, the Consultant

shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

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

7. DEFAULT OF CONSULTANT

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

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

8. OWNERSHIP OF DOCUMENTS

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

final payment. Notwithstanding the above, all computer financial models including without limitation compilations of formulas and spreadsheet models used or developed by the Consultant in performing its work are proprietary and shall remain property owned solely by the Consultant.

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

9. INDEMNIFICATION

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

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant. Said indemnification shall include any claim that Consultant, or Consultant's employees or agents, are considered to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant or other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to

be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

10. INSURANCE

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

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	1,000,000
Commercial general liability at least as broad as ISO CG 0001 (general aggregate)	2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	1,000,000
Professional Liability (per claim and aggregate)	1,000,000
Worker's compensation	Statutory

(b) All insurance required by this section shall apply on a primary basis. Consultant agrees that it will not cancel or reduce said insurance coverage. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(c) Auto liability insurance shall cover owned, nonowned and hired autos. If Consultant owns no vehicles, auto liability coverage may be provided by means of a nonowned and hired auto endorsement to the general liability policy.

(d) At all times during the term of this Agreement, Consultant shall maintain on file with City a certificate of insurance, in a form acceptable to City showing that the aforesaid policies are in effect in the required amounts. The general liability policy shall contain or be endorsed to contain a provision including the Indemnitees as additional insureds. Consultant shall promptly file with City such certificate or certificates and endorsements if applicable. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

(e) No policy required by this section shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the Indemnitees.

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

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

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

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

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to

any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

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

16. NOTICES

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

To City: Edward C. Starr
City Manager
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant: Andrea Roess
Managing Director
David Taussig & Associates
5000 Birch Street, Ste. 6000
Newport Beach, CA 92660

17. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Because of the personal nature of the services to be rendered pursuant to this Agreement, only Andrea Roess (responsible employee) shall perform the services described in this Agreement.

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONFIDENTIALITY

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

22. DISCRIMINATION

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

23. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Mayor

By: _____
(Title)

Attest:

By: _____
City Clerk

By: _____
(Title)

Approved as to Form:

By: _____
City Attorney

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is made and entered into this ____ day of February 2016, by and between the City of Montclair at 5111 Benito Street, Montclair, California 91763, herein called "Client," and David Taussig and Associates, Inc. at 5000 Birch Street, Suite 6000, Newport Beach, CA 92660, herein after called "Consultant." The Client and the Consultant in consideration of the mutual promises and conditions herein contained agree as follows.

ARTICLE I
TERM OF CONTRACT

Section 1.1 This agreement shall become effective on the date stated above and will continue in effect until the earlier of (i) that day when the services provided for herein have been performed or (ii) until terminated as provided in Article 6 below.

ARTICLE II
SERVICES TO BE PERFORMED BY CONSULTANT

Section 2.1 Consultant agrees to perform the professional services for the Client and to deliver the work products to the Client as described in the Scope of Work statement attached as Exhibit "A" hereto. Such professional services and work products, as from time to time modified in accordance with Section 2.3 hereof, are collectively referred to as the "Consulting Services."

Section 2.2 Consultant will determine the method, details and means of performing the Consulting Services. Consultants may, at Consultants' own expense, employ such assistance as it deems necessary to perform the Consulting Services required by Client under this Agreement. Consultants shall conduct research and arrive at conclusions with respect to their rendition of information, advice, recommendation or counsel independent of the control and direction of the Client, other than normal contract monitoring. All computer software (including without limitation financial models, compilations of formulas and spreadsheet models), inventions, designs, programs, improvements, processes and methods (collectively, the "Proprietary Models") used or developed by DTA in performing its work is proprietary and shall remain property owned solely by, or licensed by a third party to DTA. Client acknowledges and agrees that the consideration paid by Client herein only entitles Client to a license to use the hard copy or electronically transmitted reports generated pursuant to the Consulting Services and that any Proprietary Model that Consultant uses to generate such reports is owned by, or is duly licensed from a third party to Consultant and is not being provided to Client hereunder. Client acknowledges that DTA may have used reports and analyses that DTA authored for other clients as base works or templates for the reports and analyses prepared for Client pursuant to this Agreement, and Client acknowledges and agrees that DTA has the right to use the reports and analyses that it authors pursuant to this Agreement as base works or templates for reports and analyses that DTA authors for DTA's other clients, provided, however that DTA shall not use any confidential information provided by Client in such future reports and analyses. Client

acknowledges and agrees that DTA has spend substantial time and effort in collection and compiling data and information (the "Data Compilations") in connection with the Consulting Services and that such Data Compilations may be used by DTA for its own purposes, including, without limitation, sale or distribution to third parties; provided, however, that DTA will not sell or distribute any of Client's confidential information that may be contained in such Data Compilations, unless such confidential information is used only on an aggregated and anonymous basis.

Section 2.3 Any proposed changes in the Consulting Services hereunder shall be submitted to the other party hereto, and any such changes agreed to by the parties shall be reflected in an amendment to Exhibit "A" in accordance with Section 7.2 hereto.

Section 2.4 Nothing in this Agreement shall give the Consultant possession of authority with respect to any Client decision beyond the rendition of information, advice, recommendation or counsel.

ARTICLE III **COMPENSATION**

Section 3.1 Client agrees to pay Consultant for its Consulting Services a professional fee computed according to the Fee Schedule attached as Exhibit "B" hereto.

Section 3.2 The Client shall reimburse the Consultant for Consultant's out-of-pocket expenses plus a 15% administrative charge. Expenses shall include all actual expenditures made by Consultant in the performance of any Consulting Services undertaken pursuant to the Agreement, including, without limitation, the following expenditures:

- (a) Cost of clerical assistance @ \$35.00 per hour, including typing, collation, printing and copying, plus copier and photography costs, including photographic reproduction of drawings and documents.
- (b) Transportation costs, including mileage for the use of personal automobiles at the prevailing IRS standard rate, rental vehicles, lodging and regularly scheduled commercial airline ticket costs.
- (c) Courier services, facsimile, and telephone expenses.

Section 3.3 On or about the first two weeks of each month during which Consulting Services are rendered hereunder, Consultant shall present to Client an invoice covering the current Consulting Services performed and the reimbursable expenses incurred pursuant to this Agreement and exhibits thereto. Such invoices shall be paid by Client within thirty (30) days of the date of each invoice. A 1.2% charge per month may be imposed against accounts which are not paid within 30 days of the date of each invoice.

Section 3.4 The maximum total fee amount set forth in Exhibit "B" may be increased as a result of any expansion of the Consulting Services to be rendered hereunder pursuant to Section 2.3 or as provided in Exhibit "A" hereto.

Section 3.5 Records of the Consultant's costs relating to (i) Consulting Services performed under this Agreement and (ii) reimbursable expenses shall be kept and be available to the Client or to Client's authorized representative at reasonable intervals during normal business hours.

ARTICLE IV
OTHER OBLIGATIONS OF CONSULTANT

Section 4.1 Consultant agrees to perform the Consulting Services in accordance with Exhibit "A". Should any errors caused by Consultant's negligence be found in such services or products, Consultant will correct them at no additional charge by revising the work products called for in Exhibit "A" to eliminate the errors.

Section 4.2 Consultant will supply all tools and instrumentalities required to perform the Consulting Services under the Agreement.

Section 4.3 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Consultant without the prior written consent of Client. However, Consultant may subcontract portions of the work to be performed hereunder to other persons or concerns provided Consultant notifies Client of the name and address of said proposed subcontractor and Client either consents or fails to respond to notification with respect to the use of any particular proposed subcontractor.

Section 4.4 In the performance of its Consulting Service hereunder, Consultant is, and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of Client) under any and all laws, whether existing or future. Consultant is not authorized to make any representation, contract or commitment on behalf of Client.

Section 4.5 Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of Client will cause the Consultant to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. Client and Consultant agree that Consultant is not a "public official" or "participating in governmental decision" as those terms are used in Section 87100. The Client and Consultant also agree that no actions and opinions necessary for the performance of duties under the Contract will cause the Consultant to be a "public official" or "participating in a governmental decision" as those terms are used in Section 87100.

ARTICLE V
OTHER OBLIGATIONS OF CLIENT

Section 5.1 Client agrees to comply with all reasonable requests of Consultant and provide access to all documents reasonably necessary to the performance of Consultant's duties under this Agreement with the exception of those documents which Exhibit "A" calls upon the Consultant to prepare.

Section 5.2 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Client without the prior written consent of Consultant.

Section 5.3 Consultant frequently is retained by developers, landowners, and other persons and concerns interested in development projects which often eventually lead to the preparation on a contract basis by Consultant of preliminary tax spread models for government agencies to determine tax rates and other matters necessary to accomplish various improvements to realty for financing under a Mello-Roos or other financing programs. In light of the foregoing, Client will determine whether or not it is appropriate to conduct a "significant substantive review" or a "significant intervening substantive review" of Consultant's activities conducted pursuant to this Agreement as such terms are defined in Section 18700(c)h of Title 2 of the California Administrative Code. Should Client elect to conduct such a substantive review, then Client shall determine whether it has sufficient expertise on staff to conduct such a review, and, if not, will retain

an independent expert consultant to review Consultant's work. Thereafter, Client shall conduct such review, or cause such independent review to be conducted, prior to the making of any governmental decision relating to the matters contained within the Scope of Work described in Exhibit "A". The parties do not intend and nothing in this Section 5.3 is meant to imply that Consultant is a "public official," "participating in a governmental decision," or has a "financial interest" in the services provided as such terms are used in Section 87100 of Title 9 of the California Governmental Code.

Section 5.4 Client, public agencies, landowners, consultants and other parties dealing with Client or involved in the subject development project referred to in Exhibit "A" will be furnishing to Consultant various data, reports, studies, computer printouts and other information and representations as to the facts involved in the project which Client understands Consultant will be using and relying upon in preparing the reports, studies, computer printouts and other work products called for by Exhibit "A." Consultant shall not be obligated to establish or verify the accuracy of the information furnished by or on behalf of Client, nor shall Consultant be responsible for the impact or effect on its work products of the information furnished by or on behalf of Client, in the event that such information is in error and therefore introduces error into Consultant's work products.

Section 5.5 Client agrees to defend, indemnify and hold Consultant harmless from and against all obligations, losses, liabilities, damages, claims, attachments, executions, demands, actions and/or proceedings (collectively, "Claims") and all costs and expenses in connection therewith, including reasonable attorneys' fees, arising out of or connected with the performance of Consultant's Consulting Services under this Agreement, except as may arise from Consultant's willful misconduct or gross negligence. In that regard, Client will indemnify and hold Consultant harmless from any Claims arising from, growing out of, or in any way resulting from, errors contained in data or information furnished by Client or Client's designee to Consultant for use in carrying out the Consulting Services called for by this agreement. If for any reason the indemnification under this Section 5.5 is unavailable to Consultant or insufficient to hold it harmless, then the Client shall contribute to the amount paid or payable by Consultant as a result of such loss, liability, damage, claim, demand, action or proceeding in such proportion as is appropriate to reflect not only the relative benefits received by the Client on the one hand and Consultant on the other hand but also the relative fault of the Client and Consultant as well as any relevant equitable considerations; provided that Consultant's contribution obligations hereunder shall in no event exceed the amounts received by Consultant under this Agreement.

Section 5.6 In the event that court appearances, testimony or depositions are required of Consultant by Client in connection with the services rendered hereunder, Client shall compensate Consultant at a rate of \$250 per hour and shall reimburse Consultant for out-of-pocket expenses on a cost basis.

ARTICLE VI

TERMINATION OF AGREEMENT

Section 6.1 Either party may terminate or suspend this Agreement upon thirty (30) days written notice. Unless terminated as provided herein, this Agreement shall continue in force until the Consulting Services set forth in Exhibit "A" have been fully and completely performed and all proper invoices have been rendered and paid.

Section 6.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party at its option may terminate this Agreement by giving written notification to the defaulting party. Such termination shall be effective upon receipt by the defaulting party, provided that the defaulting party shall be allowed ten (10) days in which to cure any default following

receipt of notice of same.

Section 6.3 The covenants contained in Sections 3.1, 3.2, 4.4, 5.3, 5.4, 5.5, 5.6 and all of Article VII shall survive the termination of this Agreement.

ARTICLE VII

GENERAL PROVISIONS

Section 7.1 Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with the first sentence of this Section 7.1. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

Section 7.2 This Agreement and exhibits hereto supersede any and all agreements, either oral or written, between the parties hereto with respect to the rendering of service by Consultant for Client and contains all of the covenants and agreements between the parties with respect to the rendering of such services. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement (including any exhibit hereto) will be effective if it is in writing and signed by the party against whom it is sought to be enforced.

Section 7.3 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 7.4 Any controversy between the parties hereto involving the construction or application of any of the terms, covenants, or conditions of this Agreement will, on the written request of one party served on the other, be submitted to binding arbitration in accordance with the commercial rules and regulations of the American Arbitration Association and the provisions of the California Arbitration Act (Sections 1280 through 1294.2 of the California Code of Civil Procedure). The arbitration shall take place in Newport Beach, California, or such other location mutually agreed to by the parties.

The arbitrator(s) shall be selected as follows: In the event that Consultant and Client agree on one arbitrator, the arbitration shall be conducted by such arbitrator. In the event Consultant and Client do not so agree, Consultant and Client shall each select an arbitrator and the two arbitrators so selected shall select the third arbitrator. If there is more than one arbitrator, the arbitrators shall act by majority vote. The parties may propose arbitrators from JAMS, ADR, ARC or any independent arbitrator/neutral for dispute resolution. The parties are not required to hire an AAA arbitrator for resolution of a dispute hereunder.

The decree or judgment of an award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Section 7.5 The prevailing party in any arbitration or legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorneys' fees. The non-

prevailing party shall be liable, to the extent allowable under law, for all fees and expenses of the arbitrator(s) and all costs of the arbitration.

Section 7.6 This Agreement will be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this Agreement has been executed on the date and year first above written.

CONSULTANT:
David Taussig & Associates, Inc.

CLIENT:
City of Montclair

By: _____
David Taussig, President

By: _____

Date: _____

Date: _____

EXHIBIT A

COMMUNITY FACILITIES DISTRICT FORMATION SERVICE OF THE CITY OF MONTCLAIR

SCOPE OF WORK

David Taussig & Associates, Inc. shall provide special tax consulting services, as described in the tasks below, necessary to assist the City in the formation of a CFD to finance certain annual services for the project expected to encompass 23 apartment units.

Task 1. Initial Meeting

Attend an initial meeting to discuss the scope of work, proposed schedule, and to identify any other issues prior to beginning work.

Task 2. Research

Gather the necessary data from Client and Developer with the assistance of DTA. Client and Developer are responsible for providing and verifying data describing types of development, improved property values, net taxable acreage, and the estimated cost of the annual services proposed to be financed. DTA shall rely on such data provided by the Client and Developer, and shall not be responsible for verifying its accuracy. DTA shall also compile assessor's data for the project area.

Task 3. Preliminary Tax Spread

Prepare initial spread of special taxes (the "Tax Spread") based on land use, building square footage, and/or acreage as obtained through Task 2 above. Calculate special taxes to support proposed annual services costs. DTA may recommend alternative techniques to apportion special taxes to enhance project feasibility.

Task 4. Rate & Method of Apportionment

Prepare the Rate and Method of Apportionment of Special Tax (the "RMA") which describes the methodology used to calculate the annual special tax levy for the CFD. DTA shall work with Client staff to modify the RMA as needed.

Task 5. Public Report

Prepare the Public Report, as described in Section 53321.5 of the California Government Code, containing descriptions of the proposed services, their estimated costs, and maximum annual special tax rates.

Task 6. Document Review and Preparation

Assist the City with the preparation of required documents, including the Resolution of Intention, Resolution of Formation, and related items.

Task 7. Verbal Consulting Services

Provide verbal consulting services and advice to Client and other Project Developers regarding the special tax and apportionment methodology during the period in which Tasks 1 through 6 are being completed.

Task 8. Coordination

DTA shall attend up to a total of three meetings (including the meeting described in Task 1). These meetings may be used to discuss or present the Tax Spread, Rate and Method of Apportionment of Special Tax, Public Report, or other items prepared by DTA. They may also be used for the protest hearing, or other public meetings. After a total of three meetings attended by DTA have been completed, additional meetings will require fees beyond the maximum established in the Fee Schedule if the budgeted amount has been completely expended based on hourly rates quoted herein.

Task 9. Preparation of Boundary Map

This task entails the preparation of the CFD boundary map pursuant to the requirements of the Mello-Roos Act and the County Recorder's Office, assuming that computerized base maps are provided by Client. Record map at the County Recorder's office and distribute copy of recorded map to the project team.

EXHIBIT B**COMMUNITY FACILITIES DISTRICT FORMATION SERVICE
OF THE CITY OF MONTCLAIR****FEE SCHEDULE****Professional Services Fee**

DTA shall be remunerated for services based on the hourly rates shown in Table 1 below, not to exceed \$15,000, with invoices being submitted to the City on a monthly basis.

Table 1
Hourly Rates

Managing Director	-	\$200/Hour
Vice President	-	\$195/Hour
Manager	-	\$170/Hour
Senior Associate	-	\$150/Hour
Associate	-	\$135/Hour
Senior Analyst	-	\$125/Hour
Analyst	-	\$115/Hour
Research Assistant	-	\$ 90/Hour

Consulting services related to the annual collection of special taxes, shall be covered under a separate Agreement.

Any additional tasks assigned by City if the total fee listed above has been exceeded shall be charged at the hourly rates listed above. An excessive number of meetings (more than four) or tax spread computer runs (more than fifteen) may also require additional fees if the total fee has been exceeded. Such additional fees shall be added to the "Total Fee" amounts listed above. The hourly fees listed above apply for a twelve month period after execution of this Agreement, and are subject to a cost-of-living increase after that period, and on an annual basis thereafter.

In addition to fees for services, City shall reimburse DTA for travel, photocopying, courier, facsimile, clerical, telephone expenses, and administrative charges, not to exceed \$1,000.

All budgets, rates, and expenses are subject to a cost of living increase every 12 months.

Attachment A

SCOPE OF WORK

EXHIBIT A

**MELLO-ROOS SPECIAL TAX ADMINISTRATION
COMMUNITY FACILITIES DISTRICT NO. 2016-1
OF THE CITY OF MONTCLAIR**

SCOPE OF WORK

David Taussig & Associates, Inc. ("Consultant") shall provide financial consulting services to assist the City of Montclair (the "Client") in the annual administration of Community Facilities District No. 2016-1. The intent of these services shall be to determine the special tax rates and facilitate the collection of the special taxes for each fiscal year.

The specific activities and tasks to be performed under this Scope of Work include the following:

Task 1 Land Use Research

This task involves determining, gathering and organizing the land use data required to apportion and collect special taxes, and includes the following subtasks:

- 1.1 Subdivision Research:** Identify and obtain copies of all final tract or parcel maps recorded within CFD No. 2016-1.
- 1.2 Development Research:** Determine all building permit activity as of January 1 of the previous fiscal year. Identify issuance date, building square footage and situs address for each new building.
- 1.3 Assessor Parcel Research:** Review current Assessor Parcel Maps to compile a list of the Assessor's Parcels which will be valid for each fiscal year. Determine acreage of all parcels.
- 1.4 Database Management:** Create automated parcel database that will include information for all parcels. Data will include Assessor Parcel Number and corresponding tract, lot and unit number, acreage, building square footage, building permit issuance date and situs address.

Task 2 Classification of Property

This task involves application of the Rate and Method of Apportionment of Special Taxes to determine the appropriate special tax classification for each parcel located in the CFD and includes the following subtasks:

- 2.1 Exempt Property:** Identify all property owned by public agencies or entities otherwise exempt from the special tax and classify as exempt property.

- 2.2 Taxable Property:** Identify all taxable properties and classify each as "Developed Property" or "Undeveloped Property." Assign each "Developed Property" to the appropriate special tax classification.

Task 3 Financial Analysis

This task involves calculating and apportioning the Special Tax Requirement and includes the following subtasks:

- 3.1 Determine Special Tax Requirement:** Assist Client with the calculation of the Special Tax A Requirement and Special Tax B Requirement.
- 3.2 Determine Special Tax Rates:** Based on tax classifications and special tax requirement, compute the current fiscal year Special Tax A and Special Tax B for all classifications of taxable property.

Task 4 Report Preparation

This task includes the preparation of an Annual Special Tax Report containing the findings of the financial analysis and an explanation of the methodology employed to apportion the special taxes. Included in the report is a list of the special tax levy for each Assessor's Parcel.

Task 5 Enrollment of Special Taxes

This task involves submitting the special tax levy on or before August 10 of each year, or such other date specified by the County of San Bernardino to the Auditor-Controller, for inclusion on the consolidated property tax bills. The special tax levy will be submitted on magnetic tape or other media as specified by the County.

Task 6 Delinquent Property Owner Research

This task involves the review and research of County records to determine which parcels are delinquent in the payment of property and special taxes, and includes the following subtasks:

- 6.1 Semi-Annual Delinquent Special Tax Report:** Review special tax payment information from the County of San Bernardino. Determine which parcels are delinquent and the corresponding amount of delinquent special taxes. Prepare report summarizing the amount of delinquent special taxes.
- 6.2 Collection of Delinquent Special Taxes:** Assist Client with the development of procedures to cure delinquent special taxes. Assist with the preparation of demand letters as necessary.

Task 7 Roll Changes and Adjusted Property Tax Bills

This task involves monitoring any changes to the secured tax roll which necessitate new or adjusted property tax bills. This task includes the calculation of new or adjusted bills and the preparation of requests to the County to prepare such bills.

Task 8 Responses to Property Owner Questions

This task involves the provision of information to individuals and other interested parties regarding the amount and calculation of the special tax.

Task 9 Annual Reporting/Disclosure

This task involves assisting Client in the preparation of special tax disclosure documents pursuant to Section 1102.6b of the Civil Code and Section 53340.2 of the Government Code (as amended by SB 1464).

EXHIBIT B

**MELLO-ROOS SPECIAL TAX ADMINISTRATION
COMMUNITY FACILITIES DISTRICT NO. 2016-1
OF THE CITY OF MONTCLAIR**

BUDGET

The proposed budget for Tasks 1 - 9 in the Scope of Work is time and materials, not to exceed \$2,500 per fiscal year. The \$2,500 represents a maximum amount not to be exceeded for Tasks 1 - 9, subject to the limitations identified below, unless otherwise agreed upon by the City of Montclair (the "Client").

Consultant shall charge the following hourly rates for services related to the Scope of Work.

Managing Director	\$200/Hour
Vice President	\$195/Hour
Manager	\$170/Hour
Senior Associate	\$150/Hour
Associate	\$135/Hour
Senior Analyst	\$125/Hour
Analyst	\$115/Hour
Research Assistant	\$ 90/Hour

Monthly progress payments will be made by Client upon presentation of invoice by Consultant providing details of services rendered and expenses incurred. At Client's request services in addition to those identified in the Scope of Work may be provided if the total fee to complete the Tasks selected is less than the associated budget. Alternatively, if the selected Tasks can be completed for less than the amount budgeted, only the hours actually expended will be billed.

In addition to fees for services, Client shall reimburse Consultant for travel, copying, courier, facsimile, telephone expenses, data services, materials, and other out-of-pocket expenses, as noted elsewhere in this Agreement, in an amount not to exceed \$250 annually.

LIMITATIONS

The preceding professional fees and hourly rates apply for a 12 month period from execution of the Agreement and are subject to a cost-of-living and/or other appropriate increase every 12 months thereafter. Consultant generally reviews its professional fees and hourly rates annually and, if appropriate, adjusts them to reflect increases in seniority, experience, cost-of-living, and other relevant factors. Consultant shall notify Client in advance of any such increase.

The proposed budget of \$2,500 is based on the administration of parcels in CFD No. 2016-1 as of fiscal year 2015-2016. If additional property is annexed into CFD No. 2016-1, it is understood that augmentation to the proposed budget would be required for future years.

DTA has assumed that the Client will (i) provide DTA with a copy of all building permits issued within CFD No. 2016-1. Additional services other than those necessary to amend errors on the part

of Consultant are not covered by the budget listed above. As for Task 7, detailed written responses or formal meetings with property owners to resolve disputes will be classified as Additional Work and billed at hourly rates listed above.

Agreement No. 16-32

A REIMBURSEMENT AGREEMENT

Between

**CITY OF MONTCLAIR
a California Municipal Corporation**

and

CFC-MONTCLAIR, LLC

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made this 2nd day of May, 2016, by and between the City of Montclair, a California Municipal Corporation (the "City"), and CFC-Montclair, LLC (the "Applicant").

RECITALS

This Agreement is made with respect to the following facts.

A. The Applicant is the owner of that certain real property ("Property") located within the City of Montclair, County of San Bernardino, California. The Property is more particularly described as an area of approximately 0.65 gross acres in size and is located on at 8949 Monte Vista Avenue. The Property is further described in Exhibit "A" attached hereto and incorporated herein by reference.

B. The Property is located adjacent to the boundaries of the North Montclair Downtown Specific Plan approved by the City Council on May 15, 2006 by Resolution No. 06-2628 ("Specific Plan"). The Applicant is contemplating the development of this Property and would like to develop this site in accordance with the provision of the North Montclair Downtown Specific Plan. The project will consist of construction of approximately 23 residential units.

C. In order to contemplate development of the proposed project pursuant to the standards in the North Montclair Downtown Specific Plan, the Specific Plan will require amendment and related environmental review. The amendment to the Specific Plan and environmental review shall be referred to collectively as the "Project."

E. To provide the City with the needed expertise and information necessary for the City's preparation of an amendment to the Specific Plan and the necessary environmental review concerning the Project, it is necessary for the City to access the services of certain outside land use planning, environmental, legal, and other experts for the Project ("Consultants").

F. As a condition of the City's consideration for amendment to the North Montclair Downtown Specific Plan, the Applicant has agreed to reimburse the City for the Consultants' costs and expenses related to the Project in the manner and amounts set forth in this Agreement. The Applicant's reimbursement of City under this Agreement will ensure that the City has the necessary resources to diligently and efficiently process certain conditions related to the Applicant's Project.

TERMS

NOW, THEREFORE, in consideration of the following mutual promises and agreements, City and Applicant agree as follows:

1 Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City and the Applicant have entered into this

Agreement. The City and the Applicant each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. City to Retain Consultants. As a necessary and indispensable part of the Conditions of Approval of Applicant's proposed Project and use of the Property, the City shall retain the services of Consultants as set forth in Section 4 of this Agreement to provide advice as the City may deem necessary in its reasonable and sole discretion. The contemplated general scope of work of the Consultants for the Project is attached hereto as Exhibit "B" and incorporated herein by reference, but the City reserves the right, in its reasonable and sole discretion, to amend the scope of work as it deems necessary and appropriate to the City's proper review and consideration of the Applicant's Project. However, if such amendment will cause, or will be likely to cause, the Estimated Costs (as defined in Section 5) to be exceeded, the City shall promptly notify Applicant thereof in writing (and in no event, less than five (5) business days after the City becomes aware of such information).

The Applicant agrees that, notwithstanding the Applicant's reimbursement obligations under this Agreement, Consultants shall be the contractors exclusively of the City and not of the Applicant. Except for those disclosures required by law, including, without limitation, the Public Records Act, all conversations, notes, memoranda, correspondence and other forms of communication by and between the City and its Consultants which are deemed under law to be privileged and confidential shall not be subject to disclosure to the Applicant. The Applicant agrees that it shall have no claim to, nor shall it assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work product produced by the Consultants which is privileged or confidential under law; provided, however, the Applicant shall be provided with photocopies of all such documents or work product for which it has reimbursed the City which are not so privileged or confidential under law.

3. Applicant to Cooperate with Consultants. The Applicant agrees to cooperate in good faith with the Consultants. The Applicant agrees that it will instruct its agents, employees, consultants, contractors and attorneys to reasonably cooperate with the Consultants and to provide all necessary documents or information reasonably requested of them by the City and/or the Consultants; provided, however, that the foregoing shall not require the disclosure of any documents or information of the Applicant which by law is privileged, proprietary, confidential, and exempt from disclosure under the Public Records Act.

4. City's Selection of Consultants. The City proposed to retain the following as Consultants pursuant to Section 2 of this Agreement, but shall have the right to retain any additional consultants or sub-consultants pursuant to this Agreement David Taussig & Associates., including any sub-consultants determined by CFC-Montclair, LLC., and City to be necessary (Communities Facilities District formation), and BBK (legal advisors). If and when the City determines to retain such additional consultants or subconsultants, it shall first so inform the Applicant of its intent to do so, and include with such information the terms and conditions (including fees) upon which such parties will be retained. The Applicant shall have five (5) business days in which

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to review and approve or disapprove the retention of such parties (approval shall not be unreasonably withheld or conditioned). Provided that the Applicant has not notified the City of its disapproval as to the retention of any such parties on or prior to the expiration of such five (5) business day period, the City may thereafter retain such parties upon the terms and conditions submitted to the Applicant. In the event that the Applicant reasonably objects to any such retention, the Applicant's objection shall state the reasons for its objection in sufficient detail that the City shall be able to address, and potentially remedy, such objection if the City so determines. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such objection) communicate in order to resolve any such objection, but if the parties are unable to resolve such objection, and if the City thereafter retains the disputed party, the Applicant shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to any Consultants.

5. Applicant's Reimbursement of Fees, Costs and Expenditures. The Applicant shall reimburse the City for one hundred percent (100%) only of the actual fees, costs and other expenditures incurred by the City relative to the Consultant costs ("Costs"), subject to the terms and conditions of this Agreement. Applicant further understands and agrees that Costs are based upon the rates provided by Consultants attached hereto as Exhibit "C" to this Agreement.

The City has preliminarily reviewed the scope of work required and has estimated the aggregate Costs for all consultants to be approximately Thirty Two Thousand Dollars (\$32,000) ("Estimated Costs"). Upon the execution of this Agreement and before May 3, 2016, the Applicant shall submit a deposit in the amount of Ten Thousand (\$10,000) to cover the Estimated Costs, which amount the City shall separately account for in a Project deposit account ("Deposit Account").

When the Consultants invoice the City for fees, costs, and expenditures associated with the Project, they shall concurrently provide duplicate invoices to the Applicant, who shall have five (5) business days in which to review and approve or disapprove the same (approval shall not be unreasonably withheld or conditioned). Provided that the Applicant has not notified the City of its disapproval of any invoices on or prior to the expiration of such five (5) business day period, the City may draw upon the Deposit Account to make the required payments. In the event that the Applicant reasonably objects to any invoice, the Applicant's objection shall state the reasons for its objection in sufficient detail that the City shall be able to address, and potentially remedy, such objection if the City so determines. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such objection) communicate in order to resolve any such objection, but if the parties are unable to resolve such objection, and if the City thereafter pays the disputed amounts, the Applicant shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to any Consultants. At any time that the Deposit Account drops below – Five Thousand Dollars (\$5,000), the City may make written demand on Applicant to

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replenish the Deposit Account to Ten Thousand Dollars (\$10,000), and Applicant shall submit the required amount of funds to the Deposit Account within ten (10) calendar days. In the event Applicant fails to make any required deposit, City shall have the right to consider Applicant's Project applications as withdrawn and cease processing such applications.

The City shall not exceed the Estimated Costs without first informing the Applicant in writing regarding the need for additional services which cause the Costs to exceed the Estimated Costs ("Excess Costs"), and shall provide appropriate documentation of such Excess Costs in sufficient detail that the Applicant shall be able to reasonably evaluate such costs. The City shall also inform the Applicant in writing prior to amending any scope of services, or adding services, to be provided by the Consultants, and shall provide appropriate documentation of such amended or additional scope of work in sufficient detail that the Applicant shall be able to reasonably evaluate such amended scope, and incurring Excess Costs. The Applicant's obligation to reimburse the City for the Excess Costs shall be contingent upon the City providing Applicant with written notice of the amendment of the scope of services to be performed by any Consultants and the estimated cost thereof as described hereinabove prior to the commencement of work. Once the City provides such notice, Applicant shall be obligated to pay the Excess Costs in the same manner as the Estimated Costs provided above, including, but not limited to, replenishing the Deposit Account; provided, however, in the event that the Applicant reasonably objects to any Excess Costs, the Applicant shall provide the City with a written objection not later than five (5) business days after receipt of the City's written notice stating the reasons for its objection in sufficient detail that the City shall be able to address, and potentially remedy, such objection if the City so determines. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such objection) communicate in order to resolve any such objection, but if the parties are unable to resolve such objection, and if the City thereafter pays any disputed Excess Costs, the Applicant shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to any Consultants.

The City shall maintain accurate records of invoices received from, and payments made to, the Consultants resulting from the Project, and will provide a payment summary to Applicant within a reasonable time upon request. In the event that excess funds remain in the Deposit Account upon conclusion of the Project and after all final payments to the Consultants have been made, the City agrees to refund that excess amount, if any, to Applicant within fifteen (15) days of final payment to the Consultants. Alternatively, if the Costs of the services of the Consultants exceed the Estimated Costs and Excess Costs, if any, then, subject to the terms and conditions of this Agreement, Applicant shall remain obligated to pay for all such Costs. Applicant shall pay any such amount within ten (10) calendar days of written demand for payment by City.

6. Applicant and City understand and agree that Applicants' land use entitlements concerning the Property are subject to the Conditions of Approval granted

by the Planning Commission and City Council for Case No. 2016-3; and entering into said Reimbursement Agreement will aid the Applicant in satisfying certain Conditions of Approval of Case No. 2016-3.

7. Term. The term of this Agreement shall commence on the date that this Agreement is approved by the City Council and fully executed by the parties, and shall terminate when all services required for the Project by Consultants have been completed to the City's reasonable satisfaction and the Applicant has satisfied all of its obligations under this Agreement. For purposes of this section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse the City for Estimated Costs and Excess Costs, whether or not paid by the City to Consultants prior to the date of termination, which accrue prior to the date of termination. The Applicant's obligation to reimburse (Section 5) the City as provided in this Agreement shall survive the termination of this Agreement pursuant to Section 8.

8. Early Termination.

8.1 By City. The City may, in its reasonable and sole discretion, terminate this Agreement prior to the term set forth in Section 6 above, without cost or liability to the City, upon thirty (30) days prior written notice to the Applicant in the event that Applicant either: (1) fails to satisfy any material obligation of this Agreement (provided, however, if such failure is capable of being timely remedied without prejudice to the City, and is timely remedied by the Applicant, such failure shall be deemed to be waived); or (2) materially fails to reasonably prosecute its application(s) for the Project. In the event of such termination, Applicant shall be deemed to have withdrawn its application(s) for the Project.

8.2 By Applicant. The Applicant may, in its reasonable and sole discretion, terminate this Agreement prior to the end of the term set forth in Section 7 above, upon thirty (30) days' prior written notice to the City; provided, however, that Applicant's right to so terminate this Agreement is expressly contingent upon Applicant satisfying both of the following: (1) Applicant shall give City written notice withdrawing its application(s) for the Project; and (2) Applicant shall satisfy all of its obligations under this Agreement up through the effective date of termination. For purposes of this section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse the City for Estimated Costs and Excess Costs incurred prior to the date of termination, whether or not paid by the City to Consultants prior to the date of termination.

Within two (2) working days following either the City's decision to terminate this Agreement or the City's receipt of written notice indicating the Applicant's decision to terminate this Agreement, the City shall notify all Consultants and instruct them to cease work on the Project. Consultants shall also be instructed to bill the City for any services completed prior to the date of termination.

9. Assignability. This Agreement may not be assigned by either party without the prior and express written consent of the other party, which consent shall not be unreasonably withheld. In determining whether to approve a request by the

AGREEMENT NO. 16-32

Applicant to assign this Agreement, the City may consider, among other things, the proposed assignee's financial status and commitment to the Project. Any attempted assignment of this Agreement not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee.

10. No Oral Modifications. This Agreement represents the entire understanding of the City and the Applicant, and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, only by a writing signed by both the authorized representatives of both the City and the Applicant. All modifications to this Agreement must be approved by the City Council of the City of Montclair.

11. Binding Upon Successors. This Agreement and each of its terms shall be binding upon the City, the Applicant and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

12. Legal Challenges. Nothing herein shall be construed to require City to defend any third party claims and suits challenging any action taken by the City with regard to any procedural or substantive aspect of the City's approval of development of the Property, the environmental process, or the proposed Project. The Applicant may, however, in its sole and absolute discretion, appear as real party in interest in any such third party action or proceeding, and in such event, it and the City shall defend such action or proceeding and the Applicant shall be responsible and reimburse the City for whatever reasonable legal fees and expert or other costs, in their entirety, including reasonable attorneys' fees, which may be incurred by the City in defense of such action or proceeding. The City shall have the absolute right to retain such legal counsel as the City deems necessary and appropriate, and the Applicant shall reimburse the City for any and all reasonable attorneys' fees and expert or other costs incurred by the City as a result of such third party action or proceeding; provided, however, the Applicant may, at any time, notify the City in writing of its decision to terminate such reimbursement obligation and, thereafter, the City may choose, in its sole discretion, to defend or not defend such third party action or proceeding. In the event that the City decides not to continue the defense of such third party action or proceeding, Applicant shall be obligated to reimburse City for any and all reasonable costs, fees, penalties or damages associated with dismissing the action or proceeding. In the event that the City decides to continue the defense of such third party action or proceeding, Applicant shall have no further obligation to reimburse City for its attorney fees and expert or other costs.

It is acknowledged by the parties that City is entering into this Agreement to assist Applicant in processing the Project. Applicant understands and agrees that City would not have entered this Agreement if it were to be liable in damages for breach of this Agreement. As a result, Applicant understands and agrees that City shall not be liable for damages to Applicant or any successor for breach of this Agreement or for any cause of action that arises from this Agreement. Applicant's remedies shall be limited to termination of this Agreement, subject to the obligations contained in Section 8.2

13. Attorneys' Fees. In the event that any action or proceeding, including arbitration, is commenced by the City to establish the validity of this

AGREEMENT NO. 16-32

Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its reasonable attorneys' fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys' fees on appeal.

14. Jurisdiction and Venue. This Agreement is executed and is to be performed in Montclair, San Bernardino County, California. Any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of San Bernardino, California. The City and the Applicant each consent to the personal jurisdiction of the court in any such action or proceeding.

15. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable, the City and the Applicant both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

16. Headings. The headings of each Section of this Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each Section.

17. Representations of Authority. Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants to the other party that all necessary legal prerequisites to that party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.

18. Notices. Notices required under this Agreement shall be sent to the following:

If to City:
Edward C. Starr, City Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763
Fax: 909-621-1584

If to the Applicant:
Tom Y. Lee
CFC-Montclair, LLC
1807 South San Gabriel Blvd. #A,
San Gabriel, CA 91776

Notices given pursuant to this Agreement shall be deemed received as follows:

- (1) If sent by United States Mail - five (5) calendar days after deposit into the United States Mail, first class postage prepaid.
- (2) If by facsimile - upon transmission and actual receipt by the receiving party.

- (3) If by express courier service or hand delivery - on the date of receipt by the receiving party.

The addresses for notices set forth in this Section 18 may be changed upon written notice of such change to either the City or the Applicant, as appropriate.

[SIGNATURES ON FOLLOWING PAGES]

CITY OF MONTCLAIR
a California Municipal Corporation

By: _____
Paul M. Eaton, Mayor

ATTEST:

By: _____
Andrea M. Phillips, Deputy City Clerk

APPROVED AS TO FORM:

Diane E. Robbins, City Attorney

Arrow Station L.P.
a California Limited Partnership

By: _____

By: _____

ATTEST:

By: _____
[INSERT NAME & TITLE]

APPROVED AS TO FORM:

[INSERT NAME]

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY A

SEE ATTACHED

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY A

PARCEL 8 OF PARCEL MAP NO. 10434, IN THE CITY OF MONTCLAIR, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 132 PAGE 44 OF PARCEL MAPS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA;

EXCEPT FROM SAID PARCEL 8 ALL OIL, GAS, HYDROCARBON SUBSTANCES, GASES AND MINERALS OF EVERY KIND AND CHARACTER LYING MORE THAN 500 FEET BELOW THE SURFACE, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH, AND TO USE AND OCCUPY ALL PARTS OF THE PROPERTY LYING MORE THAN 500 FEET BELOW THE SURFACE THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR AND PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM SAID SITE OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF THE PROPERTY OR ANY PURPOSE OR PURPOSES, WHATSOEVER, AS RESERVED IN THE DEED FROM THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY RECORDED APRIL 3, 1987 AS INSTRUMENT NO. 87.110471 OF OFFICIAL RECORDS.

APN: 1008-011-24
(END OF LEGAL DESCRIPTION)

EXHIBIT "B"
SCOPE OF SERVICE FOR CONSULTANTS

DAVID TAUSSIG & ASSOCIATES

SERVICES RELATED TO DEVELOPMENT OF RATE AND METHOD AND IMPLEMENTATION OF A COMMUNITY FACILITIES DISTRICT.

BEST BEST & KRIEGER LLP

Any and all legal services needed for the Project, including, but not limited to, any needed experts or sub-consultants.

OTHER CONSULTANTS

Any and all other consultants determined by the City to be reasonably necessary for its review and processing of the Project application(s).

EXHIBIT "C"
BILLING RATES OF EACH CONSULTANT

DAVID TAUSSIG & ASSOCIATES

See attached

BEST BEST & KRIEGER LLP

See attached

OTHER CONSULTANTS



Public Finance and Urban Economics

5000 Birch Street, Ste. 6000, Newport Beach, CA 92660

Phone: 949.955.1500 / Fax: 949.955.1590

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is made and entered into this ____ day of February 2016, by and between the City of Montclair at 5111 Benito Street, Montclair, California 91763, herein called "Client," and David Taussig and Associates, Inc. at 5000 Birch Street, Suite 6000, Newport Beach, CA 92660, herein after called "Consultant." The Client and the Consultant in consideration of the mutual promises and conditions herein contained agree as follows.

ARTICLE I TERM OF CONTRACT

Section 1.1 This agreement shall become effective on the date stated above and will continue in effect until the earlier of (i) that day when the services provided for herein have been performed or (ii) until terminated as provided in Article 6 below.

ARTICLE II SERVICES TO BE PERFORMED BY CONSULTANT

Section 2.1 Consultant agrees to perform the professional services for the Client and to deliver the work products to the Client as described in the Scope of Work statement attached as Exhibit "A" hereto. Such professional services and work products, as from time to time modified in accordance with Section 2.3 hereof, are collectively referred to as the "Consulting Services."

Section 2.2 Consultant will determine the method, details and means of performing the Consulting Services. Consultants may, at Consultants' own expense, employ such assistance as it deems necessary to perform the Consulting Services required by Client under this Agreement. Consultants shall conduct research and arrive at conclusions with respect to their rendition of information, advice, recommendation or counsel independent of the control and direction of the Client, other than normal contract monitoring. All computer software (including without limitation financial models, compilations of formulas and spreadsheet models), inventions, designs, programs, improvements, processes and methods (collectively, the "Proprietary Models") used or developed by DTA in performing its work is proprietary and shall remain property owned solely by, or licensed by a third party to DTA. Client acknowledges and agrees that the consideration paid by Client herein only entitles Client to a license to use the hard copy or electronically transmitted reports generated pursuant to the Consulting Services and that any Proprietary Model that Consultant uses to generate such reports is owned by, or is duly licensed from a third party to Consultant and is not being provided to Client hereunder. Client acknowledges that DTA may have used reports and analyses that DTA authored for other clients as base works or templates for the reports and analyses prepared for Client pursuant to this Agreement, and Client acknowledges and agrees that DTA has the right to use the reports and analyses that it authors pursuant to this Agreement as base works or templates for reports and analyses that DTA authors for DTA's other clients, provided, however that DTA shall not use any confidential information provided by Client in such future reports and analyses. Client

acknowledges and agrees that DTA has spend substantial time and effort in collection and compiling data and information (the "Data Compilations") in connection with the Consulting Services and that such Data Compilations may be used by DTA for its own purposes, including, without limitation, sale or distribution to third parties; provided, however, that DTA will not sell or distribute any of Client's confidential information that may be contained in such Data Compilations, unless such confidential information is used only on an aggregated and anonymous basis.

Section 2.3 Any proposed changes in the Consulting Services hereunder shall be submitted to the other party hereto, and any such changes agreed to by the parties shall be reflected in an amendment to Exhibit "A" in accordance with Section 7.2 hereto.

Section 2.4 Nothing in this Agreement shall give the Consultant possession of authority with respect to any Client decision beyond the rendition of information, advice, recommendation or counsel.

ARTICLE III **COMPENSATION**

Section 3.1 Client agrees to pay Consultant for its Consulting Services a professional fee computed according to the Fee Schedule attached as Exhibit "B" hereto.

Section 3.2 The Client shall reimburse the Consultant for Consultant's out-of-pocket expenses plus a 15% administrative charge. Expenses shall include all actual expenditures made by Consultant in the performance of any Consulting Services undertaken pursuant to the Agreement, including, without limitation, the following expenditures:

- (a) Cost of clerical assistance @ \$35.00 per hour, including typing, collation, printing and copying, plus copier and photography costs, including photographic reproduction of drawings and documents.
- (b) Transportation costs, including mileage for the use of personal automobiles at the prevailing IRS standard rate, rental vehicles, lodging and regularly scheduled commercial airline ticket costs.
- (c) Courier services, facsimile, and telephone expenses.

Section 3.3 On or about the first two weeks of each month during which Consulting Services are rendered hereunder, Consultant shall present to Client an invoice covering the current Consulting Services performed and the reimbursable expenses incurred pursuant to this Agreement and exhibits thereto. Such invoices shall be paid by Client within thirty (30) days of the date of each invoice. A 1.2% charge per month may be imposed against accounts which are not paid within 30 days of the date of each invoice.

Section 3.4 The maximum total fee amount set forth in Exhibit "B" may be increased as a result of any expansion of the Consulting Services to be rendered hereunder pursuant to Section 2.3 or as provided in Exhibit "A" hereto.

Section 3.5 Records of the Consultant's costs relating to (i) Consulting Services performed under this Agreement and (ii) reimbursable expenses shall be kept and be available to the Client or to Client's authorized representative at reasonable intervals during normal business hours.

ARTICLE IV
OTHER OBLIGATIONS OF CONSULTANT

Section 4.1 Consultant agrees to perform the Consulting Services in accordance with Exhibit "A". Should any errors caused by Consultant's negligence be found in such services or products, Consultant will correct them at no additional charge by revising the work products called for in Exhibit "A" to eliminate the errors.

Section 4.2 Consultant will supply all tools and instrumentalities required to perform the Consulting Services under the Agreement.

Section 4.3 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Consultant without the prior written consent of Client. However, Consultant may subcontract portions of the work to be performed hereunder to other persons or concerns provided Consultant notifies Client of the name and address of said proposed subcontractor and Client either consents or fails to respond to notification with respect to the use of any particular proposed subcontractor.

Section 4.4 In the performance of its Consulting Service hereunder, Consultant is, and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of Client) under any and all laws, whether existing or future. Consultant is not authorized to make any representation, contract or commitment on behalf of Client.

Section 4.5 Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of Client will cause the Consultant to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. Client and Consultant agree that Consultant is not a "public official" or "participating in governmental decision" as those terms are used in Section 87100. The Client and Consultant also agree that no actions and opinions necessary for the performance of duties under the Contract will cause the Consultant to be a "public official" or "participating in a governmental decision" as those terms are used in Section 87100.

ARTICLE V
OTHER OBLIGATIONS OF CLIENT

Section 5.1 Client agrees to comply with all reasonable requests of Consultant and provide access to all documents reasonably necessary to the performance of Consultant's duties under this Agreement with the exception of those documents which Exhibit "A" calls upon the Consultant to prepare.

Section 5.2 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Client without the prior written consent of Consultant.

Section 5.3 Consultant frequently is retained by developers, landowners, and other persons and concerns interested in development projects which often eventually lead to the preparation on a contract basis by Consultant of preliminary tax spread models for government agencies to determine tax rates and other matters necessary to accomplish various improvements to realty for financing under a Mello-Roos or other financing programs. In light of the foregoing, Client will determine whether or not it is appropriate to conduct a "significant substantive review" or a "significant intervening substantive review" of Consultant's activities conducted pursuant to this Agreement as such terms are defined in Section 18700(c)h of Title 2 of the California Administrative Code. Should Client elect to conduct such a substantive review, then Client shall determine whether it has sufficient expertise on staff to conduct such a review, and, if not, will retain

an independent expert consultant to review Consultant's work. Thereafter, Client shall conduct such review, or cause such independent review to be conducted, prior to the making of any governmental decision relating to the matters contained within the Scope of Work described in Exhibit "A". The parties do not intend and nothing in this Section 5.3 is meant to imply that Consultant is a "public official," "participating in a governmental decision," or has a "financial interest" in the services provided as such terms are used in Section 87100 of Title 9 of the California Governmental Code.

Section 5.4 Client, public agencies, landowners, consultants and other parties dealing with Client or involved in the subject development project referred to in Exhibit "A" will be furnishing to Consultant various data, reports, studies, computer printouts and other information and representations as to the facts involved in the project which Client understands Consultant will be using and relying upon in preparing the reports, studies, computer printouts and other work products called for by Exhibit "A." Consultant shall not be obligated to establish or verify the accuracy of the information furnished by or on behalf of Client, nor shall Consultant be responsible for the impact or effect on its work products of the information furnished by or on behalf of Client, in the event that such information is in error and therefore introduces error into Consultant's work products.

Section 5.5 Client agrees to defend, indemnify and hold Consultant harmless from and against all obligations, losses, liabilities, damages, claims, attachments, executions, demands, actions and/or proceedings (collectively, "Claims") and all costs and expenses in connection therewith, including reasonable attorneys' fees, arising out of or connected with the performance of Consultant's Consulting Services under this Agreement, except as may arise from Consultant's willful misconduct or gross negligence. In that regard, Client will indemnify and hold Consultant harmless from any Claims arising from, growing out of, or in any way resulting from, errors contained in data or information furnished by Client or Client's designee to Consultant for use in carrying out the Consulting Services called for by this agreement. If for any reason the indemnification under this Section 5.5 is unavailable to Consultant or insufficient to hold it harmless, then the Client shall contribute to the amount paid or payable by Consultant as a result of such loss, liability, damage, claim, demand, action or proceeding in such proportion as is appropriate to reflect not only the relative benefits received by the Client on the one hand and Consultant on the other hand but also the relative fault of the Client and Consultant as well as any relevant equitable considerations; provided that Consultant's contribution obligations hereunder shall in no event exceed the amounts received by Consultant under this Agreement.

Section 5.6 In the event that court appearances, testimony or depositions are required of Consultant by Client in connection with the services rendered hereunder, Client shall compensate Consultant at a rate of \$250 per hour and shall reimburse Consultant for out-of-pocket expenses on a cost basis.

ARTICLE VI

TERMINATION OF AGREEMENT

Section 6.1 Either party may terminate or suspend this Agreement upon thirty (30) days written notice. Unless terminated as provided herein, this Agreement shall continue in force until the Consulting Services set forth in Exhibit "A" have been fully and completely performed and all proper invoices have been rendered and paid.

Section 6.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party at its option may terminate this Agreement by giving written notification to the defaulting party. Such termination shall be effective upon receipt by the defaulting party, provided that the defaulting party shall be allowed ten (10) days in which to cure any default following

receipt of notice of same.

Section 6.3 The covenants contained in Sections 3.1, 3.2, 4.4, 5.3, 5.4, 5.5, 5.6 and all of Article VII shall survive the termination of this Agreement.

ARTICLE VII

GENERAL PROVISIONS

Section 7.1 Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with the first sentence of this Section 7.1. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

Section 7.2 This Agreement and exhibits hereto supersede any and all agreements, either oral or written, between the parties hereto with respect to the rendering of service by Consultant for Client and contains all of the covenants and agreements between the parties with respect to the rendering of such services. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement (including any exhibit hereto) will be effective if it is in writing and signed by the party against whom it is sought to be enforced.

Section 7.3 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 7.4 Any controversy between the parties hereto involving the construction or application of any of the terms, covenants, or conditions of this Agreement will, on the written request of one party served on the other, be submitted to binding arbitration in accordance with the commercial rules and regulations of the American Arbitration Association and the provisions of the California Arbitration Act (Sections 1280 through 1294.2 of the California Code of Civil Procedure). The arbitration shall take place in Newport Beach, California, or such other location mutually agreed to by the parties.

The arbitrator(s) shall be selected as follows: In the event that Consultant and Client agree on one arbitrator, the arbitration shall be conducted by such arbitrator. In the event Consultant and Client do not so agree, Consultant and Client shall each select an arbitrator and the two arbitrators so selected shall select the third arbitrator. If there is more than one arbitrator, the arbitrators shall act by majority vote. The parties may propose arbitrators from JAMS, ADR, ARC or any independent arbitrator/neutral for dispute resolution. The parties are not required to hire an AAA arbitrator for resolution of a dispute hereunder.

The decree or judgment of an award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Section 7.5 The prevailing party in any arbitration or legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorneys' fees. The non-

prevailing party shall be liable, to the extent allowable under law, for all fees and expenses of the arbitrator(s) and all costs of the arbitration.

Section 7.6 This Agreement will be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this Agreement has been executed on the date and year first above written.

CONSULTANT:
David Taussig & Associates, Inc.

CLIENT:
City of Montclair

By: _____
David Taussig, President

By: _____

Date: _____

Date: _____

EXHIBIT A

COMMUNITY FACILITIES DISTRICT FORMATION SERVICE OF THE CITY OF MONTCLAIR

SCOPE OF WORK

David Taussig & Associates, Inc. shall provide special tax consulting services, as described in the tasks below, necessary to assist the City in the formation of a CFD to finance certain annual services for the project expected to encompass 23 apartment units.

Task 1. Initial Meeting

Attend an initial meeting to discuss the scope of work, proposed schedule, and to identify any other issues prior to beginning work.

Task 2. Research

Gather the necessary data from Client and Developer with the assistance of DTA. Client and Developer are responsible for providing and verifying data describing types of development, improved property values, net taxable acreage, and the estimated cost of the annual services proposed to be financed. DTA shall rely on such data provided by the Client and Developer, and shall not be responsible for verifying its accuracy. DTA shall also compile assessor's data for the project area.

Task 3. Preliminary Tax Spread

Prepare initial spread of special taxes (the "Tax Spread") based on land use, building square footage, and/or acreage as obtained through Task 2 above. Calculate special taxes to support proposed annual services costs. DTA may recommend alternative techniques to apportion special taxes to enhance project feasibility.

Task 4. Rate & Method of Apportionment

Prepare the Rate and Method of Apportionment of Special Tax (the "RMA") which describes the methodology used to calculate the annual special tax levy for the CFD. DTA shall work with Client staff to modify the RMA as needed.

Task 5. Public Report

Prepare the Public Report, as described in Section 53321.5 of the California Government Code, containing descriptions of the proposed services, their estimated costs, and maximum annual special tax rates.

Task 6. Document Review and Preparation

Assist the City with the preparation of required documents, including the Resolution of Intention, Resolution of Formation, and related items.

Task 7. Verbal Consulting Services

Provide verbal consulting services and advice to Client and other Project Developers regarding the special tax and apportionment methodology during the period in which Tasks 1 through 6 are being completed.

Task 8. Coordination

DTA shall attend up to a total of three meetings (including the meeting described in Task 1). These meetings may be used to discuss or present the Tax Spread, Rate and Method of Apportionment of Special Tax, Public Report, or other items prepared by DTA. They may also be used for the protest hearing, or other public meetings. After a total of three meetings attended by DTA have been completed, additional meetings will require fees beyond the maximum established in the Fee Schedule if the budgeted amount has been completely expended based on hourly rates quoted herein.

Task 9. Preparation of Boundary Map

This task entails the preparation of the CFD boundary map pursuant to the requirements of the Mello-Roos Act and the County Recorder’s Office, assuming that computerized base maps are provided by Client. Record map at the County Recorder’s office and distribute copy of recorded map to the project team.

EXHIBIT B

**COMMUNITY FACILITIES DISTRICT FORMATION SERVICE
OF THE CITY OF MONTCLAIR**

FEE SCHEDULE

Professional Services Fee

DTA shall be remunerated for services based on the hourly rates shown in Table 1 below, not to exceed \$15,000, with invoices being submitted to the City on a monthly basis.

Table 1
Hourly Rates

Managing Director	-	\$200/Hour
Vice President	-	\$195/Hour
Manager	-	\$170/Hour
Senior Associate	-	\$150/Hour
Associate	-	\$135/Hour
Senior Analyst	-	\$125/Hour
Analyst	-	\$115/Hour
Research Assistant	-	\$ 90/Hour

Consulting services related to the annual collection of special taxes, shall be covered under a separate Agreement.

Any additional tasks assigned by City if the total fee listed above has been exceeded shall be charged at the hourly rates listed above. An excessive number of meetings (more than four) or tax spread computer runs (more than fifteen) may also require additional fees if the total fee has been exceeded. Such additional fees shall be added to the "Total Fee" amounts listed above. The hourly fees listed above apply for a twelve month period after execution of this Agreement, and are subject to a cost-of-living increase after that period, and on an annual basis thereafter.

In addition to fees for services, City shall reimburse DTA for travel, photocopying, courier, facsimile, clerical, telephone expenses, and administrative charges, not to exceed \$1,000.

All budgets, rates, and expenses are subject to a cost of living increase every 12 months.

DTA DAVID TAUSSIG & ASSOCIATES

Public Finance and Urban Economics

5000 Birch Street, Ste. 6000, Newport Beach, CA 92660

Phone: 949.955.1500 / Fax: 949.955.1590

EXHIBIT A

MELLO-ROOS SPECIAL TAX ADMINISTRATION COMMUNITY FACILITIES DISTRICT NO. 2016-1 OF THE CITY OF MONTCLAIR

SCOPE OF WORK

David Taussig & Associates, Inc. ("Consultant") shall provide financial consulting services to assist the City of Montclair (the "Client") in the annual administration of Community Facilities District No. 2016-1. The intent of these services shall be to determine the special tax rates and facilitate the collection of the special taxes for each fiscal year.

The specific activities and tasks to be performed under this Scope of Work include the following:

Task 1 Land Use Research

This task involves determining, gathering and organizing the land use data required to apportion and collect special taxes, and includes the following subtasks:

- 1.1 Subdivision Research:** Identify and obtain copies of all final tract or parcel maps recorded within CFD No. 2016-1.
- 1.2 Development Research:** Determine all building permit activity as of January 1 of the previous fiscal year. Identify issuance date, building square footage and situs address for each new building.
- 1.3 Assessor Parcel Research:** Review current Assessor Parcel Maps to compile a list of the Assessor's Parcels which will be valid for each fiscal year. Determine acreage of all parcels.
- 1.4 Database Management:** Create automated parcel database that will include information for all parcels. Data will include Assessor Parcel Number and corresponding tract, lot and unit number, acreage, building square footage, building permit issuance date and situs address.

Task 2 Classification of Property

This task involves application of the Rate and Method of Apportionment of Special Taxes to determine the appropriate special tax classification for each parcel located in the CFD and includes the following subtasks:

- 2.1 Exempt Property:** Identify all property owned by public agencies or entities otherwise exempt from the special tax and classify as exempt property.

- 2.2 Taxable Property:** Identify all taxable properties and classify each as "Developed Property" or "Undeveloped Property." Assign each "Developed Property" to the appropriate special tax classification.

Task 3 Financial Analysis

This task involves calculating and apportioning the Special Tax Requirement and includes the following subtasks:

- 3.1 Determine Special Tax Requirement:** Assist Client with the calculation of the Special Tax A Requirement and Special Tax B Requirement.
- 3.2 Determine Special Tax Rates:** Based on tax classifications and special tax requirement, compute the current fiscal year Special Tax A and Special Tax B for all classifications of taxable property.

Task 4 Report Preparation

This task includes the preparation of an Annual Special Tax Report containing the findings of the financial analysis and an explanation of the methodology employed to apportion the special taxes. Included in the report is a list of the special tax levy for each Assessor's Parcel.

Task 5 Enrollment of Special Taxes

This task involves submitting the special tax levy on or before August 10 of each year, or such other date specified by the County of San Bernardino to the Auditor-Controller, for inclusion on the consolidated property tax bills. The special tax levy will be submitted on magnetic tape or other media as specified by the County.

Task 6 Delinquent Property Owner Research

This task involves the review and research of County records to determine which parcels are delinquent in the payment of property and special taxes, and includes the following subtasks:

- 6.1 Semi-Annual Delinquent Special Tax Report:** Review special tax payment information from the County of San Bernardino. Determine which parcels are delinquent and the corresponding amount of delinquent special taxes. Prepare report summarizing the amount of delinquent special taxes.
- 6.2 Collection of Delinquent Special Taxes:** Assist Client with the development of procedures to cure delinquent special taxes. Assist with the preparation of demand letters as necessary.

Task 7 Roll Changes and Adjusted Property Tax Bills

This task involves monitoring any changes to the secured tax roll which necessitate new or adjusted property tax bills. This task includes the calculation of new or adjusted bills and the preparation of requests to the County to prepare such bills.

Task 8 Responses to Property Owner Questions

This task involves the provision of information to individuals and other interested parties regarding the amount and calculation of the special tax.

Task 9 Annual Reporting/Disclosure

This task involves assisting Client in the preparation of special tax disclosure documents pursuant to Section 1102.6b of the Civil Code and Section 53340.2 of the Government Code (as amended by SB 1464).

EXHIBIT B

**MELLO-ROOS SPECIAL TAX ADMINISTRATION
COMMUNITY FACILITIES DISTRICT NO. 2016-1
OF THE CITY OF MONTCLAIR**

BUDGET

The proposed budget for Tasks 1 - 9 in the Scope of Work is time and materials, not to exceed \$2,500 per fiscal year. The \$2,500 represents a maximum amount not to be exceeded for Tasks 1 - 9, subject to the limitations identified below, unless otherwise agreed upon by the City of Montclair (the "Client").

Consultant shall charge the following hourly rates for services related to the Scope of Work.

Managing Director	\$200/Hour
Vice President	\$195/Hour
Manager	\$170/Hour
Senior Associate	\$150/Hour
Associate	\$135/Hour
Senior Analyst	\$125/Hour
Analyst	\$115/Hour
Research Assistant	\$ 90/Hour

Monthly progress payments will be made by Client upon presentation of invoice by Consultant providing details of services rendered and expenses incurred. At Client's request services in addition to those identified in the Scope of Work may be provided if the total fee to complete the Tasks selected is less than the associated budget. Alternatively, if the selected Tasks can be completed for less than the amount budgeted, only the hours actually expended will be billed.

In addition to fees for services, Client shall reimburse Consultant for travel, copying, courier, facsimile, telephone expenses, data services, materials, and other out-of-pocket expenses, as noted elsewhere in this Agreement, in an amount not to exceed \$250 annually.

LIMITATIONS

The preceding professional fees and hourly rates apply for a 12 month period from execution of the Agreement and are subject to a cost-of-living and/or other appropriate increase every 12 months thereafter. Consultant generally reviews its professional fees and hourly rates annually and, if appropriate, adjusts them to reflect increases in seniority, experience, cost-of-living, and other relevant factors. Consultant shall notify Client in advance of any such increase.

The proposed budget of \$2,500 is based on the administration of parcels in CFD No. 2016-1 as of fiscal year 2015-2016. If additional property is annexed into CFD No. 2016-1, it is understood that augmentation to the proposed budget would be required for future years.

DTA has assumed that the Client will (i) provide DTA with a copy of all building permits issued within CFD No. 2016-1. Additional services other than those necessary to amend errors on the part

of Consultant are not covered by the budget listed above. As for Task 7, detailed written responses or formal meetings with property owners to resolve disputes will be classified as Additional Work and billed at hourly rates listed above.



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Mrunal Shah
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Mrunal.Shah@bbklaw.com

February 29, 2016

Marilyn Staats
Deputy City Manager/Office
of Economic Development
City of Montclair
5111 Benito Street
Montclair, CA 91763

Re: Special Counsel Services to City of Montclair for Proposed Community
Facilities District

Dear Marilyn:

We are pleased to submit this letter to you in connection with our services as special counsel to the City of Montclair (the "City") relating to the proposed formation of a Mello-Roos Community Facilities District by the City. The firm of Best Best & Krieger LLP will serve as special counsel on such matters, and proposes to perform the following services on the basis set forth in this letter.

We will confer and consult with City staff on all matters relating to the financing of services in this matter. We will attend all meetings of the City's staff and consultants at which the community facilities district is discussed. We are available to engage in these services according to the City's time schedule.

Our services will include the preparation of all materials necessary for the proper legislative approval of the community facilities district. We will conduct the proceedings for the proper formation of the proposed community facilities district.

We will charge for the formation of the proposed community facilities district on an hourly basis. These fees will be charged solely against the developer deposit and will be charged for those preliminary legal services required to properly form the community facilities district. The hourly rates for such services are as follows:

Kim A. Byrens, Partner	\$450 per hour
Mrunal Shah, Of Counsel	\$350 per hour
Paralegal Services	\$200 per hour



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Marilyn Staats
February 29, 2016
Page 2

The fees for formation and document negotiation are payable on a monthly basis solely from the developer's deposit. By your signature and return of this letter, you agree to pay our fees and expenses as set forth in this paragraph.

Additionally, we will charge the City for out-of-pocket expenses which would include, the costs of duplicating and mailing, transportation, long distance telephone calls, messenger and courier service and the preparation of transcripts of the financing. This expense is not expected to exceed \$1,500.

If this arrangement is satisfactory to you, please authorize our employment according to the terms of this letter by having this letter executed by you or your agent.

We look forward to working with you and the staff of the City of Montclair in order to bring this matter to a successful conclusion.

Sincerely,

Mrunal Shah
of BEST BEST & KRIEGER LLP

TERM OF PAYMENT OF FEES AND
EXPENSES APPROVED THIS _____
DAY OF _____, 2016

Authorized Signatory

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 16-33, A CONSULTING AGREEMENT WITH DUDEK RELATED TO PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT FOR THE FIRST AMENDMENT TO THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN CONSIDER APPROPRIATION OF \$117,000 FROM REDEVELOPMENT PROJECT AREA NO. III TAX ALLOCATION BONDS TO FINANCE A PORTION OF THE COSTS FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT AND FOR RELATED LEGAL FEES FOR THE FIRST AMENDMENT TO THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN	DATE: April 18, 2016 SECTION: AGREEMENTS ITEM NO.: 3 FILE I.D.: CFD050 DEPT.: ECONOMIC DEV./ COMMUNITY DEV.
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REASON FOR CONSIDERATION: The City Council approved Agreement No. 16-29 with Moule & Polyzoides on April 4, 2016, for preparation of the First Amendment to the North Montclair Downtown Specific Plan (NMDSP). In approval of this action it was noted that preparation of an Environmental Impact Report would be necessary to accommodate the proposed changes to the amended Specific Plan. Staff requests that the City Council consider approval of Agreement No. 16-33, with Dudek to prepare the necessary Environmental Impact Report to accommodate amendment of the NMDSP. In addition, staff is requesting that the City Council consider an appropriation of \$117,000 in Redevelopment Project Area No. III Tax Allocation Bond funds to finance a portion of the costs related to preparation of the EIR and for legal fees related to review of the EIR.

A copy of Agreement No. 16-33 is included in the agenda packet for consideration by the City Council, which includes the proposal from Dudek for the preparation of the EIR. A copy of the estimated costs for legal fees from Best Best Krieger (BBK) is also included in the agenda packet.

BACKGROUND: As the City Council is aware, the NMDSP proposes development planned in a pattern of neighborhoods and grids that promote pedestrian, transit-oriented mixed-use development and a sense of community. The Plan attempts to establish residential development patterns which reduce urban sprawl and increase use of public transportation. The Plan was adopted by the City Council on May 16, 2006.

With the eclipse of nearly ten years, staff recommended that the Specific Plan be amended to expand certain boundaries and clarify or revise certain aspects of the Plan.

Moule & Polyzoides were the consultants that developed the original NMDSP. As indicated, the City Council approved an agreement with Moule & Polyzoides on April 4,

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

2016 to prepare the First Amendment to the Specific Plan. The amendments proposed to the Specific Plan include the following elements:

- A proposed expansion of the Specific Plan area boundary to incorporate the approximately 7 acres on the southwest corner of Arrow Highway and Monte Vista Avenue.
- A proposed modification to the southeast corner of the Arrow Highway and Fremont Avenue area to incorporate a new street alignment/pattern over the previously established pattern for this area.
- The possible reconfiguration of the designated street pattern developed for the northeast corner of Moreno Street and Fremont Avenue to reflect the existing land ownerships patterns which include the North Plaza area.
- An examination of the easterly boundary of the Specific Plan which extends Central Avenue. Land use district designations should be assigned to properties within the Specific Plan where there currently are none (e.g., John's Incredible Pizza, Best Buy, and Target properties).
- A re-evaluation of locations of proposed parking structures based on approved projects and ongoing discussions with developers.
- An update to the street pattern to reflect the existing street patterns (and public park) at the Paseos and Arrow Station projects.
- Preparation of an overlay or other map that shows existing property lines, shapes, etc., to enable staff and the public to easily see how the existing properties correspond to the land use designations specified by the plan.
- A determination regarding minimum lot sizes for development in each respective zone because certain areas contain many individual small and narrow-shaped lots.
- A determination regarding the use of tandem parking.

The City Council is aware that an environmental analysis was conducted related to the proposed Montclair Plaza Expansion project. Dudek was the environmental firm that conducted this analysis for the proposed Montclair Plaza Expansion project. The firm obtained a large amount of basic information about Montclair and specific information related to traffic counts, green house gas emissions, and other information pertinent to preparation of an EIR in North Montclair and the NMDSP area. The development and retention of this previously compiled data means the collection of new data for the EIR would be minimized. The cost for the services provided by Dudek would also be less based on use of this pre-existing data. Staff found the previous environmental analysis delivered by Dudek for the Montclair Plaza Expansion to be a quality report. Therefore, staff is recommending the retention of Dudek without the Request for Proposal process.

The City's standard agreement for consulting services has been used as the format for Agreement No. 16-33. The work to be performed by Dudek is shown as Exhibit A to Agreement No. 16-33.

There will be legal fees that accompany the preparation of the EIR. Staff proposes utilizing the services of BBK to provide counsel regarding the EIR. BBK is currently under contract with the City. Staff would recommend the City Council provide an appropriation sufficient to cover the estimated cost of legal fees from BBK.

FISCAL IMPACT: The cost estimate provided by Dudek to prepare the EIR for the First Amendment to the NMDSP would be approximately \$142,400. BBK has estimated legal fees could cost approximately \$91,500 related to review and advice regarding the EIR.

One of the items to be considered in the First Amendment to the NMDSP includes a proposed expansion to the boundaries of the Specific Plan to include the area located on the southwest corner of Monte Vista Avenue and Arrow Highway. Trammel Crow Residential (same individuals that developed the Paseos) is requesting to see this area included in the Specific Plan. Through discussion, staff has negotiated a fifty percent split of the total costs for the EIR and EIR-related legal fees (\$233,900) with the development team. Therefore, the City's projected costs for the EIR and related legal fees would be approximately \$117,000.

Staff would recommend funding for the proposed EIR and related legal fees (\$117,000) be appropriated from Redevelopment Project Area No. III Tax Allocation Bonds.

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

1. Approve Agreement No. 16-33, a consulting agreement with Dudek related to preparation of an Environmental Impact Report for the First Amendment to the North Montclair Downtown Specific Plan; and
2. Approve an appropriation of \$117,000 from Redevelopment Project Area No. III Tax Allocation Bonds to finance a portion of the costs for preparation of an Environmental Impact Report and for related legal fees for the First Amendment to the North Montclair Downtown Specific Plan.

AGREEMENT NO. 16-33
CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and effective as of April 19, 2016, between the City of Montclair, a municipal corporation (“City”) and Dudek (“Consultant”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on April 19, 2016 and shall remain and continue in effect for a period of twelve months until tasks described herein are completed, but in no event later than April 16, 2017 unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

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

5. **PAYMENT**

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

\$140,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed Ten Thousand Dollars (\$10,000.00). Any additional work in excess of this amount shall be approved by the City Council.

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

7. DEFAULT OF CONSULTANT

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

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

8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to billed time, sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment. Notwithstanding the above, all computer financial models including without limitation compilations of formulas and spreadsheet models used or developed by the Consultant in performing its work are proprietary and shall remain property owned solely by the Consultant.

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

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

9. INDEMNIFICATION

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

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant. Said indemnification shall include any claim that Consultant, or Consultant's employees or agents, are considered to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law.

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

10. INSURANCE

(a) Consultant shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to City nor shall Consultant allow any subcontractor to commence work on a subcontract until all

insurance required of the subcontractor has been obtained. Consultant shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-: VI:

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	1,000,000
Commercial general liability at least as broad as ISO CG 0001 (general aggregate)	2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	1,000,000
Professional Liability (per claim and aggregate)	1,000,000
Worker's compensation	Statutory

(b) All insurance required by this section shall apply on a primary basis. Consultant agrees that it will not cancel or reduce said insurance coverage. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(c) Auto liability insurance shall cover owned, nonowned and hired autos. If Consultant owns no vehicles, auto liability coverage may be provided by means of a nonowned and hired auto endorsement to the general liability policy.

(d) At all times during the term of this Agreement, Consultant shall maintain on file with City a certificate of insurance, in a form acceptable to City showing that the aforesaid policies are in effect in the required amounts. The general liability policy shall contain or be endorsed to contain a provision including the Indemnitees as additional insureds. Consultant shall promptly file with City such certificate or certificates and endorsements if applicable. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

(e) No policy required by this section shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the Indemnitees.

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

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

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

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

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Montclair in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or

employee of the City of Montclair will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

(c) Consultant covenants that neither he/she nor any office or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the

study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

16. NOTICES

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

To City: Edward C. Starr
City Manager
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant: Ruta K. Thomas
Principal
Dudek
18 North Marengo
Pasadena, CA 91101

17. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Because of the personal nature of the services to be rendered pursuant to this Agreement, Ruta K. Thomas (responsible employee) shall be responsible for the performance of the services described in this Agreement.

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONFIDENTIALITY

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

22. DISCRIMINATION

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

23. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Paul M. Eaton, Mayor

By: _____
(Title)

Attest:

By: _____
Andrea M. Phillips, Deputy City Clerk

By: _____
(Title)

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

EXHIBIT A
SCOPE OF WORK

See Attached

March 30, 2016

Michael Diaz, Senior Planner
City of Montclair
5111 Benito Street
Montclair, CA 91763

Subject: Proposal to Prepare an Environmental Impact Report (EIR) for the North Montclair Downtown Specific Plan Amendment Project in the City of Montclair, California

Mr. Diaz:

Dudek is pleased to submit this proposal to prepare an EIR for the North Montclair Downtown Specific Plan Amendment Project. We will provide the team with:

Comprehensive Project Understanding

The subject of this proposal is an amendment to the North Montclair Downtown Specific Plan (NMDSP). We understand the City would like to amend the current specific plan, as follows:

- Revision of the official site plan and other map-based exhibits in the NMDSP to reflect:
 - Proposed expansion of the NMDSP area boundary line to incorporate the southwest corner of Arrow Highway/Monte Vista Avenue *and* determine appropriate land use zones, density levels and street patterns;
 - Proposed modification to the southeast corner of the Arrow Highway/Fremont Avenue area to incorporate a new street alignment/pattern over the previously established pattern for this area, and re-designate zones accordingly;
 - Possible reconfiguration of the designated street pattern developed for the northeast corner of Moreno Street/Fremont Avenue (e.g., “Gold’s Gym” property) to reflect a change in direction with respect to what was designated as “New Fremont Avenue” and previously contemplated connection with the Montclair Plaza (now Montclair Place);
 - Determine whether the easterly boundary of the NMDSP should remain at Central Avenue. If so, then land use district designations should be assigned to properties within the NMDSP where there currently are none (e.g., John’s Incredible Pizza, Best Buy, and Target properties);
 - Re-evaluate locations of proposed parking structures based on approved projects and ongoing discussions with developers;
 - Update street pattern to reflect the existing street pattern (and public park) at the Paseos and Arrow Station projects;

Mr. Michael Diaz

Subject: Proposal to Prepare an Environmental Impact Report for the North Montclair Downtown Specific Plan Amendment Project in the City of Montclair, California

- Prepare an overlay layer or other map that shows existing property lines, shapes, etc., to enable staff and the public to easily see how the existing properties correspond to the land use designations specified by the NMDSP.
- Determine a minimum lot size for developments in each respective zone, especially as it relates to proposed development of individual small and narrow-shaped lots located on Huntington Drive in the panhandle area of the NMDSP abutting Claremont and Upland;
- Determine whether tandem parking should be allowed or not by the NMDSP (specific standards or layouts to utilize over other parking arrangements); and
- Clarify or remove references to single-family uses as permitted uses in the CR and NR zones as shown in the Allowable Land Uses table of the NMDSP. The listing of SFR as permitted uses in the CR and NR zones is confusing when the overall goal of the Plan is for attached housing types and density. This is a potential issue for the small narrow properties (a few of which are vacant) located in the Huntington Drive area of the NMDSP.

We understand that Moule & Polyzoides will prepare the NMDSP update (or amendment). As part of this task, map exhibits, drawings, images and text associated with the specific plan will be updated to reflect the changes described above under Project Understanding. Additionally, the Code Chapter will also be updated for inclusion in the NMDSP.

We understand that it is the City's desire to amend the NMDSP so that future projects can easily fit into the parameters of the updated specific plan and allow for a more streamlined environmental review process that doesn't involve redundant environmental analyses in the future. As such, the elements described above for amending the NMDSP will be analyzed at a programmatic level in the EIR, allowing for future projects to tier off the EIR. Program-level documents focus not on discrete projects with construction characteristics and specific timelines, but a broad, encompassing program that will allow specified types of development, in specified amounts, within the specific plan area. Dudek will prepare the EIR with as much specificity as possible, including mitigation measures that can be implemented at the project level, to streamline environmental clearance of specific development projects proposed in the future under the NMDSP. It is assumed that the City and subsequent developers would use this document to "tier from" as individual development projects are proposed within the Specific Plan area and begin preparation of environmental documents on those projects, making the environmental clearance process more timely and efficient. The goal will be to achieve maximum benefit to the City for development under the NMDSP. We understand that unused density proposed in one area of the specific plan may be shifted to another area of the specific plan if appropriate to do so. The EIR will consider the potential reallocation of density within the specific plan area and the environmental analyses will cover this reallocation as best as possible for the entire specific plan area.

Knowledgeable and Diverse Project Team For 35 years, Dudek has been a leading mid-sized California environmental, urban planning, and engineering firm that helps clients design, plan, permit, and manage projects involving natural resource management, urban infill and infrastructure development, and regulatory compliance. Our environmental experts help clients achieve environmental and regulatory objectives while delivering savings and efficiencies in time, cost, and resources. We are well versed in the needs of local cities and agencies and bring our depth of technical knowledge, experience, and successful project management to each project. The Dudek team has extensive experience working throughout southern California as follows:

Mr. Michael Diaz

Subject: Proposal to Prepare an Environmental Impact Report for the North Montclair Downtown Specific Plan Amendment Project in the City of Montclair, California

- California Environmental Quality Act/National Environmental Policy Act (CEQA/NEPA) documentation
- Master planning and environmental analyses for commercial redevelopment projects
- Community outreach on contentious projects
- Visual simulations and shade/shadow analyses prepared by a senior civil drafter and computer-aided drafting and design (CADD) operator
- Field surveys and habitat restoration by biologists certified by the California Department of Fish and Wildlife and United States Fish and Wildlife Service
- Infrastructure projects with Metropolitan Water District, Southern California Edison, Southern California Gas Company and the California Public Utilities Commission
- Preparation of fuel modification plans approved by the regulating fire department
- Hydraulic analyses prepared in accordance with Public Works criteria
- 404/401 permits coordinated with the Flood Control District, incorporating their maintenance parameters.

Familiarity with Regional Issues and Agencies Because of our prior work in the City of Montclair, we are extremely familiar with the diverse community makeup, infrastructure, natural resources, and land use environments, which will facilitate smooth integration and successful consulting services for this project. Our experience with similar environmental projects throughout the region, as well as the depth of our senior leadership with environmental and planning issues in the greater southern California area, will allow us to complete the requested work in a timely, complete, and cost-effective manner. In relevant part Dudek offers:

- **Long-standing relationships with local regulatory agencies**, which provides extensive local experience
- **Recent environmental review experience and knowledge of issues pertaining to residential redevelopment projects** throughout California, which provides specific expertise with the type of project that is proposed
- **Commitment of senior Dudek staff** to work on the project, which provides unique intellectual capital that can be leveraged to the benefit of the proposed project

Dudek is a multidisciplinary environmental, urban planning, habitat restoration, water resource, and engineering firm. We are proud of our long history collaborating with local jurisdictions in the strategic advancement of the environmental review process. With over 1,600 successful environmental documents completed pursuant to CEQA, NEPA, state and federal Endangered Species Acts, the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, and a host of other state and federal pieces of environmental legislation, our team offers professionals that can provide high-quality and legally defensible work products.

Thank you for the invitation to submit this proposal for the North Montclair Downtown Specific Plan Amendment Project. As per your request, this proposal includes a scope of work, schedule and budget for preparation of an EIR. If you have any questions or would like more information about our proposal, please

Mr. Michael Diaz

Subject: Proposal to Prepare an Environmental Impact Report for the North Montclair Downtown Specific Plan
Amendment Project in the City of Montclair, California

feel free to contact me at 626.204.9822 or by email at rthomas@dudek.com. We look forward to working with your team to ensure a quick and seamless environmental review process for the proposed project.

Best regards,



Ruta K. Thomas, REPA
Principal

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Attachments

Attachment A	Budget
Attachment B	Fee Schedule

Firm Profile

Dudek is an employee-owned, privately held California Corporation founded in 1980. For 35 years, Dudek has been a leading mid-sized California environmental, urban planning, and engineering firm that helps clients design, plan, permit, and manage projects involving natural resource management, infrastructure development, and regulatory compliance. Our environmental experts help clients achieve environmental and regulatory objectives while delivering savings and efficiencies in time, cost, and resources. We are well versed in the needs of local cities and agencies and bring our depth of technical knowledge, experience, and successful project management to each project.

LOCAL PRESENCE AND FAMILIARITY

Our Los Angeles area office is located at 38 North Marengo Avenue in the City of Pasadena. Ruta K. Thomas, a senior California Environmental Quality Act (CEQA)/National Environmental Policy Act (NEPA) project manager, brings 20 years of direct experience to all our projects throughout southern California.

DIVERSE CAPABILITIES

At Dudek, our mid-sized structure means we are small enough to provide customized services to meet the needs of the community, while still offering the depth of experience needed to provide thorough, effective work products and guidance. Our project managers are empowered to be problem solvers with the ability to make decisions in a timely fashion to keep project momentum moving forward. We are proud of our low employee turnover.

Our staff's long tenure means the project manager you see at the bidding stage will still be with you at project completion. Repeatedly, this Dudek project team has demonstrated its ability to successfully interact with community residents, property owners, interest groups, and public agencies in formulating environmental analyses. Our sensitivity and ability to balance often diverse and conflicting community input and incorporate the results in environmental documents have consistently led to public support and advocacy during public hearings before planning commissions, councils, and boards of supervisors. A simple phone call or email to other Dudek staff members can provide our project managers with a broader perspective from a diverse group of seasoned professionals. This is an added benefit to each project we undertake, at no extra cost to the client.

Dudek offers the project team complete solutions for projects by providing a fully integrated array of services combining environmental analysis, policy planning, and technical studies tailored to meet the demands of any project. Our depth and breadth of experience means we can quickly access resources and assemble the right team for each project task. Our in-house team includes the following:

- AICP-certified environmental planners
- CEQA/NEPA specialists
- Civil drafters and CADD operators

DUDEK AT A GLANCE

- 300+ employees in nine California offices
- No. 1 Environmental Consulting Firm, San Diego Business Journal (2007–2012)
- Engineering News-Record Top 200 U.S. Environmental Firms (2008–2013)
- 90% Dun and Bradstreet Open Rating for reliability, delivery, timeliness, and responsiveness

- CDFW- and USFWS-certified biologists
- Registered professional archaeologists and cultural resource managers
- Noise and air quality specialists
- Greenhouse gas emissions specialists
- Registered landscape architects
- Certified arborists and foresters
- Certified GIS professionals
- LEED professionals
- Certified hydrogeologists
- Licensed geologists
- Registered environmental property assessors
- Licensed professional engineers
- Licensed contractors

We understand the challenges cities have with managing increasing workloads with shrinking budgets and reduced staff. Dudek has built a strong reputation helping public officials effectively progress through California's ever-increasing regulatory maze, providing the appropriate team of experienced scientific, engineering, and regulatory professionals. We are organized to be a one-stop shop for environmental service needs.

Stantec

Dudek is pleased to have Stantec join our team for preparation of a traffic impact study for the North Montclair Downtown Specific Plan Amendment Project. Since 1954, Stantec's local strength, knowledge, and relationships, coupled with their expertise, have allowed them to meet their clients' needs in more creative and personalized ways. They are one of the leading civil engineering, traffic engineering, and transportation planning and design firms in California. Their staff includes certified transportation planners and California registered civil and traffic engineers. They have provided engineering services for many of the largest public works and transportation planning projects in California. A major strength with respect to their qualifications and experience is in the area of preparation of traffic studies in support of environmental documents. The firm is well experienced in the requirements of such studies and has participated in many successful EIR preparation efforts. Their professional transportation staff continues to serve as trusted advisors for public and private sector clients in Southern California. They work in full partnership with their clients and strive to give the consultant team the solutions needed to meet both their short-term and long-term objectives. Stantec prepared the traffic study for the Montclair Plaza Redevelopment Project MND.

Project Team

Project Management

Ruta K. Thomas, REPA who has twenty years of CEQA/NEPA experience, will serve as the project manager for preparation of the environmental analyses for the proposed project. Ms. Thomas is a Principal in Dudek's Los Angeles area office, as well as a Senior Project Manager responsible for managing the preparation and coordination of highly complex, controversial, and visible environmental documentation for residential and commercial projects throughout the state of California. She has experience managing and

directing a diversified mix of residential and commercial redevelopment projects, such as the Montclair Plaza Redevelopment Project MND for the City of Montclair, the Village at Bella Terra and Ripcurl Redevelopment Project EIRs for the City of Huntington Beach and the Bergamot Transit Village Station and Roberts Center Mixed-Use Redevelopment Project EIRs for the City of Santa Monica. As a result of her extensive CEQA experience and knowledge, the Association of Environmental Professionals (AEP) has asked Ms. Thomas to instruct CEQA courses for new practitioners regularly since 2007. As a Registered Environmental Property Assessor (REPA), she has been determined by the state of California to have the academic training, occupational experience, and professional reputation necessary to objectively conduct one or more aspects of environmental assessment and site cleanup activities. Ms. Thomas brings scientific rigor to the projects on which she works, and with demonstrated expertise in writing and negotiation, she equally is able to communicate with agencies and technical colleagues towards the successful attainment of her client's goals. She has a calm demeanor, is able to relay scientific and regulatory information in a way that is easy to understand, and has the unique ability to gain the trust of a wide range of constituents. She facilitates community workshops and outreach events in a way that ensures participants leave feeling that their concerns have been addressed and that they are an integral part of the solution. Ms. Thomas received a B.A. in Biology/Economics from Lehigh University in Pennsylvania and an M.A. in Environmental Studies from Brown University in Rhode Island.

Shannon Kimball Wages, AICP will serve as the project manager for review and processing of the development application for the Montclair Downtown Specific Plan Amendment Project. She specializes in managing long-range policy and planning documents as well as complex land use entitlement projects. As a planner for over thirteen years, she has successfully managed the preparation of multiple general plans, specific plans, TOD plans, zoning ordinances, housing elements, downtown plans, visioning plans, corridor studies, and economic feasibility studies. Ms. Kimball Wages has received several awards from the American Planning Association (APA) for her planning projects. She combines her experience in planning, urban design, development, and community outreach to achieve desired projects that work to realize the community's goals and objectives. From planning through conceptual design to certificates of occupancy, she is involved throughout the process, facilitating positive growth and change in the communities she represents. Ms. Kimball Wages received a B.A. in Humanities and Spanish from Brigham Young University and a M.P.L in Urban Planning and Design from the University of Southern California

Melissa Dugan, PTP, ENV SP of Stantec will manage the transportation planning tasks and be responsible for the traffic impact study and technical work effort. She has more than 20 years of professional consulting experience in transportation planning for both public sector and private clients, with specific expertise in long-range planning. Ms. Dugan has prepared traffic impact studies for numerous cities and communities in southern California using a variety of planning tools. Ms. Dugan is a hands-on manager responsible for the technical analyses for specific plans, general plans and environmental impact reports and has consistently and successfully assisted clients with meeting their project objectives.

Daryl Zerfass, PE of Stantec will serve as Principal-in-Charge for the traffic work and have QA/QC responsibilities and provide oversight of the project, including reviewing and signing the traffic impact study. He has a background of more than 25 years in transportation planning, and has been involved in numerous transportation planning projects throughout California and other parts of the country. His project experience includes traffic impact studies for large-scale development projects, freeway facility studies for PSR's and PR's, area-wide transportation studies, and land use related circulation studies. He will serve as special advisor for State highway issues.

Technical Staff

In order to be reflective of the project team's needs as we collaborate on the North Montclair Downtown Specific Plan Amendment Project, Dudek has assembled a team of professionals with a distinguished record of producing environmental analyses in compliance with CEQA. We offer an outstanding team of urban and environmental planners, supported by highly competent technical specialists.

The Dudek team provides the full range of technical skills required to prepare environmental documents, as well as other related tasks. Our team includes CEQA practitioners, certified environmental scientists, urban planners and designers, land use specialists, transportation planners and engineers, infrastructure engineers, and public participation specialists. Dudek's capabilities to write superior policy planning and environmental documents, as well as associated technical studies, for the City of Montclair are enhanced by our team members' extensive experience preparing environmental analyses in the region and throughout the state. The excellence and innovation of our environmental documents have been recognized through the numerous awards received from our peers and professional organizations, and by the continued relevance of our documents to the communities in which they have been developed.

The key professionals comprising the Dudek team have experience in and direct knowledge of residential redevelopment projects in communities similar to the City of Montclair. Additionally, this team assisted the City of Montclair with preparation of an MND for the Montclair Plaza Redevelopment Project. Overall program management and preparation of final work products will be Dudek's responsibility. Dudek staff members will be involved in all phases of the work program and will provide assistance and project management to our team members. **Table I** provides a list of the Dudek team qualifications and roles for this contract.

TABLE I. DUDEK TEAM INFORMATION

Role	Name	Education and Licenses
Aesthetics	Josh Saunders, AICP	University of California, San Diego BA, Urban Studies and Planning
Air Quality and Greenhouse Gas Emissions	Jennifer Reed	University of California, Santa Barbara BA, Environmental
Land Use & Planning and Population & Housing	Shannon Kimball Wages, AICP	University of Southern California MA, Urban Planning/Design Brigham Young University BA, Humanities/Spanish
Agricultural Resources, Recreation, and Public Services	Stephanie Tang	University of California, San Diego BA, Urban Studies and Planning
Biological Resources	Brock Ortega	Humboldt State University BS, Wildlife Biology and Management
Cultural Resources	Micah Hale, PhD, RPA	University of California, Davis PhD, Anthropology California State University, Sacramento MA, Anthropology UC, Davis BS, Anthropology

TABLE I. DUDEK TEAM INFORMATION

Role	Name	Education and Licenses
Historic Resources	Samantha Murray, RPA	Cal State, Los Angeles MA, Anthropology Cal State, Northridge BA, Anthropology
Geology & Soils QA/QC	Steve Dickey, PG, CEG	University of Riverside Graduate Work, Geophysics and Geology Occidental College BA, Geology
Geology & Soils, Hydrology & Water Quality, Mineral Resources, and Utilities & Service Systems	Dylan Duvergé	San Francisco State University MS, Geosciences UC Santa Cruz BA, Environmental Studies
Hydrology & Water Quality and Utilities & Service Systems QA/QC	Derek Reed, PE, QSD/QSP	University of California, Los Angeles BS, Civil Engineering
Hazards & Hazardous Materials	Nicole Peacock, PE, PG	UCLA BS, Civil and Environmental Engineering/Geology
Noise	Mike Greene, INCE Bd. Cert.	UC, San Diego BS, Applied Mechanics
Traffic & Transportation	Shawn Shamlou, AICP	Syracuse University MA, Geography San Diego State University BA, Geography
Water Quality Management Plan	Trey Driscoll, PG, CHG, QSD/QSP	Hobart and William Smith Colleges, Geneva, New York, BS, Geoscience and Environmental Studies

Scope of Work

Project Understanding

The subject of this proposal is an amendment to the North Montclair Downtown Specific Plan (NMDSP). We understand the City would like to amend the current specific plan, as follows:

- Revision of the official site plan and other map-based exhibits in the NMDSP to reflect:
 - Proposed expansion of the NMDSP area boundary line to incorporate the southwest corner of Arrow Highway/Monte Vista Avenue *and* determine appropriate land use zones, density levels and street patterns;
 - Proposed modification to the southeast corner of the Arrow Highway/Fremont Avenue area to incorporate a new street alignment/pattern over the previously established pattern for this area, and re-designate zones accordingly;
 - Possible reconfiguration of the designated street pattern developed for the northeast corner of Moreno Street/Fremont Avenue (e.g., “Gold’s Gym” property) to reflect a change in direction with respect to what was designated as “New Fremont Avenue” and previously contemplated connection with the Montclair Plaza (now Montclair Place);
 - Determine whether the easterly boundary of the NMDSP should remain at Central Avenue. If so, then land use district designations should be assigned to properties within the NMDSP where there currently are none (e.g., John’s Incredible Pizza, Best Buy, and Target properties);
 - Re-evaluate locations of proposed parking structures based on approved projects and ongoing discussions with developers;
 - Update street pattern to reflect the existing street pattern (and public park) at the Paseos and Arrow Station projects;
- Prepare an overlay layer or other map that shows existing property lines, shapes, etc., to enable staff and the public to easily see how the existing properties correspond to the land use designations specified by the NMDSP.
- Determine a minimum lot size for developments in each respective zone, especially as it relates to proposed development of individual small and narrow-shaped lots located on Huntington Drive in the panhandle area of the NMDSP abutting Claremont and Upland;
- Determine whether tandem parking should be allowed or not by the NMDSP (specific standards or layouts to utilize over other parking arrangements); and
- Clarify or remove references to single-family uses as permitted uses in the CR and NR zones as shown in the Allowable Land Uses table of the NMDSP. The listing of SFR as permitted uses in the CR and NR zones is confusing when the overall goal of the Plan is for attached housing types and density. This is a

potential issue for the small narrow properties (a few of which are vacant) located in the Huntington Drive area of the NMDSP.

Planning Services

The approach of the Dudek project team for providing assistance with entitlement processing is based on serving as a key element of the project team to anticipate controversial issues, provide unbiased recommendations, devise solutions to potential impacts and/or other issues that may arise, and provide expert planning and policy consultation. This proposal assumes minimal printing of reports and memos. Most deliverables will be submitted in electronic format (Microsoft Word (WORD) and/or Adobe Acrobat (PDF)). The following provides our scope of work for the review and processing of the development application for the proposed project.

TASK 1 Entitlement Processing and Streamlining

Subtask 1A Kick-off, Project Tracking and Initial Site Assessment

IA.1 Kick-off Meeting. The first step in the entitlement process will involve meeting with City staff to understand needs and expectations, turnaround review schedule, and communication and work flow process protocol. Setting expectations initially will promote a partnership to create a customized solution that achieves project goals for the City. Throughout the project, Dudek will maintain communication with City staff.

IA.2 Project Tracking. Dudek will work with City staff to set up a project tracking spreadsheet to track both the budget (running costs) and key milestones/deadlines to keep the project on schedule as agreed to by the City. The project schedule will coordinate review times for both the development plans and the environmental document, and include noticing dates and public comment periods, and meeting and hearing dates in accordance with the City’s adopted timeframes.

IA.3 Initial Site Assessment. During this first task following the kick-off meeting, Dudek will take a tour of the project area to understand firsthand the issues and characteristics of the specific plan area, as well as the character and nature of their surroundings. Ideally this tour will be conducted with City staff; however, Dudek can conduct the site visit independently, as deemed appropriate. We will also consider the relationship of the project area to the nearby Metrolink station and identify existing circulation and connectivity conditions and opportunities for improvement.

List of Products

- One (1) electronic copy of an agenda for the kick-off meeting provided in WORD and PDF formats
- One (1) electronic copy of a project tracking spreadsheet

Subtask 1B Reviewing Application for Completeness

Dudek will work with City staff to route plans to the Development Review Committee for review and comment. We will limit rounds of review by consulting with the City prior to submittal to ensure that the proposed project is consistent with the City’s General Plan, Zoning Code, North Montclair Downtown Specific Plan, Citywide Design Guidelines, and the City’s objectives to achieve quality transit-oriented

development in the project area. We anticipate two rounds of submittals for each site. For each submittal we will respond to any incomplete items, technical deficiencies or problems and design issues.

List of Products

- One (1) electronic copy of first submittal responses in WORD and PDF formats
- One (1) electronic copy of second submittal responses in WORD and PDF formats

Subtask 1C Finalize Plans and Public Review

Dudek will work with City staff to address all City and agency comments and finalize plans. We will prepare required notices, radius maps, and labels and distribute the plans for review for the required time period, in preparation for public hearings, as needed. During this time we will work closely with City staff to coordinate the agenda and any preparation items required for the hearings. Upon the close of the public review period, we will address any comments and finalize conditions of approval.

List of Products

- One (1) electronic copy of public notice, radius maps and labels in WORD and PDF formats, as needed

Subtask 1D Attend Public Hearings

Dudek will prepare the presentation for public hearings before the Planning Commission and City Council. Following the hearing, we will address any comments from the Planning Commission and public, and prepare for the City Council hearing. For each hearing, we will be available to answer any questions from the Commission, Council and public.

List of Products

- One (1) electronic copy of Planning Commission Presentation in Microsoft PowerPoint (PPT) format
- One (1) electronic copy of City Council Presentation in Microsoft PowerPoint (PPT) format

Environmental Review Services

The approach of the Dudek project team for preparation of the EIR is based on meeting the following objectives:

- Serving as a key element of the project team to anticipate controversial issues, provide unbiased recommendations, devise solutions to potential impacts and/or other issues that may arise, and provide expert planning, policy, and environmental compliance consultation
- Committing senior management to the project to provide close coordination with, and accessibility to, the project team to ensure technical accuracy, document objectivity, and legal defensibility
- Complying with CEQA, the current CEQA Guidelines, as well as current case law, and serving as a public educator of CEQA and the CEQA process
- Complying with all unique City processing requirements

- Using applicable information from other recent environmental documents (i.e., North Montclair Downtown Specific Plan EIR and Montclair Plaza Redevelopment MND) to recognize schedule and budget efficiencies
- Responding to all significant issues of concern raised by the various governmental agencies, private entities, individuals, and community groups
- Submitting all required deliverables within the mutually agreed upon time frames

Dudek agrees that a Supplemental EIR to the North Montclair Downtown Specific Plan EIR will likely be appropriate for the project, depending on the results of project-level analysis of air quality, noise, and traffic particularly during construction, as well as the results of the water quality management plan. As per CEQA Guidelines Section 15162, a Subsequent EIR shall be prepared if the City of Montclair (as the lead agency) determines that any of the following has occurred:

- 1) Substantial changes are proposed in the project which will require major revisions of the EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in severity of previously identified significant effects;
- 2) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions of the EIR or Negative Declaration due to involvement of new significant environmental effects or a substantial increase in severity of previously identified significant effects; or
- 3) New information of substantial importance which was not known could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified or the Negative Declaration was adopted, shows the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or Negative Declaration.
 - (B) Significant effects previously examined will be substantially more severe than previously shown in the previous EIR.
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponent decline to adopt the mitigation measure or alternative.

Dudek will take full responsibility for project initiation and organization, data compilation, impact assessment, development of mitigation measures (as needed), report compilation, monitoring and review for CEQA adequacy, attendance at public meetings and hearings, response to public comments, coordination of the internal project team, and preparation of a Mitigation Monitoring and Reporting Program (MMRP).

Report format and content will be in full compliance with CEQA (as amended through the date of submittal of the draft EIR), the CEQA Guidelines (also as amended through the date of submittal of the draft EIR), and the City's environmental guidelines and procedural requirements. General EIR organization will include a discussion of existing conditions, potential direct and indirect/secondary environmental impacts, and the

recommendation of mitigation measures for each affected issue area. To present information in a concise and easily understood format, text will be supplemented with graphics, charts, maps and tables in an 8½ x 11 inch size, unless a larger format is critical to the readability of the document. All final work products will be submitted in electronic format and will be prepared using WORD and other formats (i.e., PDF) that are compatible with the City’s software applications.

Approach

We understand that Moule & Polyzoides will prepare the NMDSP update (or amendment). As part of this task, map exhibits, drawings, images and text associated with the specific plan will be updated to reflect the changes described above under Project Understanding. Additionally, the Code Chapter will also be updated for inclusion in the NMDSP.

For the specific plan amendment component of the overall proposed project, a program-level analysis is the appropriate level of environmental review in the EIR. Program-level documents focus not on discrete projects with construction characteristics and specific timelines, but a broad, encompassing program that will allow specified types of development, in specified amounts, within the specific plan area. Dudek will prepare the EIR with as much specificity as possible, including mitigation measures that can be implemented at the project level, to streamline environmental clearance of specific development projects proposed in the future under the NMDSP. It is assumed that the City and subsequent developers would use this document to “tier from” as individual development projects are proposed within the Specific Plan area and begin preparation of environmental documents on those projects, making the environmental clearance process more timely and efficient. The goal will be to achieve maximum benefit to the City for development under the NMDSP. We understand that unused density proposed in one area of the specific plan may be shifted to another area of the specific plan if appropriate to do so. The EIR will consider the potential reallocation of density within the specific plan area and the environmental analyses will cover this reallocation as best as possible for the entire specific plan area.

TASK 1 Participate in Project Startup Activities

Subtask 1A Attend One Project Kick-Off Meeting

The Dudek team will attend one project kick-off meeting with representatives from the City of Montclair. The purpose of the kick-off meeting is to compile the relevant background data and reports; clearly define the proposed project for the purposes of the environmental analysis; finalize the cumulative projects list with the City; discuss the City’s format for the draft Findings of Fact; discuss the project schedule and important assumptions for achieving the schedule; identify all anticipated discretionary actions; establish early communication among various project team members, as well as the protocols for ongoing communication; and to familiarize the Dudek project team with the issues and concerns that the project team determines to be important issues for analysis in the EIR. Based on the discussions and issues raised during the kick-off meeting, the Dudek project management team will refine the scope of work, schedule, and budget, if necessary.

List of Products

- Attend one (1) kick-off meeting
- Submit one (1) written request for additional information, if necessary

TASK 2 Conduct Preliminary Technical Analyses

Subtask 2A Prepare Traffic Impact Study

The traffic study, to be prepared by Stantec, will evaluate the specific plan amendment. The traffic analysis will be performed for three time frames: existing, a short-range near-term analysis and a long-range analysis. The existing plus project scenario will satisfy CEQA requirements and the short-range will identify project impacts related to additional traffic on the surrounding area street system. The long-range analysis will focus on analyzing the difference between the existing General Plan land uses and the proposed project. We will use forecast data from the 2012 Regional Transportation Plan (RTP)/Sustainable Communities Strategies (SCS) traffic model maintained by San Bernardino County, as recently used in the Montclair Plaza Redevelopment Project traffic study.

The project trip distribution will be derived based on our professional judgment and review of the existing trip patterns. The project trips will then be added to the existing counts to represent baseline conditions and thereby satisfy CEQA requirements. The short-range analysis will define cumulative conditions either by specifically adding known projects (i.e., the North Montclair Downtown Specific Plan or the Montclair Mall expansion) in the area or by developing a suitable interpolation between existing and long-range volumes. This short-range analysis will thereby provide the “ground to plan” analysis for EIR purposes. The long-range part of the analysis will compare the current General Plan land uses with those proposed by the project (i.e., a “plan to plan” analysis). Year 2030 forecasts will be produced by refining the forecast data from the RTP/SCS model for a study area that is defined according to the potential impacts of the proposed changes. The analysis will use peak hour intersection forecasts for identifying potential impacts and mitigation measures.

The following are the work tasks to be carried out for the traffic study:

- 1) Data Collection / Existing Conditions – Traffic count data (ADT and peak hour counts) will be used from Fall 2014 for the study area intersection and roadways (as part of the Montclair Plaza Redevelopment Project). This scope of work assumes that the traffic study will analyze six intersections, and up to twelve roadway segments. The study area intersections are expected to include:
 - Monte Vista Avenue at Arrow Highway
 - Monte Vista Avenue at Moreno Street
 - Monte Vista Avenue at San Jose Street
 - Monte Vista Avenue at I-10 Westbound
 - Monte Vista Avenue at I-10 Eastbound
 - Palo Verde Street at I-10 Eastbound ramp

These locations can be changed for others, assuming we have recent traffic counts. If additional intersections, or intersections which weren't included in the previous study, are necessary, those will need an additional scope and fee.
- 2) Trip Generation – Trip generation will be calculated for the proposed project using the latest version of ITE rates for related land uses.
- 3) Existing Analysis – This scenario will compare the impacts of the existing-plus-project scenario against the existing count (No Project) conditions.

- 4) Long-Range Analysis – The long-range analysis will compare existing General Plan land uses with the proposed project land uses. Traffic forecasts will be produced for the final phase of the project. Land use and trip generation inputs, construction impacts and intersection capacity utilization (ICU) values will be derived for the intersections in the study area.
- 5) Mitigation Measures – Using the results from Tasks 3 and 4, an evaluation will be made of the current long-range transportation improvements that have been identified for buildout of the General Plan land uses. Where appropriate, changes will be proposed to that long-range plan.
- 6) Special Issues – This task will address special traffic issues with respect to the project including access onto the local street system. This access evaluation will make sure that the project does not create any potential problems with respect to intersection operations. Potential impacts during construction will also be analyzed as part of this task.
- 7) Traffic Impact Study – A traffic impact study will be prepared describing the results of the traffic modeling and analyses. It will be prepared in a format suitable for information to be extracted for the EIR and will form a stand-alone appendix for the EIR. Any appropriate revisions will be incorporated into the study so that it can be found to be fully responsive to the needs of the project. Appropriate revisions include any corrections to the study within the general scope of work and intersections where data was collected. Any comments that result in traffic data collection or analysis at any locations not identified in our proposal may result in the need for additional compensation.
- 8) Meetings/Hearings and EIR Support– Stantec will attend up to two (2) project meetings, including a kick-off meeting to review the proposed plan and concepts and one other meeting where traffic-related issues are discussed. We will also answer questions and provide assistance in addressing traffic and transportation-related issues that may come forward during the course of the project via e-mail, correspondence, or conference calls. In addition, whenever possible, portions of the traffic study (i.e. project turning movements and traffic generation) will be provided independently of the study, to facilitate preparation of other portions of the EIR.

List of Products

- One (1) electronic copy of the draft traffic impact study in WORD and PDF formats
- Two (2) printed hardcopies of the final traffic impact study

Subtask 2B Prepare Air Quality Impact Technical Study

Dudek will use the results of the traffic impact study, as well as information regarding changes to the specific plan to model the potential air quality impacts generated by the overall proposed project. By conducting the air quality modeling early in the environmental review process, Dudek can determine whether there will be significant air quality impacts, and if these impacts can be mitigated.

Dudek will prepare a technical study assessing the air quality and greenhouse gas (GHG) emissions impacts of the proposed project utilizing the significance thresholds in Appendix G of the CEQA Guidelines and the South Coast Air Quality Management District's (SCAQMD) emissions-based thresholds. After reviewing all available project materials, Dudek will prepare a request for any outstanding data needed to conduct the analysis. If precise information on a particular factor is not available from the City or its representatives,

Dudek will make every effort to quantify these items using the best available information for comparable data sources, but in all cases will consult first with the City regarding the information needed. Details of the analysis (e.g., daily criteria air pollutant emission calculations) will be included in an appendix to the technical study. Contents of the analysis are briefly discussed below.

Local and regional climate, meteorology, and topography as they affect the accumulation or dispersal of air pollutants will be presented in the air quality assessment. Current air quality conditions and recent trends in the South Coast Air Basin, where the project is located, will be described on the basis of California Air Resources Board (CARB) and U.S. Environmental Protection Agency (EPA) annual air quality monitoring data summaries. Federal, state, and local regulatory agencies responsible for air quality management will be identified, and applicable federal, state, and local air quality policies, regulations, and standards will be summarized.

Dudek will estimate construction emissions associated with amending the specific plan using the California Emissions Estimation Model (CalEEMod) land use and air emissions model. The analysis of short-term construction emissions (and demolition emissions, if proposed), will be based on scheduling information (e.g., overall construction duration, phasing and phase timing) and probable construction activities (e.g., construction equipment type and quantity, workers, and haul trucks) developed by the City and/or standardized approaches. Dudek will then evaluate the significance of the emissions based on the SCAQMD significance criteria.

The SCAQMD also recommends that a project's construction emissions be assessed with respect to SCAQMD's "localized significance thresholds" (LSTs). The LSTs are intended to assess whether construction of a project would cause or contribute to exceedances of ambient air quality standards at sensitive receptors in the project area. For projects with a total site area of five acres or less, the assessment may use a simple "lookup table" approach provided by the SCAQMD. Although the project area exceeds five acres, for budgetary purposes, we have assumed that construction would occur within an area of five acres or less per day, and the assessment may use the lookup table approach and the construction emission estimates from CalEEMod.

The long-term operational analysis will quantify mobile source emissions created by project-generated traffic, and energy and area source emissions caused by the operation of the proposed project using CalEEMod. Estimated mobile emissions will be based on the data presented in the traffic study prepared for the project. Energy and area source emissions (e.g., natural gas combustion and consumer products) will be estimated using the default values in CalEEMod for residential land uses. The estimated operational emissions will be compared to the SCAQMD significance thresholds.

Dudek will evaluate whether traffic associated with the project could lead to potential exposure of sensitive receptors to substantial localized concentrations of air pollutant emissions, specifically carbon monoxide (CO) "hot spots". Dudek proposes only addressing CO hotspots in a qualitative manner because increases in traffic associated with the project area expected to be minor. Dudek will base its assessment on the screening criteria recommended by the SCAQMD. For budgetary purposes, it assumes that the study intersections would not exceed the screening criteria and a refined CO hotspots analysis would not be required.

Additional Appendix G thresholds will also be evaluated, including the potential for the project to expose sensitive receptors to substantial pollutant concentrations, to cause objectionable odors, or to impede attainment of the SCAQMD 2012 air quality management plan.

Potential conflicts with or potential to obstruct implementation of the applicable air quality plan where it may cause or contribute to emission of identified air pollutants in excess of levels stated in the plan or where it may fail to implement a remedial or mitigation measure required under the plan will be analyzed. The results of the updated air quality impacts analyses will be discussed with the project team and included as part of the EIR.

List of Products

- One (1) electronic copy of the draft air quality impact technical study in WORD and PDF formats
- Two (2) printed hardcopies of the final air quality impact technical study

Subtask 2C Prepare GHG Emissions Impact Technical Study

Dudek will prepare a technical study assessing the GHG emissions impacts of the proposed project utilizing the significance thresholds in Appendix G of the CEQA Guidelines. After reviewing all available project materials, Dudek will prepare a request for any outstanding data needed to conduct the analysis. If precise information on a particular factor is not available from the City or its representatives, Dudek will make every effort to quantify these items using the best available information for comparable data sources, but in all cases will consult first with the City regarding the information needed. Details of the analysis (e.g., annual GHG emission calculations) will be included in an appendix to the technical study. Contents of the analysis are briefly discussed below.

The GHG emissions assessment will include a brief description of global climate change and a summary of key, applicable regulatory measures. Dudek will estimate the GHG emissions associated with construction (and demolition, if proposed) of the project using CalEEMod based on the same construction scenario utilized in the air quality analysis. Project-generated operational GHG emissions that will be estimated will include those associated with mobile sources, natural gas usage, electrical generation, water supply, wastewater, and solid waste disposal. The emissions estimates will be based on information provided by the City or CalEEMod default values for residential land uses. Details of the analysis (e.g., annual GHG emission calculations) will be included in a technical appendix.

The impact analysis will reflect Appendix G of the State CEQA Guidelines; specifically, whether a project would (a) generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment and (b) conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of GHGs. The SCAQMD GHG CEQA Significance Threshold Working Group has proposed options lead agencies can select from to screen thresholds of significance for GHG emissions in residential and commercial projects; however, no thresholds have been formally adopted. Options the SCAQMD evaluated include bright-line screening thresholds of 3,000 metric tons of carbon dioxide equivalent (MT CO₂E) per year for all land use types and 3,500 MT CO₂E per year for residential projects, and an efficiency metric threshold of 4.8 MT CO₂E per service population per year for project-level analyses. Based on our recent experience working with the City and additional review of recent CEQA documents, it is our understanding that the City's guidance is to use the SCAQMD proposed thresholds to assess the significance of project-generated GHG emissions. We will work with City staff to confirm application of the appropriate threshold for evaluating the project's GHG emissions under CEQA. Our budget assumes that a simple

emission-based threshold, such as the 3,500 MT CO₂E per year or the 4.8 MT CO₂E per service population per year, can be used.

At the local level, the City of Montclair has not adopted a comprehensive climate action plan; however, in March 2014, the San Bernardino Associated Governments (SANBAG) prepared a Regional GHG Reduction Plan, which outlines reduction strategies for San Bernardino County and the 21 incorporated cities that participated in the Regional GHG Reduction Plan study. Although the City authorized SANBAG to prepare the Regional GHG Reduction Plan, no formal action has been taken by the City's governing body to adopt the Regional GHG Reduction Plan or the GHG reduction measures that the plan presents. Instead, the City continues to rely on thresholds recommended by SCAQMD. Dudek will provide a discussion of applicable state regulations (Assembly Bill 32 Scoping Plan measures), any General Plan goals, objectives, and policies that help the City contribute to regional GHG reduction efforts, and applicable development standards that would increase energy efficiency, such as the California Building Code.

Recent CEQA analyses have applied a business-as-usual (BAU) or no action taken approach, which compares project-generated GHG emissions under the proposed scenario and the BAU scenario assuming no implementation of state measures and with project design features that would reduce GHG emissions. The BAU approach has recently been addressed by the Supreme Court in the *Center for Biological Diversity v. California Department of Fish and Wildlife* decision on the Newhall Ranch project, which indicated that substantial evidence is needed to demonstrate that a project-level reduction of 29% for new projects would be consistent with the statewide goal of 29% reduction from BAU. Accordingly, the use of 28.3% reduction in GHG emissions from the BAU scenario, which the City has applied before, may not be the City's preferred approach moving forward. As such, Dudek will work with City staff to determine an appropriate threshold for evaluating the significance of the project's GHG emissions under CEQA.

List of Products

- One (1) electronic copy of the draft GHG emissions impact technical study in WORD and PDF formats
- Two (2) printed hardcopies of the final GHG emissions impact technical study

Subtask 2D Prepare Noise Impact Technical Study

Dudek will use the results of the traffic impact study, as well as information regarding changes to the specific plan to model the potential noise impacts generated by the proposed project. By conducting the noise modeling early in the environmental review process, Dudek can determine whether there will be significant noise impacts, and if these impacts can be mitigated.

Dudek will conduct a technical noise study for the proposed project. The analysis will address potential noise impacts from construction of the project at noise-sensitive receivers and from traffic noise at any proposed future residential land uses. Noise will be characterized in the following terms:

- L_{eq} , the equivalent energy noise level, is the average acoustic energy content of noise for a stated period of time; for evaluating community impacts, this rating scale does not vary, regardless of whether the noise occurs during the day or the night
- L_{min} , the minimum instantaneous noise level experienced during a given period of time
- L_{max} , the maximum instantaneous noise level experienced during a given period of time

A field noise study will be conducted to measure existing on- and off-site noise conditions. Sound-level data will be collected over 10- to 15-minute periods at one or more on-site locations as well as at nearby noise-sensitive land uses. Potential impacts at nearby noise-sensitive land uses from demolition of the existing on-site structures, excavation and grading, and construction noise will be evaluated based on construction equipment data to be provided by the City or from typical construction activities associated with residential construction projects and noise modeling methods developed by the Federal Highway Administration (FHWA). Long-term (operational) noise effects from traffic on the local roadways will be evaluated using the Federal Highway Administration's Traffic Noise Model (TNM) version 2.5 and traffic volumes the project's traffic impacts analysis. Increases in on-site operational noise at nearby noise-sensitive land uses from heating, ventilation or air conditioning equipment will also be addressed. If noise impacts are identified, mitigation measures will be developed and recommended to reduce impacts to a "less than significant" level and to comply with City noise standards.

The significance of noise impacts will be assessed based on the relevant City of Montclair, state and federal thresholds. If significant noise impacts are identified, mitigation measures to reduce impacts to a less than significant level (where feasible) will be recommended. The noise study methodology, regulatory background, existing conditions, noise impacts and mitigation measures will be summarized in the project's EIR. Additionally, the results of the updated noise level impacts analyses will be discussed with the project team and included as part of the EIR.

List of Products

- One (1) electronic copy of the draft noise impact technical study in WORD and PDF formats
- Two (2) printed hardcopies of the final noise impact technical study

TASK 3 Prepare Initial Study/Notice of Preparation (IS/NOP) and Attend Scoping Meeting

Subtask 3A Prepare IS/NOP

Dudek will prepare an Initial Study/Notice of Preparation (IS/NOP) for the proposed project that is consistent with the procedural and substantive provisions of Sections 15063 and 15082 and Appendices C, G, and I of the CEQA Guidelines and would be used to narrow the focus of the environmental issues addressed in the EIR. Dudek would also be responsible for preparing the Notice of Completion (NOC) and Notice of Intent (NOI) for the proposed project. The Initial Study will be prepared in conformance with a City-approved Initial Study checklist format. Based upon review and comment by the project team, Dudek will revise the IS/NOP, as appropriate. It is anticipated that at a minimum, the following CEQA issue areas will be sufficiently analyzed in the Initial Study to allow them to be scoped out from further analysis in the EIR:

- Agriculture/Forestry Resources
- Biological Resources
- Cultural Resources
- Mineral Resources
- Recreation

Since project details and community interest in the project are not yet known, we have assumed a worst case scenario of analyzing the remaining 12 CEQA issue areas in the EIR. However, if during the CEQA process, it is determined that additional CEQA issue areas can also be scoped out in the Initial Study, we will revise this proposal's scope of work and budget accordingly.

All mitigation measures included in the Initial Study would be incorporated into the MMRP. All appropriate mitigation measures identified in the Initial Study would be provided in an appendix to the EIR to consolidate all mitigation measures required of the project (from both the Initial Study and EIR) for ease in public reading and understanding. The “Environmental Impact Analysis” section at the end of this Scope of Work discusses each of these resources in more detail.

Once completed, Dudek will submit to the project team for internal review an electronic copy of the Administrative Draft IS/NOP. Once comments on the Administrative Draft IS/NOP have been received from the project team, Dudek will incorporate all comments and submit (electronically only) a Screencheck Draft IS/ NOP to the project team for final review before preparing the Final IS/NOP for public review. It is anticipated that comments received on the Screencheck Draft IS/NOP would be minimal and mostly editorial in nature. Substantive comments requiring a second round of substantial edits would require an amendment to the budget proposed. A Final Print-Ready copy of the IS/NOP in electronic format (WORD and PDF) will be submitted to the project team for final review before printing.

Dudek will prepare and distribute twenty (20) printed bound copies of the Draft IS/NOP (with technical appendices), one (1) printed unbound camera-ready copy of the Draft IS/NOP, forty (40) electronic copies of the Draft IS/NOP on CD, one (1) electronic copy in WORD format, and one (1) electronic copy in PDF format. As appropriate, to save paper and other resources, appendices will be provided on CD when hard copies of the IS/NOP are printed.

Dudek will distribute the IS/NOP and NOC to the State Clearinghouse (SCH) and responsible agencies, trustee agencies, and any other interested parties pursuant to the City’s mailing list. Dudek would be responsible for transmittal of the NOI to the County Clerk of San Bernardino, along with applicable filing fees. During the 30-day public review period of the IS/NOP, Dudek will begin preparation of the Draft EIR in order to reduce the overall project schedule.

Subtask 3B Attend One Scoping Meeting

Members of the Dudek team will attend a scoping meeting for the proposed project. Specifically, Dudek’s Project Manager will attend the scoping meeting. It is assumed that the City of Montclair would coordinate and facilitate the scoping meeting and that oversized presentation materials describing or illustrating the project will also be provided by the City. Dudek would provide relevant meeting handouts, including a summary of the IS/NOP, a CEQA Process flowchart, the purpose of the scoping meeting, environmental issue areas, and a sign-in sheet. Dudek would also take detailed notes regarding the issues raised by commenting individuals that should be addressed in the Draft EIR. In addition, Dudek would be available to present the purpose of the scoping meeting, provide an overview of the CEQA process, and answer questions raised by the public regarding the CEQA process and/or general questions regarding technical and analytic methods, as needed. Dudek’s primary role in the scoping meeting is to solicit and/or record public input regarding the scope and content of the Draft EIR.

List of Products

- One (1) electronic copy of the Administrative Draft IS/NOP in WORD and PDF formats
- One (1) electronic copy of the Screencheck Draft IS/NOP in WORD and PDF formats
- One (1) electronic copy of the Final Print-Ready IS/NOP in WORD and PDF formats
- Twenty (20) printed bound copies of the Final IS/NOP (with technical appendices on a CD)
- One (1) printed unbound camera-ready copy of the Final IS/NOP

- ❑ Forty (40) electronic copies of the Final IS/NOP on CD
- ❑ One (1) electronic copy of the Final IS/NOP in WORD and PDF formats
- ❑ Attend one (1) Scoping Meeting

TASK 4 Prepare Administrative Draft EIR and Screencheck Draft EIR

Subtask 4A Prepare Administrative Draft EIR and Screencheck Draft EIR

The objective of this task is to prepare a comprehensive, accurate, and objective EIR for the proposed project that fully complies with CEQA and the CEQA Guidelines (both as amended throughout submittal of the Draft EIR) and all applicable guidance and procedures established by the City of Montclair for the purpose of environmental review.

The main purpose of the Draft EIR will be to thoroughly and accurately analyze the environmental impacts of the proposed project with respect to resources for which impacts have not been scoped out in the IS/NOP. The document will be as free as possible of jargon so that the information it contains is accessible to the project team and the public. The methodology and criteria used for determining the impacts of the project will be clearly and explicitly described in each section of the EIR, including any assumptions, models, or modeling techniques used in the analysis.

The Draft EIR will include the following sections:

- Contents
- Introduction
- Executive Summary, including a comprehensive summary table of impacts and mitigation measures, areas of controversy, issues to be resolved, and a summary discussion of the proposed project and its alternatives
- Project Description, including project objectives, project location(s), project characteristics, and required approvals
- Introduction to the Analysis
- Environmental Analysis
 - > Environmental Setting
 - > Regulatory Framework (applicable federal, State, local, plans, policies, and standards)
 - > Thresholds of Significance
 - > Project Environmental Impacts (short-term, long-term, direct, and indirect)
 - > Mitigation Measures (for potentially significant environmental issues)
 - > Level of Significance after Mitigation
 - > Cumulative Environmental Impacts (short-term, long-term, direct, and indirect)
- Alternatives
- Long-Term Implications (including growth-inducing impacts, a summary of project-related and cumulative significant and unavoidable impacts, and significant irreversible environmental changes or commitments of resources)
- List of EIR Preparers

- References
- Technical Appendices

It is assumed that key construction and operational features of the project would be available at the beginning of work on the EIR such that an accurate, finite, and stable project description could be prepared prior to beginning substantial work on the EIR. This approach has proven to result in the most expeditious preparation and processing of an EIR.

The scope of work for the environmental issue areas expected to be analyzed in the Draft EIR is further described at the end of this Scope of Work in the “Environmental Impact Analysis” section, with an emphasis on unique and/or important components of the environmental analysis. In order to ensure a common understanding of the scope and content of the EIR, Dudek will prepare a comprehensive list of each of the thresholds that would be evaluated in the EIR, as well as every impact statement that would be addressed to respond to each of the thresholds for review and approval by the project team prior to beginning work on the EIR (some thresholds may contain more than one impact statement).

Cumulative Impacts

Cumulative impacts will be specified in the individual environmental issue areas of the EIR. The cumulative analysis will be qualitative in nature and will be based upon known projects, either approved, proposed (applications on file), or reasonably foreseeable, within a defined area around the proposed project, as determined by the factors relevant to each environmental issue area and identified in the traffic impact study prepared as part of Task 2. The cumulative impact assessment will be based on potential development projects that may, in combination with the proposed project, create cumulatively considerable environmental impacts, as required by Section 15130 of the 2016 CEQA Guidelines. Dudek will review and finalize the list of cumulative projects to be used as part of the cumulative impacts analysis during the kick-off meeting; we will discuss including projects outside the City of Montclair as part of this list.

Other CEQA Sections

Summary. This section will be in tabular format and will briefly describe the impacts of the proposed project, the level of significance of impacts, recommended mitigation measures, and the level of significance after the recommended mitigation measures are implemented.

Long-Term Implications. The EIR will discuss all significant unavoidable adverse impacts. The EIR will discuss any potential growth-inducing and irreversible impacts of the proposed project. Potential sources of growth inducement and their corresponding impacts, such as removal of obstacles to growth will be qualitatively analyzed, to the extent that they are applicable.

Alternatives. In order to accurately define alternatives, Dudek will work with the project team to first clearly articulate project objectives. The EIR can then most effectively assess alternatives in light of CEQA’s mandate to reduce significant project-related impacts while meeting the project’s basic objectives. Dudek proposes a two-tiered approach to the alternatives analysis, which is to (1) describe the alternatives screening process and (2) describe and analyze those alternatives selected for detailed study. This will allow the EIR to demonstrate the consideration given to a sufficiently broad range of alternatives.

The alternatives screening process will provide an opportunity for the EIR to describe the process used to identify alternatives. The section will describe a range of alternatives initially considered, including their ability

to meet “screening criteria.” Alternatives not carried forward for detailed analysis will be identified, and the reason for rejection of these alternatives will be specified.

For those alternatives described in detail, the EIR will qualitatively address the anticipated environmental impacts, focusing on the environmental issue areas fully analyzed in the body of the EIR but also considering all seventeen environmental issues areas as the alternative may result in impacts to issue areas that they project did not. Dudek will work closely with the project team to develop a maximum of three alternatives to the proposed project including the No Project scenario, as required by CEQA. Potential alternatives to the proposed project could include a smaller development and/or a different land use.

The alternatives will be provided in a sufficient level of detail for comparison with the proposed project. Each alternative will be evaluated with respect to each key impact category. The advantages and disadvantages of each alternative and the reasons for rejecting or recommending the alternative will also be discussed and the environmentally superior alternative will be identified. During the course of the environmental analysis, minor variations to the proposed project that could have the effect of reducing or eliminating environmental concerns may become apparent. These variations will be recommended, where feasible.

Appendices. All technical studies, survey results, data, and public and agency comments will be included as appendix material to the Draft EIR.

All appropriate mitigation measures identified for these resources in both the Initial Study (as discussed under Task 3) and the Draft EIR would be provided in an appendix of the Draft EIR to consolidate all mitigation measures required of the project (from both the Initial Study and EIR) for ease in public reading and understanding. All mitigation measures included in the Initial Study would be incorporated into the Mitigation Monitoring and Reporting Program.

Only electronic copies of the Administrative Draft EIR will be provided to the project team in an effort to cut down on printing costs. Once comments on the Administrative Draft EIR have been received from the project team, Dudek will incorporate all comments and submit (electronically only) a Screencheck Draft EIR to the project team for final review before preparing the Draft EIR for public review. It is anticipated that comments received on the Screencheck Draft EIR would be minimal and mostly editorial in nature. Substantive comments requiring a second round of substantial edits would require an amendment to the budget proposed. A Final Print-Ready copy of the Draft EIR in electronic format (WORD and PDF) will be submitted to the project team for final review before printing.

List of Products

- One (1) electronic copy of the Administrative Draft EIR in WORD and PDF formats
- One (1) electronic copy of the Screencheck Draft EIR in WORD and PDF formats
- One (1) electronic copy of the Final Print-Ready Draft EIR in WORD and PDF formats

TASK 5 Prepare Public Review Draft EIR and Attend Public Meeting on Draft EIR

Subtask 5A Prepare Public Review Draft EIR

Dudek will prepare a Draft EIR for a 45-day public review period that incorporates all of the comments on the Administrative Draft EIR and Screencheck Draft EIR. The Draft EIR will be comb-bound, using heavy

stock paper for the cover, rather than plastic or laminate. Dudek will prepare and distribute twenty (20) printed bound copies of the Draft EIR (with technical appendices), one (1) printed unbound camera-ready copy of the Draft EIR, forty (40) electronic copies of the Draft EIR on CD, one (1) electronic copy in WORD format, and one (1) electronic copy in PDF format. Additionally, Dudek will prepare and distribute one (1) printed copy of the Executive Summary, twenty (20) CD copies of the Executive Summary, and one (1) printed unbound camera-ready copy of the Executive Summary. Dudek will distribute the requisite fifteen (15) copies of the Draft EIR (including its technical appendices and Executive Summary) to the State Clearinghouse. If acceptable to the project team, Dudek will submit the Draft EIR to the State Clearinghouse on CD, including hard copies of the Executive Summary (15 copies of each). As appropriate, to save paper and other resources, appendices will be provided on CD when hard copies of the EIR are printed.

Dudek would also be responsible for preparation of the NOC, as well as any applicable filing fees. Dudek will distribute the NOC along with the Draft EIR to the State Clearinghouse. It is assumed that the City would be responsible for distribution of the NOC to area property owners, local organizations, and departments within the City (some of which will also receive a copy of the Draft EIR), as well as publication of the NOC in a local newspaper. Dudek would be responsible for transmittal of the NOC to the County Clerk of San Bernardino, along with applicable filing fees.

Subtask 5B Attend One Public Meeting on Draft EIR

Dudek's Project Manager will attend a public meeting for the Draft EIR. It is assumed that the City of Montclair would coordinate and facilitate the public meeting and that presentation materials describing or illustrating the project will also be provided by the City. Dudek would take detailed notes regarding the issues raised by commenting individuals that should be addressed in the Final EIR. In addition, Dudek would be available to provide an overview of the CEQA process and answer questions raised by the public regarding the CEQA process and/or questions regarding the analysis in the EIR.

List of Products

- Twenty (20) printed bound copies of the Draft EIR (with technical appendices)
- One (1) printed unbound camera-ready copy of the Draft EIR
- Forty (40) electronic copies of the Draft EIR on CD
- One (1) electronic copy of the Draft EIR and Executive Summary in WORD and PDF formats
- One (1) printed stapled copy of the Executive Summary
- One (1) printed unbound camera-ready copy of the Executive Summary
- Twenty (20) CD copies of the Executive Summary
- Attend one (1) public meeting on the Draft EIR

TASK 6 Prepare Administrative Final EIR, Screencheck Final EIR, and MMRP

Subtask 6A Prepare Administrative Final EIR, Screencheck Final FEIR, and MMRP

The Response to Comments volume of the Final EIR will include all comments received, responses to those comments, and standard introductory material. The MMRP would be provided separately, but prepared concurrently with the Final EIR. All comments will be numbered (to indicate comment letter and comment

number), and the responses to those comments will be similarly numbered to allow easy correlation. In addition, where the text of the Draft EIR must be revised, the text will be isolated as “text changes” in the Response to Comments volume, indicating deleted text by strikeout and inserted text by double-underline. The text of the Draft EIR will not be revised. The Final EIR will collectively consist of the Draft EIR, the Response to Comments document, and the technical appendices.

It is assumed that the Final EIR would be provided at least 10 days prior to consideration for certification by the City to any commenting public agency and any member of the public who has requested the document. Further, the MMRP will be designed to ensure compliance with all adopted mitigation measures during project implementation. The MMRP will be in table format and will specify project-specific mitigation measures, as well as standard conditions of approval that are applicable to the project. Mitigation timing and responsible parties will also be identified. The objective of the MMRP is to ensure compliance with *Public Resources Code* Section 21081.6, as mandated by Assembly Bill 3180 (Cortese 1988), which requires that a lead agency adopt an MMRP at the time an EIR is certified.

All appropriate mitigation measures identified for these resources in both the Initial Study (as discussed under Task 3) and the Draft EIR would be provided in an appendix of the Draft EIR to consolidate all mitigation measures required of the project (from both the Initial Study and EIR) for ease in public reading and understanding. All mitigation measures included in the Initial Study would be incorporated into the MMRP.

An estimated budget has been prepared for the responses to comments effort. While the actual scope and extent of public comments (in either written or oral format) cannot be definitively determined at this time, we have tried to provide a conservative, yet realistic, estimate of the scope of work that would be required for this project, in order to avoid the need for a contract amendment.

Only electronic copies of the Administrative Final EIR will be provided to the project team in an effort to recognize printing costs efficiencies. Once comments on the Administrative Final EIR and MMRP have been received from the project team, Dudek will incorporate all comments and submit (electronically only) a Screencheck Final EIR and MMRP to the project team for final review before preparing the Final EIR and MMRP for public review. It is anticipated that comments received on the Screencheck Final EIR and MMRP would be minimal and mostly editorial in nature. Substantive comments requiring a second round of substantial edits would require an amendment to the budget proposed. A Final Print-Ready copy of the Final EIR in electronic format (WORD and PDF) will be submitted to the project team for final review before printing.

List of Products

- One (1) electronic memorandum indicating the adequacy of the estimated budget for the responses to comments work effort (if needed)
- One (1) electronic copy of the Administrative Final EIR in WORD and PDF formats
- One (1) electronic copy of the Screencheck Final EIR in WORD and PDF formats
- One (1) electronic copy of the Final Print-Ready Final EIR in WORD and PDF formats

TASK 7 Prepare Final EIR for Public Review, Attend Certification Hearings and File NOD

Subtask 7A Prepare Final EIR for Public Review

Dudek will prepare a Final EIR and MMRP that incorporates all of the comments on the Administrative Final EIR, Screencheck Final EIR and MMRP. Dudek will provide the project team with fifteen (15) printed bound copies of the Final EIR and MMRP, one (1) printed unbound camera-ready copy of the Final EIR and MMRP, one (1) electronic copy of the Final EIR and MMRP in WORD format, one (1) electronic copy of the Final EIR and MMRP in PDF format, and fifteen (15) CD copies of the Final EIR and MMRP. For public agencies that commented on the Draft EIR, they would be provided with a Final EIR at least ten days prior to the meeting during which the City would consider certification of the EIR.

List of Products

- Fifteen (15) printed bound copies of the Final EIR (with technical appendices) and MMRP
- One (1) printed unbound camera-ready copy of the Final EIR and MMRP
- One (1) electronic copy of the Final EIR and MMRP in WORD and PDF formats
- Fifteen (15) CD copies of the Final EIR and MMRP

Subtask 7B Attend Planning Commission and City Council Hearings and File NOD

Members of the Dudek team will attend up to one (1) hearing before the Planning Commission and up to one (1) hearing before the City Council during which approval of the project and certification of the Final EIR would be considered. Specifically, Dudek's Project Manager, as well as Stantec's Project Manager, will attend all hearings. It is assumed that the City of Montclair would coordinate and facilitate the meeting and that oversized presentation materials describing or illustrating the project will also be provided by the City. Dudek would be available to answer questions raised concerning the CEQA process and/or technical questions regarding the analysis contained in the EIR. If attendance of Dudek/Stantec staff is only required at one Planning Commission and/or one City Council hearing, this proposal's scope of work and budget will be revised accordingly.

Dudek would prepare and file the Notice of Determination (NOD) with the County Clerk (within five days of certification of the EIR). Dudek would also be responsible for any applicable filing fees.

List of Products

- Attend one (1) Planning Commission hearing
- Attend one (1) City Council hearing
- One (1) printed and one (1) electronic copy of the NOD (in WORD and PDF formats)

TASK 8 Attend Additional Project Meetings

Subtask 8A Attend Additional Project Meetings

In addition to the meetings identified under Tasks 1 through 7 above, members of the Dudek project management team will attend a maximum of four (4) meetings during preparation of the IS/NOP and EIR as

deemed necessary by the project team. Additionally, the Dudek team would be available to participate in conference calls, as needed, during the course of the environmental review process.

List of Products

- Attend up to four (4) additional one-hour project meetings

TASK 9 Project Management and General Coordination

Subtask 9A Project Management and General Coordination

The purpose of this task is to manage the Dudek project team, manage the environmental document preparation effort, and maintain constant, close communication between the all members of the project team. This task is also intended to ensure that the project will be completed on time and within budget, and that all work products are of the highest quality. Dudek will coordinate the team's work for the communication of issues, transmittal of comments, financial management, and other project management matters.

TASK 10 Prepare Certification Documents

Subtask 10A Prepare Certification Documents

Dudek will prepare draft Findings of Fact for each significant effect identified in the EIR and prepare a Statement of Overriding Considerations, if unavoidable significant impacts occur. As required by the CEQA Guidelines, one of three findings must be made for each significant effect and must be supported by substantial evidence in the record. The Statement of Overriding Considerations will rely on input from the project team regarding the benefits of the project. Dudek will consult with the project team to review and finalize the Findings and Statement of Overriding Considerations for the City's ultimate adoption.

List of Products

- One (1) electronic copy of the Draft Certification Documents in WORD and PDF formats
- Five (5) printed copies of the Final Certification Documents
- One (1) printed unbound camera-ready copy of the Final Certification Documents

Environmental Impact Analysis

Since project details and community interest in the project are not yet known, we have assumed a worst case scenario of analyzing 12 CEQA issue areas in the EIR. However, if during the CEQA process, it is determined that additional CEQA issue areas can be scoped out in the Initial Study, we will revise this proposal's scope of work and budget accordingly. Additionally, as much information as possible from the North Montclair Downtown Specific Plan EIR and Montclair Plaza Redevelopment MND will be used to recognize cost and schedule efficiencies.

The following CEQA issue areas will be analyzed and discussed in either the IS/NOP or the EIR. The environmental analyses provided for the CEQA issue areas below will consist of a programmatic (qualitative) discussion.

Aesthetics

Aesthetics (defined as any element, or group of elements, that embodies a sense of beauty), views, daytime glare, and nighttime illumination are related elements in the visual environment. Visual impacts of a project include the provision of objective visual resources (such as project design elements) and the subjective viewer response to those changes in the visual environment.

The environmental analysis will provide a description of views in the NMDSP area supplemented by photographs. Dudek will fully analyze whether the proposed project would substantially degrade the existing visual character or quality of the site and its surroundings due to grading, height, bulk, massing, or architectural style or building materials; location in a visually prominent area; degradation of the visual unity of the area; or degradation of views from roadways or adjacent uses.

Existing sources of light and glare will also be described for the specific plan area in general. The environmental analysis will analyze whether changes to the specific plan would create a new source of substantial light or glare that would adversely affect day or nighttime views in the area. Dudek will evaluate changes in ambient lighting levels, including hot spots and spillover onto adjacent areas, particularly any sensitive receptors that will be identified. Substantial light can be caused by lighting to illuminate signage or architectural features, or for wayfinding purposes, and substantial glare can be caused by the use of reflective building materials, both of which have the potential of being installed as part of future project under the specific plan.

Agriculture/Forestry Resources

The NMDSP area is not designated as prime farmland, farmland of statewide importance, unique farmland, or farmland of local importance and is not subject to a Williamson Act contract. Furthermore, the NMDSP area has never been used as forest land or used for timber production. These issues will be discussed and supported with documentation. However, Agriculture/Forestry Resources will likely be scoped out in the IS/NOP.

Air Quality

The City of Montclair is located in the South Coast Air Basin and is within the jurisdiction of the South Coast Air Quality Management District (SCAQMD). The air pollutants of greatest concern in the South Coast Air Basin are ozone, NO_x, CO_x, PM₁₀, and PM_{2.5}. The air quality analysis will provide an introductory discussion of the air pollutants of concern in the region, summarize local and regional air quality, describe pertinent characteristics of the air basin, and provide an overview of the physical conditions affecting pollutant buildup and dispersion in the City and/or basin. The setting will also discuss the sources, types, and health effects of air pollutants. The results of the analysis prepared under Task 2B will be summarized in the Draft EIR.

Biological Resources

It is unlikely that any native vegetation exists on in the NMDSP area. It is also unlikely that any sensitive species or habitats are located in the NMDSP area. While there are ornamental trees located throughout the NMDSP area that could be directly or indirectly affected by construction activities, it is highly unlikely that they would provide suitable habitat for nesting migratory birds. To ensure that no impacts to migratory birds would occur, the environmental document will include a mitigation measure that requires preconstruction surveys for nesting migratory birds (if determined appropriate) for the overall NMDSP area. Additionally, the

environmental analysis will consider the removal of potentially mature trees and determine any potentially significant impacts of doing so. Biological Resources will likely be scoped out in the IS/NOP.

Cultural Resources

The project is subject to compliance with AB 52, which requires lead agencies to provide tribes (who have requested notification) with early notification of the project, and, if further requested, consultation to inform the CEQA process with respect to tribal cultural resources. AB 52 is a government-to-government process between the CEQA lead agency and California Native American Tribes. According to the City, the San Manuel Band of Mission Indians and Soboba Band of Luiseno Indians have requested notification of projects occurring in the City. The City has expressed that they will take care of the notification process and respond to any comment letters. However, Dudek will contact the California Native American Heritage Commission (NAHC) for a review of their Sacred Lands File. The NAHC will determine if any NAHC-listed Native American sacred lands are located within the NMDSP area. In addition, the NAHC will provide a list of Native American contacts for the Project who should be contacted for additional information. Dudek will prepare and mail a letter to each of the NAHC-listed contacts, requesting that they contact us if they know of any Native American cultural resources within the NMDSP area.

The Cultural Resources section of the EIR will summarize the results of the South Central Coastal Information Center records search, Native American group coordination, background research, cultural resources survey, and property significance evaluations. The section will discuss the project description, regulatory framework, all sources consulted, research, setting, and findings. In addition, the section will assess potential impacts to historical resources in compliance with CEQA, and will provide mitigation measures and recommendations, as appropriate. Dudek's assessment will follow the Secretary of Interior's Standards and Guidelines for an evaluation report. Cultural Resources will likely be scoped out in the IS/NOP.

Geology/Soils

This section will be prepared using available geologic and/or soils maps, published literature, stereoscopic aerial photographs, and information, reports, and/or plans with information regarding geology and/or soils for the general NMDSP area. Typically, for urban infill projects, enough data can be gathered such that a detailed geological study is not required, and further, standard construction techniques and the rigorous requirements of the Uniform Building Code, the California Building Code, and the City's Municipal Code provide enough protection to ensure that significant impacts do not result. Accordingly, these techniques and standards will be identified and discussed with respect to the proposed project, and additional mitigation measures, if required, will also be presented. Based on the information collected, soils and geologic conditions will be discussed, and potential impacts will be identified.

Greenhouse Gas Emissions

GHG and climate change will be addressed using a methodology that Dudek has used, and is currently using, on other projects of similar size and scope. To accomplish this, Dudek will briefly describe global warming concepts, the science that supports these concepts, each of the GHGs, and the project's participation (or lack of) in the formation of these gases. As the science of greenhouse gases is constantly changing, Dudek will briefly describe the current regulatory setting including California law AB 1493, AB 32, and Executive Order S-3-05, and will outline SCAQMD's current position on significance thresholds. The results of the analysis prepared under Task 2C will be summarized in the Draft EIR.

Hazards/Hazardous Materials

Potential impacts of the general use of hazardous materials in the NMDSP area will be summarized. Since Dudek could not confirm if a hazardous materials database check has been conducted in the past year, we will complete the task of having Environmental Data Resources, Inc. (EDR) run a hazardous materials database check to confirm potential hazards in the NMDSP area. If it is determined that this database check is not necessary, we can revise the budget included herein.

The EIR will describe planned uses generally within the NMDSP area that could create hazards for future residents or occupants of the specific plan area, such as those associated with the use, disposal, transportation, or potential upset of hazardous materials, including those typically used for cleaning and landscaping. Federal, state, county, and City laws and regulations governing hazardous materials will be summarized. The EIR will also evaluate the extent to which the project could impair or physically interfere with an adopted emergency response plan or emergency evacuation plan, or expose people or structures to a significant risk of loss, injury, or death involving wildland fires, the latter of which is highly unlikely and could likely be scoped out in the IS/NOP.

Cable Airport is located approximately one to one and a half miles northeast of the NMDSP area. However, the NMDSP area is not located within Cable Airport's safety zone area. The NMDSP area may be located within the AIA of the Ontario International Airport and thus may be subject to the ONT ALUCP. The EIR will include a discussion of the overall proposed project's consistency with the ONT ALUCP and identify whether or not the project is subject to the real estate transaction disclosure policy of the ONT ALUCP.

Hydrology/Water Quality

Existing hydrologic conditions within the NMDSP area will be identified, including the extent and nature of the existing watershed, groundwater recharge, and supply, drainage conditions, and water quality. Surface water resources will be described for the NMDSP area. Existing and planned drainage and flood control facilities for proposed uses will also be described. The 100- and 500-year floodplains within the project vicinity will be mapped, and any exposure of structures to the 100-year floodplain will be evaluated. The potential increase in the rate of runoff as a result of the proposed project will be described and compared to pre-development conditions, although it is anticipated that the rate of runoff would remain reasonably constant given that the NMDSP area is currently mostly developed and will not be substantially altered (with respect to the amount of impervious surfaces and/or the grade of properties interfacing with adjacent roadways). Additionally, the amount of landscaping (pervious surfaces) will be addressed. The EIR will analyze whether the proposed project would adversely alter the existing drainage pattern of the NMDSP area, such that flooding, erosion, or other degraded water quality conditions would occur. As would be expected, impacts related to erosion are not considered likely, particularly assuming compliance with the requirements of the National Pollutant Discharge Elimination System (NPDES) program during construction activities.

The environmental analysis will address potential changes in surface water and groundwater quality as a result of changes to the specific plan. Dudek will discuss the applicability of relevant water quality regulations to reduce potential effects. These requirements would include, but would not be limited to, the Regional Water Quality Control Board NPDES permit requirements for construction and operational activities and the Clean Water Act Section 303(d) list of impaired water bodies. In addition, either this section and/or the utilities/service systems section would determine whether the project would result in an exceedance of the capacity of any downstream storm drain facility, or result in runoff that exceeds the pre-developed condition.

The risk of inundation by seiches, mudflows, and tsunamis (which are not likely) will also be addressed in the EIR.

Land Use and Planning

The Land Use and Planning section of the EIR will describe the need for a General Plan Amendment and Specific Plan Amendment to amend the boundaries of the NMDSP. This section will describe existing land uses, intensities, and patterns in the specific plan area and the compatibility of the proposed project with existing development. The EIR will evaluate any potential conflicts between the proposed project and surrounding uses. These conflicts could include a use that would create a nuisance for adjacent properties or result in incompatibility with surrounding land uses, such as difference in the physical scale of development, noise levels, traffic levels, or hours of operation. The EIR will evaluate the extent to which adopted City development standards or proposed design standards would eliminate or minimize potential conflicts between the proposed project and adjacent uses. The EIR will also evaluate the potential impacts of increasing density in dwelling units as part of amending the NMDSP.

Mineral Resources

The NMDSP area does not have any oil and gas wells. The environmental document will analyze the potential for the proposed project to result in the loss of availability of a known mineral resource or a locally important mineral resource recovery site. Potentially significant impacts are not anticipated, however, this issue will be included in the environmental document as per CEQA. Mineral Resources will likely be scoped out in the IS/NOP.

Noise

Dudek will use the results of the traffic impact study, as well as changes to the specific plan, to model the potential noise impacts generated by the proposed project both during construction and operation. The results of the analysis prepared under Task 2D will be summarized in the Draft EIR.

Population/Housing

The proposed project would not displace existing housing and would not divide an established community. However, changes to the overall NMDSP could increase the number of potential employees in the project area that could alter the population, employment, and housing characteristics for the area. The employment and housing characteristics of the city and region will be summarized and will be used to determine potential project impacts. Applicable General Plan policies regarding population, housing (including affordable housing), and employment opportunities will also be described and analyzed. The EIR will also evaluate the potential impacts of increasing density in dwelling units as part of amending the NMDSP.

Public Services

The City of Montclair Fire Department and Police Department provide fire and police services to the City. The EIR will address potential impacts of the project on police and fire department response capabilities and time. The EIR would also address proper site access and circulation, location and number of fire hydrants, and fire prevention devices and systems that would be installed. Since there is an anticipated increase in permanent residential population with the proposed project, impacts on recreational facilities, schools and libraries will be analyzed. The Ontario-Montclair School District and the Chaffey Joint Union High School

District serve the educational needs of the project area. Potential impacts to public services will be substantiated and analyzed in the EIR.

Recreation

The EIR will document the existing parks, open space, and recreational resources in the NMDSP area. Policies related to recreation and open space will be described, as applicable to the proposed project. The impacts of the proposed project (if any) on parks, open space, and recreational resources will be evaluated. Standards for the provision of such resources, as established in the General Plan and as provided for in the City's General Plan and in the Quimby Act, will be compared and evaluated. Recreation will likely be scoped out in the IS/NOP.

Transportation/Traffic

As indicated under Task 2A above, Stantec will produce a stand-alone traffic impact study that provides recommendations for the mitigation of project impacts, if any. The report will include the appropriate maps showing the study area(s), study intersections, and locations of the cumulative projects, diagrams showing peak hour turning movement volumes at the study intersections for each scenario, and trip distribution percentages. Analysis of on-site and off-site circulation, access, queuing, and parking will be included. All calculations will be provided. Dudek and Stantec will respond to comments received from the project team. Dudek will summarize the results of the traffic impact study into the EIR.

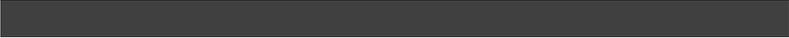
Utilities/Service Systems

The analysis of wet utilities (sewer, water, and storm drain) will focus on the adequacy of existing City systems to accommodate the proposed project. With respect to sewer, this section of the EIR will address whether the sewage generated by the project would exceed the wastewater treatment requirements of the Regional Water Quality Control Board. In addition, Dudek would also coordinate with the City to ensure that the wastewater treatment provider has adequate capacity to serve the proposed project's projected demand, in addition to the provider's existing commitments. Similarly, the EIR will address whether the wastewater generated by the project would require the expansion of existing wastewater treatment facilities or the construction of new wastewater treatment facilities. If inadequate wastewater treatment is identified, measures to provide adequate wastewater treatment will be identified.

In terms of storm drainage, this section of the EIR will address whether implementation of the proposed project would exceed the capacity of existing or planned stormwater drainage systems, either immediately downstream of the specific plan area or at a potentially constrained confluence of storm drains further downstream. If inadequate storm drain capacity is identified, measures to eliminate impacts (such as the on-site detention, retention, and/or filtration) and/or upgrading the storm drain facilities will be identified. Water quality impacts would also be addressed in the EIR.

The EIR will provide a description of existing and future landfill capacity at the landfills that accept waste from the City of Montclair and describe any regulations associated with State-mandated waste reduction requirements. The amount of solid waste that could be generated by the proposed project will be estimated based on factors developed in consultation with the City. Projected solid waste will be compared to existing and future landfill capacity to determine whether the changes in land use would substantially shorten the life of the landfill or necessitate expansion of the landfill.

Dudek will also contact Southern California Gas Company and Southern California Edison for information concerning existing and planned energy infrastructure and sources that would serve the project area. This information will be summarized in the EIR. Based on factors provided by the service providers, the EIR will quantify estimated energy use for the proposed project.



Approach to Communication

In practice, effective project management is the result of constant and careful attention to the daily demand for communication: communication among project participants and communication with the client. Dudek believes that, in the end, the most effective project manager is the one who ensures that information, data, instructions, and guidance continue to flow on a regular basis. Dudek's project manager will maintain a continual level of communication with the project team by:

- Serving as the single point of contact
- Regularly calling and/or emailing the project team's key contact staff person to discuss project milestones, activities, and potential issues
- Holding regular project management meetings with key project staff to coordinate work efforts, check on task completion, and review budget conformance
- Updating, as necessary, the project description, schedule, work progress reports, and inventories of available data so that all team members are aware of information that may affect their work products and schedules
- Coordinating with the project team at strategic junctures for public input

Proactive communication and coordination with the project team are determining factors in the success of this project for all parties involved. We will take an aggressive approach in developing the proper documentation and approval process with the project team at critical decision points and milestones. All correspondence will be directed through the project manager, and the project manager will be responsible for making sure that all information is passed on to team members. Weekly team meetings will be held to verify that the schedule identified in the work plan is being followed.

Schedule

The proposed schedule assumes a kick-off date of April 19, 2016; however, this schedule can be modified if the project commences earlier or later than the proposed date. Dudek proposes the following schedule to complete an EIR within seven months of kick-off, as required by CEQA Guidelines Section 15108. If a more aggressive schedule is desired, we would be happy to work with the project team to determine how this could be accomplished. Dudek understands the importance of meeting the schedule outlined below and has confirmed technical staff availability to meet this schedule, assuming that adequate information regarding the project and a mutually acceptable scope of services is available when the City provides Dudek with a notice to proceed. Other factors that could lengthen or shorten the schedule include dates of receipt of project information, length of project team review, and unanticipated issues arising from City staff or public review of the EIR.

Target dates:

Kick-off Meeting	By April 19, 2016
Completion of Preliminary Technical Analyses ¹	By June 14, 2016

IS/NOP and NOC/NOI

- Submittal of Administrative Draft IS/NOP and NOC.....By May 17, 2016
- Receipt of Comments on Administrative Draft IS/NOP and NOC.....By May 31, 2016
- Submittal of Print-Ready Draft IS/NOP and Final IS/NOP and NOC.....By June 7, 2016
- Publication of Final IS/NOP and NOCBy June 9, 2016
- 30-Day IS/NOP Public Review Period.....June 9, 2016 – July 8, 2016
- Scoping Meeting During 30-Day Public Review

Draft EIR and NOC

- Submittal of Administrative Draft EIR and NOC.....By July 22, 2016
- Receipt of Comments on Administrative Draft EIR and NOC.....By August 5, 2016
- Submittal of Print-Ready Draft EIR and Draft EIR and NOC By August 12, 2016
- Publication of Draft EIR..... By August 17, 2016
- 45-Day Draft EIR Public Review Period.....August 17, 2016 – September 30 , 2016
- Draft EIR Public Hearing During 45-Day Public Review

Final EIR, MMRP and NOD

- Submittal of Administrative Final EIR/MMRP and NOD By October 21, 2016
- Receipt of Comments on Administrative Final EIR/MMRP and NOD.....By November 4, 2016
- Submittal Print-Ready Final EIR/MMRP and Final EIR and NOD..... By November 11, 2016

¹ The IS/NOP process can proceed without completion of the preliminary technical analyses (i.e., traffic, air quality, GHG, noise, and WQMP). The preliminary technical analyses would be completed in time for publication of the Draft EIR.

- Publication of Final EIR/MMRP..... By November 16, 2016
- File NOD Within 5 days of certification of EIR
- Attend Planning Commission and City Council Hearings..... After November 16, 2016

Project Meetings and Management

- Attend Project Meetings Ongoing
- Project Management and General Coordination..... Ongoing

The overall schedule for completion of the EIR will specifically depend on several factors, some of which are outside of Dudek’ control. In particular, the availability of the project team to review the revised project description, agree on the scope of the document, review the technical studies, and review the Draft EIR will be key factors. The schedule includes the following specific assumptions:

- Receipt of complete and accurate project data at the project kick-off meeting
- Receipt of complete and accurate technical studies and plans at the project kick-off meeting
- Stable project description throughout the environmental review process

Budget

Dudek has prepared a cost estimate that is competitive, yet accurately reflective of the level of effort required to complete the scope of services based on our understanding of the project with the information made available to date. Dudek does not believe it is in the client's interest to submit an unrealistically low cost proposal, which is made possible by either reducing the scope of work or by assuming that budget augments will be made available at a later date. That said, we are flexible and willing to discuss ways to reduce our preliminary cost proposal, if necessary. For your convenience, we have provided a detailed cost proposal for preparation of a Supplemental EIR as Attachment A, identifying labor costs by task, by person, and by hour, and we have also included our standard fee schedule as Attachment B. In an effort to keep costs at a minimum, there will be minimal printing of the draft document and notices. If additional printed copies are requested by any member of the project team, Dudek will revise this budget accordingly.

Factors that would increase the scope of work and estimated costs outlined in this proposal include, but are not necessarily limited to, any of the following:

- Attendance at additional meetings
- Additional printing of copies of reports
- Analysis of additional issues above those discussed in this proposal, or a more detailed level of analysis than described in this proposal
- Changes in the project requiring re-analysis or rewriting of report sections
- Collection of additional data

Our cost proposal is valid for 90 days from the date of this proposal and is based on all team members' standard hourly rates.

Attachment A Budget

Attachment B Fee Schedule

DUDEK
2016 STANDARD SCHEDULE OF CHARGES

ENGINEERING SERVICES

Project Director.....	\$265.00/hr
Principal Engineer III.....	\$235.00/hr
Principal Engineer II.....	\$225.00/hr
Principal Engineer I.....	\$215.00/hr
Program Manager.....	\$205.00/hr
Senior Project Manager.....	\$205.00/hr
Project Manager.....	\$195.00/hr
Senior Engineer III.....	\$195.00/hr
Senior Engineer II.....	\$185.00/hr
Senior Engineer I.....	\$175.00/hr
Project Engineer IV/Technician IV.....	\$165.00/hr
Project Engineer III/Technician III.....	\$150.00/hr
Project Engineer II/Technician II.....	\$135.00/hr
Project Engineer I/Technician I.....	\$120.00/hr
Project Coordinator.....	\$95.00/hr
Engineering Assistant.....	\$85.00/hr

ENVIRONMENTAL SERVICES

Principal.....	\$240.00/hr
Senior Project Manager/Specialist II.....	\$225.00/hr
Senior Project Manager/Specialist I.....	\$215.00/hr
Environmental Specialist/Planner VI.....	\$195.00/hr
Environmental Specialist/Planner V.....	\$175.00/hr
Environmental Specialist/Planner IV.....	\$165.00/hr
Environmental Specialist/Planner III.....	\$155.00/hr
Environmental Specialist/Planner II.....	\$135.00/hr
Environmental Specialist/Planner I.....	\$125.00/hr
Analyst III.....	\$115.00/hr
Analyst II.....	\$105.00/hr
Analyst I.....	\$95.00/hr
Planning Assistant II.....	\$85.00/hr
Planning Assistant I.....	\$75.00/hr

COASTAL PLANNING/POLICY SERVICES

Senior Project Manager/Coastal Planner II.....	\$220.00/hr
Senior Project Manager/Coastal Planner I.....	\$210.00/hr
Environmental Specialist/Coastal Planner VI.....	\$200.00/hr
Environmental Specialist/Coastal Planner V.....	\$180.00/hr
Environmental Specialist/Coastal Planner IV.....	\$170.00/hr
Environmental Specialist/Coastal Planner III.....	\$160.00/hr
Environmental Specialist/Coastal Planner II.....	\$150.00/hr
Environmental Specialist/Coastal Planner I.....	\$140.00/hr

ARCHAEOLOGICAL SERVICES

Senior Project Manager/Archaeologist II.....	\$215.00/hr
Senior Project Manager/Archaeologist I.....	\$205.00/hr
Environmental Specialist/Archaeologist VI.....	\$185.00/hr
Environmental Specialist/Archaeologist V.....	\$165.00/hr
Environmental Specialist/Archaeologist IV.....	\$155.00/hr
Environmental Specialist/Archaeologist III.....	\$145.00/hr
Environmental Specialist/Archaeologist II.....	\$135.00/hr
Environmental Specialist/Archaeologist I.....	\$125.00/hr
Environmental Specialist/Paleontologist III.....	\$165.00/hr
Environmental Specialist/Paleontologist II.....	\$145.00/hr
Environmental Specialist/Paleontologist I.....	\$125.00/hr
Paleontological Technician III.....	\$85.00/hr
Paleontological Technician II.....	\$75.00/hr
Paleontological Technician I.....	\$55.00/hr
Archaeologist Technician II.....	\$75.00/hr
Archaeologist Technician I.....	\$55.00/hr

CONSTRUCTION MANAGEMENT SERVICES

Principal/Manager.....	\$195.00/hr
Senior Construction Manager.....	\$180.00/hr
Senior Project Manager.....	\$160.00/hr
Construction Manager.....	\$150.00/hr
Project Manager.....	\$140.00/hr
Resident Engineer.....	\$140.00/hr
Construction Engineer.....	\$135.00/hr
On-site Owner's Representative.....	\$130.00/hr
Construction Inspector III.....	\$125.00/hr
Construction Inspector II.....	\$115.00/hr
Construction Inspector I.....	\$105.00/hr
Prevailing Wage Inspector.....	\$135.00/hr

COMPLIANCE SERVICES

Compliance Director.....	\$205.00/hr
Compliance Manager.....	\$145.00/hr
Compliance Project Coordinator.....	\$105.00/hr
Compliance Monitor.....	\$95.00/hr

HYDROGEOLOGICAL SERVICES

Principal.....	\$260.00/hr
Principal Hydrogeologist/Engineer.....	\$240.00/hr
Sr. Hydrogeologist IV/Engineer IV.....	\$225.00/hr
Sr. Hydrogeologist III/Engineer III.....	\$210.00/hr
Sr. Hydrogeologist II/Engineer II.....	\$195.00/hr
Sr. Hydrogeologist I/Engineer I.....	\$180.00/hr
Hydrogeologist VI/Engineer VI.....	\$160.00/hr
Hydrogeologist V/Engineer V.....	\$150.00/hr
Hydrogeologist IV/Engineer IV.....	\$140.00/hr
Hydrogeologist III/Engineer III.....	\$130.00/hr
Hydrogeologist II/Engineer II.....	\$120.00/hr
Hydrogeologist I/Engineer I.....	\$110.00/hr
Technician.....	\$100.00/hr

DISTRICT MANAGEMENT & OPERATIONS

District General Manager.....	\$185.00/hr
District Engineer.....	\$175.00/hr
Operations Manager.....	\$150.00/hr
District Secretary/Accountant.....	\$100.00/hr
Collections System Manager.....	\$100.00/hr
Grade V Operator.....	\$100.00/hr
Grade IV Operator.....	\$90.00/hr
Grade III Operator.....	\$85.00/hr
Grade II Operator.....	\$63.00/hr
Grade I Operator.....	\$55.00/hr
Operator in Training.....	\$40.00/hr
Collection Maintenance Worker II.....	\$60.00/hr
Collection Maintenance Worker I.....	\$45.00/hr

OFFICE SERVICES

Technical/Drafting/CADD Services

3D Graphic Artist.....	\$155.00/hr
Senior Designer.....	\$145.00/hr
Designer.....	\$135.00/hr
Assistant Designer.....	\$130.00/hr
GIS Programmer I.....	\$180.00/hr
GIS Specialist IV.....	\$155.00/hr
GIS Specialist III.....	\$145.00/hr
GIS Specialist II.....	\$135.00/hr
GIS Specialist I.....	\$125.00/hr
CADD Operator III.....	\$125.00/hr
CADD Operator II.....	\$120.00/hr
CADD Operator I.....	\$105.00/hr
CADD Drafter.....	\$95.00/hr
CADD Technician.....	\$85.00/hr

SUPPORT SERVICES

Technical Editor III.....	\$145.00/hr
Technical Editor II.....	\$130.00/hr
Technical Editor I.....	\$115.00/hr
Publications Specialist III.....	\$105.00/hr
Publications Specialist II.....	\$95.00/hr
Publications Specialist I.....	\$85.00/hr
Clerical Administration II.....	\$85.00/hr
Clerical Administration I.....	\$80.00/hr

Forensic Engineering – Court appearances, depositions, and interrogatories as expert witness will be billed at 2.00 times normal rates.

Emergency and Holidays – Minimum charge of two hours will be billed at 1.75 times the normal rate.

Material and Outside Services – Subcontractors, rental of special equipment, special reproductions and blueprinting, outside data processing and computer services, etc., are charged at 1.15 times the direct cost.

Travel Expenses – Mileage at current IRS allowable rates. Per diem where overnight stay is involved is charged at cost

Invoices, Late Charges – All fees will be billed to Client monthly and shall be due and payable upon receipt. Invoices are delinquent if not paid within 30 days from the date of the invoice. Client agrees to pay a monthly late charge equal to 1% per month of the outstanding balance until paid in full.

Annual Increases – Unless identified otherwise, these standard rates will increase 3% annually.

EXHIBIT B
FEE SCHEDULE

See Attached

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2016 STANDARD SCHEDULE OF CHARGES

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District Secretary/Accountant.....	\$100.00/hr
Collections System Manager.....	\$100.00/hr
Grade V Operator.....	\$100.00/hr
Grade IV Operator.....	\$90.00/hr
Grade III Operator.....	\$85.00/hr
Grade II Operator.....	\$63.00/hr
Grade I Operator.....	\$55.00/hr
Operator in Training.....	\$40.00/hr
Collection Maintenance Worker II.....	\$60.00/hr
Collection Maintenance Worker I.....	\$45.00/hr

OFFICE SERVICES

Technical/Drafting/CADD Services

3D Graphic Artist.....	\$155.00/hr
Senior Designer.....	\$145.00/hr
Designer.....	\$135.00/hr
Assistant Designer.....	\$130.00/hr
GIS Programmer I.....	\$180.00/hr
GIS Specialist IV.....	\$155.00/hr
GIS Specialist III.....	\$145.00/hr
GIS Specialist II.....	\$135.00/hr
GIS Specialist I.....	\$125.00/hr
CADD Operator III.....	\$125.00/hr
CADD Operator II.....	\$120.00/hr
CADD Operator I.....	\$105.00/hr
CADD Drafter.....	\$95.00/hr
CADD Technician.....	\$85.00/hr

SUPPORT SERVICES

Technical Editor III.....	\$145.00/hr
Technical Editor II.....	\$130.00/hr
Technical Editor I.....	\$115.00/hr
Publications Specialist III.....	\$105.00/hr
Publications Specialist II.....	\$95.00/hr
Publications Specialist I.....	\$85.00/hr
Clerical Administration II.....	\$85.00/hr
Clerical Administration I.....	\$80.00/hr

Forensic Engineering – Court appearances, depositions, and interrogatories as expert witness will be billed at 2.00 times normal rates.

Emergency and Holidays – Minimum charge of two hours will be billed at 1.75 times the normal rate.

Material and Outside Services – Subcontractors, rental of special equipment, special reproductions and blueprinting, outside data processing and computer services, etc., are charged at 1.15 times the direct cost.

Travel Expenses – Mileage at current IRS allowable rates. Per diem where overnight stay is involved is charged at cost.

Invoices/Late Charges – All fees will be billed to Client monthly and shall be due and payable upon receipt. Invoices are delinquent if not paid within 30 days from the date of the invoice. Client agrees to pay a monthly late charge equal to 1% per month of the outstanding balance until paid in full.

Annual Increases – Unless identified otherwise, these standard rates will increase 3% annually.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 16-34, A CONSULTING AGREEMENT WITH DAVID TAUSSIG & ASSOCIATES, INC., FOR FORMATION AND ADMINISTRATION OF COMMUNITY FACILITIES DISTRICT NO. 2016-2	DATE: April 18, 2016
	SECTION: AGREEMENTS
	ITEM NO.: 4
	FILE I.D.: CFD050
CONSIDER APPROVAL OF AGREEMENT NO. 16-35, A REIMBURSEMENT AGREEMENT WITH MAPLE MULTI FAMILY LAND CA, L.P., REGARDING PROPERTY GENERALLY LOCATED ON THE SOUTHWEST CORNER OF ARROW HIGHWAY AND MONTE VISTA AVENUE	DEPT.: ECONOMIC DEV./ COMMUNITY DEV.

REASON FOR CONSIDERATION: Maple Multi Family Land CA, L.P., is a limited partnership that includes Trammel Crow Residential. The individuals involved in development of the Paseos as GLJ Partnership are now part of Trammel Crow Residential. Trammel Crow is interested in pursuing entitlements for a multifamily residential project on property generally located on the southwest corner of Arrow Highway and Monte Vista Avenue. The general area is depicted on Exhibit 1. This area is just outside the boundaries of the North Montclair Downtown Specific Plan (NMDSP) area. Staff is in the process of amending the NMDSP and proposes the inclusion of this area in the boundaries of the NMDSP.

The amendment of the Specific Plan will involve preparation of an amended Specific Plan document, preparation of an Environment Impact Report (EIR) and will incur legal fees associated with review of the documents. In keeping with the City Council directive to minimize impact of development of the General Fund, staff sees benefit in the City sharing certain costs of the EIR for the amended Specific Plan and certain legal fees with the developer of the proposed project.

If the Specific Plan is amended, the developer would be subject to the requirement for formation of a Community Facilities District (CFD). Therefore, staff has recommended that the developer enter into a Reimbursement Agreement with the City which would share costs related to the Environmental Impact Report and legal fees. In addition, the Reimbursement Agreement anticipates and would include the fees to be reimbursed to the City related to planning and architectural review by Moule & Polyzoides, formation of a CFD with the assistance of David Taussig & Associates, Inc., and legal advice and review by Best Best & Krieger (BBK)

As previously stated, projects within the NMDSP area are required to form a CFD as a method to ensure development projects have a limited impact on the City's General Fund. Agreement No. 16-34 would authorize staff to retain the services of David

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

Taussig & Associates, Inc. David Taussig & Associates, Inc. would develop the documentation necessary for establishment of CFD No. 2016-2 relating to the proposed project by Maple Multi Family Land CA, L.P.

Agreement No. 16-35 is the proposed Reimbursement Agreement with Maple Multi Family Land CA, L.P. The Agreement would provide that the developer share costs for the EIR and legal fees associated with the EIR. The developer would be required to reimburse the City for the costs associated with design review of their project, CFD formation and certain legal costs.

Agreement No. 16-34 with David Taussig & Associates, Inc., and Agreement No. 16-35 with Maple Multi Family Land CA, L.P., are included in the agenda packet for consideration by the City Council.

BACKGROUND: The City Council adopted the NMDSP on May 16, 2006. The intent of the Specific Plan was to encourage pedestrian, transit-oriented mixed-use development.

Maple Multi Family Land CA, L.P., (a partnership between Westminster Development and Trammel Crowe Residential) is in the process of pursuing entitlements for certain property generally located on the Southwest corner of Arrow Highway and Monte Vista Avenue. The developers of the property would like to construct a multifamily residential project on approximately 6.74 acres of property containing between 213 to 288 units. In order to advance the development proposal, the project proposed by the developers would need to be included within the boundaries of the NMDSP.

Should the proposed development be included in the Specific Plan area, the City Council has determined that all projects within the boundaries of the NMDSP area must be included in a CFD. The services of David Taussig & Associates, Inc., were used to assist in the formation of the CFDs related to the Paseos and Arrow Station projects. In order to retain consistency in the establishment of assessments related to each CFD, it is recommended that David Taussig & Associates, Inc., be used to provide the necessary consulting services. The CFD would be used to finance certain annual maintenance and public safety costs.

Proposed Agreement No. 16-34 is the standard consultant agreement prepared by the City Attorney. The more salient points in the proposed agreement include the following:

- The total amount of the agreement related to formation of the CFD No. 2016-2 would not exceed \$21,000 unless additional payment is approved. The Agreement also provides for David Taussig & Associates, Inc., to prepare the annual assessment that is presented to the County of San Bernardino for collection. The current annual cost of this service would be \$3,500 subject to future adjustment.
- The City would be able to suspend or terminate the agreement, with or without cause, by serving the consultant with thirty days' written notice.
- Any work or documents prepared by the consultant would become the sole property of the City.
- The consultant would provide the City with the appropriate forms of indemnification and insurance.

As indicated, the developer is required to enter into a Reimbursement Agreement with the City to share costs related to the EIR and legal fees. In addition, the Reimbursement Agreement anticipates and would include the fees to be reimbursed to the City related to planning and architectural review by Moule & Polyzoides, formation of a CFD with the assistance of David Taussig & Associates, Inc., and legal advice and review by BBK.

Proposed Agreement No. 16-35 contains the terms of the developer's reimbursement of certain City-incurred costs associated with preparation of the EIR, legal fees, planning fees, and development of documents and implementation of procedures for the CFD. A synopsis of the proposed agreement includes the following points:

- The City would retain the services of certain consultants and have the right to amend the scope of work. The consultants would be contractors exclusively of the City and not of the developer. The work product produced by the consultants, subject to financial reimbursement by the developer, would be photocopied for the information of the developers unless that work would be considered privileged or confidential under law.
- The City proposes to retain the services of Dudek to prepare an EIR for the First Amendment to the NMDSP. The City proposes to utilize the services of BBK to provide legal services related to the EIR. The estimated total costs associated with preparation of the EIR and accompanying legal fees are approximately \$233,700. Agreement No. 16-35 proposes that these costs be equally shared. The cost for the City would be approximately \$117,000 and the cost for the developer would be approximately \$117,000.

If the City would choose to retain additional consultants, it would be required to inform the developer. The developer would have five days to review and approve or disapprove the retention of such consultants. In the event the developer objected to the retention of the consultants, the City and developer would communicate to resolve any objections. If the parties were unable to resolve objections and the City retained the disputed party, the developer would have the sole and exclusive right to terminate the agreement and would reimburse the City for all costs incurred to the date of termination.

- As a part of the review process of the proposed development, the City would retain the services of David Taussig & Associates, Inc., regarding formation of a CFD to pay for items such as street maintenance and certain public safety costs. BBK would be retained regarding legal services for the formation of the CFD and regulatory agreements. In addition, design and architectural review would be conducted by Moule & Polyzoides. The estimated total costs for these services would be \$51,000. These costs would be borne by the developer.
- The City has estimated the aggregate cost for all consultants to be paid by the developer would be \$168,000. By May 2, 2016, the developer would be required to submit the sum of \$50,000 to the City. This amount would be held by the City in a separate account as the "Project Deposit Account." When consultants invoice the City for fees, costs, and expenditures associated with the project, City staff would concurrently provide a duplicate invoice to the developer. The developer would have five days to approve or disapprove the invoice. In the event the developer disputed an invoice, the City and developer would communicate to resolve the objections. If the parties were unable to

resolve the objections and the City paid the invoice, the developer could take action to terminate the agreement and would reimburse the City for all costs incurred to the date of the termination. When the developer deposit drops below \$30,000, the City would make a written demand to the developer to replenish the deposit to the \$50,000 amount.

- The City would not exceed the estimated \$168,000 of costs without first informing the developer in writing regarding the need for additional services. The City would be required to provide the developer with appropriate documentation of the reason for the excess costs so the developer may reasonably evaluate such costs. The City would also be required to inform the developer in writing prior to amending the scope of work for any consultant service and the estimated cost thereof. Once the City had provided such notice to the developer, the developer would be obligated to pay the excess cost in the same manner as the estimated costs. However, if the developer objected to the excess costs, the developer must provide the City with a written objection no later than five days after receipt of the City's written notice. The City and developer would communicate in an attempt to resolve the objection. If the parties were unable to resolve the objection, the developer would have the sole and exclusive right to terminate the agreement and reimburse the City for all costs incurred to the date of termination.
- The City would be required to maintain accurate records of invoices received from, and payments made to, the consultants. The City would be required to provide a payment summary to the developer within a reasonable time upon request.
- The term of the Agreement would commence on May 2, 2016 and would terminate in eighteen months unless extended. The developer's obligation to reimburse the City would survive the termination of the Agreement.
- The City would be able to terminate the Agreement prior to the terms set forth above, without cost or liability, upon 30 days' written notice to the developer in the event the developer fails to satisfy any material obligation of the agreement or fails to prosecute its applications for the project. The developer would be able to terminate the Agreement upon 30 days' prior written notice provided that the developer gives the City written notice withdrawing its application for the project and the developer would be obligated to satisfy all of its obligations under the Agreement through the effective date of the termination.
- The Agreement would not be assignable by either party without the prior written consent of the other party.

FISCAL IMPACT: Proposed Agreement No. 16-34 would authorize staff to retain the services of David Taussig & Associates, Inc., to form and administer proposed CFD No. 2016-2. As indicated, the purpose of the CFD would be to finance certain City maintenance and public safety costs related to the project proposed by Maple Multi Family Land CA, L.P. The cost to retain David Taussig & Associates, Inc., would be approximately \$21,000. The annual fee to prepare and levy the assessment would be approximately \$3,500 subject to increase. The annual fee for preparation of the assessment is paid from the CFD proceeds.

Through the proposed Reimbursement Agreement (Agreement No. 16-35), the developer would be required to pay one-half of the costs associated with preparation of the EIR and the associated legal fees, The developer would also reimburse the City the cost associated with formation of the CFD, design and architectural review, and certain legal fees. The estimated total cost of the reimbursement by developer would be \$168,000. A breakdown of the costs is shown as follows:

Items Subject to Cost Reimbursement by Maple Multi Family Land CA, L.P.

Environmental Impact Report–Dudek:	\$ 71,300
Legal Fees for EIR–BBK:	45,700
Design/Architectural Review–Moule & Polyzoides:	10,000
CFD Formation–David Taussig & Associates, Inc.:	21,000
Legal Fees for CFD and Operating Agreement–BBK:	<u>20,000</u>
Total:	\$168,000

In proposing the Reimbursement Agreement, staff is attempting to see that the City’s consulting fees related to formation of the CFD and legal fees related to the proposed development remain revenue neutral to the General Fund. Furthermore, creating the CFD, staff hopes to see that maintenance costs related to public facilities within the NMDSP area also largely remain revenue neutral.

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

1. Approve Agreement No. 16-34, a consulting agreement with David Taussig & Associates, Inc., for formation and administration of Community Facilities District No. 2016-2.
2. Approve Agreement No. 16-35, a Reimbursement Agreement with Maple Multi Family Land CA, L.P., regarding property generally located on the southwest corner of Arrow Highway and Monte Vista Avenue.

**AREA PROPOSED FOR INCLUSION WITHIN THE PLANNING AREA OF
THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN**



AGREEMENT NO. 16-34
CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES
COMMUNITY FACILITIES DISTRICT 2016-2

THIS AGREEMENT is made and effective as of May 2, 2016, between the City of Montclair, a municipal corporation (“City”) and David Taussig & Associates (“Consultant”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

That portion of the Agreement relating to formation of the Community Facilities District, shall commence on May 2, 2016 and shall remain and continue in effect for a period of eighteen months until tasks described herein are completed, but in no event later than November 2, 2017 unless sooner terminated pursuant to the provisions of this Agreement. That portion of the Agreement related to the annual administration of the Community Facilities District related to the establishment of the tax rates has remain in effect until terminated pursuant to the provisions of the Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

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

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A and B to Attachment A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Twenty One Thousand Dollars for the eighteen month term of the Agreement related to formation of the Community Facilities District unless additional payment is approved as provided in this Agreement. The payment amount related to the annual administration of the Community Facilities District will be approximately \$3,500 annually

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed Ten Thousand Dollars (\$10,000.00). Any additional work in excess of this amount shall be approved by the City Council.

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least Thirty (30) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

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

7. DEFAULT OF CONSULTANT

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

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

8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to billed time, sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment. Notwithstanding the above, all computer financial models including without limitation compilations of formulas and spreadsheet models used or developed by the Consultant in performing its work are proprietary and shall remain property owned solely by the Consultant.

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

9. INDEMNIFICATION

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

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant. Said indemnification shall include any claim that Consultant, or Consultant's employees or agents, are considered to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law.

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

defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

10. INSURANCE

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

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	1,000,000
Commercial general liability at least as broad as ISO CG 0001 (general aggregate)	2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	1,000,000
Professional Liability (per claim and aggregate)	1,000,000
Worker's compensation	Statutory

(b) All insurance required by this section shall apply on a primary basis. Consultant agrees that it will not cancel or reduce said insurance coverage. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(c) Auto liability insurance shall cover owned, nonowned and hired autos. If Consultant owns no vehicles, auto liability coverage may be provided by means of a nonowned and hired auto endorsement to the general liability policy.

(d) At all times during the term of this Agreement, Consultant shall maintain on file with City a certificate of insurance, in a form acceptable to City showing that the aforesaid policies are in effect in the required amounts. The general liability policy shall contain or be endorsed to contain a provision including the Indemnitees as additional insureds. Consultant shall promptly file with City such certificate or certificates and endorsements if applicable. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

(e) No policy required by this section shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the Indemnitees.

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

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

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

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

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers

and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

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

16. NOTICES

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

To City: Edward C. Starr
City Manager
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant: Andrea Roess
Managing Director
David Taussig & Associates
5000 Birch Street, Ste. 6000
Newport Beach, CA 92660

17. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Because of the personal nature of the services to be rendered pursuant to this Agreement, only Andrea Roess (responsible employee) shall perform the services described in this Agreement.

Consultant's responsible employee may use assistants, under his direct supervision, to perform some of the services under this Agreement. Consultant shall

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONFIDENTIALITY

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

22. DISCRIMINATION

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

23. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Paul M. Eaton, Mayor

By: _____
(Title)

Attest:

By: _____
Andrea M. Phillips, Deputy City Clerk

By: _____
(Title)

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is made and entered into this ____ day of March 2016, by and between the City of Montclair at 5111 Benito Street, Montclair, California 91763, herein called "Client," and David Taussig and Associates, Inc. at 5000 Birch Street, Suite 6000, Newport Beach, CA 92660, herein after called "Consultant." The Client and the Consultant in consideration of the mutual promises and conditions herein contained agree as follows.

ARTICLE I
TERM OF CONTRACT

Section 1.1 This agreement shall become effective on the date stated above and will continue in effect until the earlier of (i) that day when the services provided for herein have been performed or (ii) until terminated as provided in Article 6 below.

ARTICLE II
SERVICES TO BE PERFORMED BY CONSULTANT

Section 2.1 Consultant agrees to perform the professional services for the Client and to deliver the work products to the Client as described in the Scope of Work statement attached as Exhibit "A" hereto. Such professional services and work products, as from time to time modified in accordance with Section 2.3 hereof, are collectively referred to as the "Consulting Services."

Section 2.2 Consultant will determine the method, details and means of performing the Consulting Services. Consultants may, at Consultants' own expense, employ such assistance as it deems necessary to perform the Consulting Services required by Client under this Agreement. Consultants shall conduct research and arrive at conclusions with respect to their rendition of information, advice, recommendation or counsel independent of the control and direction of the Client, other than normal contract monitoring. All computer software (including without limitation financial models, compilations of formulas and spreadsheet models), inventions, designs, programs, improvements, processes and methods (collectively, the "Proprietary Models") used or developed by DTA in performing its work is proprietary and shall remain property owned solely by, or licensed by a third party to DTA. Client acknowledges and agrees that the consideration paid by Client herein only entitles Client to a license to use the hard copy or electronically transmitted reports generated pursuant to the Consulting Services and that any Proprietary Model that Consultant uses to generate such reports is owned by, or is duly licensed from a third party to Consultant and is not being provided to Client hereunder. Client acknowledges that DTA may have used reports and analyses that DTA authored for other clients as base works or templates for the reports and analyses prepared for Client pursuant to this Agreement, and Client acknowledges and agrees that DTA has the right to use the reports and analyses that it authors pursuant to this Agreement as base works or templates for reports and analyses that DTA authors for DTA's other clients, provided, however that DTA shall not use any confidential information provided by Client in such future reports and analyses. Client

acknowledges and agrees that DTA has spend substantial time and effort in collection and compiling data and information (the "Data Compilations") in connection with the Consulting Services and that such Data Compilations may be used by DTA for its own purposes, including, without limitation, sale or distribution to third parties; provided, however, that DTA will not sell or distribute any of Client's confidential information that may be contained in such Data Compilations, unless such confidential information is used only on an aggregated and anonymous basis.

Section 2.3 Any proposed changes in the Consulting Services hereunder shall be submitted to the other party hereto, and any such changes agreed to by the parties shall be reflected in an amendment to Exhibit "A" in accordance with Section 7.2 hereto.

Section 2.4 Nothing in this Agreement shall give the Consultant possession of authority with respect to any Client decision beyond the rendition of information, advice, recommendation or counsel.

ARTICLE III **COMPENSATION**

Section 3.1 Client agrees to pay Consultant for its Consulting Services a professional fee computed according to the Fee Schedule attached as Exhibit "B" hereto.

Section 3.2 The Client shall reimburse the Consultant for Consultant's out-of-pocket expenses plus a 15% administrative charge. Expenses shall include all actual expenditures made by Consultant in the performance of any Consulting Services undertaken pursuant to the Agreement, including, without limitation, the following expenditures:

- (a) Cost of clerical assistance @ \$35.00 per hour, including typing, collation, printing and copying, plus copier and photography costs, including photographic reproduction of drawings and documents.
- (b) Transportation costs, including mileage for the use of personal automobiles at the prevailing IRS standard rate, rental vehicles, lodging and regularly scheduled commercial airline ticket costs.
- (c) Courier services, facsimile, and telephone expenses.

Section 3.3 On or about the first two weeks of each month during which Consulting Services are rendered hereunder, Consultant shall present to Client an invoice covering the current Consulting Services performed and the reimbursable expenses incurred pursuant to this Agreement and exhibits thereto. Such invoices shall be paid by Client within thirty (30) days of the date of each invoice. A 1.2% charge per month may be imposed against accounts which are not paid within 30 days of the date of each invoice.

Section 3.4 The maximum total fee amount set forth in Exhibit "B" may be increased as a result of any expansion of the Consulting Services to be rendered hereunder pursuant to Section 2.3 or as provided in Exhibit "A" hereto.

Section 3.5 Records of the Consultant's costs relating to (i) Consulting Services performed under this Agreement and (ii) reimbursable expenses shall be kept and be available to the Client or to Client's authorized representative at reasonable intervals during normal business hours.

ARTICLE IV
OTHER OBLIGATIONS OF CONSULTANT

Section 4.1 Consultant agrees to perform the Consulting Services in accordance with Exhibit "A". Should any errors caused by Consultant's negligence be found in such services or products, Consultant will correct them at no additional charge by revising the work products called for in Exhibit "A" to eliminate the errors.

Section 4.2 Consultant will supply all tools and instrumentalities required to perform the Consulting Services under the Agreement.

Section 4.3 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Consultant without the prior written consent of Client. However, Consultant may subcontract portions of the work to be performed hereunder to other persons or concerns provided Consultant notifies Client of the name and address of said proposed subcontractor and Client either consents or fails to respond to notification with respect to the use of any particular proposed subcontractor.

Section 4.4 In the performance of its Consulting Service hereunder, Consultant is, and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of Client) under any and all laws, whether existing or future. Consultant is not authorized to make any representation, contract or commitment on behalf of Client.

Section 4.5 Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of Client will cause the Consultant to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. Client and Consultant agree that Consultant is not a "public official" or "participating in governmental decision" as those terms are used in Section 87100. The Client and Consultant also agree that no actions and opinions necessary for the performance of duties under the Contract will cause the Consultant to be a "public official" or "participating in a governmental decision" as those terms are used in Section 87100.

ARTICLE V
OTHER OBLIGATIONS OF CLIENT

Section 5.1 Client agrees to comply with all reasonable requests of Consultant and provide access to all documents reasonably necessary to the performance of Consultant's duties under this Agreement with the exception of those documents which Exhibit "A" calls upon the Consultant to prepare.

Section 5.2 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Client without the prior written consent of Consultant.

Section 5.3 Consultant frequently is retained by developers, landowners, and other persons and concerns interested in development projects which often eventually lead to the preparation on a contract basis by Consultant of preliminary tax spread models for government agencies to determine tax rates and other matters necessary to accomplish various improvements to realty for financing under a Mello-Roos or other financing programs. In light of the foregoing, Client will determine whether or not it is appropriate to conduct a "significant substantive review" or a "significant intervening substantive review" of Consultant's activities conducted pursuant to this Agreement as such terms are defined in Section 18700(c)h of Title 2 of the California Administrative Code. Should Client elect to conduct such a substantive review, then Client shall determine whether it has sufficient expertise on staff to conduct such a review, and, if not, will retain

an independent expert consultant to review Consultant's work. Thereafter, Client shall conduct such review, or cause such independent review to be conducted, prior to the making of any governmental decision relating to the matters contained within the Scope of Work described in Exhibit "A". The parties do not intend and nothing in this Section 5.3 is meant to imply that Consultant is a "public official," "participating in a governmental decision," or has a "financial interest" in the services provided as such terms are used in Section 87100 of Title 9 of the California Governmental Code.

Section 5.4 Client, public agencies, landowners, consultants and other parties dealing with Client or involved in the subject development project referred to in Exhibit "A" will be furnishing to Consultant various data, reports, studies, computer printouts and other information and representations as to the facts involved in the project which Client understands Consultant will be using and relying upon in preparing the reports, studies, computer printouts and other work products called for by Exhibit "A." Consultant shall not be obligated to establish or verify the accuracy of the information furnished by or on behalf of Client, nor shall Consultant be responsible for the impact or effect on its work products of the information furnished by or on behalf of Client, in the event that such information is in error and therefore introduces error into Consultant's work products.

Section 5.5 Client agrees to defend, indemnify and hold Consultant harmless from and against all obligations, losses, liabilities, damages, claims, attachments, executions, demands, actions and/or proceedings (collectively, "Claims") and all costs and expenses in connection therewith, including reasonable attorneys' fees, arising out of or connected with the performance of Consultant's Consulting Services under this Agreement, except as may arise from Consultant's willful misconduct or gross negligence. In that regard, Client will indemnify and hold Consultant harmless from any Claims arising from, growing out of, or in any way resulting from, errors contained in data or information furnished by Client or Client's designee to Consultant for use in carrying out the Consulting Services called for by this agreement. If for any reason the indemnification under this Section 5.5 is unavailable to Consultant or insufficient to hold it harmless, then the Client shall contribute to the amount paid or payable by Consultant as a result of such loss, liability, damage, claim, demand, action or proceeding in such proportion as is appropriate to reflect not only the relative benefits received by the Client on the one hand and Consultant on the other hand but also the relative fault of the Client and Consultant as well as any relevant equitable considerations; provided that Consultant's contribution obligations hereunder shall in no event exceed the amounts received by Consultant under this Agreement.

Section 5.6 In the event that court appearances, testimony or depositions are required of Consultant by Client in connection with the services rendered hereunder, Client shall compensate Consultant at a rate of \$250 per hour and shall reimburse Consultant for out-of-pocket expenses on a cost basis.

ARTICLE VI

TERMINATION OF AGREEMENT

Section 6.1 Either party may terminate or suspend this Agreement upon thirty (30) days written notice. Unless terminated as provided herein, this Agreement shall continue in force until the Consulting Services set forth in Exhibit "A" have been fully and completely performed and all proper invoices have been rendered and paid.

Section 6.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party at its option may terminate this Agreement by giving written notification to the defaulting party. Such termination shall be effective upon receipt by the defaulting party, provided that the defaulting party shall be allowed ten (10) days in which to cure any default following

receipt of notice of same.

Section 6.3 The covenants contained in Sections 3.1, 3.2, 4.4, 5.3, 5.4, 5.5, 5.6 and all of Article VII shall survive the termination of this Agreement.

ARTICLE VII

GENERAL PROVISIONS

Section 7.1 Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with the first sentence of this Section 7.1. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

Section 7.2 This Agreement and exhibits hereto supersede any and all agreements, either oral or written, between the parties hereto with respect to the rendering of service by Consultant for Client and contains all of the covenants and agreements between the parties with respect to the rendering of such services. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement (including any exhibit hereto) will be effective if it is in writing and signed by the party against whom it is sought to be enforced.

Section 7.3 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 7.4 Any controversy between the parties hereto involving the construction or application of any of the terms, covenants, or conditions of this Agreement will, on the written request of one party served on the other, be submitted to binding arbitration in accordance with the commercial rules and regulations of the American Arbitration Association and the provisions of the California Arbitration Act (Sections 1280 through 1294.2 of the California Code of Civil Procedure). The arbitration shall take place in Newport Beach, California, or such other location mutually agreed to by the parties.

The arbitrator(s) shall be selected as follows: In the event that Consultant and Client agree on one arbitrator, the arbitration shall be conducted by such arbitrator. In the event Consultant and Client do not so agree, Consultant and Client shall each select an arbitrator and the two arbitrators so selected shall select the third arbitrator. If there is more than one arbitrator, the arbitrators shall act by majority vote. The parties may propose arbitrators from JAMS, ADR, ARC or any independent arbitrator/neutral for dispute resolution. The parties are not required to hire an AAA arbitrator for resolution of a dispute hereunder.

The decree or judgment of an award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Section 7.5 The prevailing party in any arbitration or legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorneys' fees. The non-

prevailing party shall be liable, to the extent allowable under law, for all fees and expenses of the arbitrator(s) and all costs of the arbitration.

Section 7.6 This Agreement will be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this Agreement has been executed on the date and year first above written.

CONSULTANT:
David Taussig & Associates, Inc.

CLIENT:
City of Montclair

By: _____
David Taussig, President

By: _____

Date: _____

Date: _____

EXHIBIT A

COMMUNITY FACILITIES DISTRICT FORMATION SERVICE OF THE CITY OF MONTCLAIR

SCOPE OF WORK

David Taussig & Associates, Inc. shall provide special tax consulting services, as described in the tasks below, necessary to assist the City in the formation of a CFD to finance certain annual services for the project expected to encompass 213 to 288 apartment units within the North Montclair Downtown Specific Plan.

Task 1. Initial Meeting

Attend an initial meeting to discuss the scope of work, proposed schedule, and to identify any other issues prior to beginning work.

Task 2. Research

Gather the necessary data from Client and Developer with the assistance of DTA. Client and Developer are responsible for providing and verifying data describing types of development, improved property values, net taxable acreage, and the estimated cost of the annual services proposed to be financed. DTA shall rely on such data provided by the Client and Developer, and shall not be responsible for verifying its accuracy. DTA shall also compile assessor's data for the project area.

Task 3. Preliminary Tax Spread

Prepare initial spread of special taxes (the "Tax Spread") based on land use, building square footage, and/or acreage as obtained through Task 2 above. Calculate special taxes to support proposed annual services costs. DTA may recommend alternative techniques to apportion special taxes to enhance project feasibility.

Task 4. Rate & Method of Apportionment

Prepare the Rate and Method of Apportionment of Special Tax (the "RMA") which describes the methodology used to calculate the annual special tax levy for the CFD. DTA shall work with Client staff to modify the RMA as needed.

Task 5. Public Report

Prepare the Public Report, as described in Section 53321.5 of the California Government Code, containing descriptions of the proposed services, their estimated costs, and maximum annual special tax rates.

Task 6. Document Review and Preparation

Assist the City with the preparation of required documents, including the Resolution of Intention, Resolution of Formation, and related items.

Task 7. Verbal Consulting Services

Provide verbal consulting services and advice to Client and other Project Developers regarding the special tax and apportionment methodology during the period in which Tasks 1 through 6 are being completed.

Task 8. Coordination

DTA shall attend up to a total of three meetings (including the meeting described in Task 1). These meetings may be used to discuss or present the Tax Spread, Rate and Method of Apportionment of Special Tax, Public Report, or other items prepared by DTA. They may also be used for the protest hearing, or other public meetings. After a total of three meetings attended by DTA have been completed, additional meetings will require fees beyond the maximum established in the Fee Schedule if the budgeted amount has been completely expended based on hourly rates quoted herein.

Task 9. Preparation of Boundary Map

This task entails the preparation of the CFD boundary map pursuant to the requirements of the Mello-Roos Act and the County Recorder's Office, assuming that computerized base maps are provided by Client. Record map at the County Recorder's office and distribute copy of recorded map to the project team.

EXHIBIT B**COMMUNITY FACILITIES DISTRICT FORMATION SERVICE
OF THE CITY OF MONTCLAIR****FEE SCHEDULE****Professional Services Fee**

DTA shall be remunerated for services based on the hourly rates shown in Table 1 below, not to exceed \$20,000, with invoices being submitted to the City on a monthly basis.

Table 1
Hourly Rates

Managing Director	-	\$200/Hour
Vice President	-	\$195/Hour
Manager	-	\$170/Hour
Senior Associate	-	\$150/Hour
Associate	-	\$135/Hour
Senior Analyst	-	\$125/Hour
Analyst	-	\$115/Hour
Research Assistant	-	\$ 90/Hour

Consulting services related to the annual collection of special taxes, shall be covered under a separate Agreement.

Any additional tasks assigned by City if the total fee listed above has been exceeded shall be charged at the hourly rates listed above. An excessive number of meetings (more than four) or tax spread computer runs (more than fifteen) may also require additional fees if the total fee has been exceeded. Such additional fees shall be added to the "Total Fee" amounts listed above. The hourly fees listed above apply for a twelve month period after execution of this Agreement, and are subject to a cost-of-living increase after that period, and on an annual basis thereafter.

In addition to fees for services, City shall reimburse DTA for travel, photocopying, courier, facsimile, clerical, telephone expenses, and administrative charges, not to exceed \$1,000.

All budgets, rates, and expenses are subject to a cost of living increase every 12 months.

EXHIBIT A
SCOPE OF WORK

EXHIBIT A

MELLO-ROOS SPECIAL TAX ADMINISTRATION COMMUNITY FACILITIES DISTRICT NO. 2016-2 OF THE CITY OF MONTCLAIR

SCOPE OF WORK

David Taussig & Associates, Inc. ("Consultant") shall provide financial consulting services to assist the City of Montclair (the "Client") in the annual administration of Community Facilities District No. 2016-2. The intent of these services shall be to determine the special tax rates and facilitate the collection of the special taxes for each fiscal year.

The specific activities and tasks to be performed under this Scope of Work include the following:

Task 1 Land Use Research

This task involves determining, gathering and organizing the land use data required to apportion and collect special taxes, and includes the following subtasks:

- 1.1 Subdivision Research:** Identify and obtain copies of all final tract or parcel maps recorded within CFD No. 2016-2.
- 1.2 Development Research:** Determine all building permit activity as of January 1 of the previous fiscal year. Identify issuance date, building square footage and situs address for each new building.
- 1.3 Assessor Parcel Research:** Review current Assessor Parcel Maps to compile a list of the Assessor's Parcels which will be valid for each fiscal year. Determine acreage of all parcels.
- 1.4 Database Management:** Create automated parcel database that will include information for all parcels. Data will include Assessor Parcel Number and corresponding tract, lot and unit number, acreage, building square footage, building permit issuance date and situs address.

Task 2 Classification of Property

This task involves application of the Rate and Method of Apportionment of Special Taxes to determine the appropriate special tax classification for each parcel located in the CFD and includes the following subtasks:

- 2.1 Exempt Property:** Identify all property owned by public agencies or entities otherwise exempt from the special tax and classify as exempt property.

- 2.2 Taxable Property:** Identify all taxable properties and classify each as "Developed Property" or "Undeveloped Property." Assign each "Developed Property" to the appropriate special tax classification.

Task 3 Financial Analysis

This task involves calculating and apportioning the Special Tax Requirement and includes the following subtasks:

- 3.1 Determine Special Tax Requirement:** Assist Client with the calculation of the Special Tax A Requirement and Special Tax B Requirement.
- 3.2 Determine Special Tax Rates:** Based on tax classifications and special tax requirement, compute the current fiscal year Special Tax A and Special Tax B for all classifications of taxable property.

Task 4 Report Preparation

This task includes the preparation of an Annual Special Tax Report containing the findings of the financial analysis and an explanation of the methodology employed to apportion the special taxes. Included in the report is a list of the special tax levy for each Assessor's Parcel.

Task 5 Enrollment of Special Taxes

This task involves submitting the special tax levy on or before August 10 of each year, or such other date specified by the County of San Bernardino to the Auditor-Controller, for inclusion on the consolidated property tax bills. The special tax levy will be submitted on magnetic tape or other media as specified by the County.

Task 6 Delinquent Property Owner Research

This task involves the review and research of County records to determine which parcels are delinquent in the payment of property and special taxes, and includes the following subtasks:

- 6.1 Semi-Annual Delinquent Special Tax Report:** Review special tax payment information from the County of San Bernardino. Determine which parcels are delinquent and the corresponding amount of delinquent special taxes. Prepare report summarizing the amount of delinquent special taxes.
- 6.2 Collection of Delinquent Special Taxes:** Assist Client with the development of procedures to cure delinquent special taxes. Assist with the preparation of demand letters as necessary.

Task 7 Roll Changes and Adjusted Property Tax Bills

This task involves monitoring any changes to the secured tax roll which necessitate new or adjusted property tax bills. This task includes the calculation of new or adjusted bills and the preparation of requests to the County to prepare such bills.

Task 8 Responses to Property Owner Questions

This task involves the provision of information to individuals and other interested parties regarding the amount and calculation of the special tax.

Task 9 Annual Reporting/Disclosure

This task involves assisting Client in the preparation of special tax disclosure documents pursuant to Section 1102.6b of the Civil Code and Section 53340.2 of the Government Code (as amended by SB 1464).

EXHIBIT B
FEE SCHEDULE

EXHIBIT B

**MELLO-ROOS SPECIAL TAX ADMINISTRATION
COMMUNITY FACILITIES DISTRICT NO. 2016-2
OF THE CITY OF MONTCLAIR**

BUDGET

The proposed budget for Tasks 1 - 9 in the Scope of Work is time and materials, not to exceed \$3,500 per fiscal year. The \$3,500 represents a maximum amount not to be exceeded for Tasks 1 - 9, subject to the limitations identified below, unless otherwise agreed upon by the City of Montclair (the "Client").

Consultant shall charge the following hourly rates for services related to the Scope of Work.

Managing Director	\$200/Hour
Vice President	\$195/Hour
Manager	\$170/Hour
Senior Associate	\$150/Hour
Associate	\$135/Hour
Senior Analyst	\$125/Hour
Analyst	\$115/Hour
Research Assistant	\$ 90/Hour

Monthly progress payments will be made by Client upon presentation of invoice by Consultant providing details of services rendered and expenses incurred. At Client's request services in addition to those identified in the Scope of Work may be provided if the total fee to complete the Tasks selected is less than the associated budget. Alternatively, if the selected Tasks can be completed for less than the amount budgeted, only the hours actually expended will be billed.

In addition to fees for services, Client shall reimburse Consultant for travel, copying, courier, facsimile, telephone expenses, data services, materials, and other out-of-pocket expenses, as noted elsewhere in this Agreement, in an amount not to exceed \$250 annually.

LIMITATIONS

The preceding professional fees and hourly rates apply for a 12 month period from execution of the Agreement and are subject to a cost-of-living and/or other appropriate increase every 12 months thereafter. Consultant generally reviews its professional fees and hourly rates annually and, if appropriate, adjusts them to reflect increases in seniority, experience, cost-of-living, and other relevant factors. Consultant shall notify Client in advance of any such increase.

The proposed budget of \$3,500 is based on the administration of parcels in CFD No. 2016-2 as of fiscal year 2015-2016. If additional property is annexed into CFD No. 2016-2, it is understood that augmentation to the proposed budget would be required for future years.

DTA has assumed that the Client will (i) provide DTA with a copy of all building permits issued within CFD No. 2016-2. Additional services other than those necessary to amend errors on the part

Exhibit B to Agreement No. 16-34

of Consultant are not covered by the budget listed above. As for Task 7, detailed written responses or formal meetings with property owners to resolve disputes will be classified as Additional Work and billed at hourly rates listed above.

AGREEMENT NO. 16-35

A REIMBURSEMENT AGREEMENT

Between

CITY OF MONTCLAIR
a California Municipal Corporation

and

MAPLE MULTI-FAMILY LAND CA, L.P.
a Delaware Limited Partnership

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made this _____ day of March, 2016, by and between the CITY OF MONTCLAIR, a California Municipal Corporation (the "City"), and MAPLE MULTI-FAMILY LAND CA, L.P., a Delaware limited partnership (the "Applicant").

RECITALS

This Agreement is made with respect to the following facts.

A. The Applicant is the owner of that certain real property ("Property") located within the City of Montclair, County of San Bernardino, California. The Property is more particularly described as an area of approximately 6.74 gross acres in size and is located on the southwest corner of Monte Vista Ave. and Arrow Highway, Montclair, CA. The Property is further described in Exhibit "A" attached hereto and incorporated herein by reference.

B. The Property is located adjacent to the boundaries of the North Montclair Downtown Specific Plan approved by the City Council on May 15, 2006 by Resolution No. 06-2628 ("Specific Plan"). The Applicant is contemplating the development of this Property and would like to develop this site in accordance with the provision of the North Montclair Downtown Specific Plan. The project will consist of construction of approximately 213-288 residential units.

C. The City of Montclair is also contemplating certain amendments to the Specific Plan and wishes to coordinate such amendments with the Applicant.

D. In order to contemplate development of the proposed project pursuant to the standards in the North Montclair Downtown Specific Plan, the Specific Plan will require amendment and related environmental review. The amendment to the Specific Plan and environmental review shall be referred to collectively as the "Project."

E. To provide the City with the needed expertise and information necessary for the City's preparation of an amendment to the Specific Plan and the necessary environmental review concerning the Project, it is necessary for the City to access the services of certain outside land use planning, environmental, legal, and other experts for the Project ("Consultants").

F. As a condition of the City's consideration for amendment to the North Montclair Downtown Specific Plan, the Applicant has agreed to reimburse the City for a portion of the Consultants' costs and expenses related to the Applicant's Project in the manner and amounts set forth in this Agreement. The Applicant's reimbursement of City under this Agreement will ensure that the City has the necessary resources to diligently and efficiently process certain conditions related to the Applicant's Project.

TERMS

NOW, THEREFORE, in consideration of the following mutual promises and agreements, City and Applicant agree as follows:

1. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City and the Applicant have entered into this Agreement. The City and the Applicant each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. City to Retain Consultants. As a necessary and indispensable part of the Conditions of Approval of Applicant's proposed Project and use of the Property, the City shall retain the services of Consultants as set forth in Section 4 of this Agreement to provide advice as the City may deem necessary in its reasonable and sole discretion. The contemplated general scope of work of the Consultants for the Project is attached hereto as Exhibit "B" and incorporated herein by reference, but the City reserves the right, in its reasonable and sole discretion, to amend the scope of work as it deems necessary and appropriate to the City's proper review and consideration of the Applicant's Project. However, if such amendment will cause, or will be likely to cause, the Estimated Costs (as defined in Section 5) to be exceeded, the City shall promptly notify Applicant thereof in writing (and in no event, less than five (5) business days after the City becomes aware of such information).

The Applicant agrees that, notwithstanding the Applicant's reimbursement obligations under this Agreement, Consultants shall be the contractors exclusively of the City and not of the Applicant. Except for those disclosures required by law, including, without limitation, the Public Records Act, all conversations, notes, memoranda, correspondence and other forms of communication by and between the City and its Consultants which are deemed under law to be privileged and confidential shall not be subject to disclosure to the Applicant. The Applicant agrees that it shall have no claim to, nor shall it assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work product produced by the Consultants which is privileged or confidential under law; provided, however, the Applicant shall be provided with photocopies of all such documents or work product for which it has reimbursed the City which are not so privileged or confidential under law.

3. Applicant to Cooperate with Consultants. The Applicant agrees to cooperate in good faith with the Consultants. The Applicant agrees that it will instruct its agents, employees, consultants, contractors and attorneys to reasonably cooperate with the Consultants and to provide all necessary documents or information reasonably requested of them by the City and/or the Consultants; provided, however, that the foregoing shall not require the disclosure of any documents or information of the Applicant which by law is privileged, proprietary, confidential, and exempt from disclosure under the Public Records Act.

4. City's Selection of Consultants. The City proposes to retain the

following as Consultants pursuant to Section 2 of this Agreement, but shall have the right to retain any additional consultants or sub-consultants pursuant to this Agreement: (1) Dudek (Environmental), (2) Best Best Kreiger, Attorneys at Law (BBK) (legal advisors on environmental and Community Facilities District), (3) David Taussig & Associates (Community Facilities District), and (4) Moule & Polyzoides, Urbanists and Architects (Land Use Consultants-related to applicants Project only). If and when the City determines to retain such additional consultants or subconsultants, it shall first so inform the Applicant of its intent to do so, and include with such information the terms and conditions (including fees) upon which such parties will be retained. The Applicant shall have five (5) business days in which to review and approve or disapprove the retention of such parties (approval shall not be unreasonably withheld or conditioned). Provided that the Applicant has not notified the City of its disapproval as to the retention of any such parties on or prior to the expiration of such five (5) business day period, the City may thereafter retain such parties upon the terms and conditions submitted to the Applicant. In the event that the Applicant reasonably objects to any such retention, the Applicant's objection shall state the reasons for its objection in sufficient detail that the City shall be able to address, and potentially remedy, such objection if the City so determines. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such objection) communicate in order to resolve any such objection, but if the parties are unable to resolve such objection, and if the City thereafter retains the disputed party, the Applicant shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to any Consultants.

5. Applicant's Reimbursement of Fees, Costs and Expenditures. The Applicant shall reimburse the City the actual fees, costs and other expenditures incurred by the City relative to the Consultant costs ("Costs") related to the Applicant's Project, subject to the terms and conditions of this Agreement. Applicant further understands and agrees that the Costs may include Costs incurred by the City for its proposed amendments to the Specific Plan. As a result, the Costs are fairly apportioned in accordance with the percentages and are based upon the rates provided by Consultants attached hereto as Exhibit "C" to this Agreement.

The City has preliminarily reviewed the scope of work required and has estimated the aggregate Costs for all consultants to be approximately One Hundred Sixty Eight Thousand Dollars (\$168,000) ("Estimated Costs"). Upon the execution of this Agreement and before May 2, 2016, the Applicant shall submit a deposit in the amount of Fifty Thousand (\$50,000) as the initial amount to cover the Estimated Costs, which amount the City shall separately account for in a Project deposit account ("Deposit Account").

When the Consultants invoice the City for fees, costs, and expenditures associated with the Project, they shall concurrently provide duplicate invoices to the Applicant, who shall have five (5) business days in which to review and approve or disapprove the same (approval shall not be unreasonably withheld or conditioned). Provided that the Applicant has not notified the City of its disapproval of any invoices on or prior to the expiration of such five (5) business day period, the City may draw upon

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the Deposit Account to make the required payments. In the event that the Applicant reasonably objects to any invoice, the Applicant's objection shall state the reasons for its objection in sufficient detail that the City shall be able to address, and potentially remedy, such objection if the City so determines. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such objection) communicate in order to resolve any such objection, but if the parties are unable to resolve such objection, and if the City thereafter pays the disputed amounts, the Applicant shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to any Consultants. At any time that the Deposit Account drops below Twenty Thousand Dollars (\$20,000), the City may make written demand on Applicant to replenish the Deposit Account to Fifty Thousand Dollars (\$50,000), and Applicant shall submit the required amount of funds to the Deposit Account within ten (10) calendar days. In the event Applicant fails to make any required deposit, City shall so notify Applicant in writing and Applicant shall have ten (10) additional calendar days to replenish the Deposit Account. Thereafter, City shall have the right to consider Applicant's Project applications as withdrawn and cease processing such applications.

The City shall not exceed the Estimated Costs without first informing the Applicant in writing regarding the need for additional services which cause the Costs to exceed the Estimated Costs ("Excess Costs"), and shall provide appropriate documentation of such Excess Costs in sufficient detail that the Applicant shall be able to reasonably evaluate such costs. Notwithstanding anything herein to the contrary, the City shall not incur Excess Costs without the express prior written consent of Applicant. The City shall also inform the Applicant in writing prior to amending any scope of services, or adding services, to be provided by the Consultants, and shall provide appropriate documentation of such amended or additional scope of work in sufficient detail that the Applicant shall be able to reasonably evaluate such amended scope, and approve or disapprove the same, in writing. The Applicant's obligation to reimburse the City for the Excess Costs shall be contingent upon the City providing Applicant with written notice of the amendment of the scope of services to be performed by any Consultants and the estimated cost thereof as described hereinabove prior to the commencement of work and Applicant's approval thereof, as herein provided. Once the City provides such notice and obtains such approval, then Applicant shall be obligated to pay the Excess Costs in the same manner as the Estimated Costs provided above, including, but not limited to, replenishing the Deposit Account; provided, however, in the event that the Applicant reasonably disapproves any Excess Costs, the Applicant shall provide the City with a written objection not later than five (5) business days after receipt of the City's written notice stating the reasons for its disapproval in sufficient detail that the City shall be able to address. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such disapproval) communicate in order to resolve any such objection, but if the parties are unable to resolve such disapproval, and if the City thereafter pays any disputed Excess Costs, the Applicant shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to any Consultants. Upon such termination by the Applicant, the City shall have the

right to consider Application withdrawn and no longer obligated to process such Application.

The City shall maintain accurate records of invoices received from, and payments made to, the Consultants resulting from the Project, and will provide a payment summary to Applicant within a reasonable time upon request. In the event that excess funds remain in the Deposit Account upon conclusion of the Project and after all final payments to the Consultants have been made, the City agrees to refund that excess amount, if any, to Applicant within fifteen (15) calendar days of final payment to the Consultants. Alternatively, if the Costs of the services of the Consultants exceed the Estimated Costs and Excess Costs, if any, then, subject to the terms and conditions of this Agreement, Applicant shall remain obligated to pay for all such Costs. Applicant shall pay any such amount within ten (10) calendar days of written demand for payment by City.

6. **Conditions of Approval.** Applicant and City understand and agree that Applicants' land use entitlements concerning the Property are subject to the Conditions of Approval granted by the Planning Commission and City Council and entering into said Reimbursement Agreement will aid the Applicant in satisfying certain Conditions of Approval of Applicant's proposed project

7. **Term.** The term of this Agreement shall commence on the date that this Agreement is approved by the City Council and fully executed by the parties, and shall terminate when all services required for the Project by Consultants have been completed to the City's reasonable satisfaction and the Applicant has satisfied all of its obligations under this Agreement. For purposes of this section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse the City for Estimated Costs and Excess Costs, whether or not paid by the City to Consultants prior to the date of termination, which accrue prior to the date of termination. The Applicant's obligation to reimburse (Section 5) the City as provided in this Agreement shall survive the termination of this Agreement pursuant to Section 8.

8. **Early Termination.**

8.1 **By City.** The City may, in its reasonable and sole discretion, terminate this Agreement prior to the term set forth in Section 6 above, without cost or liability to the City, upon thirty (30) days' prior written notice to the Applicant in the event that Applicant either: (1) fails to satisfy any material obligation of this Agreement (provided, however, if such failure is capable of being timely remedied without prejudice to the City, and is timely remedied by the Applicant, such failure shall be deemed to be waived); or (2) materially fails to reasonably prosecute its application(s) for the Project. In the event of such termination, Applicant shall be deemed to have withdrawn its application(s) for the Project.

8.2 **By Applicant.** The Applicant may, in its reasonable and sole discretion, terminate this Agreement prior to the end of the term set forth in Section 7 above, upon thirty (30) days' prior written notice to the City; provided, however, that Applicant's right to so terminate this Agreement is expressly contingent upon Applicant

satisfying both of the following: (1) Applicant shall give City written notice withdrawing its application(s) for the Project; and (2) Applicant shall satisfy all of its obligations under this Agreement up through the effective date of termination. For purposes of this section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse the City for Estimated Costs and Excess Costs incurred prior to the date of termination, whether or not paid by the City to Consultants prior to the date of termination.

Within two (2) working days following either the City's decision to terminate this Agreement or the City's receipt of written notice indicating the Applicant's decision to terminate this Agreement, the City shall notify all Consultants and instruct them to cease work on the Project. Consultants shall also be instructed to bill the City for any services completed prior to the date of termination. Upon such termination by the Applicant, the City shall have the right to consider the Application withdrawn and no longer obligated to process such Application.

9. Assignability. This Agreement may not be assigned by either party without the prior and express written consent of the other party, which consent shall not be unreasonably withheld; provided, however, Applicant shall have the right to assign the Agreement to any entity that assumes ownership of the Property and in which Applicant or an affiliate thereof has an ownership interest. In determining whether to approve a request by the Applicant to assign this Agreement, the City may consider, among other things, the proposed assignee's financial status and commitment to the Project. Any attempted assignment of this Agreement not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee.

10. No Oral Modifications. This Agreement represents the entire understanding of the City and the Applicant, and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, only by a writing signed by both the authorized representatives of both the City and the Applicant. All modifications to this Agreement must be approved by the City Council of the City of Montclair.

11. Binding Upon Successors. This Agreement and each of its terms shall be binding upon the City, the Applicant and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

12. Legal Challenges. Nothing herein shall be construed to require City to defend any third party claims and suits challenging any action taken by the City with regard to any procedural or substantive aspect of the City's approval of development of the Property, the environmental process, or the proposed Project. The Applicant may, however, in its sole and absolute discretion, appear as real party in interest in any such third party action or proceeding, and in such event, it and the City shall defend such action or proceeding and the Applicant shall be responsible and reimburse the City for whatever reasonable legal fees and expert or other costs, in their entirety, including reasonable attorneys' fees, which may be incurred by the City in defense of such action or proceeding. The City shall have the absolute right to retain such legal counsel as the

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City deems necessary and appropriate, and the Applicant shall reimburse the City for any and all reasonable attorneys' fees and expert or other costs incurred by the City as a result of such third-party action or proceeding; provided, however, the Applicant may, at any time, notify the City in writing of its decision to terminate such reimbursement obligation and, thereafter, the City may choose, in its sole discretion, to defend or not defend such third party action or proceeding. In the event that the City decides not to continue the defense of such third party action or proceeding, Applicant shall be obligated to reimburse City for any and all reasonable costs, fees, penalties or damages associated with dismissing the action or proceeding. In the event that the City decides to continue the defense of such third party action or proceeding, Applicant shall have no further obligation to reimburse City for its attorneys' fees and expert or other costs.

It is acknowledged by the parties that City is entering into this Agreement to assist Applicant in processing the Project. Applicant understands and agrees that City would not have entered this Agreement if it were to be liable in damages for breach of this Agreement. As a result, Applicant understands and agrees that City shall not be liable for damages to Applicant or any successor for breach of this Agreement or for any cause of action that arises from this Agreement, except to the extent of any amounts in the Deposit Account that remain unencumbered and shall be refunded to Applicant. Applicant's remedies shall be limited to termination of this Agreement, subject to the obligations contained in Section 8.2.

13. Attorneys' Fees. In the event that any action or proceeding, including arbitration, is commenced by the City to establish the validity of this Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its reasonable attorneys' fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys' fees on appeal.

14. Jurisdiction and Venue. This Agreement is executed and is to be performed in Montclair, San Bernardino County, California. Any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of San Bernardino, California. The City and the Applicant each consent to the personal jurisdiction of the court in any such action or proceeding.

15. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable, the City and the Applicant both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

16. Headings. The headings of each Section of this Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each Section.

17. Representations of Authority. Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants to the other party that all necessary legal prerequisites to that party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.

18. Notices. Notices required under this Agreement shall be sent to the following:

If to City:

Edward C. Starr, City Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763
Fax: 909-621-1584

If to the Applicant:

E. Garth Erdossy
Maple Multi-Family Land CA, L.P.
c/o Trammell Crow Residential
5790 Fleet St., Suite 140
Carlsbad, CA 92008
gerdossy@tcr.com

Notices given pursuant to this Agreement shall be deemed received as follows:

- (1) If sent by United States Mail - five (5) calendar days after deposit into the United States Mail, first class postage prepaid.
- (2) If by facsimile - upon transmission and actual receipt by the receiving party.
- (3) If by express courier service or hand delivery - on the date of receipt by the receiving party.

The addresses for notices set forth in this Section 18 may be changed upon written notice of such change to either the City or the Applicant, as appropriate.

CITY OF MONTCLAIR
a California Municipal Corporation

By: _____
Mayor

ATTEST:

By: _____
Andrea M. Phillips, Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Diane E. Robbins, City Attorney

**Maple Multi-Family Land CA, L.P.
a Delaware Limited Partnership**

By: Maple Multi Family Development, L.L.C.
a Texas limited liability company
its: general partner

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

ATTEST:

By: _____
(Insert Name and Title)

APPROVED AS TO FORM:

(Insert Name)

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY A

A.P.N.: 1009-021-04

A.P.N.: 1009-021-07

A.P.N.: 1009-021-10

A.P.N.: 1009-021-11

A.P.N.: 1009-021-12

A.P.N.: 1009-021-19

1

EXHIBIT "B"
SCOPE OF SERVICE FOR CONSULTANTS

DUDEK

Services related to preparation and supply consulting services related to preparation of a supplemental environmental impact report.

BEST BEST KREIGER Attorneys at Law (BBK)

BBK will supply legal services related to advice and review of the Supplemental Environmental Impact Report. BBK will provide documents, advise and review of related to development of Community Facilities District for the project proposed by Maple Multi Family Land, CA, L.P

DAVID TAUSSIG & ASSOCIATES

Services related to formation of the rate and method and implementation of a Community Facilities District

MOULE & POLYZOIDES

Services related to design and architectural review of the project proposed by Maple Multi Family Land CA, L.P.

EXHIBIT "C"
BILLING PERCENTAGES FOR EACH CONSULTANTSUBJECT TO
REIMBURSEMENT

DUDEK

Fifty percent of the costs incurred by Dudek for environmental consulting work.

DAVID TAUSSIG & ASSOCIATES

One hundred percent of the costs incurred by David Taussig & Associates relating to formation of a Community Facilities District for Applicant's project.

BEST BEST & KRIEGER LLP (BBK)

Fifty percent of the costs incurred by BBK for legal advice associated with the environmental documentation.

One hundred percent of the costs incurred by BBK for legal advice association with formation of the Community Facilities District and the Operations and Maintenance Agreement.

MOULE & POLYZOIDES

One hundred percent of the cost associated with design and architectural review of Applicant's project.

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION
NO. 16-3117 ADJUSTING THE EQUIVALENT
DWELLING UNIT MONTHLY FEE FOR SEWER
SERVICE

DATE: April 18, 2016

SECTION: RESOLUTIONS

ITEM NO.: 1

FILE I.D.: SEW125

DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: The Inland Empire Utilities Agency (IEUA) provides sewage treatment services to the City of Montclair and six other regional contracting agencies. The IEUA Board of Directors has approved a rate increase for the fee charged to the contracting agencies for this sewage treatment. This higher rate is effective July 1, 2016. In addition to the rate increase approved by IEUA, the City's sewer maintenance costs are expected to increase over the next year. In order to cover the cost of the rate increase by IEUA and the higher City maintenance costs, the City must change the rates charged to its customers. The rate may be changed by a Resolution adopted by the City Council.

BACKGROUND: IEUA provides sewage treatment for seven regional contracting agencies, including the City of Montclair. Treatment costs are passed on to City residents and businesses via a monthly fee based on an equivalent dwelling unit (EDU). Annual adjustments in these rates may be made, provided that the rates have been approved by the City Council, under the requirements of Proposition 218.

On June 17, 2013, the City Council of the City of Montclair conducted a public hearing in accordance with Proposition 218 requirements. As a result of that hearing process, rate caps were approved by the City Council for a five-year period. For fiscal year 2016/2017, the maximum rate established by the City Council was \$25.29 per equivalent dwelling unit per month.

The sewer rate is composed of three parts:

Part 1 Fee – Inland Empire Utilities Agency Sewage Treatment Fee (Maximum rate under June 17, 2013, rate cap hearing-\$17.39)

Part 2 Fee – City Sewer Maintenance Cost (Maximum rate under June 17, 2013, rate cap hearing-6.40)

Part 3 Fee – City Sewer Replacement Cost (Maximum rate under June 17, 2013, rate cap hearing-\$1.50)

Prepared by:



Fiscal Impact
Finance Review:



Proofed by:



Reviewed and
Approved By:



The rate proposed for fiscal year 2016/2017 is as follows:

<u>Effective Date</u>	<u>Part 1</u>	<u>Part 2</u>	<u>Part 3</u>	<u>Rate</u>
July 1, 2016	\$17.39	\$6.40	\$1.50	\$25.29

FISCAL IMPACT: Adoption of Resolution No. 16-3117 would permit the City to collect the sufficient funds to pay the higher treatment rate being assessed by IEUA, pay for increased maintenance costs, and continue to contribute to the sewer replacement fund. Should the City not adopt Resolution No. 16-3117, it would still be obligated to pay the increased IEUA treatment rate and find some other source of funds for sewer maintenance, or operate the sewer program at a deficit.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 16-3117 adjusting the equivalent dwelling unit monthly fee for sewer service.

RESOLUTION NO. 16-3117

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MONTCLAIR SETTING
THE EQUIVALENT DWELLING UNIT RATE
FOR SEWER SERVICE**

WHEREAS, on June 17, 2013, the City Council of the City of Montclair conducted a public hearing to discuss maximum sewer rates for the five-year period commencing July 1, 2013, and terminating June 30, 2018; and

WHEREAS, the City Council of the City of Montclair approved the rates as recommended by staff; and

WHEREAS, the maximum monthly rate to be charged per equivalent dwelling unit (EDU) for the period commencing July 1, 2016, and ending June 30, 2017, was set as follows:

Part 1 Fee – Inland Empire Utilities Agency Treatment Fee	\$ 17.39
Part 2 Fee – City Sewer Maintenance Fund	6.40
Part 3 Fee – City Sewer Replacement Fund	<u>1.50</u>
Total Maximum Monthly EDU Rate	<u>\$25.29</u>

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby set the monthly EDU rate as follows:

Part 1 Fee – Inland Empire Utilities Agency Treatment Fee	\$ 17.39
Part 2 Fee – City Sewer Maintenance Fund	6.40
Part 3 Fee – City Sewer Replacement Fund	<u>1.50</u>
Total Maximum Monthly EDU Rate	<u>\$25.29</u>

APPROVED AND ADOPTED this XX day of XX, 20XX.

Mayor

ATTEST:

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 16-3117 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, 20XX, and that it was adopted by the following vote, to-wit:

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

Andrea M. Phillips
Deputy City Clerk

**MINUTES OF THE CITY OF MONTCLAIR REAL
ESTATE COMMITTEE MEETING HELD ON
MONDAY, MARCH 21, 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 5:56 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; Associate Planner Gutierrez; Public Works Director Hudson; Deputy City Clerk Phillips

III. APPROVAL OF MINUTES

Minutes of the Real Estate Committee of January 19, 2016, were approved.

IV. PUBLIC COMMENT – None

V. DISCUSSION ITEMS

A. DEVELOPMENT PROPOSALS — PROJECTS NOT OFFICIALLY SUBMITTED FOR FORMAL CITY REVIEW:

1. PROPOSAL TO CONSTRUCT A 23-UNIT RESIDENTIAL APARTMENT PROJECT ON .65 ACRES AT 8949 MONTE VISTA AVENUE (FORMERLY GREASE MONKEY). PROJECT WOULD CONSIST OF A SINGLE THREE-STORY, U-SHAPED BUILDING WITH TUCK UNDER PARKING WITHIN THE BOUNDARIES OF THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN REQUIRING PLANNING COMMISSION AND CITY COUNCIL APPROVAL—CFC-MONTCLAIR, LLC

City Planner Diaz noted this project will be located on a remnant parcel north of the Paseos and south of Montclair Fire Station No. 1. He reviewed the site plan with the Committee, noting the project would be mostly flats and a few two-story townhomes with square footage ranging from 635 to 1075.

Deputy City Manager Staats noted there would be a requirement for a parking plan and the creation of a Community Facilities District, and the incorporation of Covenants, Conditions, and Restrictions (CC&Rs).

Council Member Dutrey asked who the management company will be. City Planner Diaz stated that is not known at this time.

Deputy City Manager Staats noted the developer will be required to provide that information to the City before operations begin.

Council Member Dutrey asked if a zone change will be required.

City Planner Diaz and Deputy City Manager Staats concurred that no zone change is required.

Mayor Eaton voiced his support of the project.

Council Member Dutrey noted his concerns are related to lighting and security due to issues seen at the Paseos, and stated his support of the project otherwise.

2. PROPOSAL TO CONVERT AN EXISTING 27,385 SF SINGLE STORY MEDICAL OFFICE BUILDING INTO A MEDICAL CONDOMINIUM AT 4950 SAN BERNARDINO STREET (NORTH SIDE OF SAN BERNARDINO STREET BETWEEN MONTE VISTA AVENUE AND FREMONT AVENUE)—CGM DEVELOPMENT

THE FOLLOWING ENTITLEMENTS ARE REQUESTED:

- a. **Precise Plan of Design to upgrade the building façade of the existing medical office building, landscaping, and parking lot site improvements**
- b. **Tentative Tract Map No. 19713 to subdivide air space for a 26-unit office condominium with CC&Rs**
- c. **Conditional Use Permit to subdivide air space for a 26-unit office condominium**
- d. **Variance — relief from MMC Sections 11.88.050.D and 11.88.050.E regarding the provision of separate utility services to each unit (electrical, plumbing, sewer, HVAC)**

Associate Planner Gutierrez reviewed plans for the project that include site improvements such as restriping the parking lot, landscaping, a new wall, and exterior enhancements. She noted the developer is also requesting approval for a tract map to allow the office building to be converted to office condominiums. She noted the developer has also inquired about acquiring properties in the nearby vicinity, so this project may be a catalyst for future growth and development in that area.

City Planner Diaz noted the developer is also working closely with Monte Vista Water District to landscape around the water pump in front of the subject site.

B. UPDATE ON PROPOSED MODIFICATIONS TO THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN TO EXPAND BOUNDARIES AND OTHER

PROJECTS WITHIN THE BOUNDARIES OF THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN

Deputy City Manager Staats noted Trammel Crowe Residential was successful in acquiring much of the property generally located on the west of Monte Vista Avenue south of Arrow Highway, but could not obtain the absolute corner parcel due to issues between the property owner and a tenant. The developer is now talking with staff about participating in the cost of Supplemental Environmental Impact Report for the amended North Montclair Downtown Specific Plan.

Council Member Dutrey asked if the developer has prepared a site plan.

Deputy City Manager Staats stated the developer had already drawn up a site plan for the project excluding the corner parcel.

The Committee expressed its support for the project and directed staff to continue working with the developer to include the project in the NMDSP.

C. DISTRIBUTION OF DRAFT REQUEST FOR PROPOSALS (RFP) FOR A GENERAL PLAN UPDATE

City Planner Diaz presented the draft RFP, noting the Committee is welcome to propose recommendations for any additional requirements that they would like to see.

Council Member Dutrey inquired whether there would be a fiscal impact analysis incorporated into the General Plan.

City Planner Diaz noted that could be incorporated but is not necessarily something that would be part of the RFP process.

Council Member Dutrey noted he would like to see staff analyze the fiscal impact related to police and fire services for new proposed land uses.

Deputy City Manager Staats noted the state may be changing the law related to general plan elements, and that it should be noted in the RFP to make the consultants aware of those possible changes that may alter the requirements of the project.

Council Member Dutrey asked when the Housing Element will be updated.

Community Development Director Lustro advised the plan does not need to be updated until 2021.

D. DISTRIBUTION OF DRAFT ORDINANCE ESTABLISHING STANDARDS FOR LED SIGNS

Community Development Director Lustro noted this item was prepared at the request of an auto dealer in the City. YESCO was retained by the City to prepare the draft LED sign specifications. He noted the ordinance

allows for flexibility in case future amendments are needed related to LED signs in the Montclair Place district.

Council Member Dutrey requested samples of non-freeway-oriented LED signs that had been developed.

Community Development Director Lustro stated he would provide some pictures.

E. DISCUSSION OF PROPOSED INTERIOR IMPROVEMENTS/FOOD COURT RELOCATION AT MONTCLAIR PLACE

Community Development Director Lustro stated CIM has submitted their proposed layout for the new relocated food court in the mall, which includes a request for a Conditional Use Permit (CUP) to allow for the sale of alcoholic beverages within the food court. He noted the California Department of Alcoholic Beverage Control (ABC) has indicated that it would support this use if the tenants provide table service to deliver alcohol in the controlled beverage seating area.

The Committee reviewed the proposed plan and discussed the request for a CUP for on-site sale of alcohol. They also discussed CIM's plan to create two patio areas for proposed anchor restaurants on either side of the Moreno Street Market Bridge entrance.

The Committee expressed support for the proposed plans.

F. DISCUSSION REGARDING STREET IMPROVEMENTS AT VACANT PROPERTY ON THE SOUTHWEST CORNER OF HOLT BOULEVARD AND CENTRAL AVENUE

Deputy City Manager Staats reported that the developer expressed that they do not believe that the Brooks Street improvements should be their responsibility. Discussion ensued related to potential options for negotiating with the developer related to performing the street improvements.

Council Member Dutrey recommended staff continue discussions with the developer related to its obligation to perform street improvements.

G. OTHER ITEMS – None.

VII. ADJOURNMENT

At 6:45 p.m., Council Member Dutrey adjourned the Real Estate Committee.

Submitted for Real Estate Committee approval,



Andrea Phillips, Deputy City Clerk

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
APRIL 4, 2016, AT 8:54 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 8:54 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 March 21, 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 March 21, 2016.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

At 8:55 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 9:12 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Raft stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 9:12 p.m., Mayor Pro Tem Raft adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager