

**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

June 6, 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](http://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 (CC), Successor Agency Board of Directors (SA), Montclair Housing Corporation Board of Directors (MHC), Montclair Housing Authority Commissioners (MHA), and Montclair Community Foundation Board of Directors (MCF)

**II. INVOCATION**

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

**III. PLEDGE OF ALLEGIANCE**

**IV. ROLL CALL**

**V. PRESENTATIONS**

- A. Introduction of New Employees

**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**

- A. Second Reading — Consider Adoption of 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 [CC]

**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 May 2, 2016 [CC/SA/MHC/MHA/MCF]

**B. Administrative Reports**

- |  |    |
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| 2. Consider Approval of Warrant Registers and Payroll Documentations [CC]  | 11 |
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| 9. Consider Setting a Public Hearing to Consider Ordinance No. 16-958 Amending the Montclair Municipal Code Related to the Retention of Unclaimed Property on Monday, June 20, 2016, at 7:00 p.m. in the City Council Chambers [CC]  | 18 |
| 10. Consider Setting a Public Hearing to Consider Adoption of Successor Agency Resolution No. 16-04 Approving Agreement No. 16-51, a Purchase and Sale Agreement Between the Successor Agency and Bill Fox Regarding the Property Generally Located in the Southeast Quadrant of Ramona Avenue and State Street [SA] | 22 |
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17.	Consider Authorizing the Expenditure of \$3,200 from the Crime Prevention Fund to Purchase Educational and Promotional Materials for Distribution During Community Events [CC]	82
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5. Consider Adoption of Successor Agency Resolution No. 16-03 Approving Agreement No. 16-50, a Right of Entry Agreement Between the Successor Agency to the City of Montclair Redevelopment Agency and Bill Fox Regarding the Property Generally Located in the Southeast Quadrant of Ramona Avenue and State Street [SA] 203

**IX. PULLED CONSENT CALENDAR ITEMS**

**X. RESPONSE - None**

**XI. COMMUNICATIONS**

A. City Department Reports

1. Human Services Department
  - a. Summer Programs

B. City Attorney

1. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation  
*Gonzalez v. Montclair*
2. Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with Designated Labor Negotiator Edward C. Starr

Agency: City of Montclair

Employee Associations: Management  
Montclair City Confidential Employees Association  
Montclair General Employees Association  
Montclair Fire Fighters Association  
Montclair Police Officers Association

- C. City Manager/Executive Director
- D. Mayor/Chairman
- E. Council/SA Board/MHC Board/MHA Commissioners/MCF Board
- F. Committee Meeting Minutes *(for informational purposes only)*
  - 1. Minutes of the Public Works Committee Meeting of April 21, 2016 [CC] 213
  - 2. Minutes of the Personnel Committee Meeting of May 2, 2016 [CC] 240
- XII. COUNCIL/MHC WORKSHOP**
  - A. Fiscal Year 2016–17 Preliminary Budget Review  
*(The City Council/MHC Board of Directors may consider continuing this item to an adjourned meeting on Monday, June 13, 2016, at 6:00 p.m. in the City Council Chambers.)*
- XIII. ADJOURNMENT OF SUCCESSOR AGENCY BOARD OF DIRECTORS, MONTCLAIR HOUSING CORPORATION BOARD OF DIRECTORS, MONTCLAIR HOUSING AUTHORITY COMMISSIONERS, AND MONTCLAIR COMMUNITY FOUNDATION BOARD OF DIRECTORS**  
*(At this time, the City Council will meet in Closed Session regarding pending litigation and labor negotiations.)*
- XIV. CLOSED SESSION ANNOUNCEMENTS**
- XV. ADJOURNMENT OF CITY COUNCIL**

*The next regularly scheduled joint City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation meeting will be held on Monday, June 20, 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 City Clerk's Office 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, 5111, Benito Street, Montclair, California, on June 2, 2016.*

## AGENDA REPORT

<b>SUBJECT:</b> CONSIDER ADOPTION OF 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  <u>SECOND READING</u>	<b>DATE:</b> June 6, 2016  <b>SECTION:</b> PUBLIC HEARINGS  <b>ITEM NO.:</b> A  <b>FILE I.D.:</b> SEW125  <b>DEPT.:</b> PUBLIC WORKS
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**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.

The IEUA 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.

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

<u>Adopted IEUA Rate</u>	<u>Proposed City Rate</u>	<u>Effective Date</u>
\$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

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

**FISCAL IMPACT:** Failure to adopt the recommended fee increases would result in a negative fiscal impact to the sewer fund as the City would still be responsible for payment of the increased fees to IEUA whenever a call for funds is made by IEUA.

**RECOMMENDATION:** Staff recommends the City Council consider adoption of 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.

**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.

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Mayor

ATTEST:

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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

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Andrea M. Phillips  
Deputy City Clerk

## AGENDA REPORT

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**SUBJECT:** CONSIDER RECEIVING AND FILING OF  
TREASURER'S REPORT

**DATE:** June 6, 2016  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 1  
**FILE I.D.:** FIN520  
**DEPT.:** ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending April 30, 2016, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Treasurer's Report for the period ending April 30, 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 April 30, 2016.

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Prepared by:

*Janet Kuelbeck*

Fiscal Impact  
Finance Review:

*Donald L. Parker*

Proofed by:

*Andrea M Phillips*

Reviewed and  
Approved By:

*Donald L. Parker*

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# AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF WARRANT  
REGISTERS AND PAYROLL DOCUMENTATIONS

**DATE:** June 6, 2016

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 2

**FILE I.D.:** FIN540

**DEPT.:** ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of the Warrant Registers and Payroll Documentations.

**BACKGROUND:** Mayor Pro Tem Raft has examined the Warrant Registers dated May 16, 2016, and June 6, 2016, and the Payroll Documentations dated May 1, 2016, and May 15, 2016, and recommends their approval.

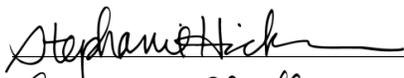
**FISCAL IMPACT:** The Warrant Register dated May 16, 2016, totals \$1,166,098.44. The Warrant Register dated June 6, 2016, totals \$1,573,033.03. The Payroll Documentation dated May 1, 2016, totals \$626,358.48 gross, with \$435,494.93 net being the total cash disbursement. The Payroll Documentation dated May 15, 2016, totals \$582,536.31 gross, with \$410,104.28 net being the total cash disbursement.

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

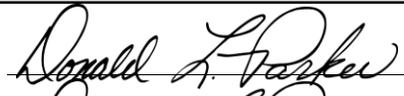
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Prepared by:



Fiscal Impact  
Finance Review:



Proofed by:



Reviewed and  
Approved By:



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# AGENDA REPORT

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**SUBJECT:** CONSIDER RECEIVING AND FILING OF  
TREASURER'S REPORT

**DATE:** June 6, 2016  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 3  
**FILE I.D.:** FIN510  
**DEPT.:** SUCCESSOR RDA

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**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 April 30, 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 April 30, 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 April 30, 2016.

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Prepared by:

*Michael Piotrowski*

Fiscal Impact  
Finance Review:

*Donald L. Parker*

Proofed by:

*Andrea M. Phillips*

Reviewed and  
Approved By:

*Donald L. Parker*

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# AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF WARRANT REGISTER    **DATE:** June 6, 2016  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 4  
**FILE I.D.:** FIN530  
**DEPT.:** SUCCESSOR RDA

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**REASON FOR CONSIDERATION:** The City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending April 30, 2016, pursuant to state law.

**BACKGROUND:** Vice Chairperson Raft has examined the Successor to the Redevelopment Agency Warrant Register dated 04.01.16–04.30.16 in the amounts of \$26,259.32 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 April 30, 2016.

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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>

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## AGENDA REPORT

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**SUBJECT:** CONSIDER RECEIVING AND FILING OF  
TREASURER'S REPORT

**DATE:** June 6, 2016  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 5  
**FILE I.D.:** FIN525  
**DEPT.:** MHC

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending April 30, 2016, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Treasurer's Report for the period ending April 30, 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 April 30, 2016.

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Prepared by:

*Michael Piotrowski*

Fiscal Impact  
Finance Review:

*Donald L. Parker*

Proofed by:

*Andrea M. Phillips*

Reviewed and  
Approved By:

*Donald L. Parker*

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## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF WARRANT REGISTER    **DATE:** June 6, 2016  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 6  
**FILE I.D.:** FIN545  
**DEPT.:** MHC

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending April 30, 2016, pursuant to state law.

**BACKGROUND:** Vice Chairperson Raft has examined the Warrant Register dated 04.01.16-04.30.16 in the amount of \$80,031.28 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 April 30, 2016.

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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>

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## AGENDA REPORT

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**SUBJECT:** CONSIDER RECEIVING AND FILING OF  
TREASURER'S REPORT

**DATE:** June 6, 2016  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 7  
**FILE I.D.:** FIN525  
**DEPT.:** MHA

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**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 April 30, 2016, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Treasurer's Report for the period ending April 30, 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 April 30, 2016.

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Prepared by:

*Michael Piotrowski*

Fiscal Impact  
Finance Review:

*Donald L. Parker*

Proofed by:

*Andrea M. Phillips*

Reviewed and  
Approved By:

*Donald L. Parker*

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## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF WARRANT REGISTER    **DATE:** June 6, 2016  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 8  
**FILE I.D.:** FIN545  
**DEPT.:** MHA

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**REASON FOR CONSIDERATION:** The Montclair Housing Authority Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending April 30, 2016, pursuant to state law.

**BACKGROUND:** Vice Chairperson Raft has examined the Warrant Register dated 04.01.16-04.30.16 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

**RECOMMENDATION:** Vice Chairperson Raft recommends the Montclair Housing Authority Board of Directors approve the Warrant Register for the period ending April 30, 2016.

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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>

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## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER SETTING A PUBLIC HEARING TO CONSIDER ORDINANCE NO. 16-958 AMENDING THE MONTCLAIR MUNICIPAL CODE RELATED TO THE RETENTION OF UNCLAIMED PROPERTY ON MONDAY, JUNE 20, 2016 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS	<b>DATE:</b> June 6, 2016 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 9 <b>FILE I.D.:</b> PDT360 <b>DEPT.:</b> POLICE
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**REASON FOR CONSIDERATION:** Section 2080.4 of the California Civil Code provides the authority to the legislative body of a city to adopt an ordinance for the care, restitution, sale, and destruction of unclaimed property in the possession of the police department. In addition to sale by auction, the section allows a city to retain such property if the city determines the property is needed for public use.

Although Montclair Municipal Section 7.16.040 does allow unclaimed property to be sold at auction or transferred to certain charitable organizations, it does not allow for the retention of unclaimed property for public use. Staff recommends the Montclair Municipal Code be amended to include this option for the disposition of such property. A revision to an ordinance requires a public hearing and consideration by the City Council.

**BACKGROUND:** "Unclaimed property" means any property found by members of the Police Department or any property brought to the Police Department by others, the owner of which property is unknown. Property held as evidence, dangerous or deadly weapons, narcotics or poisonous drugs, explosives, or any property of any kind whatsoever, the possession of which is prohibited by law, is excluded from the definition. Any person who finds property valued at one hundred dollars or more, and who is unable to locate the owner, must turn the property over to the Police Department. The law enforcement agency is responsible for the secure storage and disposition of the property.

The California Civil Code provides guidance for the disposition of property in the event the owner of the property is unknown. The Civil Code provides the authority to the legislative body of any city to adopt an ordinance for the care, restitution, sale, or destruction of unclaimed property in the possession of its law enforcement agency. In addition to the destruction and sale at auction of such property, the Civil Code allows the legislative body to adopt an ordinance which allows for the retention of unclaimed property which is needed for public use.

Montclair Municipal Code Section 7.16.040 requires unclaimed property to be sold at auction or destroyed if not sold. Proceeds of auction sales are deposited with the City Treasurer for credit to the General Fund. The section allows suitable unclaimed

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Prepared by: <u>          <i>M. DeMoet</i>          </u>	Fiscal Impact	Finance Review: <u>          <i>Donald L. Parker</i>          </u>
Proofed by: <u>          <i>Judy Ryan</i>          </u>	Reviewed and	Approved By: <u>          <i>M. DeMoet</i>          </u>

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property in the form of operable bicycles and usable toys to be turned over to the probation officer, the Welfare Department of the County, or to charitable and nonprofit organizations. The section does not allow for the retention of unclaimed property for public use. Staff believes having this option available would enhance the City's ability to provide services to the community while reducing General Fund expenditures.

**FISCAL IMPACT:** Adoption Ordinance No. 16-958 would result in a positive fiscal impact to the General Fund by converting unclaimed property to public use.

**RECOMMENDATION:** Staff recommends the City Council set a public hearing to consider adoption of Ordinance No. 16-958 amending Section 7.16.040 and adding Section 7.16.50 to the Montclair Municipal Code related to the retention of unclaimed property for public use on Monday, June 20, 2016 at 7:00 p.m. in the City Council Chambers.

**ORDINANCE NO. 16-958**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA AMENDING SECTION 7.16.040 TO CHAPTER 7.16 OF THE MONTCLAIR MUNICIPAL CODE, AND ADDING SECTION 7.16.050 TO CHAPTER 7.16 OF THE MONTCLAIR MUNICIPAL CODE, RELATED TO UNCLAIMED PROPERTY**

WHEREAS, Sections 2080, et. Seq. of the California Civil Code set forth provisions governing lost and unclaimed property, including the statutory authority for a City to provide by ordinance for the sale, retention for public use, or destruction of unclaimed property;

WHEREAS, Chapter 7.16 of the Montclair Municipal Code currently sets forth the procedures to be followed concerning the sale and disposition of unclaimed property in the possession of the police department;

WHEREAS, Section 2080.4 of the California Civil Code allows a City to retain unclaimed property for public use; and

WHEREAS, it is determined to be in the best interests of the City and its residents to amend Chapter 7.16 of the Montclair Municipal Code to allow the City to retain unclaimed property for public use.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION I. Amendment to Code.** Section 7.16.040 of Title 7 of the Montclair Municipal Code is hereby repealed and replaced as follows:

Section 7.16.040 Disposition of property unclaimed by owner.

If, after the period of time specified in Section 7.16.030, the owner fails to redeem the unclaimed property, or if the owner fails to pay the police department's reasonable costs in the storage and care of the property as required by Section 7.16.020, the police chief shall cause such property to be transferred to the City's purchasing agent who may, in compliance with Section 2080.4 of the California Civil Code, either sell the property at public auction or retain the property for a public use; provided, however, that if the property shall consist of lost and unclaimed bicycles or toys, the purchasing agent may cause such property to be donated to one or more nonprofit tax-exempt charitable organizations which agree, in writing, to donate such property in turn to needy children of the City or county; and provided further, that if the property shall consist of money, it shall be deposited in the general fund of the City. Upon the transfer of such unclaimed property to the purchasing agent for the City, the owner of such property shall not thereafter be entitled to redeem the property.

**SECTION II. Addition to Code.** Section 7.16.050 of Title 7 of the Montclair Municipal Code is hereby added as follows:

Section 7.16.050 Disposition of funds and unsold property.

A. Proceeds of unclaimed property sold at public action. After the auction is completed, the City's purchasing agent shall deliver the proceeds of the auction to the City's finance director for deposit in the general fund of the City. No officers or employees of the City or their immediate family may bid on any property advertised and offered for sale at public auction.

B. Property unsold at public auction. Any unclaimed property advertised and offered for sale at public auction but not sold, and not suitable for appropriation to the use of the City, shall be deemed to be of no value, and shall be disposed of in a manner as may be determined by the City's purchasing agent. No such property shall be given or sold to officers or employees of the City or their immediate family.

**SECTION III. Severability.**

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

**SECTION IV. Effective Date.**

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

**SECTION V. 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, 2016.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
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. 16-958 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2016, and finally passed not less than five (5) days thereafter on the XX day of XX, 2016, by the following vote, to-wit:

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

\_\_\_\_\_  
Andrea M. Phillips  
Deputy City Clerk

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER SETTING A PUBLIC HEARING TO CONSIDER ADOPTION OF SUCCESSOR AGENCY RESOLUTION NO. 16-04 APPROVING AGREEMENT NO. 16-51, A PURCHASE AND SALE AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND BILL FOX REGARDING THE PROPERTY GENERALLY LOCATED IN THE SOUTHEAST QUADRANT OF RAMONA AVENUE AND STATE STREET	<b>DATE:</b> June 6, 2016 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 10 <b>FILE I.D.:</b> SAG080 <b>DEPT.:</b> SUCCESSOR RDA
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**REASON FOR CONSIDERATION:** The Successor Agency and the Oversight Board to the former City of Montclair Redevelopment Agency approved a proposal submitted by Mr. Bill Fox for the acquisition and development of the former Redevelopment Agency-owned property generally located in the southeast quadrant of Ramona Avenue and State Street. In order to approve the disposition of the property, it is recommended that the Successor Agency conduct a public hearing pursuant to Section 33431 of the Health and Safety Code.

The Successor Agency Board of Directors is requested to consider setting a public hearing for June 20, 2016, to consider adoption of Successor Agency Resolution No. 16-04 approving Agreement No. 16-51, a Purchase and Sale Agreement between the Successor Agency and Mr. Fox.

A copy of proposed Agreement No. 16-51 is attached for the Successor Agency Board of Directors' review and consideration. Successor Agency Resolution No. 16-04 is currently being drafted and is not available for review at this time.

**BACKGROUND:** The Redevelopment Dissolution Law (ABX 1 26) requires successor agencies to dispose of former redevelopment agency-owned assets as determined pursuant to a Long Range Property Management Plan (LRPMP) approved by the Department of Finance. The Successor Agency property located in the southeast quadrant of Ramona Avenue and State Street was listed as an asset on the former City of Montclair Redevelopment Agency's LRPMP slated for sale.

The Ramona Avenue property was purchased by the Redevelopment Agency in 1999 for the Ramona Avenue Grade Separation project. The property was originally 5.4 acres. A portion of the property was sold to Monte Vista Water District for a blending station and a portion of the site was used for the grade separation. As a consequence of the grade separation project and the sale of the land to the Monte Vista Water District, a remnant parcel of approximately 2.65 acres was created. The property is zoned MIP Manufacturing.

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

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The Oversight Board authorized staff to have the appraisal of the Ramona Avenue property updated at their meeting conducted on July 8, 2015. Department of Finance (DOF) approval of the action to update the appraisal was secured and the completed appraisal was received by staff on October 6, 2015.

The Successor Agency Board of Directors and the Oversight Board requested staff issue a Request for Proposals (RFP) to determine interest in purchase and development of the site. Staff issued the RFP's on November 11, 2015 with submission of responses due to the Successor Agency on January 19, 2016. Two responses to the RFP's were received. The responses to the Request for Proposals were evaluated according to criteria established in the RFP.

On March 7, 2016, the Successor Agency approved the proposal submitted by Mr. Bill Fox for disposition of the property located in the southeast quadrant of Ramona Avenue and State Street. The Oversight Board approved the selection of the proposal submitted by Mr. Fox on March 9, 2016. Both bodies approved the proposal submitted by Mr. Fox subject to consideration of a Purchase and Sale Agreement between the Successor Agency and Mr. Fox.

Successor Agency Counsel prepared the Purchase and Sale Agreement for the subject site and negotiations regarding the agreement have been completed. The Purchase and Sale Agreement is ready for consideration by the Successor Agency Board of Directors. In order to consider the Purchase and Sale Agreement it is recommended that the Successor Agency conduct a public hearing pursuant to Section 33431 of the Health and Safety Code.

It should be noted that actions of the Successor Agency to must also be approved by the Oversight Board.

**FISCAL IMPACT:** The cost to publish a legal notice regarding consideration of a Purchase and Sale Agreement between the Successor Agency and Mr. Bill Fox is approximately \$500. The publication cost would be an expense charged to the Redevelopment Agency Trust.

**RECOMMENDATION:** Staff recommends that the Successor Agency Board of Directors set a public hearing for June 20, 2016 at 7:00 pm to consider adoption of Successor Agency Resolution No. 16-04, a Resolution of the Successor Agency of the City of Montclair Redevelopment Agency approving Agreement No. 16-51, a Purchase and Sale Agreement between the City of Montclair Successor Agency and Mr. Bill Fox regarding the property generally located on the southeast quadrant of Ramona Avenue and State Street.



**CITY OF MONTCLAIR**

**NOTICE OF PUBLIC HEARING ON PROPOSED AGREEMENT NO. 16-51, A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AND BILL FOX REGARDING PROPERTY GENERALLY LOCATED IN THE SOUTHEAST QUADRANT OF RAMONA AVENUE AND STATE STREET**

**NOTICE IS HEREBY GIVEN** that the Successor Agency to the City of Montclair Redevelopment Agency Board of Directors will conduct a public hearing on Monday, June 20, 2016, at 7:00 p.m. in the City of Montclair City Council Chambers, 5111 Benito Street, Montclair, California, to consider Agreement No. 16-51, a Purchase and Sale Agreement by and between the Successor Agency to the City of Montclair Redevelopment Agency and Bill Fox concerning property generally located in the southeast quadrant of Ramona Avenue and State Street. The Agreement involves disposition of the property pursuant to the Long Range Property Management Plan for the former City of Montclair Redevelopment Agency that was approved by the Oversight Board to the former City of Montclair Redevelopment Agency on November 13, 2013 and approved by the Department of Finance on February 12, 2015.

Any person interested in the above proceeding may appear at the time and place listed above to testify in favor of or in opposition to this item. Any written correspondence regarding this matter must be sent to the attention of the Successor Agency Secretary, 5111 Benito Street, Montclair, California, 91763. A copy of proposed Agreement No. 16-51 may be inspected at the Office of the Successor Agency Secretary located at the City of Montclair City Hall, 5111 Benito Street, Montclair, California, before the public hearing.

If you contest the item listed above in court, you may be limited to challenging only those issues you or someone else cited during the public hearing described in this Notice or documented in written correspondence delivered to the Successor Agency to the City of Montclair Redevelopment Agency at, or prior to, the public hearing. Furthermore, you must exhaust any administrative remedies prior to litigating the action of the Successor Agency to the City of Montclair Redevelopment Agency.

Dated: Monday, June 6, 2016

Publish: Friday, June 10, 2016  
Friday, June 17, 2016

  
\_\_\_\_\_  
Andrea M. Phillips, Secretary  
Successor Agency to the City of  
Montclair Redevelopment Agency

# **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

**SELLER:** Successor Agency to the City of Montclair  
Redevelopment Agency

**BUYER:** Bill Fox

**DATED:** \_\_\_\_\_, 2016

**(Southeast Quadrant of Ramona Avenue and State Street)**

**BASIC TERMS**

Buyer: Bill Fox

Buyer's Address: Bill Fox  
450 E. Foothill Blvd.  
Pomona, CA 91767  
Tel. (909) 920-9962 Ext. 222  
Fax: (909) 624-1380

City: The City of Montclair

Closing Date (or Closing) Estimated to occur by 210 calendar days after the Effective Date, but not later than the Outside Date

Designated Improvements: A concrete, tilt-up building consisting of not less than 42,300 square feet. The Real Property, as improved by the Designated Improvements, shall have an estimated market value of not less than \$5,000,000, as further described in the Option Agreement

Disposition Deed: A grant deed in the form of Exhibit B hereto

Effective Date: \_\_\_\_\_, 2016 [the date as of which this Agreement has been signed by representatives of both parties]

Escrow Holder: Fidelity National Title, National Commercial Services  
21680 Gateway Center Drive, Suite 110  
Diamond Bar, CA 91765  
Direct: (909) 978-3019  
Fax: (909) 860-6329  
Attention: Mary Lou Adame, Escrow Officer  
Email: Marylou.adame@fnf.com  
(or another escrow holder mutually acceptable to Buyer and Seller)

Option Agreement An agreement in the form of Exhibit D hereto

Outside Date: 225 calendar days after the Effective Date

Planning Commission Contingency Date: 180 calendar days after the Effective Date

Purchase Price: One Million Five Hundred Twenty Nine Thousand Five Hundred Dollars (\$1,529,500.00)

Real Property: That property described in Exhibit A hereto; the subject property is sometimes referred to as APN 1012-141-18

Seller: Successor Agency to the City of Montclair Redevelopment Agency

Seller's Address: 5111 Benito Street  
Montclair, California 91763  
Attention: Marilyn Staats  
Tel. (909) 625-9412  
Email: mjstaats@cityofmontclair.org

Soil and Title Contingency  
Date: 60 calendar days after the Effective Date

Title Company: Fidelity National Title, National Commercial Services  
1300 Dove Street  
Newport Beach, CA 92660  
Tel: (800) 633-6467  
Direct: (949) 221-4763  
Attention: Curtis Taplin, Title Officer  
Email: ctma@fnf.com  
(or another title insurer mutually acceptable to Buyer and Seller)

Will Serve Contingency Date: 120 calendar days after the Effective Date

**PURCHASE AND SALE AGREEMENT  
AND  
JOINT ESCROW INSTRUCTIONS**

This **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** ("Agreement") is made and entered into as of \_\_\_\_\_, 2016 (the "Effective Date") by and between Seller and Buyer.

**RECITALS**

**A.** Seller is the fee owner of that real property which is legally described on Exhibit A attached hereto and made a part hereof (the "Real Property"). The Real Property is unimproved.

**B.** Seller has offered to sell to Buyer the Real Property described herein for the price and subject to the terms set forth below. Buyer has considered the offer by Seller and agrees to buy from Seller the Real Property, as more specifically described below.

**C.** In addition to the Purchase Price, a material consideration to Seller in agreeing to sell the Real Property to Buyer pursuant to this Agreement and but for which Seller would not have agreed to enter into this Agreement or sell the Real Property to Buyer is the assurance by Buyer to Seller that Buyer will make the Designated Improvements to the Real Property.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

**1. Purchase and Sale.** Seller hereby agrees to sell the Real Property to Buyer, and Buyer hereby agrees to purchase the Real Property from Seller, on the terms and conditions set forth in this Agreement. The term Real Property is defined collectively as the following:

(a) The fee interest in the Real Property to be conveyed by a grant deed in the form of the Disposition Deed; and

(b) All personal property, equipment, supplies, and fixtures owned by Seller and located at the Real Property.

**2. Payment of Consideration.** As consideration for the sale of the Real Property from Seller to Buyer, Buyer shall, at the Closing (as defined below), pay to Seller the Purchase Price for the Real Property. Upon payment of the Purchase Price to Seller, the disposition of such moneys by Seller is a matter with which Buyer is not concerned.

**3. Escrow and Independent Consideration.**

(a) Opening of Escrow. For the purposes of this Agreement, the escrow ("Escrow") shall be deemed opened ("Opening of Escrow") on the date that Escrow Holder receives a copy of this Agreement fully executed by Buyer and Seller. Buyer and Seller shall use their best efforts to cause the Opening of Escrow to occur on or before five (5) business days after the Effective Date. Escrow Holder shall promptly notify Buyer and Seller in writing of the date of the Opening of Escrow. Buyer and Seller agree to execute, deliver and be bound by any reasonable or

customary supplemental escrow instructions or other instruments reasonably required by Escrow Holder to consummate the transaction contemplated by this Agreement; provided, however, that no such instruments shall be inconsistent or in conflict with, amend or supersede any portion of this Agreement. If there is any conflict or inconsistency between the terms of such instruments and the terms of this Agreement, then the terms of this Agreement shall control. Without limiting the generality of the foregoing, no such instruments shall extinguish any obligations imposed by this Agreement or any other agreement between Seller and Buyer.

(b) Independent Consideration. Within three (3) days after the Effective Date, Buyer shall deliver to Seller Five Thousand and No/100 Dollars (\$5,000.00) as non-refundable independent consideration (the "Independent Consideration"). The Independent Consideration has been bargained for and agreed to as consideration for Seller's execution and delivery of this Agreement and for the rights and privileges granted to Buyer herein, including any and all rights granted to Buyer to terminate this Agreement under the circumstances provided for herein. Notwithstanding anything to the contrary contained in this Agreement, the Independent Consideration shall be non-refundable in all events, except for: (i) Seller's default hereunder, (ii) the failure of the Oversight Board to approve the sale of the Real Property as provided under this Agreement, and (iii) actions by the California Department of Finance which prevent the disposition of the Real Property to Buyer as provided under this Agreement. If the Closing occurs, a credit shall be applied to the Purchase Price based upon payment of the Independent Consideration.

(c) Closing. For purposes of this Agreement, the "Closing" or "Closing Date" shall be the date the Disposition Deed is recorded pursuant to applicable law in the county in which the Real Property is located. Unless changed in writing by Buyer and Seller, the Closing shall occur on the Closing Date, or as soon thereafter as the conditions precedent to closing are satisfied pursuant to Sections 6 and 7 of this Agreement. The parties acknowledge that, if conditions precedent have been satisfied pursuant to Sections 6 and 7 of this Agreement prior to 210 ten calendar days after the Effective Date, the parties may proceed to a Closing that occurs prior to the 210<sup>th</sup> calendar day after the Effective Date. If the Closing has not, for any reason, occurred by the Outside Date, then either Buyer or Seller may terminate this Agreement by delivering written notice to the other at any time after the outside Closing Date; provided, however, that if either party is in default under this Agreement at the time of such termination, then such termination shall not affect the rights and remedies of the non-defaulting party against the defaulting party. Notwithstanding the foregoing portion of this Section 3, if the Closing occurs prior to delivery of a termination notice by either party, then neither party shall have the right to terminate this Agreement pursuant to this Section 3(c).

**4. Seller's Delivery of Real Property and Formation Documents.** Within ten (10) days after the Effective Date, Seller shall deliver to Buyer the following items (collectively, the Property Documents"):

(a) Such proof of Sellers' authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company consistent with the terms of this Agreement, including without limitation approval of the Oversight Board of the sale of the Real Property by Seller to Buyer

(b) Copies of all plans, consulting reports, permits, surveys and inspections for improvements done by the City with respect to the Real Property that constitute public records;

provided that any such information as so provided shall be provided without warranty and without any representations (including without limitation regarding accuracy, completeness or suitability).

In addition, Seller shall cause Escrow Holder to obtain and deliver to Buyer a Natural Hazard Report as provided for under Sections 1102 and 1103 of the California Civil Code (the "Natural Hazard Report") on or before the date which is five (5) days prior to the Soil and Title Contingency Date.

**5. Buyer's Right of Entry.** From and after the Opening of Escrow through the earlier to occur of the termination of this Agreement or the Closing Date, or as otherwise agreed in writing by Seller prior to the time entry is effected, Buyer and Buyer's employees, agents, consultants and contractors shall have the right to enter upon the Real Property during normal business hours, provided reasonable prior notice has been given to Seller.

(a) Investigation of the Real Property. In addition to the foregoing, the Buyer shall have the right, at its sole cost and expense, prior to the Closing Date, to engage its own environmental consultant (the "Environmental Consultant") to make such investigations as Buyer deems necessary or appropriate, including any "Phase 1" or "Phase 2" investigations of the Real Property. If, based upon such evaluation, inspections, tests or investigation, Buyer determines that it, in its discretion, does not wish to proceed with purchase of the Real Property based upon the condition of the Real Property, Buyer may cancel this Agreement by giving written notice of termination to Seller on or before the Closing Date which specifically references this Section 5. If Buyer does not cancel this Agreement by the time allowed under this Section 5, Buyer shall be deemed to have approved the evaluation, inspections and tests as provided herein and to have elected to proceed with this transaction on the terms and conditions of this Agreement. Seller shall be provided a copy of all reports and test results provided by Buyer's Environmental Consultant promptly after receipt by the Buyer of any such reports and test results without any representation or warranty as to their accuracy or completeness.

Buyer shall bear all costs, if any, associated with restoring the Real Property to substantially the same condition prior to its testing by or on behalf of Buyer if requested to so do by Seller but excluding any latent defects or Hazardous Materials (as defined below) discovered by Buyer during its investigation of the Real Property. Buyer agrees to indemnify, protect, defend (with counsel satisfactory to Seller) and hold Seller and the Real Property free and harmless from and against all costs, claims, losses, liabilities, damages, judgments, actions, demands, attorneys' fees or mechanic's liens arising out of or resulting from any entry or activities on the Real Property by Buyer, Buyer's agents, contractors or subcontractors and the contractors and subcontractors of such agents, but in no event shall the indemnity of this Section include the discovery of pre-existing conditions by Buyer or any such liabilities, costs, etc. arising from the negligence or willful misconduct of Seller and/or its consultants. The indemnity obligations of Buyer set forth in this Section 5(a) shall survive any termination of this Agreement or the Close of Escrow.

"Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the County, the State of California, regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health

and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §6901 et seq.

(b) No Warranties as To the Real Property. The physical condition and possession of the Real Property, is and shall be delivered from Seller to Buyer in an “as is” condition, with no warranty expressed or implied by Seller, including without limitation, the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Real Property for development purposes. In addition, Seller makes no representations, warranties or assurances concerning the Real Property, its suitability for any particular use or with regard to the approval process for entitlements as to the Real Property.

(c) Buyer Precautions after Closing. Upon and after the Closing, Buyer shall take all reasonable precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Real Property. Such precautions shall include compliance with all laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the state, the County, City, or any other political subdivision in which the Real Property is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over the Real Property (“Governmental Requirements”) with respect to Hazardous Materials.

## **6. Buyer’s Conditions Precedent and Termination Right.**

(a) Conditions Precedent. The Closing and Buyer’s obligation to consummate the purchase of the Real Property under this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, “Buyer’s Contingencies”), which are for Buyer’s benefit only.

(i) Title Review. Within ten (10) calendar days after the Opening of Escrow, but in no event later than the sixtieth (60<sup>th</sup>) day after the Effective Date, Seller shall cause the Title Company to deliver to Buyer a preliminary title report (the “Report”) describing the title to the Real Property, together with copies of the plotted easements and the exceptions (the “Exceptions”) set forth in the Report; provided that the cost of the Report shall be borne by Seller. Seller acknowledges that the Buyer’s Title Policy shall include an endorsement against the effect of any mechanics’ liens; Seller will provide such indemnity or other assurances as necessary to induce the Title Company to provide such endorsement. On or before the Soil and Title Contingency Date, Buyer shall have approved in writing, in Buyer’s sole discretion, any matters of title disclosed by the following (collectively, the “Title Documents”): (i) the Report; (ii) the Exceptions; (iii) the legal

description of the Real Property; (iv) the Option Agreement; and (iv) any survey Buyer desires to obtain at Buyer's sole cost and expense. Buyer shall have the same rights to approve or disapprove any exceptions to title that are not created by Buyer and that come into existence after issuance of the Report but prior to Closing. The rights set forth in the Option Agreement shall be deemed to be acceptable limitations upon title. Seller shall, on or before the Closing, remove all deeds of trust, mortgages, delinquent taxes and other monetary liens (but not the lien for any real property taxes or assessments not yet delinquent).

(ii) Buyer's Title Policy. On or before the Closing, the Title Company shall, upon payment (by Buyer) of the Title Company's premium, have agreed to issue to Buyer, a standard ALTA owner's policy of title insurance ("Buyer's Title Policy") in the amount of the Purchase Price showing fee title to the Real Property vested solely in Buyer and subject only to the (i) the standard, preprinted exceptions to Buyer's Title Policy; (ii) liens to secure payment of real estate taxes or assessments not yet delinquent; (iii) matters affecting the Real Property created by or with the written consent of Buyer; and (iv) those matters specifically approved in writing by Buyer. Buyer shall have the right, at its sole cost and expense, to obtain coverage beyond that offered by a standard ALTA policy (such as an owner's extended coverage ALTA policy); provided, however, that Buyer's ability to obtain such extended coverage shall not be a Buyer's Contingency and Buyer's obligations hereunder shall in no way be conditioned or contingent upon obtaining such extended coverage. Buyer shall have sole responsibility for obtaining, and bearing the cost of, any endorsements and for any survey or other matters required by the Title Company for such extended coverage.

In the event Buyer enters into a loan agreement to generate moneys to purchase the Real Property from Seller under this Agreement, Buyer and not Seller shall be responsible for the title insurance, closing costs and any other costs, fees or expenses in relation to Buyer obtaining such loaned moneys. The sale shall be all cash to Seller.

(iii) Physical and Legal Inspections and Studies. On or before Soil and Title the Contingency Date, Buyer shall have approved in writing, in Buyer's sole and absolute discretion, the results of any physical and legal inspections, investigations, tests and studies Buyer elects to make or obtain, including, but not limited to, investigations with regard to zoning, building codes and other governmental regulations; engineering tests; soils, seismic and geologic reports; environmental audits, inspections and studies; environmental investigation or other invasive or subsurface testing; and any other physical or legal inspections and/or investigations as Buyer may elect to make or obtain.

(iv) Natural Hazard Report. Seller shall cause the Escrow Holder to provide to Buyer prior to the Soil and Title Contingency Date the Natural Hazard Report described at Section 4 of this Agreement; provided that Buyer shall bear the cost to prepare such Natural Hazard Report.

(v) Property and Formation Documents. On or before the Soil and Title Contingency Date, Buyer shall have approved in writing, in Buyer's reasonable discretion, the terms, conditions and status of all of the Property Documents.

(vi) Delivery of Documents. Seller's delivery of all documents described in Section 8, below.

(vii) Representations and Warranties. All representations and warranties of Seller contained in this Agreement shall be materially true and correct as of the date made and as of the Closing.

(viii) Title Company Confirmation. The Title Company shall have confirmed that it is prepared to issue the Buyer's Title Policy consistent with the provisions of this Agreement.

(ix) Will Serve Letters. On or before the Will Serve Contingency Date, Buyer shall have obtained will serve approval letters as to water and other utility service availability to the Real Property.

(x) Planning Commission. On or before the Planning Commission Contingency Date, Buyer shall have obtained approval by the City Planning Commission for the development of a building consistent with that certain "Proposal for Property Purchase and Development" dated as of January 13, 2016 as made by Buyer to Seller, a copy of which is on file with the City Clerk of the City as a public record.

(xi) No Default. As of the Closing, Seller shall not be in default in the performance of any material covenant or agreement to be performed by Seller under this Agreement.

(b) Termination Right. Should any of Buyer's Contingencies not be met by the Outside Date, or if the Independent Consideration has not been delivered by Buyer to Seller by the time set forth therefor in Section 3(b), and Seller so informs Buyer, Buyer may, by written notice to Seller, terminate this Agreement. If this Agreement is so terminated, then (except to the extent expressly allocated to one party hereto by this Agreement) any escrow, title or other cancellation fees shall be paid by Buyer, unless Seller is in default hereunder, in which case Seller shall pay all such fees. If Buyer has not terminated this Agreement in writing ("Termination Notice") on or before 5:00 p.m. on the Monday preceding the scheduled Closing ("Termination Notice Deadline"), then all such Buyer's Contingencies shall be deemed to have been satisfied and this Agreement shall continue pursuant to its terms.

(c) Seller's Cure Right. Buyer shall notify Seller, in Buyer's Termination Notice, of Buyer's disapproval or conditional approval of any Title Documents. Seller shall then have the right, but not the obligation, to (i) remove from title any disapproved or conditionally approved Exception(s) (or cure such other title matters that are the basis of Buyer's disapproval or conditional approval of the Title Documents) within five (5) business days after Seller's receipt of Buyer's Termination Notice, or (ii) provide assurances reasonably satisfactory to Buyer that such Exception(s) will be removed (or other matters cured) on or before the Closing. With respect to any such Exception, it shall be sufficient for purposes hereof for Seller to commit in writing, within the applicable period, to remove such Exception at or before the Closing. Seller's failure to remove such Exception after committing to do so shall be a default hereunder. An Exception shall be deemed removed or cured if Seller furnishes Buyer with evidence that the Title Company will issue the Buyer's Title Policy, as defined herein, at the Closing deleting such Exception or providing an endorsement (at Seller's expense) reasonably satisfactory to Buyer concerning such Exception. If Seller cannot or does not remove or agree to remove any of the disapproved Exception(s) (or cure other matters) within such five (5) business day period, Buyer shall have three (3) business days after the expiration of such five (5) business day period to give Seller written notice that Buyer

elects to proceed with the purchase of the Real Property subject to the disapproved Title Document(s), it being understood that Buyer shall have no further recourse against Seller for such disapproved Title Exception(s).

7. **Seller's Conditions Precedent and Termination Right.** The Closing and Seller's obligations with respect to the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following condition precedent ("Seller's Contingencies"), which are for Seller's benefit only:

(a) **Completion of Title Review.** Seller shall have received written confirmation from Buyer on or before the Soil and Title Contingency Date that Buyer has completed its review of title and that the condition of title satisfactory.

(b) **Confirmation Concerning Site.** Seller shall have received written confirmation from Buyer on or before the Soil and Title Contingency Date that Buyer has reviewed the condition of the Real Property, including without limitation concerning Hazardous Materials, zoning and suitability, and approves the condition of the Real Property.

(c) **Confirmation Regarding Buyer's Title Policy.** Seller shall have received written confirmation from Buyer on or before the Soil and Title Contingency Date that Buyer has approved a pro forma title policy.

(d) **Delivery of Documents.** Buyer's delivery of all documents described in Section 9(a), below.

Should any of Buyer's Contingencies not be met by the Outside Date and Buyer has so informed Seller, Seller may, by written notice to Buyer, terminate this Agreement. If this Agreement is so terminated, then (except to the extent expressly allocated to one party hereto by this Agreement) any escrow, title or other cancellation fees shall be paid by Buyer.

8. **Seller's Deliveries to Escrow Holder.**

(a) **Seller's Delivered Documents.** At least one (1) business day prior to the Closing Date, Seller shall deposit or cause to be deposited with Escrow Holder the following items, duly executed and, where appropriate, acknowledged ("Seller's Delivered Items"):

(i) **Deed.** The Disposition Deed.

(ii) **Option Agreement.** The Option Agreement.

(iii) **FIRPTA/Tax Exemption Forms.** The Transferor's Certification of Non-Foreign Status in the form attached hereto as Exhibit C (the "FIRPTA Certificate"), together with any necessary tax withholding forms, and a duly executed California Form 593-C, as applicable (the "California Exemption Certificate").

(iv) **Hazard Disclosure Report.** Unless earlier delivered to Buyer, Seller shall cause Escrow Holder to obtain and deliver to Buyer, at Seller's cost, a Natural Hazard Report as provided for under Sections 1102 and 1103 of the California Civil Code (the "Natural Hazard Report") before the Closing.

(v) Possession of Real Property. Possession of the Real Property free of any tenancies or occupancy.

(vi) City. Such proof of Seller's authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company which are consistent with the terms of this Agreement.

(vii) Further Documents or Items. Any other documents or items reasonably required to close the transaction contemplated by this Agreement as determined by the Title Company.

(b) Failure to Deliver. Should any of Seller's Delivered Items not be timely delivered to Escrow, Buyer may, by written notice to Seller, terminate this Agreement; provided, however, that Buyer may (but shall not be obligated to) in such notice provide Seller with five (5) business days to deliver all of Seller's Delivered Items. If Buyer's notice provides Seller such five (5) business days to deliver Seller's Delivered Items, and if Seller's Delivered Items are not delivered within such period, then this Agreement shall automatically terminate without further action or notice. In the event of any such termination, any cash deposited by Buyer shall immediately be returned to Buyer. Under no circumstances shall Buyer have any responsibility or duty to pay consultants or real estate brokers retained by Seller, Seller being solely responsible in connection with any such contractual arrangements of Seller.

**9. Buyer's Deliveries to Escrow**. At least one (1) business day prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder the following, each duly executed and acknowledged, by Buyer as appropriate ("Buyer's Delivered Items"):

(a) Purchase Price. The Purchase Price, less the Independent Consideration theretofore paid to Seller, and such additional funds as are necessary to pay Buyer's closing costs set forth in Section 10(b) herein. In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code, as evidenced by the delivery at Closing of the California Exemption Certificate duly executed by Seller, Title Company shall withhold three and one-third percent (3-1/3%) of the Purchase Price on behalf of Buyer for payment to the California Franchise Tax Board in accordance with Section 11(b) hereof. In the event Seller is not exempt from such withholding or does not otherwise deliver the California Exemption Certificate at Closing, Buyer shall execute and deliver three (3) originals of California Form 593 to Title Company at or immediately after Closing.

(b) Change of Ownership Report. One (1) original Preliminary Change of Ownership Report.

(c) Final Escrow Instructions. Buyer's final written escrow instructions to close escrow in accordance with the terms of this Agreement.

(d) Authority. Such proof of Buyer's authority and authorization to enter into this Agreement and to consummate the transaction contemplated hereby as may be reasonably requested by Seller or the Title Company.

(e) Further Documents or Items. Any other documents or items reasonably required to close the transaction contemplated by this Agreement as determined by the Title Company.

**10. Costs and Expenses.**

(a) Seller's Costs. If the transaction contemplated by this Agreement is consummated, then Seller shall be debited for and bear the following costs: (i) costs and charges associated with the removal of encumbrances; (ii) Seller's share of prorations; and (iii) costs, if any, allocable to Seller under this Agreement and costs for such services as Seller may additionally request that Escrow perform on its behalf (which foregoing items collectively constitute "Seller's Costs and Debited Amounts").

(b) Buyer's Costs. If the transaction contemplated by this Agreement is consummated, then Buyer shall bear the following costs and expenses: (i) the Escrow Holder's fee; (ii) Buyer's share of prorations, (iii) the premium for an owner's policy of title insurance which, at the election of Buyer, will be an ALTA owner's extended coverage policy of title insurance and the cost for any survey required in connection with the delivery of an ALTA owner's extended coverage policy of title insurance; (iv) documentary recording fees, if any; (v) documentary transfer tax, if any; (vi) costs, if any, for such services as Buyer may additionally request that Escrow perform on its behalf; and (vii) any costs associated with Buyer borrowing money in order to pay to Seller the Purchase Price (collectively, "Buyer's Costs and Debited Amounts").

(c) Generally. Each party shall bear the costs of its own attorneys, consultants, and real estate brokers in connection with the negotiation and preparation of this Agreement and the consummation of the transaction contemplated hereby. Buyer represents to Seller that Buyer and not Seller shall be solely responsible for payment in connection with services of any consultants, finders or real estate brokers engaged by Buyer in connection with the purchase of the Real Property from the Seller. Seller represents to Buyer that Seller has not engaged the services of any consultants, finders or real estate brokers in connection with the sale of the Real Property to the Buyer.

**11. Prorations; Withholding.**

(a) All revenues (if any) and expenses relating to the Real Property (including, but not limited to, property taxes, utility costs and expenses, water charges and sewer rents and refuse collection charges) shall be prorated as of the Closing Date; provided that all delinquent taxes shall be satisfied at the expense of Seller. Not less than five (5) business days prior to the Closing, Seller shall deliver to Buyer a tentative schedule of prorations for Buyer's approval (the "Proration and Expense Schedule"). If any prorations made under this Section shall require final adjustment after the Closing, then the parties shall make the appropriate adjustments promptly when accurate information becomes available and either party hereto shall be entitled to an adjustment to correct the same. Any corrected or adjustment proration shall be paid promptly in cash to the party entitled thereto.

(b) In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code (the "Tax Code") as evidenced by the delivery to Buyer at Closing of the California Exemption Certificate duly executed by Seller, (i) Title Company shall withhold three and one-third percent (3-1/3%) of

the Purchase Price on behalf of Buyer at Closing for payment to the California Franchise Tax Board in accordance with the Tax Code, (ii) Buyer shall deliver three (3) duly executed copies of California Form 593 to Title Company at or immediately after Closing, (iii) two (2) copies of California Form 593 shall be delivered by Title Company to Seller, and (iv) on or before the 20<sup>th</sup> day of the month following the month title to the Real Property is transferred to Buyer (as evidenced by the recording of the Grant Deed), Title Company shall remit such funds withheld from the Purchase Price, together with one (1) copy of California Form 593 to the California Franchise Tax Board on behalf of Buyer. Buyer and Seller hereby appoint Title Company as a reporting entity under the Tax Code, authorized to withhold and remit the withholding tax contemplated under the Tax Code, together with such other documents required by the Tax Code (including, without limitation, California Form 593), to the California Franchise Tax Board.

**12. Closing Procedure.** When the Title Company is unconditionally prepared (subject to payment of the premium therefor) to issue the Buyer's Title Policy and all required documents and funds have been deposited with Escrow Holder, Escrow Holder shall immediately close Escrow in the manner and order provided below.

(a) Recording. Escrow Holder shall cause the Disposition Deed and the Option Agreement to be recorded pursuant to applicable law in the county in which the Real Property is located and obtain conformed copies thereof for distribution to Buyer and Seller.

(b) Disburse Funds. Escrow Holder shall debit or credit (as provided herein) all Buyer's Costs and Debited Amounts, Seller's Costs and Debited Amounts and General Expenses, prorate matters and withhold funds as provided herein. The Purchase Price, less any applicable debits or credits (as provided herein) shall be distributed by check payable to Seller unless Escrow Holder is instructed otherwise in writing signed by Seller (and, in such event, in accordance with such instructions). Escrow Holder shall disburse to City from moneys disbursed to Escrow Holder by Buyer the Building Permit Amount concurrent with Closing to be paid to an account designated by City or Seller in writing to Escrow Holder Seller authorizes Escrow Holder to request demands for payment and to make such payments from the Purchase Price (or such other funds, if any, as are advanced by Seller) to defray the cost of removing deeds of trust, liens and other encumbrances (but not for the Building Permit Amount or any other obligations of Buyer).

(c) Documents to Seller. Escrow Holder shall deliver to Seller a conformed copy of the Disposition Deed, the original Option Agreement, and documents, if any, recorded on behalf of any lender, as duly recorded among the official land records of the County of San Bernardino, and a copy of each other document (or copies thereof) deposited into Escrow by Buyer pursuant hereto.

(d) Documents to Buyer. Escrow Holder shall deliver to Buyer the original FIRPTA Certificate, the original California Exemption Certificate (as applicable), and a conformed copy of each of the Disposition Deed as duly recorded among the official land records of the County of San Bernardino, the Natural Hazard Report, a copy of the Option Agreement, and each other document (or copies thereof) deposited into Escrow by Seller pursuant hereto, including, without limitation, those documents referenced in Section 8.

(e) Title Company. Escrow Holder shall cause the Title Company to issue the Buyer's Title Policy to Buyer.

(f) Closing Statement. Escrow Holder shall forward to both Buyer and Seller a separate accounting of all funds received and disbursed for each party.

(g) Informational Reports. Escrow Holder shall file any information reports required by Internal Revenue Code Section 6045(e), as amended.

(h) Possession. Possession of the Real Property shall be delivered to Buyer at the Closing.

**13. Representations and Warranties.**

(a) Seller's Representations and Warranties. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Real Property, Seller makes the following representations and warranties as of the Effective Date and as of the Closing, each of which is material and is being relied upon by Buyer (and the truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder), and all of which are material inducements to Buyer to enter into this Agreement (and but for which Buyer would not have entered into this Agreement) and shall survive Closing; provided that each of the representations and warranties of Seller is based upon the information and belief of the City Manager of City:

(i) Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and, subject to the approval of the Oversight Board and, as may be applicable, the California Department of Finance, to consummate the transaction contemplated.

(ii) Subject to the approval of the Oversight Board and, as may be applicable, the California Department of Finance, all requisite action (corporate, trust, partnership or otherwise) has been taken by Seller in connection with entering into this Agreement and the instruments referenced herein; and, by the Closing, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby.

(iii) Subject to the approval of the Oversight Board and, as may be applicable, the California Department of Finance, the individual executing this Agreement and the instruments referenced herein on behalf of Seller has the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.

(iv) Neither the execution or delivery of this Agreement or the documents or instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement or the documents or instruments referenced herein or therein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, lease or other agreement or instrument to which Seller is a party or that affect the Real Property, including, but not limited to, any of the Title Documents or the Property Documents.

(v) There is no pending litigation nor, to the best of Seller's knowledge, threatened litigation, which does or will adversely affect the right of Seller to convey the Real Property. There are no claims which have been received by Seller that have not been disclosed to Buyer.

(vi) Seller has made no written or oral commitments to or agreements with any governmental authority or agency materially and adversely affecting the Real Property, or any part hereof, or any interest therein, which will survive the Closing.

(vii) There are no leases or rental agreements in effect as to the Real Property.

(viii) Seller is not in default of its obligations under any contract, agreement or instrument to which Seller is a party pertaining to the Real Property.

(ix) There are no mechanics', materialmen's or similar claims or liens presently claimed or which will be claimed against the Real Property for work performed or commenced for Seller or on Seller's behalf prior to the date of this Agreement.

(x) There are no undisclosed contracts, licenses, commitments, undertakings or other written or oral agreements for services, supplies or materials concerning the use, operation, maintenance, or management of the Real Property that will be binding upon Buyer or the Real Property after the Closing. There are no oral contracts or other oral agreements for services, supplies or materials, affecting the use, operation, maintenance or management of the Real Property.

(xi) There are not as of the Effective Date, nor will there be as of the Closing, any written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights or interest of any nature in and to the Real Property or any part thereof, and no person other than Buyer shall have any right of possession to the Real Property or any part thereof as of the Closing.

(xii) No person, excepting Seller, has possession or any rights to possession of the Real Property or portion thereof.

(b) Subsequent Changes to Seller's Representations and Warranties. If, prior to the Closing, Buyer or Seller should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Seller set forth herein incorrect or untrue in any respect (collectively, the "Seller Representation Matter"), then the party who has learned, discovered or become aware of such Representation Matter shall promptly give written notice thereof to the other party and Seller's representations and warranties shall be automatically limited to account for the Representation Matter. Buyer shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Seller if Buyer reasonably disapproves any such change. If Buyer does not elect to terminate this Agreement, Seller's representation shall be qualified by such Seller Representation Matter and Seller shall have no obligation to Buyer for such Seller Representation Matter.

(c) Buyer's Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Real Property, Buyer makes the following representations and warranties as of the date hereof and at and as of the Closing, each of which is material and is being relied upon by Seller (and the truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder), and all of which shall survive Closing:

(i) Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.

(ii) All requisite action has been taken by Buyer in connection with entering into this Agreement and the instruments referenced herein; and, by the Closing, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby.

(iii) The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

(iv) Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party or by which any of Buyer's properties are bound.

(d) Subsequent Changes to Buyer's Representations and Warranties. If, prior to the Closing, Seller or Buyer should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Buyer set forth herein incorrect or untrue in any respect (collectively, the "Buyer's Representation Matter"), then the party who has learned, discovered or become aware of such Buyer's Representation Matter shall promptly give written notice thereof to the other party and Buyer's representations and warranties shall be automatically limited to account for the Buyer's Representation Matter. Seller shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Buyer if Seller reasonably disapproves any such change. If Seller does not elect to terminate this Agreement, Buyer's representation shall be qualified by such Buyer's Representation Matter and Buyer shall have no obligation to Seller for such Buyer's Representation Matter.

**14. Fair Value Price.** Each of Buyer and Seller agree and acknowledge that the Purchase Price represents a fair value price for the Real Property. At such time as Buyer makes improvements to the Real Property, the costs for planning, designing, and constructing such improvements shall be borne exclusively by the Buyer and the Buyer shall construct or cause to be constructed such improvements in compliance with all the zoning, planning and design review requirements of the Montclair Municipal Code, and all nondiscrimination, labor standard, and wage rate requirements to the extent such labor and wage requirements are applicable.

Buyer, including but not limited to its contractors and subcontractors, shall be responsible to comply with Labor Code Section 1720, et seq., if applicable, and its implementing regulations, regarding the payment of prevailing wages (the "State Prevailing Wage Law"), if applicable, and, if applicable, federal prevailing wage law ("Federal Prevailing Wage Law" and, together with State Prevailing Wage Law, "Prevailing Wage Laws") with regard to the construction of improvements to the Real Property, but only if and to the extent such sections are applicable to the development of the Real Property. Insofar as the parties are in agreement that Buyer is paying a fair market price for the Real Property, the parties understand that the payment of prevailing wages will not be required.

In any event, Buyer shall be solely responsible for determining and effectuating compliance with the Prevailing Wage Laws, neither Seller nor City makes any final representation as to the applicability or non-applicability of the Prevailing Wage Laws to improvements to the Real Property, or any part thereof. Buyer hereby releases from liability, and agrees to indemnify, defend, assume all responsibility for and hold each of Seller and City, and their respective officers, employees, agents and representatives, harmless from any and all claims, demands, actions, suits, proceedings, fines, penalties, damages, expenses resulting from, arising out of, or based upon Buyer's acts or omissions pertaining to the compliance with the Prevailing Wage Laws as to the Real Property. This Section 14 shall survive Closing.

**15. General Provisions.**

(a) Condemnation. If any material portion of the Real Property shall be taken or appropriated by a public or quasi-public authority exercising the power of eminent domain, Buyer shall have the right, at its option, to (i) terminate this Agreement or (ii) proceed with the purchase of the Real Property and receive all of the award or payment made in connection with such taking.

(b) Notices. All notices, demands, requests or other communications required or permitted hereunder (collectively, "Notices") shall be in writing, shall be addressed to the receiving party as provided in the Basic Terms section above, and shall be personally delivered, sent by overnight mail (Federal Express or another carrier that provides receipts for all deliveries), sent by certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission (provided that a successful transmission report is received). All Notices shall be effective upon receipt at the appropriate address. Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice in accordance with this Section was given shall be deemed to constitute receipt of such Notice. The providing of copies of Notices to the parties' respective counsels is for information only, is not required for valid Notice and does not alone constitute Notice hereunder.

(c) Brokers. Seller assumes sole responsibility for any consultants or brokers ("Seller's Agents") it may have retained in connection with the sale of the Real Property (and Buyer shall have no responsibility in connection with such matters). Seller represents to Buyer that Seller has engaged no consultants, finders or real estate brokers in connection with the sale of the Real Property to the Buyer, and there are no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with this Agreement. Seller agrees to and does hereby indemnify and hold the Buyer free and harmless from and against any and all costs, liabilities or causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the Seller in connection with this Agreement. Buyer assumes sole responsibility for any consultants or brokers ("Buyer's Agents") it may have retained in connection with the purchase of the Real Property (and Seller shall have no responsibility in connection with such matters). Buyer represents to Seller that Buyer has engaged no consultants, finders or real estate brokers in connection with the sale of the Real Property to the Buyer, and there are no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with this Agreement. Buyer agrees to and does hereby indemnify and hold the Seller free and harmless from and against any and all costs, liabilities or causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the Buyer in connection with this Agreement.

(d) [Intentionally Omitted].

(e) Waiver, Consent and Remedies. Each provision of this Agreement to be performed by Buyer and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and Buyer's performance hereunder, as appropriate, and any breach thereof by Buyer or Seller shall be deemed a material default hereunder. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

(f) Cooperation. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use all reasonable efforts to accomplish the Closing in accordance with the provisions hereof and, following Closing.

(g) Remedies. Without limitation as to the availability of other remedies, this Agreement may be enforced by an action for specific enforcement.

(h) Time. Time is of the essence of every provision herein contained. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until 5:00 p.m. of the next day that is not a Saturday, Sunday, or legal holiday. Except as otherwise expressly provided herein, all time periods expiring on a specified date or period herein shall be deemed to expire at 5:00 p.m. on such specified date or period.

(i) Counterparts; Facsimile Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A facsimile signature shall be deemed an original signature.

(j) Captions. Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

(k) Obligations to Third Parties. City shall be deemed to be a third party beneficiary of this Agreement. Excepting only for City, the execution and delivery of this

Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties to this Agreement to, any person or entity other than the parties hereto.

(l) Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

(m) Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

(n) Applicable Law. This Agreement shall be governed by and construed in accordance with the local law of the State of California.

(o) Exhibits and Schedules. The exhibits and schedules attached hereto are incorporated herein by this reference for all purposes.

(p) Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between, and the final expression of, Buyer and Seller with respect to the subject matter hereof. The parties hereto expressly agree and confirm that this Agreement is executed without reliance on any oral or written statements, representations or promises of any kind which are not expressly contained in this Agreement. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

(q) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

(r) Assignment. Buyer may not assign its rights under this Agreement without the prior written consent of Seller; provided, however, that Buyer may assign its rights under this Agreement to any limited liability company in which Bill Fox owns no less than fifty percent (50%) of the equity ("Permitted Assignee") without the prior written consent of Seller so long as the Permitted Assignee agrees in writing enforceable by Seller that Permitted Assignee will be deemed Buyer under this Agreement (including without limitation the attachments hereto) for all purposes and will succeed to all rights and obligations of Buyer remaining as of the date Seller receives written notice of such assignment together with evidence demonstrating agreement of the Permitted Assignee to be bound to Seller hereunder. In the event of an assignment to a Permitted Assignee which complies with the foregoing portion of this paragraph (r) of Section 15, upon notification of Seller to such effect, Bill Fox shall have no personal liability to Seller and its agents, representative or assignees as Buyer. Seller may assign its rights under this Agreement to City without the consent of Buyer; provided that (i) City shall have those rights as set forth in the Option Agreement without regard to whether any assignment of rights of the Seller takes place, (ii) Seller shall remain liable for its obligations hereunder, and (iii) the Purchase Price shall be paid to Seller.

[signatures begin on the following page]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first written above.

**“SELLER”**

**SUCCESSOR AGENCY TO THE CITY OF  
MONTCLAIR REDEVELOPMENT AGENCY**, a  
public entity, corporate and politic

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

Paul M. Eaton  
Mayor

**“BUYER”**

**BILL FOX**

By:  \_\_\_\_\_  
Name: Bill Fox

Acceptance by Escrow Holder:

Fidelity National Title, National Commercial Services hereby acknowledges that it has received a fully executed copy of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions by and between the Successor Agency to the City of Montclair Redevelopment Agency, a public entity, corporate and politic ("Seller"), and Bill Fox ("Buyer") and agrees to act as Escrow Holder thereunder and to be bound by and strictly perform the terms thereof as such terms apply to Escrow Holder.

Dated: \_\_\_\_\_, 2016

FIDELITY NATIONAL TITLE,  
NATIONAL COMMERCIAL SERVICES

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

**EXHIBIT A**

**LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of San Bernardino, described as follows:

[legal description: to come].

APN: 1012-141-18

**EXHIBIT B**

**DEED**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Bill Fox  
450 E. Foothill Blvd.  
Pomona, CA 91767  
Attn: Bill Fox

APN: 1012-141-18

[Space above for recorder.]

DOCUMENTARY TRANSFER TAX

\$ \_\_\_\_\_  
\_\_\_\_\_ computed on the consideration or value of  
property conveyed; OR  
\_\_\_\_\_ computed on the consideration or value less  
liens or encumbrances remaining at time of sale.

\_\_\_\_\_  
Signature of Declarant or Agent determining tax - Firm  
Name

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the Successor Agency to the City of Montclair Redevelopment Agency, a public entity, corporate and politic ("Grantor"), hereby grants to [Bill Fox] that certain real property located in the County of San Bernardino, State of California, more particularly described on **Attachment No. 1** attached hereto and incorporated herein by this reference (the "Property"), subject to existing easements, restrictions and covenants of record.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of \_\_\_\_\_, 201\_\_.

**SUCCESSOR AGENCY TO THE CITY OF  
MONTCLAIR REDEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Paul M. Eaton  
Its: Mayor

**ATTACHMENT NO. 1 TO GRANT DEED**

**LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of San Bernardino, described as follows:

[legal description: to come].

APN: 1012-141-18

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

STATE OF CALIFORNIA )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

Signer is representing:  
 Name Of Person(s) Or Entity(ies)  
 \_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

\_\_\_\_\_  
 Title Or Type Of Document

\_\_\_\_\_  
 Number Of Pages

\_\_\_\_\_  
 Date Of Documents

\_\_\_\_\_  
 Signer(s) Other Than Named Above

**EXHIBIT C**

**FIRPTA CERTIFICATE**

**TRANSFEROR'S CERTIFICATE OF NON-FOREIGN STATUS**

To inform [Bill Fox] ("Transferee"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("Code") will not be required upon the transfer of certain real property to the Transferee by the Successor Agency to the City of Montclair Redevelopment Agency (the, "Transferor"), the undersigned hereby certifies the following:

1. The Transferor is not a foreign person or citizen, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);

2. The Transferor's social security number or U.S. employer identification number is as follows: \_\_\_\_\_.

3. The Transferor's home or office address is:

\_\_\_\_\_  
\_\_\_\_\_

The Transferor understands that this certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment or both. Under penalty of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document.

\_\_\_\_\_  
Successor Agency to the City of Montclair  
Redevelopment Agency

**EXHIBIT D**

**OPTION AGREEMENT**

**Recording Requested By  
And When Recorded Mail To:**

City of Montclair  
5111 Benito Street  
Montclair, California 91763  
Attention: Marilyn Staats

APN: 1012-14-18

Space above for Recorder's Use

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

**OPTION AGREEMENT**

This **OPTION AGREEMENT** ("Option Agreement") is entered into as of \_\_\_\_\_, 201\_, by and between the **CITY OF MONTCLAIR**, a municipal corporation ("City"), and **[BILL FOX]** (the "Owner" and, together with City, the "Parties").

**RECITALS**

A. Owner has purchased that certain real property commonly known as \_\_\_\_\_, Assessor's Parcel No. 1012-14-18, Montclair, California, 91763, and more particularly described in Exhibit "A" attached hereto and incorporated herein ("Property"), under that certain unrecorded "Purchase and Sale Agreement and Joint Escrow Instructions" dated as of \_\_\_\_\_, 2016 (the "Purchase Agreement") by and between Owner and the Successor Agency to the City of Montclair Redevelopment Agency ("Successor Agency"). A copy of the Purchase Agreement is on file with Successor Agency as a public record. The Purchase Agreement was approved by the Successor Agency and the Oversight Board to the Successor Agency to the City of Montclair Redevelopment Agency (the "Oversight Board").

B. As a material consideration but for which Successor Agency and the Oversight Board would not have approved the sale of the Property to Owner, Owner agreed in the Purchase Agreement to make certain improvements to the Property; the provision of such improvements will result in the generation of taxes to recipients of property taxes and other taxes. To assure that the Owner provides the improvements, and to provide City with rights to acquire the Property on the terms and conditions set forth herein if the Owner does not improve the Property, the Parties agreed to provide to City an option to purchase the Property from Owner on the terms and conditions set forth herein.

C. For the sum of One Dollar (\$1.00) and other valuable consideration the receipt of which is acknowledge by Owner, Owner grants to City an option to purchase the Property on the terms and conditions set forth hereinbelow. For purposes of this Option Agreement, "Property" shall also be deemed to include any and all improvements located on the real property.

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual covenants and conditions contained herein, the parties hereto agree as follows:

**1. Grant of Option.** Owner grants to City an option ("Option") to purchase the Property on the terms and conditions set forth in this Option Agreement. The purchase price payable by City to the Owner for the Property shall be equal to (i) the "Purchase Price" as defined in the Purchase Agreement, plus (ii) expenditures made by Owner to unrelated third parties for construction of improvements made to the Property through the completion of the sale to City hereunder (herein, the "Acquisition Price"). Subject to the terms hereof, the Option may be exercised by City at any time on or after the date that is the one (1) year anniversary of the Outside Date (as defined under the Purchase Agreement) (the "Performance Deadline") until the date that is the four (4) year anniversary of the Outside Date (the "Option Termination Date"), but only if the Owner has failed to cause the development on the Property of a building or buildings consisting of not less than forty two thousand three hundred (42,300) square feet (the "Minimum Required Square Footage") which when combined with any other improvements to the Property have an estimated market value of not less than Five Million Dollars (\$5,000,000.00)(the "Minimum Required Value"). In the event that as of the Performance Deadline the Designated Improvements (as defined in the Purchase Agreement) have not been completed so as to satisfy each of the Minimum Required Square Footage and the Minimum Required Value, City, shall have the right, at its option, to purchase the Property for the Acquisition Price in accordance with this Option Agreement. City shall act reasonably in determining whether improvements have been accomplished which satisfy each of the Minimum Required Square Footage and the Minimum Required Value.

If City notifies Owner, at the address of record for Owner in the Purchase Agreement or such other address as Owner may provide in writing to City from time to time, that City elects to acquire the Property pursuant to this Section 1, the exercise of the Option shall be implemented as set forth in Section 3 hereof. Owner agrees to cooperate in implementing the acquisition of the Property by City under this Section 1.

In the event Owner completes the construction of Designated Improvements or otherwise improves the Property in a manner that satisfies the Minimum Required Square Footage and the Minimum Required Value before the Performance Deadline, City shall, upon receipt of a written request therefor from Owner, execute a writing which extinguishes this Option Agreement, including without limitation the Option; while it is intended that a writing to extinguish the Option Agreement

would be in recordable form, upon execution of such a writing by City, such writing shall be enforceable as to City without regard to whether such writing is recorded.

The Option created hereby shall be irrevocable by Owner and shall be binding upon the successors and assigns of Owner. City shall have the right of specific performance to enforce the terms of this Option Agreement.

**2. Term and Consideration for Option.** The term of the Option ("Option Term") shall commence on the date of this Option Agreement, and shall expire upon the Option Termination Date if not sooner extinguished pursuant to the terms hereof.

**3. Exercise of Option.** The Option may be exercised by City's delivery to Owner of written notice of such exercise ("Exercise Notice") in the event the Designated Improvements or other improvements satisfying each of the Minimum Required Square Footage and the Minimum Required Value have not been completed prior to the Performance Deadline. Following receipt of the Exercise Notice, Owner shall have the right, but not the obligation, to complete the Designated Improvements or other improvements satisfying each of the Minimum Required Square Footage and the Minimum Required Value within forty-five (45) days of receipt of such notice. If Owner completes the Designated Improvements or other improvements satisfying each of the Minimum Required Square Footage and the Minimum Required Value within such 45-day period, then this Option Agreement and the Option shall be terminated and City shall have no right pursuant to this Option Agreement to purchase the Property pursuant to the terms hereof. If Owner does not so complete the Designated Improvements or other improvements satisfying each of the Minimum Required Square Footage and the Minimum Required Value within forty-five (45) days of receipt of such notice, the Exercise Notice shall become effective on the first business day following such 45-day period.

**4. Escrow and Completion of Sale.** Within five (5) days after City has given the Exercise Notice, or as soon thereafter as reasonably practicable, an escrow shall be opened with an escrow company mutually acceptable to City and Owner for the conveyance of the Property to City. City shall deposit the Option Price in escrow not later than one (1) business day prior to the anticipated close of escrow date. City's obligation to close escrow shall be subject to City's approval of a then-current preliminary title report and, at City's option, environmental and other site testing. Any exceptions shown on such preliminary title report created on or after the Owner's acquisition of the Property shall be removed by Owner at its sole expense prior to the close of escrow pursuant to this Section 4 unless such exception(s) is(are) accepted by City in its reasonable discretion; provided, however, that City shall accept the following exceptions to title: (i) current taxes not yet delinquent, (ii) matters affecting title existing on the date of Owner's acquisition of the Property, (iii) liens and encumbrances in favor of City, and (iv) matters shown as printed exceptions in the standard form ALTA owner's policy of title insurance. The parties shall each be responsible for one-half of the escrow fees, documentary transfer taxes, recording fees and any other costs and expenses of the escrow, and, if applicable, the Owner shall be responsible for the cost of an owner's extended coverage ALTA owner's policy of title insurance. City shall have thirty (30) days after exercise of the Option to enter upon the Property to conduct any tests, inspections, investigations, or studies of the condition of the Property. Owner shall permit City access to the Property for such purposes. City shall indemnify, defend, and hold harmless Owner and its officers, directors, shareholders, partners, employees, agents, and representatives from and against all claims, liabilities, or damages, and including expert witness fees and reasonable attorney's fees and costs, caused by City's activities with respect to or arising out of such testing, inspection, or investigatory activity on the Property.

Escrow shall close promptly after acceptance by City of the condition of title and the physical and environmental condition of the Property.

**5. Failure to Exercise Option.** If the Option is not exercised by City in the manner provided in Sections 3 and 4 above on or before the Option Termination Date, the Option shall automatically terminate. Notwithstanding anything to the contrary contained in this Option Agreement, if Owner completes the Designated Improvements or otherwise improves the Property in a manner that satisfies each of the Minimum Required Square Footage and the Minimum Required Value after the Performance Deadline but before City has exercised the Option pursuant to the terms hereof, then this Option Agreement and the option shall be terminated and City shall have no right to purchase the Property by virtue of this Option Agreement.

**6. Assignment and Nomination.** City shall not assign its rights and interest hereunder without the approval of the Owner, which may be given or withheld in Owner's sole and absolute discretion, excepting that upon exercise by City of the Option, City may nominate another person or entity to acquire title to the Property, and the identity of such nominee shall not be subject to the approval of the Owner.

**7. Title.** Following the date hereof, except to secure purchase money for the acquisition of the Property by Owner under the Purchase Agreement and as necessary to fund improvements to the Property, Owner agrees not to cause, and shall use commercially reasonable efforts not to permit, any lien, easement, encumbrance or other exception to title to be recorded against the Property without City's prior written approval, such approval not to be unreasonably withheld.

**8. Representations and Warranties of Owner.** Owner hereby represents, warrants and covenants to City as follows, which representations and warranties shall survive the exercise of the Option and the Close of Escrow:

(a) that this Option Agreement and the other documents to be executed by Owner hereunder, upon execution and delivery thereof by Owner, will have been duly entered into by Owner, and will constitute legal, valid and binding obligations of Owner;

(b) neither this Option Agreement, nor anything provided to be done under this Option Agreement, violates or shall violate any contract, document, understanding, agreement or instrument to which Owner is a party or by which it is bound; and

(c) Owner shall pay, prior to delinquency, any and all real property taxes and assessments which affect the Property.

Owner agrees to indemnify, protect, defend, and hold City and the Property harmless from and against any damage, claim, liability, or expense of any kind whatsoever (including, without limitation, reasonable attorneys' fees and fees of expert witnesses) arising from or in connection with any breach of the foregoing representations, warranties and covenants. Such representations and warranties of Owner, shall be true and correct on and as of the date of this Option Agreement and on and as of the date of the Close of Escrow.

**9. Representations and Warranties of City.** City hereby represents and warrants and covenants to Owner, as follows, which representations and warranties shall survive the Close of Escrow:

(a) that this Option Agreement and the other documents to be executed by City hereunder, upon execution and delivery thereof by City, will have been duly entered into by City, and will constitute legal, valid and binding obligations of City, and

(b) neither this Option Agreement, nor anything provided to be done under this Option Agreement, violates or shall violate any contract, document, understanding, agreement or instrument to which City is a party or by which it is bound.

City agrees to indemnify, protect, defend, and hold Owner and the Property harmless from and against any damage, claim, liability, or expense of any kind whatsoever (including, without limitation, reasonable attorneys' fees and fees of expert witnesses) arising from or in connection with any breach of the foregoing representations, warranties and covenants. Such representations and warranties of City, and any other representations and warranties of City contained elsewhere in this Option Agreement shall be true and correct on and as of the date of this Option Agreement and on and as of the date of the Close of Escrow.

## **10. General Provisions.**

**10.1 Paragraph Headings.** The paragraph headings used in this Option Agreement are for purposes of convenience only. They shall not be construed to limit or extend the meaning of any part of this Option Agreement.

**10.2 Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Option Agreement shall be in writing and shall be either personally served, sent by telecopy, mailed in the United States mails, certified, return receipt requested, postage prepaid, or sent by other commercially acceptable means, addressed to the party to be served with the copies indicated below, at the last address given by that party to the other under the provisions of this section. All communications shall be deemed delivered at the earlier of actual receipt, the next business day after deposit with Federal Express or other overnight delivery service or two (2) business days following mailing as aforesaid, or if telecopied, when sent, provided a copy is mailed or delivered as provided herein:

**To Owner:** Bill Fox  
450 E. Foothill Blvd.  
Pomona, CA 91767

**To City:** City of Montclair  
5111 Benito Street  
Montclair, California 91763  
Attention: City Clerk

**10.3 Binding Effect.** The terms, covenants and conditions of this Option Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and transferees.

**10.4 Entire Agreement.** This Option Agreement sets forth the entire agreement between the parties hereto respecting the Option, and supersedes all prior negotiations and agreements, written or oral, concerning or relating to the subject matter of this Option Agreement.

**10.5 California Law.** This Option Agreement shall be governed by the laws of the State of California and any question arising hereunder shall be construed or determined according to such laws.

**10.6 Time of the Essence.** Time is of the essence of each and every provision of this Option Agreement.

**10.7 Counterparts.** This Option Agreement may be signed by the parties hereto in duplicate counterparts which together shall constitute one and the same agreement between the parties and shall become effective at such time as both of the parties shall have signed such counterparts.

**10.8 Interpretation.** This Option Agreement shall be interpreted in a manner which recognizes the purposes set forth in the Recitals hereto.

**10.9 Relationship Between the Parties.** Seller and Buyer are not partners or joint venturers. City is not a partner or joint venturer of either Seller or Buyer.

**10.10 Computation of Time.** All periods of time referred to in this Option Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time is specified as business days (which shall not include Saturdays, Sundays and state or national holidays), provided that if the date or last date to perform any act or give any notice with respect to this Option Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

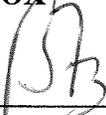
**10.11 Definition of Terms.** Terms not otherwise defined in this Option Agreement are defined in the Purchase Agreement.

IN WITNESS WHEREOF, this Option Agreement is executed by the parties hereto on the date first above written.

**OWNER:**

**BILL FOX**

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

  
Bill Fox

**CITY:**

**CITY OF MONTCLAIR,**  
a municipal corporation

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

Mayor

ATTEST:

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

**EXHIBIT "A" TO OPTION AGREEMENT**

**LEGAL DESCRIPTION**

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

[to come].

APN: 1012-14-18

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

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Los Angeles )

On May 27, 2016, before me, Megan Jena Morris, Notary Public,  
(Print Name of Notary Public)

personally appeared Bill Fox

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

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



WITNESS my hand and official seal.

Megan Jena Morris  
Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)  
\_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

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

STATE OF CALIFORNIA )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

\_\_\_\_\_  
 Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
 Number Of Pages

Signer is representing:  
 Name Of Person(s) Or Entity(ies)  
 \_\_\_\_\_

\_\_\_\_\_  
 Date Of Documents

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Signer(s) Other Than Named Above

# AGENDA REPORT

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**SUBJECT:** CONSIDER ADOPTION OF CITY POLICY  
REGARDING PUBLIC IMPROVEMENTS

**DATE:** June 6, 2016

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 11

**FILE I.D.:** LDA025

**DEPT.:** PUBLIC WORKS

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**REASON FOR CONSIDERATION:** From time to time, staff develops policies, either at Council direction, or as may be found necessary by staff. Official City policies must be adopted by the City Council.

**BACKGROUND:** Proposed development within the City typically has an impact on a neighborhood or on the entire City. Sometimes the impact is positive, but the impact can be negative as well. Staff attempts to mitigate the negative impacts through the environmental review process and imposition of conditions for approval of the development. Mitigation measures may include the construction of public improvements to address increased traffic, increased storm water runoff, increased sewage flows, and other factors.

Sometimes proposed improvements may exacerbate already existing problems. The City may not have the ability to address the existing problems, but does not want those problems magnified through more development. Therefore, conditions of approval may include the need to extend improvements beyond the limits of proposed development.

Occasionally, City staff meets resistance from developers who feel staff has no authority to require certain improvements, either within or adjacent to proposed developments. An example might be a desire by staff to extend an existing industrial street that currently dead ends into an undeveloped parcel through that parcel and connect to a major arterial. The street is not significant enough to be included as a master planned street within the circulation element of the General Plan, but is still of enough importance that it should be extended in order to improve circulation, both for existing needs as well as for developed needs.

Staff recommends the City Council consider and adopt the attached policy relating to public improvements. The policy has been utilized by staff for years, but has never had official recognition or adoption by the City Council as a policy.

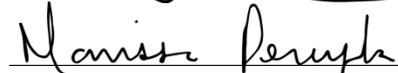
**FISCAL IMPACT:** Fiscal impacts to the City may be minor to significant, but in a positive manner.

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Prepared by: 

Fiscal Impact  
Finance Review: 

Proofed by: 

Reviewed and  
Approved By: 

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**RECOMMENDATION:** Staff recommends the City Council adopt City Policy regarding public improvements.

SUBJECT: PUBLIC IMPROVEMENTS

PURPOSE: To provide direction as to public improvements required with various development proposals.

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**General Policy:**

It is the policy of the City of Montclair that all new development (residential, commercial, institutional, and industrial); all new parking lots and/or expansions of existing parking lots; significant renovations/additions to existing structures (defined as increasing the value of the building by 25% or more); and subdivisions of land, lot line adjustments, and parcel mergers shall provide the needed public improvements to public rights-of-way that the property abuts or directly impacts. This policy does not eliminate an applicant's responsibility to provide and/or pay for additional dedications, exactions, and/or fees for public facilities improvements or services as adopted by separate ordinances (e.g., transportation impact, parkland, sanitary sewer expansion fees, etc.). These improvements are necessary to:

1. Ensure orderly, integrated, and cohesive design, and development of the community's infrastructure;
2. Enhance the public's health and safety through the construction of needed infrastructure and right-of-way improvements and/or dedications; and
3. Implement:
  - the policies and will of the elected governing body,
  - provisions of the Land Use and Development Code, and
  - the Community Design and Circulation Elements of the City's General Plan.

The provisions of these Public Improvements required by this policy are intended to benefit the immediate property owner and the public welfare and safety of the community. It is the goal of the City that all of the necessary public improvements are uniform and part of an integrated system. This policy does not change or modify any of the public improvement requirements as presently outlined in the Montclair Municipal Code, or as may be modified in the future.

**Provisions:**

The following provisions are applicable to the implementation of this policy:

1. **Responsible Authority:** As development projects and subdivisions are proposed, the Economic-Community Development Director and Public Works Director (or designees) shall jointly determine the type and scope of public improvements that shall be required as conditions of project approval and shall recommend such public improvements to the Development Review Committee (DRC) for consideration and approval. The Planning Commission and City Council, as appropriate, shall have final authority to modify these requirements when it is demonstrated by applicant(s) that the project

modification would provide the same or greater level of public improvement(s) as intended by purpose and objectives of this policy.

2. **Type of Improvements:** Exhibit A, attached hereto and by its reference incorporated herein this policy, outlines the typical type of improvements that are required for a given application. Improvements include new infrastructure and may require the repair of existing infrastructure (e.g., sidewalks, curbs, gutter, pavement, etc.). Depending on the extent of trench work for utility connections, street improvements, and other roadway/public right-of-way impacts, requirements could include curb, gutter, and sidewalk reconstruction and resurfacing of the existing pavement within and beyond the limits of the development.
3. **Boundaries of Improvements:** At a minimum, improvements shall be required for the area adjoining a public right-of-way (out to the centerline) where the development, major renovation/addition, or subdivision is proposed. When the Public Works Director determines the necessity of tying improvements (e.g., sidewalks, signalization, medians, streetlights, or storm drains) into existing infrastructure, he/she shall require the extension of the development improvements beyond the frontage of the area of work on the same or adjacent parcels owned/controlled by the applicant/developer. In rare circumstances, the Public Works Director may require the extension of improvements within the public right-of-way on property adjacent to the development site, which is not controlled by the developer, when it is obvious that the necessary improvements would not be provided on the adjacent property given the built-out nature of the adjacent parcel. This latter requirement would be for the purpose of tying improvements into the existing infrastructure network and to eliminate gaps in the improvements.

If sewer or drainage improvements extend beyond an area that the developer owns, a reimbursement agreement may be established when the nexus exists. A reimbursement agreement may be established when there is undeveloped land under different ownership that will benefit from the off-site improvements, as provided by state law (Government Code Section 66485-66487, and as amended) at the developer's request.

4. **Timing of Improvement Construction:** To ensure that the improvements are completed, bonds or other securities, in a form and amount approved by the Public Works Director, shall be posted prior to the issuance of building, grading, or public works permits and/or map recordation to guarantee construction of the required public improvements. All improvements shall be installed prior to the certificate of occupancy being granted or the Public Works Director's acceptance of the permitted work.
5. **General Plan:** The need for street widening and/or new street construction may or may not be consistent with the circulation element of the General Plan. The need for such improvements will be determined on a case by case basis based on factors including the proposed improvements, requested variances, street vacations, and/or any requested amendments to the General Plan or a Specific Plan.

Exhibit A

XX= Required  
 \* = Potentially Required Based on Specific Project Impacts

Type of Project	Street Trees	Side-walks	Curb and gutter	Street Widening / Resurfacing	Dedication of Rights-of-Way	Sewer Improvements	Street Lights	Drainage Improvements	Fire Hydrants	Trash Enclosures	Others as Mitigation Measures	Median Improvements	Signal Construction / Modifications
New Single Family Home	XX	XX	XX	XX	XX	XX	XX	XX					
Additions to a Single Family Home	*	*	*	*	*	*	*	*	*		*		
New Multi-Family Home Project	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	*	*
New Commercial Buildings	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	*	*
Additions of 25% or more to all buildings / uses, except Single Family	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	*	*
New Industrial Buildings	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	*	*
New Educational Buildings	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	*	*
Parcel Maps	XX	XX	XX	XX	XX	XX	XX	XX	XX	*	*	*	*
Tract Maps	XX	XX	XX	XX	XX	XX	XX	XX	XX	*	XX	*	*
Lot Line Adjustments/ Parcel Mergers	As may be required and/or allowed by the Subdivision Map Act [Government code Section 66412(d) and 66499.35 (a) and (b)]												
Permits	*	*	*	*	*	*	*	*	*	*	*	*	*
Variances	*	*	*	*	*	*	*	*	*	*	*	*	*

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER GRANTING SOUTHERN CALIFORNIA GAS COMPANY A NON-EXCLUSIVE EASEMENT FOR GAS SERVICE ACROSS CITY-OWNED PROPERTY LOCATED ON THE SOUTH SIDE OF BROOKS STREET EAST OF MONTE VISTA AVENUE	<b>DATE:</b> June 6, 2016 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 12 <b>FILE I.D.:</b> STA110 <b>DEPT.:</b> PUBLIC WORKS
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**REASON FOR CONSIDERATION:** Southern California Gas Company has requested an easement across City-owned property. Conveyances of rights-of-way and easements on City property require City Council approval.

**BACKGROUND:** As part of the right-of-way acquisition work for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, the City acquired a strip of land located on the south side of Brooks Street, east of Monte Vista Avenue, as shown on the attached Exhibit B, hereinafter called the "Strip." The purpose of the acquisition is to provide access to a parcel located north of the Union Pacific Railroad tracks on the east side of Monte Vista Avenue, hereinafter called the "Property." With the loss of access to Monte Vista Avenue caused by the grade separation, the Strip will provide access from Brooks Street to the Property.

Upon completion of the grade separation project, it is the City's intent to transfer ownership of the Strip to the owners of the Property, thus giving them a flag lot with access from Brooks Street. The flag lot would also provide a corridor for utilities to serve the Property since the utility connections from Monte Vista Avenue will all be severed. However, because the Strip is not part of the Property at this time, Southern California Gas Company needs an easement to cross the City-owned Strip.

It is anticipated that other utility companies will also need easements, but so far none have requested any.

**FISCAL IMPACT:** There is no fiscal impact to the City in granting the easement shown on the attached Grant of Easement document.

**RECOMMENDATION:** Staff recommends the City Council grant Southern California Gas Company a non-exclusive easement for gas service across City-owned property located on the south side of Brooks Street east of Monte Vista Avenue.

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

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Recording Requested by and  
when recorded mail to:

Southern California Gas Company  
555 W. 5<sup>th</sup> St., ML GT 11A1  
Los Angeles, CA 90013-1011  
Attn.: Land & Right of Way

DOCUMENTARY TRANSFER TAX \$ CONVEYANCE OF EASEMENT (OIL AND GAS  
LEASE) AND CONSIDERATION & VALUE IS LESS THAN \$100. R&T 11911.

**Leak  
Survey**

**Area:** SBD 118-2

**APN:** 1011-012-12-0000 \_\_\_\_\_ Computed on full value of property conveyed

**CPD#:** 2040023619 \_\_\_\_\_ Computed on full value less liens and encumbrances  
remaining at time of sale

**DISTRIBUTION R.W.** 262802 \_\_\_\_\_ Southern California Gas Company

**GRANT OF EASEMENT**

**FOR VALUABLE CONSIDERATION, CITY OF MONTCLAIR, a municipal corporation,**  
("Grantor"), hereby grants to Southern California Gas Company, a California corporation, its  
successors and assigns ("Grantee"): a 26.5 foot in width permanent non-exclusive easement  
("Easement") to excavate for, lay, construct, reconstruct, relocate, reconfigure, use, inspect, maintain,  
operate, repair, replace, patrol, change the size of, add to, or remove from time to time, as Grantee deems  
necessary, one or more pipelines and conduits, together with devices for metering, measuring, regulating,  
cathodic protection, communications and other appurtenances (all hereinafter referred to as the  
"Facilities") for the transportation and distribution of natural gas and communications as Grantee deems  
necessary, convenient or beneficial over, under, through, along, and for all other purposes connected  
therewith, and together with the reasonable right of ingress and egress to and from the Easement to access  
the Facilities and the right to use Grantor's abutting property during construction and maintenance of the  
Facilities, the strip of land located in the **City of MONTCLAIR** in the **County of SAN  
BERNARDINO**, California, described in Exhibit "A" and depicted in Exhibit "B" attached hereto, and  
made a part of this agreement.

**Grantor**, for its heirs, successors and assigns, agrees that, except as provided below, no change of grade  
of the Easement shall be made, that it shall not be inundated, that it shall be kept free of trees, deep-rooted  
shrubs, buildings and structures of all kinds (except for Grantee's Facilities), that nothing shall be done to  
impair Grantee's vehicular access to or along the Easement, and that nothing shall be done that  
unreasonably interferes with Grantee's use of the Easement.

Grantee shall have the right, but not the duty, to trim or remove trees, brush, roots or material from the Easement whenever Grantee deems it necessary. Said right shall not relieve Grantor of the duty as owner to trim or remove trees, brush or material to prevent danger or hazard to property or persons.

**Grantor** reserves the right to (1) use any surface or subsurface areas, provided such use does not unreasonably or substantially interfere with Grantee's use of the Easement; (2) improve the Easement area surface with landscaping (except trees and deep-rooted shrubs), paved driveways, parking surfaces, sidewalks, curbs and gutters; provided, however, that before making any such improvements involving a change of grade, Grantor and its heirs, successors and assigns, shall notify the Grantee in advance and comply with underground service alert notification requirements pursuant to Government Code Sections 4216 and following.

This Easement shall be binding upon and inure to the benefit of successors, heirs, and assigns of Grantor and Grantee



EXHIBIT "A"

THAT PORTION OF THAT PORTION OF LOT 2, BLOCK 28, MONTE VISTA TRACT, IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS MAP RECORDED IN BOOK 11, PAGE(S) 34 OF MAPS AND AS SHOWN ON THE AMENDED MAP OF PART OF MONTE VISTA TRACT, RECORDED IN BOOK 8 OF MAPS, PAGES(S) 73 AND AN AMENDED MAP OF PART OF MONTE VISTA TRACT, RECORDED IN BOOK 13 OF MAPS, PAGE(S) 21, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHEAST CORNER OF FOREMAN PROPERTY DESCRIBED IN DEED RECORDED AUGUST 14, 2001 AS INSTRUMENT NO. 20010367198 OFFICIAL RECORDS SAID NORTHEAST CORNER ALSO BEING ON THE WESTERLY LINE PARCEL 1, PARCEL MAP NO. 7103, IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PARCEL MAP RECORDED MARCH 10, 1982 IN BOOK 72, PAGE 39 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND DISTANT 37.0 FEET SOUTHERLY OF THE CENTERLINE OF BROOKS STREET; SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 88° 58' WEST A DISTANCE OF 26.99 FEET;

THENCE SOUTH 9° 54' WEST A DISTANCE OF 183.33 FEET MORE OR LESS TO THE SOUTH LINE OF THE LAND CONVEYED TO W. C. LOOKING HILL BY DEED RECORDED JUNE 18, 1920, IN BOOK 686, PAGE(S) 358 OF DEEDS;

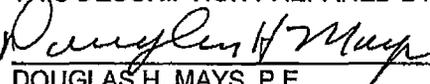
THENCE NORTH 88° 58' EAST ALONG THE SAID SOUTH LINE A DISTANCE OF 26.99 FEET MORE OR LESS TO A POINT ON THE EAST LINE OF SAID LAND CONVEYED TO W. C. LOOKING HILL SAID POINT ALSO BEING ON THE WESTERLY LINE PARCEL 1, PARCEL MAP NO. 7103;

THENCE NORTH 9° 54' EAST ALONG THE SAID EAST LINE A DISTANCE OF 183.33 FEET, MORE OR LESS TO THE TRUE POINT OF BEGINNING.

THE ABOVE PARCEL OF LAND CONTAINS 4,858 SQ. FT. OR 0.11 ACRES MORE OR LESS;

EXHIBIT B IS ATTACHED HERETO AND A PART HEREOF.

THIS DESCRIPTION PREPARED BY ME OR UNDER MY SUPERVISION.

 February 25, 2011  
DOUGLAS H. MAYS, P.E. DATE  
RCE NO. 21062,  
LICENSE EXPIRES 9-30-11





## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF THE FILING OF A NOTICE OF COMPLETION, REDUCTION OF FAITHFUL PERFORMANCE BOND TO 10 PERCENT, AND RETENTION OF PAYMENT BOND FOR SIX MONTHS FOR THE TRAFFIC SIGNAL IMPROVEMENT PROJECT AT CENTRAL AVENUE AND SAN BERNARDINO STREET	<b>DATE:</b> June 6, 2016
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 13
	<b>FILE I.D.:</b> CVC060
CONSIDER RELEASE OF RETENTION 30 DAYS AFTER RECORDATION OF NOTICE OF COMPLETION	<b>DEPT.:</b> PUBLIC WORKS

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**REASON FOR CONSIDERATION:** State law requires Notices of Completion to be recorded with the County Recorder upon acceptance of a public works project. The City Council is requested to consider approval of the filing of a Notice of Completion with the Office of the San Bernardino County Recorder and related actions concerning the Human Services/Recreation Building Improvement Project.

**BACKGROUND:** On August 3, 2015, PTM General Engineering, Inc., was awarded a contract for construction of the Traffic Signal Improvement Project Central Avenue and San Bernardino Street and entered into Agreement No. 15-65 with the City. All work required under Agreement No. 15-65 has been satisfactorily completed. The Traffic Signal Improvement Project Central Avenue and San Bernardino Street included new traffic signals allowing for protected left hand turn movements in all four directions.

**FISCAL IMPACT:** PTM General Engineering, Inc., was awarded the construction contract for \$206,906. The City Council also authorized a construction contingency of \$25,000, bringing the total expenditure authorization to \$231,906. During the course of construction, it was necessary to slightly modify the scope of work by way of construction change orders. The changes ultimately increased the total construction cost from the authorized amount of \$206,906 to the final construction cost of \$209,429.03, an increase of \$2,523.03, still keeping the amount within the construction contingency authorized by the City Council at the time of award. The project is jointly funded with Highway Safety Improvement (HSIP) Program funds and 2014 Lease Revenue Bond Proceeds.

**RECOMMENDATION:** Staff recommends the City Council take the following actions related to the Traffic Signal Improvement Project at Central Avenue and San Bernardino Street:

1. Approve the filing of a Notice of Completion with the Office of the San Bernardino County Recorder.
2. Reduce the Faithful Performance Bond to 10 percent.
3. Retain the Payment Bond for six months.
4. Release retention 30 days after recordation of Notice of Completion.

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

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RECORDING REQUESTED BY:

**City of Montclair**

AND WHEN RECORDED MAIL DOCUMENT AND  
TAX STATEMENT TO:

NAME: **City of Montclair**

STREET ADDRESS: **5111 Benito Street**

CITY, STATE & ZIP  
CODE: **Montclair, CA 91763**

Government Code 6103

(Space above this line for Recorder's Use Only)

## NOTICE OF COMPLETION

NOTICE is hereby given that: The undersigned is the owner of an interest of estate in the hereinafter described property, the nature of which said interest or estate is:

fee

The full name and address of the undersigned  
is

Michael C. Hudson  
Public Works Director  
City Engineer  
5111 Benito Street  
Montclair, CA 91763

The work was completed on that certain work known as:

### **Traffic Signal Improvement Project Central Avenue and San Bernardino Street**

for the undersigned City of Montclair,  
a Municipal Corporation, on the 20th day of May, 2016

The City accepted the job on the 20th day of May, 2016

The Contractor on said job was

PTM General Engineering, Inc.  
5942 Acorn Street  
Riverside, Ca. 92504

The improvement consisted of:

Traffic Signal Improvements

The property upon which said work of improvement was completed is described as:

5285 San Bernardino Street, Montclair, CA. 91763

### VERIFICATION

I, the undersigned, say that I am agent for the owner of the aforesaid interest or estate in the property described in the above notice. I have read the foregoing notice and know and understand the contents thereof, and the facts stated herein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 6, 2016

at 5111 Benito Street, Montclair, California

\_\_\_\_\_  
Michael C. Hudson  
Public Works Director  
City Engineer

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF A \$26,000 APPROPRIATION FROM THE CONTINGENCY FUND FOR CONSTRUCTION OF A RETAINING WALL AND FOOTINGS TO ENCLOSE THE UNDERPASS BENEATH HOLT BOULEVARD AT THE SAN ANTONIO FLOOD CONTROL CHANNEL AND CONSTRUCT L-SHAPED WALLS TO ENCLOSE THE CHANNEL WALKWAY UNDER THE BRIDGE	<b>DATE:</b> June 6, 2016 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 14 <b>FILE I.D.:</b> STA670 <b>DEPT.:</b> PUBLIC WORKS
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**REASON FOR CONSIDERATION:** Appropriations of General Fund moneys require City Council approval.

**BACKGROUND:** The Public Works, Code Enforcement, Police, and Fire Departments are habitually called to address problems with homeless and drug users that occur beneath Holt Boulevard at the San Antonio Flood Channel. Problems include large amounts of debris, homeless encampments, drug use, fires, and crime. Attached photographs show accumulation of trash and debris.

The issues were previously discussed with the Public Works Committee, most recently at its meeting on February 18, 2016. The cost estimate given to the Committee for cleaning up the site and securing the area ranged between \$20,000 and \$30,000.

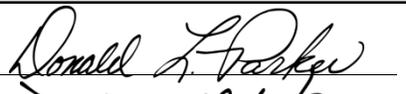
At the City's request, S.C.S. Services provided an estimate for debris removal and the construction of block walls to secure the area under Holt Boulevard along the San Antonio Channel. Code Enforcement currently uses S.C.S. Services for trash and weed abatement, boarding vacant buildings, and securing City properties to prevent vandalism and theft.

**FISCAL IMPACT:** The cost to remove debris and enclose and secure the underpass beneath Holt Boulevard at the San Antonio Flood Channel is approximately \$19,000. The cost to enclose the channel walkway is approximately \$7,000, pending approval from the United States Army Corps of Engineers. The total cost for all services is approximately \$26,000.

**RECOMMENDATION:** Staff recommends the City Council appropriate \$26,000 from the Contingency Fund for construction of a retaining wall and footings to enclose the underpass beneath Holt Boulevard at the San Antonio Flood Channel and construct L-shaped walls to enclose the channel walkway under the bridge.

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

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Holt Boulevard Underpass Photos (Page 1 of 2)



Holt Boulevard Underpass Photos (Page 2 of 2)



## AGENDA REPORT

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**SUBJECT:** CONSIDER AUTHORIZING ALLOCATION AND EXPENDITURE OF 2015 JUSTICE ASSISTANCE GRANT PROGRAM FUNDS IN THE AMOUNT OF \$13,459 FOR SMALL EQUIPMENT PURCHASES

**DATE:** June 6, 2016

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 15

**FILE I.D.:** PDT362

**DEPT.:** POLICE

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**REASON FOR CONSIDERATION:** The Montclair Police Department has been awarded funding from the Bureau of Justice Assistance via the Edward Byrne Memorial Justice Assistance Grant (JAG) Program for Federal Fiscal Year 2015. The City Council is requested to consider allocation of 2015 JAG funds to the Police Department Fiscal Year 2015-16 Budget.

**BACKGROUND:** The Police Department has been awarded a \$14,167 JAG Program award. The JAG Program requires that the state's allocation for municipal agencies in the region be distributed and administered directly through San Bernardino County. The San Bernardino County Board of Supervisors, acting in its capacity as JAG Program Administrator, shall disburse appropriate grant allocations to eligible jurisdictions, less a 5 percent administrative fee as allowable under JAG guidelines. As such, the San Bernardino County Board of Supervisors would retain an administrative fee of \$708.

JAG moneys are for the exclusive use of law enforcement services and programs. These funds shall supplement existing services and shall not be used to supplant any existing funding for law enforcement services.

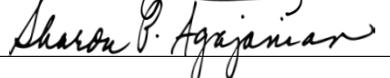
The Police Chief proposes that 2015 JAG funds in the amount of \$13,459 be appropriated to the purchase of police duty gear and equipment. The Department's FY 2015-16 General Fund Budget for police duty gear and equipment has been expended; however, the agency still bears the responsibility for providing serviceable duty gear and equipment that is essential to the optimal performance and safety of its Police Officers. Not only has the budget for duty gear been expended, but the reserve supply of serviceable gear and equipment has also been exhausted. The Department currently has two recruits attending the San Bernardino County Sheriff's Academy, two new hires, and anticipates hiring an additional four to five recruits in the coming months. It is incumbent on the Department to provide duty gear and equipment for new hires as well as replace gear and equipment used by existing officers that is known to be worn or damaged.

**FISCAL IMPACT:** If authorized by the City Council, \$13,459 in JAG Program funding would be allocated to the Police Department's Fiscal Year 2015-16 Budget—Small Equipment Account (Fund 1150). The San Bernardino County Board of Supervisors,

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Prepared by:  Fiscal Impact Finance Review: 

Proofed by:  Reviewed and Approved By: 

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acting in its capacity as JAG Program Administrator, would retain a 5 percent administrative fee of \$708.

**RECOMMENDATION:** Staff recommends the City Council authorize the allocation and expenditure of 2015 Justice Assistance Grant Program funds in the amount of \$13,459 for small equipment purchases.

## AGENDA REPORT

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**SUBJECT:** CONSIDER AUTHORIZING THE USE OF \$3,500  
IN STATE ASSET FORFEITURE FUNDS TO HOST  
THE 2016 NATIONAL NIGHT OUT EVENT

**DATE:** June 6, 2016

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 16

**FILE I.D.:** PDT362

**DEPT.:** POLICE

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**REASON FOR CONSIDERATION:** The Police Department, through its Community Relations Division, is coordinating and hosting the 2016 National Night Out community event. The City Council is requested to consider authorizing the use of State Asset Forfeiture funds to purchase goods and services that are essential to its success.

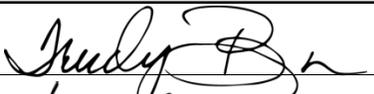
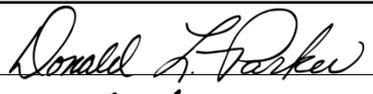
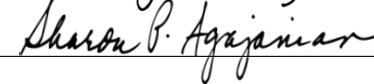
**BACKGROUND:** The Police Department is dedicated to ensuring the safety of the Montclair community and is committed to engaging residents in dialogue about law enforcement-related responsibilities, concerns, and crime prevention. To that end, the Department, through its Community Relations Division, will coordinate and host this year's National Night Out event in Alma Hofman Park on Tuesday, August 2, 2016. National Night Out is an annual community-building campaign designed to promote police-community partnerships that enhance neighborhood camaraderie and build safer communities.

To encourage community involvement, this year's event will include fun in the Splash Pad, a photo booth, face painting, and a movie in the park, all at no cost to attendees. Popcorn, cookies, nuts, and shaved ice will be available for sale. Montclair Police and Fire Departments will be on hand to speak to the public and provide our youth and the "young at heart" the opportunity to see and handle some of the tools of the trade. A certified child seat installation technician will be available to inspect car seats and provide instruction on proper installation procedures. Child ID/fingerprint kits and a host of educational and promotional materials that help guide, support, motivate, and encourage residents to take an active role in securing a safer community will be available. In addition, a portion of the funding would be used to purchase two movie licenses in support of the City's Movie in the Park summer series leading up to the National Night Out event.

Nextdoor, ADT®, and Associa®, corporate sponsors of National Night Out, have committed to significant participation. Target staff will be on hand to assist with setup and tear down, and will provide National Night Out promotional gifts and refreshments. Several area representatives have also confirmed their participation in the event.

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

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National Night Out is a perfect opportunity for outreach and interaction with the communities we serve.

**FISCAL IMPACT:** Pursuant to Health and Safety Code Section 11489, 15 percent of funds distributed through State Asset Forfeiture shall be deposited in a special fund to be "used for the sole purpose of funding programs designed to combat drug abuse and divert gang activity, and shall wherever possible involve educators, parents, community-based organizations and local businesses, and uniformed law enforcement officers." The City has established Fund 1146 for this purpose.

If authorized by the City Council, funding for the purchase of goods and services for National Night Out and two movie licenses for the City's Movie in the Park summer series would result in an expenditure of \$3,500 from said fund.

**RECOMMENDATION:** Staff recommends the City Council authorize the use of \$3,500 in State Asset Forfeiture funds to host the 2016 National Night Out event.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER AUTHORIZING THE EXPENDITURE OF \$3,200 FROM THE CRIME PREVENTION FUND TO PURCHASE EDUCATIONAL AND PROMOTIONAL MATERIALS FOR DISTRIBUTION DURING COMMUNITY EVENTS	<b>DATE:</b> June 6, 2016 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 17 <b>FILE I.D.:</b> PDT200 <b>DEPT.:</b> POLICE
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**REASON FOR CONSIDERATION:** The City Council is requested to consider authorizing the purchase of educational and promotional items for dissemination by Department personnel during presentations and school and community events.

**BACKGROUND:** The Police Department and its Community Relations Division are dedicated to ensuring the safety of our residents and community. To that end, the Department is committed to providing educational and promotional materials that help guide, support, motivate, and encourage Montclair residents to take an active role in securing a safer community.

Outreach materials are important public safety resources that feature vital safety messages and information ranging from bicycle safety and drugs to implementing and maintaining effective neighborhood watch programs. These materials help children and adults make informed choices about their personal safety; spark conversation about what citizens can do individually and collectively to promote ongoing involvement in their own community; and empower them to unite against bullying, gangs, drugs, and overall crime in the community.

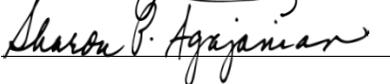
The Department's Community Relations Division ensures personnel are available to attend school and community events and speaking engagements to encourage dialogue about law enforcement-related responsibilities and concerns, as well as crime prevention measures. Safety and crime prevention and awareness materials are disseminated during such events.

California Penal Code Section (PC) 1202.5 authorizes the Superior Court of California, San Bernardino County, to collect restitution from defendants convicted of particular crimes. The funds are then transferred to the local law enforcement agency where the crimes occurred to implement, support, and continue local crime-prevention programs.

**FISCAL IMPACT:** Funds received pursuant to PC 1202.5 are held in the Crime Prevention Fund (1151). If authorized by the City Council, funding for the purchase of educational and promotional materials would result in an expenditure of \$3,200 from said fund.

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

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**RECOMMENDATION:** Staff recommends the City Council authorize the expenditure of \$3,200 in Crime Prevention Funds to purchase educational and promotional materials for distribution during community events.

## AGENDA REPORT

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**SUBJECT:** CONSIDER AUTHORIZING A \$1,020  
APPROPRIATION FROM THE PROPOSITION  
30/AB109 FUND TO PAY THE ANNUAL  
USAGE FEE FOR FIVE ELECTRONIC STAKEOUT  
TRACKER SYSTEMS

**DATE:** June 6, 2016  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 18  
**FILE I.D.:** PDT405  
**DEPT.:** POLICE

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**REASON FOR CONSIDERATION:** The City Council is requested to authorize the use of Proposition 30/AB109 Funds to pay the annual usage fee for the Department's five Electronic StakeOut (ESO) tracker systems, ensuring the devices would continue to operate as expected on the cellular network and secure web portal.

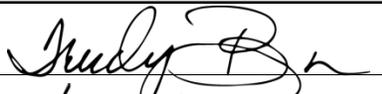
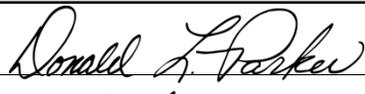
**BACKGROUND:** ESO tracker systems are apprehension tools that actively target criminals perpetrating property crimes affecting the quality of life in our community. This highly effective and fiscally efficient tool is the next wave for modern policing; in fact Montclair Police Department has utilized the devices since 2014. The number of police agencies turning to Global Positioning System (GPS) technology to protect assets is increasing. 3SI Security Systems, the ESO tracker system provider, uses Electronic Satellite Pursuit (ESP), a proven GPS tracking system that combines high-sensitivity GPS, cellular, and radio frequency (RF) location technologies to provide a powerful and effective tracking and location tool.

An ESO tracking system is a small electronic GPS device capable of being concealed within or on many objects. The fully automatic devices stay hidden until needed and have high-sensitivity GPS systems built into them. Only one high-speed Internet computer is needed to track the device via a secured website. The system is completely silent, giving no indication to the thief that a tracking system is in progress. RF technology provides an additional location method. The device battery status and history is available via a secured website. Device tracking and event history is also stored on a secured website. The devices are easy to maintain and use and require minimal installation time. They utilize little resources and have remote access which reduces manpower deployment. The battery system self-checks and is serviced once every 12 months.

Through ESO deployment, the device alerts law enforcement to crimes in progress, resulting in the arrest of criminals. The different uses for the ESO tracking systems are virtually endless. Various applications include bait cars, bicycles, motor scooters, metal theft, construction sites, laptop computers, cash packs, or whatever the current crime trend may be.

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

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**FISCAL IMPACT:** If authorized by the City Council, funding to cover the recurring usage fee for continued support of the Department's five ESO tracker systems would result in an appropriation from the Proposition 30/AB109 Fund (1141) in the amount of \$1,020.

**RECOMMENDATION:** The City Council is requested to authorize a \$1,020 appropriation from the Proposition 30/AB109 Fund to pay the annual usage fee for five Electronic StakeOut tracker systems.

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 16-38 WITH CHAFFEY JOINT UNION  
HIGH SCHOOL DISTRICT FOR LAW  
ENFORCEMENT SERVICES DURING FISCAL  
YEAR 2016-17

**DATE:** June 6, 2016  
**SECTION:** AGREEMENTS  
**ITEM NO.:** 1  
**FILE I.D.:** SCH125/350  
**DEPT.:** POLICE

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 16-38 with Chaffey Joint Union High School District to continue the Safe School Zone Officer assignment at Montclair High School.

A copy of proposed Agreement No. 16-38 is attached for the City Council's review and consideration.

**BACKGROUND:** Since 1995, the Montclair Police Department has provided the community with the services of a Safe School Zone Officer at Montclair High School.

Pursuant to the terms of proposed Agreement No. 16-38, Chaffey Joint Union High School District would pay \$64,000 toward the cost of a Safe School Zone Officer. The Police Department would be obligated to provide an on-campus presence for eight hours each school day. Our experience has shown an Officer's presence has a positive impact at the high school with little change to the allocation of patrol resources.

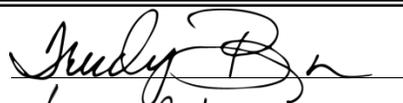
**FISCAL IMPACT:** Chaffey Joint Union High School District would pay \$64,000 toward the salary of the Safe School Zone Officer during Fiscal Year 2016-17 should this item be approved.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 16-38 with Chaffey Joint Union High School District for law enforcement services during Fiscal Year 2016-17.

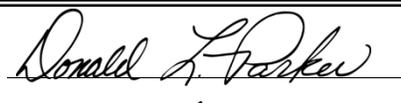
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Prepared by:



Fiscal Impact  
Finance Review:



Proofed by:



Reviewed and  
Approved By:



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**AGREEMENT  
FOR SPECIALIZED LAW ENFORCEMENT SERVICES**

This Agreement is made and entered into this 1st day of July, 2016 by and between the City of Montclair (hereinafter referred to as CITY) and the Chaffey Joint Union High School District (hereinafter referred to as DISTRICT), both of whom understand as follows:

**WITNESSETH**

WHEREAS, the following services are to be performed subject to the conditions hereinafter set forth:

NOW, THEREFORE in consideration of these services and mutual conditions hereinafter provided, the parties hereto agree as follows:

- A. Beginning with the school year through the end of the school year, the CITY will perform specialized law enforcement services for the DISTRICT at and about the campus of Montclair High School. It is understood that these services are to be provided, to the extent possible, on regularly scheduled school days between 7:00 a.m. and 4:00 p.m., and during mutually agreed upon “in-service” or familiarization periods.
  - 1. It is acknowledged that the provision of services may be interrupted by the normal working conditions experienced by law enforcement agencies, which include, but are not limited to: employee illness, court appearances, training requirements, prisoner transportation, emergency circumstances taxing on other departmental resources, etc. Should the interruption of services, for any reason, extend beyond four successive days, the CITY shall meet its obligation through the assignment of an alternate sworn employee.
  
- B. This Agreement will allow the CITY, through its Police Department, to provide the following specialized law enforcement services to the DISTRICT:
  - 1. One Sworn Community Oriented Officer, known as a Safe School Zone Officer, shall, through random patrol and their on-campus presence, strive to maintain a crime-free zone on and around each school campus.
  - 2. Through the Safe School Zone Officer, provide a consistent and timely response to calls for assistance from the high school or concerning students from the high school.
  - 3. Through the Safe School Zone Officer, provide a consistent liaison for the high school administration on law enforcement matters.

4. Through the Safe School Zone Officer, provide resources and materials necessary for classroom presentations on law enforcement matters.
  5. Through the Safe School Zone Officer, maintain a physical presence on campus during the hours of approximately 7:00 a.m. and 4:00 p.m. on each school day subject to possible interruptions as described in paragraph A(1) above. While on campus, the role of the officer is to:
    - a. Act as a positive role model for students.
    - b. Facilitate a positive and interactive student/law enforcement relationship.
    - c. Maintain a proactive stance toward crime prevention and order maintenance.
    - d. Act as first responder to criminal conduct or order maintenance issues occurring on or about the high school campus.
    - e. Within the confines of the law, act as information resource for school administrators on matters of mutual concern.
- C. In addition to the above, beginning with the summer session of 2016, the Safe School Zone Officer will provide services to the high school, adjusting the hours to the school schedule.
1. One Safe School Zone Officer will maintain a physical presence on campus each day during the regularly scheduled school hours.
- D. In consideration for providing these services, the DISTRICT will pay to the CITY a total of \$64,000 invoiced in two equal \$32,000 amounts; the first during November 2016, and the second due in May 2017.
- E. It is understood by both parties that the Safe School Zone Officer or other CITY officers providing this service shall remain CITY's employee at all times. As such, the CITY shall be responsible for all employment costs, supervision, control, and assignment of said officers.
- F. This Agreement is not assignable, either in whole or in part, by DISTRICT without the prior written consent of the CITY. The laws of the State of California shall govern the rights, obligation, duties, and liabilities of the parties to this Agreement and shall also govern the interpretation of the Agreement, if in dispute.

#### TERMINATION OR MODIFICATION OF AGREEMENT

This Agreement shall end on June 30, 2017, unless extended by both the CITY and DISTRICT. The CITY or DISTRICT may terminate all or any portion of this Agreement at any time upon providing a thirty (30) day written notice delivered to the addresses below. In the event the Agreement is terminated by either party prior to June 30, 2017, DISTRICT shall pro-rate its final payment for services rendered at \$5,500 per month.

CITY: City of Montclair  
5111 Benito Street  
Montclair, California 91763

DISTRICT: Chaffey Joint Union High School District  
211 West Fifth Street  
Ontario, California 91762

INDEMNIFICATION

DISTRICT shall defend, indemnify and hold harmless the CITY, its elective and appointive boards, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, in any manner arising out of any negligent or intentional or willful acts or omissions of DISTRICT under this Agreement.

CITY shall defend, indemnify and hold harmless the DISTRICT, its elective and appointive boards, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, in any manner arising out of any negligent or intentional or willful acts or omissions of CITY under this Agreement.

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

CITY OF MONTCLAIR

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Paul M. Eaton,  
Mayor

ATTEST:

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Andrea M. Phillips,  
Deputy City Clerk, City of Montclair

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT

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Timothy Ward,  
Assistant Superintendent

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 16-39 WITH L.D. KING, INC., FOR  
PLAN CHECKING AND DESIGN SERVICES

**DATE:** June 6, 2016

**SECTION:** AGREEMENTS

**ITEM NO.:** 2

**FILE I.D.:** PUB115

**DEPT.:** PUBLIC WORKS

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**REASON FOR CONSIDERATION:** Agreements for plan checking and design services require City Council approval.

A copy of proposed Agreement No. 16-39 is attached for the City Council's review and consideration.

**BACKGROUND:** The City uses consulting engineers for most of its engineering services. It is the most efficient means for a small city with minimal engineering staff to obtain engineering services required, given the varying needs that occur with design and development review.

L.D. King, Inc., an engineering consulting firm, has been providing design and plan checking services for the City since 1974, at one point even serving as the City's consultant City Engineer. The firm has considerable knowledge of the City and offers valuable engineering services and assistance to the City on an as-needed basis in a number of areas. These areas include reviewing plans, conducting studies, and preparing project reports and improvement plans. Most of the engineering plan checking not performed in-house is done by L.D. King, Inc.

Agreement No. 12-11 for plan checking services with L.D. King, Inc., expired at the end of 2014. Through an oversight the agreement was not renewed. The proposed agreement would be retroactive to January 1, 2015, and expire on June 30, 2020. The agreement also provides for miscellaneous engineering services as needed.

**FISCAL IMPACT:** The City collects plan checking fees to cover the cost of reviewing plans and reports associated with new development. The fees are based on the type of plan or report being reviewed. The fees collected from developers cover the invoices submitted by L.D. King, Inc. Miscellaneous engineering services, when requested, are paid with funds either already appropriated for specific projects or by separate appropriations for the specific need.

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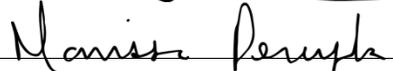
Prepared by:



Fiscal Impact  
Finance Review:



Proofed by:



Reviewed and  
Approved By:



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The agreement includes an annual cap of \$50,000 for the term of the agreement. The agreement allows minor increases of up to \$5,000 annually by the City Manager's authority. Increases beyond this amount will require City Council approval.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 16-39 with L.D. King, Inc., for plan checking and design services.

**CITY OF MONTCLAIR**

**AGREEMENT FOR PLAN CHECKING AND DESIGN SERVICES**

THIS AGREEMENT is made and effective as of June 6, 2016, between the City of Montclair, a municipal corporation ("City") and L.D. King, Inc. ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on January 1, 2015, and shall remain and continue in effect for a period of 66 months, terminating on June 30, 2020, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

Consultant shall at all times faithfully, 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 Engineer shall represent City in all matters pertaining to the administration of this Agreement, and 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 Project Payment Schedule as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed FIFTY THOUSAND DOLLARS (\$50,000.00) on an annual basis for the term of 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 annually approve additional work not to exceed FIVE THOUSAND DOLLARS (\$5,000). 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.

## 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.

(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
(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 non-owned 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:**

Mr. Michael C. Hudson  
Public Works Director/City Engineer  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

**To Consultant:**

Dale Wintergerst  
L.D. King, Inc.  
10390 Commerce Center Drive  
Suite C-250  
Rancho Cucamonga, CA 91730

17. ASSIGNMENT

Consultant's responsible employee, Dale Wintergerst, 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**

City of Montclair  
5111 Benito Street  
Montclair, CA 91763

By: \_\_\_\_\_  
Paul M. Eaton, Mayor

Attest:

By: \_\_\_\_\_  
Andrea M. Phillips, Dep. City Clerk

Approved as to Form:

By: \_\_\_\_\_  
City Attorney

**CONSULTANT**

L.D. King, Inc.  
10390 Commerce Center Drive  
Suite C-250  
Rancho Cucamonga, CA 91730

By: \_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Title)

## EXHIBIT "A"

### PROJECT PAYMENT SCHEDULE



## Rate Schedule

### L.D. King, Inc.

October 1, 2015 - September 30, 2016

Principal.....	\$175.00
Sr. Project Manager/Sr. Engineer Designer.....	\$173.00
Director of Planning.....	\$173.00
Project Manager.....	\$154.00
Project Engineer.....	\$134.00
Engineer/Designer/Planner III.....	\$123.00
Engineer/Designer/Planner II.....	\$107.00
Engineer/Designer/Planner I.....	\$ 97.00
CAD Drafter.....	\$ 89.00
Project Coordinator.....	\$ 76.00
Graphic Artist/Technician.....	\$ 72.00
Project/Administrative Assistant.....	\$ 64.00
Engineer Support Staff/Intern.....	\$ 44.00
<b><u>Surveying Services</u></b>	
Director of Surveys.....	\$168.00
Project Surveyor, Office.....	\$140.00
Senior Survey Calculator.....	\$123.00
Survey Calculator.....	\$107.00
3-Man Survey Crew.....	\$300.00
2-Man Survey Crew.....	\$238.00
1-Man Survey Crew.....	\$165.00
<b><u>Travel Time</u></b>	
3-Man Survey Crew.....	\$161.00
2-Man Survey Crew.....	\$109.00
1-Man Survey Crew.....	\$ 65.00
<b><u>Overtime Rates</u></b>	
3-Man Survey Crew.....	\$361.00
2-Man Survey Crew.....	\$279.00
1-Man Survey Crew.....	\$190.00
<b><u>Subsistence</u></b>	
3-Man Survey Crew.....	\$309.00
2-Man Survey Crew.....	\$209.00
<b><u>Construction Services</u></b>	
Sr. Resident Engineer.....	\$133.00
Resident Engineer.....	\$128.00
Senior Inspector.....	\$118.00
Inspector.....	\$102.00
Car/Truck for Construction Services Personnel.....	\$ 66.00/Day
<b><u>Reimbursable Costs</u></b>	
In-House Reproduction.....	Cost
Printing and Materials.....	Cost + 15%
Express Mail, Courier, Next Day Service.....	Cost + 15%
Special Subconsultant Services.....	Cost + 10%

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

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 16-40 WITH SAN BERNARDINO ASSOCIATED GOVERNMENTS AMENDING AGREEMENT NO. 16-15 APPROVING A TRADE CORRIDOR IMPROVEMENT FUND BASELINE AGREEMENT FOR CONSTRUCTION FUNDS FOR THE MONTE VISTA AVENUE/UNION PACIFIC RAILROAD GRADE SEPARATION PROJECT

**DATE:** June 6, 2016

**SECTION:** AGREEMENTS

**ITEM NO.:** 3

**FILE I.D.:** STA110

**DEPT.:** PUBLIC WORKS

CONSIDER AUTHORIZING CITY MANAGER STARR TO SIGN AGREEMENT NO. 16-40

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**REASON FOR CONSIDERATION:** On February 16, 2016, the City Council authorized City Manager Edward Starr to sign Agreement No. 16-15 with San Bernardino Associated Governments (SANBAG) for the use of Trade Corridor Improvement Funds (TCIF). The agreement now needs to be amended based on a revised construction cost estimate. The Council is again requested to authorize City Manager Edward Starr to sign Agreement No. 16-40 amending the previous agreement.

A copy of proposed Agreement No. 16-40 with SANBAG is attached for the City Council's review and consideration.

**BACKGROUND:** The City has previously entered into Agreement No. 15-64 with SANBAG acting as the San Bernardino County Transportation Authority, to jointly fund the construction of the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, and Agreement No. 16-15, which specified the use of TCIF as one source of funds for this project.

Based on the most current construction cost estimate for the grade separation project, SANBAG has prepared an amendment to Agreement No. 16-15 and requested the City's approval, along with approvals from the California Department of Transportation and the California Transportation Commission.

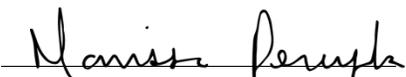
**FISCAL IMPACT:** Fiscal impacts to the City were previously addressed in Agreement No. 15-64. Agreement No. 16-15 added no additional fiscal impacts. Exhibit A of Agreement No. 16-40 identifies funding sources intended to be used by SANBAG. Based on SANBAG's ability to secure additional funding from different sources, the City contribution has been reduced from \$1.842 million to \$1.752 million.

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

1. Approve Agreement No. 16-40 with San Bernardino Associated Governments amending Agreement No. 16-15 approving a Trade

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

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Corridor Improvement Fund Baseline Agreement for construction funds for the Monte Vista Avenue/Union Pacific Grade Separation Project.

2. Authorize City Manager Starr to sign Agreement No. 16-40.

**TRADE CORRIDORS IMPROVEMENT FUND  
PROJECT BASELINE AGREEMENT AMENDMENT #1**

On \_\_\_\_\_, with CTC Resolution TCIF \_\_\_\_\_, attached hereto for reference, the California Transportation Commission approved a TCIF Program Amendment to revise fund programming and project schedule of TCIF Project: Monte Vista Grade Separation Project.

The Project Baseline Agreement provision for the Monte Vista Grade Separation Project, effective on March 16, 2016, made by and between the California Transportation Commission, the California Department of Transportation, the City of Montclair, and San Bernardino Associated Governments remains in effect except for the following sections:

**4.1 Project Schedule and Cost**

See Project Programming Request Form, attached as Exhibit A.

\_\_\_\_\_  
California Department of Transportation  
Malcolm Dougherty, Director

\_\_\_\_\_  
California Transportation Commission  
Susan Bransen, Executive Director

\_\_\_\_\_  
City of Montclair  
Edward C. Starr, City Manager

\_\_\_\_\_  
San Bernardino Associated Governments  
Raymond Wolfe, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Eileen Monaghan Teichert, SANBAG General Counsel

## Exhibit A

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

### PROJECT PROGRAMMING REQUEST

DTP-0001 (Revised September 2013)

*General Instructions*

<input checked="" type="checkbox"/> Amendment (Existing Project)					<b>Date:</b> 5/20/16						
<b>District</b>		<b>EA</b>		<b>Project ID</b>		<b>PPNO</b>		<b>MPO ID</b>		<b>TCRP No.</b>	
08						1190		20010135			
<b>County</b>		<b>Route/Corridor</b>		<b>PM Bk</b>		<b>PM Ahd</b>		<b>Project Sponsor/Lead Agency</b>			
SBD								San Bernardino Associated Governments (SANBAG)			
						<b>MPO</b>			<b>Element</b>		
						SCAG			LA		
<b>Project Manager/Contact</b>				<b>Phone</b>				<b>E-mail Address</b>			
Brian Smith				(909)884-8276				<a href="mailto:bsmith@sanbag.ca.gov">bsmith@sanbag.ca.gov</a>			
<b>Project Title</b>											
Monte Vista Avenue Grade Separation at UPRR Line											
<b>Location, Project Limits, Description, Scope of Work</b>											
In the City of Montclair construct grade separation at Monte Vista Avenue/Union Pacific Railroad and associated roadway improvements to provide four lanes to traffic and a connector between Monte Vista Avenue and State Street. Pre-construction components previously funded with a combination of Local, Federal and other State funding.											
<input type="checkbox"/> Includes ADA Improvements						<input type="checkbox"/> Includes Bike/Ped Improvements					
<b>Component</b>		<b>Implementing Agency</b>									
PA&ED		Montclair, City of									
PS&E		Montclair, City of									
Right of Way		Montclair, City of									
Construction		San Bernardino Associated Governments (SANBAG)									
<b>Purpose and Need</b>											
The purpose of the work is to improve traffic flow, eliminate rail crossing delays and provide adequate levels of service through the year 2025.											
Benefits: The project will improve safety, improve emergency vehicle response time, provide efficient movement of goods and mitigate the train/vehicular traffic conflict delays that are expected to worsen through 2025. The project will also improve air quality, lower noise and improve the quality of life for residents and motorists of both the County and the City.											
<b>Project Benefits</b>											
The project will improve safety, improve emergency vehicle response time, provide efficient movement of goods and mitigate the train/vehicular traffic conflict delays that are expected to worsen through 2025. The project will also improve air quality, lower noise and improve the quality of life for residents and motorists of both the County and the City.											
<input type="checkbox"/> Supports Sustainable Communities Strategy (SCS) Goals						<input type="checkbox"/> Reduces Greenhouse Gas Emissions					
<b>Project Milestone</b>								<b>Existing</b>		<b>Proposed</b>	
Project Study Report Approved											
Begin Environmental (PA&ED) Phase								04/01/02			
Circulate Draft Environmental Document				<b>Document Type</b> CE/CE				/ /			
Draft Project Report								08/27/02			
End Environmental Phase (PA&ED Milestone)								07/19/13			
Begin Design (PS&E) Phase								01/01/03			
End Design Phase (Ready to List for Advertisement Milestone)								03/01/16			
Begin Right of Way Phase								01/01/03			
End Right of Way Phase (Right of Way Certification Milestone)								03/01/16		04/27/16	
Begin Construction Phase (Contract Award Milestone)								11/02/16		02/07/17	
End Construction Phase (Construction Contract Acceptance Milestone)								01/31/19		05/01/19	
Begin Closeout Phase								02/02/19		05/02/19	
End Closeout Phase (Closeout Report)								08/01/19		03/05/20	

**ADA Notice** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, M S-89, Sacramento, CA 95814.

**PROJECT PROGRAMMING REQUEST**

DTP-0001 (Revised September 2013)

Date: 5/20/16

District	County	Route	EA	Project ID	PPNO	TCRP No.
08	SBD,	,	,		1190	
<b>Project Title:</b> Monte Vista Avenue Grade Separation at UPRR Line						

Existing Total Project Cost (\$1,000s)									Implementing Agency
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	
E&P (PA&ED)									Montclair, City of
PS&E									Montclair, City of
R/W SUP (CT)									Montclair, City of
CON SUP (CT)									San Bernardino Associated
R/W									Montclair, City of
CON			22,753					22,753	San Bernardino Associated
<b>TOTAL</b>			22,753					22,753	
Proposed Total Project Cost (\$1,000s)									Notes
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			26,685					26,685	
<b>TOTAL</b>			26,685					26,685	

Fund No. 1:	State Bond - Trade Corridor Program (TCIF)								Program Code
Existing Funding (\$1,000s)									20.XX.723.000
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	Funding Agency
E&P (PA&ED)									Caltrans
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			2,113					2,113	
<b>TOTAL</b>			2,113					2,113	
Proposed Funding (\$1,000s)									Notes
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			2,113					2,113	
<b>TOTAL</b>			2,113					2,113	

Fund No. 2:	Demo - Demonstration-State TEA21 (DEMOS21)								Program Code
Existing Funding (\$1,000s)									20.30.010.680
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	Funding Agency
E&P (PA&ED)									San Bernardino Associated Gov
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			12,152					12,152	
<b>TOTAL</b>			12,152					12,152	
Proposed Funding (\$1,000s)									Notes
E&P (PA&ED)									PNRS funds
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			14,715					14,715	
<b>TOTAL</b>			14,715					14,715	

Fund No. 3: Local Funds - SBD Co Measure I (XSBD)									Program Code
Existing Funding (\$1,000s)									20.XX.400.100
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	Funding Agency
E&P (PA&ED)									San Bernardino Associated Gov
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			5,570					5,570	
TOTAL			5,570					5,570	
Proposed Funding (\$1,000s)									
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			2,029					2,029	
TOTAL			2,029					2,029	

Fund No. 4: Local Funds - City Funds (CITY)									Program Code
Existing Funding (\$1,000s)									20.XX.400.100
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	Funding Agency
E&P (PA&ED)									Montclair, City of
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			1,842					1,842	
TOTAL			1,842					1,842	
Proposed Funding (\$1,000s)									
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			1,752					1,752	
TOTAL			1,752					1,752	

Fund No. 5: Local Funds - Local Transportation Funds (LTF)									Program Code
Existing Funding (\$1,000s)									20.XX.400.100
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	Funding Agency
E&P (PA&ED)									San Bernardino Associated Gov
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			1,076					1,076	
TOTAL			1,076					1,076	
Proposed Funding (\$1,000s)									
E&P (PA&ED)									UPRR
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			1,076					1,076	
TOTAL			1,076					1,076	

Fund No. 6:		PUC 190							Program Code	
Existing Funding (\$1,000s)										
Component	Prior	14/15	15/16	16/17	17/18	18/19	19/20+	Total	Funding Agency	
E&P (PA&ED)									CPUC	
PS&E										
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON										
TOTAL										
Proposed Funding (\$1,000s)									Notes	
E&P (PA&ED)									PUC 190 fund	
PS&E										
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON			5,000					5,000		
TOTAL			5,000					5,000		

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 16-41 WITH SAN BERNARDINO TRANSPORTATION AUTHORITY AMENDING AGREEMENT NO. 15-64 FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE MONTE VISTA AVENUE/UNION PACIFIC RAILROAD GRADE SEPARATION PROJECT	<b>DATE:</b> June 6, 2016 <b>SECTION:</b> AGREEMENTS <b>ITEM NO.:</b> 4 <b>FILE I.D.:</b> STA110 <b>DEPT.:</b> PUBLIC WORKS
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**REASON FOR CONSIDERATION:** On August 3, 2015, the City Council approved Agreement No. 15-64 with San Bernardino Associated Governments (SANBAG), acting in its role as the Transportation Authority for San Bernardino County. Based on the most current cost estimate for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, SANBAG now wishes to amend the agreement to reflect the new cost estimate. Contract amendments require City Council approval.

A copy of proposed Agreement No. 15-64 with the San Bernardino County Transportation Authority is attached for the City Council's review and consideration.

**BACKGROUND:** The City is currently under contract with NCM Engineering Corporation for the design and development of construction drawings for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project. The design has been completed, along with an updated cost estimate. The City has requested that SANBAG provide construction management services and provide the funds necessary for construction. SANBAG has agreed to provide the funding and construction services, including advertising and awarding the construction contract, subject to the terms of Agreement No. 15-64.

With the design completed and the construction cost estimate revised, SANBAG wishes to amend Agreement No. 15-64 to reflect changes in the revised construction cost estimate and the actual cost of construction management services.

**FISCAL IMPACT:** Construction cost, construction management cost, and project management cost are estimated to be approximately \$26,960,492. Agreement No. 16-41 includes the following comments and table:

*Public Share:*

91.5% - \$24,417,225.18 before buy downs<sup>2</sup>

*Nexus Development Impact Fee Share (DIF, "Development Share" or "Local Share"):*

8.5% - \$2,543,266.82 before buy downs<sup>2</sup> (including SANBAG project management cost)

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

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Phase	Estimate Cost <sup>1</sup>	Shares per Nexus Study	
		Public Share	Development Share
Construction Management	\$3,315,020.00	\$3,033,243.30	\$281,776.70
Construction Capital	\$23,370,472.00	\$21,383,981.88	\$1,986,490.12
SANBAG Project Management <sup>3</sup>	\$275,000.00	\$0.00	\$275,000.00
TOTAL	\$26,960,492.00	\$24,417,225.18	\$2,543,266.82

<sup>1</sup> Estimated Costs are based on April 2016 estimates.

<sup>2</sup> UPRR project contribution and PUC allocation, if obtained, will buy down total project cost in accordance with Measure I Strategic Plan Policy 40001/VS-30. Buy down amounts will cause proportional adjustment of Public and Development Shares.

<sup>3</sup> In accordance with Measure I Strategic Plan Policy VMS-29 and VMS-30 SANBAG Project Management costs are to be paid solely by Development Share.

The City's portion of the cost is estimated at a not-to-exceed amount of \$2,543,266.82, though the actual cost with buy-downs is closer to \$1,800,000. The City's portion will come from the Regional Transportation Development Impact Fees (TDIF) collected by the City since 2006. Any shortfall will be made up as a loan from the local Measure I pass-through, with that loan being repaid by future Regional TDIF.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 16-41 with San Bernardino Transportation Authority amending Agreement No. 15-64 for construction management services for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project.

**AMENDMENT NO. 1 TO  
COOPERATIVE AGREEMENT NO. 15-1001297  
BETWEEN  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
AND  
CITY OF MONTCLAIR  
FOR  
CONSTRUCTION PHASE FOR THE GRADE SEPARATION AT  
MONTE VISTA AVENUE/UPRR IN THE CITY OF MONTCLAIR**

**I. PARTIES AND TERM**

A. THIS AMENDMENT NO. 1 to COOPERATIVE AGREEMENT (“Agreement”) is made and entered into by and between the San Bernardino County Transportation Authority (hereinafter referred to as “AUTHORITY”) and the City of MONTCLAIR (CITY), (AUTHORITY and CITY may be referred to herein as a “Party” and collectively “Parties”).

**II. RECITALS**

A. WHEREAS, CITY and AUTHORITY have previously entered into Cooperative Agreement, No. 15-1001297 which delineates roles, responsibilities, and funding commitments relative to the Construction activities of the PROJECT.

B. WHEREAS, the CITY and AUTHORITY wish to amend Cooperative Agreement, No. 15-1001297 to update the estimated Construction Phase costs of the PROJECT based on the latest engineer’s estimate developed during final design phase, updated construction management costs, and adjusted party shares.

NOW, THEREFORE, the Parties agree to amend Cooperative Agreement No. 15-1001297 between the CITY and AUTHORITY as follows:

1. Delete paragraph F of Section II, entitled “RECITALS” and replace with the following:

“F. WHEREAS, the project Construction phase is estimated to cost a total of \$26,960,492.00, which includes \$275,000.00 for the AUTHORITY to provide Project Management services for the Project; and”

2. Delete paragraph K of Section II, entitled “RECITALS” and replace with the following:

“K. WHEREAS, the remaining PROJECT cost, aside from AUTHORITY Project Management costs, for the Construction Phase is estimated at \$26,685,492.00, which shall be funded with 8.5% Development Share funds and 91.5% Public Share funds as defined by the Nexus Study and the SANBAG Measure I 2010-2014 Strategic Plan after application of any buy downs, as noted in Paragraphs “H” and “I” in Section V, in accordance with AUTHORITY Measure I Strategic Plan Policy 40001/VS-30.”

3. Delete paragraph B of Section III, entitled “AUTHORITY RESPONSIBILITIES” and replace with the following:

“B. To contribute towards the Construction phase of the PROJECT cost an amount not to exceed \$24,417,225.18, as shown in “Revised Attachment A”. The actual cost of a specific contract may ultimately vary from the estimates provided in Attachment A, however, under no circumstances is the total combined AUTHORITY contribution to exceed \$24,417,225.18 without an amendment to this Agreement.”

4. Delete paragraph J of Section IV, entitled “CITY RESPONSIBILITIES” and replace with the following:

“J. To reimburse AUTHORITY for the Development Share of actual costs incurred for the Construction phase of the PROJECT and up to \$275,000 for SANBAG Project Management as shown in “Revised Attachment A”. The actual cost of a specific contract may ultimately vary from the estimates provided in “Revised Attachment A”, however, under no circumstances is the total combined CITY contribution to exceed \$2,543,266.82 without an amendment to this Agreement.”

5. Delete paragraph I of Section V, entitled “MUTUAL RESPONSIBILITIES” and replace with the following:

“I. CITY has applied to be on the priority list for a Project allocation from the PUC. City will diligently seek to comply with all requirements to submit an allocation request for a \$5 million allocation from the PUC. Should such funding be secured for the project, CITY will request payment from Caltrans. All PUC funds will buy down Project costs and if received, SANBAG will progressively invoice CITY the full amount of PUC allocation.”

6. Replace “Attachment A” with the “Revised Attachment A” which is attached to this Amendment No. 1 and by this reference incorporated herein; and replace all references to “Attachment A” with “Revised Attachment A” throughout Cooperative Agreement No. 15-1001297.
7. Except as amended by this Amendment No. 1, all other terms and conditions of Cooperative Agreement No. 15-1001297 shall remain in full force and effect.
8. The recitals are incorporated into the body of this Amendment No. 1.
9. This Amendment No. 1 may be signed in counterparts, each of which shall constitute an original.
10. The Effective Date of this Amendment is the date AUTHORITY executes this Amendment No. 1.

**SIGNATURES ON FOLLOWING PAGE:**

**SIGNATURE PAGE TO  
AMENDMENT NO. 1 TO  
COOPERATIVE AGREEMENT NO. 15-1001297  
BETWEEN  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
and CITY OF MONTCLAIR**

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

**CITY OF MONTCLAIR**

By: \_\_\_\_\_  
Ryan McEachron  
President, Board of Directors

By: \_\_\_\_\_  
Paul M. Eaton  
Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
General Counsel

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

ATTEST

By: \_\_\_\_\_  
Jeffery Hill  
Procurement Manager

By: \_\_\_\_\_  
Andrea M. Phillips  
Deputy City Clerk

## Revised Attachment A

### PROJECT DESCRIPTION

The CITY of Montclair and SANBAG propose to construct a grade separation crossing at Monte Vista Avenue Union Pacific Railroad Crossing. The cost estimate for the construction phase of the project is approximately \$26,960,492.00.

### PROJECT FUNDING TABLE

Public Share: 91.5%- \$24,417,225.18 before buy downs<sup>2</sup>

Nexus Development Impact Fee Share (DIF, “Development Share” or “Local Share”): 8.5%- \$2,543,266.82 before buy downs<sup>2</sup> (including SANBAG project management cost)

Phase	Estimate Cost <sup>1</sup>	Shares per Nexus Study	
		Public Share	Development Share
Construction Management	\$3,315,020.00	\$3,033,243.30	\$281,776.70
Construction Capital	\$23,370,472.00	\$21,383,981.88	\$1,986,490.12
SANBAG Project Management <sup>3</sup>	\$275,000.00	\$0.00	\$275,000.00
<b>TOTAL</b>	<b>\$26,960,492.00</b>	<b>\$24,417,225.18</b>	<b>\$2,543,266.82</b>

<sup>1</sup> Estimated Costs are based on April 2016 estimates.

<sup>2</sup> UPRR project contribution and PUC allocation, if obtained, will buy down total project cost in accordance with Measure I Strategic Plan Policy 40001/VS-30. Buy down amounts will cause proportional adjustment of Public and Development Shares.

<sup>3</sup> In accordance with Measure I Strategic Plan Policy VMS-29 and VMS-30 SANBAG Project Management costs are to be paid solely by Development Share.

### PROJECT SCHEDULE

Currently the Monte Vista Avenue Grade Separation schedule is as shown here below with approximate milestones:

Milestones	Estimated Completion Date
Environmental Approval	Summer 2013
Plans, Specifications & Estimate (PSE)	Spring 2016
Right of Way (ROW)	Winter 2013
Construction Start	Winter 2016/2017
Completion for Beneficial Use	Summer 2018

# AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 16-42 WITH WEST COAST ARBORISTS  
FOR TREE MAINTENANCE SERVICES

**DATE:** June 6, 2016

**SECTION:** AGREEMENTS

**ITEM NO.:** 5

**FILE I.D.:** STA700

**DEPT.:** PUBLIC WORKS

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**REASON FOR CONSIDERATION:** The City currently contracts with West Coast Arborists (WCA) for tree maintenance services. Approval of Agreement No. 16-42 will extend the tree maintenance contract for three additional years. Agreements with the City require City Council approval.

A copy of proposed Agreement No. 16-42 with West Coast Arborists is attached for the City Council's review and consideration.

**BACKGROUND:** Agreement No. 12-48 with WCA, a three-year agreement for tree maintenance services, expired on June 30, 2015. At its meeting on June 1, 2015, the City Council approved Agreement No. 15-37 with WCA, extending the services contract for an additional year. Agreement No. 15-37 expires on June 30, 2016.

Proposed Agreement No 16-42 would extend the term of Agreement No. 15-37 by three years, commencing July 1, 2016, and expiring on June 30, 2019. Agreement No. 16-42 is a three-year Agreement, but if acceptable to both the City and Contractor, this Agreement may be extended for two additional three-year terms.

WCA continues to provide the City with quality tree-trimming and other related services. WCA has been utilized by the City to trim trees since October 2000. The company is responsive to staff's requests and has established an internet-based inventory of all City trees at no additional cost. Public Works staff uses this inventory, which provides information related to tree location, tree species, work history, and the value of each tree, in its annual tree trimming program. This year WCA completed a full inventory of all City- and privately-owned trees and trees on vacant public, residential, and commercial properties, and has incorporated them into the tree inventory.

**FISCAL IMPACT:** The cost to provide tree maintenance services is not expected to exceed \$125,000 during Fiscal Year 2016-17. Funds for this purpose are included in the Fiscal Year 2016-17 City budget under Public Works/Tree Maintenance.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 16-42 with West Coast Arborists for tree maintenance services.

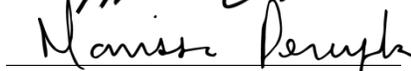
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Prepared by:



Proofed by:



Fiscal Impact  
Finance Review:



Reviewed and  
Approved By:



**AN AGREEMENT BY AND BETWEEN THE CITY OF  
MONTCLAIR AND WEST COAST ARBORISTS  
FOR TREE MAINTENANCE SERVICES**

**THIS AGREEMENT** is made and entered into this 1st day of July, 2016, by and between the CITY OF MONTCLAIR, a Municipal Corporation, County of San Bernardino, State of California, hereinafter referred to as "CITY," and WEST COAST ARBORISTS, hereinafter referred to as "CONTRACTOR."

**WITNESSETH:**

**SECTION I**

The CONTRACTOR, in consideration of the promises of the CITY hereinafter set forth, hereby agrees to furnish all tools, equipment, materials, labor, and transportation necessary to perform and complete the terms of this Agreement and to faithfully perform and maintain in a good and workmanlike manner the maintenance services on the areas as set forth and listed in this Agreement.

**SECTION II**

This Agreement is for a period of one (3) years from the date hereinabove set forth expiring on June 30, 2019, subject to the right of either party to cancel without cause by giving a minimum of thirty (30) days' written notice to the other of such cancellation.

**SECTION III**

All of the work and services to be performed pursuant to this Agreement shall be performed in a good and workmanlike manner. Contractor shall pay prevailing wages in accordance with the laws of the State of California. Payment for work completed will be based on the following schedule:

<i><b>Description</b></i>	<u><b>Unit</b></u> <u><b>Prices</b></u>	<u><b>Unit</b></u> <u><b>Description</b></u>
Tree trimming	\$62.00	Each
Palm Tree Trimming	\$62.00	Each
Complete Tree and Stump Removal	\$22.00	Diameter inch
Stump removal	\$6.75	Diameter inch
Tree planting 15-gallon w/out RB	\$162.50	Each
Tree planting 24-inch box w/out RB	\$336.00	Each
Speciality Tree Planting 15-gal w/out RB	\$177.65	Each
Speciality Tree Planting 24" Box w/out RB	\$355.25	Each
Root pruning	\$10.30	Each (foot)

Three-man crew rental, aerial unit, dump truck, and chipper	\$120.90	Hour
Emergency work call out	\$255.00	Hour
Palm tree trimming	\$45.90	Each

Payment will be made on the 15th day of each and every calendar month during the term of this Agreement, which will be paid to the Contractor for all work and services to be performed pursuant to the Agreement.

Payment of additional services requested, in writing, by City and not included in the Scope of Services as set forth in this Agreement, shall be negotiated on an item-by-item basis. Any additional services cost will include labor, equipment, overhead, and profit.

Any and all work done under this Section of this Agreement will be with prior written approval from the CITY. If prior written approval is not obtained by the CONTRACTOR, no payment will be approved. Charges for additional services shall be invoiced on a monthly basis and shall be paid by the CITY within a reasonable time after said invoices are received by the CITY.

#### **SECTION IV**

The CONTRACTOR shall defend, indemnify, and save harmless the CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, including the payment by the CONTRACTOR of any and all legal costs and attorneys' fees, in any manner arising out of any negligent or intentional or willful acts or omissions of the CONTRACTOR or any of its agents, servants, employees, or licensees in the performance of this Agreement including, but not be limited to, all consequential damages to the maximum extent permitted by law.

#### **SECTION V**

Not used.

#### **SECTION VI**

The CONTRACTOR shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to the CITY nor shall the CONTRACTOR allow any employee to commence work on the maintenance services subject to this Agreement until all insurance required has been obtained. The CONTRACTOR shall take out and maintain, at all times during the term of this Agreement, the policies of insurance as set forth hereinafter.

#### **SECTION VII**

Workers' Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish the CITY a Certificate of Insurance as proof that it has taken out full Workers' Compensation Insurance for all persons whom it may employ directly or through subcontractors in carrying out the work specified herein in accordance with the State of California.

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

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

#### **SECTION VIII**

Throughout the term of this Agreement, at the CONTRACTOR'S sole cost and expense, the CONTRACTOR shall keep, or cause to be kept, in full force and effect for the mutual benefit of the CITY and the CONTRACTOR comprehensive, broad form, general public liability, and automobile insurance against claims and liabilities for personal injury, death, or property damage arising from the CONTRACTOR'S activities, providing protection of at least One Million Dollars (\$1,000,000) for any one person Three Million Dollars (\$3,000,000) per accident or occurrence for bodily injury or death, and at least One Million Dollars (\$1,000,000) for property damage.

#### **SECTION IX**

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; and policies required under Section VIII shall name, as additional insured, the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured, and all subcontractors waive the right of subrogation against the CITY, its elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by the CITY; and (3) they cannot be canceled or materially changed except after (30) days written notice by the insurer to the CITY by certified mail.

The CONTRACTOR shall furnish the CITY with copies of all such policies promptly upon receipt of them or certificate evidencing the insurance. The CONTRACTOR may effect for its own account insurance not required under this Agreement.

#### **SECTION X**

The Public Works Superintendent, or his designated representative, shall be the judge of all work performed by the CONTRACTOR. If the work is not satisfactory, the Public Works Superintendent or his designated representative may suspend the Agreement for any period of time or terminate the Agreement as set forth herein. No sums shall be due or payable to the CONTRACTOR for or during any time of such suspension or after termination.

It is further agreed that in the event the CONTRACTOR fails to prosecute the work or any part thereof contemplated by this Agreement, the Public Works

Superintendent, or his designated representative, shall so certify to the City Manager of the CITY; and if thereafter the CONTRACTOR, for a period of five (5) days after written notice, continues to fail to do so, then the CITY may exclude the CONTRACTOR from the premises or any portion thereof and may complete the work contemplated by this Agreement or any portion of said work by letting the unfinished portion of said work, or the portion taken over by the CITY, the cost of which shall be a charge against the CONTRACTOR and may be deducted from any money due or becoming due to the CONTRACTOR from the CITY; or the CONTRACTOR may be compelled to pay the CITY the amount of said charge or the portion thereof unsatisfied.

## **SECTION XI**

### **SPECIFIC**

#### **A. Scope of Work**

The work shall consist of furnishing all materials, labor, equipment, and incidentals necessary for pruning and removal of street and park trees in accordance with the Contractor's request for proposals.

1. **WORKING HOURS:** All work shall be performed between the hours of 7:00 a.m. and 5:00 p.m. weekdays. No weekend or holiday work shall be permitted unless authorized by the Public Works Superintendent.
2. **PUBLIC SAFETY AND COOPERATION:** All work shall be conducted in such a manner as to cause the least possible interference with, or annoyance to others and maintain safe conditions at all times while work operation are in progress.
3. **INSPECTION BY THE CITY:** The City shall inspect all work performed under this contract for compliance to the specifications and report any deficiencies to the Contractor.
4. **DAMAGE TO PROPERTY:** The Contractor shall not damage any public or private property as a result of the work specified. Any damage resulting from the Contractor's work shall be repaired, restored or replaced in kind within twenty-four (24) hours.
5. **CERTIFIED ARBORIST:** The Contractor shall employ a full-time, permanent Certified Arborist, as accredited by the International Society of Arboriculture at the time of proposal submittal, bid award and for the duration of the Agreement.

The Certified Arborist shall be responsible for the Contractor's employees performing the work as specified herein, daily inspections of the worksite, and supervision of the Contractor's employees. The Certified Arborist shall represent the Contractor regarding any disputes that may arise with the City, public, and the Contractor's employees.

6. **WORKMANSHIP:** All work shall be completed in a timely and workmanlike manner. The Contractor shall provide qualified tree workers trained

according to the tree care standards accepted by the International Society of Arboriculture and the National Arborists Association.

All work shall be performed in a safe manner in compliance with the American National Safety Institute, Z133.1 Safety Standards for Tree Care Operations, as published by American National Safety Institute, Inc., 1430 Broadway, New York, New York 10018.

The Contractor shall provide qualified tree workers certified to perform tree work near energized primary and secondary electrical distribution lines. The Contractor shall comply with the Electrical Safety Orders issued by the State of California Occupational Health and Safety Administration (Cal/OSHA) including all amendments and revisions.

7. MEASUREMENT AND PAYMENT: The unit prices called for in the Agreement shall be full compensation for all labor, materials, and equipment necessary to complete the work as specified

No further compensation shall be made unless authorized by the Public Works Superintendent or his designated representative.

8. NOTIFICATION TO RESIDENTS: The Contractor shall notify all affected residents and businesses of tree pruning and removal operations twenty-four (24) hours before the start of work. The Contractor is responsible for posting "Temporary No Parking" signs at least twenty-four (24) hours before using any parking lanes for tree trimming operations. Every effort shall be made by the Contractor to minimize the duration of driveway blocking. Further, the Contractor shall provide access to each residential or commercial establishment each evening.

9. TRAFFIC AND SAFETY REQUIREMENTS: Any contractor performing work in a public right-of-way or parks shall conduct the operations so as to cause the least possible obstruction and inconvenience to public traffic and pedestrians and take all necessary measures to maintain an adequate traffic flow to prevent accidents and to protect the worksite.

All traffic controls shall be in accordance with the Manual of Traffic Controls for Construction and Maintenance Work Zones published by State of California, Department of Transportation. All traffic devices, safety lights, and flagmen shall be provided by the Contractor.

The Contractor shall receive approval from the Public Works Superintendent prior to the partial or complete closure of any lanes, streets, or intersections.

## **B. Complete Tree Pruning Specifications**

All trees shall be pruned only in such a manner as to maintain the natural structure, form, health, and appearance of the tree species. Tree pruning shall consist of the total removal of those dead and living branches that might compromise the health, strength, and natural form of the tree. Specifically, mature trees shall be pruned in such a manner as to:

1. Prevent branch and foliage interference with the requirements of safe public passage. Over residential streets, limbs shall be maintained gradually from eight (8) feet at the curb to seventeen (17) feet over traffic lanes. Over arterial streets, limbs shall be maintained at a maximum height of fourteen (14) feet from grade to wood.  
  
Over sidewalks, limbs shall be maintained at a height of seven (7) feet from the grade to wood.
2. Remove all dead and dying branched and branch stubs that are ½ inch or larger.
3. Remove all broken or loose braches.
4. Remove any live branches that interfere with the tree's structural strength and healthful development, which will include the following:
  - Limbs that rub and abrade a more important branch.
  - Limbs of weak structure that are not important to the framework of the tree.
  - Limbs that, if allowed to grow, would wedge apart the junction of more important branches.
  - Branches near the end of a limb that will produce more weight or offer more resistance to wind that the limb are able to support.
  - Undesirable sucker and water sprout growth giving specific attention not to nick or damage the sprout "burl."
  - Selective removal of one or more developing leaders where multiple branch growth exists near the end of broken or stubbed limbs.
  - Selective removal of limbs obstructing buildings or other structures, streetlights or traffic signs.
5. Cut back ends of branches and reduce weight where excessive overburden appears likely to result in breakage of supporting limbs.
6. On mature trees only, clear water sprout or sucker growth to a minimum height of eight (8) feet above ground level.
7. Maintain a balanced appearance when viewed from the opposite side of the street immediately opposite the tree.
8. Remove all vines entwined in trees and on tree trunks. Vine tendrils shall be removed without injury to the trees.

9. Clear all branches and foliage within four (4) to six (6) feet of primary electrical lines.
10. When pruning cuts are made to a side limb, the remaining limb shall possess a basal thickness of at least one third the diameter of the cut. Such cuts shall be considered proper only when the remaining limb is vigorous enough to maintain adequate foliage to produce wood growth capable of callusing the pruning cut within a reasonable amount of time.
11. All final pruning cuts shall be made in such a manner so as to favor the earliest possible covering of the wound by natural callus growth. Flush cuts shall be made and the branch collar shall not be removed.
12. Tree limbs shall be removed and controlled in such a manner as to cause no damage to other parts of the tree, or to other plants or property.
13. All tools used on a tree known to contain an infectious tree disease shall be properly disinfected immediately before and after completing work on the tree. All significant pest, disease or structural weakness or defects observed by the Contractor while performing this work shall be promptly reported to the City.
14. All pruning tools and saws used for tree pruning shall be kept sharpened at all times to result in final cut with a nonabrasive wood surface and secure bark. All trees six (6) inches in diameter (DBH) or less shall be pruned with hand tools only. Chain saws will not be permitted on any trees with six (6) inches or less (DBH).
15. Whenever pruning cuts are made, while removing limbs too large to hold securely in one hand during the curing operation, the limb shall be cut off first, one (1) to two (2) feet beyond the intended final cut. Then the final cut shall be made in a manner to prevent the tearing of bark and wood.
16. Live, healthy limbs with a diameter of three (3) inches or greater shall not be removed without prior approval from the Public Works Superintendent.
17. No more than twenty (20) percent of live wood may be removed from the crown of any tree. The exception to this is Live Oaks, which are limited to no more than ten (10) percent.
18. Any extraneous metal, wire, rubber or other material interfering with the natural growth of the tree shall be removed.
19. The use of climbing spurs or spike shoes is strictly prohibited except in the case of aerial rescue.
20. All pruning shall be performed in such a manner as to encourage and promote the natural growth and shape of the tree species. The Contractor shall not perform any of the following procedures:
  - The severe cutting back of growing tips including topping, dehorning, heading back, pollarding, hat racking.

- Flush cutting where a cut is made even with the surface with the trunk or limb, removing the branch collar and branch bark ridge.
- Stub cutting where branch removal results in the base of the branch removed protruding more than approximately one-quarter inch beyond the zone of the branch collar and branch bark ridge.
- Removal of all the inner branches and foliage also known as lion tailing.

### **C. Removals**

Removals of trees shall be completed in the safest and most efficient manner possible while providing minimal inconvenience to the resident. Removals shall include the total removal of all brush, surface roots, and stumps.

Stumps may be removed in whole by digging out each individual stump or by grinding the stump to a minimum of twelve (12) inches below the top of the curb. In each instance, the areas shall be backfilled and graded to conform to the surrounding area. Whenever a tree is removed, the Contractor is responsible for notifying Dig Alert at 1 (800) 227-2600, two (2) days before digging. Stumps must be removed within two (2) days of the date that the tree is removed.

### **D. Disposal of Tree Branches, Brush, and Stumps**

All tree branches, brush, and stumps produced as a result of the Contractor's operations shall be reduced, reused, recycled, and/or transformed whenever possible.

1. Reducing will include, but not limited to, chipping, grinding, and/or shredding. Disposal at a landfill is acceptable only if the material is accepted by the landfill for use as alternate daily cover.
2. Reusing shall include, but not limited to, using chipped, ground, and/or shredded tree materials as mulch.
3. Recycling shall include, but not limited to, chipped, ground, or shredded tree material used to produce compost utilizing either a low or high technology.
4. Transformation will include, but not limited to, burning green waste, such as tree wood chips, for the purpose of producing energy.

Worksites shall be cleaned on a daily basis with no limbs, brush or debris left overnight.

## **SECTION XII**

### **MISCELLANEOUS PROVISIONS**

- A. Assignment.** No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by the CONTRACTOR without the written consent of the CITY.

- B. Independent Contractor.** The parties hereto agree that CONTRACTOR and its employees, officers, and agents are independent contractors under this Agreement, and shall not be construed for any purpose whatsoever to be employees of the CITY.
- C. Compliance With Laws.** The CONTRACTOR shall comply with all applicable laws in performing its obligations under this Agreement.
- D. Discrimination.** The CONTRACTOR 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 CONTRACTOR agrees to comply with all County, State, and Federal laws relating to equal employment opportunity rights.
- E. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- F. Attorneys' Fees.** In the event that any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount to be determined by the Court to be reasonable.
- G. Entire Agreement.** This Agreement supersedes any and all other agreements either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any other party that is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing, signed by all parties.

**IN WITNESS WHEREOF**, the parties hereto execute this Agreement as of the day and year first set forth hereinabove.

**CONTRACTOR:**

**WEST COAST ARBORISTS**

\_\_\_\_\_  
Patrick Mahoney, President

\_\_\_\_\_  
Date

**CITY:**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
Paul M. Eaton  
Mayor

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Andrea M. Phillips  
Deputy City Clerk

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Date

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 16-44 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO SUPPORT OPERATION COSTS AT THE FAMILY RESOURCE CENTER

**DATE:** June 6, 2016

**SECTION:** AGREEMENTS

**ITEM NO.:** 6

**FILE I.D.:** HSV044

**DEPT.:** HUMAN SVCS.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 16-44 with the Ontario-Montclair School District (OMSD) to support maintenance and operation costs for the Family Resource Center (FRC).

A copy of proposed Agreement No. 16-44 with OMSD is attached for the City Council's review and consideration.

**BACKGROUND:** The Montclair Community Collaborative (MCC) was organized in 1996 to collectively strengthen the community. The mission of MCC is "to guarantee a progressive quality community for all by working together as diverse, committed individuals and organizations." As a result of the ongoing strategic planning process, MCC identifies resources and develops services for children, youth, and adults.

Since March 2011, OMSD has been using the FRC House located at 9916 Central Avenue regularly to provide case management services, parenting classes and counseling for students and their families. Proposed Agreement 16-44 would continue their use of the FRC House and would assist in paying for maintenance and operation costs.

The term of proposed Agreement No. 16-44 is July 1, 2016, through June 30, 2017.

**FISCAL IMPACT:** OMSD would pay a total of \$9,000 for the one-year contract period, not to exceed the amount stated. Should the City Council approve proposed Agreement No. 16-44 the funding would assist with paying for maintenance and operation costs for the FRC House.

Approval of this agreement will result in no fiscal impact to the City's General Fund. Funds provided under this agreement will be utilized to offset the costs usually covered by the City's General Fund.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 16-44 with OMSD to support operation costs at the Family Resource Center.

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Prepared by: *M. Richter* Fiscal Impact Finance Review: *Donald L. Parker*

Proofed by: *Vanessa Tom* Reviewed and Approved By: *M. Richter*

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**AGREEMENT FOR SERVICES**  
**ONTARIO-MONTCLAIR SCHOOL DISTRICT**  
950 WEST "D" STREET • ONTARIO, CALIFORNIA 91762 • (909) 459-2500

**THIS AGREEMENT** is made and entered into this 1st day of July 2016 by and between the **Ontario-Montclair School District**, hereinafter referred to as the "**DISTRICT**," and **City of Montclair**, hereinafter referred to as the "**CONSULTANT**."

**1. SERVICES TO BE PERFORMED BY CONSULTANT**

- a) **CONSULTANT** agrees to perform the following services on the dates and times herein stated in accordance with directions stipulated to by **DISTRICT** (provide attachment if necessary):

**Services to be provided as stated on Appendix A in support of delivery of mental health services.**

- b) **CONSULTANT** may, at **CONSULTANT's** own expense, employ such assistants as **CONSULTANT** deems necessary to perform the services required of **CONSULTANT** by this Agreement. **DISTRICT** will not train, control, direct, or supervise **CONSULTANT's** assistants or employees in the performance of those services.
- c) **CONSULTANT** is, and shall at all times be deemed to be, an independent contractor and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between **DISTRICT** and **CONSULTANT** or any of **CONSULTANT's** agents or employees. **CONSULTANT** assumes exclusive responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. **CONSULTANT**, its agents and employees, shall not be entitled to any rights and/or privileges of **DISTRICT's** employees and shall not be considered in any manner to be **DISTRICT's** employees.
- d) If **CONSULTANT** is a regular employee of a public entity, all services which **CONSULTANT** renders under this Agreement will be performed at times other than **CONSULTANT's** regular assigned work day for said entity or during periods of vacation or leave of absence from said entity, using **CONSULTANT's** own resources.

**2. COMPENSATION**

- a) **Compensation for Services**  
Except as otherwise provided in this Agreement, **DISTRICT** agrees to compensate **CONSULTANT** for services rendered under this Agreement as follows:

\$9,000 for the duration of this agreement.

**Travel Expenses**

**DISTRICT** will pay no additional amount for travel or other expenses of **CONSULTANT** under this Agreement unless specified below. Should travel or other expenses be specified below, **CONSULTANT** shall be entitled to the lesser amount of

1. The not to exceed amount stated, or

2. The actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to this Agreement.

NONE

**Summary of Compensation**

**Services: \$9,000**

**Travel Expense: NONE**

**Total contract amount not to exceed (services + travel) \$9,000.00**

- b) If this Agreement is with an individual consultant, **CONSULTANT** shall notify the **DISTRICT** whether or not **CONSULTANT** is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS).
- c) **DISTRICT** will not withhold any federal or state income tax for payment made pursuant to this Agreement but, if applicable, will provide **CONSULTANT** with a statement of earnings at the end of each calendar year. **CONSULTANT** is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.
- d) Unless specified below, payment for services and travel shall be made by **DISTRICT** to **CONSULTANT** after services/travel has been completed and consultant submits documentation for payment (e.g. consultant invoice).

**3. TERM OF AGREEMENT**

The term of this Agreement is from July 1, 2016 through June 30, 2017, unless sooner terminated pursuant to the provisions of Section 6 of this Agreement. **DISTRICT** and **CONSULTANT** may mutually agree in writing to extend the term of this Agreement provided, however, **DISTRICT** shall not be obligated to pay **CONSULTANT** any additional consideration unless **CONSULTANT** undertakes additional services, in which instance the consideration shall be increased as **DISTRICT** and **CONSULTANT** shall agree in writing.

**4. OBLIGATIONS OF CONSULTANT**

- a) During the term of this Agreement, **CONSULTANT** agrees to diligently prosecute the work specified in the "Services to be Performed by Consultant" to completion. **CONSULTANT** may represent, perform services for, and be employed by such additional clients, persons, or companies as **CONSULTANT**, in **CONSULTANT**'s sole discretion, sees fit.
- b) **CONSULTANT** will provide all space, materials, tools, and instrumentalities required to perform the services under this Agreement at **CONSULTANT**'s expense, and shall not be entitled to reimbursement. **CONSULTANT** shall not be entitled to any benefits the **DISTRICT** may make available to its employees, including, but not limited to, office or business equipment, office space, supplies, group health, life insurance, vacation or retirement benefits.
- c) At all times during the term of this Agreement, **CONSULTANT** agrees to provide workers' compensation insurance for **CONSULTANT**'s employees and agents as required by law. The policy shall include Employers' Liability including Occupational Disease with limits not less than \$1,000,000 per person per accident.
- d) **CONSULTANT** shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.
- e) **CONSULTANT** shall comply with the requirements of Education Code section 45125.1 with respect to fingerprinting of employees who may have any contact with the **DISTRICT**'s pupils if **CONSULTANT** provides any of the following services: school and classroom janitorial; school

site administrative; school site grounds and landscape maintenance; pupil transportation; school site food-related; tutoring, mentoring services. If at any time during the term of this Agreement **CONSULTANT** is either notified by the Department of Justice or otherwise becomes aware that any employee of **CONSULTANT** performing services under this Agreement has been arrested or convicted of a violent or serious felony listed in Penal Code section 667.5(c) or Penal Code section 1192.7, respectively, **CONSULTANT** agrees immediately to notify the **DISTRICT** and remove said employee from performing services on this Agreement. **CONSULTANT** shall certify in writing to the **DISTRICT** that neither the **CONSULTANT** nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Education Code section 45122.1

- f) **CONSULTANT** shall indemnify, pay for the defense of, and hold harmless **DISTRICT** and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of **CONSULTANT's** negligent or willful acts and/or omissions in rendering any services hereunder, including but not limited to the negligent or willful acts and/or omissions of **CONSULTANT's** employees and agents. **CONSULTANT** shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning **CONSULTANT** or any employee/agent of **CONSULTANT** and shall further indemnify, pay for the defense of, and hold harmless **DISTRICT** of and from any such payment or liability arising out of or in any manner connected with **CONSULTANT's** performance under this Agreement.
- g) During the entire term of this Agreement, **CONSULTANT** shall procure, pay for and keep in full force and effect the following types of insurance:
  - 1. Comprehensive general liability insurance, including owned and non-owned automobile (vehicle) liability insurance with respect to the services provided by, or on behalf of, **CONSULTANT** under this Agreement. All insurance policies shall state the name of the insurance carrier and name **DISTRICT** as an additional insured. Liability insurance for death, bodily injury and property damage shall be for no less than One Million dollars (\$1,000,000) per occurrence.
  - 2. The policies of insurance described in Paragraph (g) 1. above shall be carried with responsible and solvent insurance companies authorized to do business in the State of California. True and correct copies of all certificates of insurance reflecting the coverage required in Paragraph (g) 1. above are attached hereto. **CONSULTANT** agrees that it shall not cancel or change the coverage provided by the policies of insurance described in Paragraph (g) 1. above without first giving the **DISTRICT's** Chief Business Official, thirty (30) days prior written notice. Should any such policy of insurance be canceled or changed, **CONSULTANT** agrees to immediately provide **DISTRICT** true and correct copies of all new or revised certificates of insurance.
- h) Neither this Agreement nor any duties or obligations under this Agreement may be assigned by **CONSULTANT** without the prior written consent of **DISTRICT**.

## 5. OBLIGATIONS OF DISTRICT

- a) **DISTRICT** agrees to comply with all reasonable requests by **CONSULTANT** and to provide access to all documents reasonably necessary for the performance of **CONSULTANT's** duties under this Agreement.

**6. TERMINATION OF AGREEMENT**

- a) Unless otherwise terminated as provided below, this Agreement shall continue in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.
- b) Should **CONSULTANT** default in the performance of this Agreement or breach any of its provisions, **DISTRICT** may terminate this Agreement by giving written notification to **CONSULTANT**.
- c) If at any time during the performance of this Agreement **DISTRICT** determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, **DISTRICT** shall have the right to terminate the performance of **CONSULTANT**'s services hereunder by giving written notification to **CONSULTANT** of its intention to terminate.
- d) In the event that **DISTRICT** terminates this Agreement under paragraph (b) or (c) of this Section, **CONSULTANT** shall only be paid for those services rendered to the date of termination. All cash deposits made by **DISTRICT** to **CONSULTANT**, if any, shall be refundable to **DISTRICT** in full upon termination of this Agreement unless specified to the contrary below.  
N/A

**7. GENERAL PROVISIONS**

- a) Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be deemed given and served upon delivery personally, or three (3) days after depositing in the United States Mail. Mailed notices shall be addressed to the parties at the addresses set forth in this Agreement for **DISTRICT** and **CONSULTANT**. The foregoing addresses may be changed by written notice to the other party as provided herein.
- b) This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by **CONSULTANT** and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which 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 will be effective only if it is in writing, signed by both parties, except **DISTRICT** may unilaterally amend the Agreement to accomplish the changes listed below:
  - 1. Increase dollar amounts;
  - 2. Administrative changes; and
  - 3. Changes as required by law.
- c) If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- d) This Agreement shall be governed by and construed in accordance with the laws of the State of California.

- e) Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records and files of **DISTRICT**, **CONSULTANT**, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of the **DISTRICT** or as a part of any audit of **DISTRICT**, for a period of three (3) years after final payment is made under this Agreement. **CONSULTANT** shall preserve and cause to be preserved such books, records and files for the audit period.
- f) **CONSULTANT** warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind it hereto. This Agreement shall not become binding upon the **DISTRICT** until it has been duly approved or ratified by the Board of Trustees.

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

**"DISTRICT"**

**"CONSULTANT"**

By: \_\_\_\_\_  
 Signature  
 Phil Hillman  
 \_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Signature  
 Paul Eaton  
 \_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Chief Business Official  
 \_\_\_\_\_  
 Title

\_\_\_\_\_  
 Mayor of the City of Montclair  
 \_\_\_\_\_  
 Title

950 West D Street  
 Ontario, CA 91762  
 (909) 418-2500

\_\_\_\_\_  
 5111 Benito St.  
 \_\_\_\_\_  
 Address  
 Montclair, CA 91763  
 \_\_\_\_\_  
 City, State, Zip  
 (909) 625-8571  
 \_\_\_\_\_  
 Telephone Number

ATTEST:

\_\_\_\_\_  
 Signature  
 Andrea Phillips  
 \_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Deputy City Clerk  
 \_\_\_\_\_  
 Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date of Board of Trustees Approval: June 2, 2016

**Certification of Compliance with California Education Code Section 45125.1**

I hereby certify that all employees and representatives of **CITY OF MONTCLAIR** (“**CONSULTANT**”) who may come in contact with pupils and are required by California Education Code Section 45125.1 to submit or have their fingerprints submitted to the Department of Justice have now done so, that I have received and reviewed the report and that none of the foregoing have been convicted of a felony as defined in California Education Code Section 45122.1. The Ontario-Montclair School District is entitled to rely upon this representation. **CONSULTANT** hereby agrees to indemnify Ontario-Montclair School District for any and all claims, damages, suits and liability that arise out of, relate to or is associated with a failure of **CONSULTANT** to comply with California Education Code Section 45125.1 or with a failure to exercise reasonable care with respect to proper selection and/or supervision of **CONSULTANT**’s employees who may come in contact with pupils.

**CONSULTANT**

\_\_\_\_\_  
Signature

Paul Eaton  
\_\_\_\_\_  
Printed Name

Mayor of the City of Montclair  
\_\_\_\_\_  
Title

5111 Benito St.  
\_\_\_\_\_  
Address  
Montclair, CA 91763  
\_\_\_\_\_  
City, State, Zip  
(909) 625-8571  
\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
Signature

Andrea Phillips  
\_\_\_\_\_  
Printed Name

Deputy City Clerk  
\_\_\_\_\_  
Title

**END OF AGREEMENT FOR CONSULTANT SERVICES**

## Appendix A

### Ontario-Montclair Family Resource Center Network City of Montclair Human Services Division and the Ontario-Montclair School District

The County of San Bernardino Department of Behavioral Health's Family Resource Center Program is part of the Prevention and Early Intervention component of the Mental Health Services Act. The Ontario-Montclair School District is serving as the lead fiscal agency for the Family Resource Center (FRC) program whose goal is to improve the overall mental health of families, youth, and adults by reducing stigma and providing community access to behavioral health prevention and early intervention services at the neighborhood level. This effort will be designated as the Ontario-Montclair Family Resource Center Network.

**I. Purpose:** The intent of this appendix is to 1) Document the existing partnership between City of Montclair Human Services Division (City) and the Ontario-Montclair School District (OMSD); 2) Establish the terms and conditions under which the City will provide leadership and oversight for the Ontario-Montclair FRC Network; 3) Demonstrate City's commitment to the project.

The City and OMSD were co-founders of the Montclair Community Collaborative in 1996 and since that time the City has been a core partner with OMSD on many projects. Improving the mental health outcomes for City residents in need would greatly contribute to the health of the community and mission and collaborative. City of Montclair children, youth, families, and older adults would greatly benefit from prevention efforts and accessible nearby mental health services since there are no public or nonprofit mental health agencies located in the community.

The City has facilitated the community-health education program, Por La Vida, since 1997. Por La Vida now has an extensive network of Latinas in the community who disseminate health information at the grassroots level by teaching classes and who serve as leaders who network with neighbors and other community members.

The City offers a full range of services from early childhood education to senior services and offers evening and Saturday hours for many services. In addition to traditional recreation programs, the City has operated a free and low cost medical clinic for children and adults without access to health care for over 30 years. Many of the clinic clients are working poor who do not qualify for government coverage.

The City serves over 100 seniors a day through its lunch meal program at the City's Senior Center. Older adults also participate in social activity groups, arts and crafts, health fairs, and other support services at the Center.

The City operates after school programs at all elementary and middle school and summer recreation programs. Many of the City's recreation participants are in the Transitional Age Youth range (between the ages of 16-25 years old), and would benefit from the proposed Family Resource Center.

The City is fully committed to being a partner in OMSD's ongoing operation of its FRCs as "on-stop" centers and regional network of partners to reduce stigma and help increase access to mental health supports for trauma exposed individuals, individuals experiencing onset of serious psychiatric illness, children and transitional age youth (TAY) in stressed families, children and TAY at risk of school failure, and children and TAY at risk of or experiencing involvement with the juvenile justice system.

- II. Responsibilities:** The City will make client referrals to community counseling services and other FRC resources for residents needing supports in a community setting. The City will:
- Disseminate mental wellness and stigma reduction information through Por La Vida Promotoras (Leaders) and promote FRC partner community mental health workshops to residents.
  - Make referrals to FRC services through the City Medical Clinic and have staff and volunteers participate in stigma reduction and cultural competency related mental health trainings.
  - Make referrals to FRC services for seniors at the Montclair Senior Center.
  - Disseminate mental wellness and stigma reduction information at the youth Activity center, make referrals to FRC services for youth through the Center, and support the FRC community/service learning projects.
  - Provide the City's Central Avenue facility as a Family Resource Center for mental health resource services, case management, community counseling, parent education, and community mental health workshops.
  - Through a subcontract of \$9,000 per year the City of Montclair will provide access to the City owned FRC on Central Avenue. It is understood that any subcontracting agency will be approved by the County of San Bernardino Department of Behavioral Health (DBH), and shall be subject to all applicable provisions of the contract between OMSD and DBH, and that OMSD will be fully responsible for any performance of this subcontracting agency.

**City of Montclair**

Subcontractor Budget FY 2016-2017

San Bernardino Department of Behavioral Health

Prevention and Early Intervention Family Resource Center

<b>CATEGORY</b>	<b>\$</b>
Operating Costs at the Central Avenue Facility	
Utilities/Internet/Security	\$ 9,000
<b>Total Operating Expenses</b>	<b>\$ 9,000</b>

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 16-45 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO ADMINISTER AN IMMUNIZATION PROGRAM AND PROVIDE HEALTH SERVICES FOR STUDENTS AND THEIR FAMILIES	<b>DATE:</b> June 6, 2016
	<b>SECTION:</b> AGREEMENTS
	<b>ITEM NO.:</b> 7
	<b>FILE I.D.:</b> HSV043
	<b>DEPT.:</b> HUMAN SVCS.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 16-45 with the Ontario-Montclair School District (OMSD) to continue the immunization program for OMSD students and their families, and to provide health care services at the Montclair Medical Clinic to families referred by OMSD staff.

A copy of proposed Agreement No. 16-45 is attached for the City Council's review and consideration.

**BACKGROUND:** The Montclair Community Collaborative (MCC) was organized in 1996 to collectively strengthen the community. The mission of MCC is "to guarantee a progressive quality community for all by working together as diverse, committed individuals and organizations." As a result of the ongoing strategic planning process, MCC identifies resources and develops services for children, youth, and adults.

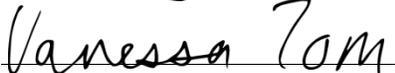
The immunization program has been provided through the Montclair Medical Clinic and serves students qualifying for the Vaccine for Children (VFC) Program. Volunteer Medical Director James M. Lally, D.O., would administer the continuation of the VFC Program. The contract with OMSD includes funding for a part-time Licensed Vocational Nurse (LVN) and a part-time Medical Clinic Coordinator to administer and coordinate the Clinic and VFC Program. The funding also includes all supplies not provided through the VFC Program. The term of proposed Agreement No. 16-45 is July 1, 2016, through June 30, 2017.

**FISCAL IMPACT:** OMSD would pay a total of \$70,000 within the year of the Agreement in ten monthly installments and \$9,250 for actual immunizations administered per SB 792. Should the City Council approve proposed Agreement No. 16-45, the funding would provide supplies, and allocate a part-time LVN and a part-time Medical Clinic Coordinator in the Human Services Division Fiscal Year 2016-2017 Budget. Approval of this agreement will result in no fiscal impact to the City's General Fund.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 16-45 with the Ontario-Montclair School District to administer an immunization program and to provide health care services for OMSD students and their families.

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

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## AGREEMENT FOR SERVICES ONTARIO-MONTCLAIR SCHOOL DISTRICT

950 WEST "D" STREET • ONTARIO, CALIFORNIA 91762 • (909) 459-2500

**THIS AGREEMENT** is made and entered into this 1st day of July 2016 by and between the **Ontario-Montclair School District**, hereinafter referred to as the "**DISTRICT**," and **City of Montclair**, hereinafter referred to as the "**CONSULTANT**."

### 1. SERVICES TO BE PERFORMED BY CONSULTANT

- a) **CONSULTANT** agrees to perform the following services on the dates and times herein stated in accordance with directions stipulated to by **DISTRICT** (provide attachment if necessary):

**Services to be provided as stated on Appendix A, Appendix B and Appendix C.**

- b) **CONSULTANT** may, at **CONSULTANT**'s own expense, employ such assistants as **CONSULTANT** deems necessary to perform the services required of **CONSULTANT** by this Agreement. **DISTRICT** will not train, control, direct, or supervise **CONSULTANT**'s assistants or employees in the performance of those services.
- c) **CONSULTANT** is, and shall at all times be deemed to be, an independent contractor and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between **DISTRICT** and **CONSULTANT** or any of **CONSULTANT**'s agents or employees. **CONSULTANT** assumes exclusive responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. **CONSULTANT**, its agents and employees, shall not be entitled to any rights and/or privileges of **DISTRICT**'s employees and shall not be considered in any manner to be **DISTRICT**'s employees.
- d) If **CONSULTANT** is a regular employee of a public entity, all services which **CONSULTANT** renders under this Agreement will be performed at times other than **CONSULTANT**'s regular assigned work day for said entity or during periods of vacation or leave of absence from said entity, using **CONSULTANT**'s own resources.

### 2. COMPENSATION

- a) **Compensation for Services**

Except as otherwise provided in this Agreement, **DISTRICT** agrees to compensate **CONSULTANT** for services rendered under this Agreement as follows:

**\$7,000 per month, for ten months (Appendix D), plus not to exceed \$9,250 for actual immunizations administered per SB 792 (Appendix E).**

#### **Travel Expenses**

**DISTRICT** will pay no additional amount for travel or other expenses of **CONSULTANT** under this Agreement unless specified below. Should travel or other expenses be specified below, **CONSULTANT** shall be entitled to the lesser amount of

1. The not to exceed amount stated, or

- 2. The actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to this Agreement.

N/A

**Summary of Compensation**

Services: **\$70,000 + \$9,250**

Travel Expense: None

**Total contract amount not to exceed (services + travel) \$79,250.**

- b) If this Agreement is with an individual consultant, **CONSULTANT** shall notify the **DISTRICT** whether or not **CONSULTANT** is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS).
- c) **DISTRICT** will not withhold any federal or state income tax for payment made pursuant to this Agreement but, if applicable, will provide **CONSULTANT** with a statement of earnings at the end of each calendar year. **CONSULTANT** is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.
- d) Unless specified below, payment for services and travel shall be made by **DISTRICT** to **CONSULTANT** after services/travel has been completed and consultant submits documentation for payment (e.g. consultant invoice).

**3. TERM OF AGREEMENT**

The term of this Agreement is from July 1, 2016 through June 30, 2017, unless sooner terminated pursuant to the provisions of Section 6 of this Agreement. **DISTRICT** and **CONSULTANT** may mutually agree in writing to extend the term of this Agreement provided, however, **DISTRICT** shall not be obligated to pay **CONSULTANT** any additional consideration unless **CONSULTANT** undertakes additional services, in which instance the consideration shall be increased as **DISTRICT** and **CONSULTANT** shall agree in writing.

**4. OBLIGATIONS OF CONSULTANT**

- a) During the term of this Agreement, **CONSULTANT** agrees to diligently prosecute the work specified in the "Services to be Performed by Consultant" to completion. **CONSULTANT** may represent, perform services for, and be employed by such additional clients, persons, or companies as **CONSULTANT**, in **CONSULTANT**'s sole discretion, sees fit.
- b) **CONSULTANT** will provide all space, materials, tools, and instrumentalities required to perform the services under this Agreement at **CONSULTANT**'s expense, and shall not be entitled to reimbursement. **CONSULTANT** shall not be entitled to any benefits the **DISTRICT** may make available to its employees, including, but not limited to, office or business equipment, office space, supplies, group health, life insurance, vacation or retirement benefits.
- c) At all times during the term of this Agreement, **CONSULTANT** agrees to provide workers' compensation insurance for **CONSULTANT**'s employees and agents as required by law. The policy shall include Employers' Liability including Occupational Disease with limits not less than \$1,000,000 per person per accident.
- d) **CONSULTANT** shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.
- e) **CONSULTANT** shall comply with the requirements of Education Code section 45125.1 with respect to fingerprinting of employees who may have any contact with the **DISTRICT**'s pupils if **CONSULTANT** provides any of the following services: school and classroom janitorial; school

site administrative; school site grounds and landscape maintenance; pupil transportation; school site food-related; tutoring, mentoring services. If at any time during the term of this Agreement **CONSULTANT** is either notified by the Department of Justice or otherwise becomes aware that any employee of **CONSULTANT** performing services under this Agreement has been arrested or convicted of a violent or serious felony listed in Penal Code section 667.5(c) or Penal Code section 1192.7, respectively, **CONSULTANT** agrees immediately to notify the **DISTRICT** and remove said employee from performing services on this Agreement. **CONSULTANT** shall certify in writing to the **DISTRICT** that neither the **CONSULTANT** nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Education Code section 45122.1

- f) **CONSULTANT** shall indemnify, pay for the defense of, and hold harmless **DISTRICT** and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of **CONSULTANT**'s negligent or willful acts and/or omissions in rendering any services hereunder, including but not limited to the negligent or willful acts and/or omissions of **CONSULTANT**'s employees and agents. **CONSULTANT** shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning **CONSULTANT** or any employee/agent of **CONSULTANT** and shall further indemnify, pay for the defense of, and hold harmless **DISTRICT** of and from any such payment or liability arising out of or in any manner connected with **CONSULTANT**'s performance under this Agreement.
  
- g) During the entire term of this Agreement, **CONSULTANT** shall procure, pay for and keep in full force and effect the following types of insurance:
  - 1. Comprehensive general liability insurance, including owned and non-owned automobile (vehicle) liability insurance with respect to the services provided by, or on behalf of, **CONSULTANT** under this Agreement. All insurance policies shall state the name of the insurance carrier and name **DISTRICT** as an additional insured. Liability insurance for death, bodily injury and property damage shall be for no less than One Million dollars (\$1,000,000) per occurrence.
  - 2. The policies of insurance described in Paragraph (g) 1. above shall be carried with responsible and solvent insurance companies authorized to do business in the State of California. True and correct copies of all certificates of insurance reflecting the coverage required in Paragraph (g) 1. above are attached hereto. **CONSULTANT** agrees that it shall not cancel or change the coverage provided by the policies of insurance described in Paragraph (g) 1. above without first giving the **DISTRICT**'s Chief Business Official, thirty (30) days prior written notice. Should any such policy of insurance be canceled or changed, **CONSULTANT** agrees to immediately provide **DISTRICT** true and correct copies of all new or revised certificates of insurance.
  
- h) Neither this Agreement nor any duties or obligations under this Agreement may be assigned by **CONSULTANT** without the prior written consent of **DISTRICT**.

**5. OBLIGATIONS OF DISTRICT**

- a) **DISTRICT** agrees to comply with all reasonable requests by **CONSULTANT** and to provide access to all documents reasonably necessary for the performance of **CONSULTANT**'s duties under this Agreement.

**6. TERMINATION OF AGREEMENT**

- a) Unless otherwise terminated as provided below, this Agreement shall continue in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.
- b) Should **CONSULTANT** default in the performance of this Agreement or breach any of its provisions, **DISTRICT** may terminate this Agreement by giving written notification to **CONSULTANT**.
- c) If at any time during the performance of this Agreement **DISTRICT** determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, **DISTRICT** shall have the right to terminate the performance of **CONSULTANT**'s services hereunder by giving written notification to **CONSULTANT** of its intention to terminate.
- d) In the event that **DISTRICT** terminates this Agreement under paragraph (b) or (c) of this Section, **CONSULTANT** shall only be paid for those services rendered to the date of termination. All cash deposits made by **DISTRICT** to **CONSULTANT**, if any, shall be refundable to **DISTRICT** in full upon termination of this Agreement unless specified to the contrary below.  
N/A

**7. GENERAL PROVISIONS**

- a) Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be deemed given and served upon delivery personally, or three (3) days after depositing in the United States Mail. Mailed notices shall be addressed to the parties at the addresses set forth in this Agreement for **DISTRICT** and **CONSULTANT**. The foregoing addresses may be changed by written notice to the other party as provided herein.
- b) This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by **CONSULTANT** and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which 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 will be effective only if it is in writing, signed by both parties, except **DISTRICT** may unilaterally amend the Agreement to accomplish the changes listed below:
  - 1. Increase dollar amounts;
  - 2. Administrative changes; and
  - 3. Changes as required by law.
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- d) This Agreement shall be governed by and construed in accordance with the laws of the State of California.

- e) Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records and files of **DISTRICT**, **CONSULTANT**, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of the **DISTRICT** or as a part of any audit of **DISTRICT**, for a period of three (3) years after final payment is made under this Agreement. **CONSULTANT** shall preserve and cause to be preserved such books, records and files for the audit period.
- f) **CONSULTANT** warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind it hereto. This Agreement shall not become binding upon the **DISTRICT** until it has been duly approved or ratified by the Board of Trustees.

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

**"DISTRICT"**

**"CONSULTANT"**

By: \_\_\_\_\_  
 Signature  
 Phil Hillman  
 \_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Signature  
 Paul Eaton  
 \_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Chief Business Official  
 \_\_\_\_\_  
 Title

\_\_\_\_\_  
 Mayor of the City of Montclair  
 \_\_\_\_\_  
 Title

950 West D Street  
 Ontario, CA 91762  
 (909) 418-2500

\_\_\_\_\_  
 5111 Benito St.  
 \_\_\_\_\_  
 Address  
 Montclair, CA 91763  
 \_\_\_\_\_  
 City, State, Zip  
 (909) 625-8571  
 \_\_\_\_\_  
 Telephone Number

\_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
 Signature  
 \_\_\_\_\_  
 Andrea Phillips  
 \_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Deputy City Clerk  
 \_\_\_\_\_  
 Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date of Board of Trustees Approval: June 2, 2016

## Certification of Compliance with California Education Code Section 45125.1

I hereby certify that all employees and representatives of **CITY OF MONTCLAIR** (“CONSULTANT”) who may come in contact with pupils and are required by California Education Code Section 45125.1 to submit or have their fingerprints submitted to the Department of Justice have now done so, that I have received and reviewed the report and that none of the foregoing have been convicted of a felony as defined in California Education Code Section 45122.1. The Ontario-Montclair School District is entitled to rely upon this representation. **CONSULTANT** hereby agrees to indemnify Ontario-Montclair School District for any and all claims, damages, suits and liability that arise out of, relate to or is associated with a failure of **CONSULTANT** to comply with California Education Code Section 45125.1 or with a failure to exercise reasonable care with respect to proper selection and/or supervision of **CONSULTANT’s** employees who may come in contact with pupils.

### CONSULTANT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Paul Eaton

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Mayor of the City of Montclair

\_\_\_\_\_  
Title

\_\_\_\_\_  
5111 Benito St.

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
(909) 625-8571

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Andrea Phillips

\_\_\_\_\_  
Printed Name

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

\_\_\_\_\_  
Title

**END OF AGREEMENT FOR CONSULTANT SERVICES**

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 16-46 WITH THE SAN BERNARDINO COUNTY DEPARTMENT OF AGING AND ADULT SERVICES TO PROVIDE A SENIOR CITIZEN NUTRITION PROGRAM	<b>DATE:</b> June 6, 2016
	<b>SECTION:</b> AGREEMENTS
	<b>ITEM NO.:</b> 8
	<b>FILE I.D.:</b> HSV105
	<b>DEPT.:</b> HUMAN SVCS.

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**REASON FOR CONSIDERATION:** San Bernardino County Department of Aging and Adult Services (DAAS) has presented a new three-year grant contract for the Senior Citizen Nutrition Program for City Council approval.

A copy of proposed Agreement No. 16-46 with DAAS is included in the City Council's agenda packet, as the document was too large to include as an attachment to this agenda report.

**BACKGROUND:** The San Bernardino County Department of Aging and Adult Services has awarded the City a grant contract to continue to provide a Senior Citizen Nutrition Program for older adults ages 60 and over. The not-to-exceed grant amount for each fiscal year is \$145,000 for a total contract not-to-exceed amount of \$435,000 covering Fiscal Years 2016-17, 2017-18, and 2018-19. Unlike previous contracts for this program, the City will no longer be required to submit monthly billings based on meals served (service units) to be reconciled quarterly. With this new contract, the City will instead submit monthly requests for reimbursement base on costs incurred. This new process is expected to be less burdensome from an accounting standpoint.

This grant funding will be used for part-time salaries, nutrition education consultant fees, training, program supplies, and catered food expenses needed to operate the program. The City of Montclair is contracted to serve up to 23,200 meals and provide 252 days of service annually. An in-kind match of a minimum of \$11,067 (11.11% of the Federal Title III funding) is required each year. The City will achieve this match through volunteer hours, Golden Express vehicle expenses, and insurance expenses already covered by the General Fund.

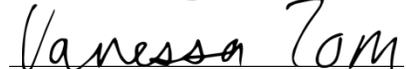
The term of proposed Agreement No. 16-46 is July 1, 2016, through June 30, 2019.

**FISCAL IMPACT:** This Agreement is consistent with the Human Services submitted budget for FY16/17. Should Agreement No. 16-46 be approved, the grant contract in the not-to-exceed amount of \$435,000 would be awarded to the City.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 16-46 with the San Bernardino County Department of Aging and Adult Services to provide a Senior Citizen Nutrition Program.

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

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## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 16-48 WITH POMONA VALLEY  
WORKSHOP TO PROVIDE CUSTODIAL  
SERVICES AT THE POLICE DEPARTMENT

**DATE:** June 6, 2016

**SECTION:** AGREEMENTS

**ITEM NO.:** 9

**FILE I.D.:** PER187

**DEPT.:** ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of proposed Agreement No. 16-48 with Pomona Valley Workshop (PVW) to provide custodial services at the Police Department.

A copy of proposed Agreement No. 16-48 with PVW is attached for the City Council's review and consideration.

**BACKGROUND:** Pomona Valley Workshop (PVW) has been in business since 1966 and is located in the City of Montclair. Established by a small group of determined parents who were willing to take great risks to ensure a full and productive life for each of their disabled adult children, PVW has blossomed into four distinct programs that serve over 400 people with disabilities throughout Los Angeles and San Bernardino Counties. PVW's mission is to assist adults with disabilities in reaching their potential in vocational and socialization skills in order that they may achieve their highest level of employment and community integration.

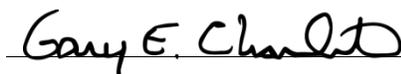
One of the programs offered by PVW is their supported employment services. This program links businesses with groups of three to four qualified pre-screened workers who have developmental disabilities. Each team (referred to as an enclave) is supervised by a full-time professional called a job coach who remains with the team, provides on-going training, ensures quality standards are consistently met, and provides onsite customer service to the business partner. In return, the business partner pays a pre-determined contracted rate for each person in the group and PVW absorbs the costs of the job coach, payroll, benefits, workers' compensation, training, and recruitment.

Recently PVW's executive staff approached the City of Montclair to inquire if any of their supported employment services may be utilized throughout the various City departments. With the City's recent loss of various custodial staff, meetings were held between PVW and City staff regarding the possibility of PVW providing custodial services at the Montclair Police Department. PVW submitted the attached proposal to provide three (3) individuals (also referred to as consumers) along with a job coach to perform custodial services Monday through Friday for 7.5 hours per day. The proposed hourly rate for each consumer is \$12.00 per hour (which is less than the

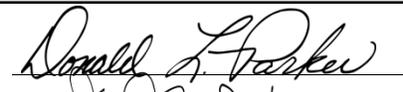
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Prepared by:



Fiscal Impact  
Finance Review:



Proofed by:



Reviewed and  
Approved By:



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hourly rate for a Custodian) and the job coach will be provided at no cost. All wages, payroll taxes, workers' compensation, and benefits to consumers and the job coach will be paid by PVW.

**FISCAL IMPACT:** The annual cost for the enclave of three (3) consumers and a job coach from PVW will be approximately \$70,000. Funds to cover the cost of this service are included in the Public Works Department section of the Fiscal Year 2016-17 Budget. Any costs for services provided prior to July 1, 2016, are included in the current Fiscal Year 2015-16 Budget. The contract will renew annually on July 1 of each year unless either party expressly requests to terminate or modify it upon the renewal date.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 16-48 with Pomona Valley Workshop to provide custodial services at the Police Department.



"Serving Adults With Disabilities Since 1966"

Corporate Office  
4650 Brooks Street  
Montclair, CA 91763  
(909) 624-3555  
Fax (909) 624-5675  
[www.pvwonline.org](http://www.pvwonline.org)

Adult Development Center  
10550 Ramona Ave., Ste. A  
Montclair, CA 91763  
(909) 399-0617  
fax (909) 398-4744

'Round About Senior Services  
4669 Holt Blvd.  
Montclair, CA 91763  
(909) 399-3449  
fax (909) 399-9026

Supported Employment Services  
4650 Brooks Street  
Montclair, CA 91763  
(909) 624-3555  
fax (909) 624-5675

Work Activity Program  
4650 Brooks Street  
Montclair, CA 91763  
(909) 624-3555  
fax (909) 624-5675

PVW Country Store  
4669 Holt Blvd.  
Montclair, CA 91763  
Donations: (909) 399-5601

Date: May17, 2016  
Customer: Paul M. Eaton, Mayor  
Montclair City Hall  
5111 Benito Street  
Montclair, California 91763  
Phone: 909 626-8571

**MEMORANDUM OF UNDERSTANDING FOR MONTCLAIR CITY HALL**

This is a written agreement between PVW, (otherwise known as Pomona Valley Workshop) and Montclair City Hall for janitorial services to be provided at the location of the Montclair Police Department located at 4870 Arrow Highway, Montclair, CA 91763. This MOU stipulates conditions of the relationship between PVW and Montclair City Hall for the mutual provision of supported employment services.

**MONTCLAIR CITY HALL AGREES TO PROVIDE THE FOLLOWING:**

1. Work for an enclave providing janitorial services at 5 days a week for a period of 7.5 hours a day. An enclave is defined as three consumer workers and one job coach. The enclaves will work Monday through Friday between the hours of 8:00am and 4:00pm. Enclave services will begin on or about June 6, 2016.
2. Montclair City Hall agrees that payment of fees are at a rate of \$12.00 per hour for each consumer worker made payable to PVW for work performed and will be invoiced on a weekly basis.
3. Montclair City Hall agrees that PVW will re-evaluate and appropriately adjust said service agreement (MOU) every six months, or at any time State of California minimum wage changes, in order to adjust hourly worker rates to reflect worker proficiency and prevailing wage.
4. Montclair City Hall agrees to provide directions and details of the work to be performed, with specific instructions for work to be performed provided to the job coach, including a comprehensive description of job duties to be performed by consumer workers.
5. Montclair City Hall understands that the role of the job coach is to supervise, direct and maintain the quality of work of the consumer workers under his/her supervision.
6. Montclair City Hall will provide an accurate description of safety requirements, personnel standards and other conditions required at the job site.
7. Montclair City Hall will provide all products associated with performance of all assigned duties such as safety supplies and equipment.
8. Montclair City Hall will ensure observation of all applicable standards of confidentiality related to persons working at their site.
9. Montclair City Hall will ensure observation of all applicable labor laws.
10. Montclair City Hall will provide prompt response when requests are made for management support to resolve problems or other issues.
11. Montclair City Hall will ensure workers and their job coach will have accessible use of the restrooms and drinking water while working as well as an appropriate area for workers to take work breaks and a meal period.

**PVW AGREES TO PROVIDE THE FOLLOWING:**

1. PVW will provide three consumer workers and one job coach per enclave that are able to perform the tasks agreed upon by PVW and Montclair City Hall.
2. PVW will make every attempt to provide a substitute for any consumer worker that is absent.

Federal Tax ID 95-2465264

Under the Internal Revenue Code, Section 501(c)(3), Pomona Valley Workshop is classified as a non-profit public benefit, publicly supported, tax-exempt, charitable organization with nothing given in return for donations.

*its productive, it's extra...  
it's working!*



"Serving Adults With Disabilities Since 1966"

Corporate Office  
4650 Brooks Street  
Montclair, CA 91763  
(909) 624-3555  
Fax (909) 624-5675  
[www.pvwonline.org](http://www.pvwonline.org)

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Montclair, CA 91763  
(909) 624-3555  
fax (909) 624-5675

PVW Country Store  
4669 Holt Blvd.  
Montclair, CA 91763  
Donations: (909) 399-5601

It's productive, it's *working!*

3. PVW will provide payroll services for consumer workers and the job coach to include workers' compensation insurance and other related payroll benefits.
4. PVW will provide supervision, job coach services, and vocational training support for consumer workers while at Montclair City Hall.
5. PVW will ensure quality work is performed in compliance with the requirements of Montclair City Hall.
6. PVW will provide prompt management support to resolve problems or other issues.
7. PVW will provide a list of key contacts for Montclair City Hall use only.

This MOU is considered automatically renewed annually unless either party expressly requests to terminate or modify it upon the renewal date.

PVW will provide Montclair City Hall with weekly invoices for services performed by the enclave, which are due and payable within thirty (30) days from invoice date. A 1.5% per month (18% annum) will be charged on all past due invoices. PVW reserves the right to cancel said contract without notice if payment for services is not received.

**CONDITIONS FOR THE AMENDMENT OR TERMINATION OF THIS AGREEMENT:**

This agreement may be amended by mutual consent of authorized representatives of Montclair City Hall and PVW. If dissatisfaction should arise on the part of either party, the parties will meet to seek resolution. If no resolution is found, either party may terminate this agreement with a minimum of 10 working days written notice. If during the course of the contract Montclair City Hall would like to add additional enclaves, rates will be negotiated for each additional enclave as described in this agreement. In the event additional enclaves are placed at Montclair City Hall and subsequently cancelled, the cancellation of an individual enclave does not void the provision for the remaining enclave(s) or negate this contract in its entirety.

Signatures below are by persons authorized to represent each company, respectively:

\_\_\_\_\_  
Montclair City Hall  
By: Paul M. Eaton, Mayor

\_\_\_\_\_  
Date

*Mitch Gariador*  
\_\_\_\_\_  
PVW  
By: Mitch Gariador, Executive Director

*5/16/18*  
\_\_\_\_\_  
Date

Distribution:  
Paul M. Eaton, Mayor, Montclair City Hall  
Mitch Gariador, Executive Director, PVW  
Terri Perkins, Associate Director of Work Services, PVW

ATTEST:

\_\_\_\_\_  
Andrea Phillips, Deputy City Clerk  
City of Montclair

Federal Tax ID 95-2465264

Under the Internal Revenue Code, Section 501(c)(3), Pomona Valley Workshop is classified as a non-profit public benefit, publicly supported, tax-exempt, charitable organization with nothing given in return for donations.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 16-52 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO PROVIDE AFTER-SCHOOL PROGRAMS	<b>DATE:</b> June 6, 2016
	<b>SECTION:</b> AGREEMENTS
	<b>ITEM NO.:</b> 10
	<b>FILE I.D.:</b> HSV030
	<b>DEPT.:</b> HUMAN SVCS.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 16-52 with the Ontario-Montclair School District (OMSD) to provide after-school programs funded by the After-School Education and Safety Program (ASES) grant.

A copy of proposed Agreement No. 16-52 with OMSD is attached for the City Council's review and consideration.

**BACKGROUND:** The Montclair Community Collaborative (MCC), organized in 1996, is a partnership between the City, OMSD, and community organizations having the core objective of improving quality-of-life outcomes for children and youth. Through the ongoing strategic planning process, MCC identifies resources and develops services for children, youth, and adults.

The goal of the ASES grant is to promote after-school learning modules to enhance children's educational and learning capabilities. Such grants made available to local education authorities such as OMSD provide communities with enhanced community-based school services in an effort to strengthen healthy child development.

Proposed Agreement No. 16-52 would provide funding through the ASES grant for after-school programs at the following 11 school sites: El Camino, Howard, Kingsley, Lehigh, Mission, Monte Vista, Montera, Moreno, Ramona, Serrano, and Vernon.

The total amount of funding for these 11 school sites is \$1,316,196.99 and would be used to support academic, recreational, and enrichment activities for children in after-school programs.

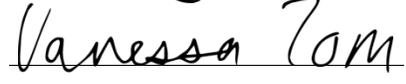
The term of proposed Agreement No. 16-52 is July 1, 2016, through June 30, 2017.

**FISCAL IMPACT:** Should the City Council approve proposed Agreement No. 16-52, OMSD would pay the City of Montclair \$1,316,196.99 to fund personnel, supplies, training, and grant oversight.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 16-52 with the Ontario-Montclair School District to provide after-school programs.

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

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**AGREEMENT FOR SERVICES**  
**ONTARIO-MONTCLAIR SCHOOL DISTRICT**  
950 WEST "D" STREET • ONTARIO, CALIFORNIA 91762 • (909) 459-2500

**THIS AGREEMENT** is made and entered into this 16 day of June 2016 by and between the Ontario-Montclair School District, hereinafter referred to as the "**DISTRICT**," and City of Montclair, hereinafter referred to as the "**CONSULTANT**."

**1. SERVICES TO BE PERFORMED BY CONSULTANT**

- a) **CONSULTANT** agrees to perform the following services on the dates and times herein stated in accordance with directions stipulated to by **DISTRICT** (provide attachment if necessary):

See Attachment A for a complete description of services, and Schedule A for a detailed list of schools.

- b) **CONSULTANT** may, at **CONSULTANT**'s own expense, employ such assistants as **CONSULTANT** deems necessary to perform the services required of **CONSULTANT** by this Agreement. **DISTRICT** will not train, control, direct, or supervise **CONSULTANT**'s assistants or employees in the performance of those services.

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

- d) If **CONSULTANT** is a regular employee of a public entity, all services which **CONSULTANT** renders under this Agreement will be performed at times other than **CONSULTANT**'s regular assigned work day for said entity or during periods of vacation or leave of absence from said entity, using **CONSULTANT**'s own resources.

**2. COMPENSATION**

- a) **Compensation for Services**

Except as otherwise provided in this Agreement, **DISTRICT** agrees to compensate **CONSULTANT** for services rendered under this Agreement as follows:

See Attachment B and Schedule A for a detailed description of compensation.

**Travel Expenses**

**DISTRICT** will pay no additional amount for travel or other expenses of **CONSULTANT** under this Agreement unless specified below. Should travel or other expenses be specified below, **CONSULTANT** shall be entitled to the lesser amount of

1. The not to exceed amount stated, or
2. The actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to this Agreement.  
Not to exceed \$1,316,196.99

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**Summary of Compensation**

Services:	\$1,316,196.99
Travel Expense:	N/A
<b>Total contract amount not to exceed</b> ( <i>services + travel</i> )	<b>\$1,316,196.99</b>

- b) If this Agreement is with an individual consultant, **CONSULTANT** shall notify the **DISTRICT** whether or not **CONSULTANT** is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS).
- c) **DISTRICT** will not withhold any federal or state income tax for payment made pursuant to this Agreement but, if applicable, will provide **CONSULTANT** with a statement of earnings at the end of each calendar year. **CONSULTANT** is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.
- d) Unless specified below, payment for services and travel shall be made by **DISTRICT** to **CONSULTANT** after services/travel has been completed and consultant submits documentation for payment (e.g. consultant invoice).

**3. TERM OF AGREEMENT**

The term of this Agreement is from July 1, 2016 through June 30, 2017, unless sooner terminated pursuant to the provisions of Section 6 of this Agreement. **DISTRICT** and **CONSULTANT** may mutually agree in writing to extend the term of this Agreement provided, however, **DISTRICT** shall not be obligated to pay **CONSULTANT** any additional consideration unless **CONSULTANT** undertakes additional services, in which instance the consideration shall be increased as **DISTRICT** and **CONSULTANT** shall agree in writing.

**4. OBLIGATIONS OF CONSULTANT**

- a) During the term of this Agreement, **CONSULTANT** agrees to diligently prosecute the work specified in the "Services to be Performed by Consultant" to completion. **CONSULTANT** may represent, perform services for, and be employed by such additional clients, persons, or companies as **CONSULTANT**, in **CONSULTANT**'s sole discretion, sees fit.
- b) **CONSULTANT** will provide all space, materials, tools, and instrumentalities required to perform the services under this Agreement at **CONSULTANT**'s expense, and shall not be entitled to reimbursement. **CONSULTANT** shall not be entitled to any benefits the **DISTRICT** may make available to its employees, including, but not limited to, office or business equipment, office space, supplies, group health, life insurance, vacation or retirement benefits.
- c) At all times during the term of this Agreement, **CONSULTANT** agrees to provide workers' compensation insurance for **CONSULTANT**'s employees and agents as required by law. The policy shall include Employers' Liability including Occupational Disease with limits not less than \$1,000,000 per person per accident.

- d) **CONSULTANT** shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.
- e) **CONSULTANT** shall comply with the **DISTRICT's** Asbestos Hazard Emergency Response Act (AHERA) and Lead Based Paint compliance procedures. Prior to starting any construction work at a **DISTRICT** facility (including demolition, drilling/penetrating, cutting/tearing, sanding, scraping, screwing/unscrewing, or other similar activities) the following requirements must be met:
1. Contact the Facilities Planning and Operations Department (909-418-6966) to discuss the project and the planned method of construction or installation to occur.
  2. Receive and review the District's Asbestos Hazard Emergency Response Act (AHERA) Management Plan Book that identifies the known location(s) of asbestos and/or lead-based paint containing materials for the subject site to confirm these materials will not be disturbed during the course of your work.
  3. Obtain authorization from the Facilities Planning and Operations Department.
- f) **CONSULTANT** shall comply with the requirements of Education Code section 45125.1 with respect to fingerprinting of employees who may have any contact with the **DISTRICT's** pupils if **CONSULTANT** provides any of the following services: school and classroom janitorial; school site administrative; school site grounds and landscape maintenance; pupil transportation; school site food-related; tutoring, mentoring services. If at any time during the term of this Agreement **CONSULTANT** is either notified by the Department of Justice or otherwise becomes aware that any employee of **CONSULTANT** performing services under this Agreement has been arrested or convicted of a violent or serious felony listed in Penal Code section 667.5(c) or Penal Code section 1192.7, respectively, **CONSULTANT** agrees immediately to notify the **DISTRICT** and remove said employee from performing services on this Agreement. **CONSULTANT** shall certify in writing to the **DISTRICT** that neither the **CONSULTANT** nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Education Code section 45122.1
- g) **CONSULTANT** shall indemnify, pay for the defense of, and hold harmless **DISTRICT** and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of **CONSULTANT's** negligent or willful acts and/or omissions in rendering any services hereunder, including but not limited to the negligent or willful acts and/or omissions of **CONSULTANT's** employees and agents. **CONSULTANT** shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning **CONSULTANT** or any employee/agent of **CONSULTANT** and shall further indemnify, pay for the defense of, and hold harmless **DISTRICT** of and from any such payment or liability arising out of or in any manner connected with **CONSULTANT's** performance under this Agreement.
- h) During the entire term of this Agreement, **CONSULTANT** shall procure, pay for and keep in full force and effect the following types of insurance:
1. Comprehensive general liability insurance, including owned and non-owned automobile (vehicle) liability insurance with respect to the services provided by, or on behalf of, **CONSULTANT** under this Agreement. All insurance policies shall state the name of the insurance carrier and name **DISTRICT** as an additional insured. Liability insurance for death, bodily injury and property damage shall be for no less than One Million dollars (\$1,000,000) per occurrence.

2. The policies of insurance described in Paragraph (g) 1. above shall be carried with responsible and solvent insurance companies authorized to do business in the State of California. True and correct copies of all certificates of insurance reflecting the coverage required in Paragraph (g) 1. above are attached hereto. **CONSULTANT** agrees that it shall not cancel or change the coverage provided by the policies of insurance described in Paragraph (g) 1. above without first giving the **DISTRICT**'s Chief Business Official, thirty (30) days prior written notice. Should any such policy of insurance be canceled or changed, **CONSULTANT** agrees to immediately provide **DISTRICT** true and correct copies of all new or revised certificates of insurance.

i) Neither this Agreement nor any duties or obligations under this Agreement may be assigned by **CONSULTANT** without the prior written consent of **DISTRICT**.

#### **5. OBLIGATIONS OF DISTRICT**

- a) **DISTRICT** agrees to comply with all reasonable requests by **CONSULTANT** and to provide access to all documents reasonably necessary for the performance of **CONSULTANT**'s duties under this Agreement.
- b) **DISTRICT** shall defend, indemnify and hold **CONSULTANT** and its Council Members, officers, employees, agents, and staff harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), claims for injury or damages arising out of the performance of or in connection with this agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the improper conduct and/or negligence or intentional acts or omissions of **DISTRICT**, its officers, employees, agents, or staff.

#### **6. TERMINATION OF AGREEMENT**

- a) Unless otherwise terminated as provided below, this Agreement shall continue in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.
- b) Should **CONSULTANT** default in the performance of this Agreement or breach any of its provisions, **DISTRICT** may terminate this Agreement by giving written notification to **CONSULTANT**.
- c) If at any time during the performance of this Agreement **DISTRICT** determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, **DISTRICT** shall have the right to terminate the performance of **CONSULTANT**'s services hereunder by giving written notification to **CONSULTANT** of its intention to terminate.
- d) In the event that **DISTRICT** terminates this Agreement under paragraph (b) or (c) of this Section, **CONSULTANT** shall only be paid for those services rendered to the date of termination. All cash deposits made by **DISTRICT** to **CONSULTANT**, if any, shall be refundable to **DISTRICT** in full upon termination of this Agreement unless specified to the contrary below.

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#### **7. GENERAL PROVISIONS**

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

- b) This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by **CONSULTANT** and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which 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 will be effective only if it is in writing, signed by both parties, except **DISTRICT** may unilaterally amend the Agreement to accomplish the changes listed below:
1. Increase dollar amounts;
  2. Administrative changes; and
  3. Changes as required by law.
- c) If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- d) This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- e) Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records and files of **DISTRICT**, **CONSULTANT**, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of the **DISTRICT** or as a part of any audit of **DISTRICT**, for a period of three (3) years after final payment is made under this Agreement. **CONSULTANT** shall preserve and cause to be preserved such books, records and files for the audit period.
- f) **CONSULTANT** warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind it hereto. This Agreement shall not become binding upon the **DISTRICT** until it has been duly approved or ratified by the Board of Trustees.

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

**“DISTRICT”**

**“CONSULTANT”**

\_\_\_\_\_  
**Signature/Date**

Phil Hillman/CBO  
 \_\_\_\_\_  
**Printed Name/Title**

950 West D. Street Ontario, CA 91762  
 \_\_\_\_\_  
**Address, City, State, Zip Code**

(909) 459.2500  
 \_\_\_\_\_  
**Telephone Number**

\_\_\_\_\_  
**Signature/Date**

Paul M. Eaton  
 \_\_\_\_\_  
**Printed Name/Title**

5111 Benito St., Montclair, CA 91763  
 \_\_\_\_\_  
**Address, City, State, Zip Code**

(909) 626-8571  
 \_\_\_\_\_  
**Telephone Number/E-mail**

Date of Governing Board's Approval:  
 \_\_\_\_\_

**Attest:** \_\_\_\_\_  
 Andrea Phillips, Deputy City Clerk

## Certification of Compliance with California Education Code Section 45125.1

I hereby certify that all owners and employees of City of Montclair  
[name of **CONSULTANT**] ("**CONSULTANT**") who may come in contact with pupils and are required by California Education Code Section 45125.1 to submit or have their fingerprints submitted to the Department of Justice have now done so, that I have received and reviewed the report and that none of the foregoing have been convicted of a felony as defined in California Education Code Section 45122.1. The Ontario-Montclair School District is entitled to rely upon this representation. **CONSULTANT** hereby agrees to indemnify Ontario-Montclair School District for any and all claims, damages, suits and liability that arise out of, relate to or is associated with a failure of **CONSULTANT** to comply with California Education Code Section 45125.1 or with a failure to exercise reasonable care with respect to proper selection and/or supervision of **CONSULTANT**'s employees who may come in contact with pupils.

**" CONSULTANT"**

\_\_\_\_\_  
Signature  
Paul M. Eaton  
\_\_\_\_\_  
Printed Name  
Mayor  
\_\_\_\_\_  
Title  
5111 Benito St.  
\_\_\_\_\_  
Address  
Montclair, CA 91763  
\_\_\_\_\_  
City, State, Zip  
(909) 626-8571  
\_\_\_\_\_  
Telephone Number

**Attest:** \_\_\_\_\_  
Andrea Phillips, Deputy City Clerk

**END OF AGREEMENT FOR CONSULTANT SERVICES**

**Ontario-Montclair School District  
ASES Payment Schedule—City of Montclair  
July 1, 2016 through June 30, 2017**

			Schedule A			
No.	School	Program	Allocation	7.50% Admin.	Balance	Tenthly Payment
060	El Camino	ASES After-school Base	112,500.00	8,437.50	104,062.50	10,406.25
064	Howard	ASES After-school Base	112,500.00	8,437.50	104,062.50	10,406.25
065	Kingsley	ASES After-school Base	120,060.00	9,004.50	111,055.50	11,105.55
066	Lehigh	ASES After-school Base	122,850.00	9,213.75	113,636.25	11,363.63
071	Mission	ASES After-school Base	131,694.75	9,877.11	121,817.64	12,181.76
072	Monte Vista	ASES After-school Base	160,080.00	12,006.00	148,074.00	14,807.40
073	Moreno	ASES After-school Base	112,500.00	8,437.50	104,062.50	10,406.25
045	Montera	ASES After-school Base	112,500.00	8,437.50	104,062.50	10,406.25
074	Ramona	ASES After-school Base	112,500.00	8,437.50	104,062.50	10,406.25
382	Serrano	ASES After-school Base	102,601.50	7,695.11	94,906.39	9,490.64
383	Vernon	ASES After-school Base	63,789.00	4,784.18	59,004.82	5,900.48
065	Kingsley	ASES Supplemental	27,635.00	2,072.63	25,562.37	2,556.24
066	Lehigh	ASES Supplemental	36,855.00	2,764.13	34,090.87	3,409.09
071	Mission	ASES Supplemental	39,508.43	2,963.13	36,545.30	3,654.53
072	Monte Vista	ASES Supplemental	30,636.00	2,297.70	28,338.30	2,833.83
382	Serrano	ASES Supplemental	24,706.00	1,852.95	22,853.05	2,285.31
			<b>1,422,915.68</b>	<b>106,718.69</b>	<b>1,316,196.99</b>	<b>131,619.71</b>

## Attachment A

**Contract No.:** C-167-068 City  
**CONSULTANT:** of Montclair

- 1) Services to be performed by **CONSULTANT**
  - a) **CONSULTANT** agrees to perform the following services on the dates and times herein stated in accordance with directions stipulated to by **DISTRICT** (provide attachment if necessary):
    - i) **CONSULTANT** will provide staff and materials to operate the after-school program services at the following sites: El Camino, Howard, Kingsley, Lehigh, Mission, Monte Vista, Moreno, Montera, and Ramona elementary schools as well as Serrano and Vernon middle schools.
    - ii) **CONSULTANT** will have the following responsibilities in support of the ASES program:
      - (1) Coordinate the academic assistance, homework support, and enrichment portions of the ASES program at each school site.
      - (2) Hire, train, and supervise site staff, including the learning coordinators and learning leaders.
      - (3) Seek regular input from principals regarding performance evaluations, including recommendations for retraining and terminating a site coordinator and/or other site staff.
      - (4) Participate in all cross training for learning coordinators and learning leaders.
      - (5) Maintain ongoing communication between City of Montclair staff and school staff regarding student needs and progress, including, but not limited to attendance at school-day meetings and/or one-on-one meetings with teachers.
      - (6) Coordinate ASES activities with school staff to assure program supports current academic goals of teachers and administrators.
      - (7) Provide academic assistance and other activities specifically supporting, but not duplicating, daytime curriculum and academic goals.
      - (8) Foster communication with and involvement of parents through parent orientations, parent handbook, development and distribution of periodic newsletters, and hosting, at a minimum, one parent night.
      - (9) Regularly attend and participate in regularly scheduled governance and operation meetings.
  - (10) Provide the **DISTRICT**, in a timely manner, with any required documentation, such as, but not limited to, monthly program evaluations, attendance, and snack counts.

## Attachment B

**Contract No.:** C-167-068  
**CONSULTANT:** City of Montclair

### 1) Compensation

- a) Except as otherwise provided in this Agreement, **DISTRICT** agrees to compensate **CONSULTANT** for services rendered under this Agreement as follows:
  - i) **CONSULTANT** will be paid 92.5% of grant award from the California Department of Education (henceforth **CDE**), according to Schedule A, attached hereto.
  - ii) Administrative costs may not exceed 7.5% of grant award from **CDE**, according to Schedule A, attached hereto.
  - iii) If **DISTRICT** fails to receive 2015-2016 ASES grant funding, **CONSULTANT** will hold **DISTRICT** harmless for any financial liabilities or obligations it has incurred.
  - iv) Timing and amounts of payments will be made according to Schedule A, attached hereto. If the funds received from **CDE** change, a pro rata adjustment to the maximum amount available for payment to **CONSULTANT** will be made.
  - v) **CONSULTANT** fee will only be paid out of funds received by **DISTRICT** from the State and only up to the limits of this agreement.
  - vi) **CONSULTANT** is to provide documentation necessary for annual independent audits, in accordance with **CDE** requirements. Any additional audit cost bill to **DISTRICT** due to lack of documentation will be billed to **CONSULTANT** for payment.

# AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF RESOLUTION NO. 16-3119 RELATED TO A PRECISE PLAN OF DESIGN FOR A PROPOSED 23-UNIT RESIDENTIAL APARTMENT PROJECT WITHIN THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN AT 8949 MONTE VISTA AVENUE

**DATE:** June 6, 2016

**SECTION:** RESOLUTIONS

**ITEM NO.:** 1

**FILE I.D.:** CDV050

**DEPT.:** COMMUNITY DEV.

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**REASON FOR CONSIDERATION:** All land use and design review entitlements within the boundary of the North Montclair Downtown Specific Plan (NMDSP) require review and approval by the City Council.

Proposed Resolution No. 16-3119 is attached for the City Council’s review and consideration.

**BACKGROUND:** CFC-Montclair, LLC is proposing to build a 23-unit residential apartment project on a 0.65-acre site, presently addressed as 8949 Monte Vista Avenue. The new development is tentatively named Vista Court and when completed, would be the third residential development project within the boundaries of North Montclair Downtown Specific Plan (NMDSP). Since the project involves no subdivision of land area and no variance requests, this project only requires the approval of a Precise Plan of Design (PPD).

Copies of the site plan, floor plans, elevations, renderings, and conceptual landscape plan are included in the Council packets for reference.

## Precise Plan of Design

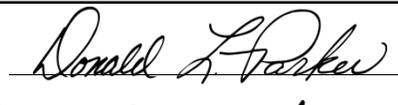
The proposed project consists of a single, 3-story, U-shaped building surrounding an exterior landscaped courtyard. The 3-story building would be approximately 20,162-square-feet in area, 37 feet in height, and set back 17 feet from the face of curb on Monte Vista Avenue.

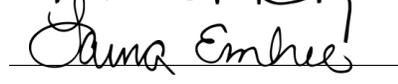
The 17-foot setback would accommodate a six-foot deep landscaped parkway (for street trees), a five-foot wide public sidewalk, and approximately six feet of private landscaping planter area at the front of the new building.

The common courtyard space at the middle of the site would feature landscaping and a combination of concrete walkways and permeable brick paving, freestanding and built-in tile seating, decorative urns and pots, and a barbecue area. Main access to the courtyard would be from the south. On the north side of the building, the developer proposes a garden area with seating for use by the tenants. Each unit would also have

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Prepared by:  Fiscal Impact Finance Review: 

Proofed by:  Reviewed and Approved By: 

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a modest, private patio or balcony space suitable for a small café table and chairs. Patios at ground level would be defined by low decorative walls and landscaping.

A covered trash enclosure is proposed for the project and would be located at and integrated into the southeast corner of the new building where it could be easily accessed by solid waste providers from the private driveway on the southerly boundary of the site.

### Unit Size

The proposed building is designed to provide a combination of living unit types which are summarized in the following table:

<b>Summary of Proposed Unit Sizes</b>		
<i>Floor Plan</i>	<i>Size Range</i>	<i>Number of Units</i>
1 BR/1 BA Flat	665 s.f.	<b>6</b>
1 BR/1 BA Flat	786 s.f.	<b>3</b>
2 BR/2 BA Flat	956 s.f.	<b>2</b>
2 BR/2 BA Townhouse	1,050 s.f.	<b>6</b>
2 BR/2 BA Townhouse	1,084 s.f.	<b>3</b>
2 BR/2 BA Flat	1,085 s.f.	<b>2</b>
1 BR/1 BA Flat	810 s.f.	<b>1</b>
<b>Total</b>		<b>23 Units</b>

The new building also includes a ground level lounge room for the tenants that would provide a seating area with TV, game tables, a kitchenette, and restroom.

### Parking

A total of 28 parking spaces are proposed along the east side of the site, some of which are tucked under or partially covered by the east end of the building. A breakdown of the proposed parking spaces includes 25 standard sized parking stalls, one van-accessible disabled person parking space, and two tandem stalls for a total of 28 spaces. Access to the parking area would be from a driveway portal on the south side of the building facing the existing private driveway between the subject site and The Paseos development to the south. The parking requirement for residential units in the NMDSP is a minimum of one (1) space per unit (NMDSP Section 5.2.030.C.3).

### Architecture

The architectural design for the building is generally categorized as Mediterranean in nature, which features a number of characteristic elements: smooth plaster walls, articulation at corners and main entries, functional balconies, tiled pitched roof, decorative use of ornamental (wrought iron) metal at balconies and gates, awnings, etc. The main color for the stucco building will be tan with doors and windows being

complementary gray and brown. The concrete tile roof will be a blend of burnt orange and brown colors.

### Landscaping/Hardscape

The landscape and irrigation plans for the project site feature a varied selection of drought tolerant plant materials that would complement the architecture of the buildings and highlight the central courtyard space. The proposed tree list includes several accent selections such as Tree Aloes, King Palms, and a 60-inch Magnolia tree to be planted within the courtyard area. Crape Myrtle, Tristiana, and Cypress trees round out the selections proposed for the perimeter of the site. Tree sizes range from 24- to 60-inch box size. The shrub list includes combination of succulents, lilies, roses, Bird of Paradise, Rosemary, Raphiolepis, Westringia, etc. No turf areas are proposed for the project.

Lastly, the parkway area along Monte Vista Avenue would continue the established pattern of Canary Island Pines (*Pinus canariensis*) and Crape Myrtle (*Lagerstroemia indica*) street trees.

### Project Site Information

- The subject property is located within the planning area of North Montclair Downtown Specific Plan (NMDSP), adopted in 2006. The objective of the NMDSP is to introduce urban style residential projects to the area and begin the process of creating a "downtown" environment with walkable neighborhoods, local retail and service businesses, and convenient access to rail transit.
- The project site is rectangular in shape and approximately 28,300 square feet (0.65 acres) in area. The property was developed in 1991 as a "lube and tune" business known as Grease Monkey, under Case No. 89-27. The property has been vacant since 2012.
- The subject property contains a 14-foot wide easement on the south side of the property forming a portion of the existing 35-foot wide private driveway that it shares with the adjacent Paseos project. The subject 14-foot wide easement is approximately 138 feet in length and ends at a perimeter wall constructed for the Paseos project.
- On March 21, 2016, the project was reviewed by the Real Estate Committee, which found the project to be well done.
- On April 11, 2016, the Planning Commission reviewed the proposed project and unanimously recommended City Council approval. One Paseos resident and the property manager for The Paseos project spoke in opposition to the project as proposed over concerns regarding parking, density, and building height.

**ANALYSIS:** Overall, staff finds the project to be very well designed and consistent with the intent and design goals of the North Montclair Downtown Specific Plan. Staff has worked closely with the applicant's architect and the City's design consultant for nearly a year to ensure the project was developed in accordance with the development standards and guidelines of the Specific Plan. The project represents a good design solution to a fairly small site involving careful planning and fine architecture. When

completed, the new units will add to the City's housing stock of new market rate, high quality dwelling units in various sizes and configurations.

At 23 dwelling units on slightly more than one-half acre, the project density is calculated to be just over 35 dwelling units per acre, which is consistent with the "Corridor Residential" density range of 30-50 dwelling units per acre. The project is also consistent with the intent of the "Corridor Residential" land use designation for the site, which states in part, "The...zone is intended to establish a denser fabric of residential buildings, appropriate for locations on arterial roads. It is therefore the portion of the plan where the more intense residential development is expected." The proposed building directly faces Monte Vista Avenue and contributes to the development of an attractive and continuous streetscape along the street.

Although the project directly faces Monte Vista Avenue, entering and exiting the site and parking area will be relatively easy from the existing short length private driveway located on the south side of the project site. The private driveway will be posted as "No Parking" to meet Fire Department access requirements and facilitate trash pickup by solid waste trucks.

### Architecture and Landscaping

Staff finds the proposed "Mediterranean" architecture for the project to be well done, visually attractive, and complementary to The Paseos project that abuts the project site. The design of the new building is relatively simple in form and utilizes an appropriate range of architectural details and application of durable materials that will be long lasting. Architectural design and details are extended to all sides of the buildings. Staff believes the project architecture and colors selected for the project will help provide a comfortable level of distinction from the adjacent developments.

The courtyard area is relatively small but well designed to serve as the key focal point and social area for the complex. The proposed number and quality of the improvements within the courtyard area will serve and enhance the quality of life for the project residents, who will share the common open space area. Courtyard areas of ground floor patios will be properly defined and separated from the courtyard by means of low plaster walls.

Staff believes the proposed landscaping plan, including hardscape elements, is well done and appropriate for the proposed architecture and size of the property. Plant materials are well distributed around the site; many are drought tolerant, provide shade, and add visual interest. The use of specimen-sized trees (e.g., Magnolia, Palms, Aloe) in the courtyard and in key areas along the perimeter of the site will add immediate impact. Lastly, parkway landscaping along Monte Vista Avenue will continue the street theme and appearance established by The Paseos project to the south of the subject site.

### Parking

The NMDSP was developed and approved as a Transit Oriented Design (TOD) plan that intends to promote the use of public transit options and reduce the need for private vehicle usage and areas for parking. As such, the project has been designed to be in compliance with all applicable development standards of the NMDSP including the one (1) parking space per dwelling unit requirement. For this project, unit sizes were purposely limited to no more than two bedrooms and a maximum unit size of 1,085

square feet in order to minimize the pressure of providing more parking to accommodate larger units with potentially more vehicles. In addition, the developer is aware of the concern over parking and has indicated his support for complying with the condition of approval requiring the preparation and enforcement of a Parking Management Plan for his project.

During the Planning Commission hearing, one resident from The Paseos project voiced his concerns with the project, particularly the lack of sufficient parking at their complex that would get worse if the subject project were approved as proposed. With respect to the current parking issue at The Paseos, staff notes that the current problem was largely created by the original property management company, Alliance Residential, which distributed an excess number of parking permits to many residents, presumably to more easily lease up units, but in direct violation of the Parking Management Plan. In at least one case of which staff is aware, one unit was issued five parking permits, while others utilize their extra parking permits to park their vehicles outdoors instead of in the garage, which is instead being used for storage, thereby compounding the problem. Ms. Deborah Loughlin, the property manager for GHP (new owner of The Paseos), is aware of the problem and has begun efforts to develop and implement a new “color coded” parking permit program to regain control of parking at The Paseos.

Ms. Loughlin indicated that a private security patrol service GHP has employed for many months will soon have the authority to tow violating vehicles once the program is implemented. She added that she has conducted meetings with residents and explained the need for compliance with the new rules; however, the problem of excess parking permits will not disappear overnight. As the “beneficiaries” of Alliance’s generosity with move out, they gradually expect to get the parking under control.

Former Community Development Director Steve Lustro also spoke to Steven Fink, Director of Acquisitions for GHP, about the Vista Court project. Mr. Fink shared the observation that Ms. Loughlin’s task was not insurmountable, but was going to take time. Mr. Lustro also described other potential residential projects in the immediate area and Mr. Fink was pleased to hear that more units would be built in the area to increase the critical mass of rooftops. He was not worried about parking issues generated by Vista Court.

Lastly, staff explored the possibility of adding parking in the existing private drive between the proposed Vista Court project and the adjacent Paseos project. As previously noted in this report, the existing private drive is approximately 35 feet in total width (curb to curb), with only 14 feet of the total width being controlled by the applicant. Within this limited area perhaps 2-3 parallel parking spaces could be accommodated along the north side of the drive between Monte Vista Avenue and the west side of the parking entry point for Vista Court. These spaces would be controlled by the owner of the Vista Court project. The adding of these spaces to the applicant’s side of the private drive has been made a condition of approval. When added, the total number of spaces for Vista Court would be increased from the proposed 28 parking spaces to 30 or 31 parking spaces.

As for The Paseos side of the private drive, a maximum of 3-4 spaces could be accommodated provided that the Fire Department does not deem the remainder of the drive as a “Fire Lane” serving both projects. The Paseos management would be responsible to ascertain whether the Fire Department could support parking along the south side of the private drive. If possible, the existing landscaping on the north side

of The Paseos community building might need to be removed in order to add a sidewalk for persons exiting from parked vehicles. Moreover, these spaces, if installed, would be under the control of The Paseos and not be available for Vista Court residents or guests.

#### Property Maintenance/Management

As with all new development in the NMDSP project area, proper property maintenance and management is a key goal for the City. As a condition of approval, the proposed apartment development would be managed by an institutional quality professional management company with an on-site manager. As part of the above condition, the applicant will be required to record an Operations Agreement against the entire property providing for the perpetual maintenance of all buildings and improvements, including roadways, retaining walls, drainage facilities, and water and sewer systems.

City staff is also working with a consultant to lay groundwork and implement a Community Facilities District (CFD), which would overlay the subject site. Establishment of the CFD, which has been anticipated since the NMDSP was adopted, would provide the vehicle for collecting funds to maintain public improvements such as curb, gutter and sidewalk, paving, streetlights, street sweeping, signage, street furniture, landscaping in the public right-of-way. Completion and City approval of the CFD will be a condition of approval before any grading and/or building permits are issued on the project.

#### Findings

- The proposed 23-unit residential apartment project is consistent with the "Planned Development" land use designation of the City's General Plan Land Use Map, and the CR ("Corridor Residential") land use designation of the North Montclair Downtown Specific Plan. The CR land use district is intended to establish a denser fabric of residential buildings, appropriate for locations on arterial roads. It is therefore the portion of the plan where the more intense residential development is expected. The proposed building directly faces Monte Vista Avenue and contributes to the development of an attractive and continuous streetscape.
- The proposed project makes efficient use of the small site while complying with applicable development standards of the NMDSP. The 23 dwelling units proposed with this project are within the "Corridor Residential" density range of 30-50 dwelling units per acre.
- The site plan, building form, massing, and height will contribute to the ongoing formation of the streetscape and development pattern envisioned by the NMDSP. The proposed 3-story building and its placement on the site near Monte Vista Avenue are consistent with the intent of the CR land use district and represents a good design solution for a fairly small site.
- The proposed "Mediterranean" inspired architectural design of the project as indicated on the submitted plans is well done, attractive, and complementary to recent development in the area. The design is consistent with the architectural style guidelines depicted in the NMDSP, and features high quality exterior materials and finishes and incorporates appropriate lighting and landscape materials to give the project a distinctive and pleasing appearance.

### Public Comment from Adjoining Property Owners

No public hearing is required for this project. However, on April 1, 2016, courtesy notices were mailed out to property owners within a 300-foot radius from the boundaries of the subject property, including the property manager at The Paseos project adjacent to the site. Electronic comments were received by staff from three (3) individuals residing at The Paseos indicating their opposition to the project. The concerns raised in the emails included the issue of insufficient parking at The Paseos and for the subject project, proposed project density, potential noise impacts, and loss of views. Two individuals attended the Planning Commission hearing where the above concerns were raised.

### Environmental Assessment

Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the City certified an Environmental Impact Report (EIR) on August 15, 2006 in connection with the City's approval of the North Montclair Downtown Specific Plan and anticipated improvements. According to Government Code section 65457 and State CEQA Guidelines Section 15182, where a public agency has prepared an EIR on a Specific Plan after January 1, 1980, no EIR or negative declaration need be prepared for a residential project undertaken pursuant to and in conformity to that specific plan. If the project is a residential project consistent with the specific plan then it is statutorily exempt pursuant to Government Code Section 65457 and State CEQA Guidelines Section 15182. This statutory exemption is, however, subject to the limitation that if after adoption of the specific plan an event described in Public Resources Code Section 21166 or State CEQA Guidelines Section 15162 should occur then the exemption shall not apply until the City takes certain further CEQA actions.

According to Public Resources Code Section 21166 and State CEQA Guidelines Sections 15162 and 15182, no subsequent or supplemental EIR or Negative Declaration is required in connection with subsequent discretionary approvals of the same project unless: (i) substantial changes are proposed to the project that indicate new or more severe impacts on the environment; (ii) substantial changes have occurred in the circumstances under which the project was previously reviewed that indicates new or more severe environmental impacts; or (iii) new important information shows the project will have new or more severe impacts than previously considered; or (iv) additional mitigation measures are now feasible to reduce impacts or different mitigation measures can be imposed to substantially reduce impacts.

Staff finds that the current application for the proposed 23-unit residential apartment project is being undertaken pursuant to and in conformity to the North Montclair *Downtown Specific Plan, for which an EIR was certified in 2006. The proposed project* is substantially consistent with the anticipated impacts evaluated in the previously certified EIR for the North Montclair Downtown Specific Plan and its anticipated improvements. Staff further believes that the project will not have one or more significant effects not discussed in the previously certified EIR, not have more severe effects than previously analyzed, and that additional or different mitigation measures are not required to reduce the impacts of the project to a level of less than significant. As such, none of the conditions listed in Public Resources Code Section 21166 or State CEQA Guidelines Section 15162 requiring the preparation of a subsequent or supplemental EIR are present and the project qualifies for the exemption for residential projects described in Government Code Section 65457 and Section 15182 of the State CEQA Guidelines.

**FISCAL IMPACT:** There would be no direct fiscal impact on the City's General Fund at this time should the City Council adopt Resolution No. 16-3119 approving the project described herein.

**RECOMMENDATION:** Staff recommends that the City Council adopt Resolution No. 16-3119 related to a precise plan of design for a proposed 23-unit residential apartment project within the North Montclair Downtown Specific Plan (NMDSP) at 8949 Monte Vista Avenue.

**RESOLUTION NUMBER 16-3119**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING A PRECISE PLAN OF DESIGN UNDER CASE NUMBER 2016-3 FOR A PROPOSED 23-UNIT RESIDENTIAL APARTMENT DEVELOPMENT AT 8949 MONTE VISTA AVENUE WITHIN THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN (APN 1008-011-24)**

**WHEREAS**, on February 9, 2016, CFC-Montclair LLC, owner of property at 8949 Monte Vista Avenue, filed an application for a Precise Plan of Design (PPD), to build a proposed 23-unit residential apartment development on the subject site; and

**WHEREAS**, the subject property is 0.65 acres in size; and

**WHEREAS**, the General Plan land use designation for the site is "Planned Development"; and

**WHEREAS**, the North Montclair Downtown Specific Plan (NMDSP) was adopted in 2006, with the objective of introducing urban style residential projects to the area and begin the process of creating a "downtown" environment with walkable neighborhoods, local retail and service businesses, and convenient access to rail transit; and

**WHEREAS**, the NMDSP designates the subject site as being located in the Corridor Residential (CR) land use district, which allows a residential density range of 30-50 dwelling units per acre; and

**WHEREAS**, a Precise Plan of Design is requested for the overall site plan, floor plans, elevations, colors, materials, and landscape plan, associated with the 23-unit residential development; and

**WHEREAS**, the proposed project intends to construct 23 units on 0.65 acres, resulting in a density of approximately 35 dwelling units per acre, consistent within the 30-50 dwelling units per acre density range of the CR land use district; and

**WHEREAS**, staff has determined the proposed project is consistent with the intent and requirements of the General Plan and the NMDSP; and

**WHEREAS**, All land-use and design review entitlements within the boundary of the North Montclair Downtown Specific Plan (NMDSP) require review and approval by the City Council; and

**WHEREAS**, no public hearing is required for this project. However, courtesy notices were mailed out to property owners within a 300-foot radius of the boundaries of the subject property; and

**WHEREAS**, on April 11, 2016, commencing at 7:00 p.m. in the Council Chamber at Montclair City Hall, the Planning Commission conducted a hearing at which time all persons wishing to testify in connection with said application were heard, and said application was fully studied.

**WHEREAS**, on April 11, 2016, the Planning Commission of the City of Montclair reviewed and unanimously recommended approval of said Precise Plan of Design; and

**WHEREAS**, the City Council of the City of Montclair finds the proposed development is consistent with the adopted General Plan and the North Montclair Downtown Specific Plan and following good planning principles; and

**WHEREAS**, the item was placed on the City Council's June 6, 2016, agenda for consideration as required for all projects within the North Montclair Downtown Specific Plan (NMDSP) planning area; and

**WHEREAS**, based on the entire record before the City Council and all written and oral evidence presented, the City Council finds the proposed project complies with the California Environmental Quality Act (CEQA) for the reasons set forth in this Resolution.

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

**SECTION 1.** Based on the entire record before the City Council, all written and oral evidence presented to the City Council, and the findings set forth in this Resolution, the City Council approves a Precise Plan of Design under Case No. 2016-03, subject to the conditions of approval set forth in the attached Exhibit "A" and as depicted in the submitted site plan, elevations, and renderings attached hereto as Exhibit "B."

**SECTION 2.** Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds as follows with respect to the approval of a Precise Plan of Design under Case No. 2016-3:

- A. The proposed 23-unit residential apartment project is consistent with the "Planned Development" land use designation of the City's General Plan Land Use Map, and the CR ("Corridor Residential") land use designation of the North Montclair Downtown Specific Plan. The CR land use district is intended to establish a denser fabric of residential buildings, appropriate for locations on arterial roads. It is therefore the portion of the plan where the more intense residential development is expected. The proposed building directly faces Monte Vista Avenue and contributes to the development of an attractive and continuous streetscape.
- B. The proposed project makes efficient use of the small site while complying with applicable development standards of the NMDSP. The 23 dwelling units proposed with this project are within the "Corridor Residential" density range of 30-50 dwelling units per acre.
- C. The site plan, building form, massing, and height will contribute to the ongoing formation of the streetscape and development pattern envisioned by the NMDSP. The proposed 3-story building and its placement on the site near Monte Vista Avenue are consistent with the intent of the CR land use district and represents a good design solution for a small site.
- D. The proposed "Mediterranean" inspired architectural design of the project as indicated on the submitted plans is well done, attractive, and complementary to recent development in the area. The design is consistent with the architectural style guidelines depicted in the NMDSP, and features high quality exterior materials and finishes and incorporates appropriate lighting and landscape materials to give the project a distinctive and pleasing appearance.

**SECTION 5.** Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds the nature and extent of the dedications, reservations, impact fees, and other exactions are reasonably related to public needs and roughly proportional to the impacts created by the proposed 23-unit residential apartment development. In addition, several conditions, including conditions relating to the imposition of operational covenants for the project were suggested and/or accepted by the applicants.

**SECTION 6.** Based upon the facts and information contained in the application, together with all written and oral reports included for the environmental assessment for the application, the City Council finds that no subsequent or supplemental environmental document is required pursuant to CEQA in connection with the review and approval of this application based upon the following findings and determinations:

- A. Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the City certified an Environmental Impact Report (EIR) on August 15, 2006 in connection with the City's approval of the North Montclair Downtown Specific Plan and anticipated improvements. According to Government Code section 65457 and State CEQA Guidelines section 15182, where a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or negative declaration need be prepared for a residential project undertaken pursuant to and in conformity to that specific plan. If the project is a residential project consistent with the specific plan then it is statutorily exempt pursuant to Government Code section 65457 and State CEQA Guidelines section 15182. This statutory

exemption is, however, subject to the limitation that if after adoption of the specific plan an event described in Public Resources Code section 21166 or State CEQA Guidelines section 15162 should occur then the exemption shall not apply until the City takes certain further CEQA actions.

- B. According to Public Resources Code section 21166 and State CEQA Guidelines Sections 15162 and 15182, no subsequent or supplemental EIR or Negative Declaration is required in connection with subsequent discretionary approvals of the same project unless: (i) substantial changes are proposed to the project that indicate new or more severe impacts on the environment; (ii) substantial changes have occurred in the circumstances under which the project was previously reviewed that indicates new or more severe environmental impacts; or (iii) new important information shows the project will have new or more severe impacts than previously considered; or (iv) additional mitigation measures are now feasible to reduce impacts or different mitigation measures can be imposed to substantially reduce impacts.
- C. The City Council finds that the current application for the proposed 23-unit residential apartment project is being undertaken pursuant to and in conformity to the North Downtown Montclair Specific Plan, for which an EIR was certified in 2006. The proposed project is substantially consistent with the anticipated impacts evaluated in the previously certified EIR for the North Montclair Downtown Specific Plan and its anticipated improvements. Staff further believes that the project will not have one or more significant effects not discussed in the previously certified EIR, not have more severe effects than previously analyzed, and that additional or different mitigation measures are not required to reduce the impacts of the project to a level of less than significant. As such, one of the conditions listed in Public Resources Code section 15162 of the 21166 or State CEQA Guidelines Section 15162 requiring the preparation of a subsequent or supplemental EIR are present and the project qualifies for the exemption for residential projects described in Government Code section 65457 and Section 15182 of the State CEQA Guidelines.
- D. Based on these findings and all evidence in the record, the City Council concurs with staff's determination that no additional environmental review is required pursuant to CEQA in connection with the City's consideration of Case No. 2016-3 for the 23-unit Vista Court residential apartment development.

**SECTION 7.** The location and custodian of the documents and any other material that constitute the record of proceedings upon which the City Council based its decision is as follows: Director of Community Development, Community Development Department, City of Montclair, 5111 Benito Street, Montclair, California 91763, or by telephone at (909) 625-9477.

**SECTION 8. Effective Date.** This Resolution shall become effective upon its adoption.

**APPROVED AND ADOPTED** this XX day of XX, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 16-3119 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2016, and that it was adopted by the following vote, to-wit:

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

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Andrea M. Phillips  
Deputy City Clerk

**EXHIBIT A**  
**Conditions of Approval**  
**Case No. 2016-21**

**Project Approvals & General Conditions**

Planning

1. This approval is for a Precise Plan of Design (PPD) approving the site plan, floor plans, elevations, colors and materials, and landscaping associated with the construction of 23 apartment dwelling units on the subject site as described in the staff report and depicted on approved plans on file with the Planning Division.
2. Minor modifications that are determined by the City Planner to be in substantial conformance with the approved plans and which do not intensify or change the uses approved, or require deviation from adopted policies and standards may be approved by the City Planner. Any modification, intensification, or expansion of the use beyond that which is specifically approved with this action shall require review and approval by the City Council.
3. The applicant and/or property owner shall ensure that a copy of this Resolution is reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the project. In the event the plans, drawings, and exhibits are inconsistent with the approved conditions, the approved conditions shall prevail.
4. Precise Plan of Design (PPD) approval shall be valid for a period of one year and shall automatically expire on the anniversary date of Planning Commission approval, unless the applicant is diligently pursuing building plan check toward eventual construction of the project. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's PPD expiration date.
5. Within five days of City Council approval, the applicant shall submit a check in the amount of \$50 to cover the County administrative fee for filing a Notice of Exemption as required by the California Environmental Act (CEQA). The check shall be made payable to "Clerk of the Board of Supervisors."
6. The applicant shall agree to the formation of a Community Facilities District ("CFD") pursuant to the terms of Government Code Section 53311, et seq., the territory of which shall include the Project, for the purposes of the payment of maintenance and operation costs associated with the common landscaping, lighting and other improvements located within the Project. The applicant shall consent to the formation of the CFD prior to the issuance of building permits for the Project. The applicant further expressly agrees that failure to form such CFD will result in disapproval of the Project.

The applicant shall also agree that additional areas may be annexed into the CFD, provided, however, that after giving effect to such annexation, the owner, subdivider and applicant is subject only to its fair share of the obligations and costs incurred as a result of the annexation. The subdivider and applicant agree to cooperate fully in any such annexation proceedings.

If, for any reason whatsoever, the Property or portion thereof does not become part of a CFD or if any such CFD that is formed does not provide for the maintenance of the entirety of the improvements within the Property, or any portion thereof, then such improvements shall be maintained by a private property owner, or an adequate alternative reasonably acceptable to the City, to undertake such work. Costs to implement the CFD shall be reimbursed to the City pursuant to a Reimbursement Agreement between the applicant and the City.

7. Prior to the issuance of building permits for the approved project, the property owner shall complete and record an Operations & Management Regulatory Agreement (hereafter "Regulatory Agreement") with the City for providing for

the perpetual maintenance of all buildings and improvements on the subject multi-family residential project ("the Project") developed in the City for rental purposes. The Regulatory Agreement shall be recorded as a condition, covenant and restriction on the property in perpetuity unless the City Council agrees to the removal of such covenant in the event of a change in land use. The Regulatory Agreement will address the management, operations and maintenance of the multifamily residential project and be a Covenant that will run with the land.

Depending on the specific details of any proposed project, other conditions may be included in the Operations and Management Regulatory Agreement. Costs for development of the Operations and Management Agreement shall be reimbursed to the City pursuant to a Reimbursement Agreement between the applicant and the City.

a. On-Site Management

The Owner shall be required to retain the services of a California Certified Residential Property Manager to operate and maintain the project. Any manager or Management Company retained to act as an agent for the Owner shall obtain the prior written approval of the Police Chief, which approval shall not be unreasonably withheld or delayed, provided the person assigned from the management company is a California Certified Property Manager or an employee of a California Certified Property Manager. Changes to the Management Company shall be subject to the prior written approval of the Police Chief, which approval shall not be unreasonably withheld.

In exercising his/her approval rights hereunder, the Police Chief may require proof of ability and qualifications of the manager and/or management company based upon (i) prior experience, (ii) assets, and (iii) other factors determined by the Police Chief as necessary. Furthermore, upon sixty (60) days prior written demand from City with cause, Owner shall remove and replace a property manager and/or property management company. In any agreement with a property manager or property management company ("Management Agreement"), the Owner shall expressly reserve the right to terminate such agreement upon written demand of City with cause. That notwithstanding, City agrees that a request for removal of a property manager or management company shall be subject to a thirty (30)-day notice of default and a reasonable opportunity to cure before any such termination is effective.

Subsequent changes in the Management Company or manager of the Project shall obtain the prior written approval of the Police Chief as so indicated above.

- i. Management Obligations. The Owner shall maintain the legally required presence of an on-site manager pursuant to California Code of Regulations, Title 25, Section 42. The Management Company shall ensure that tenant application and screening practices are developed and enforced, that all rules and regulations are developed and enforced and that use of all facilities are managed. The Owner, through the Property Management Company, will ensure that the Project is well maintained pursuant to the standards developed in the Agreement.
- ii. Registration and Management of Rentals. The Owner, with its Management Company, shall develop all rules, documents and procedures to assure all rental occupancies of units are professionally managed including but not limited to:
  - Application(s)
  - Crime-Free Addendum and other required addenda to application
  - Tenant screening tools including, but not limited to, (1) credit check including unlawful detainer, and (2) criminal background check.

- iii. Alcoholic Beverages/Controlled Substances. Tenant rules shall prevent the consumption of alcoholic beverages or controlled substances in public view anywhere in the Project.

b. Security Requirements

Owner shall provide the following security and security monitoring measures during the term of this Agreement:

- i. Owner shall develop a "Safety and Security Plan" acceptable to the Police Department which, at a minimum, shall include the installation, operation and maintenance of security cameras throughout the Project.
- ii. At any time during the term of the Agreement, should the calls for Police service or response at the Project exceed a level reasonably considered normal and customary for the size of the Project by the Police Chief, during any consecutive two-month period, the Owner shall be required to provide a State-licensed security patrol through a company retained by the Owner.

The State-licensed security patrol company shall be retained by the Owner, with the prior approval of the Police Chief, for a period of time to be determined by the Police Chief. The approval of such a State-licensed security company shall not be unreasonably withheld.

c. Balconies, Patios and Porches

Balconies, patios and porches are approved for use as private usable open space and may not be used for storage purposes. Storage of materials that detract from the appearance of buildings is prohibited in the above-mentioned locations as well as anywhere that is directly visible to the public. The project owners shall include in all rental agreements/leases for the project that storage of boxes, indoor furniture, the hanging of clothing, and other similar items that detract from the appearance of the building is prohibited.

d. Cable and Satellite Service Equipment

Placement of antennas for radio and television reception may be permitted within a balcony, terrace, deck or patio that is intended for exclusive use of the subject tenant, subject to the following criteria:

- i. For the purpose of this Section, the word "antenna" shall include a single dish antenna, usually in a circular shape with a parabolic curve design constructed of a solid or open mesh surface, not more than two feet (2'-0") in diameter, either surface-mounted or by means of a freestanding tripod that is placed entirely within the permitted areas; and
- ii. Only one (1) antenna per dwelling unit shall be permitted; and
- iii. The method of attachment and or arrangement of said antenna shall be shall be accomplished in the least visually distracting manner as possible.
- iv. No antennas shall be placed, attached or installed in any common areas of the development including the roof, hallways, common courtyards, walkways, or the exterior walls of the apartment building.
- v. No overhead external wiring of the antennas shall be permitted.

e. Parking

The Agreement shall provide for the following:

- i. Development of an on-site "Parking Management Plan" shall be required. The Parking Management Plan shall identify the parking space(s) for every unit in the Project. With the exception of a garage attached to an identified unit, all parking spaces shall be identified with a unique number that shall be stenciled on the pavement and regularly maintained. The Parking Management Plan shall be submitted to the City and must be approved by the Community Development Director prior to occupancy of the Project. Subsequent changes to the Parking Management Plan shall have the prior written approval of the Community Development Director.
- ii. The Agreement shall stipulate that no utility trailers, commercial or construction vehicle of any length, watercraft, or recreational vehicles shall be permitted to be stored or parked overnight on any private street and/or parking areas within the complex. "Recreational Vehicle" shall mean recreational vehicles, motor homes, campers, utility trailers, watercraft, travel trailer, truck camper, camping trailer, off-road vehicles, land conveyances, vessels, aircraft, boats, trailers, van conversions, customized trucks, and other similar type vehicles that are designed for human habitation for recreational or emergency purposes, or that require a special driver's license (e.g., noncommercial Class A or Class B) to operate.
- iii. The Agreement shall stipulate that any garage units or covered parking spaces provided shall, at all times, be assigned to units within the Project pursuant to the Parking Management Plan. Storage within garages shall be allowed only to the extent the unit includes a dedicated storage cabinet or storage area and any storage may not impede access to the parking space(s) within the garage.
- iv. The Agreement shall stipulate payment of an additional rental fee or separate fee to secure parking or an additional parking space(s) is prohibited.
- f. Maintenance, Operation, Preservation, and Repair of Property

Owner, through its management company, shall keep the Project well-maintained (including, without limitation, the buildings; signage; sidewalks; parking lots; lighting; landscaping; onsite storm drain system, fencing; and pool, if any; and other Improvements) and shall operate the Project in a businesslike manner; shall prudently preserve and protect both its own and City's interests in connection with the Project; shall not commit or permit any waste or deterioration of the Project; shall not abandon any portion of the Property; and shall not otherwise act in such a way as to unreasonably increase the risk of any damage to the Project. Such maintenance shall include, without limitation, the following:

- i. Keeping the exterior surfaces of buildings painted, plastered or otherwise appropriately treated;
- ii. Replacing broken windows and other glass surfaces promptly;
- iii. Keeping the Project free from any accumulation of debris, graffiti, and waste materials;
- iv. Keeping trees, ground cover, shrubs and other plant materials trimmed and in healthy condition;
- v. Keeping paved surfaces and other hardscape in good condition, free of potholes, significant surface cracks, dangerous uplifted walkways, or other conditions which impede paths of travel; and
- vi. Keeping the on-site storm drain system in working order and in good repair at all times.

g. Remedial Actions

In the event an Owner fails to act or perform pursuant to the terms found in the Operations and Management Regulatory Agreement, the City reserves the right to enforce the restrictions imposed by the Agreement at the expense of the Owner. The Agreement shall make provisions to allow the City enforce the Conditions, Covenants and Restrictions.

h. Sale or Transfer

Owner will covenant not to sell, transfer or dispose of any land or building within the Project, or any portion of a building unless such sale is either: (a) a sale of the entire project to a purchaser, or (b) as part of a condominium sales effort where individual units are sold to individual purchasers, on a building-by-building or unit-by-unit basis, consistent with the rules of the California Department of Real Estate.

8. All dwelling units (e.g., living room and bedrooms) shall be pre-wired with phone, cable and satellite connections.
9. Ground-mounted air conditioning condenser units shall be located in the least conspicuous area as possible and screened with appropriate landscape or architecturally integrated low walls/screens subject to the satisfaction of the City Planner.
10. Prior to the issuance of a building permit, the applicant shall prepare the following items and submit for plan check review:
  - a. A photometric plan for the entire site. The photometric plan shall include the location of all exterior light fixtures (area, building, parking areas, etc.) and the overall illumination levels across the site. All proposed exterior lighting fixtures (not including required street lights) shall comply with the following standards:
    - i. Lighting fixtures shall be vandal-resistant and of a design that complements the architecture of the building.
    - ii. All light fixtures shall incorporate 90-degree cut-off style luminaires and flat lenses so as to direct illumination downward to the surface to be illuminated and away from public rights-of-way or adjacent residential properties/uses.
  - b. An acoustical report demonstrating how sound attenuation measures for the proposed units will achieve an interior noise attenuation level of 45 CNEL or less, and the building materials and construction techniques (e.g., dual-paned glazing, upgraded insulation, etc.) proposed for the project. The building plans will be checked for conformance with the mitigation measures contained in the final report.
  - c. A sidewalk layout plan incorporating required square scoring pattern for all public and private streets. The sidewalk layout plans shall comply with the following items:
    - i. The sidewalk plan for this project shall match the existing sidewalk scoring pattern established on Monte Vista Avenue for the Paseos project; and
    - ii. Coordinate square scoring pattern with curb and gutter control joints; and
    - iii. Include sidewalk ramps, driveways, streetlights, and other utility boxes to demonstrate how the square scoring pattern can be implemented to greatest extent possible with only minor to no disruption of said pattern; and
    - iv. The proper scoring shall be achieved by creating a narrow tooled joint in the wet cement; and

- v. Finish quality and workmanship shall be to the satisfaction of the Public Works Director/City Engineer and City Planner. Unacceptable work shall be removed and reinstalled in an appropriate and acceptable fashion.
11. Approval of this PPD shall not waive compliance with any applicable regulations as set forth by the California Building Code and/or City Ordinances, the San Bernardino County Health Department, or the State of California.
  12. Prior to the installation of any signs, the applicant shall submit a coordinated sign program proposal and Sign Permit Application for the entire project to the Planning Division for review and approval.
  13. No changes to the approved set of plans, including the exterior design and materials/finishes, shall be permitted without prior City review and approval.
  14. No outdoor pay telephones or vending machines shall be permitted on the project site, except that vending machines may be allowed if desired within the lounge room of the project, subject to the satisfaction of the City Planner.
  15. Masonry wall heights, materials, and finishes shall be to the satisfaction of the City Planner. Double wall or fence/wall conditions shall not be permitted.
  16. The street tree specifications for the project shall conform to the following requirements:
    - a. Monte Vista Avenue - *Pinus canariensis* (Canary Island Pine) and *Lagerstroemia indica* (Crape Myrtle), following as close as possible the alternating pattern established along the Monte Vista Avenue for the Paseos project.
    - b. All street trees shall be minimum 24-inch box size and double-staked per City standards. If planted in turf areas, trees shall be planted within a 4'-0" diameter circle in which turf does not encroach. The circle shall be left natural or minimally improved with decomposed granite, a thin layer of wood chips or similar moisture-retaining material.
  17. Streetlights shall be constructed on all public and private streets. Streetlights within and on the perimeter of the subdivision shall be as follows and as illustrated in "City Nights...City Lights," a publication of Southern California Edison:
    - a. Interior streets (public and private) - "Nostalgic Fluted Pole" with single acorn pole top fixture.
    - b. Monte Vista Avenue - "Nostalgic Fluted Pole" with double acorn pole top fixture.
    - c. Poles shall be black concrete and approximately 18 feet in height.
    - d. Fixtures shall be fitted with up-light shielding and house-side shielding (where necessary).

The spacing of streetlights and minimum lighting level for all streets shall be to the satisfaction of the Public Works Director/City Engineer. Streetlights on public streets shall be owned and maintained by Southern California Edison. Streetlights on private streets may be owned and maintained by developer or Southern California Edison.
  18. The proposed locations for neighborhood mailboxes within the project shall be subject to City review and approval prior to installation. Community mailboxes shall be located entirely within a building or as part of a structure providing suitable weather protection to the satisfaction of the City Planner. The applicant shall also ascertain any requirements for such mailboxes from the United States Postal Service.
  19. No exterior surface-mounted exposed ducts, conduit or electrical lines shall be allowed on walls, awnings, or other exterior faces of the building. In addition,

all electrical switchgear, meters, etc., shall be screened or housed in an enclosure to the extent allowed by the utilities.

20. Roof-mounted mechanical equipment (e.g., air conditioning, heating, ventilation ducts and exhaust vents, meters, pumps and filters, transformers and generators, conduit, satellite dishes and similar equipment, but excluding solar collectors and related equipment) shall be recessed below the roof line or by solid and permanent roof-mounted screens and not visible in any direction (360 degrees) from a public right-of-way or adjacent residential property, as may be seen from a point six (6) feet above ground level. In addition, screening of the top of roof-mounted mechanical equipment may be required by the Director, if necessary, to protect views from a higher elevation. Screening of roof-mounted equipment shall be accomplished by means of raised parapets, mechanical roof wells, or roof-mounted screens, all of which shall be integrated into the architecture (e.g., architectural style, materials, and color) of the main building/structure to which it is attached, subject to the approval of the City Planner.
21. Access to the roof of any building shall be from within the subject structure and not be means of roof access ladders mounted to the exterior of the building.
22. All on-site ground-mounted mechanical equipment, including, but not limited to, utility meters, air conditioners, condenser units, and repair equipment shall be located within the building or on the exterior of the building only when necessary and screened in a manner that is compatible with the architectural design of the building subject to the satisfaction of the City Planner.
23. Freestanding electrical transformers and Fire Department double check detector assembly (DCDA) equipment shall be screened with masonry walls compatible with the building architecture and/or landscaping to the satisfaction of the City Planner and Fire Marshal. Efforts shall be made to place these elements in locations that are as visually unobtrusive as possible.
24. All landscaping on the project site shall be regularly maintained in a healthy and vigorous living condition at all times. This shall include proper pruning, weeding, removal of litter, fertilizing, and the regular watering of all plants. Dead vegetation shall be promptly replaced with healthy, living plants, in accordance with standard seasonal planting practices. The property owner shall also be responsible to keep the landscaped areas reasonably free of weeds, trash, and debris.
25. All new trees incorporated into the project shall be trimmed and maintained per guidelines established and approved by the International Society of Arboriculture (ISA). Trees shall only be pruned as necessary to promote healthy growth and for aesthetic purposes (i.e., to enhance the natural form of the tree) according to established horticultural standards. Improperly or severely pruned trees, including topping which results in the removal of the normal canopy and/or disfigurement of the tree shall be replaced with trees of similar size and maturity as that which was removed or as required by Director of Community Development.
26. All landscaping and irrigation systems shall be maintained in accordance with the approved site and/or landscape plan and in full accordance with Chapter 11.60 of the Montclair Municipal Code to ensure water use efficiency.
27. To ensure compliance with the conditions of approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The applicant shall contact the City to schedule an appointment for such inspections.
28. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City,

and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void or annul, the any action of, or permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities, thereof (including actions approved by the voters of City), for or concerning the project, whether such Actions, are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any action brought and City shall cooperate with the applicant in the defense of the Action.

29. The conditions of project approval include certain fees, dedication requirements, reservation requirements, and/or other exactions more specifically described in the conditions of approval. The applicant is hereby notified that the 90-day protest period to challenge such items has begun as of the date of the project approval or the date of the Impact Fee imposition, which is also the date of final project approval. If the applicant fails to file a protest regarding any of the fees, dedications, reservations, inclusionary housing requirements or other exaction requirements as specified in Government Code §66020, the applicant shall be legally barred from later challenges.
30. The applicant shall pay all applicable impact fees in amounts in effect at the time a building permit is issued."

Building

31. Submit four complete sets of plans including the following:
  - a. Site/Plot Plan;
  - b. Floor Plan;
  - c. Electrical Plans, including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams;
  - d. Plumbing Plans, including isometrics, underground diagrams, water and waste diagram, fixture units, gas piping, and heating and air conditioning.
  - e. Plan of any existing structures on the site, including all walls to be demolished.
  - f. Waste Recycling Plan, demonstrating the recycling of a minimum of 50% of all construction debris.
32. Submit two sets of structural calculations, if required, and two sets energy conservation calculations.
33. Architect's/Engineer's stamp and "wet" signature are required prior to plan check approval.
34. The applicant shall comply with the latest adopted California Building Code, and other applicable codes, ordinances and regulations in effect at the time of permit application. These applicable codes shall be indicated on the first page of submitted plans.
35. Contractors must show proof of State and City licenses and Workers' Compensation coverage to the City prior to permit issuance.
36. Separate permits are required for fencing and/or walls.
37. All utility services to the project shall be installed underground.

38. Plans shall be submitted for plan check and approved prior to construction. All plans shall be marked with the project file number.
39. Construction activity shall only be permitted from the hours of 7:00 a.m. to 8:00 p.m. daily.
40. Prior to issuance of building permits for a new development project or major addition, the applicant shall pay development fees at the established rate. Such fees may include, but are not limited to, Inclusionary Fees, Parkland Development Fee, Transportation Development Fee, Permit and Plan Check Fees, School Fees, and Sewer Fees. School fees shall be paid directly to the Ontario-Montclair School District and the Chaffey Joint Union High School District. Applicant shall provide a copy of the school fees receipt to the Building Division prior to permit issuance.
41. All construction work carried out under the review of the Building Division shall be of good quality. The Building Official shall have the authority to enforce the installation of work that is straight, level, plumb, square, etc., as the situation requires. All work shall be well fit and of a durable nature. Paint and stucco in all cases shall not be below standard for the use applied.
42. Provide and clearly indicate on submitted plans disabled-accessible path(s) of travel to the public right-of-way and all required disabled-accessible parking areas. Sidewalks, paths-of-travel, and curb cuts shall comply with the requirements of the California Building Code, Title 24. The maximum cross-slope on a sidewalk or path-of-travel shall not exceed two percent (2%).
43. Install numerical addresses on each building in a location determined by the Planning Division. Address numerals shall be in a font acceptable to the Planning Division, a minimum of eight (8) inches in height, a minimum of 1½ inches in depth, and be in a color that adequately contrasts with the background to which they are attached.
44. A Certificate of Occupancy is required prior to the occupancy of the building(s). Issuance of the Certificate of Occupancy shall be contingent upon Fire Department inspection and final approvals from other departments and/or agencies.
45. Striping of all parking spaces shall be cane or "hairpin"-style striping.
46. Electrical and fire suppression service shall rise within the interior of the building(s). Roof ladders shall also be located entirely inside the building.
47. Placement of temporary construction and storage trailers on the property shall require approval from the Building and Planning Divisions prior to placement and permits from the Building Division. If any trailers will be used for public access, disabled-accessibility requirements shall apply. Such trailer(s) will require access to the facility by way of ramps that comply with California Building Code (CBC) 2013 edition, Chapter 11B, in addition to access to each feature of the trailer. Plans and structural calculations will be required for tie-down devices.
48. Construct trash enclosure(s) per City Standard (available at the Building Division's public counter) or to the satisfaction of the Building Official and City Planner.
49. The use of decorative foam on the exterior of buildings shall be limited to installations above the first floor. If foam is to be installed at the first floor, a minimum two-coat stucco application over mesh shall be applied. The strength of the stucco applied foam shall be substantial for longevity in wear.
50. An accessible path of travel in and around the project shall be a minimum width of four feet (4'-0"). Consideration of underground utilities and the effect they have on the path of travel shall be of high importance.

51. When permits are ready to be issued, the new permanent address of the project will be **8951 Monte Vista Avenue**. Plans shall be labeled with this address.

Water Quality Management Plan

52. The applicant shall comply with all requirements of the approved Water Quality Management Plan (WQMP) for this project.
53. The applicant/developer/homeowners association shall be responsible to contract with a qualified firm to inspect and maintain any and all manufactured stormwater treatment devices specified by the approved WQMP, following all manufacturers' recommendations. It shall also be the responsibility of the applicant/developer/homeowners association to maintain inspection reports and have them readily available for review by City staff upon request. In the event that any stormwater treatment device fails due to lack of, or insufficient maintenance and/or inspection, or some other unforeseen circumstance, it shall be the responsibility of the applicant/developer/homeowners association to correct the deficiency and restore the stormwater treatment device(s) to its original working condition.
54. Prepare and submit plans for erosion and sediment control. Plans shall include all phases of the construction project, including rough grading, utility and road installation, vertical construction, and final stabilization to the satisfaction of the Public Works Director/City Engineer. Contact Joe Rosales, NPDES Coordinator, at (909) 625-9470.
55. Prior to issuance of a Certificate of Occupancy, the applicant shall:
  - a. Submit to the Engineering Division an electronic copy of the approved WQMP in PDF format.
  - b. Have the WQMP Maintenance Agreement recorded with the County of San Bernardino and provide evidence of said recording to the NPDES Coordinator.
56. Prior to release of occupancy for any of the dwelling units in the subdivision, the person or corporation responsible for the preparation of the WQMP shall certify in writing to the Building Official that all conditions and requirements of the WQMP have been implemented or complied with. For projects, developments, or properties intended to be leased or sold, developer shall also submit evidence to the Building Official that lessee or purchaser has been advised in writing of lessee's or purchaser's ongoing maintenance responsibilities with respect to the requirements of the WQMP.

Engineering

57. A parkland development fee shall be paid to the City. This fee is payable prior to issuance of any Certificate of Occupancy.
58. Payment of transportation-related development impact fees shall be required. Fees shall be assessed at the rate in effect at the time the fees are paid.
59. Access to the site is shown to be from Monte Vista Avenue via a driveway with overlapping ownership. Verify that rights of mutual ingress and egress over the adjacent property exist. If not, secure such rights.
60. Reconstruct sidewalk through the Monte Vista Avenue frontage of the property using the scoring pattern per City of Montclair Standard Plan SP-1. Provide ADA compliance at drive approach and show path of travel from Monte Vista Avenue into the site. On-site sidewalks shall also use SP-1 for scoring pattern.
61. Install three new nostalgic twin luminaire streetlights per North Montclair Downtown Specific Plan standards along Monte Vista Avenue frontage, including the replacement of one existing cobra head fixture at north end of property. Streetlights shall be owned and maintained by Southern California Edison. Install two new nostalgic single luminaire streetlights per North Montclair Downtown Specific Plan standards along the north side of the entry driveway.

The minimum lighting level for all streets shall be to the satisfaction of the Public Works Director/City Engineer.

62. All existing overhead utilities and poles within the project boundaries and within street frontages adjacent to project shall be placed underground. All existing or new guy wires required to anchor end poles shall be located beyond the project limits. No poles or guy wires shall be permitted to remain within the property frontage.
63. All utilities within the development boundaries shall be placed underground. This requirement applies to electrical services, transformers and switches, and where technology exists, telephone and cable television facilities as well.
64. Pay all outstanding sewer reimbursement fees or assessments as imposed by a district or reimbursement agreement, if any.
65. Pay local and Regional Sewerage Capital Outlay fees as specified in the Montclair Municipal Code and by Inland Empire Utilities Agency (IEUA).
66. On-site sewers shall be designed and constructed per California Building Code and City of Montclair Building Division requirements and shall be privately maintained. All sewer design shall be subject to the approval of the Public Works Director/City Engineer.
67. Discharge of wastewater into the sewer collection system shall conform to all requirements of the Montclair Municipal Code.
68. A Water Quality Management Plan (WQMP) is required for this project. Approval of the WQMP is required prior to the preparation of grading and/or other improvement plans. Requirements for the WQMP may be obtained from the City NPDES Coordinator Joe Rosales at (909) 625-9470. Requirements of the WQMP may require significant modifications to the approved tentative map. If significant modifications are required, a resubmittal to the Planning Commission and City Council may be required.
69. A grading plan shall be prepared subject to the approval of the Public Works Director/City Engineer. An erosion control plan is to be included and considered an integral part of the grading plan. Grading plans shall be designed in accordance with City standards and guidelines and shall be on 24" by 36" sheets.
70. No soil may be imported or exported to or from the project site from any adjacent building site or from other sources for construction purposes without first obtaining approval from the Public Works Director/City Engineer. A plan acceptable to the Public Works Director/City Engineer shall be prepared showing proposed haul routes within the City. The plan shall include provisions for street sweeping and cleanup. Contractor(s) shall comply with all National Pollutant Discharge Elimination System (NPDES) requirements.
71. All drainage facilities shall comply with requirements of the approved WQMP.
72. All on- and off-site trenching and excavation shall conform to CAL-OSHA standards. Excavations exceeding five feet in depth require a CAL-OSHA permit.
73. Underground Service Alert shall be notified at least 48 hours prior to any excavation. Contact Underground Service Alert at (800) 422-4133.

Fire

74. Permits are required for the plan review and inspection of fire detection, fire sprinkler, hood and duct, and occupancy plan reviews. Fees shall be collected by the Fire Department at the time an application for permit is filed (CFC 2013 105.3.8).
75. Submit four (4) complete sets of architectural, structural, fire alarm and fire sprinkler plans, including all specifications, to the Fire Department for review prior to the issuance of any building permits. These plans and specifications shall include, but are not limited to, construction type, exits, fire protection

- equipment, building protection, and interior finish. The developer is responsible for, and shall apply for and receive, all Fire Department permits, paying all necessary fees prior to beginning construction. (CFC 2013 105.4.1)
76. Construction documents and calculations for all fire protection systems and permits are required for the installation, rehabilitation or modification of any fire protection system. Construction documents for fire protection systems shall be submitted for review and approval prior to system installation. (2013 CFC 105.4.2.1 and Chapter 9)
  77. Contractor's license number, including expiration date, wet stamp and signature of the contractor licensee shall be provided on each plan (California Business & Professions Code Sec. 7031.5).
  78. Provide an accurate description of the scope of work for the project.
  79. Show all exterior and interior building dimensions on the plans.
  80. The plan check application can be found on the City of Montclair website: <http://www.cityofmontclair.org/depts/fire/prevention/permits.asp>.
  81. This project is required to comply with the 2013 California Fire Code as amended in the Montclair Municipal Code, and Montclair Fire Department development standards.
  82. All fees are required to be paid in full prior to any permit issuance.
  83. Fire apparatus access roads shall extend to within 150 feet of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility (2013 CFC 503.1.1). Dimension may be increased if the building is equipped throughout with an approved automatic sprinkler system installed in accordance with 2013 CFC Section 903.3.1.1, 903.3.1.2 or 903.3.1.3.
  84. Fire apparatus roads shall have an unobstructed width of not less than 20 feet. (D103.6.1) and vertical clearance of not less than 13 feet 6 inches. Show all dimensions on the plans. (2013 CFC 503.2.1)
  85. Where a fire hydrant is located on a fire apparatus road, the minimum road width shall be 26 feet. The minimum clearance around a fire hydrant (Figure D103.1) requires a minimum road width of 26 feet beginning 10 feet before the fire hydrant and ending 10 feet after the fire hydrant. Accordingly, the minimum 26-foot wide road shall be a minimum of 20 feet in length, centered on the fire hydrant (2013 CFC D103.1).
  86. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities. (2013 CFC 503.2.3)
  87. Fire apparatus access roads 20 feet wide to less than 28 feet wide shall be posted on both sides as a fire lane with "NO PARKING - FIRE LANE" signs, red curbs and curb lettering (CFC 2013 D103.6).
  88. The project shall meet all City water standards. Contact the Monte Vista Water District at (909) 624-0035.
  89. Exact number, location, and design of hydrants shall be determined by Fire Department.
  90. The project shall comply with the NFPA 24 standard and the 2013 California Fire Code. The applicant shall install a Fire Department Connection (FDC) located at the DCDA/OS&Y to act as a Fire Department Boost. The combination FDC shall be equipped with two, 2½-inch NST female swivel inlets and one 7-inch NST female swivel. The riser to this FDC shall be at least six (6) inches in diameter.
  91. An approved water supply capable of providing the required fire flow for fire protection shall be provided (2013 CFC 508.1).

92. Private fire service mains and appurtenances shall be installed in accordance with NFPA 24 (508.2.1). Submit plans to the Fire Department showing fire water system detail.
93. Fire Department Connection (FDC) and Post Indicator Valve (PIV) locations shall be determined by the Fire Department during plan check. Every sprinkler system shall have at least (1) fire department connection located within 50 feet of a fire hydrant. (MMC 10.28.060K(1)).
94. The installation of check valves is required between fire hydrants and Fire Department connections (FDCs).
95. Show pipe size of the fire water system on the plans.
96. Minimum underground fire service supply pipe shall be six (6) inches in diameter. (MMC 10.28.060K(5))
97. Trash enclosures shall be fully enclosed and shall have fire sprinklers installed should any one of the following conditions exist; the trash enclosure has a combustible roof covering, the trash enclosure contains two or more individual trash containers, or the trash enclosure is under or within five (5) feet of combustible construction. (MMC 10.28.060) Four (4) sets of plans shall be submitted to the Montclair Fire Department for approval prior to starting work.
98. Outdoor detached facilities greater than 200 square feet in area are required to install an approved fire sprinkler system. (MMC 10.28.060 J(3))
99. Fire sprinkler system plans are required to be a separate plan submittal with a completed application and all fees pre-paid.
100. The application, installation, performance and maintenance of fire alarm systems and their components in new and existing buildings and structures shall be in compliance with 2013 CFC Chapter 9 (2013 CFC 907.1). Fire alarm and detection system plans are required to be a separate plan submittal with a completed application and all fees pre-paid.
101. When automatic fire sprinkler systems or fire alarm systems are installed in buildings constructed for multiple tenants and these systems protect multiple tenant spaces, the main controls and control appurtenances, such as risers, fire alarm control panels, and valves for such systems, shall be located in an attached or included room or an approved weather resistant enclosure with at least one exterior access door of not less than 3'-0" in width and 6'-8" in height.
102. 2013 CFC Chapter 33 conditions shall apply to this project during construction and demolition (2013 CFC 3301.1).
103. An approved water supply for fire protection, either temporary or permanent, shall be made available prior to combustible materials arriving on-site. The water supply, including mains and hydrants, shall be acceptably tested, painted, and approved by the water and fire departments prior to the issuance of permits (2013 CFC).
104. Approved vehicle sites. Vehicle access shall be provided to within 100 feet of temporary or permanent fire department connections. Vehicle access shall be provided by temporary or permanent roads, capable of supporting imposed loads of fire apparatus under all weather conditions. Vehicle access shall be maintained until permanent fire apparatus access roads are available (2013 CFC 1410.1).
105. Buildings and structures under construction shall post temporary address signs meeting Fire Department standards and at locations determined by the Fire Marshal (CFC 2013 505.1.2).
106. Structures under construction, alterations or demolition shall be provided with not less than one approved portable fire extinguisher (2013 CFC 1415.1).

## AGENDA REPORT

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**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 16-3122 AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH CHARGES

**DATE:** June 6, 2016

**SECTION:** RESOLUTIONS

**ITEM NO.:** 2

**FILE I.D.:** STB300-17

**DEPT.:** ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** Staff has identified 174 sewer and trash accounts in the even-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien.

**BACKGROUND:** Ordinance No. 02-815 authorizes the placement of liens on properties on which delinquent civil debts have accrued and makes property owners responsible for delinquent sewer and trash charges accrued after the effective date of the Ordinance (March 1, 2002) for accounts in tenants' names. Prior to the City Council's adoption of Ordinance No. 02-815, property owners were responsible for only those accounts in their own names.

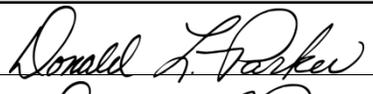
The 174 liens presented for approval are for accounts that are at least 90 days delinquent.

**FISCAL IMPACT:** Recoverable amount is \$50,283.19, plus \$3,654.00 for release of lien fees, plus \$8,700.00 in lien fees, for a total of \$62,637.19.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 16-3122 authorizing placement of liens on certain properties for delinquent sewer and trash charges as listed on Exhibit A of said Resolution.

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

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**RESOLUTION NO. 16-3122**

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

**WHEREAS**, Chapter 1.12 of the Montclair Municipal Code authorizes the City to place liens on properties on which delinquent civil debts have accrued; and

**WHEREAS**, all owners of property in the City of Montclair were notified about the adoption of Ordinance No. 02-815 authorizing placement of liens on properties on which delinquent civil debts have accrued; and

**WHEREAS**, it has been determined that there are 174 sewer and/or trash accounts on which there are delinquencies in excess of 90 days; and

**WHEREAS**, the owners of these properties have received regular billing statements and late notices since the onset of such delinquencies; and

**WHEREAS**, the owners of these properties were notified on May 05, 2016, that their delinquent accounts are subject to causing a lien to be placed on their properties for settlement of such delinquencies; and that such liens would be considered for approval by the Montclair City Council on Monday, June 06, 2016.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair approves the placement of liens on the properties and in the amounts specified in Exhibit A, entitled *Report of Delinquent Civil Debts - June 2016*, attached hereto.

**BE IT FURTHER RESOLVED** that the Deputy City Clerk is authorized to provide the San Bernardino County Auditor/Controller-Recorder with the documents required to cause such liens to be placed.

**APPROVED AND ADOPTED** this XX day of XX, 2016.

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 16-3122 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2016, and that it was adopted by the following vote, to-wit:

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

\_\_\_\_\_  
Andrea M. Phillips  
Deputy City Clerk

Exhibit A to Resolution No. 16-3122  
Report of Delinquent Civil Debts - June 2016

Street No.	Street	Account Type	Delinquency	Lien Fee	Release of Lien Fee	Total Lien Amount
11225	Ada Avenue	Residential	\$ 259.33	\$ 50.00	\$ 21.00	\$ 330.33
11142	Amherst Avenue	Residential	234.61	50.00	21.00	305.61
11141	Amherst Avenue	Residential	213.51	50.00	21.00	284.51
10360	Amherst Avenue	Multifamily	792.41	50.00	21.00	863.41
10431	Amherst Avenue	Multifamily	531.88	50.00	21.00	602.88
10421	Amherst Avenue	Multifamily	531.70	50.00	21.00	602.70
11151	Amherst Avenue	Residential	430.06	50.00	21.00	501.06
10207	Amherst Avenue	Residential	229.91	50.00	21.00	300.91
4320	Appaloosa Way	Residential	247.49	50.00	21.00	318.49
5612	Bandera Street	Residential	370.95	50.00	21.00	441.95
5598	Bandera Street	Residential	234.57	50.00	21.00	305.57
4624	Bandera Street	Multifamily	1,202.45	50.00	21.00	1,273.45
5075	Bandera Street	Residential	234.57	50.00	21.00	305.57
4432-34	Bandera Street	Multifamily	476.91	50.00	21.00	547.91
4667	Bandera Street	Residential	211.51	50.00	21.00	282.51
5243	Bandera Street	Residential	242.06	50.00	21.00	313.06
5231	Bandera Street	Residential	237.34	50.00	21.00	308.34
5205	Bandera Street	Residential	247.49	50.00	21.00	318.49
5081	Bandera Street	Residential	347.62	50.00	21.00	418.62
5209	Bandera Street	Residential	239.86	50.00	21.00	310.86
5217	Bandera Street	Residential	238.18	50.00	21.00	309.18
5235	Bandera Street	Residential	413.43	50.00	21.00	484.43
5230	Bandera Street	Residential	457.37	50.00	21.00	528.37
5207	Bandera Street	Residential	201.38	50.00	21.00	272.38
5211	Bandera Street	Residential	371.35	50.00	21.00	442.35
5221	Barrington Way	Residential	333.38	50.00	21.00	404.38
10145	Bel Air Avenue	Residential	237.34	50.00	21.00	308.34
10551	Belgian Place	Residential	237.34	50.00	21.00	308.34
5208	Berkshire Way	Residential	382.53	50.00	21.00	453.53
4531	Bodega Court	Residential	238.80	50.00	21.00	309.80
4534	Bodega Court	Residential	236.85	50.00	21.00	307.85
10978	Buckingham Way	Residential	237.34	50.00	21.00	308.34
11038	Buckingham Way	Residential	211.15	50.00	21.00	282.15
10475	Calico Court	Residential	218.98	50.00	21.00	289.98
10437	Camarena Avenue	Residential	219.39	50.00	21.00	290.39
10203	Camulos Avenue	Residential	261.29	50.00	21.00	332.29
10280	Camulos Avenue	Residential	304.60	50.00	21.00	375.60
8953	Camulos Avenue	Residential	210.17	50.00	21.00	281.17
10259	Camulos Avenue	Residential	237.34	50.00	21.00	308.34
10233	Camulos Avenue	Residential	243.27	50.00	21.00	314.27
10213	Camulos Avenue	Residential	302.41	50.00	21.00	373.41
10224	Camulos Avenue	Residential	274.86	50.00	21.00	345.86
4924	Canoga Street	Residential	246.45	50.00	21.00	317.45
5014	Canoga Street	Residential	237.34	50.00	21.00	308.34
4912	Carlton Street	Residential	356.91	50.00	21.00	427.91
11253	Carriage Avenue	Residential	263.29	50.00	21.00	334.29
11239	Carriage Avenue	Residential	297.77	50.00	21.00	368.77
11158	Carriage Avenue	Residential	237.34	50.00	21.00	308.34
9802	Central Avenue	Commercial	2,071.00	50.00	21.00	2,142.00
4337	Clair Street	Residential	263.43	50.00	21.00	334.43
5230	Clair Street	Residential	333.38	50.00	21.00	404.38
10231	Coalinga Avenue	Residential	237.34	50.00	21.00	308.34
10276	Coalinga Avenue	Residential	339.77	50.00	21.00	410.77
11333	Dartmouth Lane	Residential	247.35	50.00	21.00	318.35
10236	Del Mar Avenue	Residential	237.34	50.00	21.00	308.34
10251	Del Mar Avenue	Residential	377.17	50.00	21.00	448.17
10190	Del Mar Avenue	Residential	211.51	50.00	21.00	282.51

Exhibit A to Resolution No. 16-3122  
Report of Delinquent Civil Debts - June 2016

Street No.	Street	Account Type	Delinquency	Lien Fee	Release of Lien Fee	Total Lien Amount
4518	Donner Court	Residential	\$ 211.51	\$ 50.00	\$ 21.00	\$ 282.51
4522	Donner Court	Residential	236.02	50.00	21.00	307.02
4507	Donner Court	Residential	268.39	50.00	21.00	339.39
11159	Essex Avenue	Residential	237.34	50.00	21.00	308.34
4665	Evert Street	Senior	211.98	50.00	21.00	282.98
4133	Evert Street	Residential	240.19	50.00	21.00	311.19
4760	Evert Street	Residential	237.34	50.00	21.00	308.34
4705	Evert Street	Residential	249.19	50.00	21.00	320.19
4703	Fauna Street	Residential	237.34	50.00	21.00	308.34
4852	Fauna Street	Residential	279.39	50.00	21.00	350.39
4932	Fauna Street	Residential	238.25	50.00	21.00	309.25
4782	Fauna Street	Residential	215.85	50.00	21.00	286.85
4738	Fauna Street	Residential	238.11	50.00	21.00	309.11
4456	Fauna Street	Residential	237.34	50.00	21.00	308.34
4219	Fauna Street	Residential	237.34	50.00	21.00	308.34
4244	Fauna Street	Residential	237.34	50.00	21.00	302.34
4267	Fauna Street	Residential	227.97	50.00	21.00	298.97
4291	Fauna Street	Residential	222.00	50.00	21.00	293.00
4256	Fauna Street	Residential	238.96	50.00	21.00	309.96
10232	Felipe Avenue	Residential	209.87	50.00	21.00	280.87
8919-21	Felipe Avenue	Multifamily	452.52	50.00	21.00	523.52
10242	Felipe Avenue	Residential	239.55	50.00	21.00	310.55
10290	Felipe Avenue	Residential	332.29	50.00	21.00	403.29
5382	Flora Street	Residential	238.64	50.00	21.00	309.64
5051	Flora Street	Residential	256.43	50.00	21.00	327.43
5022	Flora Street	Residential	211.51	50.00	21.00	282.51
4730	Flora Street	Residential	416.26	50.00	21.00	487.26
10711	Fremont Avenue	Residential	224.51	50.00	21.00	295.51
10287	Fremont Avenue	Residential	253.69	50.00	21.00	324.69
10253	Fremont Avenue	Residential	237.63	50.00	21.00	308.63
11049	Fremont Avenue	Residential	238.58	50.00	21.00	309.58
10161	Geneva Avenue	Residential	237.34	50.00	21.00	308.34
3760	Hampton Drive	Residential	248.04	50.00	21.00	319.04
11432	Hartford Lane	Residential	246.58	50.00	21.00	317.58
11447	Hickory Lane	Residential	280.35	50.00	21.00	351.35
4103	Howard Street	Residential	237.34	50.00	21.00	308.34
4910	Howard Street	Residential	263.29	50.00	21.00	334.29
4597	Howard Street	Residential	342.87	50.00	21.00	413.87
4341	Howard Street	Residential	237.34	50.00	21.00	308.34
4331	Howard Street	Residential	320.52	50.00	21.00	391.52
4558	Humboldt Court	Residential	384.77	50.00	21.00	455.77
10386	Kimberly Avenue	Multifamily	1,056.56	50.00	21.00	1,127.56
11076	Kimberly Avenue	Residential	211.51	50.00	21.00	282.51
10236	Kimberly Avenue	Residential	237.34	50.00	21.00	308.34
5646	Kingsley Street	Residential	232.83	50.00	21.00	303.83
5019	Kingsley Street	Residential	237.47	50.00	21.00	308.47
4671	Kingsley Street	Multifamily	201.44	50.00	21.00	272.44
5198	Kingsley Street	Residential	201.44	50.00	21.00	272.44
4821-23	Kingsley Street	Multifamily	227.65	50.00	21.00	298.65
5193-95	Kingsley Street	Multifamily	423.02	50.00	21.00	494.02
5242	Kingsley Street	Residential	237.34	50.00	21.00	308.34
4831-33	Kingsley Street	Multifamily	221.58	50.00	21.00	292.58
5003	Kingsley Street	Residential	237.34	50.00	21.00	308.34
4909	Kingsley Street	Residential	237.34	50.00	21.00	308.34
4385	Kingsley Street #2	Residential	431.16	50.00	21.00	502.16
11362	Kingston Lane	Residential	279.10	50.00	21.00	350.10
10310-12	Lehigh Avenue	Multifamily	225.68	50.00	21.00	296.68

Exhibit A to Resolution No. 16-3122  
Report of Delinquent Civil Debts - June 2016

Street No.	Street	Account Type	Delinquency	Lien Fee	Release of Lien Fee	Total Lien Amount
10360-62	Lehigh Avenue	Multifamily	\$ 447.75	\$ 50.00	\$ 21.00	\$ 518.75
4839	Mane Street	Residential	237.37	50.00	21.00	308.37
4846	Mane Street	Residential	237.54	50.00	21.00	308.54
4601	Mane Street	Residential	223.32	50.00	21.00	294.32
4855	Mane Street	Residential	237.29	50.00	21.00	308.29
4543	Mane Street	Residential	333.38	50.00	21.00	404.38
11349	Marquette Lane	Residential	201.98	50.00	21.00	272.98
10231	Mills Avenue	Residential	237.85	50.00	21.00	308.85
11475	Millstone Lane	Residential	257.93	50.00	21.00	328.93
5215	Monte Verde Street	Residential	348.25	50.00	21.00	419.25
5239	Monte Verde Street	Residential	237.34	50.00	21.00	308.34
11194	Monte Vista Avenue	Residential	237.47	50.00	21.00	308.47
10332	Monte Vista Avenue	Residential	333.38	50.00	21.00	404.38
10290	Monte Vista Avenue	Senior	257.00	50.00	21.00	328.00
10557	Morgan Circle	Residential	237.34	50.00	21.00	308.34
10557	Mustang Circle	Senior	234.23	50.00	21.00	305.23
10217	Oak Glen Avenue	Residential	285.50	50.00	21.00	356.50
10163	Oak Glen Avenue	Senior	213.81	50.00	21.00	284.81
10176	Oak Glen Avenue	Residential	415.15	50.00	21.00	486.15
10614	Oak Glen Avenue	Residential	212.44	50.00	21.00	283.44
10604	Oak Glen Avenue	Residential	236.50	50.00	21.00	307.50
5171	Orchard Street	Residential	211.51	50.00	21.00	282.51
4843	Orchard Street	Residential	211.51	50.00	21.00	282.51
5422	Orchard Street	Residential	237.34	50.00	21.00	308.34
5358	Orchard Street	Residential	337.19	50.00	21.00	408.19
5585	Orchard Street	Residential	234.18	50.00	21.00	305.18
11153	Pasqual Avenue	Residential	241.01	50.00	21.00	312.01
3881	Peachwood Drive	Residential	237.81	50.00	21.00	308.81
10154	Poulsen Avenue	Residential	243.64	50.00	21.00	314.64
11245	Poulsen Avenue	Residential	333.38	50.00	21.00	404.38
10206	Pradera Avenue	Residential	237.34	50.00	21.00	308.34
4660	Rawhide Street	Residential	237.03	50.00	21.00	308.03
4668	Rawhide Street	Residential	237.34	50.00	21.00	308.34
4643	Rawhide Street	Residential	244.84	50.00	21.00	315.84
11458	Rockford Lane	Residential	285.03	50.00	21.00	356.03
5258	Saddleback Street	Residential	272.45	50.00	21.00	343.45
5177	San Antonio Way	Residential	237.34	50.00	21.00	308.34
11052	San Juan Way	Residential	237.34	50.00	21.00	308.34
11014	San Miguel Way	Residential	237.34	50.00	21.00	308.34
11020	San Pasqual Avenue	Residential	241.98	50.00	21.00	312.98
11143	San Pasqual Avenue	Residential	237.93	50.00	21.00	308.93
11000	San Pasqual Avenue	Residential	333.38	50.00	21.00	404.38
10221	Santa Anita Avenue	Residential	237.34	50.00	21.00	308.34
10133	Santa Anita Avenue	Residential	237.34	50.00	21.00	308.34
10298	Santa Anita Avenue	Residential	211.76	50.00	21.00	282.76
10183	Santa Anita Avenue	Residential	237.33	50.00	21.00	308.33
10290	Saratoga Avenue	Residential	234.57	50.00	21.00	305.57
11011	Stallion Street	Residential	237.34	50.00	21.00	308.34
10289	Tudor Avenue	Residential	251.35	50.00	21.00	322.35
10241	Vernon Avenue	Residential	211.51	50.00	21.00	282.51
10431	Vernon Avenue	Residential	237.46	50.00	21.00	308.46
5533	Vernon Court	Residential	263.29	50.00	21.00	334.29
4191	Via Napoli	Residential	231.60	50.00	21.00	302.60
4237	Via Riviera	Residential	256.75	50.00	21.00	327.75
11053	Wesley Avenue	Residential	237.56	50.00	21.00	308.56
11263	Whitewater Avenue	Residential	235.47	50.00	21.00	306.47
11178	Whitewater Avenue	Residential	237.34	50.00	21.00	308.34

Exhibit A to Resolution No. 16-3122  
Report of Delinquent Civil Debts - June 2016

Street No.	Street	Account Type	Delinquency	Lien Fee	Release of Lien Fee	Total Lien Amount
4548	Yosemite Drive	Residential	\$ 245.13	\$ 50.00	\$ 21.00	\$ 316.13
4515	Yosemite Drive	Residential	237.34	50.00	21.00	308.34
10464	Yosemite Drive	Residential	200.04	50.00	21.00	271.04
<b>Totals:</b>			<b>\$ 50,283.19</b>	<b>\$ 8,700.00</b>	<b>\$ 3,654.00</b>	<b>\$62,637.19</b>

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER ADOPTION OF RESOLUTION NO. 16-3123 AUTHORIZING MAYOR EATON TO SIGN AGREEMENT NO. 16-47 WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE USE OF CALIFORNIA PUBLIC UTILITIES COMMISSION SECTION 190 GRADE SEPARATION FUNDS	<b>DATE:</b> June 6, 2016 <b>SECTION:</b> RESOLUTIONS <b>ITEM NO.:</b> 3 <b>FILE I.D.:</b> STA110 <b>DEPT.:</b> PUBLIC WORKS
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**REASON FOR CONSIDERATION:** The state has prepared State Agreement No. 75GS6130 (City Agreement No. 16-47) allowing for City use of \$5,000,000 in grade separation funds for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project. The state requires a resolution adopted by the City Council authorizing the Mayor to sign the agreement on behalf of the City. Resolutions and agreements require City Council approval.

Copies of proposed Resolution No. 16-3123 and Agreement No. 16-47 are attached for the City Council's review and consideration.

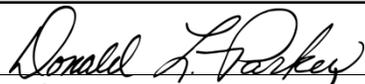
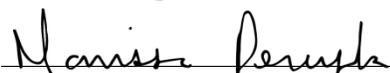
**BACKGROUND:** The state's Section 190 Grade Separation Program is a state funding program to grade separate crossings between roadways and railroad tracks. The program typically provides \$15 million distributed among three or four projects each fiscal year.

Grade-separated crossings are where either the street or the railroad track crosses over or under the other at different elevations, typically using a bridge structure. With the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, the street will cross over the railroad tracks. The elevation difference allows trains to travel through grade-separated crossings at the same time as highway users. At-grade highway-rail crossings, where the highway and railroad tracks are at the same elevation, pose significant public safety hazards to California's motorists and pedestrians. Grade-separated crossings can replace existing at-grade crossings, thereby eliminating potential conflict between trains and highway users.

The California Public Utilities Commission (CPUC) has jurisdiction over the safety of highway-rail crossings in California. The optimal safety improvement for an at-grade highway-rail crossing is the complete separation of the railroad tracks from the roadway through construction of a grade-separation structure. Replacement of at-grade crossings with grade-separated crossings eliminates the fatalities and injuries that often result from collisions between train and highway users. It also eliminates blocking delays that cause traffic congestion, reduces the noise from train horns and automatic warning devices, and can improve emergency response times.

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

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The Section 190 Grade Separation Program helps local agencies finance the high costs of grade separating highway-rail crossings, thereby improving public safety and convenience throughout California.

The CPUC establishes and furnishes to the California Transportation Commission (CTC) and the California Department of Transportation (Caltrans) a funding priority list of grade separation projects for highway-rail crossings most urgently in need of separation or alteration. Section 190 of the California Streets and Highways Code (S&H Code) requires the State's annual budget to include \$15 million for funding these projects. Section 2450, *et seq.* of the S&H Code sets out the procedure for administering these funds, and Section 2453 gives the CTC responsibility for allocating the funds to qualified projects.

S&H Code Section 2452 requires the Commission, by July 1 of each year, to establish the priority list for projects and furnish it to the CTC for use in the fiscal year beginning on July 1. The CPUC procedure is to promulgate the list for the first fiscal year by issuing an interim decision, and then to revise the list for the second year by deleting projects for which funds were actually allocated in the first. The Commission adopts the revised list by final decision in the second year of the proceeding, and begins the funding cycle again the following year by instituting a new proceeding.

In accordance with S&H Code Section 2452, the Commission is responsible for establishing criteria to be used in determining the priority of projects nominated for separation or alteration. The formula weighs vehicular and train volumes at crossings along with project costs, and considers a variety of special factors such as accident history, sightlines along the crossing approaches, the angle of the tracks to the roadway, traffic delays caused by trains traveling through the crossing, and other relevant factors.

Interested local agencies are responsible for submitting nominations to the Commission with the required information. These agencies must be ready to share in the project's cost. The Commission requires applicants to attend the formal public hearings and provide testimony in support of their proposals.

The City of Montclair has been nominating the Monte Vista Avenue/Union Pacific Grade Separation Project in a biennial basis since 2000 and has consistently had a top 20 priority. Unfortunately, until now, the City was never in a position to be able to verify adequate funding existed, a requirement of the Section 190 funds. With the design now complete and a funding agreement in place with San Bernardino Associated Governments, the City is now in that position.

**FISCAL IMPACT:** Approval of this resolution and agreement will provide \$5,000,000 in state funds towards the construction of the Monte Vista Avenue/Union Pacific Grade Separation Project.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 16-3123 authorizing Mayor Eaton to sign Agreement No. 16-47 with the California Department of Transportation for the use of California Public Utilities Commission Section 190 Grade Separation Funds.

RESOLUTION NO. 16-3123

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MONTCLAIR AUTHORIZING  
MAYOR PAUL M. EATON TO SIGN  
AGREEMENT NO. 16-47 FOR USE OF CPUC  
SECTION 190 GRADE SEPARATION FUNDS

**WHEREAS**, pursuant to the provisions of Section 2452 *et seq.*, of the Streets and Highways Code, the Public Utilities Commission of the State of California, by Final Decision Establishing Priority List for Fiscal Year 2015-16 as part of investigation 13-06-014, established a Priority List of Grade Separation Projects for the Fiscal Year of 2015-16; and

**WHEREAS**, said Priority List includes a project proposed by City to construct an overpass at Monte Vista Avenue to carry the roadway over the tracks of the Union Pacific Railroad (UPRR), hereafter referred to as "Project," as shown on Exhibit "A" attached hereto and application was made for an allocation of \$5 million; and

**WHEREAS**, by Decision No. XREQ 2016020002, dated March 7, 2016, the Public Utilities Commission authorized City to construct a crossing at separated grade identified as PUC Crossing No. 003-35.00, DOT No. 810896P, whereby Monte Vista Avenue will pass over the tracks of the UPRR, hereinafter referred to as "Railroad;" and

**WHEREAS**, on March 23, 2016, City and Railroad entered into an agreement for the construction and maintenance of said Project, and wherein Railroad has agreed to contribute a portion of the cost of Project as required by law; and

**WHEREAS**, City has herein certified to State that sufficient City funds are available to finance its share of Project cost, and that all other matters prerequisite to awarding a construction contract within a period of two years after the allocation has been or will be awarded within that time; and

**WHEREAS**, the California Transportation Commission, by Resolution No. M-126, has authorized the Department of Transportation to allocate funds from the Grade Separation Fund to local agencies in accordance with the applicable annual priority list as established by the Public Utilities Commission; and

**WHEREAS**, an agreement is to be entered into between City and State to provide reimbursement to City in a sum not to exceed \$5,000,000, provided, however, City establishes to the satisfaction of State that all sums expended by City for Project are reasonable and a necessary part of Project.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair does hereby authorize Mayor Paul M. Eaton to sign State Agreement No. 75GS6130 (City Agreement No. 16-47).

**APPROVED AND ADOPTED** this XX day of XX, 2016.

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 16-3123 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2016, and that it was adopted by the following vote, to-wit:

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

\_\_\_\_\_  
Andrea M. Phillips  
Deputy City Clerk

Monte Vista Avenue  
 Grade Separation Project  
 Priority No.12, 2015-2016  
 GS-6130  
 Agreement No. 75GS6130

I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.						2015-16	\$5,000,000
Accounting Officer							
Chapter	Statutes	Item	Fiscal Year	Program Code	Category	Fund Source	
10	2015	2660.102.0042	2015-16	20.30.010.400	21800	SHA	

AGREEMENT

THIS AGREEMENT, made and entered into this **1st** day of **June 2016**, by and between the STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "State", and the **City of Montclair**, a political subdivision of the State of California, hereinafter referred to as "City".

WITNESSETH

WHEREAS, pursuant to the provisions of Section 2452 et seq of the Streets and Highways Code, the Public Utilities Commission of the State of California, by **Final Decision Establishing Priority List For Fiscal Year 2015-16 as part of Investigation 13-06-014**, established a Priority List of Grade Separation Projects for the Fiscal Year of 2015-16; and

WHEREAS, said Priority List includes a project proposed by City to construct an **overpass** at Monte Vista Avenue to carry the roadway over the tracks of the Union Pacific Railroad (UPRR), hereinafter referred to as "Project", as shown on Exhibit "A" attached hereto and application was made for an allocation of \$5 million; and

WHEREAS, by decision **No. XREQ 2016020002, dated March 7, 2016**, the Public Utilities Commission authorized City to construct a crossing at separated grade identified as PUC Crossing No. 003-35.00, DOT No. 810896P, whereby **Monte Vista Avenue**, will pass **over** the tracks of the **UPPR**, hereinafter referred to as "Railroad"; and

WHEREAS, on **March 23, 2016**, City and Railroad entered into an agreement for the construction and maintenance of said Project, and wherein Railroad has agreed to contribute a portion of the cost of Project as required by law; and

WHEREAS, City has herein certified to State that sufficient City funds are available to finance its share of Project cost, and that all other matters prerequisite to awarding a construction contract within a period of two years after the allocation have been or will be awarded within that time; and

WHEREAS, the California Transportation Commission, by Resolution No. M-136, has authorized the Department of Transportation to allocate funds from the Grade Separation Fund to local agencies in accordance with the applicable annual priority list as established by the Public Utilities Commission; and

WHEREAS, an agreement is to be entered into between City and State to provide reimbursement to City in a sum not to exceed **\$5,000,000**, provided, however, City establishes to the satisfaction of State that all sums expended by City for Project are reasonable and a necessary part of Project;

NOW THEREFORE, in consideration of the premises and mutual undertakings of the parties hereto, as hereinafter set forth, State and City agree as follows:

1. City hereby certifies it has sufficient City funds available to finance its share of Project cost.
2. City, in cooperation with Railroad, will undertake Project, which consists of acquisition and clearing of necessary rights of way, preliminary and construction engineering, work by Railroad forces, and construction of Project.
3. The costs attributable to Project are limited to the following:
  - (a) Right of Way: The cost of right of way shall include condemnation attorney fees, escrow fee, other necessary acquisition costs, the actual payment to property owners for right of way obtained, the right of way agent's time plus travel expenses and normal payroll additives, the cost of clearing the right of way including utility relocation to the extent required by law and all relocation assistance benefit payments for the participating parcel as required by law, less the value of excess land obtained in such transactions.

- (b) Engineering: The cost of engineering shall include the actual time of engineers and designers plus travel expense and normal payroll additives.
- (c) Construction: The cost of construction shall include the amounts actually paid to the contractor(s) and the amounts directly expended for field supervision and inspection, including travel expense, normal payroll additives, laboratory tests, and work by Railroad forces.
- (d) Direct incidental costs: Direct incidental costs shall be limited to the cost of advertising for bids.

All additives, overhead, or administrative costs other than those mentioned above are excluded from the determination of the cost of Project.

4. As promptly as possible, and in any event **not more than two years** after the allocation by the Director of Transportation, City shall award a contract for construction of Project pursuant to the laws governing City in the advertising and award of public construction contracts, and in conformance with plans and specifications prepared by or on behalf of City in accordance with the California Department of Transportation "Bridge Design Specifications for Overhead Structures". Each plan sheet shall be signed and stamped by the responsible design engineer who shall be registered in the State California. Construction shall be under the control of City.
5. After award of contract by City for construction of Project and upon being furnished with a copy of the executed contract and the plans and specifications, and an itemized statement from City showing expenditures actually and necessarily made by City prior to award of contract for engineering, right of way and utility relocation directly connected with Project, State will reimburse City for up to **\$5,000,000**, or a portion of said expenditures by the ratio of State's estimated share of the total Project cost to such Project cost, whichever is less.
6. Thereafter, as the work progresses, upon being furnished with copies of the contractor's progress estimates as certified by a Civil Engineer registered in the State of California on behalf of City that the costs are true and correct, or other proof satisfactory to State as to amounts actually paid the contractor and necessarily expended directly for field supervision and inspection as certified by

a Civil Engineer registered in the State of California on behalf of City, State will reimburse City up to the total amount allocated for Project by the State for a portion of the amount of said payments to the contractor, and the amounts expended by City directly for field supervision and inspection, equal to the product obtained by multiplying said expenditures by the ratio of State's estimated share of the total Project cost to such total Project cost or \$5,000,000 whichever is less.

7. Within 60 days after completion of the work and acceptance thereof by City, a detailed statement of the direct cost of Project will be prepared by City and furnished to State, whereupon a final accounting will be made based on the direct cost of the work to City, using the definition of cost herein provided in Section 3. State's share of said cost will be equal to 80 percent of the direct cost of State's participating portion of Project, up to a **total not to exceed \$5,000,000**. If upon final accounting it is determined that State paid more than its share of Project cost, computed in said manner, City will refund to State the difference between State's share of the participating portion of Project cost, and the amount paid by State.
8. All books, papers, records, and accounts of the parties hereto, and the contractors and subcontractors, insofar as they relate to the items of expenses for labor and material or are in any way connected with the work herein contemplated, shall at all reasonable times be open to inspection and audit by the agents and the authorized representatives of the parties hereto, and the records relating thereto shall be retained by the parties and the contractors for a minimum of three years from the date that the final payment is made.
9. The portion of the total project which is the participating project for determination of State's share of the cost of Project is shown on Exhibit "B" attached hereto and made part hereof.
10. Any obligation by State for payment of monies contained herein is subject to and contingent upon the City establishing to the satisfaction of State that all sums expended by City for Project, for which City requests partial reimbursement from State, are reasonable and are a necessary part of Project.

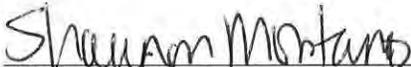
11. Disbursements of State funds to City, which are encumbered to pay for State's share of the participating portion of Project, must be made prior to May 31, 2019, otherwise the undisbursed balance shall revert to and become part of the fund from which the appropriation was made. If the City does not bill in a timely fashion, funds from a particular budget year may no longer be available in which case the State will not replace reverted funds from other sources of any kind.
12. Any progress payments made by State pursuant to Sections 6 and 7 herein are not an admission by State that such expenditures were reasonable and a necessary part of the project, and if State finds in final accounting that such expenditures were not reasonable and a necessary part of the project, City will reimburse State for such advance funds.
13. An original invoice, including supporting documentation and two (2) copies of each invoice summary shall be submitted to State, not more frequently than once per month, in accordance with the Local Assistance Procedures Manual found at <http://dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>.
14. All invoices and all written correspondence from City to State shall reference this Agreement Number (Agreement No.75GS6130) and the name of the street crossing at separated grade (Monte Vista Avenue).
15. All City invoices for payments are to be submitted to the following address:  
  
California Department of Transportation  
Division of Rail and Mass Transportation- MS 74  
Railroad Crossing Safety Branch  
P.O. Box 942874-MS 74  
Sacramento, CA 94274-001  
Attn: Shannon Montano  
Grade Separation Fund
16. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. Any changes to the terms of this Agreement must be set forth in a formal Agreement amendment.

This Agreement will expire on **May 31, 2019**.

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

APPROVAL RECOMMENDED

STATE OF CALIFORNIA

  
SHANNON MONTANO, Acting Chief  
Railroad Crossing Safety Branch  
Division of Rail and Mass Transportation

DEPARTMENT OF TRANSPORTATION

BY

\_\_\_\_\_  
BRUCE ROBERTS - Division Chief  
Caltrans  
Division of Rail and Mass Transportation

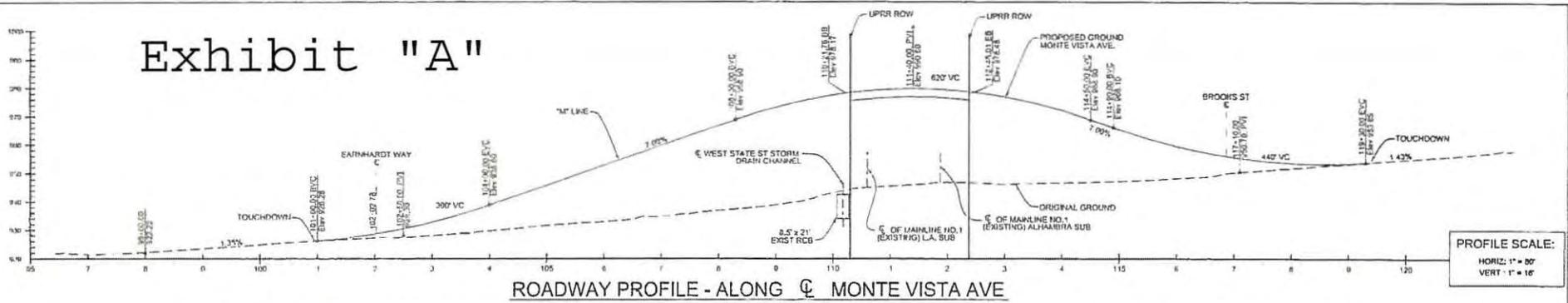
CITY OF MONTCLAIR

By \_\_\_\_\_

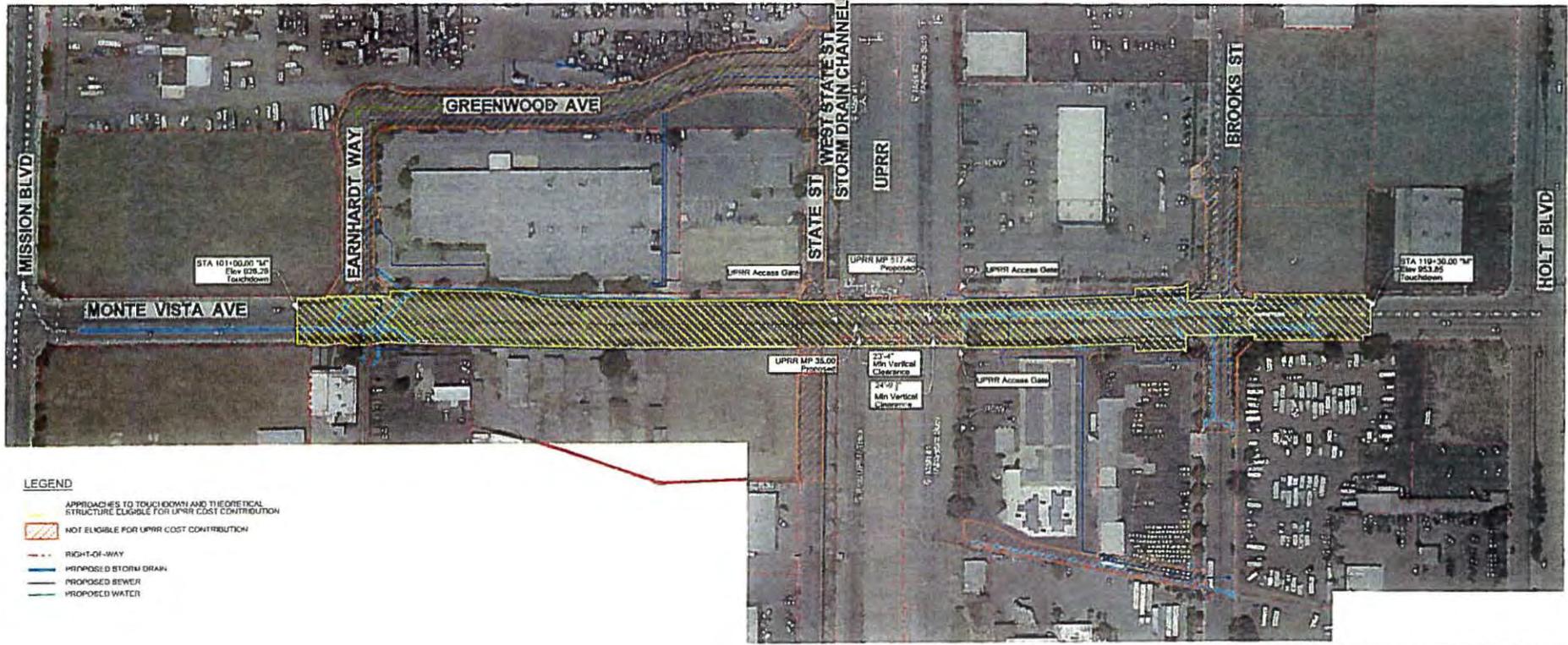
Attest \_\_\_\_\_

APPROVED AS TO FORM

# Exhibit "A"



ROADWAY PROFILE - ALONG C MONTE VISTA AVE



- LEGEND**
- APPROACHES TO TOUCHDOWN AND THEORETICAL STRUCTURE CLEARANCE FOR UPRR COST CONTRIBUTION
  - NOT ELIGIBLE FOR UPRR COST CONTRIBUTION
  - RIGHT-OF-WAY
  - PROPOSED STORM DRAIN
  - PROPOSED SEWER
  - PROPOSED WATER



PLAN  
1" = 80"



**MONTE VISTA AVENUE  
GRADE SEPARATION**

**NCM** NCM ENGINEERING  
4740 GREEN RIVER ROAD SUITE 218  
CORONA, CA 92680

Monte Vista Avenue Grade Separation at Union Pacific Railroad Crossing  
Montclair, California, Monte Vista Avenue, MP 517.4/35.00, Alhambra/Los Angeles, 746936L/810896P  
New DOT 441154C

**SUMMARY THEORETICAL ESTIMATE OF UPRR COST PARTICIPATION**

BID ITEM	PROJECT COST	PROJECT COST SUBJECT TO UPRR SHARE	% SUBJECT TO UPRR SHARING	UPRR SHARE (5%)
A ROADWAY ITEMS	\$ 2,890,900.00	\$ 1,047,757.00	36.24%	\$ 52,387.85
B DRAINAGE ITEMS	\$ 995,213.00	\$ 787,578.00	79.14%	\$ 39,378.90
C SEWER ITEMS	\$ 510,380.00	\$ 268,860.00	52.68%	\$ 13,443.00
D WATER ITEMS	\$ 552,840.00	\$ 233,900.00	42.31%	\$ 11,695.00
E SIGNING AND STRIPING	\$ 62,362.00	\$ -	0.00%	\$ -
F SIGNALS AND LIGHTING	\$ 625,320.00	\$ -	0.00%	\$ -
G LANDSCAPE AND IRRIGATION ITEMS	\$ 100,000.00	\$ -	0.00%	\$ -
H BRIDGE AND RETAINING WALL ITEMS	\$ 9,104,060.00	\$ 8,504,518.93	93.41%	\$ 425,225.95
J MISCELLANEOUS CONSTRUCTION COSTS				
MOBILIZATION @ 10%	\$ 1,650,000.00	\$ 1,084,261.39	65.71%	\$ 54,213.07
RAILROAD FLAGGING	\$ 734,500.00	\$ 734,500.00	100.00%	\$ 36,725.00
RAILROAD INSURANCE	\$ 75,000.00	\$ 75,000.00	100.00%	\$ 3,750.00
PREPARE STORM WATER POLLUTION PREVENTION PLAN	\$ 5,000.00	\$ 5,000.00	100.00%	\$ 250.00
WATER POLLUTION CONTROL	\$ 20,000.00	\$ 17,400.00	87.00%	\$ 870.00
PROPERTY IMPROVEMENTS	\$ 300,000.00	\$ -	0.00%	\$ -
K CONTINGENCY (10%)	\$ 1,374,000.00	\$ -	0.00%	\$ -
L COST ESCALATION (4%)	\$ 549,600.00	\$ -	0.00%	\$ -
<b>SUBTOTAL CONSTRUCTION COSTS</b>	<b>\$ 19,549,175.00</b>	<b>\$ 12,758,775.32</b>	<b>65.27%</b>	<b>\$ 637,938.77</b>
M MISCELLANEOUS PROJECT COSTS				
ENVIRONMENTAL	\$ 202,860.00	\$ 202,860.00	100.00%	\$ 10,143.00
RIGHT-OF-WAY	\$ 6,903,722.00	\$ 3,589,935.44	52.00%	\$ 179,496.77
PRELIMINARY ENGINEERING/DESIGN	\$ 4,159,780.39	\$ 2,787,052.86	67.00%	\$ 139,352.64
CONSTRUCTION ENGINEERING/MANAGEMENT	\$ 3,265,020.00	\$ 2,187,563.40	67.00%	\$ 109,378.17
<b>SUBTOTAL MISCELLANEOUS PROJECT COSTS</b>	<b>\$ 14,531,382.39</b>	<b>\$ 8,767,411.70</b>	<b>60.33%</b>	<b>\$ 438,370.59</b>
<b>TOTAL ESTIMATED PROJECT COST</b>	<b>\$ 34,080,557.39</b>	<b>\$ 21,526,187.02</b>	<b>63.16%</b>	<b>\$ 1,076,309.35</b>

Exhibit "B"

## AGENDA REPORT

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**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 16-3124 DIRECTING STAFF TO REVIEW THE CONFLICT OF INTEREST CODE AND SUBMIT THE 2016 BIENNIAL NOTICE PURSUANT TO THE POLITICAL REFORM ACT

**DATE:** June 6, 2016

**SECTION:** RESOLUTIONS

**ITEM NO.:** 4

**FILE I.D.:** FPP150

**DEPT.:** ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** The City Council is the designated code-reviewing body for the City's Conflict of Interest Code. It is necessary to review the Conflict of Interest Code on a biennial basis, which includes the filing of a Local Agency Biennial Notice and amending the Code to update the list of designated employees who are required to file Statements of Economic Interests and to incorporate any other necessary changes.

A copy of proposed Resolution No. 16-3124 is attached for the City Council's review and consideration.

**BACKGROUND:** Pursuant to the Political Reform Act of 1974 (Government Code §8100, et seq.), all public agencies are required to adopt a Conflict of Interest Code. A Conflict of Interest Code designates positions required to annually file Statements of Economic Interest (Fair Political Practices Commission [FPPC] Form 700), and assigns disclosure categories specifying the types of interests to be reported. The Form 700 is a public document intended to alert public officials and members of the public to the types of financial interests that may create conflicts of interest.

The City of Montclair Conflict of Interest Code, first adopted on October 4, 1976, contains the requirement that all City Council Members, Planning Commissioners, City Manager, City Attorney, and designated employees responsible for managing public investments annually file Statements of Economic Interests. In addition, the Code requires that there be a listing of designated employees who, by job title, "make or participate in the making of governmental decisions which may have a foreseeable material effect on financial interests."

The Political Reform Act requires state and local government agencies to review their Conflict of Interest Code every even-numbered year to determine if it is accurate or, alternatively, to amend the Code if necessary. Before July 1, 2016, the City Council must direct staff to review the Conflict of Interest Code and to submit a Biennial Notice to the City Council no later than October 3, 2016. The City Council must adopt any proposed amendments to the Code within 90 days of filing the Biennial Notice.

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Prepared by:


Fiscal Impact  
Finance Review:


Proofed by:

Reviewed and  
Approved By:

Adoption of Resolution No. 16-3124 would satisfy the requirement of the City Council to direct staff to review the code. Staff will submit the Biennial Notice to the City Council at its meeting on September 19, 2016, which will report the findings of the review. If amendments are required, the City Council will be requested to adopt a resolution updating the Conflict of Interest Code at its meeting on December 5, 2016.

**FISCAL IMPACT:** There would be no fiscal impact associated with the City Council's adoption of Resolution No. 16-3124.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 16-3124 directing staff to review the Conflict of Interest Code and submit the 2016 Biennial Notice pursuant to the Political Reform Act.

**RESOLUTION NO. 16-3124**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA, DIRECTING STAFF TO REVIEW THE CONFLICT OF INTEREST CODE AND SUBMIT THE 2016 LOCAL AGENCY BIENNIAL NOTICE AS REQUIRED BY THE POLITICAL REFORM ACT**

**WHEREAS**, the Political Reform Act of 1974 (Government Code §8100 et seq.) requires cities to adopt a Conflict of Interest Code; and

**WHEREAS**, the City of Montclair first adopted a Conflict of Interest Code on October 4, 1976; and

**WHEREAS**, the Conflict of Interest Code must be reviewed every two years and amended when circumstances change; and

**WHEREAS**, the City Council is the Code Reviewing Body for the City of Montclair; and

**WHEREAS**, no later than July 1st of each even-numbered year, code reviewing bodies must notify each agency within their jurisdiction to review its Conflict of Interest Code; and

**WHEREAS**, no later than October 1st of each even-numbered year, City staff shall submit to the code reviewing body a notice indicating whether or not an amendment is necessary.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair directs staff to review the Conflict of Interest Code and to submit a 2016 Local Agency Biennial Notice indicating if any amendments are necessitated due to a change circumstances.

**BE IT FURTHER RESOLVED** that the Deputy City Clerk shall transmit the 2016 Biennial Notice and recommendations to the City Council at its regular meeting on September 19, 2016.

**APPROVED AND ADOPTED** this XX day of XX, 2016.

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 16-3124 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2016, and that it was adopted by the following vote, to-wit:

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

\_\_\_\_\_  
Andrea M. Phillips  
Deputy City Clerk

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER ADOPTION OF SUCCESSOR AGENCY RESOLUTION NO. 16-03 APPROVING AGREEMENT NO. 16-50, A RIGHT OF ENTRY AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AND BILL FOX REGARDING THE PROPERTY GENERALLY LOCATED IN THE SOUTHEAST QUADRANT OF RAMONA AVENUE AND STATE STREET	<b>DATE:</b> June 6, 2016 <b>SECTION:</b> RESOLUTIONS <b>ITEM NO.:</b> 5 <b>FILE I.D.:</b> SAG080 <b>DEPT.:</b> SUCCESSOR RDA
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**REASON FOR CONSIDERATION:** As the Successor Agency Board of Directors is aware, both the Successor Agency and Oversight Board have approved a proposal submitted by Mr. Bill Fox for acquisition and development of the former Redevelopment Agency-owned property located in the southeast quadrant of Ramona Avenue and State Street. The Purchase and Sale Agreement between the Successor Agency and Mr. Fox is scheduled to be considered by the Successor Agency on June 20, 2016.

Based on scheduling concerns, Mr. Fox would like to obtain entrance to the subject site prior to consideration of the Purchase and Sale Agreement for purposes of conducting soils and groundwater testing and drilling. Therefore, the Successor Agency Board of Directors is requested to consider adoption of Resolution No. 16-03, approving a Right of Entry Agreement allowing Mr. Fox to conduct geophysical testing and drilling. A copy of Agreement No. 16-50, the Right of Entry Agreement, is attached for consideration.

**BACKGROUND:** As the Successor Agency Board of Directors knows, on March 7, 2016, the Successor Agency approved a proposal by Mr. Fox for the acquisition and development of the former Redevelopment Agency-owned property located the southeast quadrant of Ramona Avenue and State Street. The Oversight Board approved the selection of the proposal submitted by Mr. Fox on March 9, 2016. Both public bodies approved the proposal submitted by Mr. Fox subject to future consideration of a Purchase and Sale Agreement between the Successor Agency and Mr. Fox.

The Purchase and Sale Agreement with Mr. Fox has been prepared by Successor Agency Counsel and reviewed by Mr. Fox. Pursuant to Health and Safety Code Section 33431, a public hearing must be conducted prior to consideration of Purchase and Sale Agreement. This public hearing is requested to be set by the Successor Agency for June 20, 2016. For purposes of convenience and scheduling, Mr. Fox would like to access the Successor Agency property prior to consideration of the Purchase and Sale Agreement to conduct geophysical testing and drilling. In order to access the property, it will be necessary for the Successor Agency Board of Directors to consider approval of Right of Entry Agreement allowing Mr. Fox to conduct the testing and drilling.

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

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The more salient terms of Agreement No. 16-50, the Right of Entry Agreement, include the following provisions:

- The Agreement would grant or convey no right of possession, easement, or interest. Mr. Fox would be responsible for payment of all fees associated with conduct of testing or drilling.
- Mr. Fox would provide the Successor Agency with advanced notice of testing. Testing would include such analytic methods of observations, boring, and trenching. However, boring and trenching would be conducted in a manner which would not create danger for those in the immediate vicinity of the site.
- Mr. Fox would not allow any dangerous conditions to be created as a consequence of the testing. All testing and drilling would be done in a careful and reasonable manner. Mr. Fox would agree to enter the site at his own cost, risk and expense. Furthermore, there would be a comprehensive general liability policy shall be in place at the time testing is conducted. No mechanics liens would be filled against the site as a result of the testing. Mr. Fox would take all precautions necessary to prevent the release of any hazardous materials onto the site.
- Mr. Fox would provide the appropriate indemnity to the Successor Agency and the City.
- The Agreement would terminate upon the 100<sup>th</sup> date after its execution.

**FISCAL IMPACT:** Adoption of Resolution No. 16-03 and approval of the Right of Entry Agreement with Mr. Fox will have no fiscal impact on the Successor Agency or City. Mr. Fox would be responsible to payment of charges associated with conduct of testing or drilling.

**RECOMMENDATION:** Staff recommends that the Successor Agency Board of Directors adopt Resolution No. 16-03, a Resolution of the Successor Agency to the City of Montclair Redevelopment Agency approving Agreement No. 16-50, a Right of Entry Agreement between the Successor Agency to the City of Montclair Redevelopment Agency and Bill Fox regarding the property generally located in the southeast quadrant of Ramona Avenue and State Street.

**RESOLUTION NO. 16-03**

**A RESOLUTION OF THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY APPROVING AGREEMENT NO. 16-50, A RIGHT OF ENTRY AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AND BILL FOX REGARDING THE PROPERTY GENERALLY LOCATED IN THE SOUTHEAST QUADRANT OF RAMONA AVENUE AND STATE STREET**

**WHEREAS**, Successor Agency is currently in negotiations with Bill Fox (“Developer”) for the purchase by Developer from Successor Agency of certain real property (the “Site”) generally located at the southeast quadrant of Ramona Avenue and State Street, and more particularly described as Exhibit “A” to that certain draft agreement entitled “Right of Entry Agreement” in the form submitted herewith (the “Agreement”); and

**WHEREAS**, as part of its due diligence activities, the Developer desires to conduct geophysical testing and drilling for soils and groundwater testing at the Site; and

**WHEREAS**, in order to protect the interests of the Successor Agency as well as other entities which may benefit from the sale of the Site but which could be affected in the event Developer were to damage the Site in the course of conducting testing, Successor Agency requires that the Developer execute and deliver an agreement substantially in the form of the Agreement prior to conducting any invasive testing or investigations on the Site; and

**WHEREAS**, the ability of Developer to access the Site for such purposes, subject to the terms and conditions set forth in the Agreement, will facilitate the sale of the Site.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council, acting as Successor to the Board of Directors of the City of Montclair Redevelopment Agency, does hereby find and determine as follows:

**Section 1.** The Successor Agency approves and authorizes its Executive Director to execute the Agreement substantially in the form submitted herewith, together with such modifications as may be approved by legal counsel engaged by the Successor Agency. The Executive Director and his/her designees are further authorized to make such edits as do not materially modify the economic terms of the Agreement, and are authorized and directed to execute the Agreement on behalf of the Successor Agency and take all appropriate action to effectuate the terms of the Agreement.

**Section 2.** The Deputy City Clerk acting as Successor to the Agency Secretary shall certify to the adoption of this Resolution and shall maintain this Resolution on file among the official records of the Successor Agency as public records.

**APPROVED AND ADOPTED** this XX day of XX, 2016.

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Mayor, Acting as Successor to the  
Chairman of the City of Montclair  
Redevelopment Agency

**ATTEST:**

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Deputy City Clerk, Acting as Successor to  
the Secretary of the City of Montclair  
Redevelopment Agency

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, acting as Successor to the Secretary of the City of Montclair Redevelopment Agency, DO HEREBY CERTIFY that Successor Agency Resolution No. 16-03 was duly adopted by the City Council acting as Successor to the Redevelopment Agency Board of Directors at a regular meeting thereof held on the XX day of XX, 2016, and that it was adopted by the following vote, to-wit:

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

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Andrea M. Phillips, Deputy City Clerk,  
Acting as Successor to the Secretary of  
The City of Montclair Redevelopment Agency

## RIGHT OF ENTRY AGREEMENT

**THIS RIGHT OF ENTRY AGREEMENT** (“Agreement”) is made and entered into as of June 6, 2016 by and between the **SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY**, a public body corporate and politic (“Successor Agency”) (collectively, “Successor Agency”), and **BILL FOX** (“Developer”), with respect to the following:

### *RECITALS*

A. Successor Agency is currently in negotiations with Developer and/or its affiliates for the purchase by Developer from Successor Agency of certain real property (the “Site”) described at Exhibit A hereto (the “Site Map”).

B. As part of its due diligence activities, the Developer desires to conduct geophysical testing and drilling for soils and groundwater testing as well as a site survey/topography study.

C. Successor Agency requires that the Developer execute a right of entry agreement prior to conducting any invasive testing or investigations on the Site. The ability of Developer to access the Site for such purposes, subject to the terms and conditions set forth herein, will facilitate the sale of the Site. This Agreement is intended to serve as the right of entry agreement.

NOW, THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

1. **Site.** Provided that all of the terms and conditions of this Agreement are fully satisfied, Successor Agency hereby grants to Developer and its employees, agents and contractors the nonexclusive right to enter upon the Site to perform Specified Testing, as defined in Section 2 below, and for no other purposes without the prior written approval of Successor Agency, as applicable. This Agreement shall terminate upon the one hundredth (100th) day from its execution date unless renewed in writing; the Executive Director of Successor Agency (the “Executive Director”) is authorized, without necessity of obtaining further approval from the Governing Board of the Successor Agency, to extend such time for a period of up to sixty (60) additional days, in the aggregate, at his sole discretion. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any rights of possession, easement, or interest in the Site to Developer.

2. **Specified Testing.** For purposes of this Agreement, “Specified Testing” means testing conducted by any person or company reasonably approved in writing by the Executive Director or his designee, consisting of observations, boring, trenching, and such additional activities as may be approved in writing by the Executive Director. Any testing performed hereunder shall be performed on the Site. No boring or trenching shall be conducted and no machinery shall be used which will create a danger for those in the immediate vicinity of the Site or visitors to the Site. Any soil extracted as part of boring or other work shall be disposed by Developer or Developer’s contractor in a manner satisfying applicable federal and state laws. All work under this Agreement shall be conducted in a manner to produce the minimum of disruption to those in the vicinity of the Site. All work shall comply with any reasonable additional performance standards requested by the Executive Director. Before Developer has a contractor perform work on the Site, the following shall occur: (1) Developer shall provide Successor Agency with advance notice of the date and time of the work to be performed by the contractor; and (2) the contractor shall provide Successor Agency with evidence of insurance complying with the requirements of Section 3(d), below.

**3. Developer Obligations, Performance Standards, and Preconditions.** By execution of this Agreement, Developer agrees for itself and on the behalf of any employees, agents, consultants and contractors of Developer, as follows with respect to the rights granted to Developer herein:

(a) Developer will not suffer or permit any dangerous condition to be created, exist or continue on the Site.

(b) That all acts and things done by Developer on the Site will be done in a careful and reasonable manner, in accordance with all federal, state and local laws.

(c) Developer shall enter the Site entirely at its own cost, risk and expense.

(d) That prior to entry upon the Site by any contractor engaged by Developer, there shall be in effect a comprehensive general liability policy in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million dollars (\$2,000,000.00) aggregate, and a comprehensive automobile liability policy in the amount of One Million Dollars (\$1,000,000.00), combined single limit, or such other lesser policy limits as Successor Agency may approve at its sole and absolute discretion, as shall protect each of Successor Agency and the City of Montclair, a municipal corporation ("City") from claims for such damages, and which policy shall be issued by an "A-/VIII" rated insurance carrier, authorized to issue such insurance in the State of California. Such policy or policies shall be written on an occurrence form. Developer shall also furnish or cause contractor to furnish to Successor Agency evidence satisfactory to Successor Agency that Developer and any contractor with whom they have contracted carries worker's compensation insurance as required by law. Developer or its contractor shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by Successor Agency setting forth the general provisions of the insurance coverage. This countersigned certificate shall name each of Successor Agency, City and their respective officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify Successor Agency of any material change, cancellation or termination (including, without limitation, any reduction in coverage or increase in deductible) at least thirty (30) days in advance of the effective date of such change, cancellation or termination or ten (10) days in the event of nonpayment of insurance premium. Coverage provided hereunder by Developer or its contractors shall be primary insurance and not be contributing with any insurance maintained by Successor Agency, and the policy shall contain such an endorsement. The required certificate shall be furnished by Developer or its contractors prior to entering upon the Site.

(e) Developer shall not permit or suffer any mechanics', material men's or other liens of any kind or nature ("Liens") to be filed or enforced against the Site resulting from Specified Testing or other work or action authorized by Developer. Developer shall indemnify, defend and hold harmless Successor Agency from all liability for any and all liens, claims and demands, together with costs of defense and reasonable attorneys' fees, arising from any Liens. Successor Agency reserves the right, at their sole cost and expense, at any time and from time to time, to post and maintain on the Site, or any portion thereof, any notices of non-responsibility or other notice as may be desirable to protect Successor Agency against liability. In addition to, and not as a limitation of Successor Agency' other rights and remedies under this Agreement, should Developer fail, within ten (10) days of written request from Successor Agency, either to discharge any Lien or to bond for any

Lien, or to defend, indemnify, and hold harmless Successor Agency from and against any loss, damage, injury, liability or claim arising out of a Lien, then Successor Agency, at its option, may elect to pay such Lien, or settle or discharge such Lien and any action or judgment related thereto and all costs, expenses and attorneys' fees incurred in doing so shall be paid to Successor Agency or Successor Agency by Developer upon written demand.

(f) That any work performed upon the Site constituting physical improvements shall be the property of Successor Agency, and Developer shall not have any interest in the Site or be entitled to any reimbursement or repayment for any such work performed upon the Site pursuant to this Agreement. Developer shall restore the Site to substantially the same condition as existed prior to entry, unless otherwise directed by Successor Agency. In addition, all investigative reports prepared with respect to the Site, shall be owned by Developer. Notwithstanding the foregoing, copies of such reports, upon completion, shall be promptly provided to Successor Agency, which may use such reports. Developer makes no representation or warranty regarding such reports.

(g) Developer shall take all necessary precautions to prevent the import and/or release into the environment of any hazardous materials which are imported to, in, on or under the Site during the performance of any work or testing undertaken pursuant to this Agreement ("Predevelopment Work"). If hazardous materials are imported onto the Site as a result of the performance of the Predevelopment Work, Developer shall be solely responsible for removing such imported hazardous materials in conformance with all governmental requirements. Developer shall report to Successor Agency, as soon as possible after each incident, any hazardous materials discovered on the Site.

4. **Indemnity.** Developer hereby agrees to defend, indemnify and hold each of Successor Agency, City, and their officers, officials, members, employees, agents and representatives, harmless from and against any and all loss, damage, injury, liability, claim, cost or expense (including, without limitation, reasonable attorneys' fees, expert witness fees, court costs, and expenses) arising from or attributable to the activities of Developer or any of their employees, agents, consultants or contractors upon Site pursuant to this Agreement or any omission under this Agreement; provided, however, that this indemnity shall be reduced to the extent such liability arises from the sole negligence or willful misconduct of Successor Agency. Further, Developer shall have no liability to Successor Agency or to any other person or entity by reason of, nor shall Developer have any duty to indemnify, defend or hold any person harmless against, any claim, demand, damage, loss, action, liability, cause of action or judgment, including, without limitation, any claim for diminution in value of the Site or for environmental remediation or clean-up costs, arising out of or in connection with the mere fact of having discovered, inadvertently disturbed and/or reported (as may be required by law) any adverse physical condition, title condition, or other defect with respect to the Site.

5. **Notices.** Formal notices, demands and communications between the parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

Successor Agency: Successor Agency to the City of Montclair Successor Agency  
5111 Benito Street  
Montclair, CA 91763  
Attn: Executive Director

City: City of Montclair  
5111 Benito Street  
Montclair, CA 91763  
Attn: City Manager

Developer: Bill Fox  
450 E. Foothill Avenue  
Pomona, CA 91767

Such written notices, demands, and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

**6. Miscellaneous.**

(a) **Attorneys' Fees.** In the event either party hereto brings an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, or for an alleged breach or default of, or any other action arising out of this Agreement ("action"), the prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and costs and expert witness fees (if any) incurred in such action or proceeding, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

(b) **Choice of Law.** This Agreement is to be governed by, and construed in accordance with, the laws of the State of California.

(c) **Remedies.** The parties, shall in addition to all other rights provided herein or as may be provided by law, be entitled to the remedies of specific performance and injunction to enforce its rights hereunder, except to the extent expressly provided to the contrary in this Agreement. All rights and remedies under this Agreement are cumulative and no one of them shall be exclusive of any other, and any party shall have the right to pursue any one or all of such rights and remedies or any other remedy which may be provided by law, whether or not stated in this Agreement, except to the extent expressly provided to the contrary in this Agreement.

(d) **No Third Party Beneficiaries Excepting City.** City shall be deemed to be a third party beneficiary of this Agreement; excepting for City, there shall be no third party beneficiaries of this Agreement.

(e) **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties regarding the Site.

(Signatures continue on the following page)

(f) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

SUCCESSOR AGENCY TO THE CITY OF  
MONTCLAIR REDEVELOPMENT AGENCY

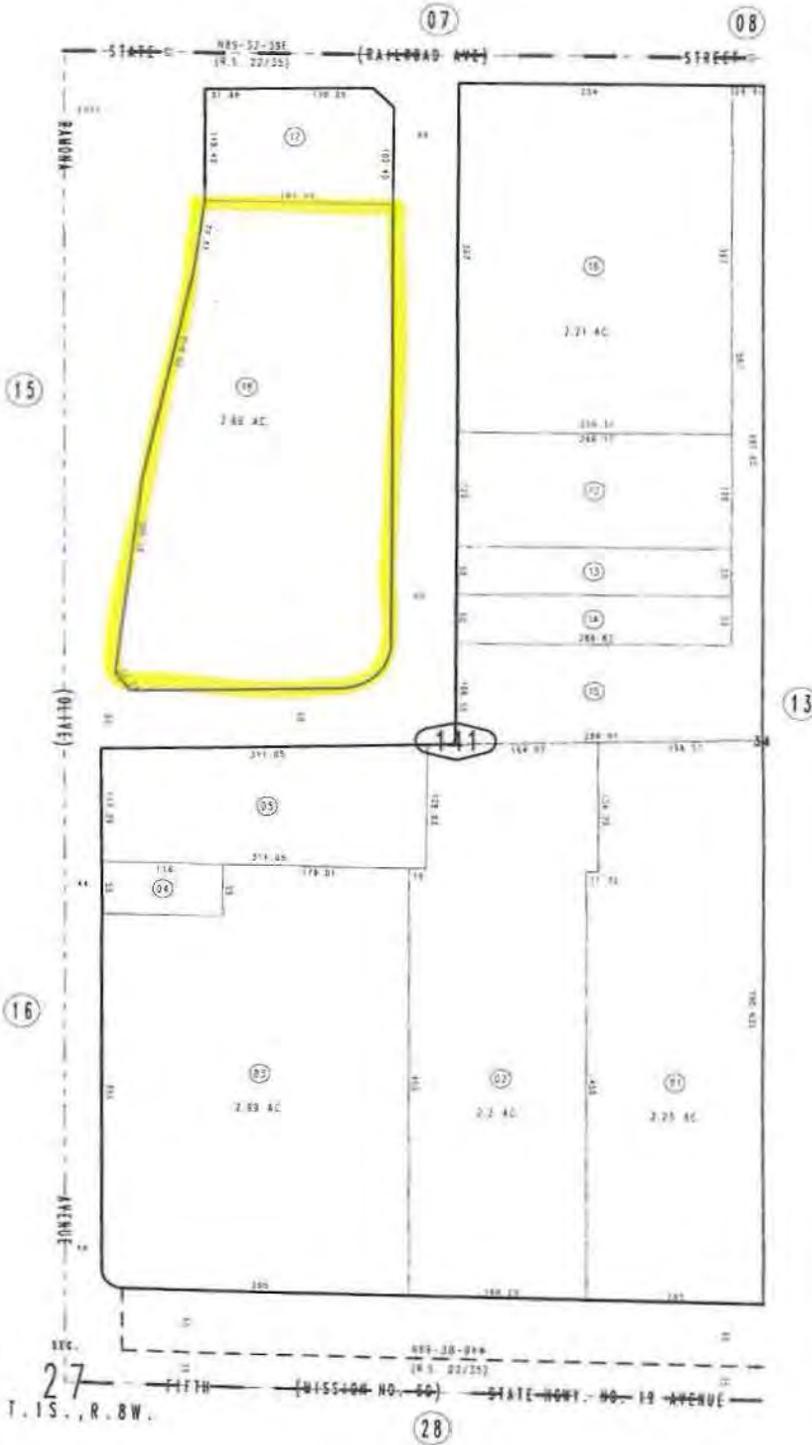
BILL FOX

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

By:  \_\_\_\_\_  
Bill Fox

Exhibit A  
Site Map

February 2004



THIS MAP IS FOR THE PURPOSES OF THE TAX MAP EXAMINATION ONLY.

Pln. San Antonio Tract  
M.B. 3/16

City of Montclair  
Tax Rate Area  
11022  
1012 - 14

Pln. N.E.1/4, Sec.27  
T.1S.,R.8W.

Assessor's Map  
Book 1012 Page 14  
San Bernardino County

REVIEWED  
2/23/04

A-1

**MINUTES OF THE REGULAR MEETING OF THE PUBLIC  
WORKS COMMITTEE HELD ON THURSDAY, APRIL 21,  
2016, AT 4:00 P.M. IN THE CITY MANAGER CONFERENCE  
ROOM, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Chair Raft called the meeting to order at 4:00 p.m.

**II. ROLL CALL**

Present: Chair Raft; Committee Member Eaton; City Manager Starr; Deputy City Manager/Director of Economic Development Staats; Office of Public Safety/Police Chief deMoet; Public Works Director/City Engineer Hudson; Public Works Superintendent Mendez; and Facilities and Grounds Superintendent McGehee.

Absent: Director of Community Development Lustro.

Also Present: Joseph Rosales NPDES Environmental Compliance Inspector.

**III. APPROVAL OF MINUTES**

The Public Works Committee approved the minutes of the Public Works Committee Meeting of February 18<sup>th</sup>, 2016. (The Public Works Committee meeting of March 17, 2016, was cancelled.)

**IV. PUBLIC COMMENT**

None

**V. PUBLIC WORKS DEPT. UPDATES/ITEMS**

**A. OPERATIONS**

**1. MAINTENANCE ACTIVITEIES**

A summary of Operations activities for the past month was included with the agenda. There were no questions or issues with the report.

**2. GRAFFITI ABATEMENT UPDATE**

Public Works Superintendent Mendez has noticed a significant decrease in graffiti tagging over the past year and a half. Mr. Mendez and Graffiti Abatement Employee Dave Bostic came to the conclusion the popularity of social media in the younger generation has played a vital role with the decrease of graffiti tags. The notoriety, instant access, and simple use of various online social media organizations has led to the 1/3 decrease of graffiti work orders over the last two quarters. Gang tags are still

prevalent and are abated within 48 hours. Public Works Operations currently holds two full time graffiti abatement employees. Public Works Staff has made the decision to utilize one full time graffiti employee from Monday thru Thursday and the second graffiti employee will work Monday and Tuesday. On Wednesday and Thursday the second graffiti employee will be shifted into different departments as needed.

Office of Public Safety/Police Chief deMoet committed on the graffiti decrease with the reenacted of the Police Department's Crime Suppression Unit within the last year. This unit acquired several search warrants and made a greater increase of graffiti related arrests. The Police Department has also noticed the reduce number of graffiti markings.

## B. FACILITIES AND GROUNDS

### 1. MAINTENANCE ACTIVITIES

A summary of Facilities and Grounds activities for the past month was included with the agenda. There were no questions or issues with the report.

### 2. LIGHT EMITTING DIODE (LED) LIGHT STOLEN AT MONTCLAIR PARKS (ADD ON)

Eight LED lights were stolen from Saratoga Park and Alma Hofman Park. Five were taken from Saratoga Park and three are missing near the Splash Pad equipment at Alma Hofman Park. The whole fixture including the LED light was reported stolen approximately one month ago. City staff did receive an anonymous telephone call with no contact information for a gentleman stating, "The new LED lights are blinding me and I want to take them down." Mr. McGehee stated the LED lights at both parks are pointed down and do not contain any overspray nor shine in any backyards.

Police Chief deMoet will contact his staff to acquire any new information about the stolen lights.

## C. ENGINEERING DIVISION ITEMS

### 1. PRESENTATION OF CAPITAL IMPROVEMENT PROGRAM 2016-2017 FISCAL YEAR

Handouts were provided to Committee Members for the recommendations of projects of the Capital Improvement Program from fiscal year 2016-2021. This draft is estimated at \$20,000,000 million over the next five year with the 2016-2017 fiscal year being funded. The projects will be presented to the Planning Commission in June and Public Works Staff inquired any comments by Committee Members.

Fourteen Capital Improvement Projects are scheduled throughout the 2016 to 2021 fiscal years. Project 1 for fiscal year 2016-2017 is 4700-4900 San Bernardino Street/Harvard Street alley improvement project. This will detail a reconstruction of the existing alley way including a new Portland Concrete Cement (PCC) curb, ramp, and ribbon gutter. Estimated cost of \$180,000 funded from the Community Development Block Grant (CDBG).

Alley improvement project at 9100-9200 Mills Avenue contains reconstruction of the existing alley way including a new PCC curb, ramp, and ribbon gutter. Funds of \$120,000 will be provided from the 2014 Lease Revenue Bond Proceeds (LRBP).

Reeder Citrus Ranch historical infrastructure will receive a roof replacement. Construction will consist of the removal and replacement of the existing roof including minor wood repairs. CDBG funding of \$60,000 will be proposed in the next fiscal year.

The Human Service/Recreation Building flooring project would remove and replaced the existing Vinyl Composition Tile (VCT) flooring throughout the lobby and hallway of the building. This general fund project has a calculated cost of \$10,000.

The lobby vinyl floor planks in the Senior Center began to lift due to the bonding glue being released. This \$10,000 project from the General Fund would remove and replace the existing vinyl flooring in the lobby at the Senior Center.

City Manager Starr stated the carpet at City Hall should be replaced prior, unless the Senior Center floor contains a tripping hazard. Mr. Starr asked, "How old is the Senior Center flooring?"

Mr. McGehee stated six years old and at this point the Senior Center flooring is not a tripping hazard. The floor moves and bounces in certain areas.

Mr. Hudson added the floor is more of an esthetic need.

Mr. Starr noted that this issue will be discussed in the budget process.

Orchard Street rehabilitation project is the top priority for the 2017-2018 fiscal year. This project will resurface Orchard Street from Benson Avenue to Mills Avenue adding a bicycle lane, replacing uplifted PCC curb gutter, sidewalk, and pedestrian ramps. The construction contains a divided cost; \$700,000 from the Successor Agency Tax 5a and \$600,000 from the 2014 LRBP.

San Bernardino Street Rehabilitation Project will resurface San Bernardino Street from Benson Avenue to Mills Avenue. Construction includes PCC curb, gutter, and sidewalk replacement. Americans with Disabilities Act (ADA) pedestrian

ramps and block wall replacement from Monte Vista Avenue to Fremont Avenue will be included in the \$1,800,000 cost from the 2014 LRBP.

Central Avenue Street Rehabilitation Project Zone 1-2 will resurface Central Avenue from northern City limits to San Bernardino Street. Replacement and construction of PCC curb, gutter, sidewalk, and ADA pedestrian ramps will be included in the five million dollar project from the 2014 LRBP.

Central Avenue Street Rehabilitation Project Zone 3-4 will resurface Central Avenue from Palo Verde Street to Holt Boulevard. PCC curb, gutter, sidewalk, and ADA pedestrian ramp will be upgraded. This project cost is foreseen at \$5 five million from the 2014 LRBP.

Western Montclair Street Rehabilitation Project Zone 3 will resurface residential streets within an area generally bounded by San Bernardino Street on the north, Monte Vista Avenue on the east, Orchard Street on the south, and Mills Avenue on the west. Upgrades include PCC repairs and ADA pedestrian ramps. The 2014 LRBP will fund the \$1,250,000 project.

Western Montclair Street Rehabilitation Project Zone 4 will resurface residential streets within an area bounded by Orchard Street on the north, Monte Vista Avenue on the east, State Street on the south, and Mills Avenue on the west. The Successor Agency Taxable Bond Proceeds Area 5a will fund the estimated two million dollar project.

Central Montclair Street Rehabilitation Project Zone 3 will resurface residential streets within an area generally bounded by San Bernardino Street on the north, Monte Vista Avenue on the west, Orchard Street on the south, and Central Avenue on the east. PCC repairs and ADA pedestrian ramp upgrades estimated at one million dollars, funding from the 2014 LRBP.

Central Avenue Street Rehabilitation Project Zone 4 will resurface residential streets within an area generally bounded by Orchard Street on the north, Monte Vista Avenue on the west, State Street on the south, and Central Avenue on the east. Construction includes PCC repairs and ADA pedestrian ramp upgrades with funding split between the 2014 LRBP of \$500,000 and \$750,000 from the Successor Agency Taxable Area 6.

Eastern Montclair Street Rehabilitation Project Zone 4 will resurface streets within an area bounded by Orchard Street on the north, Benson Avenue on the east, Holt Boulevard on the south, and Central Avenue on the west. PCC repairs and ADA pedestrian ramp upgrades contains funds disbursed from the 2014 LRBP of one million dollars and \$750,000 from the Successor Agency Taxable.

Committee Members were also presented with a summary status of prior Capital Improvement Projects. Most of the listed projects have been complete, with two projects currently under construction and one project halted due to lack of funding.

2016-2021 Capital Improvement Program					
No.	Year	Project	Amount	Funding Source	
1	2016/17	4700-4900 San Bernardino St./Harvard St. Alley Imp Project	\$180,000	CDBG	
2	2016/17	9100-9200 Mills Ave. Alley Improvement Project	\$115,000	2014 Lease Revenue Bond Proceeds	
3	2016/17	Reeder Citrus Ranch Roof Replacement Project	\$60,000	CDBG	
4	2016/17	Human Services/Recreation Flooring Replacement Project	\$10,000	General Fund	
5	2016/17	Senior Center Flooring Replacement Project	\$10,000	General Fund	
6	2017/18	Orchard Street Rehabilitation Project	\$1,300,000	2014 LRBP/Succ Agency Taxable	
7	2017/18	San Bernardino Street Rehabilitation Project	\$1,800,000	2014 Lease Revenue Bond Proceeds	
8	2018/19	Zone 1-2 Central Ave. Street Rehabilitation Project	\$5,000,000	2014 Lease Revenue Bond Proceeds	
9	2018/19	Zone 3-4 Central Ave. Street Rehabilitation Project	\$5,000,000	2014 Lease Revenue Bond Proceeds	
10	2019/20	Zone 3 Res. Western Montclair Street Rehabilitation project	\$1,250,000	2014 Lease Revenue Bond Proceeds	
11	2019/20	Zone 4 Res. Western Montclair Street Rehabilitation Project	\$2,000,000	2014 LRBP/Succ Agency Taxable	
12	2019/20	Zone 3 Res. Central Montclair Street Rehabilitation Project	\$1,000,000	2014 Lease Revenue Bond Proceeds	
13	2020/21	Zone 4 Res. Central Montclair Street Rehabilitation Project	\$1,250,000	2014 LRBP/Succ Agency Taxable	
14	2020/21	Zone 4 Res. Eastern Montclair Street Rehabilitation Project	\$1,750,000	2014 LRBP/Succ Agency Taxable	

## Infrastructure Fund Capital Project Funding Information

Project Name:	4700-4900 San Bernardino Street /Harvard Street Alley Improvement Project				
Project Details:	Reconstruct existing alleyway including new PCC curb ramps and ribbon gutter				
Preparation Date:	March 28, 2016	Department:	Public Works		
Project No. (Assigned by Finance):		Contact/Ext.:	M. Hudson/ x-441		

Phase	Fiscal Years					Total	Fund/Program
	Prior Years	2016/2017	2017/2018	2018/2019	2020/2021		
Environmental							
Design							
R/W Acquisition							
Construction		180,000.00				180,000.00	CDBG
<b>Total</b>	0.00	180,000.00	0.00	0.00	0.00	180,000.00	

<b>Approvals:</b>		
Department:	By:	Date:
Finance	By:	Date:
City Council Date:		
Revision Number:		
		<b>Total Project Cost:</b>
		<u>\$ 180,000.00</u>



## Infrastructure Fund Capital Project Funding Information

Project Name:	Reeder Citrus Ranch Roof Replacement									
Project Details:	Remove and replace the existing roof including minor wood repairs									
Preparation Date:	March 28, 2016	Department:	Public Works							
Project No. (Assigned by Finance):		Contact/Ext.:	M. Hudson/ x-441							
Fiscal Years										
Phase	Prior Years	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	Total	Fund/Program		
Environmental										
Design										
R/W Acquisition										
Construction		60,000.00					60,000.00		CDBG	
Total	0.00	60,000.00	0.00	0.00	0.00	0.00	60,000.00			
<b>Approvals:</b>										
Department:						By:				
Finance						Date:				
City Council Date:										
Revision Number:										
							<b>Total Project Cost:</b>	<u>\$60,000.00</u>		

## Infrastructure Fund Capital Project Funding Information

Project Name:	Montclair Human Service/Recreation Flooring							
Project Details:	Remove and replace existing VCT flooring throughout the lobby and hallway of the Human Services/Recreation Building							
Preparation Date:	March 28, 2016	Department:	Public Works					
Project No. (Assigned by Finance):		Contact/Ext.:	M. Hudson/ x-441					
Fiscal Years								
Phase	Prior Years	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	Total	Fund/Program
Environmental								
Design								
R/W Acquisition								
Construction		10,000.00					10,000.00	General Fund
Total	0.00	10,000.00	0.00	0.00	0.00	0.00	10,000.00	
<b>Approvals:</b>								
Department:		By:		Date:				
Finance		By:		Date:				
City Council Date:							<b>Total Project Cost:</b>	\$10,000.00
Revision Number:								

## Infrastructure Fund Capital Project Funding Information

Project Name:	Montclair Senior Center Lobby Flooring				
Project Details:	Remove and replace existing flooring in the Senior Center lobby with vinyl flooring				
Preparation Date:	March 28, 2016	Department:	Public Works		
Project No. (Assigned by Finance):		Contact/Ext.:	M. Hudson/ x-441		

Phase	Fiscal Years					Fund/Program	
	Prior Years	2016/2017	2017/2018	2018/2019	2019/2020		2020/2021
Environmental							
Design							
R/W Acquisition							
Construction		10,000.00					10,000.00
Total	0.00	10,000.00	0.00	0.00	0.00	0.00	10,000.00

Approvals:				
Department:		By:		Date:
Finance		By:		Date:
City Council Date:				
Revision Number:				
				<b>Total Project Cost:</b> \$10,000.00

## Infrastructure Fund

### Capital Project Funding Information

Project Name:	Orchard Street Rehabilitation Project									
Project Details:	This project will resurface Orchard Street from Benson Avenue to Mills Avenue adding a bicycle lane and replacing uplifted PCC curb gutter and sidewalk, sidewalk and pedestrian ramps.									
Preparation Date:	March 28, 2016	Department:	Public Works / Engineering							
Project No. (Assigned by Finance):		Contact/Ext.:	M. Hudson X.411							

Phase	Prior Years	Fiscal Years				Total	Fund/Program
		2016/2017	2017/2018	2018/2019	2019/2020		
Environmental							
Design							
R/W Acquisition							
Construction			700,000.00			700,000.00	Succ. Ag. Tax 5a
			600,000.00			600,000.00	2014 LRBP
<b>Total</b>	0.00	0.00	1,300,000.00	0.00	0.00	1,300,000.00	

<b>Approvals:</b>		
Department:	By:	Date:
Finance	By:	Date:
City Council Date:		
Revision Number:		
		<b>Total Project Cost:</b>
		\$1,300,000.00

## Infrastructure Fund

### Capital Project Funding Information

Project Name:	San Bernardino Street Rehabilitation Project
Project Details:	This project will resurface San Bernardino Street from Benson Avenue to Mills Avenue. Scope of work includes PCC curb, gutter and sidewalk replacement, ADA pedestrian ramps and blockwall replacement between Monte Vista Avenue and Fremont Avenue.
Preparation Date:	March 28, 2016
Project No. (Assigned by Finance):	
Department:	Public Works / Engineering
Contact/Ext.:	M. Hudson X411

Phase	Fiscal Years					Total	Fund/Program
	Prior Years	2016/2017	2017/2018	2018/2019	2019/2020		
Environmental	0.00	0.00	0.00	0.00	0.00	0.00	
Design							
R/W Acquisition							
Construction			1,800,000.00			1,800,000.00	2014 Lease Rev bond proceeds
<b>Total</b>	<b>0.00</b>	<b>0.00</b>	<b>1,800,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>1,800,000.00</b>	

<b>Approvals:</b>		
Department:	By:	Date:
Finance	By:	Date:
City Council Date:		
Revision Number:		
<b>Total Project Cost:</b>		<b>\$1,800,000.00</b>

## Infrastructure Fund Capital Project Funding Information

Project Name:	Central Ave Street Rehabilitation Project Zone 1-2									
Project Details:	This project will resurface Central Avenue from northern city limits to San Bernardino Street. Scope of work includes PCC curb, gutter and sidewalk replacement and ADA pedestrian ramp upgrades.									
Preparation Date:	March 5, 2016	Department:	Public Works / Engineering							
Project No. (Assigned by Finance):		Contact/Ext.:	M. Hudson X.411							

Phase	Prior Years			Fiscal Years				Total	Fund/Program
	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	Total			
Environmental									
Design									
R/W Acquisition									
Construction			5,000,000.00				5,000,000.00	2014 Lease Rev bond proceeds	
<b>Total</b>	0.00	0.00	5,000,000.00	0.00	0.00	0.00	5,000,000.00		

<b>Approvals:</b>		Date:	
Department:		By:	
Finance		Date:	
City Council Date:			
Revision Number:			
<b>Total Project Cost:</b>			<b>\$5,000,000.00</b>

## Infrastructure Fund Capital Project Funding Information

Project Name:	Central Ave Street Rehabilitation Project Zone 3-4									
Project Details:	This project will resurface Central Avenue from Palo Verde Street to Holt Boulevard. Scope of work includes PCC curb, gutter and sidewalk replacement and ADA predestrian ramp upgrades.									
Preparation Date:	March 28, 2016	Department:	Public Works / Engineering							
Project No. (Assigned by Finance):		Contact/Ext.:	M. Hudson X411							

Phase	Fiscal Years					Total	Fund/Program
	Prior Years	2016/2017	2017/2018	2018/2019	2019/2020		
Environmental							
Design							
R/W Acquisition							
Construction				5,000,000.00			2014 Lease Rev bond proceeds
<b>Total</b>	0.00	0.00	0.00	5,000,000.00	0.00	5,000,000.00	

<b>Approvals:</b>		Date:	
Department:		By:	
Finance		Date:	
City Council Date:			
Revision Number:			
		<b>Total Project Cost:</b>	<b>\$5,000,000.00</b>

## Infrastructure Fund Capital Project Funding Information

Project Name:	Western Montclair 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, Monte Vista Ave. on the east, Orchard Street on the south and Mills Avenue on the west. Scope of work includes PCC repairs and ADA pedestrian ramp upgrades.										
Preparation Date:	March 28, 2016	Department:	Public Works / Engineering								
Project No. (Assigned by Finance):		Contact/Ext.:	M. Hudson X.411								
Fiscal Years											
Phase	Prior Years	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	Total	Fund/Program			
Environmental											
Design											
R/W Acquisition											
Construction					1,250,000.00		1,250,000.00		1,250,000.00	2014 Lease Rev bond proceeds	
Total	0.00	0.00	0.00	0.00	1,250,000.00	0.00	1,250,000.00		1,250,000.00		
<b>Approvals:</b>											
Department:					By:					Date:	
Finance					By:					Date:	
City Council Date:								<b>Total Project Cost:</b>	<u>\$1,250,000.00</u>		
Revision Number:											

## Infrastructure Fund Capital Project Funding Information

Project Name:	Western Montclair Street Rehabilitation Project Zone 4									
Project Details:	This project will resurface residential streets within an area generally bound by Orchard Street on the north, Monte Vista Ave. on the east, State St. on the south and Mills Ave. on the west. Scope of work includes PCC repairs and ADA pedestrian ramp upgrades.									
Preparation Date:	March 28, 2016	Department:	Public Works / Engineering							
Project No. (Assigned by Finance):		Contact/Ext.:	M. Hudson X411							
Fiscal Years										
Phase	Prior Years	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	Total	Fund/Program		
Environmental										
Design										
R/W Acquisition										
Construction					2,000,000.00		2,000,000.00		Succ Agency	
									Taxable Bond	
Total	0.00	0.00	0.00	0.00	2,000,000.00	0.00	2,000,000.00		Proceeds Area 5a	
<b>Approvals:</b>										
Department:						By:				
Finance						Date:				
City Council Date:						Date:				
Revision Number:								<b>Total Project Cost:</b>	\$2,000,000.00	

## Infrastructure Fund Capital Project Funding Information

Project Name: Central Montclair 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, Monte Vista Ave. on the west, Orchard Street on the south and Central Avenue on the east. Scope of work includes PCC repairs and ADA pedestrian ramp upgrades

Preparation Date: March 28, 2016 Department: Public Works / Engineering

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

Phase	Fiscal Years						Total	Fund/Program
	Prior Years	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021		
Environmental								
Design								
R/W Acquisition								
Construction					1,000,000.00		1,000,000.00	2014 Lease Rev bond proceeds
<b>Total</b>	0.00	0.00	0.00	0.00	1,000,000.00	0.00	1,000,000.00	

**Approvals:** \_\_\_\_\_ Date: \_\_\_\_\_

Department: \_\_\_\_\_ By: \_\_\_\_\_

Finance By: \_\_\_\_\_ Date: \_\_\_\_\_

City Council Date: \_\_\_\_\_

Revision Number: \_\_\_\_\_

**Total Project Cost:** \$1,000,000.00

## Infrastructure Fund Capital Project Funding Information

Project Name:	Central Monclair Street Rehabilitation Project Zone 4									
Project Details:	This project will resurface residential streets within an area generally bound by Orchard St. on the north, Monte Vista Ave. on the west, State St. on the south and Central Ave. on the east. Scope of work includes PCC repairs and ADA pedestrian ramp upgrades.									
Preparation Date:	March 28, 2016	Department:	Public Works / Engineering							
Project No. (Assigned by Finance):		Contact/Ext.:	M. Hudson X.411							

Phase	Fiscal Years					Total	Fund/Program
	Prior Years	2016/2017	2017/2018	2018/2019	2019/2020		
Environmental	0.00	0.00	0.00	0.00	0.00	0.00	
Design							
R/W Acquisition							
Construction						500,000.00	2014 Lease Rev
						750,000.00	Succ Ag. Taxable (Area 6)
<b>Total</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>1,250,000.00</b>	

<b>Approvals:</b>		Date:	
Department:		By:	
Finance		Date:	
City Council Date:			
Revision Number:			
		<b>Total Project Cost:</b>	<b>\$1,250,000.00</b>

# Infrastructure Fund

## Capital Project Funding Information

Project Name: Eastern Monclair Street Rehabilitation Project Zone 4

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

Preparation Date: March 28, 2016 Department: Public Works / Engineering

Project No. (Assigned by Finance): \_\_\_\_\_ Contact/Ext.: M. Hudson X411

Phase	Prior Years	Fiscal Years				Total	Fund/Program
		2016/2017	2017/2018	2018/2019	2019/2020		
Environmental							
Design							
R/W Acquisition							
Construction							
Total	0.00	0.00	0.00	0.00	0.00	1,750,000.00	
						1,000,000.00	2014 Lease Rev
						750,000.00	Succ Ag Taxable
						1,750,000.00	

**Approvals:** \_\_\_\_\_ Date: \_\_\_\_\_

Department: \_\_\_\_\_ By: \_\_\_\_\_

Finance By: \_\_\_\_\_ Date: \_\_\_\_\_

City Council Date: \_\_\_\_\_

Revision Number: \_\_\_\_\_

**Total Project Cost: \$1,750,000.00**

**2016-2020 CAPITAL IMPROVEMENT PROGRAM  
PRIOR YEARS SUMMARY STATUS**

Project No.	Project Title Description	Project Status
7001	<p><u>Carlton Street Reconstruction</u> This project will construct curb, gutter, sidewalk, streetlights, and sewers for Carlton Street east of Monte Vista Avenue.</p>	All work associated with this project has been completed.
7002	<p><u>Community Center Restrooms</u> This project will construct new restrooms in the Community Center.</p>	All work associated with this project has been completed.
7003	<p><u>Intersection Rehabilitation</u> This project will reconstruct the approaches to several intersections in the City where rutting caused by bus traffic has created unacceptable pavement conditions.</p>	All work associated with this project has been completed. Intersections included: Arrow and Monte Vista; Central and Palo Verde; and Holt and Ramona
7006	<p><u>Northwest Montclair Street Rehabilitation</u> As part of the City's pavement management program, local residential streets in this part of the City will be resurfaced.</p>	All work associated with this project has been completed.
7007	<p><u>Monte Vista Avenue Widening</u> This project will widen the east side of Monte Vista Avenue between Mission Boulevard and Howard Street, including the installation of curb, gutters, sidewalks, streetlights, and pavement.</p>	All work associated with this project has been completed.

- 7008      Recreation Building Upgrades Phase 1      All work associated with this project has been completed.  
This project will remodel the locker rooms in the Recreation Building, add an employee restroom, add a sink to the employee break room, and add a public counter.
- 7009      City Hall Patio Improvements      All work associated with this project has been completed.  
This project will address ADA accessibility issues to City Hall, construct a new patio area for employees, and provide additional landscaping at the south entry to City Hall.
- 7010      Ramona Avenue Rehabilitation      All work associated with this project has been completed.  
This project will provide a new street surface for Ramona Avenue between Mission Boulevard and Phillips Boulevard. A sewer repair included in the CIP but not assigned a number is also part of this project.
- 7012      City Hall Patio Cover      Work on this project has been suspended due to a lack of funds and has been removed from the Capital Improvement Program.  
This project will construct a shade sail over the patio improvements completed under Project 7009.
- 7013      Police Fuel Storage Upgrades      All work associated with this project has been completed.  
This project will provide safer access to the fuel storage tanks at the Police Department Facility. The existing filler necks for the tanks require someone to climb stairs to access the filler necks. The modifications will lower the necks to ground level.

7014	<u>Northeast Montclair Street Rehabilitation Phases 1 and 2</u> As part of the City's pavement management program, local residential streets in this part of the City will be resurfaced.	All work associated with these two projects has been completed.
17000	<u>Central Avenue San Bernardino Street Signal Upgrades</u> This project will make signal modifications for protected left turn phasing for north/south and east/west traffic.	All work associated with this project has been completed.
17001 (previously 7011)	<u>Sunrise Park Block Wall</u> This project will reconstruct a block wall along the north side of Sunrise Park.	All work associated with this project has been completed.
17002	<u>Mission Boulevard Signal Coordination Upgrades</u> This project will improve signal coordination along Mission Boulevard.	This project was added to the CIP with the hope of obtaining grant funding for the work. The City was not successful in its grant application. This project has been dropped from the CIP.
17003 (previously 7005)	<u>Central Avenue/UPRR Grade Separation Reconstruction</u> This project will reconstruct the bridge over the UPRR tracks and add additional lanes to the bridge.	This project developed as a result of the study done under Project 1-02-1. The City was successful in getting federal grant funding for the reconstruction. However, after further evaluation by Caltrans, it has been determined that reconstruction cannot be justified. The City is now looking at a rehabilitation project.
17004 (previously 7004)	<u>Monte Vista/UPRR Grade Separation</u> This project will construct a bridge over the Union Pacific Railroad tracks and State Street.	All environmental work, right-of-way acquisition, and design associated with this project have been completed. The project is expected to be advertised in fall 2016 with construction starting in winter 2016/17.

- 17005     Signal Modifications at Central Avenue and Costco  
 This project will add an east leg to this intersection in conjunction with the development of the east side of Central Avenue.     All work associated with this project has been completed and the signal is fully operational. (Note: This project was included in the Capital Improvement Program because the developer paid the City to provide the design. Construction was performed by the developer.)
- 17009     Recreation Building Upgrades Phase 2  
 This project will remodel the weight room in the Recreation Building, making more of a fitness center.     Work is currently under construction.
- 19000     8700 Central Avenue Rule 20  
 This project will remove overhead utilities on the west side of Central Avenue from the Union Pacific Bicycle trail to Richton Street and place them underground.     The design for this work was previously completed, but with the termination of Redevelopment throughout the state, the work was construction was never started. Redesign of the project is now underway and construction should occur next fiscal year.
- 19001     Eastern Montclair Street Rehabilitation  
 As part of the City's pavement management program, local residential streets in this part of the City will be resurfaced     Work is currently under construction.

## 2. STATE TRASH AMENDEMENTS TO TRASH POLICY

NPDES Environmental Compliance Inspector Joseph Rosales presented new information regarding an amendment that will be placed on June 1<sup>st</sup> 2016 to the states trash policy. The revised trash policy will be added to the Municipal Storm Water Program and is unknown at this point of how the state would enforce the policy. The goal is to have no trash in receiving water, which in Montclair would be the San Antonio Flood Control Channel. Mr. Rosales stated the Public Works Operations Department is doing an excellent job by sweeping once a week and cleaning out the trash interceptor in the storm drain main line at Palo Verde Street. City Staff cleans this main line at least once a year and Public Works Staff recently cleaned the storm drain with less trash then staff anticipated.

Mrs. Staats asked how this program will be monitored.

Mr. Rosales stated it is a self monitoring program. When the final policy is complete in June, the City will have three months can come up with a solution.

## VI. POLICE DEPARTMENT UPDATES/ITEMS

BLOOD HOUND DOG UPDATE – Police Officer Ben Martin and Montclair’s new Blood Hound K-9 Bo will complete training on April 22, 2016 and both will arrive this weekend. At the May 2<sup>nd</sup>, Council Meeting Bo will be sworn in. Bo will be the State of California’s eighth Blood Hound K-9 Unit.

## VII. COMMUNITY DEVELOPMENT DEPARTMENT PROJECT UPDATES/ITEMS

VISTA COURT – In the absence of Mr. Lustro, Mr. Starr informed Committee Members of the status of Vista Court -the 23 unit condominium project. The developer is eager to construct home sites on Monte Vista Avenue, the former location of Grease Monkey. Mr. Bruce Culp a resident of the newly developed Paseos Apartment community has contacted Council Member John Dutrey and presented concerns about the future development of Vista Court. He expressed his opinion that the future condominium development will block views, create greater parking issues, and he suggested a small retail outlet be placed at this location. Mr. Starr stated that the owner of this land aspires to only develop condominiums and has taken all appropriate steps to proceed to the next process of sending the project to the Planning Commission. This future development is in the North Montclair Downtown Specific Plan (NMDSP) which is a transit district and foreseen to have high density residential units, limited number of vehicles, and for individuals to utilize the public transit system.

Parking issues at the Paseos Apartment Complex was the result of previous mismanagement. The management company did not follow protocol with the parking plan and issued out greater number of parking permits to residents. This issue will not be resolved unit the residents move out of the complex.

A meeting was arranged with Mr. Starr and Mr. Culp on Monday May 2<sup>nd</sup> at 6:00 p.m. to discuss any concerns related to this future project. Mr. Starr stated that he will provide Mr. Dutrey with the requested project plans.

Chair Raft stated she reviewed the project and her only concern was parking. Mrs. Staats commented that this project has the standard number of parking spaces. City Staff reduced the number of units from 26 to 23. Mr. Starr noted that he presented Mr. Culp's concern to Committee Members and he would recommend not prolonging this project, as the developer is assuming the Vista Court project will soon be presented to the Planning Commission and future Council Meeting.

## **VIII. CAPITAL PROJECT UPDATES**

Public Works Director/City Engineer Hudson reported the status of the following capital improvement projects:

### **A. MONTE VISTA AVENUE/UPRR GRADE SEPARATION PROJECT**

Mr. Hudson gave an update indicating that the project remains on track with the one hundred percent completion of plans once the document is signed. He noted the next step would be to submit the E-76 form in August to Caltrans to request authorization for San Bernardino Associated Governments (SANBAG) to advertize and award the contract. This project is estimated to be advertized in November or December with construction originate in December to January.

### **B. RECREATION BUILDING REMODEL-PHASE TWO WEIGHT ROOM**

The front stage area had been demolished and the store front was presumed to be installed this week. The framed work is almost finished with construction expected to be complete by next month.

### **C. CENTRAL AVENUE/SAN BERNARDINO STREET TRAFFIC SIGNAL**

This project is complete although Staff discovered locations in which conduit and cable was damaged. The City may have to pull additional cable and install new conduit on Central Avenue. Committee Members will be updated at the next Meeting.

### **D. REEDER RANCH**

Funding of \$60,000 from CDBG was successful for the Reeder Citrus Ranch to receive a new roof in the next fiscal year. The project will included the replacement of the existing roof with minor wood repairs.

### **E. EASTERN MONTCLAIR PAVEMENT REHABILITATION**

The Eastern Montclair pavement rehabilitation is included in the 2016-2017 fiscal year with the cost expected to be \$500,000. As part of the City's pavement management program, local residential streets in this part of the City will be resurfaced with funds disbursed from the Successor Agency Bond.

On April 16<sup>th</sup>, saw cutting began and a number of trees were removed by West Coast Arborist (WCA), the Cities tree contractor. Gentry Brothers was awarded the contract with work estimated to be complete in mid May. City Staff noticed that Monte Vista Water District (MVWD) has a broken water line that was never repaired on Denver Street, which is included in this pavement rehabilitation project. MVWD will soon be replacing the water line on Denver Street and asked for a quote from Gentry Brothers to repave the street. The water district chose a different contractor and will repave Denver Street after the repair work is complete. The City will deduct the funds of Denver Street from Gentry Brothers and remit the amount to MVWD. Denver Street will soon acquire a new water line and resurfaced street after the agreement is approved by Council.

**F. GOLD LINE**

No current news was reported of the Gold Line. In May, a decision is expected to be made between Los Angeles Metro Rail and SANBAG of the California State Transportation funding. In November, when residents of Los Angeles County vote on measure extensions, new measures, and transportation measures the City will find out if the Gold Line will make it to Montclair. If the transportation measures passes, the City has an agreement with SANBAG to fund the Gold Line to Montclair.

**IX. OTHER ITEMS**

None

**X. ADJOURNMENT**

Committee Member Eaton will be out of town on the next scheduled Public Works Committee meeting. Mr. Starr stated the May 19<sup>th</sup>, 2016 Public Works Committee meeting is canceled. The next meeting of the Public Works Committee will be at 4:00 p.m. on June 16<sup>th</sup>, 2016.

At 4:50 p.m., Chair Raft adjourned the meeting.

Submitted for Public Works Committee approval,



Cenica Smith  
Transcribing Secretary

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
MAY 2, 2016, AT 6:25 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Mayor Pro Tem Raft called the meeting to order at 6:25 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 April 18, 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 April 18, 2016.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

At 6:26 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:37 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 6:37 p.m., Mayor Pro Tem Raft adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



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Edward C. Starr  
City Manager