CITY COUNCIL OF MONTEREY PARK
THE CITY COUNCIL ACTING ON BEHALF OF THE SUCCESSOR AGENCY OF THE FORMER REDEVELOPMENT AGENCY, THE HOUSING AUTHORITY, THE MONTEREY PARK FINANCING AUTHORITY AND THE MONTEREY PARK GEOLOGIC HAZARD ABATEMENT DISTRICT
AGENDA

REGULAR CITY COUNCIL MEETING
MONTEREY PARK CITY HALL COUNCIL CHAMBERS
320 W. NEWMARK AVENUE, MONTEREY PARK, CA 91754

Wednesday
December 21, 2022
6:30 p.m.

MISSION STATEMENT
The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community.

GENERAL INFORMATION

Documents related to an Agenda item are available to the public in the City Clerk's Office located at 320 West Newmark Avenue, Monterey Park, CA 91754, during normal business hours and the City's website at http://www.montereypark.ca.gov/AgendaCenter/City-Council-17.

The public may watch the meeting live on the city's cable channel MPKTV (AT&T U-verse, channel 99 or Charter Communications, channel 182) or by visiting the city's website at http://www.montereypark.ca.gov/133/City-Council-Meeting-Videos.

PUBLIC PARTICIPATION

In accordance with Government Code § 54953(e) and City Council resolution, remote public participation is allowed in the following ways:

Via Email

Public comment will be accepted up to 24 hours before the meeting via email to mpclerk@montereypark.ca.gov and read into the record during public comment, when feasible. We request that written communications be limited to not more than 50 words.

Via Telephone

Public comment may be submitted via telephone during the meeting, before the close of public comment, by calling **(888) 788-0099** or **(877) 853-5247** and entering Zoom Meeting ID: **289 222 5995** then press pound (#). When prompted to enter password, enter **12345** and press pound (#) again. If participants would like to make a public comment they will enter "***9**" then the Clerk's office will be notified, and you will be in the rotation to make a public comment. Press "***6**" to unmute yourself when called upon to speak Participants are encouraged to join the meeting 15 minutes before the start of the meeting. You may speak up to 5 minutes on Agenda items. Speakers will not be allowed to combine time. The Mayor and City Council may change the amount of time allowed for speakers. As part of the virtual meeting protocols, anonymous persons will not be allowed to provide public comment.

Via Internet

Public comment may be submitted via internet during the meeting, before the close of public comment, by visiting www.zoom.us/join and entering Zoom Meeting ID: **289 222 5995** or https://us06web.zoom.us/j/2892225995 and enter the passcode **12345**. If participants would like to make a public comment, utilize the raise hand feature and the City Clerk will notify you when it is your time to speak. You can then unmute yourself at that time. The Mayor and City Council may change the amount of time allowed for speakers. As part of the virtual meeting protocols, anonymous persons will not be allowed to provide public comment.

Important Disclaimer – When a participant calls in to join the meeting, their name and/or phone number will be visible to all participants. Note that all public meetings will be recorded.

Per the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please call City Hall at (626) 307-1359 for reasonable accommodation at least 4 hours before a meeting. Council Chambers are wheelchair accessible.

CALL TO ORDER	**Mayor**
FLAG SALUTE	**The Monterey Park Police Explorers**
ROLL CALL	**Henry Lo, Vinh Ngo, Jose Sanchez, Thomas Wong, Yvonne Yiu**

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

PUBLIC COMMUNICATIONS:

While all comments are welcome, the Brown Act does not allow the City Council to take action on any item not on the agenda. The Council may briefly respond to comments after Public Communications is closed. Persons may, in addition to any other matter within the City Council's subject-matter jurisdiction, comment on Agenda Items at this time. If you provide public comment on a specific Agenda item at this time, however, you cannot later provide comments at the time the Agenda Item is considered.

STAFF COMMUNICATIONS:

- Fire Department
- Police Department
- Recreation and Community Services Department

[1.] PRESENTATION

1-A. OATH OF OFFICE TO THE NEWLY ELECTED CITY CLERK MAYCHELLE YEE

1-B. INTRODUCTION OF INTERIM DIRECTOR OF COMMUNITY DEVELOPMENT JESSICA SERRANO

1-C. GOING GREEN UPDATE

1-D. MPK REWARDS UPDATE

[2.] OLD BUSINESS – None.

[3.] CONSENT CALENDAR ITEM NOS. 3A-3K

3-A. MINUTES

It is recommended that the City Council consider:

(1) Approving the minutes from the special and regular meetings of November 16, 2022; and

(2) Taking such additional, related, action that may be desirable.

3-B. MONTHLY INVESTMENT REPORT - NOVEMBER 2022

It is recommended that the City Council consider:

(1) Receiving and filing the monthly investment report; and

(2) Taking such additional, related, action that may be desirable.

3-C. CONSIDERATION AND POSSIBLE ACTION TO AUTHORIZE THE CITY MANAGER TO EXECUTE A LEGAL RETAINER AGREEMENT WITH BURKE, WILLIAMS & SORENSEN AND TERMINATE A LEGAL RETAINER AGREEMENT WITH HENSLEY LAW GROUP EFFECTIVE ON OR BEFORE JANUARY 1, 2023; REAPPOINT KARL H. BERGER AS CITY ATTORNEY

It is recommended that the City Council consider:

(1) Authorizing the City Manager to terminate the legal services agreement with Hensley Law Group to be effective on or before December 31, 2022; and

(2) Authorizing the City Manager to execute a legal services agreement with Burke, Williams and Sorensen to be effective on or before January 1, 2023; and

(3) Confirming Karl H. Berger as the current City Attorney and reappoint him as City Attorney, effective on or before January 1, 2023; or

(4) Taking such additional, related, action that may be desirable.

3-D. ADOPT A RESOLUTION CONFIRMING AND EXTENDING A LOCAL EMERGENCY FOR THE GOODVIEWS ABATEMENT PROJECT ("GAP")

It is recommended that the City Council consider:

(1) Adopting a Resolution confirming and extending a local emergency for the GAP; and

(2) Taking such additional, related, action that may be desirable.

3-E. DEVELOPMENT IMPACT FEES FOR FISCAL YEAR 2021-2022

It is recommended that the City Council consider:

(1) Reviewing and filing the Annual Report on Development Impact Fees for Fiscal Year 2021-2022; and

(2) Taking such additional, related, action that may be desirable.

3-F. AWARD OF CONTRACT TO KNIGHT COMMUNICATIONS FOR INFORMATION TECHNOLOGY SERVICES

It is recommended that the City Council consider:

(1) Authorizing the City Manager to execute an agreement with Knight Communications, in a form approved by the City Attorney for Information Technology Network/Servers and IT Projects for a five-year contract and amount not to exceed $2,484,674;

(2) Authorizing a budget appropriation of $110,500 from the Technology fund; and

(3) Taking such additional, related, action that may be desirable.

3-G. SECOND AMENDMENT TO CONTRACT #2274-AD, CANON SOLUTIONS AMERICA

It is recommended that the City Council consider:

(1) Authorizing the City Manager to execute second Amendment with Canon Solutions America, in a form approved by the City Attorney for Canon lease and maintenance from December 21, 2022, to November 30, 2023, for a cost of $108,205 annually; and

(2) Taking such additional, related, action that may be desirable.

3-H. REPORT SUBMITTED TO THE CITY COUNCIL PURSUANT TO GOVERNMENT CODE § 8630 REGARDING THE CITY'S EMPLOYMENT EMERGENCY (PER RESOLUTION NOS. 2022-R49 AND 2022-R67); CONTINUANCE OF SUCH EMERGENCY

It is recommended that the City Council consider:

(1) Receiving and filing this report;

(2) Extending the Employment Emergency; and

(3) Taking such additional, related, action that may be desirable.

3-I. RESOLUTION DELEGATING AUTHORITY TO THE CITY MANAGER PURSUANT TO GOVERNMENT CODE § 21173 TO PERFORM ALL TASKS REGARDING DISABILITY RETIREMENT OF SAFETY EMPLOYEES OF THE CITY

It is recommended that the City Council consider:

(1) Adopting a Resolution pursuant to Government Code § 21173 to delegate authority to the City Manager regarding disability retirements; and

(2) Taking such additional, related, action that may be desirable.

3-J. RECEIVE AND FILE STAFF REPORT SUMMARIZING THE STATUS OF EMERGENCY REPAIRS OF THE MONTEREY PASS ROAD WATER LINE

It is recommended that the City Council consider:

(1) Receiving and filing the staff report summarizing the status of emergency repairs of the Monterey Pass Road water line; and

(2) Taking such additional, related, action that may be desirable.

3-K. SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN FOR POTRERO GRANDE INTERSECTIONS SIGNAL IMPROVEMENTS

It is recommended that the City Council consider:

(1) Authorizing the City Manager to execute a Second Amendment to Professional Services Agreement, in a form approved by the City Attorney, with Kimley-Horn, in an amount not to exceed $149,400, for Engineering Services for the Potrero Grande Intersections Signal Improvements; and

(2) Taking such additional, related, action that may be desirable.

[4.] PUBLIC HEARING

4-A. PUBLIC HEARING TO APPROVE THE 2022 ANNUAL REPORT AND THE LEVY OF ASSESSMENTS FOR DOWNTOWN BUSINESS IMPROVEMENT DISTRICT NO. 1 FOR PROGRAM YEAR 2023

It is recommended that the City Council consider:

(1) Opening the public hearing, receiving both written and oral comments, and closing the public hearing.

(2) Adopting the resolution confirming the 2022 Annual Report and the levy of assessments for Business Improvement District No. 1 for program year 2023; and

(3) Taking such additional, related, action that may be desirable.

[5.] NEW BUSINESS – None.

[6.] CITY COMMUNICATIONS (CITY COUNCIL)

[7.] FUTURE AGENDA ITEMS

[8.] CLOSED SESSION (IF REQUIRED; CITY ATTORNEY TO ANNOUNCE)

ADJOURN

City Council Staff Report

DATE: December 21, 2022

AGENDA ITEM NO: Consent Calendar - 3A

TO: The Honorable Mayor and City Council

FROM: Vincent D. Chang, City Clerk

SUBJECT: Minutes

RECOMMENDATION:

It is recommended that the City Council consider:

1. Approving the minutes from the special and regular meetings of November 16, 2022; and

2. Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

None.

BACKGROUND:

None.

FISCAL IMPACT:

None.

Respectfully submitted,

Maychelle Yee
City Clerk

Prepared by:

Christine Sakata
Senior Clerk Typist

Approved By:

Ron Bow
City Manager

ATTACHMENT(S):

1. Draft Minutes

ATTACHMENT 1
Draft Minutes

MINUTES
MONTEREY PARK CITY COUNCIL
FINANCING AUTHORITY (MPFA)
HOUSING AUTHORITY (MPHA)
GEOLOGIC HAZARD ABATEMENT DISTRICT (GHAD)
SUCCESSOR AGENCY (SA)
SPECIAL MEETING
NOVEMBER 16, 2022

The City Council, the Financing Authority (MPFA), the Housing Authority (MPHA), the Geologic Hazard Abatement District (GHAD), and the Successor Agency (SA) of the City of Monterey Park held a Special Meeting of the Council in Room 266, Second Floor of City Hall located at 320 West Newmark Avenue in the City of Monterey Park on Wednesday, November 16, 2022 at 5:30 p.m.

CALL TO ORDER:
Mayor Lo called the meeting to order at 5:30 p.m.

ROLL CALL:
City Mayor Lo called the roll:

Council Members Present: Peter Chan, Hans Liang, Henry Lo, Yvonne Yiu
Council Members Absent: None

ALSO PRESENT: City Manager Ron Bow, City Attorney Karl Berger, Assistant City Manager Inez Alvarez, Director of Management Services Martha Garcia, Director Human Resources and Risk Management Christine Tomikawa, Economic Development Manager Joseph Torres, Steve Berliner of Liebert Cassidy & Whitmore

VIRTUALLY PRESENT: Steve Berliner of Liebert Cassidy & Whitmore

ORAL AND WRITTEN COMMUNICATIONS

- Assistant City Manager Alavarez received, filed, and read into the record written communication from Linda Tang, who recommended a public hearing be held to provide an analysis report before any action is taken. In addition, she stated the location should provide housing towards low-income families; also, to inspect if APN 5255-008-902 is identified as privately-owned site.

1. CLOSED SESSION
The City Council adjourned to Closed Session at 5:30 p.m.

1-A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property:	109 N. Lincoln Ave., AIN 5255-008-901 / 5255-009-902
City Negotiators:	Ron Bow, City Manager Karl H. Berger, City Attorney Inez Alvarez, Assistant City Manager Joseph Torres, Economic Development Manager Martha Garcia, Management Services Director
Negotiating Party:	SteelCraft Long Beach, LP c/o Martin Howard
Under negotiation:	Terms and price

1-B. CONFERENCE WITH LABOR NEGOTIATORS, PURSUANT TO CALIFORNIA GOVERNMENT CODE § 54957.6

City Negotiators:	Steve Berliner, Esq. from Liebert Cassidy & Whitmore (the City's special counsel for labor matters) and Christine Tomikawa, Director of Human Resources and Risk Management
Employee Organization:	Confidential Employees' Association, Firefighters' Association, Mid-Management Association, Police Captains' Association, Police Officers' Association, Police Officers' Mid-Management Association, Professional Chief Officers' Association, and Service Employees International Union, Local 721

RECONVENE & ADJOURNMENT

The City Council reconvened from Closed Session with all Council Members present. The meeting was adjourned at 6:23 p.m.

Action Taken: No reportable action taken.

_____
Vincent D. Chang
City Clerk

MINUTES
MONTEREY PARK CITY COUNCIL
FINANCING AUTHORITY (MPFA)
HOUSING AUTHORITY (MPHA)
GEOLOGIC HAZARD ABATEMENT DISTRICT (GHAD)
SUCCESSOR AGENCY (SA)
REGULAR MEETING
NOVEMBER 16, 2022

The City Council, the Financing Authority (MPFA), the Housing Authority (MPHA), the Geologic Hazard Abatement District (GHAD), and the Successor Agency (SA) of the City of Monterey Park held a Regular Meeting of the Council in the Council Chamber, located at 320 West Newmark Avenue in the City of Monterey Park, Wednesday, November 16, 2022 at 6:30 p.m.

CALL TO ORDER:
Mayor Lo called the meeting to order at 6:34 p.m.

FLAG SALUTE:
The Monterey Park Police Explorers

ROLL CALL:
City Clerk Vincent Chang called the roll:

Council Members Present: Peter Chan, Henry Lo, Yvonne Yiu, Hans Liang
Council Members Absent:

ALSO PRESENT: City Attorney Karl Berger, City Manager Ron Bow, City Treasurer Joseph Leon, Assistant City Manager Inez Alvarez, Fire Chief Matt Hallock, Police Chief Scott Wiese, Director of Recreation & Community Services Robert Aguirre, Director of Human Resources & Risk Management Christine Tomikawa, Director of Management Services Martha Garcia, City Librarian Diana Garcia, Director of Public Works Shawn Igoe, Interim Director Community Development Steve Sizemore, Planning Manager Jessica Serrano, Finance Manager Laura Borjon, Economic Development Manager Joseph Torres, Interim Community Development Steve Sizemore, Acting Building Office Dennis Tarango, Senior Planner Beth Chow, Public Works Principal Management Analyst Xochitl Tipan, Principal Human Resource Analyst Alicia Ramirez, Fire Department Principal Management Analyst Angela Loera, Development Services Assistant Planner Kevin Tan, Assistant Deputy City Clerk Helena Cho, Community Communications Coordinator Randy Ishino, Senior Clerk Typist Christine Sakata, CivicSparks Fellow Olivia Williams

VIRTUALLY PRESENT
None

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

City Attorney Berger presented Mayor Lo with Mjolnir (Thor's hammer) on behalf of the City Council.

PUBLIC COMMUNICATIONS

- Sarkis Antonian thanked the council members terming out this year for their service and spoke in opposition to the redistricting process and city council term limits. He also expressed that healthcare employees are not getting paid enough.

STAFF COMMUNICATIONS

- Police Department: City Manager Bow announced the promotion of Scott Wiese and spoke on his journey to becoming Monterey Park's new Police Chief.

- Recreation and Community Service Department: Recreation and Community Service Director Aguirre mentioned all the events that's taking place within this year. He also attended the YMCA luncheon, along with Council Member Liang. The City of Monterey Park's Recreation and Community Service Department was honored with a City Champion Award presented by the San Gabriel Valley to recognize cities with outstanding commitment and services.

- Community Development: Senior Planner Chow gave a presentation on Earthquake Brace + Bolt Program. Planning Manager Serrano introduced Olivia Williams, CivicSpark Fellow, to update the city with the Going Green Program and the members on this project.

1. PRESENTATION - None
Matters listed under presentation are informational content and for discussion only.

2. OLD BUSINESS - None.

3. CONSENT CALENDAR ITEMS NOS. 3A-3I

Matters listed under consent calendar are considered to be routine, ongoing business and are enacted by one motion unless specified.

Action Taken: The City Council approved and adopted on consent calendar Agenda Item No. 3A, 3B, 3D, 3E, 3F, 3H, & 3I, except for Agenda Item No. 3C & 3G, which were pulled for discussion. Agenda Item No. 3A approved as amended to add additional language.

Motion: Moved by Council Member Chan and seconded by Council Member Yiu, motion carried by the following vote:

Ayes:	Council Members:	Yiu, Chan, Lo, Liang
Noes:	Council Members:	None
Absent:	Council Members:	None
Abstain:	Council Members:	None

3A. MINUTES

Approving the minutes from the special and regular meetings of October 5, 2022, and November 2, 2022, and the regular meeting of October 19, 2022.

Action Taken: The City Council approved the minutes from the regular meeting of October 19, 2022, the special and regular meetings of October 5, 2022, and November 2, 2022 as amended to add the addition of Economic Development under Staff Communication to the November 2, 2022 minutes on Consent Calendar.

3B. RESOLUTION ADOPTING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR JULY 1, 2023 – JUNE 30, 2024

Existing law requires the Monterey Park Successor Agency (SA) to formulate Recognized Obligation Payment Schedules (ROPS) under which the SA makes payments for eligible obligations of the former Redevelopment Agency. The ROPS are considered by the Successor Agency Board, proposed to the Oversight Board (OB) and, if approved by the OB, provided to the California Department of Finance for review.

The ROPS is required to be prepared for an entire 12 months. Staff requests that the City Council, acting on behalf of the SA for the former Monterey Park Redevelopment Agency, consider and adopt the ROPS 23-24 A&B and the related administrative budget for the period covering July 1, 2023 – June 30, 2024.

Action Taken: The City Council adopted Resolution No. SA-185 approving the Recognized Obligation Payment Schedule (ROPS 23-24 A&B) for the period between July 1, 2023 - June 30, 2024; and approved the Successor Agency Administrative Budget for July 1, 2023 – June 30, 2024; and directed staff to post and transmit the ROPS and administrative Budget to the appropriate public agencies on Consent Calendar.

Resolution No. 2022-SA-185
A RESOLUTION OF THE SUCCESSOR AGENCY TO THE MONTEREY PARK REDEVELOPMENT AGENCY ADOPTING RECOGNIZED OBLIGATION PAYMENT SCHEDULES PURSUANT TO HEALTH AND SAFETY CODE § 34177

3C. MONTHLY INVESTMENT REPORT – OCTOBER 2022

As of October 31, 2022 invested funds for the City of Monterey Park is $79,910,449.67.

Public Speakers:

- City Treasurer Leon gave a sentimental speech on his service as the elected City Treasurer for the past 14 years and thanked the council members on his journey. He inquired to hire a part-time specialist, Michael Bush, to help with the investments.

Action Taken: The City Council received and filed the monthly investment for October 2022.

3D. A RESOLUTION AMENDING THE MONTEREY PARK ADMINISTRATIVE CODE BY CHANGING "MANAGEMENT SERVICES DEPARTMENT" TO "FINANCE DEPARTMENT" AND REORGANIZING THE FINANCE DEPARTMENT

On June 15, 2022, the City Council adopted Resolution No. 2022-R47 that constitutes the Monterey Park Administrative Code (the "Administrative Code"). The Administrative Code establishes the organization and operations for all City departments. Section 4 of the Administrative Code establishes the "Management Services Department" which operates under the supervision of the Management Services Director. During the past two years, the City's efforts to become more efficient resulted in the Management Services Department transferring various functions to other City Departments. Rather than supporting those Departments, it has transitioned to focusing primarily on the City's financial functions. These now mirror those contemplated by Monterey Park Municipal ("MPMC") Chapter 3.04 which creates the "Office of Director of Finance."

Environmental Review:
The proposed action is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq*., "CEQA") and CEQA regulations (14 California Code of Regulations ("CCR") §§ 15000, *et seq*.) because it establishes rules and procedures to clarify existing policies and practices related to government organization; does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment; and constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, the action does not constitute a "project" that requires environmental review (*see* specifically 14 CCR § 15378(b)(4-5)).

Action Taken: The City Council adopted Resolution 2022-R87 amending the Monterey Park Administrative Code by Changing "Management Services Department" to "Finance Department" and reorganizing the Finance Department.

Resolution No. 2022-R87:
A RESOLUTION AMENDING SECTION 4 OF RESOLUTION NO. 2022-R47 TO RENAME THE "MANAGEMENT SERVICES DEPARTMENT" TO "FINANCE DEPARTMENT" AND IMPLEMENT CERTAIN ORGANIZATION CHANGES TO THE FINANCE DEPARTMENT

3E. SCHEDULE A PUBLIC HEARING OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTEREY PARK, CALIFORNIA CONFIRMING THE 2022 ANNUAL REPORT AND THE LEVY OF ASSESSMENTS FOR DOWNTOWN BUSINESS IMPROVEMENT DISTRICT NO. 1 FOR PROGRAM YEAR 2023

The Business Improvement District No. 1 (BID) was established in 1986 in accordance with the Parking and Business Improvement Area Law of 1989 (Streets and Highways Code §§ 36000-36004). The BID in the following discussion is business-based, meaning that an assessment is collected from businesses based upon fees rather than real property.

California law requires the BID to file an annual report with the City Clerk summarizing its activities and expenditures for the past year and proposing its budget for the upcoming year. The law also requires the BID assessments to be renewed annually after conducting a public hearing. The Advisory Committee to the BID requested that the City Council set a public hearing to consider the 2023 Levy of Assessment Fees. The BID Advisory Committee is not seeking an increase in assessments for the 2023 program year to help the businesses in the BID weather the financial burdens brought on by the COVID-19 pandemic.

Annual revenue and expenditures may be found within the 2022 Annual Report attached as Attachment 2 or at the City Clerk's office where it is available for viewing.

Action Taken: The City Council received and filed the 2022 BID Annual Report with the City Clerk and adopted Resolution No. 2022-R88 of Intent and set the Public Hearing for December 7, 2022, for consideration of the 2023 BID assessments on Consent Calendar.

Resolution 2022-R88:
A RESOLUTION DECLARING THE CITY OF MONTEREY PARK'S INTENT TO LEVY AND COLLECT ASSESSMENTS WITHIN BUSINESS IMPROVEMENT DISTRICT NO. 1 FOR PROGRAM YEAR 2023 AND SETTING A PUBLIC HEARING

3F. TITLE VI – CIVIL RIGHTS PROGRAM UPDATE FOR SPIRIT BUS

The Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination on the basis of race, color, and national origin in programs or activities that receive federal funding. The Federal Transportation Administration (FTA) requires agencies that receive their grant funds to demonstrate compliance with Title VI by submitting a Title VI Program Update every three years. The City Council last approved the Title VI Program in 2019. Staff recommends City Council approve the City's Title VI program update for continued compliance with FTA requirements as a sub-recipient of Los Angeles County Metro for pass-through funds. Failure to submit a Title VI Program Update could make the City ineligible for federal funding and result in loss of federal financial assistance.

Action Taken: The City Council approved the Title VI of the Civil Rights Act of 1964 (Title VI) Program Update; and authorized the City Manager or designee to submit the Title VI Program Update to the Los Angeles County Metro Office of Civil Rights and Federal Transit Administration (FTA) on Consent Calendar.

3G. APPROVAL OF SECOND AMENDMENT TO AGREEMENT WITH MARIPOSA LANDSCAPES, INC.

Staff is recommending that City Council approve the Second Amendment to Agreement No. 2136-A for expanding the scope of work to include city-owned water operation facilities. The additional work will increase the annual budget of the Maintenance Agreement from $118,000 to $170,000. This amendment will also extend the term of the Agreement to June 30, 2025, with an option to further extend the Agreement for an additional two years upon mutual consent by both parties.

Action Taken: The City Council authorized the City Manager to execute the Second Amendment, in a form approved by the City Attorney, that would increase the budget of the Landscape Maintenance Agreement with Mariposa Landscapes, Inc., from $118,000 annually to an amount not to exceed $170,000 annually. Additionally, the term of the Agreement would be extended to June 30, 2025, with an option for an additional two-year extension.

Motion: Moved by Council Member Chan and seconded by Council Member Yiu, motion carried by the following vote:

Ayes:	Council Members:	Yiu, Chan, Liang, Lo
Noes:	Council Members:	None
Absent:	Council Members:	None
Abstain:	Council Members:	None

3H. 2022 RESIDENTIAL STREET REHABILITATION – AWARD OF PUBLIC WORKS CONTRACT TO ALL AMERICAN ASPHALT

Per Resolution No. 2022-R32, the Public Works Director solicited bids for the 2022 Residential Street Rehabilitation project, Capital Improvement Project No. 96036. The public bid opening for the 2022 Residential Street Rehabilitation Project was held on October 27, 2022. Seven bids were received: Onyx Paving, All American Asphalt, Toro Enterprises, Vance Corporation, Sequel Contractors, Inc, Hardy & Harper, and Excel Paving Co. Staff recommends that the City Council authorize the City Manager to execute a Public Works contract with All American Asphalt, the lowest responsible bidder, for the 2022 Residential Street Rehabilitation Project in the amount of $869,422, plus 10% contingency.

CEQA (California Environmental Quality Act):
Since the proposed work is a minor alteration to an existing public facility, this project is Class 1 Categorically Exempt pursuant to the California Environmental Quality Act (CEQA).

Action Taken: The City Council adopted amended Resolution No. 2022-R38 updating the project list for FY 22-23 SB1 rehabilitation project by adding Polk Way to the list of locations; and authorized the City Manager to execute a public works contract, in a form approved by the City Attorney, with All American Asphalt of Corona, CA in the contract amount of $869,422 for the 2022 Residential Street Rehabilitation Project; and authorized the Director of Public Works to approve change orders and contingency up to $86,943, or 10% of the contract amount on Consent Calendar.

Resolution 2022-R89:
A RESOLUTION IDENTIFYING A STREET MAINTENANCE PROJECT TO BE INCLUDED IN THE FY 2022-23 BUDGET AND FUNDED BY SENATE BILL 1: ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

3I. TASK ORDERS TO PUBLIC WORKS ON-CALL AGREEMENT WITH TRANSTECH ENGINEERS FOR STAFF AUGMENTATION AND PLAN CHECK SERVICES

On January 19, 2022, the City Council approved Agreement No. 2282-A with Transtech Engineers Inc. for on-call General Engineering Services.

Staff requests approval of two Task Orders to this Agreement for staff augmentation services to help the Public Works and Community Development departments fill vacant positions. The first Task Order would provide engineering staff to the Public Works department to help with project management services for Capital Improvement Projects and other general engineering services. Task Order one would be funded partially by salary savings and projects' budget, as assigned. The second Task Order would provide Building & Safety staff to the Community

Development department to provide development review services for private projects. Additionally, staff requests a third task order for plan check services for private development projects. Contract services are necessary for continued services until vacant positions are filled.

Action Taken: The City Council authorized the City Manager to execute Task Order 1 per Transtech Engineers On-Call Agreement No. 2282-A, in a form approved by the City Attorney, for staff augmentation in the Public Works department not to exceed $600,000 annually; and authorized the City Manager to execute Task Order 2 per Transtech Engineers On-call Agreement No. 2282-A, in a form approved by the City Attorney, for staff augmentation in the Community Development department, not to exceed $210,000 annually; and authorized the City Manager to execute Task Order 3 per Transtech Engineers On-call Agreement No. 2282-A, in a form approved by the City Attorney, for Plan Check Services, not to exceed $692,000 annually; and appropriated $237,000 from the General Fund to cover costs for Task Order 3 – Plan Check Services on Consent Calendar.

4. PUBLIC HEARING

4A. CONSIDERATION AND POSSIBLE ACTION TO CONDUCT A PUBLIC HEARING TO WAIVE FURTHER READING AND ADOPT AN ORDINANCE AMENDING TITLES 16 AND 17 OF THE MONTEREY PARK MUNICIPAL CODE BY ADOPTING THE 2022 EDITION OF THE CALIFORNIA BUILDING STANDARDS CODE AND THE MONTEREY PARK AMENDMENTS TO THE CALIFORNIA BUILDING STANDARDS CODE

The Ordinance was introduced and received first reading at the November 2, 2022 City Council meeting. Government Code § 50022.3 requires the City Council to conduct a public hearing before conducting a second reading and approving the Ordinance because it will adopt, by reference, the 2022 California Building Standards Code, as set forth in Title 24 of the California Code of Regulations. The original staff report (from November 2, 2022) is attached for reference. Second reading and adoption of this Ordinance is recommended. If adopted, the ordinance will take effect in 30 days. If approved, the Ordinance would become effective January 1, 2023. Projects for which a building permit application and building plans were submitted before the effective date, and for which building permits are obtained within 90 days of the effective, are exempt from the updated regulations in the Ordinance. If the building permit expires, then all building plans must comply with the updated regulations.

Action Taken: The City Council opened the public hearing at 7:18 p.m. to receive documents and testaments; and after there being no testimonial and documentary evidence, close the public hearing at 7:18 p.m., adopted Ordinance No. 2224.

Motion: Moved by Council Member Liang and seconded by Council Member Chan, motion carried by the following vote:

Ayes:	Council Members:	Yiu, Chan, Liang, Lo
Noes:	Council Members:	None
Absent:	Council Members:	None
Abstain:	Council Members:	None

ORDINANCE NO. 2224:
AN ORDINANCE ADOPTING THE 2022 EDITIONS OF THE CALIFORNIA BUILDING CODE, THE CALIFORNIA RESIDENTIAL CODE, THE CALIFORNIA ELECTRICAL CODE, THE CALIFORNIA MECHANICAL CODE, THE CALIFORNIA PLUMBING CODE, THE CALIFORNIA ENERGY CODE, THE CALIFORNIA HISTORICAL CODE, THE CALIFORNIA FIRE CODE, THE CALIFORNIA EXISTING BUILDING CODE, THE CALIFORNIA GREEN BUILDING STANDARDS CODE, THE CALIFORNIA REFERENCED STANDARDS CODE, THE CALIFORNIA BUILDING STANDARDS ADMINISTRATIVE CODE, MAKING CERTAIN AMENDMENTS BASED UPON LOCAL CONDITIONS; AND AMENDING THE MONTEREY PARK MUNICIPAL CODE TO REFLECT SUCH CHANGES

4B. PUBLIC HEARING AND CONSIDERATION OF ADOPTING A RESOLUTION AMENDING THE 2021-2029 HOUSING ELEMENT (GPA 22-02) TO THE MONTEREY PARK GENERAL PLAN EFFECTIVE JANUARY 19, 2022

If adopted, the proposed Resolution would amend the previously adopted Housing Element effective January 19, 2022 ("HE"). The proposed amendment is recommended at the request of the California Department of Housing and Community Development ("HCD") to secure certification of the City's HE. These changes are primarily technical; there are no significant, substantive, amendments to the HE proposed in the draft Resolution.

CEQA (California Environmental Quality Act):
The draft Resolution amends the City's Housing Element ("HE") that was adopted January 19, 2022. There are no significant, substantive, amendments to the HE that would result from adopting the Resolution. Consequently, the findings and conclusions of Resolution No. 2022-R2 are incorporated into the draft Resolution; no additional environmental findings are required.

Action Taken: The City Council opened the public hearing at 7:22 p.m. to receive documents and testaments; and after there being no testimonial and documentary evidence, close the public hearing at 7:22 p.m., adopted Resolution No. 2022-R90 amending the Monterey Park Housing Element effective January 19, 2022; and authorized the City Manager, or designee, to prepare and transmit the final documents to the California Department of Housing and Community Development ("HCD").

Resolution No. 2022-R90:
A RESOLUTION RETROACTIVELY AMENDING THE 2021-2029 HOUSING ELEMENT (GPA 22-02) OF THE MONTEREY PARK GENERAL PLAN

Motion: Moved by Council Member Chan and seconded by Council Member Liang, motion carried by the following vote:

Ayes:	Council Members:	Yiu, Chan, Lo, Liang
Noes:	Council Members:	None
Absent:	Council Members:	None
Abstain:	Council Members:	None

4C. A PUBLIC HEARING TO CONSIDER AN APPLICATION FOR A WIRELESS TELECOMMUNICATIONS FACILITY PERMIT (DRB-22-49) TO ALLOW A NEW WIRELESS TELECOMMUNICATIONS FACILITY ON AN EXISTING SOUTHERN CALIFORNIA EDISON TRANSMISSION TOWER (DISH WIRELESS)

DISH Wireless ("Applicant"), is requesting a Wireless Telecommunications Facility Permit to allow installation of a new wireless telecommunications facility on an existing Southern California Edison ("SCE") lattice transmission tower. The property is zoned R-1 (Single-Family Residential) and is designated P-F (Public Facilities) in the General Plan.

After reviewing the application, it appears the proposed project is consistent with the requirements and standards in the Monterey Park Municipal Code ("MPMC") and will not have significant impacts to the surrounding community. A wireless telecommunication facility is an allowed use subject to a Wireless Telecommunications Facility Permit and the proposed project is consistent with the standards established in MPMC Chapter 21.34 for wireless telecommunication facilities.

CEQA (California Environmental Quality Act):
The proposed action is exempt from additional environmental review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq*., "CEQA") and CEQA Guidelines (14 California Code of Regulations ("CCR") §§ 15000, *et seq*.) because it consists of construction and location of a one new small facility or structure. Consequently, the project constitutes a Class 3 categorical exemption. A Notice of Exemption has been prepared accordingly.

Discussion:

- Planning Manager Serrano shared a PowerPoint presentation on the public site located on the north side of Arroyo Drive between Ackley and Robin Lina Lane.

Public Speakers:

- Rob Searcy, Wireless Telecom Facility DISH Wireless consultant discussed what they search for when looking for potential site areas to develop their facilities on.

Action Taken: The City Council opened the public hearing at 7:43 p.m. and received one public comment; closed the public hearing at 7:57 p.m.; and considered the evidence submitted during the public hearing, adopted Resolution No. 2022-R91 granting a Wireless Telecommunications Facility Permit (DRB-22-49) with conditions of approval.

Resolution No. 2022-R91:
A RESOLUTION APPROVING WIRELESS TELECOMMUNICATIONS FACILITY PERMIT (DRB-22-49) TO ALLOW A NEW WIRELESS TELECOMMUNICATIONS FACILITY AT ASSESSOR PARCEL NUMBER 5276-018-804

Motion: Moved by Council Member Liang and seconded by Council Member Yiu, motion carried by the following vote:

Ayes:	Council Members:	Yiu, Chan, Lo, Liang
Noes:	Council Members:	None
Absent:	Council Members:	None
Abstain:	Council Members:	None

5. NEW BUSINESS

5A. INTRODUCING AND WAIVING THE FIRST READING OF AN ORDINANCE EXTENDING THE EFFECTIVE DATE FOR THE 2020 MONTEREY PARK BUSINESS RECOVERY PROGRAM FROM DECEMBER 30, 2022 TO MAY 31, 2023

In 2020, at the onset of the COVID-19 pandemic, the City adopted a series of ordinances aimed at combating the effects of the pandemic on our local economy including the creation of the 2020 Monterey Park Business Recovery Program (the “Program”). The Program included temporary regulations to help local businesses recover from the devasting effects of the pandemic. The majority of the temporary regulations have been codified permanently into the Monterey Park Municipal Code, except for the outdoor temporary event permit regulations. The outdoor temporary event permit regulations were first adopted in July 15, 2020 and have since been extended twice. They are set to expire on December 30, 2022.

Staff prepared an ordinance to adopt *permanent* regulations for this valuable outdoor dining use. On November 8, 2022, the Planning Commission conducted a duly noticed public hearing and adopted a resolution recommending City Council approval of a draft ordinance with permanent regulations.

To ensure ample time for noticing and presentation to the City Council for its consideration of the ordinance with permanent regulations, staff recommends the City Council adopt the attached proposed extension ordinance to continue the effective date of the Program from December 30, 2022 to May 31, 2023. This would allow the temporary outdoor dining regulations to continue for a specified period.

Action Taken: The City Council introduced and waived the first reading of an ordinance extending the effective date for the 2020 Monterey Park Business Recovery Program from December 30, 2022 to May 31, 2023.

Motion: Moved by Council Member Liang and seconded by Council Member Yiu, motion carried by the following vote:

Ayes:	Council Members:	Yiu, Chan, Lo, Liang
Noes:	Council Members:	None
Absent:	Council Members:	None
Abstain:	Council Members:	None

Ordinance 1st Reading, entitled:

AN ORDINANCE ADOPTING THE 2022 EDITIONS OF THE CALIFORNIA BUILDING CODE, THE CALIFORNIA RESIDENTIAL CODE, THE CALIFORNIA ELECTRICAL CODE, THE CALIFORNIA MECHANICAL CODE, THE CALIFORNIA PLUMBING CODE, THE CALIFORNIA ENERGY CODE, THE CALIFORNIA HISTORICAL CODE, THE CALIFORNIA FIRE CODE, THE CALIFORNIA EXISTING BUILDING CODE, THE CALIFORNIA GREEN BUILDING STANDARDS CODE, THE CALIFORNIA REFERENCED STANDARDS CODE, THE CALIFORNIA BUILDING STANDARDS ADMINISTRATIVE CODE, MAKING CERTAIN AMENDMENTS BASED UPON LOCAL CONDITIONS; AND AMENDING THE MONTEREY PARK MUNICIPAL CODE TO REFLECT SUCH CHANGES.

6. CITY COMMUNICATIONS (CITY COUNCIL)

6A. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTEREY PARK RECOGNIZING NOVEMBER 13-19, 2022 AS LA VS. HATE UNITED AGAINST HATE WEEK

Discussion:

- Mayor Lo discussed how this has been done County wide and that it recognizes the acts of hate towards different communities. It is in response to the rise of hate crimes that poses a dangerous threat to the safety of our neighborhood.

- Council Member Liang commended Mayor Lo for bringing this forward.

Action Taken: The City Council adopted Resolution No. 2022-R92 as recognizing November 13-19, 2022 as LA Vs. Hate United Against Hate Week.

Motion: Moved by Council Member Lo and seconded by Council Member Liang, motion carried by the following vote:

Ayes:	Council Members:	Yiu, Chan, Lo, Liang
Noes:	Council Members:	None
Absent:	Council Members:	None
Abstain:	Council Members:	None

Resolution No. 2022-R92:
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTEREY PARK RECOGNIZING NOVEMBER 13-19, 2022, AS LA VS. HATE UNITED AGAINST HATE WEEK

COUNCIL COMMUNICATION:

Council Member Yiu attended Chinatown Service Center's 51st Anniversary Gala and went to Japan with her husband and enjoyed the hot springs and food.

Council Member Chan thanked the community and the staff for the 10 years of service with Monterey Park. He recognized his colleagues that are terming out; Hans Liang, Joseph Leon, and Vincent Chang and thanked them for their involvement with the city. He wished everyone a Happy Thanksgiving.

Council Member Liang attended the Veteran's Day Ceremonial Legion and the YMCA Champion Award Ceremony. He also wished everyone a Happy Thanksgiving.

Mayor Lo attended the Chinatown Service Center (CSC), Garvey Education Foundation Gala, Veteran's Day Ceremonial Legion. He expressed his gratitude towards CSC's organization and shared a quick insight of the foundation behind Chinatown Service Center and his personal upbringing with CSC. He also spoke on his involvement with the Garvey Education as a school board member and being a co-founder of the Garvey Education Foundation. Mayor Lo invited everyone to visit the tree and plaque to honor William Sanchez for his dedication and service to the community at Barnes Park. He also thanked his colleagues Hans Liang, Peter Chan, Joseph Leon, and Vincent Chang for their service and dedication with the community and would like to thank everyone on the dais for the thoughtful gift. He wished everyone a Happy Thanksgiving.

7. **FUTURE AGENDA ITEMS** – None.

8. **CLOSED SESSION (IF REQUIRED; CITY ATTORNEY TO ANNOUNCE)**
None.

ADJOURNMENT

There being no further business for consideration, the meeting was adjourned at 8:21 p.m.

_____
Vincent D. Chang
City Clerk

City Council Staff Report

DATE: December 21, 2022
AGENDA ITEM NO: **Consent Calendar - 3B**

TO: The Honorable Mayor and City Council
FROM: Amy Lee, City Treasurer
SUBJECT: Monthly Investment Report – November 2022

RECOMMENDATION:

It is recommended that the City Council consider:

1. Receiving and filing the monthly investment report; and
2. Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

As of November 30, 2022 invested funds for the City of Monterey Park is $77,975,943.52.

BACKGROUND:

In accordance with the City's Investment Policy, a monthly investment report is presented to the City Council showing the types of investments, dates of maturities, amounts of deposits, rates of interest, and the current market values for securities with maturity more than 12 months. The attached monthly investment report includes a summary investment report for the LA County Pooled Investment Fund, which displays the composition by type for the entire pooled investment fund.

Respectfully submitted by:

Amy Lee
City Treasurer

Prepared by:

Martha Garcia
Finance Director

Approved by:

Ron Bow
City Manager

Attachment 1
Monthly Investment Report

CITY OF MONTEREY PARK
INVESTMENT REPORT
NOVEMBER 30, 2022

INVESTMENTS PORTFOLIO PROFILE:

TOTAL BALANCE AT 11/30/2022 **$ 77,975,943.52**

INVESTMENT COMPOSITION

(1)	**LA COUNTY POOLED INVESTMENT FUND** *(See Schedule A for LA County Pool Composition)*	ON DEMAND	2.300%	***$ 43,044,706.77***
(2)	**LOCAL AGENCY INVESTMENT FUND**	ON DEMAND	1.880%	***$ 28,066,236.75***

	(3) CERTIFICATES OF DEPOSIT	Purchase Date	Maturity Date	Interest Rate	
1	PREFERRED BANK	09/03/22	09/03/23	2.51%	100,000
2	PREFERRED BANK	09/08/22	09/08/23	2.67%	150,000
3	SALLIE MAE BANK	08/11/21	08/12/24	0.70%	245,000
4	GOLDMAN SACHS BANK	08/11/21	08/12/24	0.60%	245,000
5	TOYOTA FINANCIAL SAVINGS BANK	09/16/21	09/16/24	0.65%	245,000
6	BMW BANK NORTH AMERICA	09/17/21	09/17/24	0.65%	245,000
7	SYNCHRONY BANK	09/17/21	09/17/24	0.65%	245,000
8	UBS BANK USA	09/22/21	09/23/24	0.65%	245,000
9	STATE BANK OF INDIA	10/18/21	10/18/24	0.70%	245,000
10	LIVE OAK BANKING CO.	01/14/22	01/16/24	0.70%	245,000
11	GREENSTATE CREDIT UNION	01/14/22	01/16/24	0.70%	245,000
12	BEAL BANK USA	01/19/22	01/17/24	0.70%	245,000
13	MEDALLION BANK UTAH	01/28/22	01/28/25	1.25%	245,000
14	PENTAGON FEDERAL UNION	01/31/22	01/31/25	1.25%	245,000
15	BEAL BANK	02/02/22	01/29/25	1.15%	245,000
16	AMERICAN EXPRESS NATL BANK	03/09/22	03/11/24	1.60%	245,000
17	BARCLAYS BANK DELAWARE	03/09/22	03/11/24	1.55%	245,000
18	CAPITAL ONE BANK USA	03/16/22	03/17/25	1.80%	245,000
19	VALLIANCE BANK	03/18/22	03/18/25	1.40%	245,000
20	STATE BANK OF TEXAS	03/25/22	03/25/25	1.45%	245,000
21	FIRST FED SAVINGS & LOAN	03/30/22	03/31/25	2.00%	245,000
22	LAFAYETTE FEDERAL CREDIT UNION	03/30/22	03/31/25	2.20%	245,000
23	ALLY BANK	03/31/22	03/28/24	1.95%	245,000
24	COMENITY CAPITAL BANK	04/14/22	04/14/25	2.55%	245,000
25	AMERICU CREDIT UNION	04/21/22	04/21/25	2.30%	245,000
26	BALBOA THRIFT & LOAN	04/29/22	04/29/25	2.00%	245,000
27	CONNEXUS CREDIT UNION	05/26/22	05/28/24	2.65%	245,000
28	METRO CREDIT UNION	07/13/22	07/12/24	3.20%	245,000
29	FIRST TECHNOLOGY CREDIT UNION	8/5/2022	08/05/24	3.25%	245,000
	Total CDs (29)			1.567%	***$ 6,865,000.00***

OTHER INFORMATION:

BANK BALANCE: [1] $ 9,265,650.73

AVERAGE MATURITY DAYS 60

AVERAGE INTEREST RATE FOR THE MONTH 2.081%

THE CITY'S INVESTMENT HAS SUFFICIENT LIQUIDITY TO MEET THE CITY'S EXPENDITURE REQUIREMENTS FOR THE NEXT 180 DAYS. THE 180-DAY LIQUIDITY DISCLOSURE IS REQUIRED PER GOVERNMENT CODE 53646.

INTEREST EARNINGS FOR 1ST QTR 2022-2023 **$ 270,308.50**

THERE HAVE BEEN NO VARIANCES TO THE INVESTMENT POLICY.

(1) Bank balance is maintained to cover outstanding warrants, payroll checks and on-going operating costs.

POOLED SURPLUS AND SPECIFIC PURPOSE INVESTMENTS
AS OF OCTOBER 31, 2022

SCHEDULE A

PORTFOLIO PROFILE	Pooled Surplus Investments	Specific Purpose Investments
Inventory Balance at 10/31/22		
At Cost	$ 43,268,255,261	$ 160,832,148
At Market	$ 40,165,954,904	$ 133,196,625
Repurchase Agreements	$ -	$ -
Reverse Repurchase Agreements	$ -	$ -
Composition by Security Type:		
Certificates of Deposit	4.39%	0.00%
United States Government and Agency Obligations	72.49%	72.88%
Bankers Acceptances	0.00%	0.00%
Commercial Paper	23.02%	0.00%
Municipal Obligations	0.07%	1.78%
Corporate and Deposit Notes	0.03%	0.00%
Repurchase Agreements	0.00%	0.00%
Asset-Backed	0.00%	0.00%
Other	0.00%	25.34%
1-60 days	31.42%	0.00%
61 days-1 year	24.46%	27.79%
Over 1 year	44.12%	72.21%
Weighted Average Days to Maturity	969	

City Council Staff Report

DATE: December 21, 2022

AGENDA ITEM NO: Consent Calendar - 3C

TO:	The Honorable Mayor and City Council
FROM:	Ron Bow, City Manager
SUBJECT:	Consideration and possible action to authorize the City Manager to execute a legal retainer agreement with Burke, Williams & Sorensen and terminate a legal retainer agreement with Hensley Law Group effective on or before January 1, 2023; reappoint Karl H. Berger as City Attorney.

RECOMMENDATION:

It is recommended that the City Council consider:

1. Authorizing the City Manager to terminate the legal services agreement with Hensley Law Group to be effective on or before December 31, 2022; and
2. Authorizing the City Manager to execute a legal services agreement with Burke, Williams and Sorensen to be effective on or before January 1, 2023; and
3. Confirming Karl H. Berger as the current City Attorney and reappoint him as City Attorney, effective on or before January 1, 2023; or
4. Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

Mr. Berger informed the City that he is accepting a partnership with Burke, Williams and Sorensen ("Burke") on or before January 1, 2023. By letter dated December 14, 2022, Burke confirmed that it will execute a legal services agreement based upon the same terms, conditions, and rate structure (as of 2022) as the current services agreement. The letter also includes a copy of Burke's firm overview. Making sure Mr. Berger continues as City Attorney is important to the City and his joining Burke will only help him continue to provide outstanding legal services.

BACKGROUND:

Karl H. Berger was appointed City Attorney on August 19, 2020 and was previously the Assistant City Attorney for 11 years (since 2009). At the time of his appointment in 2020, the City Council authorized amendment of the City's existing legal services agreement to reflect Mr. Berger's appointment as City Attorney. During his more than 13 years serving the City, Mr. Berger has provided exceptional legal services to the City of Monterey Park.

FISCAL IMPACT:
None

Respectfully submitted by:

Ron Bow
City Manager

Prepared by:

Inez Alvarez
Assistant City Manager

ATTACHMENT:
1. Letter dated December 14, 2022 from Burke

ATTACHMENT 1
Letter dated December 14, 2022 from Burke

BURKE, WILLIAMS & SORENSEN, LLP

444 South Flower Street - Suite 2400
Los Angeles, California 90071-2953
voice 213.236.0600 - fax 213.236.2700
www.bwslaw.com

Direct No.: 213.236.2818
jwelsh@bwslaw.com

December 14, 2022

Sent via email rbow@montereypark.ca.gov

Ron Bow, City Manager
City of Monterey Park
320 West Newmark Avenue
Monterey Park, CA 91754

Re: Confirmation of Legal Services Agreement

Dear Mr. Bow:

We are very pleased to confirm that Karl H. Berger has accepted our offer of full-time employment and will become a partner of Burke, Williams & Sorensen, LLP ("Burke") effective January 1, 2023.

Additionally, we are very pleased to accept a Legal Services Agreement upon the same terms, conditions and billing structure (including the current Year 2022 rates) as the current agreement (as amended in Year 2020).

Burke is a nationally recognized public law firm that will soon celebrate its 100 year anniversary and we look forward to serving the City of Monterey Park. A firm overview is included with this letter for the City Council's information.

Very truly yours,

John J. Welsh
Managing Partner

JJW:tn

LA #4877-7358-0354 v2

BURKE, WILLIAMS & SORENSEN
FIRM OVERVIEW

For over ninety years, Burke, Williams & Sorensen, LLP has served the public agencies and private business entities of California. Today, with over one hundred attorneys and ten offices throughout California, we are fully prepared to meet your legal needs.

Burke originated as a law firm in 1927, founded by two brothers, Louis H. Burke and Martin J. Burke, and Thomas P. White. From its inception, the firm specialized in corporate law and business litigation. In 1938, the firm also embarked on what was at the time a unique specialty - the representation of public entities. Always striving for excellence in its attorneys, two of the firm's founding partners, Louis H. Burke and Thomas P. White, went on to serve as California Supreme Court Justices. Throughout its growth over the years, and into the new millennium, Burke has retained its roots in real estate and business law and litigation, and as one of the preeminent firms in the fields of public law, education law, and labor and employment law.

Our clients value not only our expertise and efficiency, but also our integrity and responsiveness. In each of our eight primary practice groups, our only focus is to serve our clients so that they may receive the very best possible result.

At Burke, Williams & Sorensen, LLP, we provide our broad base of clients with superior, cost-efficient legal services tailored to the particular demands of working and doing business in the nation's most dynamic region: California.

In all our work, and in all our areas of legal expertise, our growth and strength have derived from a commitment to serve our clients while following sound business practices in an environment that celebrates diversity and fosters professional development.

Our reputation, however, is based on more than just our flexible, task-oriented approach to providing high-quality legal services rooted in our attorneys' expertise, skills, and performance. Our clients also value us for our honesty, reliability, accessibility, efficiency, and prompt responsiveness, all qualities that form a foundation for the most important factor of all when you choose legal representation: **Trust.**

Burke assists our clients with complex, multi-disciplinary issues and responds to our clients' needs in markets across the state and nationally. Clients benefit from our depth and breadth of experience in key industry sectors, including public law, retail, education, insurance and health care.

CONSTRUCTION LAW

Burke is home to a nationally-recognized construction law and litigation practice, representing public and private clients in all facets of the construction process.

We have handled cases involving virtually every type of public or private construction project, including power plants, highways, hospitals, schools, jails, parking facilities, libraries, hotels, shopping malls, sports facilities, wastewater facilities, pipelines, and many more.

EDUCATION LAW

Our Education Law Practice Group provides comprehensive representation to public school districts, community college districts, private schools, private vocational schools, and private colleges. In serving these educational institutions, we are committed to helping them fulfill their respective missions by providing strong advocacy and sound legal advice.

ENVIRONMENTAL, LAND USE, AND NATURAL RESOURCES

Burke's Environmental Group is uniquely positioned to address clients' projects, whether large or small, on every phase – from idea, to planning, to implementation, to successful conclusion. Whether you are faced with an environmental, planning, land use, NEPA, CEQA, water, contract, or funding issue, we can assist you in effectively and efficiently achieving your goal.

INSURANCE COVERAGE AND LITIGATION

Burke has a nationally renowned insurance coverage, litigation, and appellate practice in first and third-party insurance matters. Burke's litigators specialize in advising clients and litigating cases from start to finish in the areas of bad faith and punitive damages; life, health, disability, and accidental death and dismemberment insurance; long-term care and hospital indemnity insurance; ERISA pension and welfare benefit plans; property, casualty, and liability insurance; professional E&O insurance; health insurance; environmental coverage; complex litigation; class actions; and FINRA and financial services.

LABOR AND EMPLOYMENT LAW

Our Labor and Employment Law practice group is dedicated to helping California employers solve their labor and employment issues in a strategic, creative, and cost-effective manner.

At home in the courtroom, at the bargaining table, and providing day-to-day preventive counseling and training, we provide expert advice and litigation skills.

LITIGATION

Burke maintains a full-service litigation practice, covering over a dozen specialized areas of the law. Burke has handled cases in a broad spectrum of subject areas, including: contract disputes and general commercial litigation, public law litigation, real estate, commercial tenancies, labor and employment, construction, environmental and land use, insurance, constitutional law, securities, bankruptcy, financial services, business torts, personal injury and products liability, intellectual property, and professional malpractice.

PUBLIC LAW

Our public law practice began in 1938 when founding partner Louis H. Burke was appointed as City Attorney of the City of Montebello. Today, our public law practice delivers a full range of services and represents the spectrum of public and quasi-public entities including municipalities, special districts, counties, joint powers authorities, and departments of the State, as well as special purpose entities such as redevelopment agencies, economic development corporations, and affordable housing non-profits.

REAL ESTATE AND BUSINESS LAW

Recognizing that real estate issues often require local resources and expertise in many other areas of the law, Burke builds cross-disciplinary teams according to clients' needs. The team works effectively and efficiently across jurisdictions and practice areas drawing upon expertise in specialty areas such as banking and financial services, food and grocery services, technology, and research and development.

City Council Staff Report

DATE: December 21, 2022

AGENDA ITEM NO: Consent Calendar - 3D

TO: The Honorable Mayor and City Council

FROM: Ron Bow, City Manager & Director of Emergency Services
Karl H. Berger, City Attorney

SUBJECT: Adopt a Resolution Confirming and Extending a Local Emergency for the Goodviews Abatement Project ("GAP")

RECOMMENDATION:

It is recommended that the City Council consider:

1. Adopting a Resolution confirming and extending a local emergency for the GAP; and
2. Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

Completion of the GAP was scheduled to occur by December 31, 2022. Complications resulting from the required redesign of the GAP (*see* Exhibit B to Resolution No. 2022-R34) postponed the completion date until February 2023. While Resolution No. 2022-R63 anticipated a termination of emergency powers by the end of December 2022, it is now apparent that such emergency powers must be extended until at least March 1, 2023.

BACKGROUND:

Pursuant to Resolution Nos. (collectively, the "Emergency Resolutions") 12255 (adopted June 16, 2021); 2022-R22 (adopted April 20, 2022); 2022-R34 (adopted May 18, 2022); and 2022-R63 (adopted August 1, 2022), the City Manager and City Attorney are exercising emergency powers to abate a public nuisance in accordance with the Settlement Agreement in the civil case captioned *The People of the State of California, ex rel., Mark D. Hensley, City Attorney for the City of Monterey Park v. Center Int'l Investments, Inc.*, *et al.* (filed December 31, 2015) LASC Case No. BC605788. This is identified as the Goodviews Abatement Project ("GAP").

On December 7, 2022, three new Councilmembers assumed office. The draft resolution incorporates by reference the findings, declarations, and delegation of authority within the Emergency Resolutions. Implementation of the GAP in accordance with the Emergency Resolutions is occurring on nearly a daily basis.

Since the City Council last considered the GAP, via Resolution No. 2022-R83 on November 2, 2022, the City Manager undertook several actions including, without

limitation, those listed in attached Exhibit "A," which is incorporated by reference ("Approved Actions").

FISCAL IMPACT:

There is no direct fiscal impact from adopting this resolution. The projected total cost for the GAP is uncertain but is calculated to exceed $14M. The City Council already commenced lien proceeding to recover its ongoing costs. It also has secured deeds of trust on two properties owned by CII recently re-appraised at a total of approximately $8.6M.

Respectfully Submitted by:

Ron Bow
City Manager

Respectfully Submitted by:

Karl H. Berger
City Attorney

ATTACHMENTS:

1. Draft Resolution
2. Resolution No. 2022-R34

ATTACHMENT 1
Draft Resolution

RESOLUTION NO.

A RESOLUTION EXTENDING THE LOCAL EMERGENCY FOR THE GOODVIEWS ABATEMENT PROJECT ("GAP") PURSUANT TO GOVERNMENT CODE § 8630 AND RATIFYING ALL EMERGENCY ACTIONS UNDERTAKEN BY THE CITY MANAGER AND CITY ATTORNEY JUNE 16, 2021.

The City Council does resolve as follows:

SECTION 1: The City Council finds and declares as follows:

A. Pursuant to Resolution Nos. (collectively, the "Emergency Resolutions") 12255 (adopted June 16, 2021); 2022-R22 (adopted April 20, 2022); 2022-R34 (adopted May 18, 2022); and 2022-R63 (adopted August 1, 2022), the City Manager and City Attorney are exercising emergency powers to abate a public nuisance in accordance with the Settlement Agreement in the civil case captioned *The People of the State of California, ex rel., Mark D. Hensley, City Attorney for the City of Monterey Park v. Center Int'l Investments, Inc.*, *et al.* (filed December 31, 2015) LASC Case No. BC605788. This is identified as the Goodviews Abatement Project ("GAP").

B. On December 7, 2022, three new Councilmembers assumed office. This Resolution incorporates by reference the findings, declarations, and delegation of authority within the Emergency Resolutions.

C. Completion of the GAP was scheduled to occur by December 31, 2022. Complications resulting from the required redesign of the GAP (*see* Exhibit B to Resolution No. 2022-R34) postponed the completion date until February 2023. While Resolution No. 2022-R63 anticipated a termination of emergency powers by the end of December 2022, it is now apparent that such emergency powers must be extended until at least March 1, 2023.

D. Implementation of the GAP in accordance with the Emergency Resolutions is occurring on nearly a daily basis. Since the City Council last considered the GAP, via Resolution No. 2022-R83 on November 2, 2022, the City Manager undertook several actions including, without limitation, those listed in attached Exhibit "A," which is incorporated by reference ("Approved Actions").

SECTION 3: *Extension of Emergency.* The City Council considered the GAP and finds that the emergency authorized in the Emergency Resolutions should be extended. Additionally, the City Council reaffirms the authority delegated to the City Manager and City Attorney in the Emergency Resolutions. The local emergency associated with implementation of the GAP is extended until at least March 1, 2023 unless terminated earlier by City Council resolution or otherwise extended by resolution or minute order.

SECTION 4: *Severability.* If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications, and to this end, the provisions of this Resolution are severable.

SECTION 5: *Electronic Signatures*. This Resolution may be executed with electronic signatures in accordance with Government Code § 16.5. Such electronic signatures will be treated in all respects as having the same effect as an original signature.

SECTION 6: *Recordation*. The Mayor, or presiding officer, is authorized to sign this Resolution signifying its adoption by the City Council of the City of Monterey Park and the City Clerk, or her duly appointed deputy, may attest thereto.

SECTION 7: *Effective Date.* This Resolution will become effective immediately upon adoption and will remain effective unless repealed or superseded.

PASSED AND ADOPTED this ____ day of December, 2022.

_____
Henry Lo, Mayor

ATTEST:

_____
Maychelle Yee, City Clerk

APPROVED AS TO FORM:

_____
Karl H. Berger, City Attorney

Attachments:

Exhibit A: Approved Actions

EXHIBIT “A”

APPROVED ACTIONS
GAP EMERGENCY

APPROVED ACTIONS
SINCE NOVEMBER 2022

- City Manager executed Amendment No. 4 with Geosyntec Consultants to add Task Orders to Agreement No. 2278-A. Geosyntec Consultants is the Engineer of Record for the GAP.
- City Manager executed Task Order No. 1 with Geosyntec Consultants in the amount of $52,500 for additional construction observation and materials testing services necessary for the quality assurance of the construction of the GAP.
- City Manager executed Task Order No. 2 with Geosyntec Consultants in the amount of $29,500 for additional engineering design services, hillside inclinometer monitoring and equipment rental needed to monitor the hillside and project management needed to implement the GAP.
- City Manager executed Change Order No. 4 with C.A. Rasmussen to extend the construction contract by 60 working days. C.A. Rasmussen, and its subcontractors, is constructing the GAP.
- City Manager ensured recordation of the Quarter 3 Abatement Lien against the GAP property (authorized via Resolution No. 2022-R83) on November 2, 2022.
- City Manager executed Task Order No. 3 with Hamner Jewell & Associates to conduct an appraisal of APN 5254-002-029 following an offer of donation received by the City on or about October 18, 2022 (the “Offer”). Hamner Jewell & Associates provides the City will real property related evaluations including, without limitation, appraisals. The Offer is for real property directly adjacent to the GAP.

ATTACHMENT 2
Resolution 2022-R34

RESOLUTION NO. 2022-R34

A RESOLUTION CONFIRMING AND EXTENDING A LOCAL EMERGENCY FOR THE GOODVIEWS ABATEMENT PROJECT ("GAP") BASED UPON THE REPORT SUBMITTED PURSUANT TO GOVERNMENT CODE § 8630.

BE IT RESOLVED by the Council of the City of Monterey Park as follows:

SECTION 1: The City Council finds as follows:

A. Pursuant to Resolution No. 2022-R22, adopted April 20, 2022, the City Council continued the emergency powers previously delegated to the City Manager via Resolution No. 12255, adopted June 16, 2021, to implement nuisance abatement activities at 1688 West Garvey Avenue identified as the Goodviews Abatement Project ("GAP");

B. Government Code § 8630 requires regular reporting to the City Council regarding the necessity of continuing an emergency. While this requirement was suspended the Governor's proclamation in 2020, the City Council's termination of the local emergency necessitates a resumption of reporting requirements;

C. Based upon the report provided by the City Manager and City Attorney, it is apparent that the emergency related to the GAP should continue.

SECTION 2: *Findings.* The City Council finds that the entirety of the administrative record provides substantial evidence supporting continuation of the ongoing emergency related to the GAP. In addition to all other matters within the City's public records, the City Council also takes specific notice of the following matters:

A. Attached as Attachment "1," and incorporated by reference, is the Warrant Return filed by the City Attorney dated March 29, 2022 which provides a comprehensive overview of the GAP between October 11, 2021 and March 29, 2022;

B. Attached as Attachment "2," and incorporated by reference, is a Declaration by Jonathan Turner, P.E., who is the Acting City Planner and Acting Public Works Director for the GAP. It provides a detailed accounting of various matters since the beginning of 2021 related to the GAP and the separate, but related, residential development project approved by the City Council on June 16, 2021 ("Plan A");

C. Attached as Attachment "3," and incorporated reference, is a letter dated May 12, 2022 from the City Manager to CII responding to an alleged breach of the development agreement that, in part, governs Plan A;

D. Attached as Attachment "4," and incorporated by reference, is the Settlement Agreement between the People of the State of California and CII that, in part, governs implementation of the GAP.

SECTION 3: *Authorizations*. The City Council reaffirms the authority delegated to the City Manager and City Attorney in Resolution No. 2022-R22 and Resolution No. 12255. The local emergency associated with implementation of the GAP is extended until at least December 31, 2022 unless terminated earlier by City Council resolution or otherwise extended by resolution or minute order.

SECTION 4: *Electronic Signatures*. This Resolution may be executed with electronic signatures in accordance with Government Code §16.5. Such electronic signatures will be treated in all respects as having the same effect as an original signature.

SECTION 5: *Recordation*. The Mayor, or presiding officer, is authorized to sign this Resolution signifying its adoption by the City Council of the City of Monterey Park and the City Clerk, or her duly appointed deputy, may attest thereto.

SECTION 6: *Effective Date.* This Resolution will become effective immediately upon adoption and will remain effective unless repealed or superseded.

PASSED AND ADOPTED this 18th day of May, 2022.

Henry Lo, Mayor

ATTEST:

Vincent D. Chang, City Clerk

APPROVED AS TO FORM:

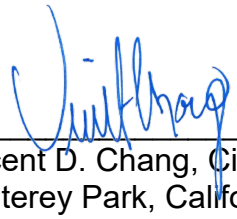
Karl H. Berger, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) §
CITY OF MONTEREY PARK)

I, Vincent D. Chang, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. 2022-R34 was duly adopted and passed at a regular meeting of the Monterey Park City Council on the 18th day of May, 2022 by the following vote:

Ayes:	Council Members: Yiu, Chan, Liang, Lo
Noes:	Council Members: None
Abstain:	Council Members: None
Absent:	Council Members: None

Dated this 18th day of May, 2022.



Vincent D. Chang, City Clerk
Monterey Park, California

Resolution
Attachment 1

KARL H. BERGER, State Bar No. 178458
City Attorney, City of Monterey Park
TIMOTHY E. CAMPEN, State Bar No. 197941
Assistant City Attorney, City of Monterey Park
HENSLEY LAW GROUP
2600 W Olive Ave Ste. 500
Burbank, CA 91505
Tel: (818) 333-5120; Fax: (818) 333-5121

Attorneys for Plaintiff CITY OF MONTEREY PARK
ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA

Exempt from fees pursuant to Government Code § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

IN RE PROPERTY AT: 1688 WEST GARVEY AVENUE, MONTEREY PARK, CALIFORNIA	**RETURN OF ABATEMENT WARRANT**
Property Owner: Center Int'l Investments, Inc.	*Hon. Suzette Clover, Judge*

I, Karl H. Berger, City Attorney for the City of Monterey Park, certify that I personally monitored the execution of the abatement warrant signed by the Honorable Suzette Clover on November 17, 2021, attached as Exhibit A and incorporated by reference (the "Warrant").

Pursuant to the Warrant's directive, I provided the court with four Status Reports during the effective dates of the Warrant. Those are collectively attached as Exhibit B and incorporated by reference (the "Reports"). As reflected in the Reports, there has been no additional attempt by individuals to interfere with the People's implementation of the temporary mitigation (aka winterization) measures or the Goodviews Abatement Project ("GAP") on the Property.

The Warrant specifically authorized implementation of the winterization measures needed to protect the Property from the effects of rain and other elements that could result in the further erosion and destabilization of the hillside. That was accomplished via the City of Monterey Park, on behalf of the People, retaining C.A. Rasmussen to implement the best

management practices ("BMP") required by applicable law. Upon information and belief, those BMPs are now integrated into the overall GAP and will be closely monitored during the entirety of construction (estimated to conclude by the end of 2022). A separate court order confirming the People's actions regarding the GAP is expected to be issued on or about May 5, 2022.

Accordingly, the Warrant is fully executed and the City returns it to the Court (in accordance with Code of Civil Procedure § 1822.55).

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

EXECUTED on this 29th Day of March, 2022, at Santa Clarita, California.

Karl H. Berger
City Attorney for the City of Monterey Park
Ex rel. the People of the State of California

DATE: March 30, 2022 SIGNED: Suzette Clover
Hon. Suzette Clover

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

IN RE PROPERTY AT: 1688 WEST GARVEY AVENUE., MONTEREY PARK, CALIFORNIA Property Owner: Center Int'l Investments, Inc.	Warrant No.: **[PROPOSED] ABATEMENT WARRANT** [*Filed Concurrently with:* *1. Application for Abatement Warrant* *2. Compendium of Declarations and Exhibits]*

TO THE PEOPLE OF THE STATE OF CALIFORNIA, TO ANY POLICE OFFICER, FIRE OFFICIAL, CODE ENFORCEMENT OFFICER, PUBLIC WORKS OFFICIAL, OR OFFICER ON BEHALF OF THE CITY OF MONTEREY PARY:

Proof by Declaration having been made this day before me by Timothy E. Campen, Assistant City Attorney, and by Jonathan M. Turner, Acting City Planner, and it appearing therefrom that there is good cause for an Abatement Warrant at the parcel located at 1688 West Garvey Avenue in the City of Monterey Park, California and identified as Assessor's Parcel No. 5254-002-031 ("Property"), the Court orders as follows:

The City of Monterey Park on Behalf of the People of the State of California ("City") and its officers, agents, employees or authorized representatives are hereby ordered for the purpose of implementing temporary erosion mitigation measures to enter the Property between any hours needed, but ordinarily between 8:00 a.m. to 6:00 p.m. to: (1) remove all failed soils erosion measures, including, without limitation, sand bags and plastic tarps; (2) place new

gravel-filled bags and new tarps on the hillside of the Property, and where otherwise needed, in compliance with the Property's Winterization Measures approved by the City of Monterey in May 2018; and (3) as needed for ongoing maintenance of the Winterization Plan. Additionally, City and its officers, agents, employees or authorized representatives are hereby ordered to enter the Property at any hour in order to repair any failures of erosion mitigation measures as may be necessary under emergency conditions and where time is of the essence.

This abatement will be undertaken to ensure that the Property is in compliance with all applicable laws including, without limitation, the Monterey Park Municipal Code, to remove and abate any and all conditions which constitute a public nuisance or a threat to the public's health and safety.

Reasonable notice may be provided to the Property's owner or owner's representative but is not required. City is authorized to exercise reasonable force to implement this Warrant and/or enter the Property, should any person seek to interfere with City's actions.

In light of the unusual circumstances and timeline needed to permanent abate the public nuisances on the Property, this Warrant will be effective for a period not longer than 75 days, unless extended or renewed. City must provide a report regarding its progress regarding the Winterization Measures to the Court not later than December 15, 2021 and January 15, 2022. Unless the City seeks an extension of this Warrant on or about January 15, 2022, it must file a return for this Warrant on or about February 1, 2022.

The abatement activities authorized by this Warrant may be undertaken in the absence of the owner or occupant of the Property.

The City is entitled to reimbursement from the Property owner for any and all costs relating to the abatement of the Property, including attorney's fees reasonably incurred in connection with the abatement activities authorized by this Warrant.

A return to this Court will be made in accordance with this Warrant and the provisions of Code of Civil Procedure § 1822.55.

DATED: November 17th, 2021

Suzette Clover
JUDGE OF THE SUPERIOR COURT

Exhibit B

COPY

RECEIVED
CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles
DEC 14 2021
Sherri R. Carter, Executive Officer/Clerk of Court
By _____ Deputy
ERIN FLORES

KARL H. BERGER, State Bar No. 178458
City Attorney, City of Monterey Park
TIMOTHY E. CAMPEN, State Bar No. 197941
Assistant City Attorney, City of Monterey Park
HENSLEY LAW GROUP
2600 W Olive Ave Ste. 500
Burbank, CA 91505
Telephone: (818) 333-5120
Facsimile: (818) 333-5121

Exempt from fees pursuant to *Government Code § 6103*

Attorneys for Plaintiff,
CITY OF MONTEREY PARK, ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

IN RE PROPERTY AT: 1688 WEST GARVEY AVENUE, MONTEREY PARK, CALIFORNIA Property Owner: Center Int'l Investments, Inc.	**STATUS REPORT SUBMITTED BY THE CITY ATTORNEY FOR THE CITY OF MONTREY PARK ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CITY OF MONTEREY PARK**

This Status Report is submitted in accordance with the Abatement Warrant issued by the Honorable Suzette Clover on November 17, 2021 affecting the above-captioned real property. The context and factual basis requiring the Abatement Warrant is included with the Application for Abatement Warrant filed with the Court by Assistant City Attorney Timothy E. Campen. In sum, this matter arises from a 2015 lawsuit brought in the name of the People of California by the City Attorney in accordance with Code of Civil Procedure § 731. This is

the first of two required Status Reports.

As a prelude to obtaining the Abatement Warrant, the People took actions to secure contractors needed for both the interim abatement procedures – identified as the Winterization Measures – and the permanent stabilization of the hillside. A summary follows:

- On October 11, 2021, the Acting City Planner informed qualified contractors that bid documents and specifications would be available on or about October 13, 2021. Additionally, he informed those contractors that a mandatory pre-bid meeting was scheduled at the Property for October 20, 2021 and that bids were due October 28, 2021;
- On October 13, 2021, the Acting City Planner provided qualified contractors with bid documents and specifications for the permanent hillside stabilization;
- On October 19, 2021, I informed CII's counsel regarding the City's access to the Property on October 20, 2021;
- On October 20, 2021, the Acting City Planner held a mandatory pre-bid meeting at the Property. The Acting City Planner was confronted by a CII representative. Police Officers from the Monterey Park Police Department were already onsite at my request and intervened at that time to avoid additional confrontation. Only one contractor representative, from C.A. Rasmussen, attended the pre-bid meeting;
- Following inquiries by the Acting City Planner on October 20, 2021, the City was informed that other invited contractors were too busy with other work stemming from new federally funded projects to participate in the hillside remediation project;
- On October 29, 2021, the Acting City Planner sought a proposal from Gothic Landscape for the Winterization Measures;
- On November 3, 2021, C.A. Rasmussen, Inc. submitted the attached letter committing itself to submitting a proposal for the permanent hillside stabilization (Exhibit A);
- On November 9, 2021, I informed CII's counsel regarding the November 10, 2021 pre-bid meeting at the Property;
- On November 10, 2021, the Acting City Planner met at the Property with

representatives from Gothic Landscape and C.A. Rasmussen regarding the Winterization Measures and the permanent abatement;

- During the November 10, 2021 site visit, the Acting City Planner was again confronted by CII's representative. A Monterey Park Police Officer was dispatched to the Property, but CII's representative departed before the Officer's arrival;
- On November 12, 2021, the City received a proposal from Gothic Landscape to perform the Winterization Measures for a total of $225,490; and
- On November 17, 2021, the Court issued an Abatement Warrant requested by the People.

After the Court issued the Abatement Warrant on November 17, 2021, the People undertook the following actions:

- On November 23, 2021, the City received a proposal from C.A. Rasmussen to perform the hillside stabilization project for a total of $11,986,000;
- On November 23, 2021, the City provided Gothic Landscaping with the maintenance contract documents needed to perform the temporary Winterization Measures on the Property in accordance with its November 12th proposal;
- On November 24, 2021, Gothic Landscaping informed the City that it would need to revise its proposal to include prevailing wage rates;
- On December 3, 2021, the Acting City Planner negotiated with C.A. Rasmussen regarding its bid to reduce the project price. Based upon that conversation, it is apparent that the current nationwide economic conditions are significantly increasing material and labor prices;
- On December 8, 2021, City representatives including the City Manager, City Attorney, and Public Works Director entered the Property to assess what immediate actions were necessary to facilitate implementation of the Winterization Measures. Pictures of the Property are attached demonstrating the ongoing public nuisances (Exhibit B);
- By letter dated December 8, 2021, counsel for CII was informed that City employees, on behalf of the People, would take actions beginning December 9, 2021 to facilitate

the Winterization Measures. A true and correct copy of that notice is attached for reference (Exhibit C);

- On December 8, 2021, the City received a revised proposal from Gothic Landscape, which included prevailing wage, for performing the Winterization Measure in the amount of $337,795;
- On December 9, 2021, City employees including, without limitation, Officers from the Monterey Park Police Department, entered the Property to commence work. At that time, an individual who identified himself as "Martin Aguilar" of HLI Tree Care drove onto the Property and confronted the City's crew leader. Mr. Aguilar informed the crew leader that CII's representative had contacted Mr. Aguilar the night before and told him (Mr. Aguilar) to cover the hillside with plastic. Mr. Aguilar departed from the Property but left a day laborer at the site without tools or an understanding of his (the laborer's) responsibilities. The City's crew leader subsequently contacted Mr. Aguilar to retrieve the laborer who then returned and retrieved that individual. Pictures showing the in-progress clean-up of the Property are attached (*see* Exhibit B). As a result of Mr. Aguilar's actions, I sent the attached courtesy email to CII's counsel (Exhibit D);
- On December 9, 2021, the Acting City Planner contacted C.A. Rasmussen regarding the City's desire to enter into a design-build contract with the contractor for $7,000,000 to rehabilitate the hillside. Work exceeding that amount would be negotiated via change order;
- On December 10, 2021, the Acting City Planner and myself discussed the proposal from C.A. Rasmussen for the permanent hillside rehabilitation and the design-build concept;
- On December 13, 2021, the Acting City Planner provided C.A. Rasmussen with the proposed design-build contract for hillside rehabilitation;
- On December 13, 2021, the Acting City Planner informed Gothic Landscape that the City would enter into a maintenance agreement for $100,000. Materials would be separately purchased by the City and provided to Gothic Landscape. Additional work

beyond $100,000 would be authorized by change order;

- On December 14, 2021, C.A. Rasmussen transmitted the attached correspondence to the Acting City Planner and myself to provide a letter demonstrating its ongoing commitment to execute a contract with the City for hillside rehabilitation (Exhibit E);
- On December 14, 2021, the People filed an *Ex parte* Application with the Honorable Mel Red Recana to accelerate a hearing date in the underlying case. The Application seeks a hearing upon the People's anticipated motion for enforcing the terms of the Settlement Agreement to permanently rehabilitate the hillside utilizing C.A. Rasmussen as the People's contractor. The Application seeks a date of January 26, 2021 to secure a court order before the present Abatement Warrant expires on February 1, 2021. A copy of the People's Application is attached for reference (Exhibit F); and
- On December 14, 2021, the City began obtaining quotes for securing the materials needed to implement the Winterization Measures on the hillside including, without limitation, gravel bags and plastic sheeting.

The People's efforts to implement the Winterization Measures and the permanent solution to hillside stabilization continues. The next Status Report is due January 15, 2022.

DATED: December 14, 2021

Karl H. Berger
City Attorney for the City of Monterey Park
Ex rel. the People of the State of California

Exhibit A

Safety · Quality · Service
Since 1964

C. A. RASMUSSEN, INC.

General Engineering Contractors
License No. 254681 A

Valencia Commerce Center
28548 Livingston Avenue
Valencia, CA 91355-4171
Telephone 661.367.9040
Fax 661.367.9097
www.carasmussen.com

VIA EMAIL

November 3, 2021

City of Monterey Park
Attn: Jon Turner, Acting City Planner
jturner@phoenixcivil.com
(805) 658-6800 tel

Re: PW21-00424
Hillside Stabilization Project
Bid Date

This is to acknowledge or telephone conversation on Friday October 29, 2021 regarding the above project. Due to our current bid schedule, we request that the bid date be extended to Friday Novermber 19, 2021 at 3:00 p.m. We are committed to providing a bid to the City on this project. Please issue an addendum accordingly.

Sincerely,

Eric Landegger
Chief Estimator
C. A. Rasmussen, Inc.

Exhibit B

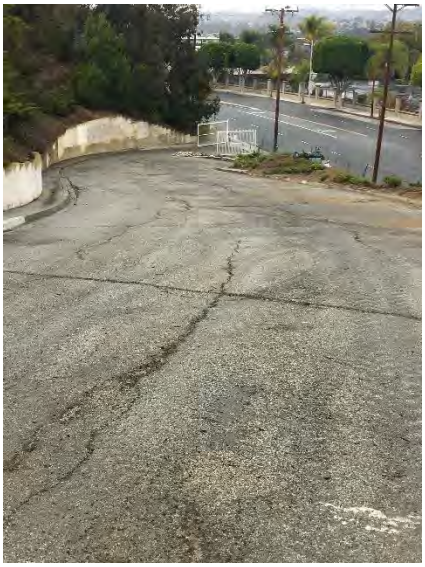


Exhibit C

BURBANK OFFICE
2600 W. OLIVE AVENUE
SUITE 500
BURBANK, CA 91505

HENSLEY LAW GROUP

TORRANCE OFFICE
3655 TORRANCE BOULEVARD
SUITE 300
TORRANCE, CA 90503

SAN DIEGO OFFICE
3850 LA JOLLA VILLAGE DRIVE
LA JOLLA, CA 92037

WRITER'S DIRECT CONTACT:
BURBANK OFFICE
KBERGER@HENSLEYLAWGROUP.COM
818.333.5120

WWW.HENSLEYLAWGROUP.COM

December 8, 2021

Mr. Alfred Fraijo, Jr., Esq.
Mr. Paul Seeley, Esq.
Sheppard Mullin Richter & Hampton, LLP
333 South Hope Street
Los Angeles, CA 90071

VIA U.S. FIRST CLASS MAIL AND EMAIL

Re: 1600-1688 Garvey Avenue
Courtesy Notice

Dear Alfred and Paul:

Enclosed for your information is an abatement warrant issued by the Honorable Suzette Clover on November 17, 2021. While the abatement warrant is not required under the terms of the Settlement Agreement with CII, it was nevertheless obtained in an abundance of caution.

As a courtesy, you are informed that work on the Winterization Measures will commence tomorrow morning. In accordance with the terms of the abatement warrant, the City may use reasonable force to ensure that there is no interference with the abatement work. You should be aware that the site is now under camera surveillance and access will be monitored. There will be no additional notice regarding the maintenance activities.

Very truly yours,

Karl H. Berger
City Attorney

c: Ron Bow, City Manager
Kelly Gordon, Police Chief
Jon Turner, Acting City Planner

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

IN RE PROPERTY AT: 1688 WEST GARVEY AVENUE., MONTEREY PARK, CALIFORNIA Property Owner: Center Int'l Investments, Inc.	Warrant No.: **[PROPOSED] ABATEMENT WARRANT** [*Filed Concurrently with:* *1. Application for Abatement Warrant* *2. Compendium of Declarations and Exhibits]*

TO THE PEOPLE OF THE STATE OF CALIFORNIA, TO ANY POLICE OFFICER, FIRE OFFICIAL, CODE ENFORCEMENT OFFICER, PUBLIC WORKS OFFICIAL, OR OFFICER ON BEHALF OF THE CITY OF MONTEREY PARY:

Proof by Declaration having been made this day before me by Timothy E. Campen, Assistant City Attorney, and by Jonathan M. Turner, Acting City Planner, and it appearing therefrom that there is good cause for an Abatement Warrant at the parcel located at 1688 West Garvey Avenue in the City of Monterey Park, California and identified as Assessor's Parcel No. 5254-002-031 ("Property"), the Court orders as follows:

The City of Monterey Park on Behalf of the People of the State of California ("City") and its officers, agents, employees or authorized representatives are hereby ordered for the purpose of implementing temporary erosion mitigation measures to enter the Property between any hours needed, but ordinarily between 8:00 a.m. to 6:00 p.m. to: (1) remove all failed soils erosion measures, including, without limitation, sand bags and plastic tarps; (2) place new

gravel-filled bags and new tarps on the hillside of the Property, and where otherwise needed, in compliance with the Property's Winterization Measures approved by the City of Monterey in May 2018; and (3) as needed for ongoing maintenance of the Winterization Plan. Additionally, City and its officers, agents, employees or authorized representatives are hereby ordered to enter the Property at any hour in order to repair any failures of erosion mitigation measures as may be necessary under emergency conditions and where time is of the essence.

This abatement will be undertaken to ensure that the Property is in compliance with all applicable laws including, without limitation, the Monterey Park Municipal Code, to remove and abate any and all conditions which constitute a public nuisance or a threat to the public's health and safety.

Reasonable notice may be provided to the Property's owner or owner's representative but is not required. City is authorized to exercise reasonable force to implement this Warrant and/or enter the Property, should any person seek to interfere with City's actions.

In light of the unusual circumstances and timeline needed to permanent abate the public nuisances on the Property, this Warrant will be effective for a period not longer than 75 days, unless extended or renewed. City must provide a report regarding its progress regarding the Winterization Measures to the Court not later than December 15, 2021 and January 15, 2022. Unless the City seeks an extension of this Warrant on or about January 15, 2022, it must file a return for this Warrant on or about February 1, 2022.

The abatement activities authorized by this Warrant may be undertaken in the absence of the owner or occupant of the Property.

The City is entitled to reimbursement from the Property owner for any and all costs relating to the abatement of the Property, including attorney's fees reasonably incurred in connection with the abatement activities authorized by this Warrant.

A return to this Court will be made in accordance with this Warrant and the provisions of Code of Civil Procedure § 1822.55.

DATED: November 17th, 2021

Suzette Clover
JUDGE OF THE SUPERIOR COURT

Exhibit D

Subject: MP - Goodviews
Date: Thursday, December 9, 2021 at 09:47:08 Pacific Standard Time
From: Karl Berger
To: Alfred Fraijo Jr.
CC: Paul Seeley, Tim Campen
Attachments: image001.jpg

Good morning –

This is a courtesy email.

I am informed that an individual claiming to be a contractor retained by Karrie arrived at the property this morning. He confronted the City crew that commenced work on the site, claiming that the City had no right to be there and to vacate the property. That individual then left one person on the site and left.

In speaking with that person, the City's crew leader understood that the laborer was a day laborer who appeared to have been retained that morning by the other individual claiming to be Karrie's contractor. He had no idea why he was there nor what he was supposed to be doing. He was advised to leave the property.

As I wrote last night, the City obtained an abatement warrant to enter the property in an abundance of caution. Part of that warrant allows the City to use reasonable force to both enter the property and prevent interference with the maintenance activities. Please be advised that additional efforts to interfere with the City's efforts may result in arrest of the individuals involved.

Thank you.

Karl H. Berger

HENSLEY LAW GROUP

2600 W. Olive Avenue, Suite 500
Burbank, California 91505
818-333-5120 Office
661-644-5476 Mobile
kberger@hensleylawgroup.com
www.hensleylawgroup.com

This is a transmission from the Hensley Law Group. The information contained in this email is confidential and may be protected by the attorney-client and/or attorney work-product privileges. This information is intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, please contact the sender and delete all copies.

Exhibit E

Subject: Re: Monterey Park Hillside Stabilization
Date: Tuesday, December 14, 2021 at 06:44:08 Pacific Standard Time
From: Eric Landegger
To: Jon Turner, PE
CC: Karl Berger

I saw this email after I sent the previous one. I will try to get you the letter this afternoon.

Thank you,

Eric Landegger
805-331-0864 cell

> On Dec 13, 2021, at 3:47 PM, Jon Turner, PE <jturner@phoenixcivil.com> wrote:
>
> Eric,
>
> I wanted to verify that you received the documents I sent over this morning. The City wanted to know if they could get a letter from Rasmussen (similar to last time) stating that Rasmussen is committed to doing the project and the City/Rasmussen are working out the contractual details and it is anticipated that the mobilization to the site will occur in January dependent on the signing of the City's contract. Something along those lines (Karl can weigh in if he wants something else).
>
> I appreciate your efforts on this.
>
> Thanks.
>
> **Jon Turner, PE**
> **Principal Civil Engineer**
> Phoenix Civil Engineering, Inc.
> 535 E. Main Street
> Santa Paula, CA 93060
>
> Office: (805) 658-6800
> Mobile: (805) 850-8562

Exhibit F

KARL H. BERGER, State Bar No. 178458
City Attorney, City of Monterey Park
TIMOTHY E. CAMPEN, State Bar No. 197941
Assistant City Attorney
JOAQUIN VAZQUEZ, State Bar No. 282528
Deputy City Attorney
HENSLEY LAW GROUP
2600 W. Olive Ave., Ste. 500
Burbank, CA 91505
Tel: (818) 333-5120; Fax: (818) 333-5121

Attorneys for Plaintiff/Petitioner, THE PEOPLE OF THE CITY OF CALIFORNIA

Exempt from fees pursuant to *Government Code § 6103*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, ex rel., MARK D. HENSLEY, City Attorney for the City of Monterey Park,
Plaintiff/Petitioner,

v.

CENTER INT'L INVESTMENTS, INC., a California corporation, and DOES 1 through 25, inclusive,

Defendants/Respondents.

Case No.: BC605788

Assigned for All Purposes to:
Hon. Mel Red Recana – Dept. 45

PLAINTIFFS' EX PARTE APPLICATION TO SPECIALLY SET MOTION TO ENFORCE SETTLEMENT AGREEMENT PURSUANT TO CCP § 664.6; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION; [PROPOSED] ORDER SETTING DATE

[Declarations of Timothy E. Campen and Jonathan Turner, and Compendium of Evidence with Exhibits filed Concurrently]

DATE: **May 9, 2022**
TIME: **11:00 a.m.**
DEPT: **45**

Res. #: 308635144412

Complaint Filed: Dec. 31, 2015

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff, the People of the State of California, by the City Attorney[1] for the City of Monterey Park, applies *ex parte* for an order specially setting the hearing on its Motion to Enforce Settlement Agreement pursuant to Code of Civil Procedure § 664.6 (the "Motion"), currently reserved for Monday, May 9, 2022, pursuant to California Rules of Court, Rule 3.1200 *et seq.*, and *Code of Civil Procedure* section 128(a). The People requests such other and further relief as this Court deems necessary and appropriate.

This application is made on the grounds that the public's safety is at risk and the May 9, 2022 date was the earliest possible hearing date available on the Court's online reservation system. The case at hand involves a hillside slope with a history of failure that requires permanent stabilization. The People of the State of California filed a public nuisance abatement lawsuit in 2015 against the owners of the subject property with the goal of the owners implementing permanent stabilization measures. A settlement agreement was reached in 2017, wherein, *inter alia*, if the property owners failed to construct permanent stabilization measures, the People, utilizing the City of Monterey Park, would enter the property and abate the nuisance itself.

Despite exhaustive attempts by the People, and the City of Monterey Park, to obtain the voluntarily compliance by CII to abate the public nuisance, the People's efforts failed. Consequently, the People obtained a 75-day abatement warrant to itself implement temporary, winterization measures for the current rainy season. Because the abatement warrant only provides temporary relief, the People seek to move up the currently set Motion date to January 26, 2022, to ensure commencement of permanent slope remediation measures before the abatement warrant expires on February 1, 2022.

Proper *ex parte* notice was provided as set forth in the Declaration of Assistant City Attorney Timothy E. Campen. This application will be based on this *Ex Parte* Application, the Declarations of Assistant City Attorney Timothy E. Campen and Acting City Planner

[1] Karl H. Berger was appointed City Attorney for the City of Monterey Park in 2020; the original case caption identifies Mark D. Hensley as the City Attorney. Mr. Hensley is now an Assistant City Attorney for the City of Monterey Park.

Jonathan Turner, P.E., the Memorandum of Points and Authorities served and filed herewith, exhibits filed herewith, the records and files herein, and on such evidence as may be presented at the hearing of this *ex parte* application.

Dated: December 14, 2021

KARL H. BERGER, CITY ATTORNEY
FOR THE PEOPLE AND THE CITY OF
MONTEREY PARK

By:_____
Timothy E. Campen, Assistant City Attorney
Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff, the People of the State of California, by the City Attorney of Monterey Park, is applying, *ex parte*, to advance the hearing for a motion to enforce settlement pursuant to Code of Civil Procedure § 664.6. The case at hand involves a hillside slope with a history of failure that requires permanent stabilization. This application is made on the grounds that the public safety is at risk, and the May 9, 2022 date that was the earliest possible hearing date available on the Court's online reservation system is too late to properly address the required hillside stabilization.

II. STATEMENT OF FACTS

The subject Property consists of 6.22 acres of undeveloped land on a hillside along West Garvey Avenue located at 1688 West Garvey, Monterey Park, California (APN 5254-002-031). (Declaration of Timothy E. Campen ("Campen Decl."), Para. 3, filed concurrently herewith.) The hillside rises approximately 150 feet above West Garvey Avenue to a graded plateau where a residential development approved in the late 1970s was to be built. (Campen Dec., Para. 3.) Over the years, the hillside on the Property has become increasingly unstable, with the City and the People taking various enforcement actions over 40 years against successive property owners including, without limitation, the Property owners to perform remedial measures. (Campen Dec., Para. 3.)

In or about 1979, the Monterey Park City Council approved a 31 residential dwelling unit project on Property. (Campen Dec., Para. 4.) That development project commenced, but was never completed. (Campen Dec., Para. 4.)

In 1984, the hillside experienced catastrophic failure, requiring the City to remove soils debris from the roadway and install a soils debris impact wall that is located along a portion of the Property line along West Garvey Avenue. (Declaration of Jonathan M. Turner, P.E. ("Turner Decl."), Para. 4, filed concurrently herewith.)

In or about 2009, CII purchased the Property ostensibly for the purpose of a residential

development involving 16 luxury homes. (Campen Dec., Para. 5.) Because the People determined that the Property owner is unable to perform its obligations pursuant the Settlement Agreement as to permanent abating the public nuisance identified in the Settlement Agreement, that development project is currently stalled indefinitely (as explained more fully below). (Campen Dec., Para. 5.)

On December 31, 2015, the People initiated an action against CII in the Los Angeles County Superior Court captioned *The People of the State of California, ex rel., Mark D. Henlsey, City Attorney for the City of Monterey Park v. Center Int'l Investments, Inc.*, Case No. BC605788 ("Action"). (Campen Dec., Para. 6.) In this Action, the People sought to permanently abate the public nuisance on the Property. Specifically, the Property is unsafe, unsightly and dangerous for all of the reasons stated in the Action including, without limitation, geologic instability of the hillside. (Campen Dec., Para. 6.)

In April of 2017, that Action resulted in a settlement agreement between the parties ("Original Agreement"), wherein, *inter alia*, CII agreed to a number of terms and conditions, including the following:

a. Complete a "Restoration Plan" to permanently stabilize the hillside and obtain a Permit to execute that plan "with all due speed."
b. Complete the hillside restoration by December 31, 2017.
c. Pending the completion of the Restoration Plan, regularly monitor and maintain the hillside with "winterization measures" according to plans approved by the City of Monterey Park.

(Campen Dec., Para. 7.)

The parties, in a writing and signed by each of them, stipulated to the Court's retention of jurisdiction under Code of Civil Procedure § 664.6 to ensure enforcement of the Settlement Agreement (the "Stipulation"). In particular, the agreed upon Stipulation states:

> [T]he Parties to this Action request and agree that the Court shall retain jurisdiction over the Parties and this Action to enforce this settlement pursuant to Code of Civil Procedure section 664.6 until

> there is full performance of all terms of the written Settlement Agreement.

(Campen Dec., Para. 7.)

On or about April 26, 2017, this Court issued an order retaining its jurisdiction to enforce the agreed upon, written Settlement Agreement and dismissing the Action (the "Order"). In relevant part, the Order states:

> [I]t is further ordered that, pursuant to the Parties' Stipulated Judgment and Settlement Agreement and Code of Civil Procedure section 664.6 and any other relevant statutory provisions, the Court shall retain jurisdiction over the Parties personally and over this Action for such further orders, hearings and other proceedings as may be appropriate to enforce the terms of the Settlement Agreement and Stipulated Judgment.

(Campen Dec., Para. 7.)

In the event of CII's failure to perform the abatement of the public nuisances, which is specifically part of the Original Agreement, the People could commence its own abatement action – at CII's cost – to remove the public nuisances. Should the People determine the need to assume abatement of the public nuisance, CII voluntarily waived any judicial or administrative right to notice or hearings including, without limitation, abatement warrants:

> CII hereby agrees to waive any and all rights of notice and hearing, except as otherwise expressly provided herein, that it may under the principles of *Rooney v. Vermont* (1973) 10 Cal.3d 351…

(Campen Dec., Para. 8; see Original Settlement Agreement, filed concurrently herewith as Exhibit A.)

In March of 2019, and after no action had been taken to permanently stabilize the hillside, the People and CII entered into a First Amended and Restated Settlement Agreement ("First Amended Agreement"). (Campen Dec., Para. 9.) The First Amended Agreement included two courses of action CII could take to abate the public nuisances upon the Property: "Plan A" would involve CII seeking discretionary land use approvals from the City of Monterey Park (which consented to participated in the Settlement Agreement as to processing such land use approvals) for a residential development of the Property that would incorporate

the abatement of the public nuisances identified in the Settlement Agreement; and "Plan B" which provides for abatement of the public nuisances only if CII failed to obtain the approvals for Plan A or failed to implement Plan A if it were approved by the City of Monterey Park. (Campen Dec., Para. 9.) Should CII fail to implement Plan A or Plan B voluntarily, then the People would assume control over Plan B to abate the public nuisances identified in the Settlement Agreement (at CII's cost). (Campen Dec., Para. 9.)

Whether CII implemented Plan A or Plan B, the First Amended Agreement included a timeline with specific, intermediate deadlines towards completion of Plan B by November 25, 2020. (Campen Dec., Para. 10) Among the timeline requirements of the First Amended Agreement is for CII to have winterization measures completed not later than September 30, 2019, and properly maintain said winterization measures. (Campen Dec., Para. 10.)

In June 2020, the People and CII entered into a Second Amended and Restated Settlement Agreement ("Second Amended Agreement") which, *inter alia*, accommodated CII's desire to obtain a new timeline to stabilize the hillside after it failed to comply with the timeline of the First Amended Agreement.[2] (Campen Dec., Para. 11.) Section H of the Second Amended Agreement further requires as follows:

> During the time that Plan A is considered by CITY, CII must construct and maintain erosion control and slope stabilization plans approved by CITY to temporarily abate the Nuisance ("Interim Maintenance Program"). The Interim Maintenance Program must be completed at CII's cost and will be monitored by CITY (also at CII's cost) to ensure compliance.
>
> (Campen Dec., Para. 11.)

Additionally, CII has agreed in section 2.B.v. of the Second Amended Agreement that "[i]n the event Plan B is not underway by the deadline set forth in the Amended Project Schedule, CITY may (1) enter the Property, abate the Nuisance, and/or complete Plan B…"

[2] This was, in part, because of the COVID-19 Pandemic's interference with the anticipated timelines for processing the Plan A considerations.

(Campen Dec., Para. 12.) This term is complimentary to a related provision in the First Amended Agreement, which states:

> Should CITY be required to implement Plan B, CII grants CITY an irrevocable license to enter onto the Property to abate the Nuisance in accordance with this Agreement. CII agrees that neither Plaintiff nor CITY will be required to obtain an abatement warrant in accordance with applicable law in order to exercise Plaintiff's rights, by and through CITY, to implement Plan B. Accordingly, CII specifically waives any rights it may have to prevent CITY's access to the Property under applicable law should it fail to voluntarily perform Plan B in accordance with the Project Schedule.
>
> (Campen Dec., Para. 12.)

On June 16, 2021, the Monterey Park City Council approved CII's requested Plan A. Separately, the Monterey Park City Council adopted Resolution No. 12255. (Campen Dec., Para. 13.) With Resolution No. 12255, the City Council found and declared that an **"emergency exists as to abating the Property which constitutes an imminent threat to public health and safety that requires immediate action."** (Campen Dec., Para. 13, emphasis added.) The City Council further directed that if CII failed to "commence substantial progress" towards abatement of the hillside **by August 1, 2021**, then the City, on behalf of the People, was authorized to itself commence with "Plan B" permanent remediation of the hillside – consistent with the Second Amended Agreement. (Campen Dec., Para. 13.) Resolution No. 12255 restated the Second Amended Agreement in that the determination of "substantial progress" was in the "the sole discretion of the City Manager." (Campen Dec., Para. 13.) CII representatives were present at this City Council meeting on June 16, 2021, and were fully informed of these terms. (Campen Dec., Para. 13.)

On August 25, 2021, City Manager Ron Bow served CII with written Notice of Breach and Opportunity to Cure regarding its failure to commence substantial progress towards fulfillment of Plan B, namely to obtain a grading permit. (Campen Dec., Para. 14.) The Notice of Breach further informed CII of the City's intent to carry out Plan B on its own. (Campen

Dec., Para. 14.) In a show of good faith, the City provided CII with an additional five day grace period, until August 31, 2021, to obtain the grading permit necessary to demonstrate commencing with substantial progress. (Campen Dec., Para. 14.) CII failed to submit all the required documentation for the permit in that time. (Campen Dec., Para. 14.)

On October 13, 2021, City Manager Ron Bow served CII with written Notice of Default of the Settlement Agreement, noting that all the required documentation for the grading permit had not been submitted until September 23, 2021 – a full 53 days after the original deadline. (Campen Dec., Para. 15.) Specifically, CII had not submitted the necessary storm water protection plan information, which is legally required for the grading permit. (Campen Dec., Para. 15.) The Notice of Default further detailed a list of CII's failures to live up to its obligations under the entire Settlement Agreement and informed CII of the People's intention to itself carry out Plan B to remediate the hillside. (Campen Dec., Para. 15.)

Although the City is actively engaged in selecting a qualified contractor to initiate Plan B, this process may take several months. (Campen Dec., Para. 17.) In the meantime, temporary measures, referred to in the Second Amended Agreement as the "Interim Maintenance Program" were necessary to winterize the hillside. (Campen Dec., Para. 17.)

The months of November through April are generally recognized as the "rainy season" in California and for Los Angeles County in particular. (Declaration of Jonathon M. Turner, P.E. ("Turner Dec."), Para. 4.) The months of November through April are recognized by the regulatory agencies as the rainy season for the purposes of implementation of storm water "best maintenance practices" ("BMPs") for construction sites. (Turner Dec., Para. 4.)

The Property's hillside was previously subject to catastrophic failure in 1984, requiring the City to remove soils debris from the roadway and install a soils debris impact wall that is located along a portion of the Property line along West Garvey Avenue. (Turner Dec., Para. 5.) The anticipated El Niño rainfall in 2015-16 is what, in part, prompted the People to file the Action that ultimately resulted in the Settlement Action. There has been no substantive remediation since that time, and implementation of Plan B as approved by the City of

Monterey Park for new, permanent retaining walls is necessary to secure the hillside. (Turner Dec., Para. 5.) The People's concerns regarding the Property's threat to public health, safety, and welfare continues.

CII developed an approved winterization plan for the parcel on or about May 2018, to be implemented until permanent retaining walls are constructed. (Turner Dec., Para. 6.) On or about September 2019, CII was required to update its winterization plan for the Property, which was signed and submitted in November 2019. (Turner Dec., Para. 6.) The term "winterization" refers to measures taken to mitigate erosion and risk of slope failure due to water infiltration from seasonal rain and weather. (Turner Dec., Para. 6.) (A true and accurate copy of the winterization plan is filed concurrently herewith as Exhibit D.)

On February 20, 2019, the Acting City Planner issued to CII a letter of noncompliance of the required winterization, noting that, among other things, soils debris from the hillside had fallen onto West Garvey Avenue. (Turner Dec., Para. 7.) A year later on February 12, 2020, the Acting City Planner issued to CII another letter of noncompliance concerning winterization of the hillside and warned CII that failure to comply with the approved winterization plan could result in default of the Settlement Agreement. (Turner Dec., Para. 7.)

On October 20 and November 10, 2021, the Acting City Planner re-inspected the Property concerning the condition and erosion mitigation of the hillside slope of the Property facing Garvey Avenue. (Turner Dec., Para. 8.) He observed that plastic sheeting intended to minimize water intrusion into the slope was blown apart in multiple locations. (Turner Dec., Para. 8.) Further, sandbags have degraded to the point where the sand is leaking out of the bags in multiple locations. (Turner Dec., Para. 8.) The efforts intended to act as erosion and water intrusion control measures have not been properly maintained, which exacerbating the potential failure of the hillside slope. (Turner Dec., Para. 8.) (True and accurate photos of the condition of the Property on October 20 and November 10, 2021, are filed concurrently herewith as Exhibit E.)

The existing hillside plastic tarps need to be removed and replaced, as they have reached

their lifespan due to exposure and failure to be property secured. (Turner Dec., Para. 9.) All of the existing sandbags onsite need to be removed and replaced with gravel filled bags to avoid sand migration and clean up issues after failure. (Turner Dec., Para. 10.) CII appears to have placed more sandbags over the failed bags, which is an unacceptable practice. (Turner Dec., Para. 10.) Further, the existing sandbags direct the flow of water in an uncontrolled manner which results in storm water flowing at a high velocity into the vehicle lanes on West Garvey Avenue. (Turner Dec., Para. 10.)

The failure of CII to commence with any physical progress towards abating the hillside on the Property since formal complaints and litigation on this issue commenced beginning six years ago has left the People with no reasonable expectation CII will ever complete this project. (Campen Dec., Para. 16.) As a result, the People can no longer risk the health and safety of the community and its residents on the baseless hope CII will finally abate this hillside. (Campen Dec., Para. 16.)

On November 17, 2021, the People obtained an abatement warrant from the Hon. Suzette Clover specifically to implement the temporary mitigation measures to the hillside until Plan B could be implemented by the People. (Campen Dec., Para. 17; Exhibit X filed concurrently herewith.) The abatement warrant granted the People unobstructed access to the Property for 60 days, February 1, 2022, to effect the mitigation measures, with periodic status reports to the court and the opportunity to request an extension as may be necessary. (Campen Dec., Para. 17.)

On December 8 and 9, 2021, the People – through the efforts of the City – commenced clearance of the Property to begin the temporary mitigation measures authorized by the abatement warrant. (True and accurate photographs of the condition of the Property on those dates, before and after clearance, are filed concurrently herewith as Exhibit D.) (Campen Dec., Para. 18.)

On December 8, 2021, the People attempted to reserve a date for this Court to hear the People's motion to enforce the settlement agreement pursuant to C.C.P. § 664.6. (Campen

Dec., Para. 19.) The soonest date available through the court's online system was May 9, 2022. (Campen Dec., Para. 19.) The People's aspiration is to obtain an order from this Court enforcing the terms of the settlement agreement to commence with Plan B before expiration of the abatement warrant. (Campen Dec., Para. 19.) This will provide the best opportunity to have seamless oversight of the hillside and minimize the threat of slope failure. (Campen Dec., Para. 19.)

It is the People's position that obtaining an order from the Court to enforce its terms and implement Plan B is the only remaining means to properly protect the community from the public nuisance and immanent threat. (Campen Dec., Para. 20.) The temporary measures currently underway are inadequate to provide long term protection from slope failure. (Campen Dec., Para. 19.) It is in the public interest to commence with Plan B as soon as practicable and before the abatement warrant expires. (Campen Dec., Para. 20.) Accordingly, the People request that this Court specially set the People's Motion to Enforce Settlement Agreement pursuant to C.C.P. § 664.6 for the date of January 26, 2022. (Campen Dec., Para. 20.)

III. ARGUMENT

A. There is Good Cause to Specially Set the Hearing Date.

The People provided CII with every opportunity to voluntarily implement the agreed upon plan to stabilize the hillside. Without direct action by the People, there is no reason to think Plan B will ever be realized. The health and safety of the community requires the People to act without any preventable delay to implement these permanent measures.

The current abatement warrant is set to expire on February 1, 2022. While the People could request an extension with good cause and would likely be granted at least some additional time, an extension of an abatement warrant through May of 2022 is not something the People can reasonably rely on.

Moving up the hearing date for the Motion to Enforce Settlement Agreement pursuant to C.C.P. § 6646.6 would provide the opportunity to render an order before the abatement

warrant is set to expire, should this Court find good cause to do so. With an order in place affirming the People's right to implement Plan B before the abatement warrant expires will provide seamless protection to the community from the unstable hillside.

B. There is No Prejudice to CII in Moving Up the Hearing Date.

The requested hearing date of January 26, 2022 will still provide ample time for full compliance with the filing deadlines of Code of Civil Procedure § 1005(b). In fact, CII being notified of this *ex parte* application now effectively provides an additional three weeks to prepare its opposition than it would otherwise have.

C. *Ex Parte* Relief is Proper Because Counsel Has Fully Complied With California Rules Of Court, Rules 3.1203 And 3.1204.

Among other provisions, Cal. Rules of Court, rule 3.1203 provides as follows: "A party seeking an *ex parte* order must notify all parties no later than 10:00 a.m. the court day before the *ex parte* appearance, absent a showing of exceptional circumstances that justify a shorter time for notice." **(**California Rules of Court, rule 3.1203(a).) An *ex parte* application must be accompanied by a declaration regarding notice stating: (1) The notice given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected and that, within the applicable time under rule 3.1203, the applicant informed the opposing party where and when **t**he application would be made. (California Rules of Court, rule 3.1204(b).)

As set forth in the Declaration of Timothy E. Campen attached hereto, notice of this *ex parte* application was provided by both email and personal service to CII's attorneys on December 14, 2021 for this December 15, 2021 *ex parte* hearing. (See Campen Dec., Para 20.) Thus**,** Counsel has duly complied with the notice requirements of California Rules of Court, rule 3.1203(a) and California Rules of Court, rule 3.1204(b).

Rule 3.1202(c) of the California Rules of Court also requires a showing that there is "irreparable harm, immediate danger, or any other statutory basis for granting relief *ex parte*." Applied to this case, the Property presents a risk of health and safety to the

community. The hillside at issue abuts a major thoroughfare with residential homes on the other side. It has a has a history of failure. The People have been attempting in good faith since 2015 to obtain voluntary compliance from the owners to bring the property into compliance. Repeated efforts to accommodate CII to allow it complete Plan B since the settlement agreement was executed in 2017 have failed to produce any results.

Although the People are in the process of implementing mitigation measures to minimize the threat of slope failure, these efforts are only temporary and under the authority of an abatement warrant that is currently set to expire on February 1, 2022. The People and the community risk suffering irreparable harm if commencement of permanent mitigation measures is not authorized soon, and most preferably before the abatement warrant expires.

IV. CONCLUSION

For the reasons set forth above, the People respectfully request that this Court specially set the hearing date on their Motion, currently scheduled for May 9, 2022, to instead be heard on January 26, 2022, or as soon thereafter as may be convenient to the Court. The People also request such other and further relief as is necessary and appropriate.

DATED: December 14, 2021

KARL H. BERGER
CITY ATTORNEY
FOR THE PEOPLE AND CITY OF MONTEREY PARK
HENSLEY LAW GROUP

By: _____
Timothy E. Campen
Attorneys for Plaintiffs
ASSISTANT CITY ATTORNEY
FOR THE PEOPLE AND THE CITY OF MONTEREY PARK

[PROPOSED] ORDER

The Court having reviewed the foregoing application, and good cause appearing therefore:

IT IS HEREBY ORDERED that the People's request to specially set the date for a Motion to Enforce Settlement Agreement pursuant to Code of Civil Procedure § 664.6 is GRANTED.

IT IS ALSO ORDERED that all filings for said Motion be in accordance with Code of Civil Procedure § 1005(b).

IT IS SO ORDERED.

Dated:_____

_____
Hon. Mel Red Recana
Judge of the Superior Court of California
County of Los Angeles

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2600 West Olive Avenue, Burbank, CA 91505.

On December 14, 2021, I served a copy of the within document(s): **PLAINTIFFS' EX PARTE APPLICATION TO SPECIALLY SET MOTION TO ENFORCE SETTLEMENT AGREEMENT PURSUANT TO CCP § 664.6; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION; [PROPOSED] ORDER SETTING DATE** on the interested parties:

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Diamond Springs, California addressed as set forth below.

☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.

☒ by causing to be personally delivered the document(s) listed above to the person(s) at the address(es) set forth below.

☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Afred Frajio, Jr., Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street Forty-Third Floor
Los Angeles, CA 90071
afraijo@sheppardmullin.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 14, 2021 at Diamond Springs, California.

Annette Kramer

Annette Kramer

KARL H. BERGER, State Bar No. 178458
City Attorney, City of Monterey Park
TIMOTHY E. CAMPEN, State Bar No. 197941
Assistant City Attorney, City of Monterey Park
HENSLEY LAW GROUP
2600 W Olive Ave Ste. 500
Burbank, CA 91505
Tel: (818) 333-5120; Fax: (818) 333-5121

Attorneys for Plaintiff CITY OF MONTEREY PARK
ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA

Exempt from fees pursuant to Government Code § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

IN RE PROPERTY AT: 1688 WEST GARVEY AVENUE, MONTEREY PARK, CALIFORNIA Property Owner: Center Int'l Investments, Inc.	**SECOND STATUS REPORT SUBMITTED BY THE CITY ATTORNEY FOR THE CITY OF MONTREY PARK ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CITY OF MONTEREY PARK**

This Second Status Report is submitted in accordance with the Abatement Warrant issued by the Honorable Suzette Clover on November 17, 2021 affecting the above-captioned real property. Please refer to the First Status Report filed with the Court on December 15, 2021 for activities occurring up to December 14, 2021.

- On December 15, 2021, the City contracted with The Dirt Yard, Inc. dba L.A. County Sandbags to secure 15,000 sandbags and 50 rolls of plastic sheeting for the hillside. The total contract amount is $28,207.50.
- On December 17, 2021, the City received the following communication from C.A. Rasmussen ("Rasmussen"): "We are committed to doing this project for the City. Currently, the City and Rasmussen are working out the contractual details. Dependent on the execution of the Contract with the City and the availability of our subcontractors and materials, we anticipate mobilization to

the site occurring no sooner than February 2022."

- On December 18, 2021, the City contracted with Rasmussen to implement the Winterization Measures, using the sandbags and plastic sheeting secured by the City. The not to exceed cost of the contract is $100,000.
- Commencing at 7:00 a.m. on December 20, 2021, Rasmussen began installing the Winterization Measures utilizing best management practices ("BMPs") as required by applicable law. Photographs showing the progress of those efforts are set forth in attached Exhibit A.
- Dashcam video of the overall site, from 4:00 p.m. on December 20th, may be viewed at https://youtu.be/4DfHBvqAbJc.
- Commencing at 7:00 a.m. on December 21, 2021, Rasmussen continued implementing the BMPs. Photographs showing its progress are set forth in attached Exhibit B.
- On December 22, 2021, Rasmussen informed the City that it completed installation of the sandbags and plastic sheeting to comply with BMPs in accordance with applicable law. Photographs showing the property after Rasmussen's efforts are set forth in attached Exhibit C.
- On December 30, 2021, the City started contract discussions with Geosyntec Consultants for design and geotechnical services for implementing Plan B.
- On January 5, 2022, the City successfully changed the hearing date for the motion in the underlying case to March 16, 2022 at 8:30 a.m. (from May 22, 2022) for a permanent order enforcing the Settlement Agreement.
- On January 13, 2022, the City inspected the property. Photographs showing the site are set forth in Exhibit D.
- On January 14, 2022, the City is expected to execute a design/build contract with Rasmussen to construct Plan B. The contract is not to exceed $12,000,000.
- Also on January 14, 2022, the City is expected to execute a contract with Geosyntec Consultants for design and project management to oversee Plan B.

The contract is not to exceed $714,000.

The People anticipate filing a request to extend the abatement warrant until March 31, 2022 to secure a permanent court order regarding Plan B. If the extension is granted, the People would file additional Status Reports on February 15, 2022 and March 15, 2022.

DATED: January 14, 2022

Karl H. Berger
City Attorney for the City of Monterey Park
Ex rel. the People of the State of California

Exhibit A

Exhibit A

December 20, 2021

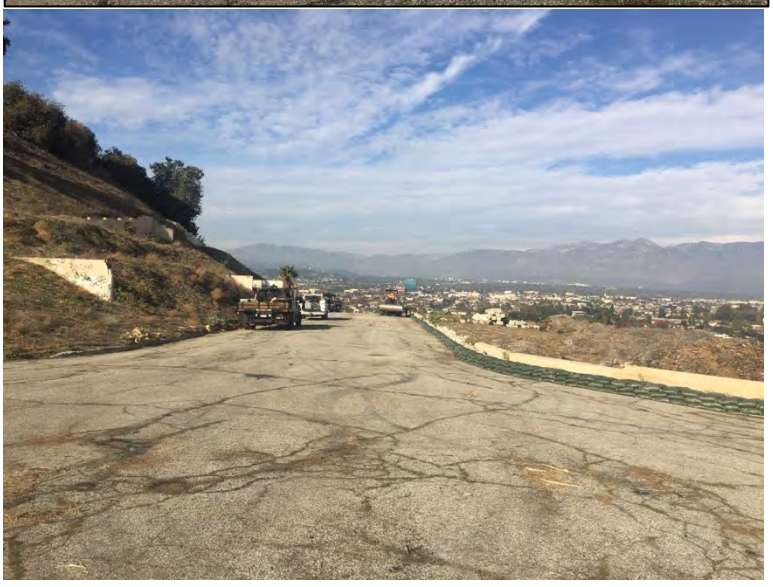


Exhibit B

Exhibit B

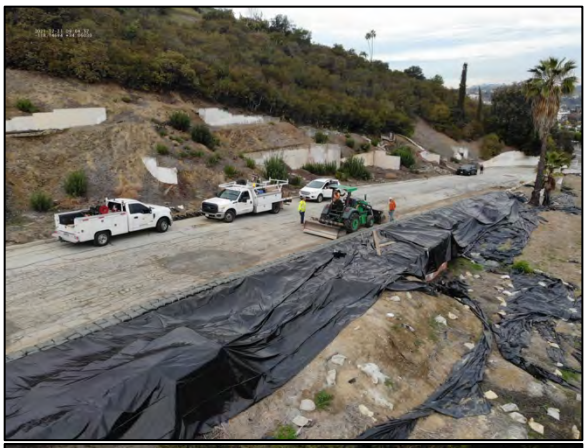
December 21, 2021

Exhibit B (cont.)

December 21, 2021

Exhibit B (cont.)

December 21, 2021



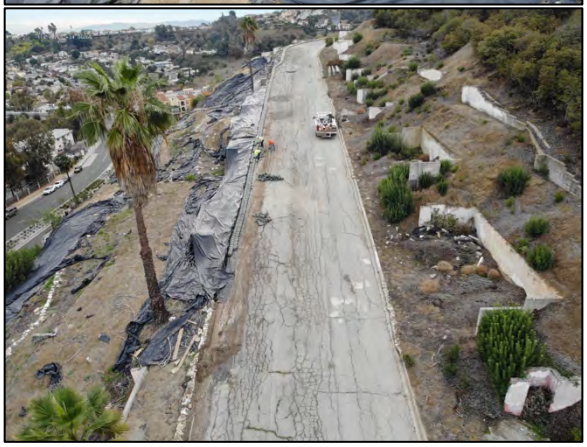


Exhibit B (cont.)

December 21, 2021

Exhibit C

Exhibit C

December 22, 2021

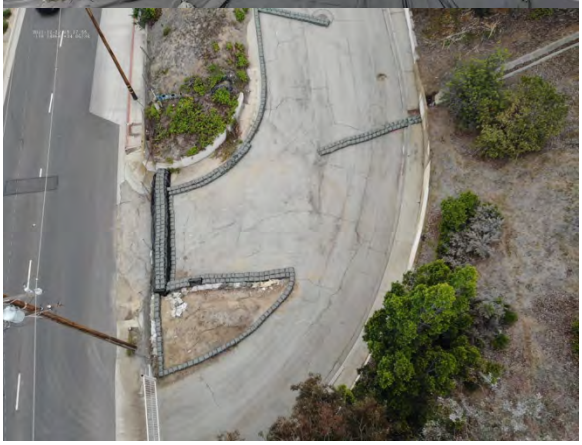


Exhibit C (cont.)

December 22, 2021

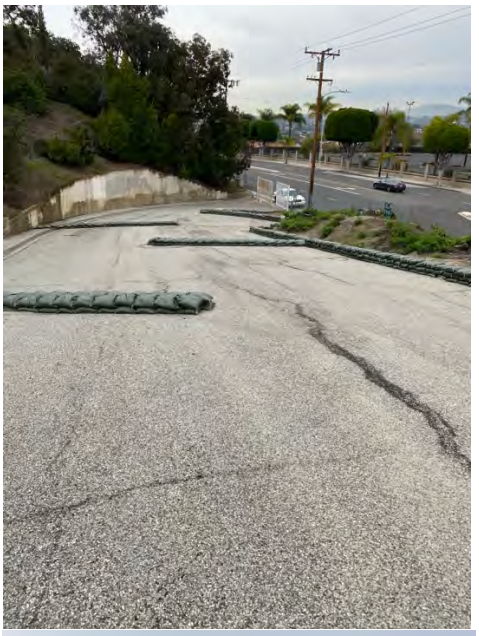
Exhibit C (cont.)

December 22, 2021

Exhibit D

Exhibit D

January 13, 2022



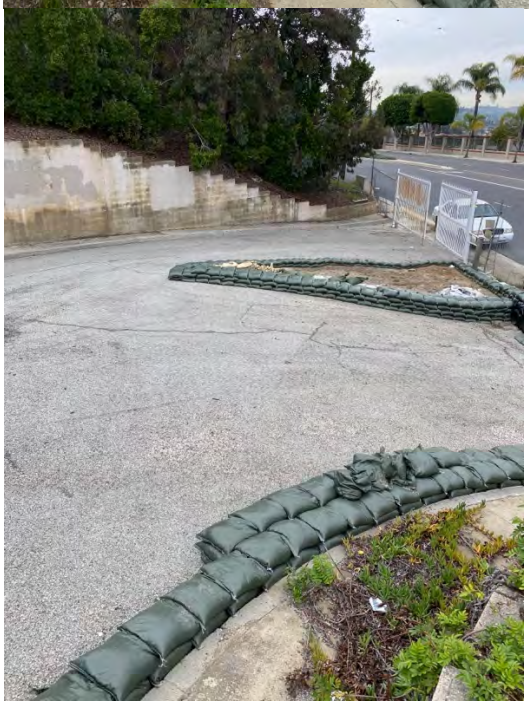
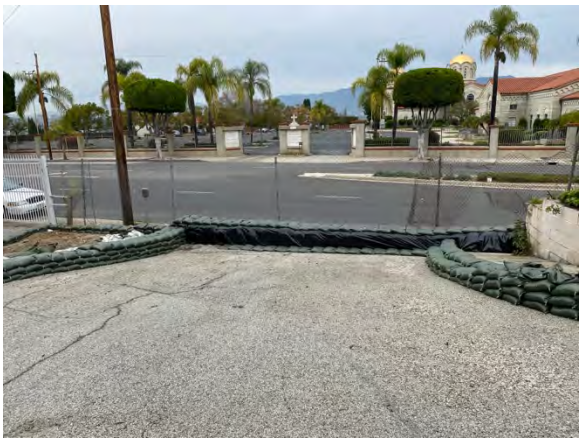
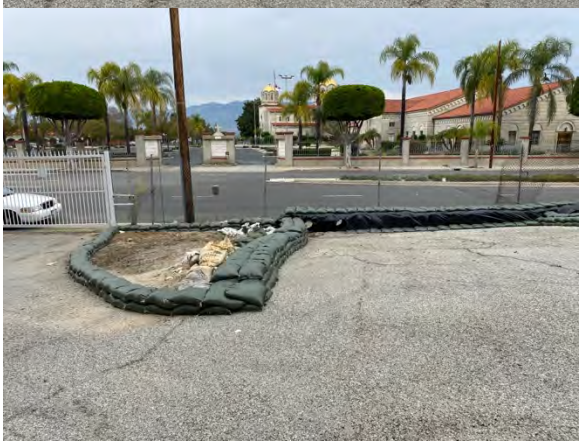


Exhibit D (cont.)

January 13, 2022





KARL H. BERGER, State Bar No. 178458
City Attorney, City of Monterey Park
TIMOTHY E. CAMPEN, State Bar No. 197941
Assistant City Attorney, City of Monterey Park
HENSLEY LAW GROUP
2600 W Olive Ave Ste. 500
Burbank, CA 91505
Tel: (818) 333-5120; Fax: (818) 333-5121

Attorneys for Plaintiff CITY OF MONTEREY PARK
ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA

Exempt from fees pursuant to Government Code § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

IN RE PROPERTY AT: 1688 WEST GARVEY AVENUE, MONTEREY PARK, CALIFORNIA Property Owner: Center Int'l Investments, Inc.	**THIRD STATUS REPORT SUBMITTED BY THE CITY ATTORNEY FOR THE CITY OF MONTREY PARK ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CITY OF MONTEREY PARK**

This Third Status Report is submitted in accordance with the Abatement Warrant issued by the Honorable Suzette Clover on November 17, 2021 affecting the above-captioned real property. Please refer to the First and Second Status Reports previously filed with the Court for December 2021 and January 2022 for activities occurring up to January 14, 2022. Since the Second Status Report was filed, the City undertook the following activities:

- On January 18, 2022, the City's geotechnical consultant, GeoSyntec, undertook a drone survey of the subject property to assist with final design of the Goodviews Abatement Project ("GAP");
- On January 19, 2022, the City executed a contract with KCM Group for project management not to exceed $355,000;
- On January 21, 2022, the City issued a Notice to Proceed (effective January 24, 2022) to C.A. Rasmussen ("Rasmussen") to commence with the GAP which will

result in permanent nuisance abatement of the subject property. Among other things, Rasmussen will continue the best management practices ("BMP") required by applicable law to secure the property from inclement weather and other runoff. A copy of the NTP is attached as Exhibit A;

- On January 27, 2022, the City obtained updated appraisals for real property burdened with performance trust deeds securing the Settlement Agreement;
- On February 2, 2022, the Acting City Planner gave a presentation to the Monterey Park City Council regarding the GAP. Among other things, that presentation noted that a new webpage (www.montereypark.ca.gov/goodviews) was added to the City's website to provide public notification regarding GAP events. A copy is included as Exhibit B;
- On February 3, 2022, Rasmussen implemented traffic control measures;
- The City will be publishing the article attached as Exhibit C in the Cascades Newspaper for purposes of public notification; and
- Pictures from February 9, 2022 and February 11, 2022 are attached as Exhibit D showing the progress for the GAP.

The next Status Report will be filed on or about March 15, 2022.

DATED: February 14, 2022

Karl H. Berger
City Attorney for the City of Monterey Park
Ex rel. the People of the State of California

Exhibit A

CITY OF MONTEREY PARK
320 West Newmark Avenue • Monterey Park • California 91754-2896
www.montereypark.ca.gov

City Council
Yvonne Yiu
Henry Lo
Fred Sornoso
Hans Liang
Peter Chan

City Clerk
Vincent D. Chang

City Treasurer
Joseph Leon

Mr. Adam Rasmussen
C.A Rasmussen, Inc.
28548 Livingston Avenue
Valencia, CA 91355

January 21, 2022

Re: 1688 West Garvey, Hillside Stabilization Project PW21-00424 – Notice to Proceed

Dear Mr. Rasmussen -

This letter will constitute the City of Monterey Park Notice to Proceed with construction of the Hillside Stabilization Project PW21-00424. The effective date for this Notice to Proceed is January 24, 2022.

On the effective Notice to Proceed date, you are authorized by the City of Monterey Park to commence work on the subject project in accordance with the terms and conditions of the contract.

Please sign and return a signed copy of this letter to the Project Manager, Jon Turner at jturner@phoenixcivil.com

Notice to Proceed issued by:
City of Monterey Park

Jon Turner, PE
Acting City Planner

Date: January 21, 2022

Notice to Proceed accepted by:
C.A. Rasmussen

Adam Rasmussen
President

Date: 1/21/22

Exhibit B

ALERTS

City Hall Open on Appointment Basis. Other Library/Rec Indoor Programs Suspended
Read On...

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Read On...

Create an Account

MONTEREY PARK | California

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Featured Projects
1688 West Garvey Avenue
South Garfield Village Specific Plan
San Gabriel Valley Regional Bicycle Master Plan
Health & Sustainability in Monterey Park ▸
General Plan ▸
Housing Element 2021-2029
Climate Action Plan
Pedestrian Linkages Plan

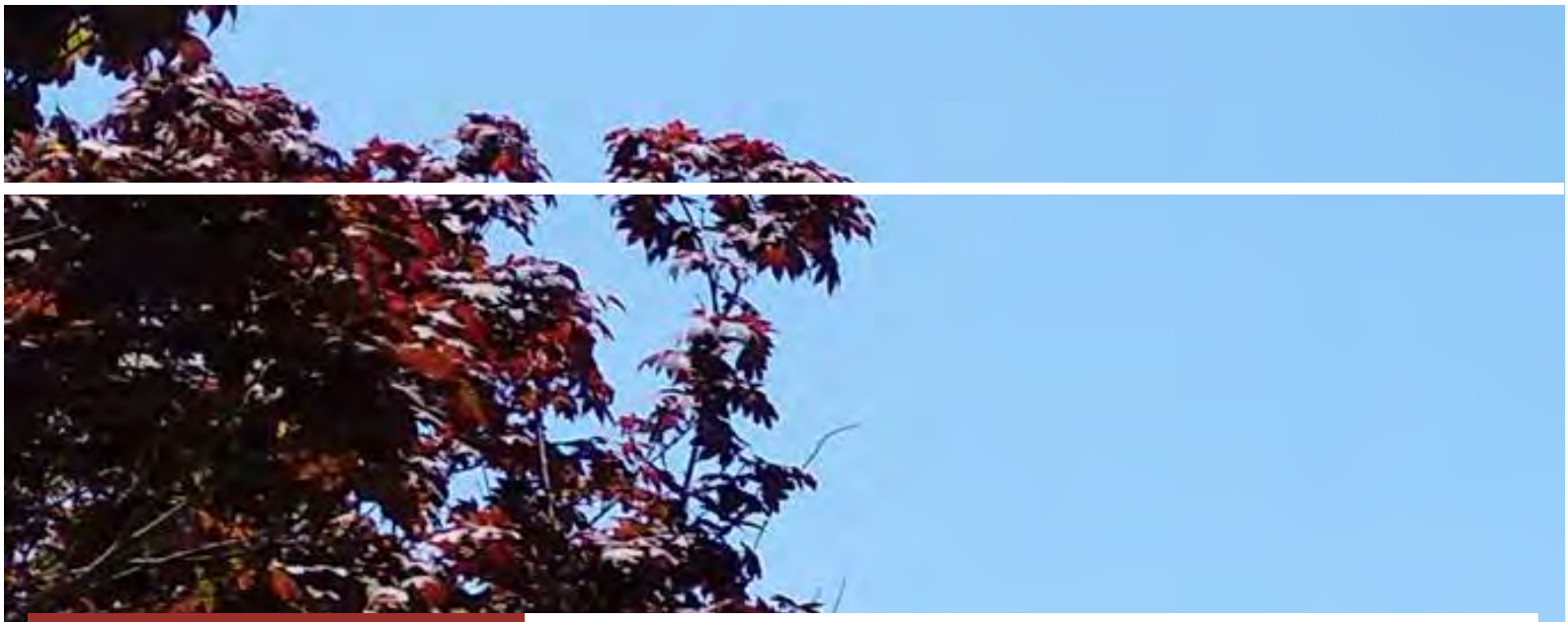
Goodviews Abatement Project (GAP) - Stabilizing the 1688 West Garvey Hillside

Current Status

The City selected a team of contractors to complete the Goodviews Abatement Project (GAP.) C.A. Rasmussen will be the contractor responsible for constructing the GAP. It will begin mobilizing in early February, 2022.

Construction Updates and Notices:

The long-awaited GAP hillside stabilization is set to commence in early February, 2022. Work during the initial phase will include demolition, clearing, and grubbing of the hillside. Most work is anticipated on weekdays from 7:00 a.m. to approximately 7:00 p.m. with weekend work occurring



Planning Commission

Design Review Board

Zoning Information - Development Standards

Property Development ►

Forms

Electronic Cigarette Information

intermittently. There will be an increase in truck traffic in the area along Ramona Rd., Garvey Ave. and Atlantic Ave. as large amounts of dirt/debris will be removed from the site to make space for the stabilization work and sidewalk to be completed. Construction activities should be anticipated and work will continue through December 2022.

Lane closure: The parking lane, sidewalk and #2 eastbound lane on West Garvey Avenue from east of Campanita Court to west of Abajo Drive will be closed for the duration of the project.

Metro Bus Service: There are two eastbound Garvey Avenue L.A. County Metro bus stops (Route 106) at St. Steven's Serbian and Abajo Drive that will not have service for the duration of the project. According to L.A. County Metro, patrons can access eastbound service at Casuda Canyon Drive and at Hitchcock Drive. For up-to-date information, please visit Metro's site at www.metro.net/service/advisories/.

For more information, please contact the City Manager's Office at (626) 307-1485 or at CMO@MontereyPark.ca.gov.

Background

The site of the Goodviews Abatement Project was originally approved for development in 1978 and 1979 for 31 residential dwelling units. That original project was developed by the Good Views Land Development Company. Consequently, during the 40 years since that time, the GAP site is commonly referenced as the “Good Views” property.

The Good Views property is historically unstable. In 1983, Garvey Avenue was damaged and blocked by a slope failure resulting in the City taking emergency action to construct various soil stabilization and drainage infrastructure. In 1986, the City entered into an agreement with the Good Views developer to construct permanent structures intended to stabilize the hillside that was to be completed by December 5, 1986. In 1987, 1988, and 1989, a number of City consultants advised the City regarding what measures were required to stabilize the hillside. The Good Views property owner failed to implement any of those recommendations. As a result, the City in 1991 issued a notice of violation to Good Views that the Project site constituted a public nuisance requiring abatement.

After providing notice on an annual basis, the City in 1994 was unable to contact Good Views representatives. It is unclear what happened to Good Views by that time. In 1997, the City Council declared the property to be a public nuisance and commenced abating the property. Among other things, it installed a gate on the abandoned private road. The City took additional abatement action in 2000 and 2002. In sum, the City expended an estimated $200,000 to $300,000 to abate nuisances on the property in the years before 2013.

Starting in 2013, the City again undertook various code enforcement actions against the new property owner of 1600-1688 West Garvey Avenue. Among other things, the City directed the property owner to submit an erosion plan; remove trash, junk and debris; abate weeds and overgrown vegetation; and maintain slope drainage. Between 2013 and 2015, the City issued six different

administrative citations regarding the property in response to various issues related to the property including, without limitation, a tree that fell onto West Garvey Avenue in 2014 that both blocked the street and brought down power lines owned by Southern California Edison.

Concerned that the El Niño storms in 2015 would result in significant slope failure at the property, the City filed a civil lawsuit against the property owner to abate the nuisances on the property. That lawsuit allowed the City to immediately take action to temporarily stabilize the hillside. Those efforts, however, did not constitute a permanent solution to the overall issue of hillside stability.

On April 25, 2017, the City entered into a settlement agreement with the property owner which includes a plan for a long-term solution to the hillside. In short, the Settlement Agreement requires the property owner to stabilize the hillside through a series of retaining walls and other geotechnical solutions.

On June 16, 2021, the City Council approved a residential development for the GAP site. Had the property owner commenced construction by August 1, 2021, the property owner could have voluntarily implemented the measures needed to stabilize the hillside.

On October 13, 2021, the City informed the property owner that it had defaulted on the settlement agreement and that the City would construct the GAP. Construction is expected to begin on this project February 1, 2022.

Notable Documents

Below are links to download public documents regarding the GAP including the Settlement Agreement(s); the City's abatement warrant; the City's Status Reports (filed with the Superior Court); and various staff reports submitted to the City Council.

Historical Document links:

- Goodviews Project History and FAQ, April 26, 2021
- Draft Environmental Impact Report (DEIR) - 1688 W. Garvey Avenue
- Technical Appendices - DEIR - 1688 W. Garvey Avenue
- Notice of Completion - 1688 W. Garvey Avenue
- Notice of Availability of Draft Environmental Impact Report for 1688 West Garvey Avenue
- Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the 1688 West Garvey Avenue Residential Project
- Initial Study for 1688 West Garvey Avenue Residential Project
- Final Environmental Impact Report (FEIR) - 1688 W. Garvey Avenue
- 1688 W. Garvey Ave Specific Plan
- Monterey Park Geologic Hazard Abatement District (MPK GHAD) - Engineer's Report

Next

Contact Us

City of Monterey Park
320 West Newmark Ave.
Monterey Park, CA 91754

Phone: 626-307-1458
Fax: 626-288-6861

Popular Links

Coronavirus Updates
Municipal Code
Passport Services
Library
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Job Openings

Site Links

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Disclaimer/Terms of Use
Site Map
Contact Us
Accessibility
Government Websites by CivicPlus®

City Hall Hours: Monday through Thursday: 7:30 a.m. to 5:30 p.m. | Friday: 7:30 a.m. to 4:30 p.m.

Exhibit C

West Garvey Avenue Hill Stabilization Project Commences

Project expected to complete in late 2022

By City Manager's Office Staff

A team of contractors have begun the Goodviews Abatement Project (GAP), which seeks to stabilize the hillside in the 1600 block of West Garvey Avenue.

The initial phases of construction will include demolition, clearing, and grubbing of the hillside. Most project work is anticipated on weekdays from 7 a.m. to approximately 7 p.m., with weekend work occurring intermittently. There will be an increase in truck traffic in the area along West Ramona Road, Garvey Avenue and Atlantic Boulevard as large amounts of dirt/debris will be removed from the site to make space for the stabilization work and for the sidewalk to be completed. Construction activities are anticipated through December 2022. Additional information, including project updates and property history is available at www.montereypark.ca.gov/goodviews.

Street Lane Closures and Transit Alerts

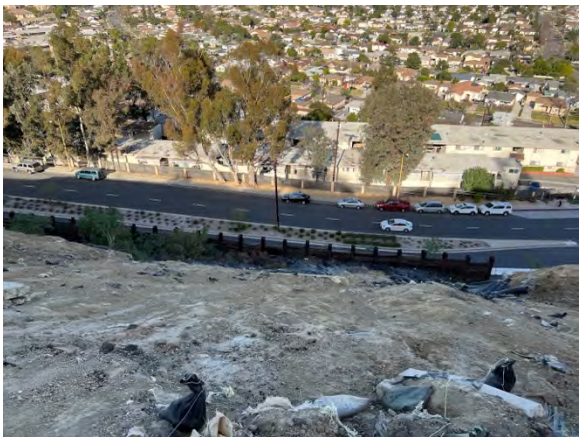
Lane closure: The parking lane, sidewalk and #2 eastbound lane on West Garvey Avenue from east of Campanita Court to west of Abajo Drive will be closed for the duration of the project.

Metro Bus Service: There are two eastbound Garvey Avenue L.A. County Metro bus stops (Route 106) at St. Steven's Serbian and Abajo Drive that will not have service for the duration of the project. According to L.A. County Metro, patrons can access eastbound service at Casuda Canyon Drive and at Hitchcock Drive. For up-to-date information, please visit Metro's site at www.metro.net/service/advisories/.

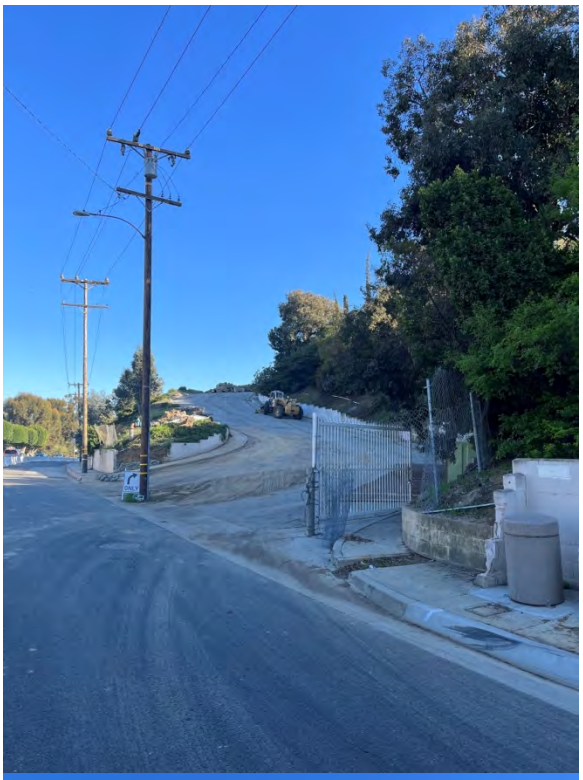
For more information on the GAP project, please contact the City Manager's Office at 626-307-1485, cmo@montereypark.ca.gov or visit www.montereypark.ca.gov/goodviews.

# # #
Print project map inline with article.

Exhibit D



Pictures dated February 9, 2022



Pictures dated February 11, 2022

Pictures dated February 11, 2022

KARL H. BERGER, State Bar No. 178458
City Attorney, City of Monterey Park
TIMOTHY E. CAMPEN, State Bar No. 197941
Assistant City Attorney, City of Monterey Park
HENSLEY LAW GROUP
2600 W Olive Ave Ste. 500
Burbank, CA 91505
Tel: (818) 333-5120; Fax: (818) 333-5121

Attorneys for Plaintiff CITY OF MONTEREY PARK
ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA

Exempt from fees pursuant to Government Code § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

IN RE PROPERTY AT: 1688 WEST GARVEY AVENUE, MONTEREY PARK, CALIFORNIA Property Owner: Center Int'l Investments, Inc.	**FOURTH STATUS REPORT SUBMITTED BY THE CITY ATTORNEY FOR THE CITY OF MONTREY PARK ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CITY OF MONTEREY PARK**

This Fourth Status Report is submitted in accordance with the Abatement Warrant issued by the Honorable Suzette Clover on November 17, 2021 affecting the above-captioned real property. Please refer to the First through Third Status Reports previously filed with the Court for activities occurring up to February 14, 2022. Since the Third Status Report was filed, the City undertook the following activities:

- On February 28, 2022, purchase orders were issued to obtain lumber for the retaining walls at the Goodviews Abatement Project ("GAP") site.
- On March 3, 2022, purchase orders were issued to obtain steel for the retaining walls at the GAP site.
- On March 3, 2022, Rincon Consultants was retained as a Storm Water Pollution Prevention Plan ("SWPPP") consultant to maintain the GAP weekly inspections in accordance with California law.

- On March 3, 2022, C.A. Rasmussen updated a new construction schedule reflecting that the GAP would take 205 days to complete.
- On March 3, 2022, the City of Monterey Park issued an Emergency Demolition Order to all entities engaging in the GAP including, without limitation, demolition and removal of existing infrastructure at the GAP site for purposes of removing underground transite pipe (i.e., pipe with asbestos) discovered during earthmoving at the site on or about February 25, 2022.
- Pictures demonstrating the progress of the GAP (with drone captured pictures from June 2021 to show comparison) are attached as Exhibit "A" for reference;
- On March 7, 2022, a cultural monitor for the Kizh Nation started observations at the GAP site.
- On March 8, 2022, the People's representatives met with representatives from the South Coast Air Quality Management District ("AQMD") regarding the transite pipe.
- On March 9, 2022, Mr. Chris Conkle, P.E. (from Geoysntec Consultants) filed a declaration in support of the People's related nuisance abatement action stating, in part, that the property owner's construction plans – as submitted to the City of Monterey Park in 2021 – cannot be used. All engineering and construction plans for the GAP must be restarted. A true and correct copy of that Declaration is attached as Exhibit "B" for reference.
- On March 10, 2022, the Acting Public Works Director and City Planner, Mr. Jon Turner, met petitioners in a separate action for a review of the GAP construction site.
- During Mr. Turner's March 10th meeting, one of the petitioners informed Mr. Turner that a private outdoor deck at the top of the GAP site appeared to be shifting. As a result, Mr. Turner ordered inclinometers to be installed at the GAP site to measure any soil movement.
- A proposal for inclinometers, dated March 11, 2022, in the amount of $49,800

was approved for installation.

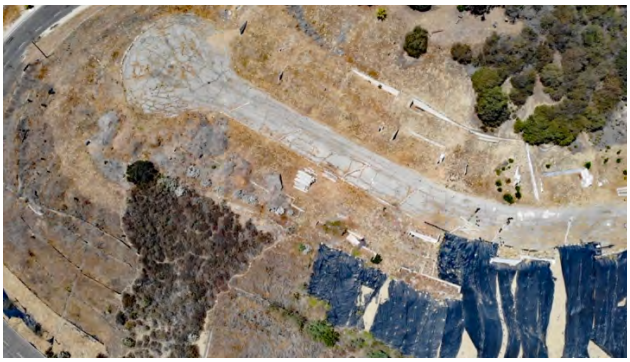
- Removal of the transite pipeline commenced March 11, 2022.
- A court hearing in the underlying nuisance abatement case is scheduled for March 16, 2022 (LASC Case No. BC605788) at 8:30 a.m. The People's Reply is attached as Exhibit "C" for reference which summarizes the matter.

While no additional Status Reports are currently scheduled in this matter, the People may seek to extend the time for this Abatement Warrant before its expiration on March 31, 2022.

DATED: March 14, 2022

Karl H. Berger
City Attorney for the City of Monterey Park
Ex rel. the People of the State of California

Exhibit A



“Before”
Pictures dated on or about June 10, 2021

Pictures dated March 3, 2022

Pictures dated March 3, 2022

Exhibit B

DECLARATION OF CHRIS CONKLE, P.E., G.E.

I, CHRIS CONKLE, P.E., G.E., hereby declare as follows:

1. I am a licensed civil engineer (P.E.) with the State of California, Credential No. 70923 since 2007, and a licensed geotechnical engineer (G.E.) with the State of California, License No. 2926, since 2011. I am employed by Geosyntec Consultants as a Principal Geotechnical Engineer, which has been retained by the City of Monterey Park to provide engineering consulting services concerning stabilization measures, including retaining walls, of a hillside located at 1688 W. Garvey in the City of Monterey Park, California 91754 (APN 5254-002-031) (the "Property"). I have 17 years of experience focused on geotechnical investigation, evaluation, design and quality assurance monitoring for a variety infrastructure projects, including retaining walls for hillside stabilization. I specialize in geotechnical infrastructure and foundation engineering, and have extensive experience in the area of analyzing and drafting geotechnical reports, construction plans, and engineering plans regarding the stability and remediation of slopes. I have personal knowledge of the facts stated in this Declaration, and if called as a witness, I could and would competently testify thereto.

2. This Declaration is made in support of the City of Monterey Park on behalf of the People of the State of California's ("City") Motion to Enforce Settlement Agreement concerning the Property.

3. I have personally, and in consultation with qualified colleagues, reviewed hillside stabilization plans submitted by Center Int'l Investments, Inc. ("CII") for hillside stabilization of the Property, including proposed retaining walls and related features.

4. The construction plans submitted by CII for the hillside stabilization did not incorporate sufficiently the relevant geotechnical recommendations. First, required remedial grading was not represented in the construction plans. Second, recommended geogrid materials that are placed in the soils for stabilization were not included in the plans.

5. Engineering of the retaining walls in CII's plans was inadequate. Specifically, CII's plans applied inappropriate assumptions regarding lateral earth pressure distribution assumptions in designing the features of the retaining walls intended to hold the hillside in

place. Additionally, CII's retaining wall design failed to include appropriate resistance to vertical loads.

6. Finally, in consultation with the City's contractor, C.A. Rasmussen, Inc., we have learned that retaining wall anchors (77-88) along the property line pose significant access constraints and related constructability concerns that may make implementing the plans impracticable. Further, as designed, several tieback anchors at five pile locations 8, 9,10,11,12 would have intersected each other in a way that could not be constructed.

7. As a result, the construction plans submitted by CII cannot be used, and the City, or anyone who would be seeking to construct the hillside stabilization, must effectivity start over with engineering and construction plans for this hillside stabilization.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

EXECUTED on this 9th day of March, 2022 at Costa Mesa, California.

Chris Conkle, P.E., G.E.

Exhibit C

KARL H. BERGER, State Bar No. 178458
City Attorney, City of Monterey Park
TIMOTHY E. CAMPEN, State Bar No. 197941
Assistant City Attorney, City of Monterey Park
JOAQUIN VAZQUEZ, State Bar No. 282528
Deputy City Attorney, City of Monterey Park
HENSLEY LAW GROUP
2600 W. Olive Avenue, Suite 500
Burbank, CA 91505
Tel: (818) 333-5120
Fax: (818) 333-5121

Attorneys for Plaintiff
THE PEOPLE OF THE STATE OF CALIFORNIA

Exempt from fees by
Government Code § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, ex. rel., MARK D. HENSLEY, City Attorney for the City of Monterey Park,

Plaintiffs,

v.

CENTER INT'L INVESTMENTS, INC., a California corporation, and
DOES 1 through 25, inclusive,

Defendants.

Case No.: BC605788

REPLY TO OPPOSITION TO PEOPLE'S MOTION TO ENFORCE SETTLEMENT AGREEMENT PURSUANT TO CCP § 664.6

[Filed concurrently with; Declaration of Karl H. Berger, Jonathon X. Turner, and Chris Conkle; Compendium of Evidence and Exhibits.]

Date: March 16, 2022
Time: 8:30 a.m.
Judge: Mel Red Recana
Dept: 45

Res # 308635144412

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/ / /

I. INTRODUCTION

The City Attorney[1] for the City of Monterey Park ("City"), on behalf of the People of the state of California (the "People"), submits this Reply in rebuttal to Center Int'l Investments' ("CII") Opposition to People's Motion to Enforce Settlement Agreement pursuant to Code of Civil Procedure § 664.6 ("Opposition").

CII is confused. This is not a contract dispute. It is a law enforcement proceeding by the City Attorney on behalf of the People of the State of California to abate a public nuisance. The public nuisance is an ongoing threat that presents a very real and continuing danger to public health and safety. The People utilized every reasonable effort to cause CII to permanently abate the nuisance that is present on its property – even to the extent of causing the City of Monterey Park to process a residential development to accommodate CII's requests and promised performance. At no point over 12 years of ownership has CII fixed its property despite it having every opportunity to voluntarily do so. CII could have voluntarily abated the nuisance on its property at any time during the seven years since the People filed its civil public nuisance complaint. Its persistent and obstinate failure to act left the People with no choice but to step in and protect the community without further delay.

"CII waive[d] any and all rights of notice and hearing" in this case (Settlement Agreement, section 3; Exhibit B[2]). Simply because the People, in an abundance of caution, sought a court order to enforce the Settlement Agreement, does not void that waiver. In fact, this Court can completely disregard CII's Opposition and any arguments made under their waiver. The ultimate reason for the People's action in bringing this Motion to Enforce Settlement Agreement is to obtain a court order providing clear direction to sworn law enforcement officers who are securing the property in the event that CII's representatives interfere with the People's abatement of the public nuisance. The People *already have* the right to enter the subject property and abate this public nuisance.

With this proper context, the People submit this Reply to CII's Opposition.

/ / /

[1] Karl H. Berger was appointed City Attorney for the City of Monterey Park in 2020; the original case caption identifies Mark D. Hensley as the City Attorney. Mr. Hensley is now an Assistant City Attorney for the City of Monterey Park.
[2] Exhibits A-H referenced herein refer to those submitted with the People's original Motion.

II. CII FAILED TO ABATE THE PUBLIC NUISANCE

CII dismisses its long history of refusing to abate the public nuisance on its property as irrelevant. (Opposition, fn. 1.) This is objectively absurd. The People first notified CII of this public nuisance and requirement to abate it in March 2013. (Campen Dec., Para. 9.[3]) Every day that the public nuisance exists unabated is a "separate offense." (Monterey Park Municipal Code ("MPMC") § 4.10.010 (b)). From the date of the first administrative citation issued to CII (Campen Dec., Para. 9.) through just August 1, 2021, amounts to 3,068 separate violations of the Monterey Park Municipal Code. Providing the Court with the history of this case, and the virtually countless opportunities provided CII to stabilize the hillside, is absolutely relevant to understanding why the People are compelled to now abate this public nuisance.

After CII failed to meet the deadlines of the Original Settlement Agreement, the People accommodated CII with a First Amended Settlement Agreement with new deadlines. When CII failed to meet those new deadlines, the People *again* accommodated CII with new deadlines in the Second Amended Settlement Agreement.

In the revised timeline of the Second Amended Settlement Agreement, CII failed to meet the following deadlines:

- January 15, 2021 – "Horizontal permits issues."
- February 2, 2021 – "Final Map Recorded."
- March 8, 2021 – "Mobilize for Horizontal Improvements."

(Declaration of City Attorney Karl H. Berger ("Berger Dec."), ¶ 47; Exhibits B, RR.)

Additionally, the Second Amended Settlement Agreement required CII to submit its Plan A plans and seek City Council approval not later than November 4, **2020**; that did not happen until a full eight months later on the June 16, **2021** Council meeting. (Exhibit B; On Decl., ¶ 8.)

Any one of these failures, by itself, was sufficient for the People to commence with abating the hillside pursuant to the Settlement Agreement. Still, the People provided yet *another* accommodation for CII to voluntarily abate the public nuisance by demonstrating substantial

[3] All references to "Campen Decl." herein refer to the Declaration of Timothy Campen, submitted with the People's Original Motion to Enforce Settlement Agreement.

performance under the Settlement Agreement by August 1, 2021, as determined by the City acting on behalf of the People. (Berger Dec., ¶ 21.)

Despite extensive warnings from the City Attorney (*see, e.g.,* Exhibit T.), CII *still could not get Plan B* underway, even *after this deadline expired*. (Berger Dec., ¶ 26-44.) The People provided CII with notice it was not fulfilling its obligations under the Settlement Agreement and gave it more time to voluntarily comply. When CII again failed this,[4] the People determined that there was no reason to expect CII would ever voluntarily abate the hillside and consequently invoke its rights under the Settlement Agreement and its police powers to abate this public nuisance.

As noted above, the People and the City could have filed a new public nuisance abatement case *every day since 2013* to seek compliance. This is in addition to multiple civil and criminal actions the People and City could have undertaken to compel compliance with the MPMC and California law. Instead, the People chose to take the "civil" route by filing a civil lawsuit in 2015 to encourage voluntary compliance. (Berger Dec., ¶ 3.) This is in accordance with an underlying philosophy that achieving voluntary compliance from property owners is in the public interest. . (Berger Dec., ¶ 3.) Entering into the original Settlement Agreement after CII's failure to abate, amending it twice after its failure to abate, and then providing more opportunities to follow through after failing to meet its obligations are all accommodations to CII's benefit only – which it repeatedly squandered. (Exhibit B.) The Settlement Agreement provides nothing to the People or the City that is not alternatively available to it through applicable law. Because CII refuses to comply with its obligations under applicable law including, without limitation, the Settlement Agreement, the City, on behalf of the People, is abating the public nuisance on its own and at CII's cost.

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[4] Declaration of Acting City Planner, Jonathan Turner, P.E., is attached hereto as Exhibit X, which directly rebuts CII's contentions that the City was responsible for CII's failures to obtain grading permits by the established deadlines.

III. CII FAILED TO COMPLY WITH THE TERMS OF THE SETTLEMENT AGREEMENT

A. CII waived its rights to any hearing as a prerequisite to the City, on behalf of the People, to abate this public nuisance.

"CII waives any and all rights of notice and hearing, except as otherwise expressly provided by this Agreement..." (Original Settlement Agreement, Section 3(C); Exhibit B.) "In the event that Plan B is not ***underway*** by the deadline set forth in the Amended Project Schedule, CITY [on behalf of the People] may…enter the Property, abate the Nuisance, and/or complete Plan B…" (Second Amended Settlement Agreement, Section 3(C), Exhibit B (emphasis added).)

B. Resolution No. 12255 merely restates the terms of the Settlement Agreement, which authorizes abatement by the City, on behalf of the People.

As CII readily admits, it attended the June 16, 2021 meeting where the City Council approved the residential development for Plan A. (On Dec., ¶ 8) At that same meeting, the City Council adopted Resolution No. 12255. (Exhibit D.), attached to People's Motion to Enforce Settlement Agreement.) The reasons for adopting that Resolution are set forth in the Recitals contained in Section 1 of Resolution No. 12255. In sum, the Resolution declares an emergency as to the hillside on the Property and delegates authority to the City Manager to determine, in the City Manager's sole discretion, whether CII would make "substantive progress toward completing the Project as required by the Settlement Agreement by August 1, 2021." (Resolution No. 12255, Section 3(B); Exhibit D.) The "Project" is defined in Section 1(D) and constitutes stabilization of "the hillside through a series of retaining walls and other geotechnical solutions." (Resolution No. 12255, Section 1(D); Exhibit D).

CII's Opposition complains that the City Council unilaterally amended the Settlement Agreement and that the People must prove a breach before moving forward with Plan B. (Opposition, page 13, lines 6-28.) Neither assertion is supported by the four corners of the Settlement Agreement.

Section 1(a) of the Original Settlement Agreement[5] requires CII to "[w]ork in good faith

[5] Copies to the Original Settlement Agreement and its amendments, as referenced herein, are included in Exhibit B.

with the City … and obtain a Permit ***with all due speed***" (emphasis added). Section 1(b) of the Original Settlement Agreement provides:

> [f]or good cause shown, such as a delay in permit issuance caused by the City … ***the City Attorney will extend the time for completing construction … and such good cause shall be determined in the exercise of his reasonable discretion***. The progress of the Project shall not be deemed good cause because the obligation to complete the hillside restoration is independent from the City's obligation to process the Project in the normal course of business. (Emphasis added).

Section 1(D) of the First Amended and Restated Settlement Agreement states that:

> [t]he Parties intend for the Original Agreement to be merged and consolidated by reference into this Agreement. To the extent … there is a conflict between the Original Agreement and this Agreement, the terms and conditions of this Agreement will prevail."

Section 1(H) of the First Amended and Restated Settlement Agreement states that:

> [t]he Project Schedule … provides the critical path Schedule for Plan A and Plan B as contemplated in this Agreement. CII understands and agrees that absent good cause, ***as determined by CITY in its sole discretion*** (and contemplated below), the Project Schedule will not be altered. (Emphasis added).

Section 2(B)(iii) of the First Amended and Restated Settlement Agreement states that:

> [f]or good cause shown, such as a delay in CITY reviewing CII's proposed development plans, CITY processing or issuing a grading or building permit … the Project Manager ***may*** extend the time set forth in the Project Schedule by a period of time equal to the length of the delay. Such an extension of time must be in writing, executed by both Parties, and included as an operational memorandum ancillary to this Agreement.

Section 3(B) of the First Amended and Restated Settlement Agreement states that:

> Nothing in this Agreement obligates CITY to exercise its discretion in any particular manner with respect to Plan A. ***Any exercise of CITY's discretion regarding Plan A in accordance with applicable law cannot be deemed to constitute a breach of Plaintiff's duties under this Agreement***." (Emphasis added).

Section 4 of the First Amended and Restated Settlement Agreement states that:

> Nothing in this Agreement is intended to, nor can it, act as a limitation on CITY's present or future exercise of municipal powers in accordance with the California Constitution and applicable law.

Section 1(D) of the Second Amended and Restated Settlement Agreement provides, in part, that:

> The Parties intend for the Original Agreement and the First Amended Agreement to

> be merged and consolidated by reference into this Agreement. To the extent … there is a conflict between the Original Agreement, the First Amended Agreement, and this Agreement, the terms and conditions of this Agreement will prevail.

Section 1(I) of the Second Amended and Restated Settlement Agreement provides, in relevant part, that:

> CII understands and agrees that absent Good Cause, ***as determined by CITY in its sole discretion*** (and contemplated below), the Amended Project Schedule will not be altered. ***"Good Cause" shall mean demonstrated progress and effort by CII in its performance***, delays attributable to the CITY's review of Plan A project materials, CITY processing or issuing a grading or building permit, or because of unusual inclement weather impeding construction." (Emphasis added).

Section 2(B) of the Second Amended and Restated Settlement Agreement provides, in part, that:

> [i]n the event that Plan B ***is not underway by the deadline set forth in the Amended Project Schedule***, CITY may (1) enter the Property, abate the Nuisance, and/or complete Plan B, and (2) foreclose on the Liens recorded in its favor … to recover the cost of completing Plan B." (Emphasis added).

In short, no specific "breach" of some discrete aspect of the Settlement Agreement, including any final completion deadline, is required for the People take over remediation of the hillside. As noted by the emphasized language above, the People and CII have always agreed that the City of Monterey Park (acting on the People's behalf) would have **sole discretion** regarding whether CII was **progressing toward completion of abatement of the hillside**. Performance issues could be mitigated by a determination of "good cause" by the City Attorney or the City's project manager.

However (and even assuming that CII had not waived all appeals rights via the Settlement Agreement, which it has), the only recourse CII would have regarding the People's (or City's) decisions on "good cause" of whether the Plan B was "underway" would, theoretically, be to seek a writ petition pursuant to Code of Civil Procedure § 1094.6. Yet, CII did not attempt such action. Nor does CII dispute in its Opposition that it never provided public comment regarding Resolution No. 12255 or made a single objection to the People's use of August 1, 2021 as the deadline for determining CII's substantial compliance with the Settlement Agreement.

The relevant, written record is very plain that the People and City gave CII every reasonable opportunity to comply with the Settlement Agreement. For example, even reading just the project schedule for the Second Amended and Restated Settlement Agreement shows that the Plan A public hearing was supposed to have been held **November 4, 2020**. (Second Amended Settlement

Agreement; Exhibit B.) CII did not bring it before the City Council until June 16, 2021 – eight months later. (Exhibit D.) Even the COVID-19 pandemic cannot account for this delay.

As noted in Resolution No. 12255 (*see* Sections 1 and 3), the City Council considered the entire history of CII's property and the entire administrative record. (Exhibit D.) Its decision to establish a deadline for substantial compliance was entirely reasonable given the totality of circumstances. Moreover, the written record unambiguously demonstrates the People's and City's restraint in exercising the discretion delegated by the City Council (and other applicable law). In the end, however, the only conclusion that could be drawn as to determining CII's compliance with the Settlement Agreement was that enough was enough (*see*, Berger Dec., ¶ 44).

IV. CII's OPPOSITION PRESENTS IRRELEVANT ARGUMENTS

A. Failure to complete slope stabilization by either April or September 2022 is not required for the People to abate the public nuisance.

CII contends that "so long as the slope stabilization was completed by the 2022 deadlines (i.e., either April 5, 2022 [for Plan B] or September 8, 2022 [for Plan A]), CII would be in compliance with the Settlement Agreement." (Opposition, p. 12, lines 21-23.) This is simply wrong.

As stated above, Section 2(B) of the Second Amended and Restated Settlement Agreement provides, in part, that

> [i]n the event that Plan B ***is not underway by the deadline set forth in the Amended Project Schedule***, CITY may (1) enter the Property, abate the Nuisance, and/or complete Plan B." (Emphasis added).

The timelines provided in the amended agreements were obviously put in place to ensure that CII remained on schedule to complete abatement by specific deadlines (*see, e.g.,* Berger Dec., ¶, para. 9.) CII's interpret the Settlement Agreement to allow it to fail to meet interim deadlines, yet neither the People nor the City could take any action for failing to perform until the September 8, 2022 deadline to see if Plan A remediation was completed, is patently absurd, directly contradicts the Settlement Agreement, and violates the People's continuing obligation to protect public health and safety.

/ / /

B. The Development Agreement is irrelevant to this Motion.

This case is a nuisance abatement case brought by the People of the State of California. It is not – as CII would have the court believe – a breach of the Development Agreement between CII and the City of Monterey Park. (*see generally* Opposition.) Even discussing the Development Agreement is a red herring for the court particularly since ***the City of Monterey Park is not a party to this action***. The City's involvement with the matter is based on the fact that it is the only public entity that could process or approve any of CII's plans and permits for Plan A. It did so. The People do not have the power to approve such plans and permits and is not a party to the Development Agreement. CII's reliance upon the language in the Development Agreement here is misleading and inappropriate. If it wishes to file suit against the City of Monterey Park for breach of contract, then it is free to do so after complying with the Government Claims Act.

C. The writ petition filed against the City of Monterey Park is irrelevant to this Motion.

CII would further like the court to believe that the writ petition (*Save Our Slopes v. City of Monterey Park et seq*., LASC Case No. 21STCP02365) filed against CII and the City of Monterey Park (but not the People) really challenging the residential development aspect of the City's approvals is relevant to this case. It is not. This is a fact that was told to CII more than once, i.e., the writ petition did not suspend the timelines in the Settlement Agreement (*see*, Berger Dec., ¶ 25 ["[w]e continue to move forward with reviewing matters for Plan B since that is an abatement of a public nuisance."]; and Berger Dec., ¶ 27 ["if there was a pause on CII's part because the writ was filed, that should have not happened and will not change the timeline for Plan B in the settlement agreement").

Simply put, the writ petition did not prevent CII from proceeding with constructing the hillside stabilization according to Plan B – or in such a manner that would accommodate a future residential development.

D. The People's abatement warrant was strictly for temporary "winterization" measures, and is irrelevant to this Action.

CII asserts that when the People obtained an abatement warrant in November of 2021 to implement temporary winterization measures before the oncoming rainy season, amounted a

violation of the Settlement Agreement and "precluded CII from having notice and an opportunity to be heard with respect to the status of CII's abatement efforts." (Opposition, p. 16, lines 19-26.)

Setting aside (once again) the fact that CII waived *all rights to notice or a hearing* and that the People were not required to even obtain an abatement warrant (*see,* Settlement Agreement; Exhibit B.) the abatement warrant obtained by the People was strictly to implement temporary measures to protect the hillside from the upcoming rainy season. (Exhibit F.) This was done after CII failed to properly maintain the Property and after CII's representatives interfered with the People's access to the Property in accordance with the Settlement Agreement. (Declaration of Jonathon Turner, ¶ 5, filed concurrently herewith.) Much like the instant Motion, the People sought and obtained an abatement warrant expressly for the purpose of ensuring that sworn law enforcement officers could detain and, if required, arrest persons interfering with the People's nuisance abatement activities. The warrant is limited in time and scope (such as sandbags and tarps) and does not involve any actions related to the permanent abatement of the hillside. CII's argument is irrelevant to the case at hand.

E. Neither the People nor the City are interfering with CII's Ability to Proceed by engaging with their project management company.

CII contends that "[t]he City is now interfering with CII's contractual relationships with its project manager (KCM Group), hindering CII's ability to proceed." (Opposition, page 17, lines 22-26.) This is inaccurate and irrelevant.

The People informed CII in the October 13, 2021 Notice of Default that the City, on behalf of the People, was taking over the project to abate the hillside, and directed CII not to interfere. (Exhibit E.) The City did not contact KCM Group until late December 2021; the contract for services was executed January 19, 2022[6] – months after CII was no longer able to proceed on the project anyway. (Berger Dec., ¶¶ 18 & 19.) Whether KCM Group breached a

[6] The City contracted with KCM to reduce costs and construction timelines for the Goodviews Abatement Project ("GAP"). The City's initial cost estimates for creating construction drawings to implement the GAP were significant and led to longer delays in constructing the GAP. It was the City's understanding that KCM Group possessed the plans and specifications for "Plan B2" and could provide them to the City's contractor for construction. As it turns out, this was incorrect. Contrary to the assertions by CII in its Opposition, there are no usable plans and specifications (*see*, Declaration of Chris Conkle, filed concurrently herewith; *see also*, Berger Dec., ¶¶ 18 and 19).

contract with CII is beyond the scope of this Motion and a civil matter between those entities.

F. The People took all reasonable steps to assist CII

CII asserts that it "approached the City and asked if could start the remediation process in anticipation of the approvals being given by the City to gain some time" (*see,* Opposition, p.8, ln.18-20). It is unclear what CII is relying upon to make this assertion. The *written* record makes it plain that the *City* was asking CII to submit paperwork well *before* the June 16, 2021 City Council hearing (*see*, Berger Dec., ¶ 15 [communication June 2, 2021]; Berger Dec., ¶ 16 [communication June 3, 2021]; Berger Dec., ¶ para 17 [communication June 14, 2021: "completion of the infrastructure is September 2022. Your client should have been working on this earlier this year."]; Berger Dec., ¶ 17 [communication June 15, 2021 "[y]ou and I both know what caused the hearing delays. And we both know that is not the City's problem. Just so we are clear."].)

IV.

CONCLUSION

For the forgoing reasons and those stated in the People's Original Motion to Enforce Settlement Agreement, the People of the State of California request this Court's acknowledgement that City of Monterey Park, on behalf of the People, may proceed without interference from CII to abate the hillside slope on Property, which is a public nuisance and presents a continuing threat to public health and safety.

DATED: March 9, 2022

Respectfully submitted,
Karl H. Berger, City Attorney
HENSLEY LAW GROUP

By: Timothy E. Campen, Assistant City Attorney
Attorneys for Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA

Resolution
Attachment 2

DECLARATION OF JONATHON M. TURNER, P.E.

I, JONATHON M. TURNER, hereby declare as follows:

1. I am a credentialed civil engineer with the State of California, Credential No. CE60214, by State Board of Professional Engineers, Land Surveyors and Geologists, and have been so licensed since February 2000. I am also credentialed as a Qualified SWPPP (stormwater pollution prevention plan) Developer, Certificate 00807, with the California State Water Resources Control Board. I hold a Bachelor of Science degree in civil engineering from California Polytechnic State University, San Luis Obispo. I am the President and Principal Engineer for Phoenix Civil Engineering, Inc., based out of Santa Paula, California. I have extensive experience in the area of analyzing geotechnical reports, construction plans, and engineering plans regarding the stability and remediation of slopes, as well as project management and implementation of slope stability and remediation. I have prepared Storm Water Pollution Prevention Plans for numerous projects public and private and am well versed in the requirements of the SWRCB with respect to Best Management Practices (BMPs) implementation and maintenance. I have personal knowledge of the facts stated in this Declaration, unless stated on information and belief, in which case, I believe the facts to be true, and if called as a witness, I could and would competently testify thereto.

2. This Declaration is made in support of the City of Monterey Park on behalf of the People of the State of California's ("City") *ex parte* Application for an Abatement Warrant for the property commonly known as 1688 W. Garvey in the City of Monterey Park, California 91754 (APN 5254-002-031) (the "Property").

3. I have been duly appointed and authorized to act as the Acting City Planner on behalf of the City of Monterey Park concerning the slope abatement and proposed

development of the Property since January 2019.

4. The months of November through April account for the vast majority of average annual rainfall in Los Angeles County. The dates of November through April are recognized by the regulatory agencies as the rainy season for the purposes of implementation of storm water "best maintenance practices" ("BMPs") for construction sites.

5. Based on information and belief, the Property's hillside has previously been subject to catastrophic failure in 1984, requiring the City to remove soils debris from the roadway and install a soils debris impact wall that is located along a portion of the Property line along W. Garvey Avenue. There has been no substantive remediation to the hillside since that time, and implementation of plans approved by the City of Monterey Park for new, permanent retaining walls is necessary to secure the hillside.

6. Based on information and belief, the property owner had developed an approved winterization plan for the parcel on or about May 2018, to be implemented until permanent retaining walls are constructed. On or about September 2019, CII was required to update the winterization plan for the Property, which was signed and submitted in November 2019. The term "winterization" refers to measures taken to mitigate erosion and risk of slope failure due to water infiltration from seasonal rain and weather. A true and accurate copy of the winterization plan is attached hereto as Exhibit G.

7. On February 20, 2019, I issued to CII's representative a letter of noncompliance of the required winterization, noting that, among other things, soils debris from the hillside had fallen onto W. Garvey Avenue. A year later on February 12, 2020, I issued another letter of noncompliance of the required winterization of the hillside and warned CII that failure to comply with the approved winterization plan could result in default of the Settlement

Agreement with the City. True and accurate copies of the letters of non-compliance are attached hereto as Exhibit H.

8. On October 20 and November 10, 2021, I re-inspected the Property concerning the condition and erosion mitigation of the hillside slope, of the Property facing Garvey Avenue. I observed that plastic sheeting intended to minimize water intrusion into the slope was blown apart in multiple locations. Sandbags have degraded to the point where the sand is leaking out of the bags in multiple locations. The efforts intended to act as erosion and water intrusion control measures have not been properly maintained since I have been appointed Acting City Planner for the Property, which is contributing to exacerbate the potential failure of the hillside slope. True and accurate photos of the condition of the Property on October 20 and November 10, 2021, attached hereto as Exhibit I.

9. The existing hillside plastic tarps need to be removed and replaced, as they have reached their lifespan due to exposure and failure to be property secured.

10. All of the existing sandbags onsite need to be removed and replaced with gravel filled bags to avoid sand migration and clean up issues after failure. The Property owner appears to have placed more sandbags over the failed bags, which is an unacceptable practice. Further, the existing sandbags direct the flow of water in an uncontrolled manner which results in storm water flowing at a high velocity into the vehicle lanes on W. Garvey Avenue.

11. On November 10, 2021, I inspected the Property with a representative of Gothic Landscape, whom the City intends to hire for winterization services concerning the Property. Gothic Landscape is an established industry contractor that specializes in installation, maintenance and removal of storm water BMPs for construction sites. I have provided Gothic Landscape with the approved Erosion Control Plan that is to be employed for the hillside

stabilization project. The Erosion Control Plan ("Mitigation Plan") is appropriate for the hillside slope pending permanent remediation.

12. Fulfilling the Mitigation Plan will require hundreds of gravel-filled sandbags strategically placed on the hillside. Further, approximately two acres of tarp will need to be secured along the slope. It is anticipated this initial effort will take up to 10 working days.

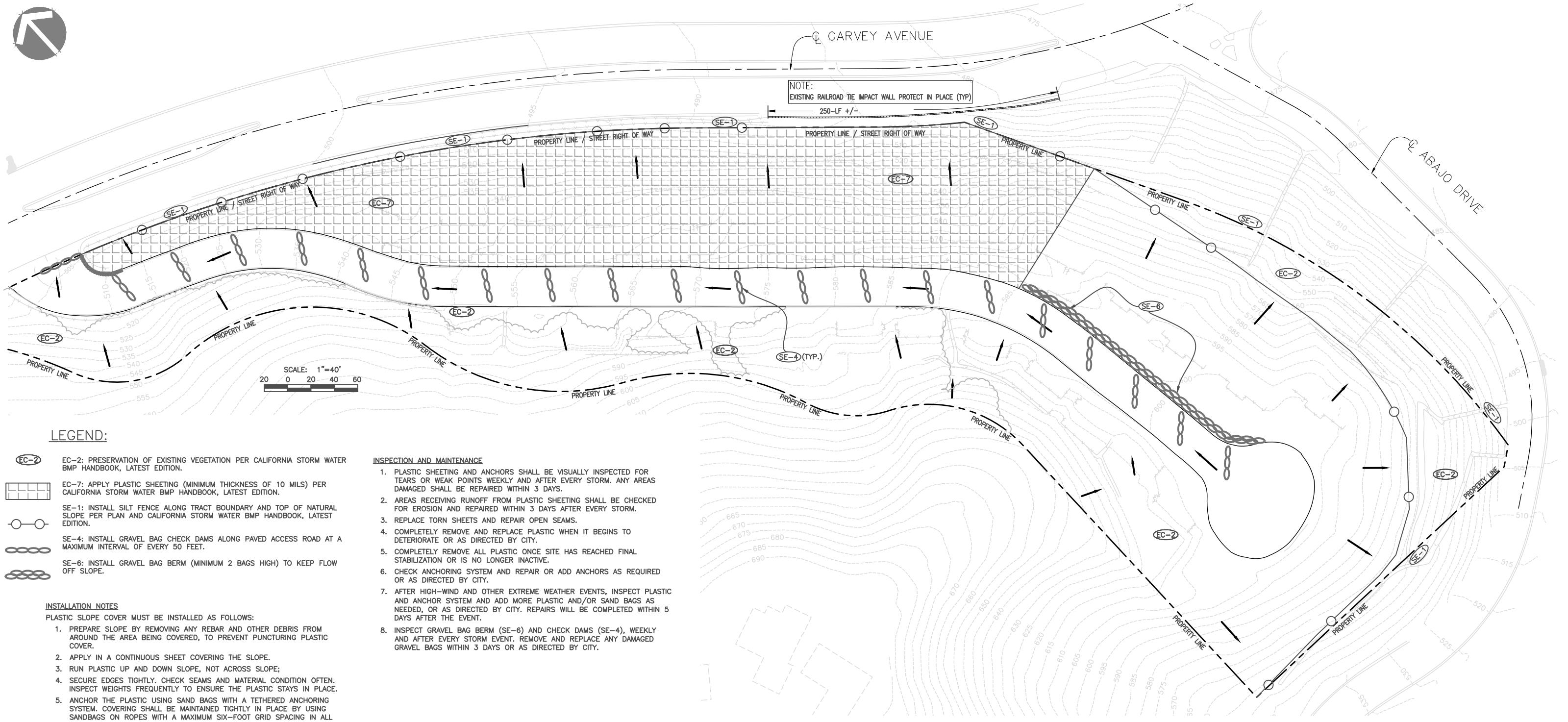
13. On going maintenance will require returning to the site on a weekly basis, or as required by inclement weather, to ensure the integrity of the Mitigation Plan. Maintenance of these temporary mitigation measures will cease once work begins by a grading contractor to begin implementation of Plan B, at which time the grading contractor will assume responsibility of the hillside. This is expected to occur anywhere between January and April of 2022, at which time the need for this abatement warrant will not longer be necessary.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

EXECUTED on this 15th day of November, 2020 at Santa Paula, California.

Jonathon M. Turner

Exhibit G



LEGEND:

EC-2: EC-2: PRESERVATION OF EXISTING VEGETATION PER CALIFORNIA STORM WATER BMP HANDBOOK, LATEST EDITION.

EC-7: APPLY PLASTIC SHEETING (MINIMUM THICKNESS OF 10 MILS) PER CALIFORNIA STORM WATER BMP HANDBOOK, LATEST EDITION.

SE-1: INSTALL SILT FENCE ALONG TRACT BOUNDARY AND TOP OF NATURAL SLOPE PER PLAN AND CALIFORNIA STORM WATER BMP HANDBOOK, LATEST EDITION.

SE-4: INSTALL GRAVEL BAG CHECK DAMS ALONG PAVED ACCESS ROAD AT A MAXIMUM INTERVAL OF EVERY 50 FEET.

SE-6: INSTALL GRAVEL BAG BERM (MINIMUM 2 BAGS HIGH) TO KEEP FLOW OFF SLOPE.

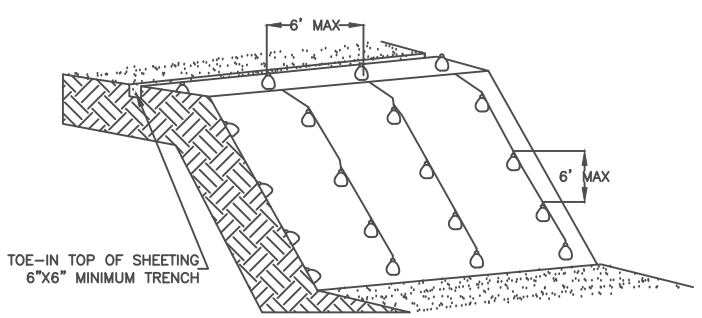
INSTALLATION NOTES

PLASTIC SLOPE COVER MUST BE INSTALLED AS FOLLOWS:

1. PREPARE SLOPE BY REMOVING ANY REBAR AND OTHER DEBRIS FROM AROUND THE AREA BEING COVERED, TO PREVENT PUNCTURING PLASTIC COVER.
2. APPLY IN A CONTINUOUS SHEET COVERING THE SLOPE.
3. RUN PLASTIC UP AND DOWN SLOPE, NOT ACROSS SLOPE;
4. SECURE EDGES TIGHTLY. CHECK SEAMS AND MATERIAL CONDITION OFTEN. INSPECT WEIGHTS FREQUENTLY TO ENSURE THE PLASTIC STAYS IN PLACE.
5. ANCHOR THE PLASTIC USING SAND BAGS WITH A TETHERED ANCHORING SYSTEM. COVERING SHALL BE MAINTAINED TIGHTLY IN PLACE BY USING SANDBAGS ON ROPES WITH A MAXIMUM SIX-FOOT GRID SPACING IN ALL DIRECTIONS.
6. ALL SEAMS SHALL BE TAPED FOR THE FULL LENGTH OF THE SEAM. A MINIMUM OF 12" OVERLAP OF ALL SEAMS IS REQUIRED.
7. PLACE PLASTIC INTO A SMALL SLOT TRENCH (6-INCH WIDE BY 6-INCH DEEP) AT THE TOP OF THE SLOPE AND BACKFILL WITH SOIL TO KEEP WATER FROM FLOWING UNDERNEATH; NO RUNOFF SHALL RUN UNDER THE PLASTIC COVERING.
8. PLACE SAND FILLED GEOTEXTILE BAGS EVERY 3 TO 6 FEET ALONG SEAMS. SAND BAGS MAY BE LOWERED INTO PLACE TIED TO ROPES.
9. PLASTIC SHEETING SHALL HAVE A MINIMUM THICKNESS OF 10 MILLIMETERS.
10. IF EROSION AT THE TOE OF A SLOPE IS OBSERVED, A GRAVEL BERM, RIPRAP, OR OTHER SUITABLE PROTECTION SHALL BE INSTALLED AT THE TOE OF THE SLOPE IN ORDER TO REDUCE THE VELOCITY OF RUNOFF.
11. INSPECT PLASTIC WEEKLY FOR RIPS, TEARS, AND OPEN SEAMS AND REPAIR IMMEDIATELY.

INSPECTION AND MAINTENANCE

1. PLASTIC SHEETING AND ANCHORS SHALL BE VISUALLY INSPECTED FOR TEARS OR WEAK POINTS WEEKLY AND AFTER EVERY STORM. ANY AREAS DAMAGED SHALL BE REPAIRED WITHIN 3 DAYS.
2. AREAS RECEIVING RUNOFF FROM PLASTIC SHEETING SHALL BE CHECKED FOR EROSION AND REPAIRED WITHIN 3 DAYS AFTER EVERY STORM.
3. REPLACE TORN SHEETS AND REPAIR OPEN SEAMS.
4. COMPLETELY REMOVE AND REPLACE PLASTIC WHEN IT BEGINS TO DETERIORATE OR AS DIRECTED BY CITY.
5. COMPLETELY REMOVE ALL PLASTIC ONCE SITE HAS REACHED FINAL STABILIZATION OR IS NO LONGER INACTIVE.
6. CHECK ANCHORING SYSTEM AND REPAIR OR ADD ANCHORS AS REQUIRED OR AS DIRECTED BY CITY.
7. AFTER HIGH-WIND AND OTHER EXTREME WEATHER EVENTS, INSPECT PLASTIC AND ANCHOR SYSTEM AND ADD MORE PLASTIC AND/OR SAND BAGS AS NEEDED, OR AS DIRECTED BY CITY. REPAIRS WILL BE COMPLETED WITHIN 5 DAYS AFTER THE EVENT.
8. INSPECT GRAVEL BAG BERM (SE-6) AND CHECK DAMS (SE-4), WEEKLY AND AFTER EVERY STORM EVENT. REMOVE AND REPLACE ANY DAMAGED GRAVEL BAGS WITHIN 3 DAYS OR AS DIRECTED BY CITY.



CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL
CPESC

CONSTRUCTION MANAGEMENT:	DEVELOPER:	PROJECT ARCHITECT	SOIL / GEOTECHNICAL ENGINEER:	CIVIL ENGINEER:	EARTH RETENTION DESIGNER:
KCM GROUP	CENTER INT'L INVESTMENTS, INC.	SLSD	ADVANCED GEOTECHNICAL SOLUTIONS, INC.	FOCUS ENGINEERING, INC. CIVIL ENGINEERS LAND SURVEYORS	DRS ENGINEERING INC.
1940 GARNET AVENUE, SUITE 300 SAN DIEGO, CA 92109 TEL: (858) 273-5400 FAX: (858) 273-5455	501 W. GARVEY AVE. #207 MONTEREY PARK, CA 91754 TEL: (626) 379-3268 FAX: (626) 282-8605	1414 FAIR OAKS AVENUE, STE 2 SOUTH PASADENA, CA 91030 TEL.: (626) 799-8818 FAX.: (626) 799-8823	485 CORPORATE DRIVE, SUITE B ESCONDIDO, CA 92029 TEL. (714) 786-5661 FAX. (714) 409-3287	25 MAUCHLY, SUITE 317 IRVINE, CA 92618 TEL. (949) 450-0590 FAX. (949) 450-0592	3564 SAGUNTO ST. #486 SANTA YNEA, CA 93460 TEL. (818) 402-3962 FAX. (818) 276-1922
E-MAIL: www.kcmgroup.net	E-MAIL: www.centerintinvestments.com	E-MAIL: www.slsdinc.com	E-MAIL: www.adv-geosolutions.com	E-MAIL: focusengring@sbcglobal.net	E-MAIL: DRS@DRS-ENGINEERING.NET

REVISIONS

NO.	DATE	DESCRIPTION

CITY OF MONTEREY PARK

WINTERIZATION EROSION CONTROL PLAN FOR
1688 W. GARVEY AVENUE - EXISTING SITE
EROSION CONTROL PLAN

APPROVED

Acting City Planner

PRINT DATE: 2019-09-05

SHEET 1 OF 1

Exhibit H

CITY OF MONTEREY PARK

320 West Newmark Avenue • Monterey Park • California 91754-2896
www.montereypark.ca.gov

City Council
Peter Chan
Mitchell Ing
Stephen Lam
Hans Liang
Teresa Real Sebastian

City Clerk
Vincent D. Chang

City Treasurer
Joseph Leon

February 20, 2019

Mr. Robert Garrison
Director of Consulting Services
Murow|CM
1151 Duryea Ave
Irvine, CA 92614

1688 W. Garvey Ave – Site Slope Winterization Remediation Requirements – Supplemental Visit

I visited the project site boundary again after the first noncompliance letter was sent out on 2/11/19 regarding the slope winterization. This was after I was assured that the slope protection would be brought into compliance. I have included updated photos of the current condition of the slope. It appears that some work was performed; however, other areas were not completed. It is unclear why the identified deficiencies were not completely addressed. Additionally, there is soil debris that the site driveway on Garvey Ave. This needs to be swept up and removed from the public right of way.

Based on the condition of the winterization measures at the time of my second site visit, it is my opinion that the erosion protection system is still not in compliance at the locations shown on the attached photo log. Please remediate these issues by Friday, February 22, 2019 and notify me when the effort is completed. Failure to comply with this requirement will result in additional code enforcement action including, without limitation, the City issuing a notice of violation and notice of default under the settlement agreement. A copy of this letter is being forwarded to Karl H. Berger, Assistant City Attorney.

Sincerely,

Jon Turner, PE
Principal Engineer
Acting City Planner

Enclosure

Slope View from Abajo Drive Looking North – Plastic Sheeting Remnants Still Present

Garvey Ave - Gaps in Slope Plastic Sheeting Requiring Repair

Garvey Ave - Gaps in Slope Plastic Sheeting Requiring Repair

Garvey Ave - Deteriorated Plastic Sheeting Still Present

Garvey Ave - Gaps in Slope Plastic Sheeting Requiring Repair and Deteriorated Sheeting Requiring Replacement Still Present

Garvey Ave - Gaps in Slope Plastic Sheeting Requiring Repair and Deteriorated Sheeting Requiring Replacement

CITY OF MONTEREY PARK

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www.montereypark.ca.gov

City Council
Peter Chan
Mitchell Ing
Stephen Lam
Hans Liang
Teresa Real Sebastian

City Clerk
Vincent D. Chang

City Treasurer
Joseph Leon

February 12, 2020

Mr. Gordon Kovtun
KCM Group
1900 Garnet Ave. #300
San Diego, CA 92109

1688 W. Garvey Ave – Site Slope Winterization Remediation Requirements – Site Visit

I visited the project site on 2/09/20 to review the installation of the slope winterization. This was after I was notified by the City that the slope protection was a concern to nearby residents. I have included photos of the current condition of the slope. It appears that some work is needed on the slope to bring it into compliance with the approved project plans.

Based on the condition of the winterization measures at the time of my site visit, it is my opinion that the erosion protection system is not in compliance at the locations shown on the attached photo log. Please remediate these issues by Friday, February 14, 2020 and notify me when the effort is completed. Failure to comply with this requirement will result in additional code enforcement action including, without limitation, the City issuing a notice of violation and notice of default under the settlement agreement.

Sincerely,

_____
Jon Turner, PE
Principal Engineer
Acting City Planner

Enclosure

IMG_0261

IMG_0262

IMG_0263

IMG_0264

IMG_3871

IMG_3872

IMG_3873

IMG_3874

IMG_3875

IMG_3876

IMG_3877

IMG_3878

Exhibit I

1688 W. Garvey Photos – Nov. 10, 2021

Resolution
Attachment 3

CITY OF MONTEREY PARK

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City Council
Peter Chan
Hans Liang
Henry Lo
Yvonne Yiu

City Clerk
Vincent D. Chang

City Treasurer
Joseph Leon

May 12, 2022

Sent via First Class U.S. Mail and Certified Mail

Center Int'l Investments, Inc.
Attn: Karrie On, Chief Executive Officer
501 West Garvey, Suite 207
Monterey Park, CA 91754

Re: Letter dated April 12, 2022 regarding Development Agreement

Dear Ms. On:

This letter responds to that sent by Center Int'l Investments, Inc. ("CII") attorneys dated April 12, 2022 regarding Development Agreement No. DA-21-01 adopted by Ordinance No. 2211 on July 17, 2022 (the "DA"). Pursuant to Section 21 of the DA, notices are sent to your attention at the above address with a courtesy copy to CII's attorneys. Note that the City's notices to the above address are being returned as undeliverable; absent an update to the DA, however, the City will continue sending notices to the above address.

CII's attorneys originally sent prior version of the April 12th letter to the City Attorney only. Per Section 21 of the DA, however, all notices must be sent to the City with a courtesy copy to the City Attorney. I am responding here on the City's behalf since the properly served April 12th letter alleges that the City is in breach of the DA as to issuing grading permits and cooperating with CII in existing litigation. Unsurprisingly, the City disagrees with CII's contentions. CII's letter is an obvious misrepresentation of the truth, and its allegations are easily refuted with written documentation.

- Grading Permit

At the outset, note that the DA did not become effective until August 16, 2021. Anything before that date, therefore, could not legally constitute a breach of contract. Identifying alleged actions or inactions as being breaches of the DA in June and July is nonsensical.

CII asserts it filed a grading permit application on June 18, 2021. That is inaccurate. The document "filed" by CII on June 18, 2021 was returned as it was incomplete. A *complete* grading permit application was not filed until *August 19, 2021*. This occurred only after the City Attorney emailed

CII's representatives on August 9, 2021 and August 10, 2021. All documents are enclosed for your reference.

CII's allegation of the City failing to process the grading permit in a timely manner is also inaccurate. After the Acting City Planner (and Project Manager) returned the grading permit application with comments on June 30, 2021, there was no response from CII for a month. In fact, on July 30, 2021 the Acting City Planner contacted CII's project manager to inquire of the status of the application considering the grading permit deadline was August 1, 2021. CII still did not return the application until August 9, 2021, to which the City Planner returned it the very next day with more comments, repeating that deficiencies previously identified were not addressed. Issues with providing a required storm water pollution prevention plan compliant with California law followed a similar pattern of back and forth through September 23, 2021. At every turn, the City responded to CII's permit application submissions in less time than the typical turn around for such permits, and often within a day or two.

In addition to multiple email communications from the City Attorney and the City's Project Manager to CII's representatives (including CII's counsel) commencing at the beginning of July – all of which urged CII to obtain a grading permit immediately – I issued a Notice of Breach dated August 25, 2021. That letter provided CII an opportunity to cure its breach of the settlement agreement with the People by obtaining a grading permit not later than August 31, 2021. A copy of that letter is enclosed for your convenience.

Even after CII failed to obtain a permit by the extended August 31, 2021 deadline, the City *still* exerted every reasonable effort to have CII obtain a grading permit. That includes email communications from the City Attorney to Mr. Alfred Fraijo dated August 31, 2021; a phone call with Mr. Fraijo on August 31, 2021; additional email correspondence on September 1, 2021; more email correspondence on September 3, 2021; another email on September 7, 2021; and again on September 9, 2021. All of these communications are in your counsel's possession. Yet, CII did not submit the necessary paperwork with required corrections until on or about September 23, 2021 – long after the August 31st extended deadline.

Pursuant to Monterey Park Municipal Code ("MPMC") Chapter 16.21 and California Building Code ("CBC") § 105.3.2, CII's application for a grading permit expired either on December 20, 2021 (if one uses CII's erroneous claim of June 18, 2021) or March 18, 2022 (if one uses the September 23, 2021 date on the completed application). In either event, CII's permit application expired well before the April 12th letter alleging a breach of the DA. The City cannot issue a permit for which no application exists.

The April 12th letter also complains that CII's project manager "inquired about the status of the grading permits" on October 5, 2021. It is unclear why that would have occurred since CII was well-informed that it was required to obtain grading permits not later than August 31st. Even if, however, one accepts CII's rendition of events – which is easily contradicted – the City does not have any record of CII filing the administrative appeal required by CBC § 113, as adopted by the MPMC. An appeal of any permit decision must be perfected to the Construction Appeals Board within 20 days from the date of that decision. In Monterey Park, the Planning Commission acts as the Construction Appeals Board. By any calculation of time, therefore, CII waived its objections to the City's processing of the grading permit application since it failed to file an administrative appeal.

In sum, the City cannot be in breach of the DA for failing to issue a grading permit as there are currently no pending permit applications for processing. Additionally, CII failed to pursue the necessary administrative remedies required to appeal any contention of a permit denial, obviating any requirement for reconsideration.

- Third-Party Lawsuit

The April 12th letter also complains that the City did not cooperate in the pending case captioned *Save Our Slopes v. City of Monterey Park, et al.* (filed July 21, 2022) LASC Case No. 21STCP02365 ("SOS Case"). Again, CII's complaints and revisionist history are directly contradicted in writing.

In a series of email and other correspondence (all of which CII and its attorneys possess), it is plain that (1) the City Attorney tendered the defense of the SOS Case to CII on July 20, 2021 along with the recommendation regarding a joint defense agreement; (2) the City Attorney followed up on August 3, 2021 confirming the tender; (3) on August 9 and August 10, 2021, the City Attorney demanded execution of the joint defense agreement that still had not been completed; (4) the City Attorney's office was informed on or about September 17, 2021, that CII had not accepted the City's defense tender; (5) this was confirmed in writing by CII's counsel on September 21, 2021; (6) on September 21, 2021, the City Attorney noted that the SOS Case should have been already resolved and that the City "will simply part company with CII and settle on its own" if CII did not fulfill its obligations by the end of September; (7) on October 13, 2021, the City issued a Notice of Default which, among other things, noted that because CII failed to defend and indemnify, the City would "separately and independently" settle the SOS Lawsuit; (8) on October 20, 2021, the City Attorney noted that CII's failure to defend and indemnify the City was "astounding." The City is defending its rights in the SOS Lawsuit since CII refused to do so. Neither an actual court nor the court of public scrutiny will view such action as a breach of the DA.

CII was provided ample opportunity to act in good faith as to its obligations to abate the public nuisance on its property independent of any residential development. It failed to fulfill its legal duties despite years of being warned about the consequences. The City's actions, on behalf of the People of the State of California, cannot be characterized as anything but foreseeable. Apparently, notwithstanding the written record, CII seeks to engage in alternative facts to fit its own narrative. In doing so, it misrepresents itself to the City Council and to the public.

Sincerely,

Ron Bow
City Manager

C: Mayor and City Council Members
Karl H. Berger, City Attorney
Alfred Fraijo, CII Counsel

CITY OF MONTEREY PARK

320 West Newmark Avenue • Monterey Park • California 91754-2896
www.montereypark.ca.gov

City Council
Yvonne Yiu
Henry Lo
Fred Sornoso
Hans Liang
Peter Chan

City Clerk
Vincent D. Chang

City Treasurer
Joseph Leon

August 25, 2021

Sent via First Class U.S. Mail and Certified Mail

Center Int'l Investments, Inc.
Attn: Karrie On, Chief Executive Officer
501 West Garvey, Suite 207
Monterey Park, CA 91754

Re: **Notice of Breach – Opportunity to Cure**
1688 Garvey Avenue aka the "Goodviews" project

Dear Ms. On:

As you are aware, on June 16, 2021 the City Council adopted Resolution No. 12255. Section 3 of that Resolution delegated authority to me for determining whether CII was making substantive progress toward completing Plan B as required by the Settlement Agreement. CII's deadline was August 1, 2021.

Despite repeated efforts by the City's representatives, CII's team failed to even obtain a grading permit to commence work on Plan B. Indeed, the City still has not received all of the plans needed to issue permits. It is apparent that CII is in breach of the Settlement Agreement. Consequently, I am selecting a contractor to complete the Plan B construction on the City's behalf in accordance with Resolution No. 12255.

Since the selection of a contractor will take a few days, the City is offering CII a five day opportunity to cure. Accordingly, all required documents must be filed with the City – and a grading permit must be issued – not later than end of business on August 31, 2021.

Sincerely,

Ron Bow
City Manager

C: Honorable Mayor, Mayor Pro Tem, and City Councilmembers
Karl H. Berger, City Attorney
Mr. Alfred Fraijo, Jr., Esq.

From: Karl Berger <kberger@hensleylawgroup.com>
Sent: Monday, August 9, 2021 9:59 AM
To: Alfred Fraijo Jr. <afraijo@sheppardmullin.com>
Cc: Jon Turner <jturner@phoenixcivil.com>; Whitney Hodges <WHodges@sheppardmullin.com>; Tim Campen <tcampen@hensleylawgroup.com>; Bow, Ron <rbow@montereypark.ca.gov>; ialvarez@montereypark.ca.gov
Subject: MP - Goodviews Development

Good morning –

Given the radio silence on this, I guess I will need to crack the whip – again.

1. JDA must be executed today;
2. Permit application (2 pages!!) must be submitted by end of business tomorrow;
3. Status report regarding all outstanding matters – if you don't know what they are, Jon will be happy to provide them – must be provided by end of day Wednesday;
4. If, by Friday, none of these deadlines are implemented, the City will issue the notice of breach on Monday and take over Plan B as a public project. That means it will be selecting its own contractor, etc.

As I've said for years now, I expect open communication on this and substantive progress.

Also, FYI, the City will be engaging affected neighbors regarding truck traffic, dirt hauling, etc. I anticipate that happening within the next 1-2 weeks.

I trust that I've made myself clear. Thanks.

Karl H. Berger

<image003.jpg>

2600 W. Olive Avenue, Suite 500
Burbank, California 91505
818-333-5120 Office
661-644-5476 Mobile
kberger@hensleylawgroup.com
www.hensleylawgroup.com

This is a transmission from the Hensley Law Group. The information contained in this email is confidential and may be protected by the attorney-client and/or attorney work-product privileges. This information is intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, please contact the sender and delete all copies.

On Aug 10, 2021, at 8:35 AM, Karl Berger <kberger@hensleylawgroup.com> wrote:

Hi Alfred –

I do not understand why we are once again in the foot dragging stage of things; I had such high hopes. Yet, no JDA provided. And, since that simple item was not completed, I'm not holding my breath for the permit application.

I will be preparing the notice of breach for Ron's signature.

Sigh.

Karl H. Berger

2600 W. Olive Avenue, Suite 500
Burbank, California 91505
818-333-5120 Office
661-644-5476 Mobile
kberger@hensleylawgroup.com
www.hensleylawgroup.com

City of Monterey Park
GRADING PERMIT

Permit Expires 6 Months from Date of Issuance!

Permit Number: _____

Date Issued: _____

THIS GRADING PERMIT SHALL BE VALID UPON SIGNING BY THE CITY ENGINEER OR HIS AUTHORIZED REPRESENTATIVE

I hereby request permission to grade or construct, by private contract, certain grading work and related improvements upon property described below, and agree to perform all work in accordance with all provisions of Section 16.21, "Excavation and Grading," of the Monterey Park Municipal Code, any special requirements of the Permit, the Plans, and General and Special Provisions approved by the City Engineer.

All grading shall be in accordance with the approved grading plan and under the supervision of the responsible parties indicated below. I am aware that if the actual conditions encountered in the field differ from the information submitted that it is my responsibility to bring it to the attention of the City and request a revision to the plans and permit requirement. Failure to do so violates the permit requirements and constitutes non-compliance.

I am aware that in the interest of public safety, special regulations apply in hillside areas and that geological or engineering reports (or both) may be required before a permit is issued. If excavated materials are to be obtained from, or are to be disposed of, on a separate, non-contiguous site located within the City of Monterey Park, a separate Grading Permit shall be required for that site also.

I am also aware that a compaction report for the building(s) footprint and a rough grading certificate signed by the Soils Engineer and the Supervising Grading Engineer must be submitted to the City Engineer's Office for review and approval prior to the issuance of a building permit for the subject site.

A 12' x 20' (min.) construction driveway shall be constructed of 1" thick asphalt pavement or 2" thick 3/4" gravel to prevent dirt from being deposited onto the public right-of-way. This driveway shall be constructed and maintained from the clearing stage of the project until the construction of the permanent driveway.

1. Owner's Name Center Int'l Investments Phone (____) 626-379-3268
   Address: 501 W. Garvey Ave #207
   Monterey Park, CA Zip: 91754

2. Address of Site: 1688 W. Garvey Ave
   Lot Number(s) 1 Tract No. 75023

3. Scale plans, drawings and quantities prepared and signed by:
   Name: Focus Engineering Inc. Phone (____) 949-450-0590
   Address: 25 Mauchly, Suite 317
   Irvine, CA Zip: 92618

4. Soils Testing Agency: Same as Geologist
   Address: _____
   _____ Zip: _____
   Phone: (____) _____ State License No. _____

5. Engineering Geologist: Advanced Geotechnical Services

Address: 485 Corporate Drive, Suite B

Escondido, CA Zip: 92029

Phone: (____) 714-786-5661 State License No. GE 2790

6. Grading Contractor: McWong Holding Company

Address: 809 S Atlantic Blvd #201

Monterey Park, CA Zip: 91754

Phone: (____) 626-570-9969 State License No. 685220

7. Hauling Contractor: McWong Holding Company

Address: 809 S Atlantic Blvd #201

Monterey Park, CA Zip: 91754

Phone: (____) 626-570-9969 State License No. 685220

8. Person having effective control of the work:

Name: McWong Holding Company

Address: 809 S Atlantic Blvd #201

Monterey Park, CA Zip: 91754

Phone: (____) 626-570-9969 State License No. 685220

8. Purpose of the Work: Slope Stabilization

9. Estimated date of start of work: 9/1/21

Estimated completion date: 9/30/22

10. Estimated c/y Cut 80,600 Estimated c/y Fill 0

I hereby acknowledge that I have read this application; that the information given is correct; that I am the owner or duly authorized agent of the owner. I agree to comply with City and State laws regulating grading, and in doing the work authorized thereby, no person will be employed in violation of the Labor Code of the State of California relating to Workman's Compensation Insurance.

Signature of Applicant: _____

Address: 501 W. Garvey Ave #207

Monterey Park, CA Zip: 91754

Application Checked By: _____ Date: _____

Permission is hereby granted the applicant to perform the work described in this Permit, the attached Special Provisions, and on the approved plans. All work shall be performed in accordance with Section 16.21 of the Monterey Park Municipal Code, and any special requirements of the Permit.

Approved _____ Date: _____

Office of City Engineer

City of Monterey Park
GRADING PERMIT

Permit Expires 6 Months from Date of Issuance!

Permit Number: _____

Date Issued: _____

THIS GRADING PERMIT SHALL BE VALID UPON SIGNING BY THE CITY ENGINEER OR HIS AUTHORIZED REPRESENTATIVE

I hereby request permission to grade or construct, by private contract, certain grading work and related improvements upon property described below, and agree to perform all work in accordance with all provisions of Section 16.21, "Excavation and Grading," of the Monterey Park Municipal Code, any special requirements of the Permit, the Plans, and General and Special Provisions approved by the City Engineer.

All grading shall be in accordance with the approved grading plan and under the supervision of the responsible parties indicated below. I am aware that if the actual conditions encountered in the field differ from the information submitted that it is my responsibility to bring it to the attention of the City and request a revision to the plans and permit requirement. Failure to do so violates the permit requirements and constitutes non-compliance.

I am aware that in the interest of public safety, special regulations apply in hillside areas and that geological or engineering reports (or both) may be required before a permit is issued. If excavated materials are to be obtained from, or are to be disposed of, on a separate, non-contiguous site located within the City of Monterey Park, a separate Grading Permit shall be required for that site also.

I am also aware that a compaction report for the building(s) footprint and a rough grading certificate signed by the Soils Engineer and the Supervising Grading Engineer must be submitted to the City Engineer's Office for review and approval prior to the issuance of a building permit for the subject site.

A 12' x 20' (min.) construction driveway shall be constructed of 1" thick asphalt pavement or 2" thick 3/4" gravel to prevent dirt from being deposited onto the public right-of-way. This driveway shall be constructed and maintained from the clearing stage of the project until the construction of the permanent driveway.

1. Owner's Name Center Int'l Investments Phone (____) 626-379-3268
   Address: 501 W. Garvey Ave #207
   Monterey Park, CA Zip: 91754

2. Address of Site: 1688 W. Garvey Ave
   Lot Number(s) 1 Tract No. 75023

3. Scale plans, drawings and quantities prepared and signed by:
   Name: Focus Engineering Inc. Phone (____) 949-450-0590
   Address: 25 Mauchly, Suite 317
   Irvine, CA Zip: 92618

4. Soils Testing Agency: Same as Geologist
   Address: _____
   _____ Zip: _____
   Phone: (____) _____ State License No. _____

Fill in.

5. Engineering Geologist: Advanced Geotechnical Services
   Address: 485 Corporate Drive, Suite B
   Escondido, CA Zip: 92029
   Phone: (____) 714-786-5661 State License No. GE 2790

6. Grading Contractor: _____
   Address: _____
   _____ Zip: _____
   Phone: (____) _____ State License No. _____

7. Hauling Contractor: _____
   Address: _____
   _____ Zip: _____
   Phone: (____) _____ State License No. _____

8. Person having effective control of the work:
   Name: McWong Holding Company
   Address: 809 S Atlantic Blvd #201
   Monterey Park, CA Zip: 91754
   Phone: (____) 626-570-9969 State License No. 685220

Fill in

8. Purpose of the Work: Slope Stabilization

9. Estimated date of start of work: _____
   Estimated completion date: _____
10. Estimated c/y Cut _____ Estimated c/y Fill _____

I hereby acknowledge that I have read this application; that the information given is correct; that I am the owner or duly authorized agent of the owner. I agree to comply with City and State laws regulating grading, and in doing the work authorized thereby, no person will be employed in violation of the Labor Code of the State of California relating to Workman's Compensation Insurance.

Signature of Applicant: _____
Address: 501 W. Garvey Ave #207
Monterey Park, CA Zip: 91754

Application Checked By: _____ Date: _____

Permission is hereby granted the applicant to perform the work described in this Permit, the attached Special Provisions, and on the approved plans. All work shall be performed in accordance with Section 16.21 of the Monterey Park Municipal Code, and any special requirements of the Permit.

Approved _____ Date: _____
Office of City Engineer

Resolution Attachment 4

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

I. PARTIES

The parties to this SETTLEMENT AGREEMENT AND MUTUAL RELEASE (hereinafter "Agreement") are Plaintiff the People of the State of California (the "People") and Defendant Center Int'l Investments, Inc. ("CII"). The People and CII are sometimes referred to individually herein as a "Party" and may be referred to collectively herein as the "Parties."

II. RECITALS

1. On December 31, 2015, the People commenced an action against CII in the Superior Court of the County of Los Angeles entitled *The People of the State of California, ex rel., Mark D. Hensley, City Attorney for the City of Monterey Park v. Center Int'l Investments, Inc., and Does 1 through 25*, Los Angeles County Superior Court, Case No. BC605788 (hereinafter the "Action").

2. In the Action, the People sought to abate a nuisance involving an unsafe, unsightly and dangerous condition of real property in the City of Monterey Park, including an unstable hillside, approximately located between 1600-1688 W. Garvey Avenue and more particularly described in the Complaint in this case ("Property"), and sought to recover the costs incurred by the People for abating such nuisance from CII, the owners of said real property.

3. CII has implemented a City-approved interim erosion control and slope stabilization plan to prevent erosion of the hillside until such time that the hillside can be permanently remediated in accordance with the terms of this Agreement.

4. CII on February 28, 2017, submitted to the City for review a geotechnical study with recommendations purporting to address all slope stability/public safety issues for the Property (the "Report") as well as site slope restoring improvement plans addressing the remediation of same, but the currently submitted plans are not adequate for development ("Restoration Plan").

5. The City estimates that the review of the Restoration Plan and the correction process between CII and the City will take approximately two months, and at that time CII will be granted a permit to begin slope restoration pursuant to the Restoration Plan ("Permit").

6. CII plans to develop the Property for residential use (the "Project"). The Parties acknowledge that the construction of the Project requires certain discretionary approvals by the City, including without limitation, a subdivision map to subdivide the Property into developable lots (the "Project Approvals").

7. Regardless of the status of the Project, CII will continue to process and finalize the Restoration Plan. CII, in consultation with the City, may submit revisions to the Restoration

Plan to be reviewed by the City to further address slope stability so long as such does not affect the deadline for restoration set forth below (the "Supplemental Plan"). The City estimates that the review and correction of the Supplemental Plan will require approximately two months.

8. The Parties now intend and desire to settle all claims alleged in the Action and to compromise the disputes now existing among them. The purpose of this Agreement is to set forth the terms and conditions of the settlement and compromise between the People, on the one hand, and CII, on the other hand.

III. TERMS AND CONDITIONS

In consideration of the execution of, and as a condition of, the Releases herein, the Parties agree to the following terms:

1. CII must comply with the following tasks below:

   a. Work in good faith with the City to complete the review and correction process of the Restoration Plan (as may be amended by the Supplemental Plan) and obtain a Permit with all due speed;

   b. Following the City's approval of the Restoration Plan, or any amendment thereto approved by the City under the Supplemental Plan, CII shall complete the hillside restoration before December 31, 2017; for good cause shown, such as a delay in permit issuance caused by the City or inclement weather impeding construction, the City Attorney will extend the time for completing construction past the December 31, 2017 date, and such good cause shall be determined in the exercise of his reasonable discretion. The progress of the Project shall not be deemed good cause because the obligation to complete the hillside restoration is independent from the City's obligation to process the Project in the normal course of business.

   c. No later than May 31, 2017, CII will submit applications to the City for the Supplemental Plan and Project Approvals;

   d. By May 5, 2017, CII must obtain and provide to the People Performance Bonds, in substantially the form of Exhibit A attached to this Agreement and incorporated by this reference into this Agreement, totaling $1 Million Dollars ($1,000,000), such Bonds to be to the benefit of the People and to guarantee the remediation of the hillside on the Property pursuant to the Restoration Plan or the Supplemental Plan approved by City acting on the People's behalf; the Performance Bonds must further provide that:

      i. The Performance Bonds amount may be reduced and/or partially cancelled by CII with the People's written consent, such consent

not to be unreasonably withheld, if the actual bid by contractors for the remediation of the Property pursuant to approved plans is less than $1 million;

ii. Subject to the limitations set forth herein, if CII defaults on its obligation to remediate the Property, the People may use all or part of the Performance Bonds to remediate the Property through any means determined by City, acting on behalf of the People;

iii. The Performance Bonds will be cancelled once CII remediates the hillside on the Property and such remediation is accepted by the People as may be evidenced by a certificate of completion recorded by City on the People's behalf;

iv. As the remediation proceeds, the Performance Bonds amount may be reduced or cancelled by CII with the People's written consent, such consent not to be unreasonably withheld, in an amount commensurate to the amount that the People would need to complete the remediation if CII abandoned the work.

e. If the estimated cost of the remediation of the Property by the City once the Restoration Plan is approved is reasonably estimated by the City to be more than $1 million, the Performance Bonds amount must be increased by CII to an amount reasonably required by the People to cover the costs of remediation by the City;

f. As part of its obligations, CII must regularly monitor and maintain all of the following until the permanent remediation of the slope pursuant to approved Restoration Plan (as may be amended by the Supplemental Plan), as the case may be, is complete as determined by the People:

1. Maintain winterization measures and temporary erosion control plan in place as shown on City-approved plans or as approved in the slope remediation construction Permit;

2. Maintain and remove vegetation such that it does not become overgrown and become a fire hazard;

3. Expeditiously remove debris in the public right-of-way that may slough off of the unstable hillside; and

4. Remove graffiti within two business days of notice by the People.

g. On or before April 15, 2016, CII paid the City the sum of *$35,000.00* to reimburse the City for the costs incurred by the People for the prosecution

of this abatement action up until that point. On or before April 28, 2017, CII must reimburse the People an additional $22,600.00 for additional costs incurred as a result of prosecuting this action since that time.

2. If CII fails to perform the obligations described in the preceding paragraph number 1, CII will be in default of this Agreement. In the event of CII's default, the People may lodge with the Court for immediate entry against CII the Stipulated Judgment which is attached to this Agreement as Exhibit B.

3. Notwithstanding the foregoing, nothing herein shall obligate the People or the City to exercise its discretion in any particular manner with respect to the alternative Restoration Plan, and any exercise of discretion reserved hereunder or required by law, shall not be deemed to constitute a breach of the People's duties under this Agreement.

4. CII hereby agrees to waive any and all rights of notice and hearing, except as otherwise expressly provided herein, that it may have under the principles of *Rooney v. Vermont Investment Corp.*, 10 Cal.3d 351 (1973), or otherwise concerning the Stipulated Judgment. CII does further agree hereby to forever waive the right to move for a new trial, to request findings of fact and conclusions of law, and/or to appeal from the Stipulated Judgment.

5. The Parties expressly agree that this Agreement is admissible to enforce this settlement pursuant to Evidence Code section 1123.

6. Pursuant to Code of Civil Procedure section 664.6, the Parties request and agree that the Court retain jurisdiction over the Parties to enforce this Agreement until there is full performance of the terms herein.

7. Attached to this Agreement as Exhibit C is a Stipulation Re: Dismissal, [Proposed] Order. Upon the People's receipt of the fully-executed Agreement and the fully-executed Stipulation Re: Dismissal from CII, the People will cause to be filed the Stipulation re Dismissal in the Action.

IV. RELEASES

1. The People's Release. The People hereby forever and fully release, acquit, and discharge CII, its predecessors, principals, parents, heirs, successors, assigns, subsidiaries, affiliates, commonly controlled entities, companies, enterprises, ventures, partners, insurers, investors, attorneys, officers, shareholders, directors, agents, representatives employees, clients, administrators, executors, personal representatives, and each of them, of and from any and all claims, demands, actions, causes of action, suits, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgments of any kind, nature, or amount whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, interest, costs, expenses and fees (including reasonable or actual attorneys' fees), arising out of or related to the Action and the claims raised therein.

2. CII's Release. CII hereby forever and fully releases, acquits, and discharges the People, and the City of Monterey Park, their predecessors, principals, parents, heirs, successors, assigns, subsidiaries, affiliates, commonly controlled entities, companies, enterprises, ventures, partners, insurers, investors, attorneys, officers, shareholders, directors, agents, representatives employees, clients, administrators, executors, personal representatives, and each of them, of and from any and all claims, demands, actions, causes of action, suits, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgments of any kind, nature, or amount whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, interest, costs, expenses and fees (including reasonable or actual attorneys' fees), arising out of or related to the Action and the claims raised therein.

3. Unknown Claims. The releases contained in this Article IV, RELEASES, release all claims, demands, actions, causes of action, suits, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgments of any kind whether known, unknown, unforeseen, patent or latent which any of the Parties may have against any other Party, arising out of or relating directly or indirectly to the Action, except those obligations otherwise set forth in this Agreement, notwithstanding Section 1542 of the California Civil Code which provides that:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The Parties understand and acknowledge the significance and consequence of such a specific waiver of Section 1542 and hereby assume full responsibility for any injuries, damages and losses which they may incur from or by reason of any of the above-mentioned matters.

4. Voluntary Release. The releases contained in this Article IV, RELEASES, are freely and voluntarily executed by the Parties after having been apprised of all relevant information and data. Each Party, in executing this Agreement, has not relied on any inducements, promises or representations made by any Party hereto or his agents or attorneys except as expressly set forth in this Agreement.

5. Covenant Not to Sue. Each Party further agrees, promises and covenants that neither the Party, nor any person, organization or any other entity acting on its behalf will file, charge, claim, sue or cause or permit to be filed, charged or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief or other) against any other Party for any claim released by the respective Party in this Article IV, RELEASES, including, but not limited to, any matter occurring in the past up to the date of this Agreement or involving any continuing effects of actions or practices which arose prior to the date of this Agreement.

V. MISCELLANEOUS

1. Attorney Fees, Injunctive Relief. In the event legal action arises by reason of any controversy claimed in a dispute relating to this Agreement, the interpretation thereof, or the failure of any Party to perform the terms of this Agreement, the prevailing party in such action is entitled, in addition to damages, to injunctive relief or other relief, to reasonable costs and expenses not limited to taxable costs, and reasonable attorney fees to be fixed by the court.

2. Entire Agreement. This Agreement contains the entire agreement between the Parties whose signatures are affixed hereto relating to the rights and obligations contained herein and any representations, negotiations or agreements between the Parties are merged into this Agreement. No subsequent modification or amendment between the Parties shall be effective unless in writing signed by all Parties to this Agreement.

3. No Admission of Liability. This Agreement is the compromise of the above-mentioned disputed claim and shall never be treated as an admission of liability by any Party for any purpose.

4. Binding Effect. This Agreement and each and every provision hereof, shall bind and shall inure to the benefit of the respective heirs, personal representatives, successors-in-interest, and assigns of the Parties hereto.

5. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes.

6. Time is of the Essence. Time is of the essence for performance of all obligations under this Agreement.

7. Law Applicable. This Agreement is entered into in the State of California and all questions concerning the validity, interpretation or performance of any of its terms or provisions or of any rights or obligations of the Parties hereto, are governed by and resolved in accordance with the laws of the State of California. If it becomes necessary for the court to interpret this Agreement, the Agreement shall be considered to have been jointly drafted by all the Parties hereto and the court shall not construe any ambiguities in the Agreement in favor of any Party.

VI. EXECUTION

1. Each Party hereto acknowledges that it has been represented by counsel in the negotiation and preparation of this Agreement, that it has read the Agreement; that it is fully aware of its contents and of its legal effect, that the preceding paragraphs recite the sole consideration for this Agreement, that all agreements and understandings among the Parties are embodied and expressed herein; and that it has entered into this Agreement freely, without coercion, and based on its own judgment and not in reliance on representations or promises not contained in this Agreement or on a release other than the Mutual Releases contained herein.

2. Each Party represents and warrants that it has the sole right and exclusive authority to execute this Agreement (and the Releases contained herein), that it is not restricted in doing so, and that it has not made or suffered any assignment, transfer, conveyance, encumbrance, hypothecation or other disposition, voluntary or involuntary, of any claim or demand relating to any matter covered by this Agreement (and the Releases contained herein).

3. Each Party whose signature appears below has read the Agreement in its entirety, and understands, and agrees to, and will perform each and every one of its provisions and conditions.

4. The effective date of this Agreement shall be April 24, 2017 ('Effective Date").

Signatures on next page

People of the State of California v. Center Int'l Investments, Inc.
Los Angeles County Superior Court Case No. BC 605783

Settlement Agreement and Mutual Release

Plaintiff the People of the State of California

Dated: April 25, 2017

By: ex rel., Mark D. Hensley, City Attorney

Defendant Center Int'l Investments, Inc.

Dated: April 25, 2017

By:

Approved as to form:

Dated: April 25, 2017

Counsel for Defendant

Robert W. Chang

FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT BETWEEN THE CITY OF MONTEREY PARK AND CENTER INTERNATIONAL INVESTMENTS, INC.

THIS FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT (this "Agreement") is entered into this _____day of March 2019 by and between the CITY OF MONTEREY PARK, a general law city and municipal corporation ("CITY") acting on behalf of Plaintiff, the People of the State of California, *ex rel*. Mark D. Hensley, City Attorney ("Plaintiff"), and CENTER INT'L INVESTMENTS, INC., a California Corporation ("CII") (collectively, the "Parties"). Each of the undersigned representatives certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement, and to execute and bind to this Agreement the entity which he or she represents.

1. RECITALS. The Parties enter into this Agreement with reference to the following facts and objectives:

A. On December 31, 2015, Plaintiff commenced an action against CII captioned *People of the State of California, ex rel., Mark D. Hensley, City Attorney for the City of Monterey Park v. Center Int'l Investments, Inc., and Does 1 through 25*, Los Angeles County Superior Court, Case No. BC605788 (the "Action").

B. In the Action, Plaintiff sought to abate a nuisance involving an unsafe, unsightly and dangerous condition of real property in the City of Monterey Park, including an unstable hillside (the "Nuisance"), located approximately between 1600-1688 West Garvey Avenue and more particularly described in the Complaint in this case ("Property"), and sought to recover the costs incurred by Plaintiff for abating such nuisance from CII, the owners of said real property.

C. Because Plaintiff does not have land use authority within CITY's jurisdiction, CITY has agreed to act on Plaintiff's behalf in order to resolve the Action in accordance with this Agreement. Plaintiff believes that such action is in the public interest and consents to CITY's implementation of this Agreement on Plaintiff's behalf.

D. The Parties previously executed a Settlement and Mutual Release dated April 25, 2017

(the "Original Agreement"). The Parties intend for the Original Agreement to be merged and consolidated by reference into this Agreement. To the extent, however, there is a conflict between the Original Agreement and this Agreement, the terms and conditions of this Agreement will prevail.

E. CII seeks to develop the Property for residential uses. CII's plan requires certain discretionary approvals from CITY including, without limitation, a development agreement and subdivision map. To implement its plan and resolve the Action, CII also proposes to abate the Nuisance as part of its residential project (collectively, "Plan A").

F. To resolve the Action, however, Plaintiff requires that CII also prepare a separate plan that, if required to be implemented, only abates the Nuisance regardless of any residential development ("Plan B"). Plan B may be voluntarily implemented by CII if Plan A is not pursued by CII or approved by CITY by the deadline set forth in the Project Schedule, as described below in Section 1(H) and attached as Exhibit "A," and incorporated by reference (the "Project Schedule"). Plan B may also be imposed by Plaintiff and CITY under the circumstances contemplated in this Agreement.

G. During the time that Plan A is considered by CITY, CII must construct and maintain erosion control and slope stabilization plans approved by CITY to temporarily abate the Nuisance ("Interim Maintenance Program"). Such Winterization Measures must be completed at CII's cost and will be monitored by CITY (also at CII's cost) to ensure compliance.

H. The Project Schedule attached as Exhibit "A," and incorporated by reference, provides the critical path schedule for Plan A and Plan B as contemplated in this Agreement. CII understands and agrees that absent good cause, as determined by CITY in its sole discretion (and contemplated below), the Project Schedule will not be altered.

I. The Parties also understand and agree that a separate instrument dated December 11, 2018 and entitled "Planning and Processing Agreement" by and between CITY and CII will govern the manner of processing Plan A and also how CII will reimburse CITY for all costs associated with abating the Nuisance ("Processing Agreement").

2. SPECIFIC TERMS OF AGREEMENT AND RELEASES. For and in consideration of the above-referenced recitals and the promises and covenants contained in this Agreement, the Parties agree as follows:

A. CII agrees to:

i. Abate the Nuisance as contemplated in this Agreement including, without limitation, the Project Schedule, at its sole cost. While CII may abate the Nuisance pursuant to Plan A and the Project Schedule, it must perform Plan B should it fail to obtain CITY's approval for Plan A. CII's failure to voluntarily perform Plan A (if approvals are granted) or Plan B will result in CITY implementing Plan B on Plaintiff's behalf at CII's cost.

ii. Maintain the Interim Maintenance Program in accordance with CITY approved plans and permit at CII's cost.

iii. Implement weed abatement measures in accordance with applicable law including, without limitation, the Monterey Park Municipal Code, and at the direction of CITY's Fire Marshal.

iv. Promptly remove debris in the public right-of-way that may slough off of the Property. If CITY notification is required, within two business days after being notified.

v. Remove graffiti within two business days after notification by CITY.

vi. Provide Plaintiff, in CITY'S name, a performance bond in a penalty amount set forth in an operational memorandum, ancillary to this Agreement, to secure performance of Plan B. The Parties understand that the penalty amount is an engineering estimate based upon the industry-standard cost of plans and specifications for Plan B. The actual cost for constructing Plan B may be more. If the penalty amount of the performance bond is expended, CII will be liable to Plaintiff and CITY for any excess costs associated with completing Plan B. Upon determining the actual cost of the performance bond, CII must deliver to the CITY an executed performance bond in a form prescribed in these

documents as security for the performance of Plan B. The surety issuing the performance bond, and the form of the performance bond, are subject to the approval of the CITY.

vii. CII grants to CITY an irrevocable license to enter onto the Property to inspect and monitor compliance with this Agreement. CITY's authorized representatives, including the Project Manager, may enter onto the Property as reasonably required. CII agrees to hold CITY harmless and to defend and indemnify CITY to the extent contemplated below for any claim or cause of action arising from entry onto the Property. CITY will strive to provide 24-hour notice to CII for any such entry onto the Property.

viii. Should CITY be required to implement Plan B, CII grants CITY an irrevocable license to enter onto the Property to abate the Nuisance in accordance with this Agreement. CII agrees that neither Plaintiff nor CITY will be required to obtain an abatement warrant in accordance with applicable law in order to exercise Plaintiff's rights, by and through CITY, to implement Plan B. Accordingly, CII specifically waives any rights it may have to prevent CITY's access to the Property under applicable law should it fail to voluntarily perform Plan B in accordance with the Project Schedule.

ix. Indemnify and hold CITY harmless from and against any claim, action, damages, costs (including, without limitation, attorneys' fees), injuries or liability arising from and directly related to CITY's approval of Plan A or Plan B. Should CITY be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of CITY approval of Plan A or Plan B, CII agrees to defend CITY (at CITY's request and with counsel satisfactory to CITY) and will indemnify CITY for any judgment rendered against it or any sums paid out in settlement or otherwise. For purposes of this Section, "CITY" includes Plaintiff, CITY's elected officials, appointed officials, officers and employees.

B. CITY agrees to:

i. Process Plan A as contemplated by and according to the Project Schedule.

ii. Provide a project team to process Plan A, the Interim Maintenance Program, and (if required) implement Plan B (the project team is collectively referenced as "Project Manager"). The cost of such project team will be borne solely by CII.

iii. For good cause shown, such as a delay in CITY reviewing CII's proposed development plans, CITY processing or issuing a grading or building permit, or because of unusual inclement weather impeding construction, the Project Manager may extend the time set forth in the Project Schedule by a period of time equal to the length of the delay. Such an extension of time must be in writing, executed by both Parties, and included as an operational memorandum ancillary to this Agreement.

3. DEFAULT; COURT ORDER.

A. If CII fails to perform its obligations under this Agreement, it will be in default. CITY may, but is not required to, provide CII with a five day notice to cure its default. In the event of CII's default, Plaintiff may lodge with the Court for immediate entry against CII the Stipulated Judgment attached as Exhibit "B," and incorporated by reference.

B. Nothing in this Agreement obligates CITY to exercise its discretion in any particular manner with respect to Plan A. Any exercise of CITY's discretion regarding Plan A in accordance with applicable law cannot be deemed to constitute a breach of Plaintiff's duties under this Agreement.

C. CII waives any and all rights of notice and hearing, except as otherwise expressly provided by this Agreement that it may have under the principles of *Rooney v. Vermont Investment Corp*. (1973) 10 Cal.3d 351 or otherwise concerning the Stipulated Judgment. CII also agrees to forever waive the right to move for a new trial, to request findings of fact and conclusions of law, and/or to appeal from the Stipulated Judgment.

D. The Parties expressly agree that this Agreement is admissible to enforce this settlement pursuant to Evidence Code § 1123.

E. Pursuant to Code of Civil Procedure § 664.6, the Parties request and agree that the Court retain jurisdiction over the Parties to enforce this Agreement until there is full performance.

4. MUNICIPAL POWERS. Nothing in this Agreement is intended to, nor can it, act as a limitation on CITY's present or future exercise of municipal powers in accordance with the California Constitution and applicable law.

5. LEGAL ADVICE. Each Party warrants and represents that in executing this Agreement, each Party sought legal advice from the attorney of its choice, that the terms of this Agreement and its consequences were completely read and explained to each Party by that attorney, and that each Party fully understands the terms of this Agreement.

6. FULL DISCLOSURE. Each Party acknowledges and represents that each Party was apprised of all relevant information and data relevant to this Agreement, including, without limitation, future risks, complications, and costs. Each Party further acknowledges and represents that, in executing this Agreement, the Party has not relied on any inducements, promises, or representations made by the other Party or any representative of the other Party.

7. WAIVER. CITY's acceptance of payment from CII under this Agreement or the Processing Agreement and CII's acceptance of approval for Plan A by the City Council will not be construed to operate as a waiver of any rights the Parties may have under this Agreement or of any cause of action arising from their performance. A waiver by either Party of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.

8. WAIVER OF APPEAL. Notwithstanding any other part of this Agreement or applicable law, under no circumstances may CII appeal the design, cost, construction, or any other implementation of the Interim Maintenance Measures or Plan B by CITY to any of CITY's legislative bodies or to any court of competent jurisdiction. CII specifically waives any rights it may have to perfect such appeals in order to compromise and settle the Action through this Agreement and, specifically, to induce Plaintiff and CITY to consider Plan A as an alternative to abating the Nuisance.

9. NOTICES. All communications to either Party by the other Party must be in writing and will be deemed made when received by such Party at its respective name and address as follows:

CITY
Karl H. Berger, Assistant City Attorney
City of Monterey Park
320 W. Newmark Ave
Monterey Park, CA 91754

CII
Center Int'l Investments, Inc.
Attn: Karrie On
Chief Executive Officer
501 West Garvey, Suite 207
Monterey Park, CA 91754

With copies to:
Sheppard Mullin Richter & Hampton LLP
Attn: Alfred Fraijo Jr.
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071-1422

Any such written communications by mail will be conclusively deemed to have been received by the addressee upon deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this Section.

10. INTERPRETATION. This Agreement was drafted in and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this Agreement will be in Los Angeles County.

11. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties. There are no other understandings, terms or other agreements, expressed or implied, oral or written.

12. RULES OF CONSTRUCTION. Each Party had the opportunity to independently review this Agreement with legal counsel. Accordingly, this Agreement will be construed simply, as a whole, and in accordance with its fair meaning; it will not be interpreted strictly for or against either Party.

13. SEVERABILITY. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

14. ELECTRONIC SIGNATURES. This Agreement may be executed by the Parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all

the Parties notwithstanding that all the Parties are not signatories to the same counterpart. In accordance with Government Code §16.5, the Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement, will be considered signed when the signature of a party is delivered by electronic transmission. Such electronic signature will be treated in all respects as having the same effect as an original signature.

15. CAPTIONS. The captions of the Sections of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.

16. TIME IS OF ESSENCE. Time is of the essence for each and every provision of this Agreement.

Plaintiff the People of the State of California

Dated: _____

By: Karl H. Berger for *ex rel.*, Mark D. Hensley, City Attorney

City of Monterey Park

Dated: _____

Ron Bow, City Manager

Defendant Center Int'l Investments, Inc.

Dated: 3/22/19

By: Karrie On, Chief Executive Officer

the Parties notwithstanding that all the Parties are not signatories to the same counterpart. In accordance with Government Code §16.5, the Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement, will be considered signed when the signature of a party is delivered by electronic transmission. Such electronic signature will be treated in all respects as having the same effect as an original signature.

15. CAPTIONS. The captions of the Sections of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.

16. TIME IS OF ESSENCE. Time is of the essence for each and every provision of this Agreement.

Plaintiff the People of the State of California

Dated: 3/22/2019

By: Karl H. Berger for *ex rel.*, Mark D. Hensley, City Attorney

City of Monterey Park

Dated:

Ron Bow, City Manager

Defendant Center Int'l Investments, Inc.

Dated:

By: Karrie On, Chief Executive Officer

Option 2(A) Timeline[1]:

Residential Development (Plan A) with Slope Stabilization (Plan B)

17 SFD's/14 Condos – Complying w/R3 Zoning

Updated 4-1-19

01/29/19 – First oversight meeting with Project Manager[2] [CII/City] (*Complete*)

02/22/19 – Temporary winterization abatement to be confirmed [CII/City].

02/22/19 – Investors' review and comments regarding onsite street design and building footprints [CII]

02/25/19 – Rejection of Plan B documents as incomplete and unusable. CII has until 3/18/2019 to submit usable Plan B documents or City will design Plan B at CII's cost. [CII/City]

02/25/19 – Commencement of new site grading and preliminary wall analysis per new building footprints and onsite street profile [CII]

03/07/19 – CII's geotechnical consultant to complete its portion of work on Plan B [CII]

03/11/19 – Applicant commences drafting IS/EIR for City review [CII]

03/18/19 – Either usable Plan B documents submitted by CII or City commences design of Plan B documents at CII cost. [CII/City]

03/18/19– Meeting re Preliminary Residential Development design status and Plan B with Project Manager [CII/City]

03/18/19 – Completion of new site grading and preliminary wall analysis per new building footprints and onsite street profile [CII]

03/19/19 - Commencement of MSE wall, upper retaining wall preliminary designs, and update of soil report (incorporate cross sections) [CII]

03/28/19 - Either usable revised Plan B documents submitted by CII by 5pm or City commences design of Plan B documents at CII cost. [CII/City]

04/08/19 – Proposed Residential Development Design meeting with Project Manager [CII/City]

04/28/19 – Plan B Document Review Completed by City [City]

04/30/19 – Project Application documents status meeting with Project Manager [CII/City]

05/13/19 – File Project application with City [CII]

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[1] Substantial compliance required; Project Manager may determine reasonableness of any proposed alteration by CII.

[2] City Project Manager may determine check-in meetings in his discretion.

[3] Schedule assumes no DRB will be required, this process will be folded into the Planning Commission hearing.

05/13/19 – File tentative map (TM) application with City [CII]

05/13/19 - Screencheck IS/EIR submitted to City [CII]

05/21/19 – City determination regarding Project application completeness [City]

05/21/19 – NOP issued for 30-Day Review of Initial Study [City]

06/24/19 - City returns comments on Screencheck IS/EIR [City]

06/30/19 – Submit draft Development Agreement (DA) to City [CII]. Discussions and revisions between City and CII re DA to be completed no later than 03/13/20. [CII/City]

08/08/19 – Draft EIR submitted to City [CII] (Tony Locacciato)

09/12/19 – City returns comments on Draft EIR [City]

9/30/19 – Winterization stabilization complete [CII]

10/10/19 – Applicant submits revised Draft EIR in response to City comments [CII]

11/14/19 – Completion of City review of Draft EIR [City]

11/15/19 – Publish DEIR/Notice of Availability/Notice of Completion for Circulation (30 days) [City]

01/31/20 – Prepare response to comments on DEIR [CII]

02/7/20 – Submit Final EIR with Draft EIR comments addressed [CII]

03/6/20 – City completes review of Final EIR [City]

03/13/20 – City staff approval of TM/DA/Final EIR [City]

04/14/20 – Planning Commission public hearing [City][3]

05/06/20 – City Council hearing: first reading (Plan A-DA ordinances) [City]

05/06/20 – *If City Council denies Residential Development Project (Plan A)* – Plan B Slope Stabilization Mobilization commences [CII/City]

05/20/20 – City Council: second reading (Plan A) [City]

05/21/20 – File Notice of Determination – 30 Day Period [City]

06/22/20 – Horizontal permits issued and Horizontal improvements commence [City/CII]

06/22/20 – Prepare Building Design package for submittal for Residential Development Project (Plan A) Building Permits [CII]

11/25/20 – *If no go for Plan A*: Plan B Slope Stabilization complete per City approved plan [CII]

11/30/20 – Submit Building Design package for approval for Building Permits [CII]

12/30/20 – Completion of City review of Architectural Design Package – Project ready for Building Permits [City]

03/31/21 – Stabilization complete for the overall Residential Development Project [CII]

07/20/21 – Project complete – Horizontal Improvements [CII]

TBD – Construction of Homes Commences – Phase 1

SECOND AMENDED AND RESTATED SETTLEMENT AGREEMENT BETWEEN THE CITY OF MONTEREY PARK AND CENTER INTERNATIONAL INVESTMENTS, INC.

THIS SECOND AMENDED AND RESTATED SETTLEMENT AGREEMENT (this "Agreement") is entered into this 8th day of June 2020 by and between the CITY OF MONTEREY PARK, a general law city and municipal corporation ("CITY") acting on behalf of Plaintiff, the People of the State of California, *ex rel.* Mark D. Hensley, City Attorney ("Plaintiff"), and CENTER INT'L INVESTMENTS, INC., a California Corporation ("CII") (collectively, the "Parties"). Each of the undersigned representatives certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement, and to execute and bind to this Agreement the entity which he or she represents.

1. RECITALS. The Parties enter into this Agreement with reference to the following facts and objectives:

A. On December 31, 2015, Plaintiff commenced an action against CII captioned *People of the State of California, ex rel., Mark D. Hensley, City Attorney for the City of Monterey Park v. Center Int'l Investments, Inc., and Does 1 through 25*, Los Angeles County Superior Court, Case No. BC605788 (the "Action").

B. In the Action, Plaintiff sought to abate a nuisance involving an unsafe, unsightly and dangerous condition of real property in the City of Monterey Park, including an unstable hillside (the "Nuisance"), located approximately between 1600-1688 West Garvey Avenue and more particularly described in the Complaint in this case ("Property"), and sought to recover the costs incurred by Plaintiff for abating such nuisance from CII, the owners of said real property.

C. Because Plaintiff does not have land use authority within CITY's jurisdiction, CITY has agreed to act on Plaintiff's behalf in order to resolve the Action in accordance with this Agreement. Plaintiff believes that such action is in the public interest and consents to CITY's implementation of this Agreement on Plaintiff's behalf.

D. The Parties previously executed a Settlement and Mutual Release dated April 25, 2017

(the "Original Agreement"). The Parties then entered into the *First Amended and Restated Settlement Agreement Between the City of Monterey Park and Center International Investments, Inc.* (the "First Amended Agreement") on March 22, 2019. The Parties intend for the Original Agreement and the First Amended Agreement to be merged and consolidated by reference into this Agreement. To the extent, however, there is a conflict between the Original Agreement, the First Amended Agreement, and this Agreement, the terms and conditions of this Agreement will prevail.

E. As previously stated in the Original Agreement and the First Amended Agreement, CII seeks to develop the Property for residential uses. CII's plan requires certain discretionary approvals from CITY including, without limitation, a development agreement and subdivision map. To implement its plan and resolve the Action, CII also proposes to abate the Nuisance as part of its residential project ("Plan A").

F. To resolve the Action, however, Plaintiff required that CII also prepare a separate plan that, if required to be implemented, only abates the Nuisance regardless of any residential development ("Plan B"). Under the Original Agreement and the First Amended Agreement, Plan B could be voluntarily implemented by CII if Plan A was (1) not pursued by CII or (2) not approved by CITY by the deadline set forth in the Project Schedule that had been attached to the First Amended Agreement.

G. Since the execution of the First Amended Agreement, CII has made progress toward the implementation of Plan A. However, due to additional delays, the Parties are entering into this Agreement to, among other things, amend the Project Schedule as described below in Section 1(I) and attached as **Exhibit "A,"** and incorporated by reference (the "Amended Project Schedule"). As in both the Original Agreement and the First Amended Agreement, Plan B may also be implemented by Plaintiff and CITY under the circumstances contemplated in this Agreement.

H. During the time that Plan A is considered by CITY, CII must construct and maintain erosion control and slope stabilization plans approved by CITY to temporarily abate the Nuisance ("Interim Maintenance Program"). The Interim Maintenance Program must be

completed at CII's cost and will be monitored by CITY (also at CII's cost) to ensure compliance.

I. The Amended Project Schedule attached as Exhibit "A," and incorporated by reference, provides the critical path schedule for Plan A and Plan B as contemplated in this Agreement. CII understands and agrees that absent Good Cause, as determined by CITY in its sole discretion (and contemplated below), the Amended Project Schedule will not be altered. "Good Cause" shall mean demonstrated progress and effort by CII in its performance, delays attributable to the CITY's review of Plan A project materials, CITY processing or issuing a grading or building permit, or because of unusual inclement weather impeding construction.

J. The Parties also understand and agree that a separate instrument dated December 11, 2018 and entitled "Planning and Processing Agreement" by and between CITY and CII will govern the manner of processing Plan A and also how CII will reimburse CITY for all costs associated with abating the Nuisance ("Processing Agreement").

2. SPECIFIC TERMS OF AGREEMENT AND RELEASES. For and in consideration of the above-referenced recitals and the promises and covenants contained in this Agreement, the Original Agreement, and the First Amended Agreement (to the extent not altered by this Agreement), the Parties agree as follows:

A. CII agrees to:

i. Cause liens to be recorded, in favor of CITY, on real property that is valued in the amount of at least $ 6.8 million (the "Liens"). The Parties understand that the amount of the Liens ($6.8 million) is an engineering estimate based upon the industry-standard cost of work for Plan B. The Liens shall be documented through a Performance Deed of Trust on each of the real properties that CII is using to satisfy its obligations. A form of the Performance Deed of Trust is attached hereto as Exhibit "B."

ii. Complete either Plan A or Plan B by the dates set forth in the Amended Project Schedule and proceed in accordance with the interim deadlines contained therein.

B. CII, CITY and Plaintiff agree that:

i. CII shall follow the Amended Project Schedule attached hereto as Exhibit "A," which hereby supersedes any prior Project Schedules attached to the Original Agreement and/or the First Amended Agreement. The Amended Project Schedule may be amended by agreement between CII, CITY, and Plaintiff without further need to amend this Settlement Agreement.

ii. The scope and/or timing and implementation of Plan B may change subject to the Parties mutual agreement and CITY approval.

iii. The document attached hereto as Exhibit "C" is a true and correct copy of the project that will be implemented as Plan A and such project will serve to abate the Nuisance at the Property.

iv. Staff for the City have reviewed Plan A and have accepted the plan as complete for purposes of taking final action upon completion of the environmental study.

v. In the event that Plan B is not underway by the deadline set forth in the Amended Project Schedule, CITY may (1) enter the Property, abate the Nuisance, and/or complete Plan B, and (2) foreclose on the Liens recorded in its favor pursuant to Section 2(A)(i) to recover the cost of completing Plan B. In the event that the actual completion cost is less than the amounts recovered by CITY through the foreclosure of the Liens, CITY will return all sums recovered exceeding the actual cost of completion of Plan B to CII.

C. CITY agrees to:

i. CITY consents to the cancellation of the performance bond in the amount of $1,000,000 that CII previously secured with respect to the slope stabilization work.

ii. The recordation of the Liens will satisfy any and all of CII's bonding obligations that were set forth in the First Amended Agreement.

iii. Process Plan A, inclusive of the site plan as shown in Exhibit C, in accordance with the Amended Project Schedule.

iv. Provide a project team to process Plan A, the Interim Maintenance Program, and (if required) implement Plan B (the project team is collectively referenced as "Project Manager"). The cost of such project team will be borne solely by CII.

v. For Good Cause shown, such as a delay in CITY reviewing CII's proposed development plans, CITY processing or issuing a grading or building permit, or because of unusual inclement weather impeding construction, the Project Manager may extend the time set forth in the Amended Project Schedule by a period of time equal to the length of the delay. Such an extension of time must be in writing, executed by both Parties, and or confirmed by the legal representatives of both Parties.

vi. Upon the completion of Plan B, CITY shall do everything required to release the Liens from the properties in accordance with the terms and conditions of the Performance Deed of Trust and/or applicable law.

Plaintiff the People of the State of California

Dated: June 8, 2020

By: Karl H. Berger for *ex rel.*, Mark D. Hensley, City Attorney

City of Monterey Park

Dated: June 8, 2020

Ron Bow, City Manager

Defendant Center Int'l Investments, Inc.

Dated: June 02, 2020

By: Karrie On, Chief Executive Officer

EXHIBIT A

Option 2(A) Timeline:
Residential Development (Plan A) with Slope Stabilization (Plan B/B2)
Updated 06/01/20

05/22/20 – File Plan A Project Application with City [CII] **Received**

05/22/20 – File Plan A vesting tentative map (VTM) application with City [CII] **Received (6/1)**

05/29/20 – Submit Specific Plan to City [CII] **Received**

05/29/20 - Screencheck IS/EIR submitted to City [CII] **Received**

05/29/20 – NOP issued for 30-Day Review of Initial Study [City] **Draft Received**

06/22/20 – City determination regarding Project application completeness [City]

07/10/20 – Submit Draft EIR [CII]

07/10/20 – Publish DEIR/Notice of Availability/Notice of Completion for Circulation (30 days) [City]

08/21/20 – Submit Final EIR with Draft EIR comments addressed [CII]

09/28/20 – City staff approval of VTM/DA/Final EIR/Specific Plan [City]

10/13/20 – Planning Commission Hearing [City]

11/04/20 – City Council hearing: first reading [City]

11/05/20 – *If City Council denies Residential Development Project* – Plan B2 Slope Stabilization Mobilization commences [CII/City]

12/02/20 – City Council hearing: second reading [City]

01/02/21 – Ordinance Effective [City]

01/15/21 – Horizontal permits issued [City]

02/02/21 – Final Map Recorded [City]

03/02/21 – File Writ Period Ends [City]

03/08/21 – Mobilize for Horizontal Improvements [CII]

04/05/22 – *If no go for Residential Development Project*: Plan B2 Slope Stabilization complete per City approved plan [CII]

09/08/22 – Stabilization complete for the overall Residential Development Project [CII]

City Council Staff Report

DATE: December 21, 2022
AGENDA ITEM NO: Consent Calendar - 3E

TO: The Honorable Mayor and City Council
FROM: Martha Garcia, Director of Finance
SUBJECT: Development Impact Fees for Fiscal Year 2021-2022

RECOMMENDATION:

It is recommended that the City Council consider:

1. Reviewing and filing the Annual Report on Development Impact Fees for Fiscal Year 2021-2022; and
2. Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

In accordance with Section 66006 of California Government Code the City is required to annually report on the status of Development Impact Fees, including the collection of revenue and expenditures of these funds. This report summarizes the required financial information for Fiscal Year 2021-2022.

BACKGROUND:

The California Government Code Sections 66000 through 66006 contain certain procedural requirements that apply to the collection of development impact fees and the expenditure of these revenues. Section 66006 of the California Government Code specifies accountability and annual reporting requirements pertaining to development impact fees. SB 1693 modified this government code section as of January 1, 1997. The report must include a description of the fee type in the account, the amount of the fee, beginning and ending balances, fee and interest income, expenditures by improvement, a description of interfund loans or transfers, including purpose, interest rate and term, and any refunds. The report must also determine whether funds are available to construct improvements while also identifying construction dates for projects with adequate funding.

This report presents a review only of the development impact fee activity, by account, for the fiscal year. It does not include any recommendations for any fee changes.

FISCAL IMPACT:
There is no fiscal impact to receive and file the Annual Report on Development Impact Fees for Fiscal Year 2021-2022.

Respectfully submitted by:

Martha Garcia
Director of Finance

Approved by:

Ron Bow
City Manager

Reviewed by:

Karl H. Berger
City Attorney

ATTACHMENT:

1. Development Impact Fees Annual Report Fiscal Year 2021-2022

ATTACHMENT 1
Development Impact Fees Annual Report Fiscal Year 2021-2022

Development Impact Fees
Annual Report
Fiscal Year 2021-2022

SUMMARY:

Pursuant to Chapter 3.110 of the Monterey Park Municipal Code ("MPMC") and Government Code Section 66006, et seq. (the Mitigation Fee Act), local agencies are authorized to condition approval of development projects on the payment of development impact fees for the purpose of defraying all or a portion of the cost of public facilities related to the development project. Any local agency that imposes a development impact fee is required to make available to the public a summary of each mitigation fee account on an annual basis. At this time, the City imposes nine types of development impact fees on development projects: (1) Law enforcement; (2) Fire suppression/medic; (3) Public meeting facilities; (4) Library facilities and collection; (5) Water distribution; (6) Sewer collection; (7) Aquatics facilities; (8) Park land and improvements; (9) Circulation.

BACKGROUND:

The Mitigation Fee Act, regulates the means by which public agencies collect, maintain, and spend development impact fees imposed on development projects. The regulations include specific requirements pertaining to governmental accounting, spending, and annual reporting of development impact fees. Each year, within the first 180 days following the previous fiscal year, the City is required to make available to the public a summary of each mitigation fee account ("Annual Report").

REPORTING REQUIRMENTS:

The City imposes nine types of development impact fees on development projects. The City records the nine fees in five funds: (1) Circulation; (2) Law enforcement and Fire suppression/medic; (3) Facilities (library, public meeting, and aquatics) and Park land and improvement; (4) Water distribution; and (5) Sewer collection. Accordingly, as required in the Mitigation Fee Act, the City must make an Annual Report which includes:

1) A brief description of the type of fee in the account or fund;

2) The amount of the fee;

3) The beginning and ending balance of the account or fund;

4) The amount of the fees collected, and interest earned;

5) Identification of each public improvement on which fees were expended and the total amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees;

6) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, and the public improvement remains incomplete;

7) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan; and

8) The amount of any refunds made pursuant to Government Code Section 66001(e) and the amount of any allocations pursuant to Government Code Section 66001(f).

Furthermore, Government Code Section 66008 provides that a local agency must expend a fee for public improvements solely and exclusively for the purpose for which it is collected. The fee may not be levied, collected, or imposed for general revenue purposes nor may it be comingled with any other account (see, MPMC section 3.110.070).

FUND BALANCE AT JUNE 30, 2021:

FUND NO.	FUND NAME	FUND BALANCE
204	Circulation	$123,474
205	Law Enforcement and Fire Suppression/Medic	($172,491)
231	Facilities (Park, Library, Public Meeting and Aquatics), Park Land and Improvements	$650,637
409	Water Distribution	$501,866
419	Sewer Collection	$71,424

CIRCULATION FEES:

Pursuant to MPMC Chapter 3.110, the Circulation Fee is collected to fund traffic circulation (streets, signals and bridges) infrastructure improvements. The objective of the Circulation Development Impact Fee is to improve street lanes, intersections, and traffic management, thus mitigating traffic impacts which are contributed from all new development.

	Circulation (Streets, Signals, Bridges)	Unit/Square Foot
Detached Dwelling Units	$1,791	Per dwelling unit
Attached Dwelling Units	$1,129	Per dwelling unit
Commercial Lodging Units	$942	Per dwelling unit
Retail/Services/Office Uses	$3.216	Per square foot
Manufacturing/Industrial	$1.305	Per square foot
Institutional Uses	$0.879	Per square foot

Circulation Fees Revenue and Expenditures:

Fiscal Year	Beginning Fund Balance	Fees Collected	Interest Earned	Expenditures	Transfers	Ending Balance
2021-22	$334,345	$53,708	$585	$265,165	$0	$123,474

FY2021-2022 Expenditures:

Object Code	Object Code Description	Description	Expenditures
5501	Capital Expenditure	Traffic Signal – Garfield/Graves	$265,165
			$265,165

Status of Projects:

	Total DIF Expenditures at 6/30/2022	Total Other Funds Expenditures at 6/30/2022	Total Project Expenditures at 6/30/2022	DIF Percent of Total	Status
Traffic Signal – Garfield/Graves CIP 96005 & 96015	$265,165	$ 206,560	$ 471,725	56%	Completed

There are no funds budgeted in FY2022-2023. No transfers or loans occurred in fiscal years reported on this report. There were no refunds or allocations pursuant to Government Code Section 66001.

LAW ENFORCEMENT AND FIRE SUPPRESSION/MEDIC FEES:

Pursuant to MPMC Chapter 3.110, these fees finance capital costs, including Police facilities, vehicles, equipment, Fire Suppression facilities and Fire equipment, to minimize the impact that new development has on the City's public services and public facilities.

Pursuant to MPMC Chapter 3.110, the Fees are updated based upon the gross square footage of nonresidential development and number of residential dwelling units as follows:

	Law Enforcement	Fire Suppression/ Medic	Unit/Square Foot
Detached Dwelling Units	$526	$640	Per dwelling unit
Attached Dwelling Units	$503	$418	Per dwelling unit
Commercial Lodging Units	$191	$381	Per lodging unit
Retail/Services/Office Uses	$0.370	$0.350	Per square foot
Manufacturing/Industrial Uses	$0.050	$0.019	Per square foot
Institutional Uses	$0.073	$0.053	Per square foot

Law Enforcement and Fire Suppression/Medic Revenues and Expenditures:

Fiscal Year	Beginning Fund Balance	Fees Collected	Interest Earned	Expenditures	Transfers	Ending Fund Balance
2021-22	($130,494)	$159,879	$20	$201,896	$0	($172,491)

FY2021-2022 Expenditures:

Object Code	Object Code Description	Description	Expenditures
5501	Capital Expenditure	Police In-Car Camera System	$201,896
			$201,896

Status of Projects:

	Total DIF Expenditures at 6/30/2022	Total Other Funds Expenditures at 6/30/2022	Total Project Expenditures at 6/30/2022	DIF Percent of Total	Status
Police In-Car Camera System	$379,125	$88,000	$467,125	81%	Ongoing

The City is not planning on making any further purchases until this fund is cured and the fund balance is positive. No transfers or loans occurred in fiscal years reported on this report. There were no refunds or allocations pursuant to Government Code Section 66001.

FACILITIES (LIBRARY, PUBLIC MEETING AND AQUATICS) PARK LAND AND IMPROVEMENT FEES:

Pursuant to MPMC Chapter 3.110, the Facilities and Park land/improvement fees are collected to fund facility (library, public meeting, and aquatics) improvements/infrastructure and park land improvements/acquisition. The objective of the Facilities (library, public meeting, and aquatics), and Park land/improvement fees is to provide parks, support facility improvements and additional park land acquisition to serve the needs of new residents.

	Park Land Acquisition & Improvements	Library	Public Meeting	Aquatics	Unit/Square Foot
Detached Dwelling Units	$3,677	$191	$1,660	$732	Per dwelling unit
Attached Dwelling Units	$3,730	$194	$1,684	$743	Per dwelling unit
Commercial Lodging Units	$17				Per dwelling unit
Retail/Services/Office	$0.064				Per square foot
Manufacturing/Industrial	$0.032				Per square foot
Institutional Uses	$0.161				Per square foot

Facilities (Park, Library, Public and Aquatics) Revenues and Expenditures:

Fiscal Year	Beginning Fund Balance	Fees Collected	Interest Earned	Expenditures	Transfers	Ending Fund Balance
2021-2022	$497,975	$164,532	$1,929	$13,800	0	$650,637

FY2021-2022 Expenditures:

Object Code	Object Code Description	Description	Expenditures
5501	Capital Expenditure	Barnes Park Fitness Court	$13,800
			$13,800

FY2022-2023 Budget Allocation:

Object Code	Object Code Description	Description	Amount Allocated
5501	Capital Expenditure	Library Storyroom Expansion	$30,000
5501	Capital Expenditure	Barnes Gym	$430,000
5501	Capital Expenditure	George Elder Park Court	$40,000
			$500,000

Status of Projects:

Description	Total DIF Expenditures at 6/30/2022	Total Other Funds Expenditures at 6/30/2022	Total Project Expenditures at 6/30/2022	DIF Percent of Total	Status
Barnes Park Court	$13,800	$0	$13,800	100.00%	Completed

No transfers or loans occurred in fiscal years reported on this report. There were no refunds or allocations pursuant to Government Code Section 66001.

WATER DISTRIBUTION FEES:

Pursuant to MPMC Chapter 3.110, the Water Distribution Fees are collected to fund water system infrastructure improvements, including reservoirs, treatment plants, pump stations, SCADA system, wells, utility office rehabilitation, water valves, and fire protection upgrades. The objective of the fees is to meet all water demands with appropriate water operation and treatment facilities to mitigate development impacts on the existing water system infrastructure.

	Water Distribution	Unit/Square Foot
Detached Dwelling Units	$2,786	Per dwelling unit
Attached Dwelling Units	$2,570	Per dwelling unit
Commercial Lodging Units	$1,672	Per dwelling unit
Retail/Services/Office Uses	$0.769	Per square foot
Manufacturing/Industrial Uses	$0.386	Per square foot
Institutional Uses	$0.528	Per square foot

Water Distribution Revenues and Expenditures:

Fiscal Year	Beginning Fund Balance	Fees Collected	Interest Earned	Expenditures	Transfers	Ending Fund Balance
2021-2022	$462,016	$38,116	$1,734	$0	$0	$501,866

FY2022-2023 Budget Allocation:

Object Code	Object Code Description	Description	Amount Allocated
5501	Capital Expenditure	Water Main Replacement	$112,491
5501	Capital Expenditure	Programmable Logic Controllers (PLC) Upgrade	$387,341
			$499,832

No transfers or loans occurred in fiscal years reported on this report. There were no refunds or allocations pursuant to Government Code Section 66001.

SEWER COLLECTION FEES:

Pursuant to MPMC Chapter 3.110, the Sewer Collection Development Impact Fees are collected to fund construction and system management improvements of the sewer collection system, including sanitary sewer system map book updates, GPS inventory, a computerized maintenance management system, FOG program, closed-circuit television, asset management plan, sewer master plan update, sewer field equipment upgrade, database/system training, emergency overflow plan, flow monitoring, sewer upgrades, and annual inspection program. The objective of the fees is to upgrade sewer collection system, thus mitigating development-generated growth-needs which impact to the City sewage service.

	Sewer Collection	Unit/Square Foot
Detached Dwelling Units	$385	Per dwelling unit
Attached Dwelling Units	$356	Per dwelling unit
Commercial Lodging Units	$231	Per dwelling unit
Retail/Services/Office Uses	$0.138	Per square foot
Manufacturing/Industrial Uses	$0.069	Per square foot
Institutional Uses	$0.095	Per square foot

Sewer Collection Revenues and Expenditures:

Fiscal Year	Beginning Fund Balance	Fees Collected	Interest Earned	Expenditures	Transfers	Ending Fund Balance
2021-2022	$65,865	$5,312	$247	$0	$0	$71,424

FY2022-2023 Budget Allocation:

Object Code	Object Code Description	Description	Amount Allocated
5501	Capital Expenditure	Water Main Replacement	$71,177
			$71,177

No transfers or loans occurred in fiscal years reported on this report. There were no refunds or allocations pursuant to Government Code Section 66001.

City Council Staff Report

DATE: December 21, 2022

AGENDA ITEM NO: Consent Calendar - 3F

TO: The Honorable Mayor and City Council

FROM: Martha Garcia, Director of Finance

SUBJECT: Award of Contract to Knight Communications for Information Technology Services

RECOMMENDATION:

It is recommended that the City Council consider:

1. Authorizing the City Manager to execute an agreement with Knight Communications, in a form approved by the City Attorney for Information Technology Network/Servers and IT Projects for a five-year contract and amount not to exceed $2,484,674;
2. Authorizing a budget appropriation of $110,500 from the Technology fund; and
3. Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

Information Technology (IT) Services is a critical function of the City. IT services provides technical expertise that supports the City in the creation, management and optimization of or access to information and business processes. After completing the Request for Proposal (RFP) evaluation process, staff is recommending Knight Communications for the IT Information Technology Services contract for the City of Monterey Park.

The contract is for a term of five (5) years in an amount not to exceed $2,484,674. The first-year service is for $468,000 with a 3% cost of services increase for each additional year.

BACKGROUND:

On September 26, 2022, staff posted the City of Monterey Park IT RFP No. 834 to the City's Website for public information. Staff also emailed the RFP to five (5) known vendors. The RFP provided information relating to planning, development, coordination, implementation, management and operation of the City's Information Technology Systems for City Hall, Fire Department, City Yard, Delta Plant (in Rosemead), Langley Center, Library (computers connected to the City's network), and Recreation facilities.

The specifications included requirements such as onsite desktop support, server administration, project coordination and other related information technology services

during normal operating hours as well as 24/7 support as needed. The scope of service includes providing support for various hardware, networking, and software systems used by all City departments as well as assistance with special projects as needed.

The City received three (3) proposals in response to the RFP and one (1) non-responsive bid from Sterling Computer Corporation.

VENDOR	1st YEAR COST	TOTAL COST (5 years)	CPI increase per year
Knight Communications	$468,000	$2,484,674	3% CPI increase per year
Orange Crew	$501,600	$2,663,054	3% CPI increase per year
LKBM Technologies	$892,620	$5,432,110	20% CPI included per year

Knight Communications is the City's current vendor for IT Services and the City has been satisfied with their performance and responsiveness. Knight Communications is familiar with the City's infrastructure, IT technical needs and requirements, including the City's need for dedicated and qualified onsite staff.

After evaluating all the proposals, staff recommends awarding a five (5) year contract to Knight Communications.

FISCAL IMPACT:

Staff recommends awarding Knight Communications a five (5) year contract for the City's IT Services for $468,000 for the first year and adding 3% for each additional four (4) years. The total for the five (5) year contract is $2,484,674.

Staff is requesting a budget appropriation of $110,500 from the Technology fund for FY 2022-23. The annual costs for the City's IT support services are shared among all City departments and are allocated among various funds based on the usage.

Respectfully submitted by:

Martha Garcia
Director of Finance

Prepared by:

Stanley Ardon
Information Technology Manager

Approved by:

Ron Bow
City Manager

Reviewed by:

Karl H. Berger
City Attorney

City Council Staff Report

DATE: December 21, 2022

AGENDA ITEM NO: Consent Calendar - 3G

TO: The Honorable Mayor and City Council

FROM: Martha Garcia, Director of Finance

SUBJECT: Second Amendment to contract #2274 AD, Canon Solutions America

RECOMMENDATION:

It is recommended that the City Council consider:

1. Authorizing the City Manager to execute second Amendment with Canon Solutions America, in a form approved by the City Attorney for Canon lease and maintenance from December 21, 2022, to November 30, 2023, for a cost of $108,205 annually; and
2. Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

This second Amendment will consolidate existing Canon Agreements (1923 A-1, 2274 AD and 2274 First Amendment) established to replace outdated copy machines in the following departments: Library, Police Department, and Human Resources.

The second Amendment will also expand the Scope of Work by replacing outdated copy machines for the following areas: City Clerk's Office, City Manager's Office, Finance Department, Fire Department, Recreation and Community Services Department Planning Division, Police Records and Detective offices and Public Works Department.

Additionally, the second Amendment to Agreement 2274 AD, will merge all Lease and Maintenance costs (existing and new) into one Canon Solutions compensation plan, with individual department costs breakdown included in invoices.

Consolidating all Canon Lease and Maintenance Agreements and Compensation Plan into one, will streamline the contract process for all departments by preventing the duplication of work and will have a total Citywide cost increase of $468 per month.

BACKGROUND:

The City of Monterey Park contracts with Canon Solutions America for copy machine and printer needs. The City currently has three active contracts with Canon Solutions America.

Three departments replaced their outdated equipment within the past year. These leases are in the three active Canon Agreements. All other departments need to replace

their older/outdated Canon equipment and two departments need to replace their older equipment and also add some new equipment.

Staff recommends that the City establish one Agreement with Canon Solutions America for all departments while replacing and adding equipment to the departments still in need. Consolidation into one Agreement, will streamline the contract process for all departments by preventing the duplication of work and will have a total Citywide cost increase of $468 per month.

FISCAL IMPACT:

The additional $468 monthly cost can be absorbed by Department's corresponding budgets. No appropriation in needed.

Respectfully submitted by:

Martha Garcia
Director of Finance

Approved by:

Ron Bow
City Manager

Reviewed by:

Karl H. Berger
City Attorney

City Council Staff Report

DATE: December 21, 2022

AGENDA ITEM NO: Consent Calendar - 3H

TO: The Honorable Mayor and City Council

FROM: Ron Bow, City Manager

SUBJECT: Report submitted to the City Council pursuant to Government Code § 8630 regarding the City's employment emergency (per Resolution Nos. 2022-R49 and 2022-R67); continuance of such emergency

RECOMMENDATION:

It is recommended that the City Council consider:

1. Receiving and filing this report;
2. Extending the Employment Emergency; and
3. Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

As of December 12, 2022, the City is in the recruitment process for Water Utility Manager, Water Production System Supervisor, Senior Water Production System Operator, Communications Dispatcher, Code Enforcement Officers, Recreation Manager, and Public Works Inspector. Since the last report from October 2022, the City filled two Water Utility Maintenance Workers, three Firefighters, Fire Marshal, Maintenance Worker, Administrative Secretary (promotional), Library Assistant, and various part-time vacancies for Police Cadet and Recreation Leader.

The City is recruiting for 39 vacant full-time positions. Staff recommends extending the employment emergency order due to the critical vacancies in the Water Treatment division and Police Communication Dispatch division.

Respectfully submitted by:

Ron Bow, City Manager

Review by:

Karl H. Berger, City Attorney

City Council Staff Report

DATE: December 21, 2022

AGENDA ITEM NO: Consent Calendar - 3I

TO:	The Honorable Mayor and City Council
FROM:	Christine Tomikawa, Director of Human Resources and Risk Management
SUBJECT:	Resolution delegating authority to the City Manager pursuant to Government Code § 21173 to perform all tasks regarding Disability Retirement of Safety Employees of the City

RECOMMENDATION:

It is recommended that the City Council consider:

1. Adopting a Resolution pursuant to Government Code § 21173 to delegate authority to the City Manager regarding disability retirements ; and
2. Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

Resolution No. 8363, adopted January 28, 1980, delegates authority to the City Manager for determining and approving disability retirements for Safety Employees. Changes in California law since that date make it desirable to update that authority. The draft Resolution, if adopted, would accomplish that task.

BACKGROUND:

The Disability Retirement regulations (commencing at Government Code § 21150) governs the manner by which public employees may retire from service because of disability. Ordinarily, this must be accomplished by the City Council in conjunction with the CalPERS Governing Board.

Government Code § 21173 allows the City Council to delegate these responsibilities to a subordinate officer including the City Manager. While this authority was previously delegated in 1980, it is recommended that this delegation be updated to reflect the changes in California law during the past 40 years.

FISCAL IMPACT:

None

Respectfully submitted by:

Christine Tomikawa
Director of Human Resources and
Risk Management

Approved by:

Ron Bow
City Manager

Reviewed by:

Karl H. Berger
City Attorney

ATTACHMENTS:

1. Proposed Resolution

ATTACHMENT 1
Proposed Resolution

RESOLUTION NO.

A RESOLUTION DELEGATING AUTHORITY TO THE CITY MANAGER TO MAKE DETERMINATIONS REGARDING DISABILITY RETIREMENT OF SAFETY EMPLOYEES IN ACCORDANCE WITH GOVERNMENT CODE § 21173.

The City Council of the city of Monterey Park does resolve as follows:

SECTION 1: The City Council finds and declares as follows:

A. The City contracts with the California Public Employees Retirement System (CalPERS);

B. California law requires that the City determine whether a local safety employee is "disabled" for purposes of CalPERS and, if so, whether such disability is "industrial"; and

C. In 1980, the City Council adopted Resolution No. 8363 which delegated authority to the City Manager to make decisions regarding disability retirements. In the 40 years since that time, California law has changed. It is now desirable to update the City Manager's authority.

SECTION 2: *Delegation of Authority*. Pursuant to Government Code § 21173, the City Council delegates authority to the City Manager to perform all functions regarding disability retirement of safety officers. Such authorization includes determinations of disability; whether such disability is industrial; and to certify such determinations to CalPERS. Additionally, the City Manager may apply to CalPERS for disability retirement of employees who are classified as local safety members and initiate reinstatements of such employees who are retired for disability.

SECTION 3: *Procedures*. The City Manager should utilize the following procedures to implement the authority granted in Section 2:

A. Determination of Disability. Whenever any party files an application for disability retirement with CalPERS for disability retirement of a local safety. member, the City Manager will conduct a duly noticed informal hearing to determine whether that employee is incapacitated physically or mentally for the performance of the duties of his position. When it is determined that·the employee is incapacitated, the employee may be terminated or placed on disability retirement status.

B. Notice of Hearing. Written notice of a hearing must be given to the affected employee by United States Certified Mail, Return Receipt Requested, or by personal service, at least 10 days in advance of such hearing. Notice is complete upon its receipt by the employee.

C. Representation at Hearing. The City may be represented at the hearing by the City Manager, or designee. The employee may be represented by a person of the employee's choice.

D. Evidence of Disability. Before noticing the hearing, the City Manager will submit a list of not less than three medical doctors, chosen by the City Manager, or designee, from which the employee may select one. The employee will then promptly submit to a medical and/or psychiatric examination by that selected medical doctor, depending upon the alleged disability. The examination results must be submitted to, and considered by, the City Manager during the employee's disability retirement hearing. Additionally, either part may submit any other relevant evidence, either oral or documentary.

E. Decision. Based upon the evidence presented, the City Manager must determine whether such employee is incapacitated physically or mentally for the performance of the duties of the position and termination of employment for that position and immediately thereafter notify CalPERS of this decision. The decision of the City Manager is the City's final decision.

SECTION 4: This Resolution may be executed with electronic signatures in accordance with Government Code §16.5. Such electronic signatures will be treated in all respects as having the same effect as an original signature.

SECTION 5: The City Clerk will certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

SECTION 6: This Resolution will become effective immediately upon adoption.

PASSED AND ADOPTED this 21st day of December, 2022.

_____
Henry Lo, Mayor

ATTEST:

_____
Maychelle Yee, City Clerk

Approved as to form:

_____
Karl H. Berger, City Attorney

City Council Staff Report

DATE: December 21, 2022

AGENDA ITEM NO: Consent Calendar - 3J

TO: The Honorable Mayor and City Council

FROM: Shawn Igoe, Director of Public Works

SUBJECT: Receive and File Staff Report Summarizing the Status of Emergency Repairs of the Monterey Pass Road Water Line

RECOMMENDATION:

It is recommended that the City Council consider:

1. Receive and File the staff report summarizing the status of emergency repairs of the Monterey Pass Road water line; and
2. Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

In August 2022, the City Council declared an emergency and authorized the City Manager to by-pass general bidding requirements under the Public Contract Code (PCC) for emergency replacement of approximately 4400 linear feet of water main line on Monterey Pass Road, between Vagabond Drive and Brightwood Street.

BACKGROUND:

On August 17, 2022, City Council adopted Resolution No. 2022-R69 authorizing the City Manager to take necessary measures for emergency repair of a water main line on Monterey Pass Road. Recurring water main leaks in several areas within Monterey Pass Road between the intersections of Vagabond Drive and Brightwood street have resulted in extensive infrastructure damage to the roadway and necessary water main pipe repairs to ensure continued water service to residences and businesses in the area.

Consequently, on August 29, 2022, the City contracted with Cannon Corporation for professional engineering services to prepare design plans and specifications for the water pipeline replacement. Cannon recently completed and provided the City with complete plans to replace the existing 12-inch water transmission line.

Staff has identified Ferreira Coastal Construction (Ferreira) as a qualified contractor for the construction phase of this project. Ferreira has experience working with other municipal agencies and the City currently contracts with Ferreira for as-needed maintenance for the City's water distribution system. Ferreira is registered with the California Department of Industrial Relations (DIR), meets the insurance requirements of the City, and is able to expedite completion of this emergency work based on the City's needs. Discussions with Ferreira on final construction cost and scheduling are still

ongoing. However, to reduce the financial impact to the City, staff has proposed direct purchase of materials for the project. This would result in an estimated 15% reduction in materials costs.

The City will provide project updates to the community for the duration of the project through the City website, social media, and City Council meetings. Staff has already started working with the Economic Development department to conduct outreach to businesses that may be impacted by this project.

FISCAL IMPACT:

The Monterey Pass Road Emergency Water Main Improvements has been added to the FY 2023 Capital Improvement plan as Project No 99025. The City's agreement with Cannon for design services is for $130,310. Construction and material costs have not yet been finalized. Staff will provide an update on estimated project costs when information is available.

Respectfully submitted by:

Shawn Igoe,
Director of Public Works

Reviewed by:

Martha Garcia
Director of Finance

Approved by:

Ron Bow
City Manager

Reviewed by:

Karl H. Berger
City Attorney

ATTACHMENT:

None

City Council Staff Report

DATE: December 21, 2022

AGENDA ITEM NO: Consent Calendar - 3K

TO: The Honorable Mayor and City Council

FROM: Shawn Igoe, Director of Public Works

SUBJECT: Second Amendment to Professional Services Agreement with Kimley-Horn for Potrero Grande Intersections Signal Improvements

RECOMMENDATION:

It is recommended that the City Council consider:

1. Authorizing the City Manager to execute a Second Amendment to Professional Services Agreement, in a form approved by the City Attorney, with Kimley-Horn, in an amount not to exceed $149,400, for Engineering Services for the Potrero Grande Intersections Signal Improvements; and
2. Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

The City's Capital Improvement Plan (CIP) for fiscal year 2022-23 includes Project No. 96012, Potrero Grande Intersection Improvements. The project consists of the construction of landscaped median islands and traffic signal improvements at two intersections along Potrero Grande Drive. Staff requests City Council approval to execute a Second Amendment to Agreement 2304-AA with Kimley-Horn, in an amount not to exceed $149,400, to prepare traffic signal and civil improvement plans for the Potrero Grande Intersection Improvements project.

BACKGROUND:

CIP No. 96012, Potrero Grande Intersection Improvements, aims to improve safety and operability for two intersections in the City: Potrero Grande Drive at Market Place Drive/Saturn Street and Potrero Grande Drive at Markland Drive. The proposed project will consider design options to increase capacity for the increased number of vehicles entering and exiting the Market Place shopping center and address issues with trucks turning at Markland Drive.

The City solicited proposals for engineering services including the preparation of traffic signal plans, specifications, and cost estimates, as well as traffic analyses for each intersection. The City received two proposals from Kimley-Horn and KOA Corporation.

RANK	PROPOSER	BASE BID AMOUNT
1	Kimley-Horn	$149,400
2	KOA Corporation	$157,673

Kimley-Horn was the lowest responsible bidder for these services. Staff requests City Council's approval to execute a Second Amendment to Agreement 2304-AA with Kimley-Horn, in an amount not to exceed $149,400, for Engineering Services for the Potrero Grande Drive Intersection Improvements, Capital Improvement Project No. 96012.

FISCAL IMPACT:

Funds for the Second Amendment to Agreement 2304-AA are budgeted as part of CIP No. 96012 and will be funded through the General Fund.

Respectfully submitted by:

Shawn Igoe,
Director of Public Works

Reviewed by:

Martha Garcia
Director of Finance

Approved by:

Ron Bow
City Manager

Reviewed by:

Karl H. Berger
City Attorney

ATTACHMENT:

1. Kimley-Horn Proposal

ATTACHMENT 1
Proposal

Kimley»Horn

11/3/2022

Mr. Ziad Mazboudi, P.E.
City Engineering Manager
City of Monterey Park
320 W. Newmark Avenue,
Monterey Park, CA 91754

RE: *Proposal for Signalized Intersection Safety Improvements in the City of Monterey Park*

Dear Mr. Mazboudi:

Kimley-Horn and Associates, Inc. (Kimley-Horn) is pleased to submit this proposal to the City of Monterey Park (Client) to prepare traffic signal and civil improvement plans for signalized intersections in Monterey Park, California (Project).

Project Understanding

Kimley-Horn understands the City is looking to improve safety and operability through traffic signal improvements for two (2) intersections throughout the City:

1. Potrero Grande Drive at Market Place Drive/Saturn Street
2. Potrero Grande Drive at Markland Drive

Potrero Grande Drive at Market Place Drive/Saturn Street improvements include the widening of the East approach to accommodate a dual westbound left turn lane to increase capacity for the large number of vehicles entering the Costco shopping center.

Potrero Grande Drive at Markland Drive improvements include redesigning the intersection that currently faces issues with truck turning radii.

Our scope of services, schedule, and fee are below:

Scope of Services

Kimley-Horn will provide the following tasks:

Task 1: Project Management and Coordination

The City of Monterey Park shall be the lead agency for this project, and the designated City Project Manager will coordinate with the Kimley-Horn team. We anticipate the following activities:

a. **Project Schedule:** Kimley-Horn will prepare a project schedule noting timelines for task completion and / or deliverables, and task dependencies. A draft schedule will be prepared for review during the kick-off meeting. Following concurrence on the schedule, a finalized baseline schedule will be provided.

b. Meetings: Kimley-Horn will schedule and conduct a project kick-off meeting within two weeks of the NTP to discuss project details, establish goals, review the project schedule, and coordinate efforts. A meeting notice, agenda, and meeting minutes noting all action items shall be prepared by Kimley-Horn for the kick-off meeting. We will have four (4) progress meetings through the duration of this project.

Task 2: Traffic Analysis

Kimley-Horn will assess traffic operations and intersection performance for each of the following (2) intersections:

- Potrero Grande Drive at Market Place Drive/Saturn Street
    a. Collect weekday and Saturday peak hour turning movement counts at the intersection
    b. Prepare a Synchro network that will include the following scenarios
        i. Existing conditions – this will note existing configuration and signal operation
        ii. Alternative 1 – assess operations under proposed lane configuration conditions and a protected-permissive signal operation
        iii. Alternative 2 – assess operations with dual left turns and a split-phase signal operation
- Potrero Grande Drive at Markland Drive
    a. Collect weekday and Saturday peak hour turning movement counts at the intersection
    b. Prepare a Synchro network that will include the following scenarios
        i. Existing conditions – this will note existing configuration and signal operation
        ii. Alternative 1 – assess operations under the existing lane configuration conditions and a protected-permissive signal operation
        iii. Alternative 2 – assess operations with existing lane configurations and a split-phase operation

Kimley-Horn will prepare a technical memorandum that notes the conclusion of the research and summarizes the operations for each alternative.

Task 2 Submittals:

- Two (2) technical memorandums

Task 3: Research and Field Investigation

Kimley-Horn will lead a data collection effort to gather information to successfully complete the project tasks.

a. **Existing Records Research:** Obtain available as-built plans from the City including street improvement plans, existing utilities maps, and communications drawings. For other records, Kimley-Horn shall research readily available existing data reports and obtain and review available project-pertinent data needed to prepare a complete design package.

b. **Field Review:** Perform a field review to record existing conditions at each of the project intersections, confirm data collected from existing plans and documentation, and to identify any additional unusual or special conditions that may affect the project design or construction. This task will reflect actual field conditions to support construction. Examples of data to be collected include:

- Roadway geometry (street widths, curb return radii, access ramps, sidewalks)
- Pavement markings and signs
- Types, sizes, and percent fill of conduits
- Sizes and locations of pull boxes, signal poles, and cabinets
- Details of loops, sawcuts, and stubouts
- Locations and sizes of catch basins, power poles, driveways, and service points
- Locations of utility manholes, meters, pull boxes, fire hydrants, valve covers and vaults
- Curb height, expansion joints, gutter width, and sidewalk scorelines at locations with proposed ADA ramps

Task 4: Field Survey

Kimley-Horn will hire a qualified subconsultant to research survey records from the City and the County Surveyor's office for the following three (2) intersections:

1. Potrero Grande Drive at Market Place Drive/Saturn Street
2. Potrero Grande Drive at Markland Drive

For each intersection, surveys will cover up to 200’ in each direction. We anticipate the following activities:

a. **Topographic Survey:** Kimley horn’s sub-consultant will research survey records with the city and the County Surveyor's office. Establish horizontal and vertical control for topographic surveying purposes. Topographic survey to include the following features/locations. Prepare a labeled map. Provide an Adobe pdf and AutoCAD dwg format file. The survey will show the following information:
   - Existing utilities, catch basin structures, local depression inlets (no dips on manholes or catch basins)

- Centerline based on record data
- Curb, gutter, sidewalk, landscaping, right-of-way, curb ramps, driveways, pavement delineations, markings, roadside signs, pull boxes, utility manholes/valves, power poles, fire hydrants
- Dips on storm drain catch basins

b. **Survey Drawings:** Plot centerline and right of way based on record data and key survey monuments. Prepare a labeled contour map. Provide an Adobe PDF and AutoCAD .dwg format file.

Task 4 Submittals:

- Survey in PDF and .dwg file

Task 5: Utility Coordination

Kimley-Horn will notify utility owners provided by City staff within the limits of the project. Kimley-Horn will request from the utility agencies existing underground and overhead utilities, including high-risk utilities. Kimley-Horn will coordinate with utility companies to obtain available right-of-way information, existing underground, and overhead utility lines that might interfere with the proposed traffic signal poles. Utility information received from utility companies will be included on the project base plans.

Kimley-Horn will compile the information in a matrix format to include dates of notification, person/utility notified, and responses received from each utility company. Copies of this information will be updated upon completion of effort and provided to the City during progress meetings.

Task 5 Submittals:

- Utility notification and coordination matrix

Task 6: Conceptual Layout

Kimley-Horn will provide conceptual layout for the following two intersections:

- Potrero Grande Drive at Market Place Drive/Saturn Street
- Potrero Grande Drive at Markland Drive

For each intersection two (2) iterations will be provided. The concept layout will identify major constraints and key design features. Truck turning templates will determine the appropriate curb return radius. The selected concept on each intersection will be further progressed in PS&E package. A preliminary cost estimate will be provided.

Task 6 Submittals:

- Four (4) conceptual layouts
- Two (2) preliminary cost estimates

Task 7: Street Improvement Plans

Kimley-Horn will prepare street improvement plans for the construction of roadway improvements for the following two (2) intersections:

- Potrero Grande Drive at Market Place Drive/Saturn Street
    a. Curb alignment modifications for southeast and southwest corners of the intersection
    b. Two curb ramps
    c. One crosswalk
    d. Relocation of one existing catch basin at southeast corner of the intersection
    e. Relocation of two existing street light poles
    f. Relocation of three existing traffic signal poles
    g. Retaining wall design at southeast corner
    h. Relocation of the existing sign in the center median
    i. Coordination with utility company to relocate the existing utility cabinet at southeast corner of the intersection
    j. Relocation of existing fire hydrant at southeast corner of the intersection
- Potrero Grande Drive at Markland Drive
    a. Curb alignment modifications for southeast and southwest corners of the intersection
    b. Two curb ramps
    c. One crosswalk
    d. Relocation of two existing catch basin at southwest and southeast corners of the intersection
    e. Coordination with Southern California Edison (SCE) to relocate the existing cabinet and associated infrastructure located at the southeast corner of the intersection
    f. Relocation of two existing street light poles
    g. Relocation of three existing traffic signal poles
    h. Shell gas station driveway modification
    i. Existing southeast bus pad redesign
    j. Relocation of existing fire hydrant at southwest corner

Roadway plans will be prepared at 20-scale (1” = 20’) horizontal. Vertical design information will be shown on plans with elevation call outs. We will use the field surveying from Task 3 for base mapping. Plan preparation will be coordinated with the City. We assume the City will provide one (1) set of consolidated comments for each submittal.

Kimley-Horn will also prepare signing and striping plans at 40-scale (1” = 40’) for the project locations. The plans will show both existing striping configurations and proposed striping configurations. The plans will be prepared in accordance with current City of Monterey Park and Caltrans standards.

Task 7 Submittals:

- 60% submittal in PDF format
- 90% submittal in PDF format
- 100% submittal in PDF format

Task 8: Storm Drain Modification Plans

Kimley-Horn will prepare storm drain modifications plans at the (2) project intersections. Kimley Horn will submit plans and calculations to County of Los Angeles for their review and approval.

Task 8 Submittals:

- 60% submittal in PDF format
- 90% submittal in PDF format
- 100% submittal in PDF format

Task 9: Traffic Signal Modification Plans

Kimley-Horn will prepare traffic signal modification plans for new installations at (2) project intersections. The traffic signal plans will be prepared in accordance with current City of Monterey Park and Caltrans standards and will be prepared at 20-scale (1" = 20').

Task 9 Submittals:

- 60% submittal in PDF format
- 90% submittal in PDF format
- 100% submittal in PDF format

Task 10: Traffic Signal Timing Sheets

Kimley-Horn will prepare updated traffic signal timing sheets for the (2) project intersections.

The updated timing sheets will include proposed signal timing parameters such as minimum bicycle greens, all-red times, walk times, flashing don't walk times, and yellow times. For each intersection, recommended phase timing parameters will be calculated by referencing the latest version of the CA MUTCD, Caltrans Traffic Signal Operations Manual, City of Monterey Park requirements, and recent aerial imagery measurements. For the intersections with new protected left turn phases, the phase diagrams on the updated traffic signal timing sheets will be updated to reflect the new phasing. The format of the updated timing sheets will be consistent with the proposed traffic controllers.

Task 10 Submittals:

- Updated traffic signal timing sheets in electronic Excel and PDF format

Task 11: Specifications and Opinions of Probable Construction Costs (OPCC)

Kimley-Horn will prepare construction specifications for bidding, and an opinion of probable construction cost (OPCC) for City use.

a. **Specifications:** Kimley-Horn will prepare a construction specifications document consistent with City format Construction specifications specific to the project. Submittal of specifications will be delivered to the City at 90% complete and final. We will provide a digital file for the specification package in Microsoft Word format at the project completion.

b. **Bid Schedule and OPCC:** Our team will prepare an itemized construction bid schedule and OPCC. Estimates will be provided with each plan submittal. The unit costs will be based upon the most current cost information for recent similar projects in the area that are approved by the City. Quantities will be developed from the plans and will help develop an engineer-estimated bid quantity. Our Opinion of Probable Construction Estimate will be delivered to the City at 90% complete and final in spreadsheet format.

Task 11 Submittals:

- 90% Specifications and Estimates
- Final Specifications and Estimates in Microsoft Word and Excel format

Task 12: Caltrans Encroachment Permit Coordination

Kimley-Horn will prepare a Caltrans Encroachment Permit package on behalf of the City for the Potrero Grande Drive and Markland Drive intersection. Our team will coordinate and address plan check correction comments.

Task 13: Construction Support

Kimley-Horn will assist the city during the construction phase by responding to the Contractor's RFIs, preparing addenda, and providing clarifications. Changes in the overall design concept are not part of this scope. A six-month construction duration is assumed. We have included up to 10 RFIs, up to five Contractor submittal reviews, one field observations, and up to two addenda. We will prepare record drawings by updating the approved design drawings based on one set of redline markups provided by the Contractor or City staff. Independent verification is not included in this scope. Significant deviations from the original design documents are not accounted for in this scope. The purpose of the record drawings is to create a deliverable that will represent the built condition for the City's records, as recorded by the Contractor.

Assumptions

- Plans will be developed in AutoCAD Civil 3D 2022 at full size sheets, 24" x 36"
- Following items are not included in the scope:
    - Geotechnical evaluation, hydrology/hydraulics analysis, and WQMP/LID
    - Potholing services
    - Right of way acquisitions and easements
    - No dips on manholes or catch basins are included
    - Street lighting plans
    - Landscape and Irrigation plans
    - Utility relocation beyond what was mentioned above
    - Protected left-turn phasing warrant analysis

Additional Services

Any services not specifically described in the above scope, as well as any changes in the scope the Client requests, will be considered Additional Services.

Additional services we can provide, if requested, include the following:

- Preparation of signal interconnect plans
- Preparation of utility relocation plans
- Preparation of landscape and irrigation plans
- Preparation of traffic control plans
- Potholing for pole locations
- Attendance at meetings with City staff

Schedule

Kimley-Horn will provide our services as expeditiously as practicable with the goal of meeting a mutually agreed-to schedule. We anticipate 3 months from receiving Notice to Proceed to submit the 1st Submittal to the City for review. Once we receive consolidated comments from the City, we anticipate up to 20 business days to address the comments. We anticipate up to three (3) submittals.

Fee and Billing

Kimley-Horn will perform the services described in Tasks 1 - 13 in the Scope of Services for a lump sum fee of $174,400.00. All permitting, application, and similar project fees will be paid directly by the Applicant.

Fees and expenses will be invoiced monthly based, as applicable, upon the percentage of services completed or actual services performed and expenses incurred as of the invoice date. Payment will be due within 25 days of the date of the invoice.

Closure

We appreciate the opportunity to provide these services to you. Please feel free to contact me at (818) 970-2048 or Jean.Fares@kimley-horn.com if you have any questions or if you need additional information.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Jean Fares, P.E.
Project Manager

City Council Staff Report

DATE: December 21, 2022

AGENDA ITEM NO: Public Hearing - 4A

TO:	The Honorable Mayor and City Council
FROM:	Joseph Torres, Economic Development Manager
SUBJECT:	Public hearing to approve the 2022 Annual Report and the levy of assessments for Downtown Business Improvement District No. 1 for program year 2023.

RECOMMENDATION:

It is recommended that the City Council consider:

1. Opening the public hearing, receiving both written and oral comments, and closing the public hearing.
2. Adopting the resolution confirming the 2022 Annual Report and the levy of assessments for Business Improvement District No. 1 for program year 2023; and
3. Taking such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

On December 7, 2022, the City Council set a continuance date of December 21, 2022, for a public hearing regarding the assessment of businesses within Business Improvement District No. 1 (BID). BID assessment revenues will fund beautification, promotional activities, and special events to benefit the downtown BID businesses.

This hearing was noticed in the Monterey Park Press newspaper and every business in the BID was sent a hearing notice in Chinese, English, and Spanish. At the conclusion of this public hearing, the Council can choose to adopt the resolution confirming the levy of assessments for the BID or adjust as needed.

BACKGROUND:

Based on its November 21, 2022, Annual Meeting, the Business Improvement District Advisory Committee (BIDAC) requested that the City Council set the date for a public hearing to consider the 2023 levy of assessment fees for the BID.

BIDAC is the advisory board to the City Council, entrusted with providing it with feedback on the needs of the businesses within the BID. In addition, it is responsible for providing an annual report to the City Council. The BID was originally managed by an independent

business association but was later replaced by the City Council with a City committee consisting of business owners within the assessed area.

Funding from Business Improvement Districts provides an avenue for BID businesses to enhance services to their area above those provided by the City. Services such as increased sidewalk cleaning, custodial services, marketing services, street furniture and Holiday decorations are some examples of ways BID funds may be used.

The law governing BIDs provides an opportunity for all potential assessees to protest the proposed renewal or change to the assessments. If written protests are received by the owners of the businesses in the BID area that pay 50% or more of the total assessment amount to be levied, the proposed assessment cannot occur. If the protests received do not amount to 50% or less, then the Council may adopt the resolution confirming the levy of assessments. This will allow the BID to continue benefitting from the promotions and public improvements as proposed in the 2023 BID budget.

In accordance with Business Improvement District law, the BIDAC submitted to Council its 2022 Annual Report for Business Improvement District No. 1 that identified activities and expenditures during the 2022 Program Year and described the proposed programs and budget for the upcoming 2023 Program year.

On November 1, 2022, the BIDAC conducted its annual members meeting, which was held at Jardin El Encanto. Notices were sent to all BID merchants inviting them to attend the meeting and express their concerns or ideas for programming and budgeting. The purpose of the meeting was to review the Annual Report and receive feedback on the 2022 expenditures and the proposed 2023 budget and assessment fee schedule.

The significant expenditure in 2022 was the installation of Holiday decorations for Garvey Avenue and janitorial services for the downtown area. In addition, a new janitorial services contractor was secured in late 2020. Up until 2021, the BID had experienced several years of expenditures exceeding the annual revenue, mainly due to the escalating costs of janitorial services provided by Chrysalis Enterprises. In December 2020, the City took steps to reduce BID expenditures by terminating the Chrysalis maintenance contract. The City then added the BID janitorial services to the City's existing contract with Valley Maintenance Corporation effective December 1, 2020, through December 31, 2023, providing the BID area with janitorial services four days a week at a significant cost reduction of 64% year-over-year. In 2022, the City added the cleaning of the Downtown parking lot on Garvey and Garfield to the Valley Maintenance contract with the same significantly reduced rate. As of September 2022, the BID has received approximately $41,841.00 in assessments and expects not to exceed its annual revenue with September 2022 year-to-date expenditures at $34,768.39.

The BIDAC's proposed 2023 BID programs and budget are included in the 2022 Annual Report.

Several goals for the upcoming 2023 BID program include, without limitation:

- Continue to work with the Downtown Garvey - Garfield businesses on ways they can assist in keeping the area attractive.
- Continue Valley Maintenance Corporation janitorial services at a reduced cost for the BID area.
- Install holiday decorations along Garvey Avenue, then remove and place in storage.
- Work with the City to provide workshops and other business assistance activities for businesses in the BID area.
- Support city projects that benefit the BID area such as discussions on the need for assisting businesses in the downtown area post-pandemic, signage, and maintenance.

The 2022 Annual Report includes a map of the area to be assessed, the 2022 and 2023 budget, and the Fee Schedule for the 2023 program year. Exhibit E of the Annual Report reflects the Fee Schedule recommended by the BIDAC and is the amount needed to bring annual revenue to a level that covers annual expenditures. This Fee Schedule is the same as in the previous 2022 program year. The annual report is available for review at the City Clerk's counter since October 19, 2022.

Staff would administer the BID funds consistent with the approved 2023 budget and seek recommendations of the BIDAC and appropriate City Council approvals to carry out BID activities.

FISCAL IMPACT:

All costs related to Business Improvement District No. 1 come from the BID assessments and not the general fund.

Respectfully prepared and submitted by:

Joseph Torres
Economic Development Manager

Approved by:

Ron Bow
City Manager

Reviewed by:

Karl H. Berger
City Attorney

ATTACHMENT:

1. Resolution Levying 2023 BID Assessments
2. 2022 Annual Report

ATTACHMENT 1
Resolution Levying 2023 BID Assessments

RESOLUTION NO. _____

A RESOLUTION LEVYING ASSESSMENTS FOR BUSINESS IMPROVEMENT DISTRICT NO. 1 FOR PROGRAM YEAR 2023 IN ACCORDANCE WITH GOVERNMENT CODE § 36624.

The City Council for the City of Monterey Park does resolve as follows:

SECTION 1: *Findings*. The City Council finds as follows:

A. Cities are authorized under the Property and Business Improvement District Law of 1994 (Streets & Highways Code §§36600, *et seq*.) to establish business improvement districts ("BID") within their jurisdictions for the purpose of funding certain services.

B. Business Improvement Area No. 1 was established by Ordinance No. 1604 on October 10, 1983, and modified by Ordinance No. 1656 on March 10, 1986.

C. As required by applicable law, the City prepared an Annual Report for Program Year 2022 for Business Improvement Area No. 1 ("Report") and submitted it to the City Council.

D. Based upon the Report, the City Council proposes to levy assessments Business Improvement Area No. 1 for Program Year 2023 as calculated in the Report which is incorporated by reference. A true and correct copy of the Report is available for public review in the City Clerk's office.

E. On November 16, 2022, the City Council adopted Resolution No. 2022-R88 giving notice of its intent to levy and collect assessments within Business Improvement District No. 1 for Program Year 2013; and

F. On December 21, 2022, the City Council considered public testimony and documentary evidence during a public hearing regarding the levy of assessments for Business Improvement District No. 1. This Resolution, and its findings, is based upon the entirety of the record considered by the City Council at its December 21st public hearing.

SECTION 2: *Protests*. The dollar value of valid protests required to prevent adoption of the proposed assessments is $51,188. Because the number of valid protests received by the City ☐ does, ☐ does not represent a majority of persons eligible to protest, the City Council ☐ may, ☐ may not, adopt the proposed assessments.

SECTION 3: *Approval*. If, pursuant to Section 2, the City Council may adopt the proposed assessments in accordance with the applicable sections of Property and Business Improvement District Law of 1994 (Streets & Highways Code §§36600, *et seq*.),

then the City Council adopts an annual assessment within the BID as set forth in attached Exhibit "A," which is incorporated by reference.

SECTION 4: *Authorization*. The City Manager, or designee, is directed to take such actions that are needed to collect this assessment.

SECTION 5: *Budget*. The BID Annual Budget for 2023, as set forth in the Report, is approved. The City Manager, or designee, is authorized to implement the BID Annual Budget for 2023 as set forth in the Report.

SECTION 6: *Reliance on Record*. Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 7: *Summaries of Information*. All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 8: *Effectiveness*. This Resolution will become effective immediately upon adoption.

PASSED AND ADOPTED this 21st day of December 2022.

_____
Henry Lo
Mayor

ATTEST:

_____
Maychelle Yee
City Clerk

APPROVED AS TO FORM:

By: _____
Karl H. Berger
City Attorney

State of California)
County of Los Angeles) ss.
City of Monterey Park)

I, Maychelle Yee, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. _____ was duly and regularly adopted by the City Council of the City of Monterey Park at a meeting held on the 21st day of December 2022 by the following vote:

Ayes:	Council Members:
Nays:	Council Members:
Absent:	Council Members:
Abstain:	Council Members:

Dated this 21st day of December 2022

_____
Maychelle Yee, City Clerk
City of Monterey Park, California

EXHIBIT:

A: 2023 BID Fee Schedule

EXHIBIT A

2023 BID Fee Schedule

Business Type	Fee	Employee/Seat	Formula
Retail	$105.17	$13.52	
Service (Includes Financial)	$105.17	$13.52	
Restaurant			
Without ABC	$105.17	$ 6.57	(1)
With ABC	$105.17	$ 7.87	(2)
Professional (inc. Insurance)	$105.17	$13.52	
Theater	$105.17		
Wholesale	$105.17		
Manufacturing	$105.17		
Contractor	$105.17		
Commercial Rental	$23.00 + .006574 sq. ft.		(3)
Residential Rental	$23.00		(4)
Hotel	$23.00 per unit		
Laundromat	$105.17		

(1) 20 seats or less, no seat assessment fees. Over 20 seats, $6.57 per seat starting with Seat 21. Eg. For 50 seats, total charge is $105.17 (base fee) + $197.10 (30 seats x $6.57) = $302.27.

(2) 20 seats or less, no seat assessment fees. Over 20 seats, $7.87 per seat starting with Seat 21. Eg. For 50 seats, total charge is $105.17 (base fee) + $236.10 (30 seats x $7.87) = $341.27.

(3) Base fee is $23.00 per unit. For every additional sq. ft. over 2,000; multiply excess by $.006574. Eg. 2,500 sq. ft., total charge is $23.00 + $3.29 (500 sq. ft. x $0.006574) = $26.29 (calculations are rounded up)

(4) If you own 1-3 units, there is no charge. If you own more than 3 units, you pay $23.00 per unit more than 3 units. Eg. You own 5 units. You pay $23.00 x 2 (5 units – 3 units) = $56.00

ATTACHMENT 2
2022 Annual Report

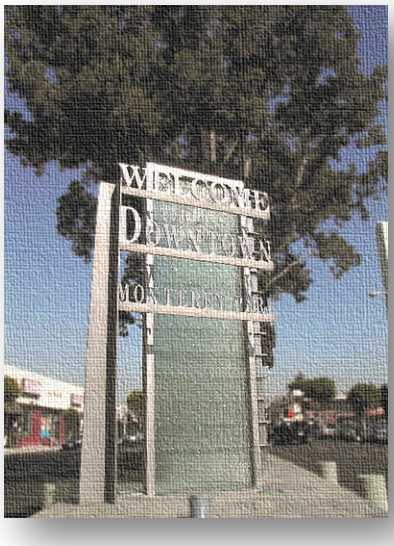
CITY OF MONTEREY PARK

BUSINESS IMPROVEMENT DISTRICT NO. 1

2022 ANNUAL REPORT

JANUARY 2022 – DECEMBER 2022

DOWNTOWN
Garvey – Garfield



VISION STATEMENT

The Downtown Business Improvement District (BID) No. 1
was established to improve and preserve the business
community in the "heart" of the City.

The Downtown area of the City is an important destination point
for the business community and residents of Monterey Park. Through continued efforts
in organization, beautification, promotion, and revitalization, the City leaders
and its business community will work together to preserve
and improve the quality of life for future generations.

BOARD MEMBERS

Gene Jeng
Jessy Li
Josephine Louie
Elizabeth Yang
One Vacancy

OVERVIEW

The Business Improvement District Advisory Board (BIDAC) meets quarterly and during special meetings to discuss issues of concern to businesses located within the BID area. Programs addressing cleanliness, promotions, and marketing are all reflected in the budget for the BID. In addition to the issues discussed, the Board also researches and plans innovative ways to promote businesses and maintain the goals and budget outlined in the Annual Report.

HISTORY

The Monterey Park Business Improvement District No. 1 encompasses the area extending along Garvey Avenue from Ramona Avenue to Nicholson Avenue and on Garfield Avenue from south of Newmark Avenue to Emerson Avenue (refer to Exhibit A). The Monterey Park City Council established the BID in 1986 at the request of local businesses in the area and the Downtown Merchants Association (DMA) under the California Streets and Highway Code Section 36500 et seq.

The primary responsibility of the BIDAC is to make recommendations to the City Council on the methods and ways by which revenues derived from the annual assessment are used for the betterment of the BID businesses and the BID area.

The BIDAC comprises five (5) members appointed by the City Council for one year and may serve for up to eight (8) years if reinstated by a Council member. Each City Council member appoints one Committee member. The BIDAC meets quarterly and as needed and hosts an annual meeting of the BID members-at-large at the end of the year, before the following year's assessments.

ACCOMPLISHMENTS

This section of the Annual Report reflects the activities during 2022 to promote or enhance the BID area and its businesses.

Holiday Promotion

Holiday decorations were installed and displayed along Garvey Avenue and the medians to provide a bright seasonal atmosphere for shoppers in the downtown BID.

Janitorial Services

Effective December 1, 2020, Valley Maintenance Corporation, taking over Chrysalis Corporation, was contracted to perform the janitorial services in the BID area four days a week at a significantly reduced rate. In 2022, the City added the cleaning of the Downtown parking lot on Garvey and Garfield to the Valley Maintenance contract with the same significantly reduced rate.

BUDGET

2023 Program Year

The Annual Report contains an estimated budget for the BID for January 1, 2023, to December 31, 2023, and is tied to programs and activities scheduled during the calendar year.

As of September 2022, the City received approximately $41,841.00 in revenue from the BID for the calendar year 2022. Exhibit B reflects the estimated expenditures for the calendar year 2022. Exhibit C shows the actual expenditures as of September 2022, and Exhibit D reflects the BID's Estimated Annual Program Budget for the program year 2023.

GOALS for 2023

This section of the Annual Report shows the programs or activities intended for 2023.

- Continue to work with the Downtown BID businesses on ways they can assist in keeping the area attractive.
- Continue janitorial services for the BID area.
- Install holiday decorations along Garvey Avenue, remove them, and place them in storage.
- Work with the City to provide resources, workshops, and other business assistance activities for businesses in the BID area.
- Support City projects that benefit the BID area, such as discussions on the need for a parking structure in the BID, signage, and maintenance; identify ways to promote businesses in the BID.

Exhibits:

A: BID Area Map
B: 2022 Estimated Expenditures
C: 2022 Actual Expenditures
D: 2023 Estimated Budget
E: 2023 Fee Schedule

EXHIBIT A

BUSINESS IMPROVEMENT DISTRICT NO. 1 MAP

EXHIBIT B

Business Improvement District No. 1

2022 Estimated Expenditures

Budget Item		Description		2022 Est. Expenditures
Administration		Postage		$ 600.00
		Business Cards		$225.00
		Translation Services		$1,200.00
		Office Supplies		$300.00
Street Banners		20 Large Banners 30” x 96”		$3,380.00
		34 Small Banners		$3,740.00
		1 Across the Street Banner		$1,400.00
		Single & Double Brackets		$6,912.00
Holiday Decoration		Holiday light bulb replacement		$500.00
		Edison		$625.00
		Holiday light storage & installation		$5,577.00
Trash Receptacles		Liners & lids		$200.00
Landscaping		Additional planting supplies		$1,000.00
Custodial Contract		Maintenance of the BID area		$ 21,840.00
		Pressure Washing		$7,360
		TOTAL EST. EXPENDITURES:		**$54,859.00**

EXHIBIT C

Business Improvement District No. 1

2022 Actual Expenditures as of September 2022

Beginning Fund Reserves Balance: $136,151.12

Budget Item		Description		2023 Estimated Budget
Administration		Postage		$613.21
		Business Cards		$0.00
		Translation Services		$0.00
		Office Supplies		$0.00
Holiday Decoration		Holiday light bulb		$0.00
		Edison Poles Adapters		$1,050.18
		Holiday light storage & installation		$9,425.00
Trash Receptacles		Additional liners & lids		$0.00
Landscaping		Additional planting supplies		$0.00
Custodial Contract		Maintenance of the BID area		$23,680.00
		TOTAL EXPENDITURES:		**$34,768.39**
Revenue as of 09/2022				**$41,841.23**
Reserves as of 09/2022				**$187,010.53**

EXHIBIT D

Business Improvement District No. 1

2023 Estimated Budget

Budget Item		Description		2023 Estimated Budget
Administration		Postage		$1,500.00
		Business Cards		$150.00
		Translation Services		$1,200.00
		Office Supplies		$300.00
BID Promotion		Incentives, marketing, & promotions		$5,500.00
Holiday Decoration		Holiday light bulb replacement		$500.00
		Edison		$600.00
		Holiday light storage & installation		$5,577.00
Trash Receptacles		Additional liners & lids		$200.00
Landscaping		Additional planting supplies		$1,000.00
Custodial Contract		Maintenance of the BID area		$21,840.00
		Pressure Washing		$7,360.00
		Downtown Parking Lot Cleaning		$15,120.00
		TOTAL:		**$60,847.00**

EXHIBIT E

2023 BID Fee Schedule (same as last year)

Business Type	Fee	Employee/Seat	Formula
Retail	$105.17	$13.52	
Service (Includes Financial)	$105.17	$13.52	
Restaurant			
Without ABC	$105.17	$ 6.57	(1)
With ABC	$105.17	$ 7.87	(2)
Professional (inc. Insurance)	$105.17	$13.52	
Theater	$105.17		
Wholesale	$105.17		
Manufacturing	$105.17		
Contractor	$105.17		
Commercial Rental	$23.00 + .006574 sq. ft.		(3)
Residential Rental	$23.00		(4)
Hotel	$23.00 per unit		
Laundromat	$105.17		

(5) 20 seats or less, no seat assessment fees. Over 20 seats, $6.57 per seat starting with Seat 21. Eg. For 50 seats, total charge is $105.17 (base fee) + $197.10 (30 seats x $6.57) = $302.27.

(6) 20 seats or less, no seat assessment fees. Over 20 seats, $7.87 per seat starting with Seat 21. Eg. For 50 seats, total charge is $105.17 (base fee) + $236.10 (30 seats x $7.87) = $341.27.

(7) Base fee is $23.00 per unit. For every additional sq. ft. over 2,000; multiply excess by $.006574. Eg. 2,500 sq. ft., total charge is $23.00 + $3.29 (500 sq. ft. x $0.006574) = $26.29 (calculations are rounded up)

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