

CITY OF MONTCLAIR

**CITY COUNCIL
SUCCESSOR REDEVELOPMENT AGENCY,
MONTCLAIR HOUSING CORPORATION, MONTCLAIR
HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY
FOUNDATION MEETINGS**

AGENDA PACKET



**Monday, April 1, 2024
7:00 p.m.**

**Montclair City Council Chambers
5111 Benito Street
Montclair, CA 91763**

Mayor

Javier "John" Dutrey

Mayor Pro Tem

Tenice Johnson

Council Members

Bill Ruh

Corysa Martinez

Benjamin "Ben" Lopez

City Manager

Edward C. Starr

City Attorney

Diane E. Robbins

City Clerk

Andrea M. Myrick



**REGULAR JOINT MEETING OF THE
CITY COUNCIL, SUCCESSOR AGENCY, MONTCLAIR HOUSING CORPORATION,
MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY FOUNDATION**

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

Monday, April 1, 2024
7:00 p.m.

If you want to provide comments on an agenda item, including public hearing and closed session items, please complete a Speaker Card located in the Council Chambers. The Mayor/Chair (or the meeting's Presiding Officer) will call on those who submitted requests to speak at the appropriate times during the meeting. Written comments (200-word limit per agenda item, and 200-word limit for all non-agenda items combined) can also be emailed to cityclerk@cityofmontclair.org at least one hour before the meeting begins.

Watch Council meetings live via Zoom using the information provided below, or on the City's official YouTube Channel at <https://www.youtube.com/@cityofmontclair>. Video recordings of Council meetings are available on the City's website and can be accessed by the end of the business day following the meeting at <https://www.cityofmontclair.org/council-meetings/>.

Zoom Link: <https://zoom.us/j/93717150550>

Dial Number: 1 (669) 900-6833

Meeting ID: 937-1715-0550

AGENDA

- I. CALL TO ORDER** City Council [CC], Successor Agency Board [SA],
Montclair Housing Corporation Board [MHC],
Montclair Housing Authority Commission [MHA],
Montclair Community Foundation Board [MCF]

II. INVOCATION

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

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

V. PRESENTATIONS

- A. Introduction of New and Promoting Police Department Employees
- B. Proclamation Declaring April 2024 as Child Abuse Prevention Month in the City of Montclair
- C. Presentation of Annual Donation by the Montclair Chamber of Commerce to the Montclair Community Foundation for the Montclair to College Program

VI. PUBLIC COMMENT

*During Public Comment, you may comment on any subject that **does not** appear on this agenda. Each speaker has up to five minutes. The meeting's presiding officer may provide more or less time to accommodate speakers with special needs or a large number of speakers waiting in line. (Government Code Section 54954.3).*

Under the provisions of the Brown Act, the meeting bodies are prohibited from participating in substantial discussion of or taking action on items not listed on the agenda.

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

A. Approval of Minutes

- 1. Regular Joint Meeting — March 18, 2024 [CC/SA/MHC/MHA/MCF] 79

B. Administrative Reports

- 1. Consider Approval of Warrant Register & Payroll Documentation [CC] 4
- 2. Consider Authorizing the Purchase of Three 2025 Ford Explorer Interceptor Utility Vehicles for the Police Department Fleet from Fritts Ford in the Total Amount of \$160,493.88 [CC]
Consider Declaring Three Ford Police Interceptor Utility Vehicles as Surplus and Available for Parts or for Sale at Auction, with Consideration for One to be Repurposed as a Cadet Vehicle [CC] 5
- 3. Consider Approval of Fiscal Year 2023–24 Schedule of Recommendations from the Community Activities Commission for Community Benefits Funding [CC] 7
- 4. Consider Receiving and Filing Annual Reports from the Independent Auditing Firm for the City of Montclair and the Successor Agency for the City of Montclair Redevelopment Agency [CC/SA] 11

C. Agreements

- 1. Consider Approval of Agreement No. 24–22 Amending Agreement No. 21–43 with the Inland Valley Humane Society & S.P.C.A. for Animal Control Services, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 13
- 2. Consider Approval of Agreement No. 24–23, Amendment No. 5 to Agreement No. 15–64 with San Bernardino County Transportation Authority (SBCTA Cooperative Agreement No. 15–1001297) for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 18
- 3. Consider Approval of Agreement No. 24–24 with Biggs Cardosa Associates, Inc., for Design Services Associated with the Holt Boulevard and Pacific Electric Trail Bridge Project, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 23
- 4. Consider Amending the 2019–2024 Capital Improvement Program to Add the Saratoga Park Transformation Project [CC]
Consider Approval of Agreement No. 24–25 with L.D. King, Inc., for Design Services for the Saratoga Park Transformation Project in the Amount of \$543,935, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]
Consider Authorizing a \$600,000 Appropriation from 2021 Lease Revenue Bond Funds for Design Services for the Saratoga Park Transformation Project [CC] 44

D. Resolutions— None

IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

- A. Department Reports — None
- B. City Attorney
- C. City Manager/Executive Director
- D. Mayor/Chairperson
- E. Council Members/Directors
- F. Committee Meeting Minutes *(for informational purposes only)*
 - 1. Personnel Committee Meeting — March 18, 2024 [CC]

78

XI. ADJOURNMENT

The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, April 15, 2024 at 7:00 p.m.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the meeting bodies after publication of the Agenda packet are available for public inspection in the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. Please call the City Clerk's Office at (909) 625-9416 or send an e-mail to cityclerk@cityofmontclair.org to request documents via e-mail.

If you need special assistance to participate in this meeting, please contact the City Clerk's Office at (909) 625-9416 or e-mail cityclerk@cityofmontclair.org. Notification prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)

I, Andrea M. Myrick, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at <https://www.cityofmontclair.org/agendas/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, March 28, 2024.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 1, 2024	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	1	PREPARER:	A. VONG/V. FLORES
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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

BACKGROUND: Mayor Pro Tem Johnson has examined the Warrant Register dated April 1, 2024, and the Payroll Documentation dated March 10, 2024, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated April 1, 2024, totals \$2,425,483.53.

The Payroll Documentation dated March 10, 2024, totals \$878,761.37 gross, with \$628,666.84 net being the total cash disbursement.

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



CITY COUNCIL AGENDA REPORT

DATE: APRIL 1, 2024

FILE I.D.: VEH450/VEH120

SECTION: CONSENT - ADMIN. REPORTS

DEPT.: POLICE

ITEM NO.: 2

PREPARER: J. MICHEL

SUBJECT: CONSIDER AUTHORIZING THE PURCHASE OF THREE 2025 FORD EXPLORER INTERCEPTOR UTILITY VEHICLES FOR THE POLICE DEPARTMENT FLEET FROM FRITTS FORD IN THE TOTAL AMOUNT OF \$160,493.88

CONSIDER DECLARING THREE FORD POLICE INTERCEPTOR UTILITY VEHICLES AS SURPLUS AND AVAILABLE FOR PARTS OR FOR SALE AT AUCTION, WITH CONSIDERATION FOR ONE TO BE REPURPOSED AS A CADET VEHICLE

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the purchase of three 2025 Ford Explorer Interceptor Utility vehicles to replace two vehicles currently used by Police Department personnel and one wrecked patrol vehicle currently being used for parts.

BACKGROUND: The City Council approved the purchase of three 2024 Ford Explorer Interceptor Utility vehicles for patrol use in the Police Department Fiscal Year 2023–24 Budget. The new vehicles would replace three 2016 Ford Police Interceptor Utility Vehicles (Units 417, 419, and 420) in the Police Department’s fleet. The mileage on these Police Interceptor Utility vehicles is high, and all are in deteriorated condition with worn interiors and other physical and mechanical damage. Unit 420 was approved for replacement in the FY 2022–23 Budget; however, it was kept in service one additional year due to another patrol vehicle that was totaled in a traffic collision and taken out of service. Since approval for its replacement, Unit 417 was involved in a collision during a pursuit in November 2023 and was completely totaled. Additionally, Unit 419, which is currently being used by patrol, could be repurposed for use by the Police cadets during parking enforcement operations and during other routine duties.

In a memorandum from Ford, the production of Police Interceptors was completed for the current 2023 model year (skipping 2024), and is set to resume with the new 2025 model later this calendar year. The vehicle ordering window was originally anticipated for October 2023, but was significantly delayed and did not become available until February 18, 2024. Of note is the increase in cost for these vehicles compared to the projected estimated cost during the budgetary process. The current FY 2023–24 Budget includes \$138,000 for three patrol Police Interceptor Utility vehicles. Ford increased the cost to \$160,493.88, which includes an increased cost for paint to a black-and-white color scheme. Cost increases to the Police Interceptor Utility vehicles was due in large part to supply-chain issues, availability, and other manufacturing cost increases for this particular vehicle type. Currently, the Department’s Equipment Replacement Fund has a positive balance as a result of a refund for damage caused to another patrol vehicle. A portion of this refund would be used to cover the remaining balance of \$22,493.88 for the purchase of the vehicles.

Fritts Ford announced an ordering window that became available February 18, 2024, with a closing date that would occur once they fulfilled their surplus of orders. Fritts Ford has been the chosen vendor for Department vehicles for the past few fiscal years, and its pricing has been consistently the lowest for patrol black-and-white Police Interceptors. Due to concerns that the window could close, staff obtained a purchase order to secure the purchase of the three vehicles from Fritts Ford prior to City Council approval, as the vehicles were included in the approved FY 2023-24 Budget.

Additionally, Units 417, 419, and 420 are proposed to be declared as surplus and made available for parts to support vehicles currently in service in the Police Department’s fleet or for sale at auction, with the consideration that Unit 419 be repurposed as a cadet vehicle. The vehicles; identification information is as follows:

<i>Vehicle Year and Model</i>	<i>Unit No.</i>	<i>VIN</i>	<i>Mileage</i>	<i>Estimated Value</i>
2016 Ford Interceptor Utility	417	1FM5K8AR8HGB33454	103,168	\$5,000
2016 Ford Interceptor Utility	419	1FM5K8AR4HGB33452	107,077	\$8,000
2016 Ford Interceptor Utility	420	1FM5K8AR6HGB33453	128,552	\$8,000

FISCAL IMPACT: If authorized by the City Council, funding for the purchase of three black-and-white 2025 Ford Interceptor Utility vehicles for patrol use would result in an expenditure of \$160,493.88 from the Police Department Fiscal Year 2023-24 Budget from Equipment Replacement Fund Account No. 1750-4426-62020-400-00000. There is no fiscal impact to the City by declaring existing vehicles in the patrol fleet as surplus and making them available for parts. However, the City could receive up to \$21,000 from the auction of said vehicles. Proceeds from the sale would be credited to the Equipment Replacement Fund.

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

1. Authorize the purchase of three 2025 Ford Explorer Interceptor Utility vehicles for the Police Department fleet from Fritts Ford in the total amount of \$160,493.88.
2. Declare three Ford Police Interceptor Utility vehicles as surplus and available for parts or for sale at auction, with consideration for one to be repurposed as a cadet vehicle.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 1, 2024	FILE I.D.:	CAC080
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	3	PREPARER:	K. RABINO
SUBJECT:	CONSIDER APPROVAL OF FISCAL YEAR 2023-24 SCHEDULE OF RECOMMENDATIONS FROM THE COMMUNITY ACTIVITIES COMMISSION FOR COMMUNITY BENEFITS FUNDING		

REASON FOR CONSIDERATION: Annually, the Human Services Department presents the City Council with a list of organizations that the Community Activities Commission (CAC) are recommending to receive a portion of funds appropriated in the Community Benefits Account. The City Council is requested to consider the CAC recommended organization requests listed on the Fiscal Year 2023-24 Community Benefits Assistance Program Agency Funding Requests at the end of this report and consider approval of the funding recommendations.

BACKGROUND: The City Council established an annual policy of appropriating funds to social service agencies that provide special services to Montclair residents. At the direction of the City Council, the CAC conducts a public hearing each year to provide CAC members with the following opportunities:

- Become acquainted with the requesting organizations and their programs of service,
- Inquire about requesting agencies' operating budgets and revenue sources in order to evaluate their financial needs,
- Determine the appropriate use of funds that may have been previously allocated by the City to requesting agencies.

The CAC heard presentations at its regular meeting on Wednesday, March 6, 2024, from thirteen organizations related to their requests for community benefits assistance, which are summarized below:

1. *AgingNext.* AgingNext was founded in 1975 to support and educate older adults as well as their families to maintain independence and to age well at home and in the community. In 2023, AgingNext supported 152 Montclair Senior and disabled participants with their programs. The funds received would be used to ensure that older adults, caregivers, and families have access to programs and resources. Funding will also assist in the Bone Building program that will be utilized at the Montclair Senior Center.
2. *Anthesis.* Anthesis serves the City of Montclair by providing vocational and social opportunities for adults with developmental and intellectual disabilities, improving their quality of life. Funding would be used to develop their "Outbound" outdoors programs and provide funding for 16 participants to go camping for the first time.

3. *Assistance League of the Foothill Communities.* The Assistance League of the Foothill Communities is a chapter of the National Assistance League® and an all-member volunteer philanthropic organization with a history of service in this area since 1953. Their mission is to transform the lives of children and adults through community programs. During the 22/23 school year, over 200 elementary and middle school students within the City of Montclair were serviced through their Operation School Bell® program. Funding would assist towards their Operation School Bell® program which provides services such as new school clothing and shoes to under-served children.
4. *Care & Company.* Care & Company is a faith-based, nonprofit organization located in the City of Montclair that aids low-income individuals, senior citizens and families with necessary hygiene items through their Hygiene Pantry program. Care & Company purchases approximately \$350 worth of hygiene products each month and asks patrons of the Hygiene Pantry for a suggested \$2 donation, however, no one is turned away due to their inability to pay. Funds received would be used to support the Hygiene Pantry by covering half of the cost of hygiene items for 2024.
5. *Christian Development Center (CDC).* Christian Development Center, a grassroots ministry, would use the funds to support their Food/Clothing Giveaway Program, which does monthly food giveaways of fresh produce to feed over 500 families every month and the Live Generously Program, which provides toiletries and basic hygiene products to residents in need. Sixty percent of their participants are Montclair residents.
6. *Foothill Family Shelter.* The Foothill Family Shelter provides services for at-risk, homeless individuals and families. In 2023, Foothill Family Shelter provided 120-day transitional housing and extended housing for homeless and low-income families; 2 of those families being from Montclair, aided 473 Montclair families with food, clothing, diapers, wipes and hygiene products through their Help Desk, and provided 66 Thanksgiving baskets to homeless and low-income families in Montclair. The funds received would be used to help provide shelter, food, and clothing for at-risk, homeless and low-income families in Montclair.
7. *Hope Through Housing Foundation (HTHF).* HTHF is a social service organization whose mission is to break the cycle of generational poverty by providing services to the National Community Renaissance's affordable housing communities. There are four affordable housing units located in Montclair: one property for seniors, one property for developmentally disabled residents, and two properties for families. All services and programs are provided free of charge to the residents; individuals and families not residing at one of the properties are also encouraged to take advantage of the services offered on-site. The HTHF offers programs, such as the Building Bright Futures youth development program. Their goal is to help young people do well in school, assist families in improving their financial situations and allowing senior citizens to age with dignity in their own homes.
8. *Love for Humanity.* Love for Humanity is a volunteer based non-profit organization dedicated to alleviating hardships and easing difficult times by helping people in need by supplying food, toiletries, and clothing, and assisting with education and job networking. The funds received would be used towards the general operating support for the programs that benefit Montclair residents such as the Grocery Bags

Program which provides groceries for low income families every month and restocks the food pantry at Our Lady of Lourdes Catholic Church in Montclair, the Food Backpack Program which gives children a backpack on Friday afternoons filled with enough pre-packaged food to last through the weekend, and the School Supplies Program which provides pouches full of essential school supplies to schools in Montclair for children in need.

9. *Montclair Meals on Wheels.* Montclair Meals on Wheels is an all-volunteer organization. Services include the home delivery of lunches to Montclair residents who are unable to shop for themselves or prepare their own meals. The program also focuses on eliminating isolation. The Meals on Wheels Program is charged \$5.00 per meal, and the cost to the recipient is also \$5.00. The funds received would pay for the fixed costs needed to support the program such as a post office box rental, delivery bags and containers as well as insurance and mileage fees.
10. *OMSD Health and Wellness Services.* OMSD Health & Wellness Services coordinates services for struggling children and families in crisis. The goal of Health & Wellness Services is to help families access food, shelter, clothing, education, health-care, and transportation. The funds received would be used for basic needs supplies and services for Montclair residents in the Case Management Program.
11. *OPARC.* OPARC has served Montclair since 1950 with employment, training, day programs, and community integration services for people with developmental and intellectual disabilities. The funding received last year was used to purchase a Griffin Metallophone to their outdoor sensory garden. This year, the funds would be used to purchase equipment for a sensory room at the Monte Vista Center. The sensory room will include a massage chair, rocker, oil diffuser, weighted blankets, sensory balls, and more, and will assist participants in enhancing motor skills, stimulating senses, encouraging emotional regulation, forstening growth and relieving discomfort.
12. *Project Sister Family Services.* Services are provided to survivors of sexual assault and include the following: a 24-hour crisis hotline, advocacy and accompaniment, individual counseling and support groups, community education, teen programs, and child-abuse prevention programs. In the 22/23 Fiscal Year Project Sister provided services to 128 Monclair residents. Funding would be used to provide a minimum of 50 residents of Montclair with 40 hours of service.
13. *VNAcare.* VNAcare provides home health-care and hospice services in our community. Funding will benefit the “Charitable Care” program, which provides assistance to underserved patient/families facing health challenges with limited financial resources. Funds will be allocated towards in-home nursing visits, the purchase of health-related services and grocery store/department store gift cards for patients/families needing food or household items.

FISCAL IMPACT: The recommended funding amounts have been limited to the approved Fiscal Year 2023–24 Budget amount of \$45,000 utilizing the following criteria:

- Level of service to the Montclair community
- Level of service need in the community
- Amount of each request
- Previous year's allocation (if applicable)
- Available funds

RECOMMENDATION: Staff recommends the City Council approve the Fiscal Year 2023-24 schedule of recommendations from the Community Activities Commission for the Community Benefits Funding Program:

**FISCAL YEAR 2023-24
COMMUNITY BENEFITS ASSISTANCE PROGRAM
AGENCY REQUESTS AND RECOMMENDED FUNDING**

<i>Requesting Agencies</i>	<i>Funding Requests</i>	<i>FY 2023-24 Recommendations</i>
(1) AgingNext	\$7,500.00	\$7,500
(2) Anthesis	\$3,000.00	\$3,000
(3) Assistance League of the Foothill Communities	\$3,000.00	\$3,000
(4) Care & Company	\$2,500.00	\$3,000
(5) Christian Development Center	\$7,500.00	\$5,000
(6) Foothill Family Shelter	\$3,000.00	\$3,000
(7) Hope Through Housing Foundation	\$2,500.00	\$2,500
(8) Love for Humanity	\$2,500.00	\$2,500
(9) Montclair Meals on Wheels	\$1,500.00	\$2,000
(10) OMSD Health and Wellness Services	\$5,000.00	\$1,500
(11) OPARC	\$5,000.00	\$5,000
(12) Project Sister Family Services	\$2,000.00	\$2,000
(13) VNAcare	\$5,000.00	\$5,000
TOTALS	<u>\$50,000.00</u>	<u>\$45,000.00</u>



CITY COUNCIL AGENDA REPORT

DATE: APRIL 1, 2024 **FILE I.D.:** FIN100/130
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** FINANCE/SA
ITEM NO.: 4 **PREPARER:** J. KULBECK
SUBJECT: CONSIDER RECEIVING AND FILING ANNUAL REPORTS FROM THE INDEPENDENT
AUDITING FIRM FOR THE CITY OF MONTCLAIR AND THE SUCCESSOR AGENCY FOR
THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY

REASON FOR CONSIDERATION: Though not required by law, in order to provide more transparency and documentation, the City Council is requested to receive and file the annual reports prepared by the City's independent auditing firm and a compliance audit required by Measure I.

BACKGROUND: The City of Montclair has engaged the auditing firm of Van Lant & Fankhanel, LLP, Certified Public Accountants (City Auditors) to perform independent audit of its financial transaction and to conduct other reviews required by law. Included in the agenda packet for City Council's information are copies of the reports issued by this firm, which are discussed in detail below.

The results of these engagements and the reports associated with them are as follows:

- Financial Audit of the City of Montclair for the Fiscal Year Ended June 30, 2023, which contains financial statements covering City operations. The financial statements presented in this report received an unqualified opinion from the auditing firm.
- Audit Communication Regarding Conduct of Audit. This letter provides information on the conduct of the audit. The auditors indicated:
 - All significant transactions have been recognized in the financial statements in the proper period.
 - They encountered no significant difficulties in dealing with management in performing and completing their audit.
 - Any misstatements noted were corrected by management.
 - No disagreements with management arose during the course of the audit.
- Report on Internal Control over Financial Reporting and on Compliance and Other Matters. This report covers deficiencies and weaknesses in internal control that could cause material misstatements. No deficiencies were noted by the auditors.
- Report on Agreed-Upon Procedures Applied to Appropriation Limit Worksheets. This is a set of procedures performed on the City's Gann Appropriation Limit as required by State Law. No findings were noted in the performance of these procedures.

- **Successor Agency Bonding Requirement Financial Disclosure Financial Statements.** This is a special purpose audit covering only those operations of the Successor Agency (former redevelopment agency) that affect bond issues. Prior to the elimination of redevelopment, there was a separate financial audit performed that was required as part of our continuing disclosure requirement for those bond issues. That audit was eliminated in the dissolution process and we now prepare this special report to comply with those disclosure requirements. This report gives the bond community specific information on the transactions associated with those bonds. To the best of staff's knowledge, we are the only successor agency that prepares this type of disclosure. For the fiscal year ended June 30, 2023, all of the continuing disclosure reporting requirements were completed, within the prescribed time limits.
- **Single Audit Report on Federal Awards Programs.** This is an organization-wide financial statement and federal awards' audit of a non-federal entity that expends \$750,000 or more in federal funds in one year. The Single Audit Report provides assurance to the Federal Government that a non-federal entity has adequate internal controls in place, and is generally in compliance with program requirements.

The financial audits of the City, the special audit of the Successor Agency, and the Single Audit were completed in March 2024. No management comments have been made by the City Auditors to the City indicating any policies and/or procedures that they would like to see improved.

Additionally, as required by Measure I, independent auditors are engaged by San Bernardino County Transportation Authority to annually perform a financial and compliance audit of the City of Montclair's Measure I fund. This audit is to include a computation of Maintenance of Effort. For Fiscal Year 2022-23 this audit was performed by Crowe LLP, Certified Public Accountants, and their report is attached. The Measure I Fund received an unqualified financial statement opinion and no noncompliance was noted. The Maintenance of Effort computation, which compares general city street and highway expenditures against an annual base requirement, indicated that the City of Montclair has exceeded its cumulative Maintenance of Effort requirement by \$20,771,915. For Fiscal Year 2022-23 the City was also required to complete a Transportation Development Act (TDA) audit, which was completed in conjunction with the Measure I audit. The funds received from the TDA were used to complete the installation of the new Pacific Electric Trail Bridge. The TDA audit received an unqualified financial statement opinion and no noncompliance was noted. A copy of the TDA audit performed by Crowe LLP, Certified Public Accountants is attached.

FISCAL IMPACT: There is no fiscal impact in receiving and filing the reports provided by the City and Measure I Auditors.

RECOMMENDATION: Staff recommends that the City Council and the Successor Agency Board of Directors receive and file annual reports from the independent auditing firm for the City of Montclair and the Successor Agency for the City of Montclair Redevelopment Agency.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 1, 2024	FILE I.D.:	ANL100
SECTION:	CONSENT - AGREEMENTS	DEPT.:	CITY MGR.
ITEM NO.:	1	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 24-22 AMENDING AGREEMENT NO. 21-43 WITH THE INLAND VALLEY HUMANE SOCIETY & S.P.C.A. FOR ANIMAL CONTROL SERVICES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The Inland Valley Humane Society & S.P.C.A. (IVHS), the animal control services provider for the City of Montclair, is requesting an amendment to Agreement No. 21-43 with the City of Montclair for animal care and control services.

The City Council is requested to consider approval of Agreement No. 24-22 amending Agreement No. 21-43 with IVHS for animal control services.

A copy of proposed Agreement No. 24-22 is attached for the City Council's review and consideration.

BACKGROUND: IVHS is a private nonprofit organization that offers a wide range of animal care and control services. IVHS provides these services to the cities of Chino, Chino Hills, Claremont, Covina, Diamond Bar, Glendora, La Verne, Montclair, Ontario, Pomona, San Dimas, and the unincorporated areas of San Bernardino County including the West End, San Antonio Heights, and Mt. Baldy.

IVHS operates a facility located at 500 Humane Way, Pomona, which offers a wide range of animal care services including adoptions, vaccinations, low-cost veterinary services, and pet care information and education. Recent improvements include dog kennel renovations and a new veterinary medical center that opened in winter of 2022.

The City has contracted with IVHS for animal control services since 1983. The contractual services provided to the City include: collection of stray and unwanted, injured, or deceased animals; enforcement of leash laws and other regulatory Ordinances related to animals within the City; provision of animal ambulance services; and operation of an animal shelter in compliance with state standards pursuant to California Food and Agriculture Code Sections 30501, et seq.

Proposed Adjustment to Animal Licensing Cost Allocation Methodology

Since the City Council's adoption of Agreement No. 21-43 with IVHS for animal control services in 2021, total costs for providing animal control services have increased significantly. Primarily, costs have risen due to increases in operating costs associated with the dramatic rise in the processing of stray dogs and cats, the sheltering of these animals, the adoption of policies statewide designed to lessen the amount of animals having to be euthanized, restrictions related to how deceased animals are disposed of, and increased costs related to wages and benefits provided to IVHS employees.

Currently, under the existing cost allocation methodology for agencies contracting with IVHS, the total cost for animal control services is apportioned to the contracting agencies

based on service level (calls for service and number of animals handled) and population.

Total costs for animal control services are offset by revenues generated by animal licensing, sheltering, and other service fees charged to the contracting agency's residents.

IVHS provides a guaranteed base revenue to each of its contract agencies based on historical licensing fee collected. This guaranteed base revenue formula was adopted as part of IVHS move towards a Net Cost Model, which was introduced to the contract agencies as part of contract negotiations that occurred in 2020 and 2021. Pursuant to Agreement No. 21-43, the City of Montclair receives a guaranteed revenue source of \$150,000 annually, as part of the City's adoption of a Net Cost Model.

The contracting agencies pay a supplemental sum each year to cover the remaining costs once licensing fees and the guaranteed revenue source are deducted from the total cost of providing animal control services.

In addition, the supplemental payment amount increases annually according to changes in the All Cities Consumer Price Index (CPI) for the Los Angeles-Long Beach-Anaheim area, All-Items Indexes, All Urban Consumers not to exceed a maximum of 4 percent change for the previous 12-month period.

In January 2024, staff was notified that IVHS was re-evaluating its existing contracts across all contracting agencies and the cost allocation methodology upon which contract amounts are based. IVHS staff noted that due to increasing costs, the current cost allocation methodology no longer provides sufficient revenues to cover costs associated with providing animal control services and that IVHS would be changing the means by which they calculate total costs. In addition, IVHS noted that they would no longer be able to provide contracting agencies with a guaranteed based revenue under a Net Cost Model. Instead, the IVHS is requiring that all contracting agencies adopt a Gross Cost Model.

Under the Gross Cost Model, contracting agencies will be invoiced for the gross cost of providing animal control services, minus any licensing, impound and court revenues received on behalf of the contract agency.

Table 1, below, identifies the proposed cost to the City of Montclair using the Gross Cost Model for Fiscal Year 2024-25 when factoring in solely the average amount of licensing revenue received over the prior four year period and the total cost of providing animal control services to the City of Montclair.*

Table 1
Proposed Animal Licensing Cost Allocation Methodology

<i>Cost Allocation Methodology</i>	<i>Base Contract Cost</i>	<i>Licensing Revenue Average</i>	<i>Net Cost to the City</i>
Gross Cost	\$428,111	\$146,000	\$282,111

**It should be noted that licensing revenues fluctuate year to year depending on a variety of factors including whether or not it is a licensing canvassing year and the amount of fees paid by Montclair residents for impound and court fees. During the past four years, the average amount of licensing revenue generated equaled roughly \$146,000.*

FISCAL IMPACT: The cost associated to the General Fund for Fiscal Year 2024-25 pertaining to approval of Agreement No. 24-22 is estimated to be \$282,111 and will be incorporated in the Fiscal Year 24-25 Budget.

It should be noted that licensing revenues fluctuate year to year depending on a variety of factors including whether or not it is a licensing canvassing year and the amount of fees paid by Montclair residents for either impound and court fees. As such, the estimated impact to the General Fund for Fiscal Year 2024-25 may be more than the estimated amount of \$282,111.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 24-22 amending Agreement No. 21-43 with the Inland Valley Humane Society & S.P.C.A. for animal control services, subject to any revisions deemed necessary by the City Attorney.

CITY OF MONTCLAIR

AMENDMENT NO. 1 TO AGREEMENT NO. 21-43
BETWEEN THE CITY OF MONTCLAIR AND
INLAND VALLEY HUMANE SOCIETY & S.P.C.A.

THIS AMENDMENT NO. 1 to Agreement No. 21-43 dated August 2, 2021, is entered into in the State of California by and between the CITY OF MONTCLAIR, a California general law municipal corporation, hereinafter called “City”, and INLAND VALLEY HUMANE SOCIETY & S.P.C.A., a nonprofit corporation, hereinafter called “Humane Society.”

City and the Humane Society agree to amend Agreement No. 21-43 as follows:

1. Section 5, subsection (a), the “Guaranteed Revenue Credits” section shall be deleted.
2. Section 5, subsection (b) becomes subsection (c), and subsection (c) becomes subsection (d).
3. Section 5 (b) shall be added to read as follows:

(b) **Revenue Credits:** Humane Society shall receive and retain all payments collected for dog and cat licenses and related late fees, impound fees, kennel care fees and court fines collected on behalf of City as a result of City’s animal control program (“Service Fees”). Any Service Fees collected by Humane Society in connection with City’s animal control program shall be automatically remitted to Humane Society. All Service Fees will be credited to the City against the Annual Fee set forth in Paragraph 5(a) above, and subsequently calculated in Paragraph 5(d) below.

4. Section 13 shall be replaced in its entirety to read as follows:

Termination: After the completion of the initial Term, either Party, at any time, may terminate this Agreement without cause upon the giving of no less than one hundred eighty (180) days prior written notice to the other Party of the intent to terminate. This notice shall include the date of termination which shall be no less than one hundred eighty (180) days following the date of the notice. In the event of such a termination, Humane Society shall be paid for all work performed under the Agreement through the date of termination. In the event that the Agreement is terminated, Humane Society will cooperate with City in transferring the animals sheltered and animal control services to any other consultant or provider chosen by City to perform the animal shelter and animal control services. The additional expenses of transferring the animals and animal control services include, but are not limited to, the actual cost of identification and relocation of animals, transfer of records, including medical records, and other costs related to the transfer of the responsibility for animal sheltering and animal care services from Humane Society.

If termination is initiated, revenue will be credited to the City based on actual receipts for the service period.

5. This Amendment will be in effect July 1, 2024.

All other provisions of the agreement remain in effect.

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

CITY OF MONTCLAIR

**INLAND VALLEY HUMANE SOCIETY
& S.P.C.A.**

By: _____
Javier John Dutrey, Mayor

By: _____
Nikole Bresciani, President/CEO

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney



CITY COUNCIL AGENDA REPORT

DATE: APRIL 1, 2024

FILE I.D.: STA110-L

SECTION: CONSENT - AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 2

PREPARER: M. HEREDIA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 24-23, AMENDMENT NO. 5 TO AGREEMENT NO. 15-64 WITH SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA COOPERATIVE AGREEMENT NO. 15-1001297) FOR THE MONTE VISTA AVENUE/UNION PACIFIC RAILROAD GRADE SEPARATION PROJECT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: On August 4, 2015, the City Council approved Agreement No. 15-64 with San Bernardino County Transportation Authority (SBCTA) for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project (Project). SBCTA wishes to amend the agreement to extend the expiration date to close out the Project.

A copy of proposed Agreement No. 24-23 with SBCTA is attached for the City Council's review and consideration.

BACKGROUND: The City had previously entered into a Cooperative Agreement with SBCTA (Agreement No. 15-64) dated September 2, 2015, which delineates the roles, responsibilities, and funding commitments of the City and SBCTA relative to the construction activities for the Project.

The City amended Agreement No. 15-64 with Agreement No. 16-41 on July 6, 2016, to revise the development share percentage used in the original agreement. The amendment also revised the public share to 91.5 percent and development share to 8.5 percent, consistent with the Nexus Study.

The agreement was further amended a second time on December 5, 2019, by Agreement No. 19-91 to reflect the latest cost estimates.

On August 25, 2020, a third amendment was approved extending the contract to August 31, 2022, to resolve pending invoices, claims, and final reporting.

A fourth amendment was approved on August 10, 2022 extending the contract to August 31, 2024.

SBCTA is now requesting to extend the contract for an additional year to allow for final claims resolution and pending closeout activities for the Project. Amendment No. 5 would extend the contract to August 31, 2025.

FISCAL IMPACT: The time extension provided for in Agreement No. 24-23 would not impact costs for the project or place any additional burdens on the City's General Fund.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 24-23 amending Agreement No. 15-64 with SBCTA (SBCTA Cooperative Agreement No. 15-1001297) for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, subject to any revisions deemed necessary by the City Attorney.

**AMENDMENT NO. 5 TO
COOPERATIVE AGREEMENT NO. 15-1001297 (15-1001297-05)
BETWEEN
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
AND
CITY OF MONTCLAIR
FOR
CONSTRUCTION PHASE FOR THE GRADE SEPARATION AT
MONTE VISTA AVENUE/UPRR IN THE CITY OF MONTCLAIR**

I. PARTIES AND TERM

A. THIS AMENDMENT NO. 5 to COOPERATIVE AGREEMENT No. 15-1001297 dated September 2, 2015 (“Amendment No. 5”) is made and entered into by and between the San Bernardino County Transportation Authority (“AUTHORITY”) and the City of MONTCLAIR (“CITY”). (AUTHORITY and CITY each may be referred to herein as a “Party” and collectively as “Parties”).

II. RECITALS

- A. WHEREAS, CITY and AUTHORITY have previously entered into COOPERATIVE AGREEMENT No. 15-1001297 (“Agreement”), which delineates roles, responsibilities, and funding commitments relative to the Construction activities of the PROJECT as defined in the Agreement.
- B. WHEREAS, the CITY and AUTHORITY previously amended the Agreement pursuant to Amendment No. 1, dated July 6, 2016, to revise the development share percentage used in the original agreement. The amendment revised the public share to 91.5% and the development share to 8.5%, consistent with the Nexus Study.
- C. WHEREAS, the CITY and AUTHORITY previously amended the Agreement pursuant to Amendment No. 2, dated December 5, 2019, to update Project Management and Construction cost and revise Attachment A.
- D. WHEREAS, the CITY and AUTHORITY previously amended the Agreement pursuant to Amendment No. 3, dated August 25, 2020, to extend the expiration date to August 31, 2022.
- E. WHEREAS, the CITY and AUTHORITY previously amended the Agreement pursuant to Amendment No. 4, dated August 10, 2022, to extend the expiration date to August 31, 2024.
- F. WHEREAS, the CITY and AUTHORITY now wish to further amend the Agreement to update the project funding and extend the expiration date by one (1) year to allow for final claims resolution and pending closeout activities.

NOW, THEREFORE, the Parties agree to amend the Agreement between the CITY and AUTHORITY as follows:

1. The entirety of Paragraph B of Section I, entitled "PARTIES AND TERM" is removed and replaced to read as follows:

"B. This Agreement shall terminate upon completion of AUTHORITY's project management of the construction, or **August 31, 2025**, whichever is earlier in time, except that the indemnification provisions shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claims arising out of this Agreement be asserted against one of the Parties, the Parties agree to extend the fixed termination date of this Agreement until such time as the claims are settled, dismissed, or paid."

2. Delete Revised Attachment A-2 and replace it in its entirety with revised Attachment A-3 attached to this Amendment No. 5.
3. Except as amended by this Amendment No. 5, all other terms and conditions of the Agreement, as previously amended, shall remain in full force and effect.
4. The recitals are incorporated into the body of this Amendment No. 5.
5. This Amendment No. 5 may be signed in counterparts, each of which shall constitute an original.
6. The Effective Date of this Amendment is the date AUTHORITY executes this Amendment No. 5.

SIGNATURES ON FOLLOWING PAGE:

**SIGNATURE PAGE TO
AMENDMENT NO. 5 TO
COOPERATIVE AGREEMENT NO. 15-1001297
BETWEEN
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
and CITY OF MONTCLAIR**

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

CITY OF MONTCLAIR

By: _____
Dawn M. Rowe
Board President

By: _____
Javier John Dutrey
Mayor

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM:

By: _____
Julianna K. Tillquist
General Counsel

By: _____
Diane E. Robbins
City Attorney

ATTEST

By: _____
Andrea M. Myrick
City Clerk

Revised Attachment A-3

PROJECT DESCRIPTION

The CITY and AUTHORITY propose to construct a grade separation crossing at Monte Vista Avenue Union Pacific Railroad Crossing. The cost estimate for the construction phase of the project is approximately \$27,293,247.

PROJECT FUNDING TABLE

Public Share: 91.5% - \$18,727,248 after buy downs²

Nexus Development Impact Fee Share (DIF, "Development Share" or "Local Share"): 8.5% - \$2,489,690 after buy downs² (including AUTHORITY project management cost)

Phase	Estimated Cost ¹	Buy Downs ²		Shares per Nexus Study After Buy Downs		Actual Contribution			Developer Share
		PUC 190	UPRR	Public Share	Developer Share	TCIF	PNRS	Measure I	
Construction Management	\$3,574,674	\$763,808	\$0	\$2,571,942	\$238,924				\$1,609,569
Construction Capital	\$22,968,573	\$4,236,192	\$1,076,309	\$16,155,306	\$1,500,766	\$1,019,000	\$10,661,442	\$5,845,498	\$130,132
SBCTA Project Management ³	\$750,000			\$0	\$750,000			\$12	\$749,988
TOTAL	\$27,293,247	\$5,000,000	\$1,076,309	\$18,727,248	\$2,489,690	\$1,019,036	\$10,661,442	\$7,046,806	\$2,489,690

¹ Estimated Costs are based on current cost.

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

³ In accordance with Measure I Strategic Plan Policy VMS-29 and VMS-30 AUTHORITY Project Management costs are to be paid solely by Development Share. Measure I used for miscellaneous expenditures is compensated for in Construction Management and Construction Capital.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 1, 2024	FILE I.D.:	STA820
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	3	PREPARER:	M. HEREDIA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 24-24 WITH BIGGS CARDOSA ASSOCIATES, INC., FOR DESIGN SERVICES ASSOCIATED WITH THE HOLT BOULEVARD AND PACIFIC ELECTRIC TRAIL BRIDGE PROJECT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approving Agreement No. 24-24 with Biggs Cardosa Associates, Inc. (BCA) for design services associated with the Holt Boulevard and Pacific Electric (PE) Trail Bridge Project.

A copy of proposed Agreement 24-24 is attached for City Council review and consideration.

BACKGROUND: The Holt Boulevard bridge and the PE trail bridge over the San Antonio Creek Channel have become safety issues due to homeless encampments located beneath the bridges. The Holt Boulevard bridge is a hot spot where Code Enforcement officers have tried various solutions to deter homeless encampments. The situation under the Holt Boulevard Bridge has worsened recently, and Code Enforcement Officers have reported several challenges when attempting to access people in need of services.

The Pacific Electric Trail is a popular path used by community members and visitors to safely travel and exercise away from vehicles and commercial traffic. Pedestrians, cyclists, joggers, equestrians, and environmentally conscious citizens rely on the connection it provides between Claremont and Montclair, and the Montclair Transcenter. In spring of 2021, BCA designed the replacement of the Pacific Electric Trail Bridge after a fire burned the prior bridge structure and forced the closure of the PE Trail.

The City desires a solution to enclose the areas under these bridges in an effort to improve safety and protect public health and welfare.

BCA continues to assist with the City's needs to safeguard the trail and prepared preliminary exhibits for a lightweight cellular concrete fill and a precast panel wall option. In their exhibit, the areas between the San Antonio Creek flood control channel walls, the bridge substructures, and the underside of the bridge decks will be enclosed with precast concrete panels.

FISCAL IMPACT: The cost to design the precast concrete panel walls is \$49,854. 2021 Lease Revenue Bond Funds will be used to cover design cost.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 24-24 with Biggs Cardosa Associates, Inc., for design services associated with the Holt Boulevard and Pacific Electric Trail Bridge Project, subject to any revisions deemed necessary by the City Attorney.

CITY OF MONTCLAIR
AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and effective as of April 1, 2024, between the City of Montclair, a municipal corporation ("City") and Biggs Cardosa Associates, Inc., a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on April 1, 2024 and shall remain and continue in effect for a period of 12 months until tasks described herein are completed, but in no event later than April 1, 2025, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

Consultant shall at all times competently and to the best of his/her ability, experience and talent, perform all tasks described herein. Consultant shall perform, consistent with but limited to the accepted standards and practices of skill and care ordinarily utilized by members of Consultant's profession engaged in providing similar services in the same or similar locality and under similar circumstances as are required of Consultant hereunder in meeting its obligations under this Agreement. Consultant makes no warranties, guarantees, express or implied, under this Agreement or otherwise in connection with Consultant's services.

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 6 hereof.

5. **PAYMENT**

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

\$49,854 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed five thousand one hundred forty six (\$5,146.00). Any additional work in excess of this amount shall be approved by the City Council.

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the

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

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

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Consultant shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, staff, mayor, council, boards, and committees (collectively, the "Indemnified Parties"), of and from all losses, damages, legal fees, costs of defense and litigation

expenses arising directly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim arising out of the work to be performed by Consultant herein, but only to the extent that any of the above are actually caused by the negligent acts or omissions, or intentional misconduct of Consultant, including its subConsultants, employees, agents, and other persons or entities performing work for Consultant. Consultant shall have no obligation to provide an immediate defense or to pay for any of the Indemnified Parties defense related cost prior to a final determination of liability or to pay any amount that exceeds Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.

(b) Contractual Indemnity. For claims with respect to matters not arising out of the performance of professional services, to the fullest extent permitted under California law, Consultant shall contractually indemnify, defend and hold harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, amounts for good faith settlement, or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees and costs), arising out of or related to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to Consultant's officers, agents, representative, employees, independent Consultants, subConsultants or affiliated or related entities and/or its or their employees, agents and representatives, caused by or arising out of all negligent acts or omissions, or intentional misconduct of Consultant, including its subConsultants, employees, agents and other persons or entities performing work for Consultant. Indemnification shall include any claim that Consultant, or Consultant's employees or agents, are or may be considered and treated as employees of the City, or are entitled to any employee benefits from City including but not limited to those available under Public Employees Retirement Law. The obligation to indemnify, defend and hold harmless the Indemnified Parties shall apply to all liability as defined above regardless of whether the Indemnified Parties were or are alleged to have been negligent, except that it shall not apply to claims arising from the sole negligence or willful intentional misconduct of the Indemnified Parties. Consultant's obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement of or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

(c) SubConsultants and Indemnification. Consultant agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every SubConsultant, Sub consultant, or other person or entity involved by, for, with, or on behalf of Consultant in the performance of any aspect of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible for each and every SubConsultant, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set forth above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns, or heirs of Consultant and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and

shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Consultant further agrees to pay or cause to be paid to the Indemnified Parties’ benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Consultant or of Consultant’s officers, agents, representatives, employees, independent Consultants, subConsultants or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Consultant further agrees to waive all rights of subrogation against the Indemnified Parties.

(e) Non-Waiver and Non-Exhaustion of City’s Further Rights and Remedies. No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the Consultant under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Consultant begins the work and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Consultant. The indemnity obligations of Consultant shall continue until it is determined by final judgment that the claim against the City and any Indemnified Parties is determined by final judgment and after exhaustion of any rights of appeal. Further, no aspect of this provision shall impact the City’s rights to contribution from Consultant, or for the City to dispute Consultant’s refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Consultant shall not be responsible for indemnification for claims or losses caused by the sole negligence or intentional wrongdoing of Indemnified Parties. Further, the indemnity provided shall be interpreted as broadly as permitted under California law and as to agreements between parties and shall if required be reformed to be consistent with those laws to protect and save this provision for the protection of the Indemnified Parties.

(g) The obligations of Consultant under this or any other provision of this Agreement shall not be limited by the provisions of any workers’ compensation act or similar act. The Consultant expressly waives any statutory immunity under such statutes or laws as to the Indemnified Parties. The Consultant’s indemnity obligation set forth in this Section 9 shall not be limited by the limits of any policies of insurance required or provided by the Consultant pursuant to this Agreement.

(h) The Consultant’s covenant under this Section 9 shall survive the expiration or termination of this Agreement.

10. INSURANCE

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. Any request by the City to purchase additional insurance not contemplated by this provision shall be considered a project reimbursable to the Consultant by the City.

(a) Types of Required Coverages

Without limiting the indemnity provisions of the Contract, the Consultant shall procure in force and effect during the term of the Contract, the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$3,000,000 per occurrence, and \$5,000,000C aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$5,000,000 for bodily injury and property damage, each accident. If Consultant owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$3,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement. The insurance policies shall contain, or be endorsed to contain, the following provisions:

- (1) Commercial General Liability

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

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability except for professional services claims."
3. Restrict coverage to the "Sole" liability of Consultant
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Agreement

Additional Insured Endorsements shall be at least as broad as ISO Forms CG 20 10 04/13; or CG 20 and 10 and CG 2037.

Primary Insurance: This insurance available to any additional insured shall be primary and any other insurance, whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement, shall be in excess of, and shall not contribute with, this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(2) Auto Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents, and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Consultant.

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

(3) Workers' Compensation

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. The City reserves the right to require redacted copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days within the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the Consultant or the City.

(g) Contractual Liability/Insurance Obligations

The coverage provided shall apply to the obligations assumed by the Consultant under the indemnity provisions of this Agreement. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Consultant; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Consultant under this Agreement.

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Consultant's Agreement with the City and continuous coverage shall be procured or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

(k) Insurance for SubConsultants

Consultant shall be responsible for causing SubConsultants to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the SubConsultants' policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as good as CG 2010 and 2037 (04/13) or comparable forms.

11. INDEPENDENT CONSULTANT

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

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

(c) Consultant shall comply with all applicable federal, state and local Conflict of Interest laws, including the Political Reform Act (California Government Code, Section 81000, *et. seq.*) and California Government Code, Section 1090, *et. seq.* Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement. Further, Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to the City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by the Consultant. The Consultant’s covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

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

To City:	City Engineer City of Montclair 5111 Benito Montclair, CA 91763
----------	--

To Consultant:	Eric Pheifer, P.E. 500 S. Main Street, Ste. 1200 Orange, CA 92868-4507
----------------	--

17. ASSIGNMENT AND SUBCONTRACTING

The Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, nor any monies due hereunder, without prior written consent of the City. The City's consent to an assignment of rights under this Agreement shall not release the Consultant from any of its obligations or alter any of its obligations to be performed under this Agreement. Any attempt at assignment or delegation by the Consultant in violation of this Section 17 shall be void and of no legal effect and shall constitute grounds to terminate this Agreement for cause. The Consultant shall not subcontract any performance required under this Agreement without the City's prior written consent.

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF PROPOSAL

Consultant is bound by the contents of the proposal submitted by the Consultant, Exhibit "A" hereto. In the event of conflict, the requirements of this Agreement shall take precedence over those contained in the Consultant's proposals.

22. CONFIDENTIALITY

Information and materials obtained by the Consultant from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement. Consultant's covenant under this Section shall survive the expiration or termination of this Agreement.

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and any application of the terms shall remain valid and enforceable under this Agreement or California law.

25. CLAIMS AGAINST CITY

Consultant must comply with the claim procedures set forth in Government Code sections 900, *et. seq.*, and/or Montclair Municipal Code, Chapter 1.16, as applicable, prior to filing any lawsuit against the City. Such claims and any subsequent lawsuit based upon the claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

28. COST OF LITIGATION

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement (whether in contract, tort or both), the prevailing Party shall be entitled to receive from the losing Party all attorneys' fees, costs and expenses in such amount as the courts may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith.

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

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

CITY

City of Montclair

CONSULTANT

Biggs Cardosa Associates, Inc.

By: _____
Javier "John" Dutrey, Mayor

By: _____
Name/Title:

Attest:

By: _____
Andrea M. Myrick, City Clerk

By: _____
Name/Title:

Approved as to Form:

By: _____
Diane Robbins, City Attorney

500 S. Main Street, Ste. 1200
Orange, CA 92868-4507
Telephone 714.550.4666

December 11, 2023

City of Montclair | Public Works Department
5111 Benito Street
Montclair, CA 91763

Attention: Monica Heredia, P.E.
Public Works Director / City Engineer

Subject: Homeless Encampment Emergency Safety Mitigation Project
Proposal to Provide Professional Engineering Services

Dear Ms. Heredia:

Biggs Cardosa Associates, Inc. is pleased to submit our proposal to provide engineering services for the subject project.

Project Understanding

The Holt Boulevard and Pacific Electric Trail Bridges over the San Antonio Creek Channel have become safety issues due to the homeless encampments beneath the bridges. Biggs Cardosa recently designed the replacement of the Pacific Electric Trail Bridge after a fire burned the prior structure and forced the closure of the Pacific Electric Trail. We understand that the situation under the Holt Boulevard Bridge has worsened recently, and Code Enforcement Officers have a challenging time accessing people in need of emergency services.

The City desires a solution to enclose these areas under those bridges in an effort to improve safety and protect public welfare. Biggs Cardosa (while not under contract) prepared preliminary exhibits for a lightweight cellular concrete fill and a precast panel wall option. In subsequent discussions with the City, Biggs Cardosa understands that the precast panel wall option is preferred. Areas between the flood control channel walls, the bridge substructures, and the underside of the bridge decks will be enclosed by precast panels at the Holt Boulevard and Pacific Electric Trail Bridges.

General Assumptions/Limitations

Environmental/Permitting: The City intends to file a Notice of Exemption (NOE) under the California Environmental Quality Act (CEQA). Biggs Cardosa has therefore not included environmental or permitting services as part of this proposal. This scope assumes that the City will file the NOE, apply for, obtain, and pay fees for any permits required, and will coordinate with regulatory agencies, as necessary. Biggs Cardosa's scope with respect to the environmental/permitting component of the project is limited to providing technical information and exhibits related to the precast concrete panel locations and details of the safety measures.

Additional Services: Any service not expressly noted within this proposal is not included. If, for example, the City ultimately decides to add lighting, security cameras, landscaping, or other elements as part of this project, Biggs Cardosa can add subconsultants and prepare an Extra Work Request, at the City's option. We assume that survey information needed to layout the precast panel walls will be provided to Biggs Cardosa by the City's on-call surveyor.

Professional Services Agreement: Considering this is an atypical project, Biggs Cardosa requests careful consideration of suggested modifications to the City's standard Professional Services Agreement. Suggested modifications will be negotiated separately with the City, but may include:

- Modifications to indemnification provisions specifically related to the CEQA component of the project. We would request that the contract exclude the requirement that Biggs Cardosa defend the City against potential challenges to the CEQA NOE.
- A limitation of liability is desired should the precast panel walls be breached or undermined. We will work closely with the City to develop the best possible solution to prevent access to the areas being enclosed by walls, but guaranteeing that the walls will keep people out will be impossible. If, for example, a person(s) wishing to gain illegal access under the bridge were to acquire tools capable of penetrating high-strength concrete and steel, designing for that will not be possible.

Scope of Work

To expedite the preparation of bid documents, Biggs Cardosa proposes Draft and Issued for Bid milestones in lieu of a typical 30%, 60%, 90%, 100%, Issued for Bid milestone submittal process.

Task 1 – Project Management & Meetings

Biggs Cardosa will submit monthly invoices and perform other general administrative project tasks.

Biggs Cardosa will conduct a kick-off meeting with the City to understand requirements and concerns in developing the design. Biggs Cardosa will attend up to three (3) additional coordination meetings, either with the City to review design development and/or meet with San Bernardino County Flood Control (SBCFCD) or other stakeholders.

Biggs Cardosa will assist the City with technical information related to permit applications, if required (e.g. SBCFCD). A number of hours has been assumed in our attached fee proposal to support with these efforts.

Assumptions:

- Up to four (4) meetings are included in this scope.
- It is assumed that any permit application fees will be paid by the City.
- The City will prepare and file the CEQA Notice of Exemption.

Deliverables:

- Monthly Invoices
- Meetings:
 - Kick-Off Meeting
 - Coordination Meetings (Up to 3)

- Technical Information/Exhibits for Permit Applications (if required)

Task 2 – Plans, Specifications & Estimates (PS&E)

Biggs Cardosa will prepare plans, technical specifications, structural and quantity calculations, and a construction cost estimate. Plans are anticipated to include a General Plan (showing the existing bridge structures) and detail sheets showing how the homeless mitigation components will be constructed. A Draft Submittal will be prepared for City review, then an Issued for Bid Submittal will be prepared to advertise the construction contract.

Assumptions:

- Plans will be drafted in AutoCAD format. References will be made to City Standard Plans, Caltrans Standard Plans, and SPPWC, where applicable.
- Technical Specifications will be developed based on 2023 Caltrans Standard Specifications and Standard Special Provisions for structural items, and 2018 Greenbook for civil items.
- The City will prepare the Notice Inviting Bids and General Conditions, with input from Biggs Cardosa on technical items, as required.
- Preparation of water pollution control items (e.g. a WPCP or SWPPP) are anticipated to be prepared by the contractor.
- Cost estimates will be prepared in Excel format, and will use unit prices from similar projects and Caltrans Contract Cost Data.
- Structural calculations will be prepared in conformance with the 8th Edition of AASHTO LRFD Bridge Design Specifications.
- No modifications to the bridges (besides drilling holes to drill and bond reinforcement) or the San Antonio Creek Channel are anticipated.
- Access for maintenance and bridge inspection is assumed to be provided through manholes in the deck, and access hatches within the precast panel walls are therefore not anticipated.

Deliverables:

- Draft Plans
- Draft Technical Specifications
- Draft Cost Estimate
- Structural Calculations
- Quantity Calculations
- Issued for Bid Plans
- Issued for Bid Technical Specifications

Task 3 – Engineering Support During Construction

Biggs Cardosa will provide assistance during bidding and construction. Our scope includes responding to Requests for Information (RFIs), reviewing shop drawings, visiting the site as needed during construction, and preparing record drawings based on the Contractor's red-lined changes.

Assumptions:

- Attending a pre-construction meeting is included in this scope.
- Up to two (2) site visits are included in this scope.
- Responding to up to ten (10) RFIs for each bridge location are included in this scope.

Homeless Encampment Emergency Safety Mitigation Project
Proposal to Provide Professional Engineering Services

- Reviewing up to three (3) shop drawings for each bridge location are included in this scope.

Deliverables:

- RFI Responses
- Shop Drawing Reviews
- Site Visits
- Record Drawings

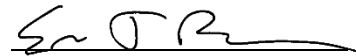
Fee

We propose to provide the services outlined in this proposal on a time and materials basis for a not to exceed amount of \$49,854. A breakdown of our fee proposal is attached.

We look forward to working with you on this project. Should you have any questions, please do not hesitate to contact me.

Sincerely,

BIGGS CARDOSA
ASSOCIATES, INC.



Eric Pheifer, PE
Principal

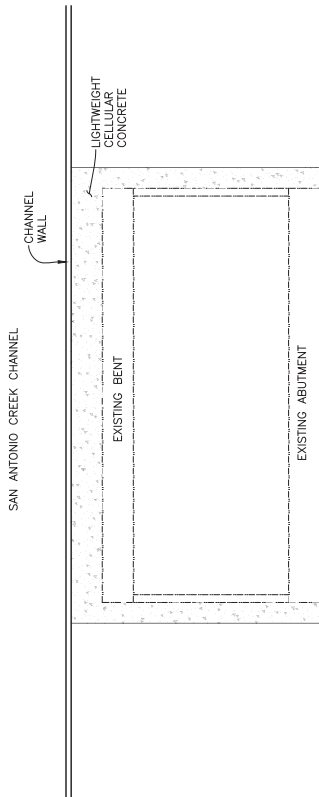
Attachments:

- Biggs Cardosa Fee Proposal

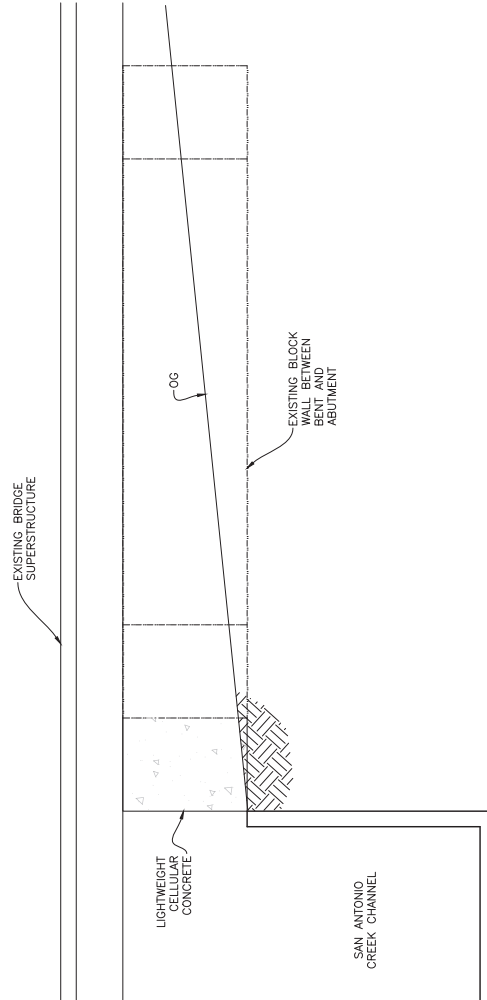
Homeless Encampment Emergency Safety Mitigation Project
 Fee Proposal | Biggs Cardosa Associates

S.O.W. Phase / Task	Principal	Associate	Engineering Manager	Senior Engineer	Project Engineer	Staff Engineer	Assistant Engineer	Junior Engineer	Senior Computer Drafter	Project Administrator	Total Hours	Labor Subtotal
Task 1 - Project Management & Meetings												
	\$280.00	\$257.00	\$225.00	\$205.00	\$190.00	\$175.00	\$160.00	\$145.00	\$165.00	\$190.00		\$8,502
Administration / Monthly Invoices	2									4	6	\$1,320
Kick-Off Meeting	1	1		3							5	\$1,152
Coordination Meetings	2	3		9							14	\$3,176
Permit Support (Technical Info & Exhibits)	1	2		2		2	4		4		15	\$2,854
Task 2 - Plans, Specifications & Estimates (PS&E)												
Plans	1	4	8			8	16		40		77	\$13,668
Technical Specifications	1	2		4	8						15	\$3,134
Structural & Quantity Calculations	1	2		4	4	8	16				35	\$6,334
Construction Cost Estimate	1		2			4		8			15	\$2,590
Task 3 - Engineering Support During Construction												
Request for Information (RFIs)		2				4	8				14	\$2,494
Shop Drawing Review		2				4	40				46	\$7,614
Site Visits				4		4					8	\$1,520
Record Drawings	1	2		2		4			12		21	\$3,884
											Labor Subtotal	\$49,740
											Mileage / Reproduction	\$114
											Expense / Subconsultant Subtotal	\$114
											Total Not to Exceed Amount	\$49,854

Expenses / Subconsultants



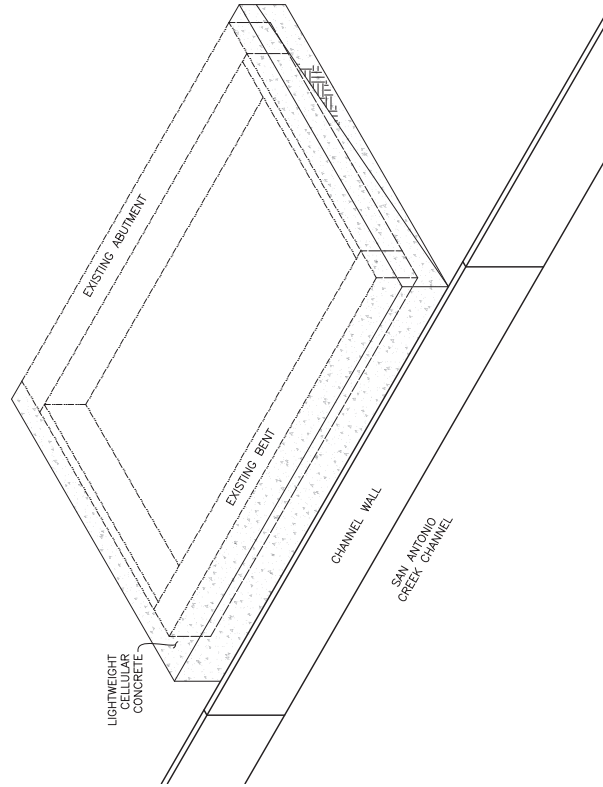
PLAN VIEW
NO SCALE



SECTION VIEW
NO SCALE

NOTES:

1. THE OPEN SPACE UNDER THE BRIDGE GIRDERS TO THE TOP OF THE CHANNEL WALL IS TO BE FILLED WITH LIGHTWEIGHT CELLULAR CONCRETE (LCC).
2. THE LCC IS EXTENDED ALONG THE SIDES OF THE BRIDGE TO COVER EXISTING BLOCK WALL AND PREVENT ACCESS TO SPACE BETWEEN THE EXISTING BENT AND ABUTMENT.
3. THE LCC IS TO BE PLACED BETWEEN THE EXISTING BENT AND ABUTMENT ON THE EXISTING CHANNEL WALL DENSITIES RANGE FROM 25 TO 80 LBS PER CUBIC FOOT (CONCRETE IS ~150 POUNDS PER CUBIC FOOT).
4. LCC IS POURED IN LIFTS OF NO MORE THAN 3 FEET IN ACCORDANCE WITH CALTRANS SPECIFICATIONS. IMPLEMENTING THIS PROCESS ON MULTIPLE BRIDGES AT ONCE CAN MAKE THIS A QUICKER AND MORE COST EFFECTIVE PROCESS.



ISOMETRIC VIEW
NO SCALE

**HOLT AVENUE OVER
SAN ANTONIO CREEK
ALTERNATE 1: LIGHTWEIGHT CONCRETE FILL**



CITY COUNCIL AGENDA REPORT

DATE: APRIL 1, 2024

FILE I.D.: PRK700

SECTION: CONSENT - AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 4

PREPARER: M. HEREDIA

SUBJECT: CONSIDER AMENDING THE 2019–2024 CAPITAL IMPROVEMENT PROGRAM TO ADD THE SARATOGA PARK TRANSFORMATION PROJECT

CONSIDER APPROVAL OF AGREEMENT NO. 24–25 WITH L.D. KING, INC., FOR DESIGN SERVICES FOR THE SARATOGA PARK TRANSFORMATION PROJECT IN THE AMOUNT OF \$543,935, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A \$600,000 APPROPRIATION FROM 2021 LEASE REVENUE BOND FUNDS FOR DESIGN SERVICES FOR THE SARATOGA PARK TRANSFORMATION PROJECT

REASON FOR CONSIDERATION: Engineering design services are required for the development of construction plans and specifications for the Saratoga Park Transformation Project (Project). Agreements for these services require City Council approval. A copy of proposed Agreement No. 24–25 with L.D. King, Inc. is attached for City Council Review and Consideration.

BACKGROUND: The City Council approved the conceptual park improvements for Saratoga Park on January 16, 2024. The Project will convert 11.7 acres from a space lacking landscaping and other amenities into a green oasis attracting City residents and visitors. The park will consist of new baseball fields, a new basketball court, a new snack bar, new restrooms, and a new playground. Site improvements include fencing, re-grading the entire site, removal of the existing snack bar, and electrical upgrades. Landscaping will feature 93 trees and nearly 2,900 drought-tolerant plants. The 2,300–linear-foot walking path, constructed with permeable pavement, will host new exercise stations and an ADA-accessible playground. Benches and picnic tables will be strategically placed for outdoor enjoyment. Trash and recycling receptacles will ensure a clean environment. The Project will also include bioswales, a weather-based irrigation system, ADA-compliant restrooms, drinking fountains, bike racks, perimeter fencing, expanded parking lots, and bark bag stations.

The Saratoga Park Transformation Project's estimated cost is \$6,800,000. On November 17, 2023, staff, with Blais and Associates' assistance, submitted a grant application to the CNRA Urban Greening Program for \$4,313,135 with a required local match of \$404,000. This grant and local match, along with the \$2 million Community Services Grant from Congresswoman Norma Torres, will enable the City to fully complete the proposed improvements and enhancements outlined in LD King's proposal.

Staff utilized the City's on-call civil engineering services contract with L.D. King, Inc. to prepare the master plan, including a conceptual site plan and cost estimate for the grant funding request. With L.D. King, Inc., having already performed the groundwork for the project's preliminary design, staff requested a formal proposal from L.D. King, Inc. to complete plans and specifications for project construction. The requested scope of services includes survey, civil design, architectural design, structural engineering,

landscape and lighting design, water quality management plan preparation, geotechnical services, and assistance with construction administration services. Staff was able to negotiate a service fee of \$543,935 with L.D. King, Inc. for the above-mentioned scope of work.

FISCAL IMPACT: Funding for this agreement is provided through 2021 Lease Revenue Bond Proceeds.

RECOMMENDATION: Staff recommends that the City Council take the following actions related to the Saratoga Park Transformation Project:

1. Amend the 2019-2024 Capital Improvement Program to add the Project;
2. Approve Agreement No. 24-25 with L.D. King, Inc. for design services for the Project in the amount of \$543,935, subject to any revisions deemed necessary by the City Attorney; and
3. Authorize a \$600,000 appropriation from 2021 Lease Revenue Bond funds for design services for the Project.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

SARATOGA PARK TRANSFORMATION PROJECT

THIS AGREEMENT is made and effective as of on April 2, 2024, between the City of Montclair, a municipal corporation ("City") and L.D. King, Inc., a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on April 2, 2024 and shall remain and continue in effect for a period of 36 months until tasks described herein are completed, but in no event later than April 2, 2027, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

Consultant shall at all times faithfully, and competently perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement. Consultant shall have the duty to prepare any design documents free from defects.

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement and shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 5 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Five Hundred Forty Three thousand and nine hundred and thirty five dollars (\$543,935) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the

Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and to the extent the default is without fault or negligence of the Consultant, it shall not be considered a default.

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

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Consultant shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other

matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Consultant herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Consultant, including its subcontractors, subconsultants, employees, agents, and other persons or entities performing work for Consultant.

(b) Contractual Indemnity. To the fullest extent permitted under California law, Consultant shall contractually indemnify, defend and hold harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, amounts for good faith settlement, or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees and costs), arising out of or related to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to Consultant's officers, agents, representative, employees, independent contractors, subcontractors, subconsultants, or affiliated or related entities and/or its or their employees, agents and representatives, caused by or arising out of all negligent acts or omissions, or intentional misconduct of Consultant, including its subcontractors, subconsultants, employees, agents and other persons or entities performing work for Consultant. Indemnification shall include any claim that Consultant, or Consultant's employees or agents, are or may be considered and treated as employees of the City or are entitled to any employee benefits from City including but not limited to those available under Public Employees Retirement Law. The obligation to indemnify, defend and hold harmless the Indemnified Parties shall apply to all liability as defined above regardless of whether the Indemnified Parties were or are alleged to have been negligent, except that it shall not apply to claims arising from the sole negligence or willful intentional misconduct of the Indemnified Parties. Consultant's obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement of or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

(c) Subcontractors/Subconsultants and Indemnification. Consultant agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subcontractor, Sub consultant, or other person or entity involved by, for, with, or on behalf of Consultant in the performance of any aspect of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible for each and every Subcontractor, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set forth above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns, or heirs of Consultant and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and

shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Consultant further agrees to pay or cause to be paid to the Indemnified Parties’ benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Consultant or of Consultant’s officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Consultant further agrees to waive all rights of subrogation against the Indemnified Parties.

(e) Non-Waiver and Non-Exhaustion of City’s Further Rights and Remedies. No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the Consultant under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Consultant begins the work and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Consultant. The indemnity obligations of Consultant shall continue until it is determined by final judgment that the claim against the City and any Indemnified Parties is determined by final judgment and after exhaustion of any rights of appeal. Further, no aspect of this provision shall impact the City’s rights to contribution from Consultant, or for the City to dispute Consultant’s refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Consultant shall not be responsible for indemnification for claims or losses caused by the sole negligence or intentional wrongdoing of Indemnified Parties. Further, the indemnity provided shall be interpreted as broadly as permitted under California law and as to agreements between parties and shall if required be reformed to be consistent with those laws to protect and save this provision for the protection of the Indemnified Parties.

(g) The obligations of Consultant under this or any other provision of this Agreement shall not be limited by the provisions of any workers’ compensation act or similar act. The Consultant expressly waives any statutory immunity under such statutes or laws as to the Indemnified Parties. The Consultant’s indemnity obligation set forth in this Section 9 shall not be limited by the limits of any policies of insurance required or provided by the Consultant pursuant to this Agreement.

(h) The Consultant’s covenant under this Section 9 shall survive the expiration or termination of this Agreement.

10. INSURANCE

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(a) Types of Required Coverages

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

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$2,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers’ Compensation: Workers’ Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$2,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement. The insurance policies shall contain, or be endorsed to contain, the following provisions:

- (1) Commercial General Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional

insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

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

Additional Insured Endorsements shall be at least as broad as ISO Forms CG 20 10 11 85; or CG 20 and 10 and CG 2037.

Primary Insurance: This insurance shall be primary and any other insurance, whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement, shall be in excess of, and shall not contribute with, this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(2) Auto Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents, and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor.

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

(3) Workers' Compensation

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all rights of subrogation

against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the Consultant or the City.

(g) Contractual Liability/Insurance Obligations

The coverage provided shall apply to the obligations assumed by the Consultant under the indemnity provisions of this Agreement. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Consultant; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Consultant under this Agreement.

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Consultant's Agreement with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

(k) Insurance for Subcontractors

Consultant shall be responsible for causing Subcontractors/Subconsultants to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractors'/Subconsultant's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as board as CG 20 38 04 13.

11. INDEPENDENT CONTRACTOR

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

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

compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or

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

(c) Consultant shall comply with all applicable federal, state and local Conflict of Interest laws, including the Political Reform Act (California Government Code, Section 81000, *et. seq.*) and California Government Code, Section 1090, *et. seq.* Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement. Further, Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to the City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by the Consultant. The Consultant’s covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

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

To City: Monica Heredia, Director of Public Works/City Engineer
 City of Montclair
 5111 Benito Street
 Montclair, CA 91763

To Consultant: Carla Berard, CEO
L.D. King, Inc.
975 N. Haven Avenue, Suite 200
Ontario, CA. 91764

17. ASSIGNMENT AND SUBCONTRACTING

The Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, nor any monies due hereunder, without prior written consent of the City. The City's consent to an assignment of rights under this Agreement shall not release the Consultant from any of its obligations or alter any of its obligations to be performed under this Agreement. Any attempt at assignment or delegation by the Consultant in violation of this Section 17 shall be void and of no legal effect and shall constitute grounds to terminate this Agreement for cause. The Consultant shall not subcontract any performance required under this Agreement without the City's prior written consent.

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF PROPOSAL

Consultant is bound by the contents of the proposal submitted by the Consultant, Exhibit A hereto. In the event of conflict, the requirements of this Agreement shall take precedence over those contained in the Consultant's proposal.

22. CONFIDENTIALITY

Information and materials obtained by the Consultant from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement. Consultant's covenant under this Section shall survive the expiration or termination of this Agreement.

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and any application of the terms shall remain valid and enforceable under this Agreement or California law.

25. CLAIMS AGAINST CITY

Consultant must comply with the claim procedures set forth in Government Code sections 900, *et. seq.*, and/or Montclair Municipal Code, Chapter 1.16, as applicable, prior to filing any lawsuit against the City. Such claims and any subsequent lawsuit based upon the claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

28. COST OF LITIGATION

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement (whether in contract, tort or both), the prevailing Party shall be entitled to receive from the losing Party all attorneys' fees, costs and expenses in such amount as the courts may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court

fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith.

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Javier John Dutrey, Mayor

By: _____
Name: Carla Berard
Title: CEO

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

March 19, 2024

Monica Heredia
City of Montclair
5111 Benito Street
Montclair, CA 91763

Subject: Proposal for Surveying Professional Design Services for the Modernization of Saratoga Park, an 11.7-acre park located in the City of Montclair

Dear Monica,

L.D. King, Inc. is pleased to provide this proposal for professional surveying, engineering, geotechnical, landscape architecture, lighting and architectural services for the project described above. The Scope of Services and Compensation are more particularly described in the attached proposal.

The design team included in this proposal are L.D. King, Inc. serving as Civil Engineer and Surveyor, Leighton Consulting, Inc. serving as Geotechnical, Architerra Design Group (ADG) serving as Landscape Architect, JCA Engineering providing electrical design, RGSE, Inc. providing structural engineering, and SVA Architects serving as Architect.

Attached are the current rate schedules for L.D. King and Architerra Design Group. Also attached is a project schedule.

Should you have any questions or need additional information regarding this Scope of Work please do not hesitate to contact me.

Sincerely,



Carla Berard, P.E., P.L.S.
CEO

attachments



EXHIBIT "A"

**SARATOGA PARK MODERNIZATION
ENGINEERING, SURVEYING, GEOTECHNICAL, LANDSCAPE ARCHITECTURAL SERVICES**

Proposal for Design Services to provide construction documents for the Modernization of Saratoga Park in the City of Montclair.

GENERAL

The construction documents for the Modernization of Saratoga Park will be based upon the conceptual design prepared by Architerra Design Group and approved by the Montclair City Council on January 9th, 2024 (Attached). Saratoga Park is bordered by Kingsley Street on the north, Vernon Avenue on the east, and commercial developments on the south and west. The park is approximately 11.7-acres.

Proposed amenities are to include four new ball fields upgraded to meet little league standards, new field lighting, new scoreboards new public address/scoring announcement system, new dugouts, new batting cages and pitching warm up cages, a custom modern design restroom-concessions building, shade sails, exercise stations, shade structures (assumed prefabricated), new playground, picnic tables, benches, bike racks, drinking fountains, perimeter fencing and gates, and other amenities to be finalized in the construction detailing process. A meandering decomposed granite path will be designed to maximize walking benefits and avoid damaging or removing any existing mature trees.

The planting plan, in addition to the field turf, is to consist of drought tolerant trees and shrubs. Irrigation will be potable and completely redesigned using spray rotors on the field turf and highly efficient drip irrigation in all of the shrub and groundcover planting areas.

SVA Architects will prepare construction documentation for the proposed restroom/concessions building including all equipment, dry storage, electrical room, custodial room, meeting room/little league office, storage/equipment room, electronic message board, and all utilities within the structure, per their attached conceptual floor plans and elevations. (JCA and L.D. King to provide electrical, water and sewer connections).

We have included the services of JCA Engineering Inc. to provide electrical design for walkway lighting, parking lot lighting, wayfinding, and new park monumentation lighting along with other electrical services within the park.

Field lighting will be provided by Musco who is the City's preferred vendor. Musco will provide drawings, calculations, and specifications for the field lighting system under a separate contract with the city. JCA will coordinate power and load requirements with MUSCO.



**SARATOGA PARK MODERNIZATION
ENGINEERING, SURVEYING, GEOTECHNICAL,
AND LANDSCAPE ARCHITECTURAL SERVICES
CITY OF MONTCLAIR**

L.D. King, Inc. will perform the surveying services to gather specific topo and grades necessary for engineering design of specific improvements.

L.D. King, Inc. will prepare a precise grading plan, parking lot design, and stormwater management, along with utility service to the custom restroom.

Leighton Consulting, Inc. will provide geotechnical studies.

RGSE will prepare structural engineering drawings, calculations, and provide mark-up of details for walls, retaining walls, a trash enclosure, a pitching machine enclosure, gate and fence post footings and other miscellaneous features.

Structural engineering for prefabricated structures will be by the manufacturer and are to be determined and planned as a deferred submittal by selected contractor along with structural calculations for shade structures, shade sails, and field light pole footings.

The scope of our services would be best described as the preparation of construction documents, preliminary cost estimates, bid support and construction administration.

PROFESSIONAL DESIGN SERVICES

A - SURVEYING SERVICES – L.D. KING, INC.

Field Survey for Design:

Field Topo to gather specific topo and existing elevations at key connection points and design areas on the site.

B - ENGINEERING SERVICES – L.D. KING, INC.

B.1 - CONSTRUCTION DOCUMENT PHASE

Park Precise Grade Plan

- Prepare Park Precise Grade Plan based on approved Conceptual Plan.
- Provide grades for sidewalks and DG walkways.
- Set Pad grades for restroom / concessions building.
- Set pad for pavilion.
- Provide water and sewer connections for restroom / concessions building.
- Provide a park drainage system.
- Set grades in parking areas.
- Set grades for hardscape.
- Provide grading for rain garden.
- Provide cross sections.
- Set top of wall and top of footing grades for walls.
- Set ball field grades.



- Set pad for basketball court and ply ground areas.
- Provide coordination with landscape architect and lighting consultant.

Storm Water Pollution Prevention Plan

- Prepare a Storm Water Pollution Prevention Plan to meet the requirements of the California Construction General Permit Order No. 2009-0009-DWQ as amended by Order No 2010-0014-DWQ and Order No. 2012-0006-DWQ. Submit to the city and file with the SMARTS system for the Regional Water Quality Control Board to obtain a WDID number. All fees shall be the responsibility of the City.

Water Quality Management Plan

- Prepare a Water Quality Management Plans for the site to fulfill the requirements of the City of Montclair MS4 permit related to Santa Ana Regional Water Quality Control Board Order Number R8-2010-0036. NPDES Permit No. CAS618036. The WQMP will conform to the latest approved version of the San Bernardino County Stormwater Program Model WQMP Guidance Document.

Specifications and Special Provisions

- Prepare project specifications and special provisions including a bid item list and standard plan appendices. Provide quantities and an itemized cost estimate, including a bid item list to be used with the bid documents.

Meetings and Coordination

- Attend all meetings as requested by the Client to facilitate design, coordination, and plan processing.

Project Administration

- Provide administrative processing and coordination with the Landscape Architect and Soils Engineer.

B.2 BIDDING PHASE

Bid Support

- Assistance will be provided during bidding to provide clarification of the contract documents. Clarification will include preparation of contract addenda, if needed.

B.3 CONSTRUCTION ADMINISTRATION PHASE

Construction Support

Assistance will be provided during construction for the following services:

- Review of shop drawings, substitutions and alternatives, and other documents as may be submitted for review.

- Response to requests for information from the contractor, field inspectors, field survey crew and other staff associated with the project. All requests should be processed through the City's construction manager as a single point contact.
- Attend construction meetings, utility coordination meetings and other meetings, as necessary, in connection with the project.

C - GEOTECHNICAL SERVICES – LEIGHTON CONSULTING, INC.

- **Research:** Review available literature, maps and historical aerial photographs as well as geologic maps and available published reports relevant to the site and the planned improvements.
- **Field Exploration:** Leighton will mark the proposed boring locations and notify you and DigAlert (811) so that known public or private underground utilities can be identified and avoided. We will also retain the services of a private utility locator to scan exploration locations prior to drilling activities in an effort to locate existing utilities.

Leighton proposes to drill, log and sample seven (7) borings onsite in areas of proposed improvements within Saratoga Park. Borings will advance to depths ranging from approximately 10 to 50 feet below the existing ground surface. Borings may be terminated shallower if very dense materials and practical refusal are encountered. Representative soil samples will be collected and transported to their geotechnical laboratory for testing.

- **Infiltration Testing:** Four (4) double-ring infiltrometer tests in general accordance with the ASTM D3385-09 Standard Test Method and City of Montclair guidelines will be conducted in the planned infiltration facilities to evaluate the infiltration characteristics of the underlying soils.
- **Geotechnical Laboratory:** Leighton will test recovered soil samples at their geotechnical laboratory. Tests will depend on soil conditions encountered and may include in-situ moisture content and dry density, modified Proctor compaction curves (ASTM D1557), grain size distribution, collapse, sulfate content, chloride content, resistivity and pH.
- **Office Studies:** Leighton will review the field and laboratory data and perform engineering analysis to develop geotechnical recommendations. They will prepare a letter report presenting their findings, conclusions and recommendations for design and construction. The letter report will include a site plan, exploration logs, geotechnical testing results, and geotechnical recommendations.

Although the presence of hazardous materials are not anticipated, identification, handling and treatment of hazardous materials are beyond the scope of their geotechnical engineering services. Leighton can provide these services, if requested.



D - LANDSCAPE AND ARCHITECTURAL – ARCHITERRA DESIGN GROUP

D.1 - LANDSCAPE ARCHITECTURAL SERVICES

1. Finalized CAD Irrigation Master Plan Base Sheet @ 60-scale, on 24"x36" sheet City Standard Title block format, 1 sheet total.
2. Base Sheet Preparation @ 20-scale, on 24"x36" sheet City Standard Title block format, 4 sheets total.
3. Base Sheet Preparation @ 10-scale base for playground enlargement, restroom/concessions area enlargement and ballfield Central Pavilion Plaza enlargement, on 24"x36" sheet City Standard Title block format, 3 sheets total.
4. Title Sheet Preparation.
5. Coordinate Landscape Demolition Plan with L.D. King for all proposed removals related to landscape scope.
6. Fine Grading coordination with L.D. King Inc. for drainage of landscape areas. Final precise grading plans by the civil engineer.
7. Construction Plan Preparation for layout and detailing of Ballfields, dugouts, pitchers warm up area, batting cages, outfield fences, scoreboards, hardscape, retention basins/rain gardens, tot lot play areas, basketball court, shade sails, picnic areas, fitness trails, trash enclosures, walls/fences etc. (20 scale/4 sheets total). EXCLUSIONS: geotechnical studies, parking lots, retention basins/rain gardens (engineering), restroom building plumbing and placement
8. Construction Enlargement Plan for horizontal layout of playground equipment and surfacing.
9. Construction enlargement for horizontal layout of the ballfield pavilion area paving and amenities, at the center of the four fields.
10. Construction enlargement for the horizontal layout of the restroom/concessions building area.
11. Construction Detail Preparation for site amenities and paving including hardscape, structures, playground, retention basins/rain gardens, entry monument, site furnishings, wall/fences, trails, and exercise equipment, etc. (L.D. King to handle retention basins/rain gardens (engineering) detailing parking lot and associated signage.
12. Coordination with SVA on architectural footprint, building placement and access.
13. Preparation of Architectural plans for restroom/concessions building (by SVA) including all concessions equipment and detailing, dry storage appurtenances and detailing, equipment storage room detailing including roll-up doors. Coordination with Civil and Electrical engineers for wet and dry utility connections. *See attached proposal for detailed list of services.*
14. Coordination with JCA Electrical Engineering for electrical design, light pole locations, meter service, conduits, restroom building electrical, coordination with ballfield lighting supplier, coordination with city for security conduits etc.

15. Preparation for electrical engineering plans (by JCA) for power to restroom building, new light standards, EV chargers, circuiting and new electrical controls. Coordination with MUSCO for field lighting. Coordination with city for security conduits Includes structural calculations for (2) two light pole conditions. *See attached proposal for detailed list of services.*
16. Coordination with field lighting vendor (MUSCO).
17. Coordination with Overhead Consultant.
18. Coordination with Structural Engineer (RGSE).
19. Preparation of Structural drawings and Calculations (By RGSE) for walls, retaining walls, fences higher than 6', trash enclosure, pitching machine enclosure, gate and fencepost footings, and monument signage footings. *See attached proposal for detailed list of services.*
20. Site visit with City maintenance personnel to review irrigation connections, existing backflow, and irrigation pressure at the meter.
21. Irrigation master plan @ 60 scale with points of connection, mainline routing sleeves and valve locations.
22. Irrigation Plan Preparation for all areas of new field turf and shrub planting. (20 Scale/4 sheets total)
23. Irrigation Detail Preparation to cover new equipment.
24. Prepare Water Efficiency Landscape Worksheet. *
25. Prepare 2 Irrigation Controller Charts. *
26. Planting plan preparation for trees/vines and shrubs/groundcover 4 sheets total).
27. Planting Detail Preparation.
28. Prepare Planting/Irrigation Hydro-zone Plan. *
29. Construction Specifications.
30. Irrigation & Planting Specifications.
31. Preparation of final cost estimates for landscape architectural improvements.
32. Provide Soils Test and Soils Management Report. *
33. Prepare Annual Irrigation and Planting Maintenance Schedule. *
34. Material/Furnishing Selection.
35. Package Coordination.
36. Client/Agency/Consultant Progress Meetings (10 virtual meetings anticipated)
37. Agency Plan Check Corrections.
38. Project Administration.
39. Telephone Consultation.
40. Utility Research (Irrigation Point of Connection, Pressure).

D.2 - BIDDING PHASE

1. Preparation of bid form/quantities.
2. Attend Pre-bid meeting.
3. Project Administration.



4. Telephone Consultation.

D.3 - CONSTRUCTION ADMINISTRATION PHASE

1. Construction observation/meetings (estimated 48 visits based on weekly attendance/12-month construction period).
2. Respond to RFI's/Review submittals.
3. Preparation of site reports/meeting minutes to be prepared for estimated 48 meetings/visits.
4. Project close out site review with Certificate of Completion.
5. Project Administration.
6. Telephone Consultation.

* Items required for AB 1881 California Water Efficient Landscape Ordinance.

If the Scope of the Project as outlined above is changed materially, the Basic Fee shall be changed in the same proportion.



**SARATOGA PARK MODERNIZATION
ENGINEERING, SURVEYING, GEOTECHNICAL,
AND LANDSCAPE ARCHITECTURAL SERVICES
CITY OF MONTCLAIR**

EXHIBIT 'B'

**SARATOGA PARK IMPROVEMENTS
ENGINEERING, SURVEYING, GEOTECHNICAL, LANDSCAPE ARCHITECTURAL SERVICES**

COMPENSATION

TASK	DESCRIPTION	FEE
A	Surveying Services	\$8,400.00
B.1	Engineering-Construction Document Phase	\$95,750.00
B.2	Engineering-Bidding Phase	\$3,350.00
B.3	Engineering-Construction Administration Phase	\$6,480.00
C	Geotechnical Services	\$30,910.00
D.1	Landscape Architectural Services	\$333,000.00
D.2	Landscape Architectural-Bidding Phase	\$7,605.00
D.3	Landscape Architectural-Construction Administration	\$55,440.00
	Reimbursable Expenses (estimated)	\$3,000.00
	TOTAL	\$543,935.00

PROFESSIONAL FEE FOR SERVICES

Client agrees to compensate Consultant for civil engineering services, survey services, geotechnical services and landscape architectural services for a fixed fee of \$540,935.00, and for reimbursable expenses on a Time and Materials basis with an estimated fee of \$3,000.00.

EXTRA WORK

Client agrees to pay Consultant compensation for all authorized extra work at the hourly rates set forth in the attached Rate Schedule. All such extra work shall be authorized by the Client prior to commencing such work.

FEE ADJUSTMENTS

Client understands and agrees that the fees quoted for the services to be performed are subject to an annual increase on October 1st of each year, beginning in 2024. The percentage increases (if any) shall apply only to the unexpended portion of the total Agreement amount remaining on each such October adjustment date. The adjustment will be in accordance with adjustments in the Master Agreement between the Civil Engineers and Land Surveyors of Southern California and the International Union of Operating Engineers Local No. 12, AFL-CIO.

REIMBURSABLE EXPENSES

Client shall reimburse Consultant for the cost of all items such as blueprinting, reproductions, fees, permits, bond premiums, title company charges and delivery charges not specifically



**SARATOGA PARK MODERNIZATION
ENGINEERING, SURVEYING, GEOTECHNICAL,
AND LANDSCAPE ARCHITECTURAL SERVICES
CITY OF MONTCLAIR**

covered by the terms of this Agreement. In the event such reimbursable items are paid directly by the Consultant, then such charges and expenses shall be invoiced at direct cost plus 15%.

Client shall reimburse Consultant for the cost of delivering plan sets, reports, or any other items pertaining to the project to City offices, County offices, subconsultant offices, and Client offices. All time will be billed at the hourly rates set forth in the attached Rate Schedule.

IN-HOUSE PRINTING AND MAILING

Client shall reimburse Consultant for the cost of labor time incurred while making extra copies of plan sets, copying reports, making CD's, e-transmitting plan sets, and sending PDF's, or any other items/services as requested by the Client or Consultants beyond the scope of contracted services. All time will be billed at the hourly rates set forth in the attached Rate Schedule.

PROPOSAL SUBMITTED BY:

Carla E. Berard, P.E., P.L.S.
CEO

THIS PROPOSAL DATED MARCH 19

L.D. King, Inc. Rate Schedule

October 1, 2023 – September 30, 2024

Principal	\$192.00
Sr. Engineer Designer	\$186.00
Sr. Project Manager	\$186.00
Project Manager	\$167.00
Project Engineer	\$148.00
Engineer/Designer III	\$133.00
Engineer/Designer II	\$117.00
Engineer/Designer I	\$107.00
CAD Drafter III	\$107.00
CAD Drafter II	\$ 97.00
CAD Drafter I	\$ 72.00
Administrative Assistant	\$ 72.00
Intern	\$ 53.00
<u>Surveying Services</u>	
Director of Survey	\$191.00
Senior Survey Calculator	\$159.00
Survey Calculator	\$141.00
3-Man Survey Crew	\$370.00
2-Man Survey Crew	\$319.00
1-Man Survey	\$203.00
<u>Travel Time</u>	
3-Man Survey Crew	\$356.00
2-Man Survey Crew	\$309.00
1-Man Survey	\$198.00
<u>Overtime Rates</u>	
3-Man Survey Crew	\$499.00
2-Man Survey Crew	\$430.00
1-Man Survey	\$303.00
<u>Subsistence</u>	
3-Man Survey Crew	\$488.00
2-Man Survey Crew	\$324.00
<u>Construction Services</u>	
Sr. Resident Engineer	\$142.00
Resident Engineer	\$136.00
Senior Inspector	\$126.00
Inspector	\$109.00
Car/Truck for Construction Services Personnel	\$ 71.00/Day
<u>Reimbursable Costs</u>	
In-House Printing	Cost
Outsourced Printing Expenses	Cost + 15%
Express Mail & Delivery	Cost + 15%
Subconsultant Services	Cost + 10%

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



975 N. Haven Avenue, Suite 200 Ontario, CA 91764 (909) 945-0526

Architerra Design Group

Rate Schedule

Principal _____ \$200.00/hour

Director _____ \$175.00/hour

Project Manager _____ \$135.00/hour

Landscape Designer _____ \$125.00/hour

CAD Draftsman _____ \$100.00/hr.

Clerical _____ \$65.00

**SARATOGA PARK IMPROVEMENTS
ENGINEERING, SURVEYING, GEOTECHNICAL, LANDSCAPE ARCHITECTURAL SERVICES**

GENERAL WORK PROGRAM AND TIMETABLE

The Design Team proposes the following timetable for completion of this Project after receipt of all necessary information from Client or Client's Consultant.

TASK	PHASE	WEEKS
	Kick Off Meeting and Start up	1 week
A.	Construction Document Phase	12-16 weeks
B.	Bidding Assistance Phase	2-4 weeks
C.	Construction Administration Phase	estimated 9-11 months
D.	“Optional” Services (Title 24 Calcs,	2-3 weeks

The design team shall render its services as expeditiously as is consistent with professional skill and care. ADG shall not be responsible for delays that may occur due to causes beyond ADG's reasonable control.

PLANT PALETTE:

TREES & VINES

PRIMARY THEME AND BACKGROUND TREES

- Cinnamomum camphora
- Pinus edulis
- Platanus chinensis
- Platanus racemosa
- Small Flowering Accent Tree
- Shade Tree
- Basin Tree
- Chickasaw Inland Yucca

- Campylopus Tree
- Albizia Rose
- Chinese Pistache
- California Sycamore
- Natchez Crape Myrtle
- Pink Trumpet Tree
- Budda Desert Willow



FEATURE LEGEND:

- 1 NEW EXTENDED PARKING (ONE-WAY) FOR ADDITIONAL 12 STALLS AND (4) NEW ADA STALLS. PARKING LOT TOTAL STANDARD STALLS: 61.
- 2 EXISTING PARK MONUMENT WALLS TO REMAIN.
- 3 NEW PLAYGROUND W/ SEPARATE PLAY AREAS FOR 2.5 YR. OLD AND 5-12 YR. OLD AGE GROUPS, INCLUDING ZEPHYRUS PLAY AREA.
- 4 NEW GROUP SHADE STRUCTURE AT TOT LOT.
- 5 NEW BASKETBALL COURT WITH PAINTED KEY AT GRADE OF KINGSLEY STREET.
- 6 SPECTATOR BLEACHER SEATING (REUSE OF EXISTING WHERE POSSIBLE).
- 7 NEW RESTROOM/CONCESSIONS BUILDING. SEE ARCHITECTURAL PLAN & ELEVATION FOR DETAILS.
- 8 MONTCLAIR LITTLE LEAGUE LOGO GRAPHIC AT SNACK BAR PLAZA
- 9 NEW COVERED DOGOUTS
- 10 NEW 225 INTERMEDIATE BASEBALL FIELDS (2 TOTAL)
- 11 NEW 6' TALL OUTFIELD HOMERUN FENCING.
- 12 RAMPED PAVING TO ELEVATED SPECTATOR SEATING AREAS
- 13 PICNIC TABLES AND SHADE TREES AT BALLPARK ENTRIES
- 14 GATED VEHICULAR ACCESS TO FIELDS/PARK
- 15 NEW EXTENDED PARKING (ONE-WAY) FOR ADDITIONAL 22 STALLS AND NEW ADA STALLS. PARKING LOT TOTAL STANDARD STALLS 67.
- 16 BULLPEN WARMUP AREA
- 17 WATER QUALITY BASINS
- 18 NEW BATTING CAGES WITH STEEL ENCLOSURE FOR PITCHING MACHINES
- 19 CENTRAL BALLPARK PLAZA WITH SHADE SAILS AND BASEBALL THEMED PLAY EQUIPMENT.
- 20 SCORERS TABLE AT BACKSTOP (4 TOTAL)
- 21 LOOPED DECOMPOSED GRANITE TRAIL
- 22 NEW 125' TEE BALL FIELD (1 TOTAL)
- 23 NEW 200' LITTLE LEAGUE FIELD (1 TOTAL)
- 24 OPEN TURF PLAY AREA
- 25 PICNIC TABLE SEATING AREA ALONG D.G. TRAIL
- 26 PROTECTION BOLLARDS
- 27 NEW TRASH ENCLOSURE NEAR CONCESSIONS WITH THREE BIN COMPARTMENTS
- 28 NEW ELECTRONIC SCORE BOARD
- 29 ACCESS GATES TO SPECTATOR SEATING AREAS
- 30 LITTLE LEAGUE SPONSOR AND PHOTO WALL
- 31 OUTDOOR WORKOUT EQUIPMENT ALONG D.G. TRAIL (4 TOTAL STATIONS)
- 32 NEW FERMENTED WALL WITH BASEBALL NETTING PROTECTION
- 33 NEW PARK ENCLOSURE, TUBULAR STEEL FENCING AND ACCESS GATES

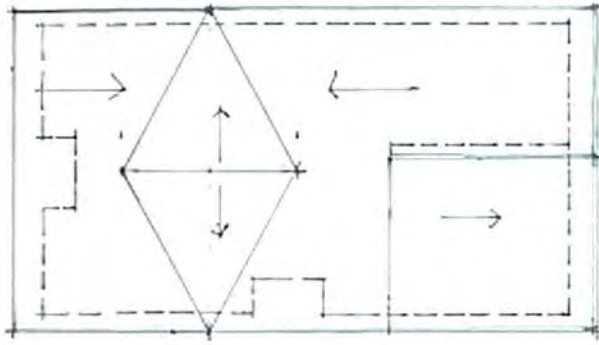
SARATOGA PARK - CONCEPTUAL PARK MASTER PLAN
 MONTCLAIR CITY OF MONTCLAIR



SCALE: 1"=40'
 DATE: JANUARY 2024
 JOB # 2231



FLOOR PLAN



ROOF PLAN



WEST ELEVATION



EAST ELEVATION



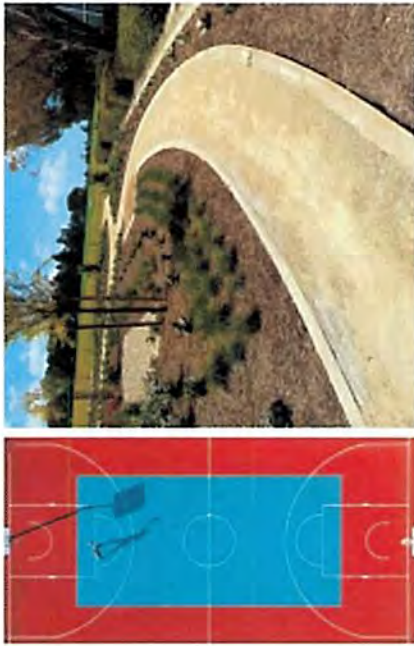
SOUTH ELEVATION

NORTH ELEVATION

A-1



City of Montclair
 Saratoga Park Concession Building – Option 1



FITNESS AND LEISURE



SPORT THEMED PLAY



SPORT FIELDS AND AMENITIES

SARATOGA PARK - IMAGE AND MATERIAL BOARDS





Pinus edulis Mondell Pine



Cinnamomum camphora Carrizal tree



Chilopsis linearis Desert Willow



Platanus racemosa Western Sycamore



Pistacia chinensis Chinese Pistache



Hemodorum heptaphyllum Park Trampet Tree



Lagerstroemia 'Natchez' Natchez Crepe Myrtle



Salvia leucantha Mexican Bush Sage



Zephyranthes candida Ran Lily



Muhlenbergia rigens Decorgrass



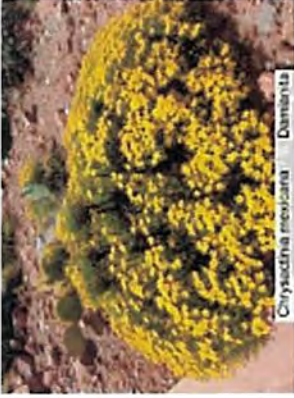
Euphorbia californica Lassen's California Fuchsia



Muhlenbergia capillaris Navy Grass



Bouteloua gracilis Blue Grama Grass



Chrysantha mexicana Dianthus



Carex divisa European Grey Sedge

SARATOGA PARK - CONCEPTUAL PLANT PALETTE

MONTCLAIR
CITY OF MONTCLAIR



Infrastructure Fund Capital Project Funding Information

Project Name: Saratog Park Transformation Project
 Project Details: Design and Construction of Saratoga Park. Improvements include new baseball fields, a new basketball court, a new snack bar, new restrooms, and a new playground. Site improvements include fencing, re-grading the entire site, removal of the existing snack bar, and electrical upgrades.

Preparation Date: March 28, 2024 Department: Public Works/Engineering Department
 Project No. (Assigned by Finance): 21026 Contact/Ext.: M. Heredia 441

Phase	Prior Years	Fiscal Years				Total	Fund/Program
		2021/2022	2022/2023	2023/2024	2025/2026		
Environmental							
Design			600,000.00			600,000.00	2021 LRB
Construction					2,000,000.00	2,000,000.00	Community Service Grant/Norma Torres
					4,200,000.00		Unfunded
Total	0.00	0.00	600,000.00	0.00	6,200,000.00	6,800,000.00	

Approvals: _____ Date: _____
 Department: Public Works/Engineering By: _____
 Finance By: _____ Date: _____
 City Council Date: _____
 Revision Number: _____

Total Project Cost: 6,800,000.00

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
MARCH 18, 2024, AT 6:07 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Johnson called the meeting to order at 6:07 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Johnson, Council Member Ruh, City
Manager Starr

III. APPROVAL OF MINUTES

**A. Minutes of the Regular Personnel Committee Meeting of
March 4, 2024.**

Moved by Council Member Ruh, seconded by Mayor Pro Tem
Johnson, and carried unanimously to approve the minutes of the
Personnel Committee meeting on March 4, 2024.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

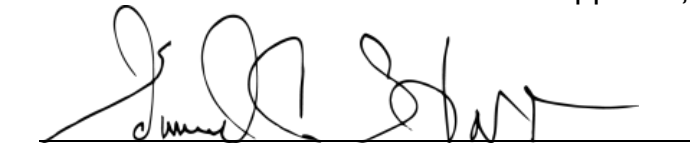
At 6:08 p.m., the Personnel Committee went into Closed Session
regarding personnel matters related to appointments, resignations/
terminations, and evaluations of employee performance.

At 6:30 p.m., the Personnel Committee returned from Closed Session.
Mayor Pro Tem Johnson stated that no announcements would be made
at this time.

VI. ADJOURNMENT

At 6:30 p.m., Mayor Pro Tem Johnson adjourned the Personnel
Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, MARCH 18, 2024 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor/Chair Dutrey called the meeting to order at 7:00 p.m.

II. INVOCATION

Pastor Donald Rucker, Christian Development Center, gave the invocation.

III. PLEDGE OF ALLEGIANCE

Council Member/Director Ruh led meeting participants in the Pledge.

IV. ROLL CALL

Present: Mayor/Chair Dutrey; Mayor Pro Tem/Vice Chair Johnson; Council Members/Directors Ruh, Martinez, and Lopez

City Manager/Executive Director Starr; Director of Finance Kulbeck; Director of Community Development Diaz; Director of Public Works/City Engineer Heredia; Police Chief Reed; Fire Chief Pohl; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS

A. Introduction of New Human Services Department Employee

Assistant Director of Human Services/Grants Manager Colunga introduced **Shari Haynes**, who was recently hired as the new Senior Citizens Supervisor.

Mayor Dutrey stated he would like to pull Item B-9 from the Consent Calendar for City Council discussion and consideration at this time.

IX. PULLED CONSENT CALENDAR ITEMS

B. Administrative Reports

9. Consider Ratifying the City of Montclair Policy Statement Regarding the Discontinuation of Oral Public Comments from Online Public Participants During City-Hosted Video/Teleconferencing Sessions

Mayor Dutrey read the policy and condemned the hateful comments made at the March 4, 2024 Council Meeting. He advised the City Council adopted Resolution No. 23-3414 last year upholding the City Council's dedication to creating a safe and welcoming environment to all.

Dr. Sharon Lyn Stein commended the City Council on behalf of the Jewish community for its response to the hateful rhetoric displayed at the prior meeting.

Council Member Ruh discussed his beliefs that, although legal, hate speech is unacceptable in civil society.

Mayor Pro Tem Johnson stated she supports the public speaking about the business of the city at council meetings, and hopes this new policy will prevent those who hid behind the anonymity of remote participation from spewing hate speech at meetings.

Council Member Lopez advised the anti-hate resolution adopted last year came at the request of the **Jewish Federation**, and covers all forms of hate to all groups. He stated he hopes to restore remote oral public comments in the future.

Council Member Martinez received clarification from City Manager Starr that Zoom will still be used for Council, Commission, and Committee meetings to allow the public to watch the meetings without being given the ability to speak and to give staff, consultants, and legislative representatives the ability to make remote presentations.

ACTION - Consent Calendar - Item B-9	
ACTING:	City Council
MOTION:	Ratify the <i>City of Montclair Policy Statement Regarding the Discontinuation of Oral Public Comments from Online Public Participants During City-Hosted Video/Teleconferencing Sessions.</i>
MADE BY: SECOND BY:	Council Member Lopez Council Member Ruh
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
RESULT:	Motion carried 5-0.

VI. PUBLIC COMMENT

- **Dr. Sharon Lyn Stein** thanked Council Members who did not support the adoption of a biased ceasefire resolution, stating such a resolution would send an anti-Israel message and have negative impacts on the Jewish community.
- **Bill Kaufman** urged the City to move forward with an ordinance to legalize the sale of cannabis products so he can bring his business to the City, and stated he supports a ceasefire and that he believes Israel is committing genocide against the Palestinian people of Gaza.
- **Steven Chow, STIIZY**, discussed his company's success selling cannabis products in the city of Pomona, including over \$500,000 in contributions the company has made to the City's parks and recreation programs over the past two years. He spoke in support of the City adopting a cannabis ordinance similar to Pomona's.
- **Olivia Renteria**, resident, expressed frustration at the skate park being shut down when there are incidents of vandalism, noting respectful early-morning park users like her daughter are being punished for the actions of others who tend to use the park in the later afternoon and evening. She requested alternative responses to vandalism such as changing park hours.

At 7:40 p.m., Mayor Dutrey called a brief recess, and the City Council reconvened at 7:46 p.m.

VII. PUBLIC HEARINGS

A. Second Reading — Consider Adoption of Ordinance No. 24-1007 Amending Chapter 11.02 of, and Adding Chapters 11.21 and 11.87 to, the Montclair Municipal Code Relating to Urban Lot Splits and Two-Unit Projects in the R-1 Single Family Zone

Mayor Dutrey opened the public hearing and invited comments from the public.

There being no one in the audience wishing to speak, Mayor Dutrey closed the public hearing and returned the matter to the City Council for consideration.

ACTION - Public Hearings - Item A	
ACTING:	City Council
MOTION:	Conduct the second reading of Ordinance No. 24-1007 by number and title only, waive further reading, and adopt Ordinance No. 24-1007.
MADE BY: SECOND BY:	Council Member Ruh Council Member Lopez
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
RESULT:	Motion carried 5-0.

B. Second Reading — Consider Adoption of Ordinance No. 24-1008 Amending the Montclair Municipal Code Related to the Compensation Schedule for the Mayor and Members of the City Council

Mayor Dutrey opened the public hearing and invited comments from the public.

Carolyn Raft, resident, submitted written comments in favor of increasing City Council compensation as proposed by the ordinance.

Mayor Dutrey closed the public hearing and returned the matter to the City Council for its consideration.

Council Member Lopez stated he remains beholden to his vow to not support any City Council salary increases during his term.

Council Member Ruh stated he does not personally support the increase and asserted he has in the past and will continue to refuse any increases that are approved for City Council compensation for himself.

ACTION - Public Hearings - Item B	
ACTING:	City Council
MOTION:	Conduct the second reading of Ordinance No. 24-1008 by number and title only, waive further reading, and adopt Ordinance No. 24-1008.
MADE BY: SECOND BY:	Mayor Pro Tem Johnson Council Member Martinez
AYES: NOES: ABSTAIN: ABSENT:	Martinez, Johnson, Dutrey Ruh Lopez None
RESULT:	Motion carried 3-1-1.

VIII. CONSENT CALENDAR

ACTION - Consent Calendar	
ACTING:	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
MOTION:	Pull Item B-9 (<i>considered prior to the Consent Calendar, after Presentations</i>) and approve the remainder of the Consent Calendar as presented.

ACTION – Consent Calendar	
MADE BY: SECOND BY:	Council Member/Director Lopez Mayor Pro Tem/Vice Chair Johnson
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
RESULT:	Motion carried 5-0.

A. Approval of Minutes

1. Adjourned Meeting — March 4, 2024

ACTION – Consent Calendar – Item A-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

2. Regular Joint Meeting — March 4, 2024

ACTION – Consent Calendar – Item A-2	
ACTING:	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

B. Administrative Reports

1. Consider Receiving and Filing City Treasurer's Report – February 2024

ACTION – Consent Calendar – Item B-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

2. Consider Approval of City Warrant Register and Payroll Documentation

ACTION – Consent Calendar – Item B-2	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

3. Consider Receiving and Filing SA Treasurer's Report – February 2024

ACTION – Consent Calendar – Item B-3	
ACTING:	Successor Agency Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

4. **Consider Approval of SA Warrant Register – February 2024**

ACTION – Consent Calendar – Item B-4	
ACTING:	Successor Agency Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

5. **Consider Receiving and Filing MHC Treasurer's Report – February 2024**

ACTION – Consent Calendar – Item B-5	
ACTING:	Montclair Housing Corporation Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

6. **Consider Approval of MHC Warrant Register – February 2024**

ACTION – Consent Calendar – Item B-6	
ACTING:	Montclair Housing Corporation Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

7. **Consider Receiving and Filing of MHA Treasurer's Report – February 2024**

ACTION – Consent Calendar – Item B-7	
ACTING:	Montclair Housing Authority Commissioners
RESULT:	Approved on Consent Calendar; motion carried 5-0.

8. **Consider Approval of MHA Warrant Register – February 2024**

ACTION – Consent Calendar – Item B-8	
ACTING:	Montclair Housing Authority Commissioners
RESULT:	Approved on Consent Calendar; motion carried 5-0.

10. **Consider Authorizing the Purchase of a 2024 Ford Explorer XLT Vehicle for the Police Department Fleet from Hemborg Ford in the Total Amount of \$42,228.51**

ACTION – Consent Calendar – Item B-10	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

11. **Consider Declaring a 1979 Smith Air Compressor (Unit 411) and a 1985 Asplundh Wood Chipper (Unit 404) as Surplus Equipment Available for Parts or for Sale at Auction**

ACTION – Consent Calendar – Item B-11	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

C. **Agreements** — None

D. **Resolutions** — None

X. COUNCIL WORKSHOP

A. Update on 2021 Lease Revenue Bond and Capital Improvement Program Projects

The City Council continued this presentation to an adjourned meeting to be held on Monday, April 1, 2024, at 5:45 p.m. in the City Council Chambers.

XI. COMMUNICATIONS

A. Department Reports

1. Human Services Department — Upcoming Events

Assistant Director of Human Services/Grants Manager Colunga shared details of the Easter Eggstravaganza event taking place at Alma Hofman Park on Saturday, March 30, from 9:00 to 11:00 a.m.

B. City Attorney

City Attorney Robbins requested the City Council meet in closed session concerning the following:

1. Appeal Hearing of John Minook Pursuant to GC §54957(b)

C. City Manager/Executive Director — None

D. Mayor/Chair

Mayor/Chair Dutrey recognized March as Women’s History Month and Irish-American Heritage Month; noted Easter and Cesar Chavez Day fall on March 31; and noted he attended **Montclair Little League’s (MLL) Opening Day**.

E. Council Members/Directors

1. Mayor Pro Tem/Vice Chair Johnson promoted the **Montclair Chamber of Commerce’s Shop Local Montclair** initiative; reported the success of the *Cinderella Dreams* event at **Montclair Place**, which had 190 participants who received free prom dresses, makeup, and accessories; and advised the Chamber will be holding its annual Montclair Police Recognition Event on Thursday, May 23, at **The Canyon in Montclair Place**.
2. Council Member/Director Lopez stated he attended **MLL’s** opening ceremonies; shared that **Buena Vista Arts-Integrated School** put on a great production of *Willy Wonka Junior* at **Vernon Middle School**; and thanked staff for providing a map showing alleyway paving projects since 2010.
3. Council Member/Director Ruh advised that tomorrow is St. Joseph’s Day and the Persian New Year; and encouraged the community to attend the upcoming annual Easter event on March 30.

F. Committee Meeting Minutes

The following committee minutes were received and filed for informational purposes:

1. Personnel Committee – March 4, 2024

XII. CLOSED SESSION

At 8:05 p.m., the City Council went into closed session to discuss the appeal hearing of John Minook.

XIII. CLOSED SESSION ANNOUNCEMENTS

At 8:23 p.m., the City Council returned from closed session.

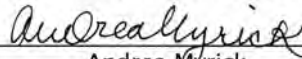
City Attorney Robbins announced that the City Council has considered the appeal of John Minook from the arbitrator's advisory decision to uphold his termination, and it was the unanimous decision of the City Council to deny the appeal of John Minook and affirm the findings, opinion, and advisory award of Hearing Officer Daniel R. Saling in its entirety.

XIV. ADJOURNMENT

At 8:24 p.m., the Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board were adjourned.

At 8:24 p.m., the City Council was adjourned to Monday, April 1, 2024, at 5:45 p.m. in the Council Chambers for a Council Workshop.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



Andrea Myrick,
City Clerk