

CITY OF MONTCLAIR

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

AGENDA PACKET



**Monday, May 6, 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, May 6, 2024
7:00 p.m.

Please note Council Member Ruh will participate via teleconference by speakerphone or other electronic means from the following additional location, which is accessible to the public:

*The Mayflower Hotel, Autograph Collection
Mezzanine Level (one floor directly above the main lobby of the hotel)
1127 Connecticut Avenue,
Washington, D.C. 20036*

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 — None

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

- A. Consider Adoption of Resolution No. 24-3435 Amending the Master User Fee Schedule [CC]

Page No.

4

VIII. CONSENT CALENDAR

A. Approval of Minutes	
1. Special Meeting — April 15, 2024 [CC]	190
2. Regular Joint Meeting — April 15, 2024 [CC/SA/MHC/MHA/MCF]	191
B. Administrative Reports	
1. Consider Approval of Warrant Register & Payroll Documentation [CC]	8
2. Consider Receiving and Filing the Montclair Police Department 2023-24 Military Equipment Annual Report Pursuant to GC §7072 [CC]	
Consider Authorizing the Scheduling of a Follow-up Police Department Community Engagement Meeting on Thursday, May 9, 2024, at 5:00 p.m. in the Police Department’s Emergency Operations Center Community Room at 4870 Arrow Highway, Montclair [CC]	9
3. Consider Declaring Certain City Property as Surplus and Available for Auction, Parts, or Destruction [CC]	27
C. Agreements	
1. Consider Approval of Agreement No. 24-28 with Anderson Air Conditioning, L.P., to Replace Two 25-Ton HVAC Condensing Units at Fire Station No. 151, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	36
2. Consider Approval of Agreement No. 24-29 with Ontario-Montclair School District to Support the Montclair After-School Program at Various Sites for the 2024-2025 School Year [CC]	45
3. Consider Approval of Agreement No. 24-30 and Amendment No. 1 to Agreement No. 24-30 with Ontario-Montclair School District to Support the Montclair After-School Summer Program at Four School Sites [CC]	64
4. Consider Approval of Agreement No. 24-31 with Blais & Associates, Inc. for Grant Writing Services [CC]	
Consider Authorizing a \$75,000 Appropriation from the Contingency Reserve Fund for Costs Related to Agreement No. 24-31 [CC]	85
5. Consider Approval of Agreement No. 24-32 with Hinderliter, de Llamas and Associates to Provide Services Related to the Development of Ordinances Regulating Commercial Cannabis Activities, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	
Consider Approval of Agreement No. 24-33 with Cole Huber Attorneys LLP for Cannabis Legal Consulting Services, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	106
6. Consider Approval of Agreement No. 24-34 Amending Agreement No. 22-93 with Records Control Services, Inc. for Records Management Consulting Services, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	159

- 7. Consider Approval of Agreement No. 24-35, Amendment No. 2 to Agreement No. 21-42 with the San Bernardino County Department of Aging and Adult Services to Accept Additional Funding to Support Senior Center Activities and the Senior Transportation Program [CC] 163
- 8. Consider Approval of Agreement No. 24-36 with CASC Engineering and Consulting for Sanitary Sewer Order Consulting Services, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 170

D. Resolutions

- 1. Consider Adoption of Resolution No. 24-3436 Authorizing the Submission of an Application for Grant Funds for the Urban and Community Forestry Grant Program of the California Department of Forestry and Fire Protection and Authorizing the Execution of Application-Related Documents by the City Manager or His Designee [CC] 186

IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

A. Department Reports

- 1. Human Services Department — Upcoming Events

B. City Attorney

C. City Manager/Executive Director

D. Mayor/Chairperson

- 1. Announcement of Three Vacancies on Community Activities Commission for Four-Year Terms from July 1, 2024, to June 30, 2028
- 2. Notice of Cancellation of May 20, 2024 Regular Joint Meeting [CC/SA/MHC/MHA/MCF]

E. Council Members/Directors

F. Committee Meeting Minutes *(for informational purposes only)*

- 1. Personnel Committee Meeting — April 15, 2024 [CC] 189

XI. ADJOURNMENT

The regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board scheduled for Monday, May 20, 2024, has been cancelled due to the lack of a quorum. The next regular joint meeting will be held on Monday, June 3, 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, call 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, May 2, 2024.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 6, 2024	FILE I.D.:	FLP280
SECTION:	PUBLIC HEARINGS	DEPT.:	ECONOMIC DEV.
ITEM NO.:	A	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 24-3435 AMENDING THE MASTER USER FEE SCHEDULE		

REASON FOR CONSIDERATION: In order to effectively implement and administer the purpose and intent of the City’s Master User Fee Schedule, staff annually revises certain portions of the Master User Fee Schedule to provide more accurate user fees and, in certain circumstances, to comply with changes that have occurred in county, state, or federal law over the course of the prior year.

A copy of proposed Resolution No. 24-3435 amending the Master User Fee Schedule and *Exhibit A: Proposed Master User Fee Revisions to Resolution No. 24-3435* are attached for the City Council’s review and consideration.

BACKGROUND: In 2003, the City Council directed staff to develop a uniform policy for establishing and recovering user fees and further directed that, to the extent possible, such fees be consolidated into a single resolution subject to annual review. The Master User Fee Schedule was adopted in 2004 via Resolution No. 04-2557, which was further amended by Resolution Nos. 05-2598 and 05-2617.

In 2006, the City Council adopted Resolution No. 06-2670 amending the Master User Fee Schedule and adopting a User Fee Cost Recovery Policy.

In 2007, pursuant to Resolution No. 06-2670, the City entered into an Agreement with Wohlford Consulting to conduct a cost allocation and user fee study that would allow the City to adjust fees based on a Cost-of-Service Study. In 2013, the City Council adopted Resolution No. 13-2994 amending the Master User Fee Schedule based on the cost of allocation study conducted by Wohlford Consulting. Further amendments to the Master User Fee Schedule were adopted in 2014 (Resolution 14-3022), 2016 (Resolution Nos. 16-3107 and 16-3112), 2017 (Resolution No. 17-3160), 2018 (Resolution No. 18-3201), and 2022 (Resolution No. 22-3372).

User Fee Cost Recovery Policy

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

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

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

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

Proposed Master User Fee Schedule Revisions

In administering the Master User Fee Schedule, staff has identified several user fees that need to be revised, added, or removed in order to provide a more accurate user fee schedule. In certain circumstances, the proposed fee revisions are necessary to comply with changes that have occurred in county, state, or federal law.

Attached as *Exhibit A* to Resolution No. 24-3435 is the proposed Master User Fee Schedule Revisions.

The proposed fee revisions included in *Exhibit A* are related to adoption of new fees to cover the costs associated with fire inspections of public and private buildings pursuant to California Health and Safety Code Sections 13146.2 and 13146.3.

Proposed New Fees

At this time, several new fees are being proposed as part of the Master User Fee Schedule Revisions. The proposed new fees are intended to cover costs associated with performing state mandated annual inspections of public and private schools, hotels, motels, lodging houses, and apartment and condominium buildings (over two units) pursuant to California Health and Safety Code Sections 13146.2 and 13146.3.

The purpose of these annual fire inspections is to mitigate known hazards, reduce risk to the community, and ensure reasonable compliance with the California Fire Codes.

These inspections include such items as confirming fire protection systems are properly maintained, egress systems are in working order, fire protective construction has not been damaged, and fire department emergency access is sufficient.

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

If adopted, Resolution No. 24-3435 amending the Master User Fee Schedule would cover costs associated with conducting Annual Fire Inspection required pursuant to California Health and Safety Code Sections 13146.2 and 13146.3.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 24-3435 amending the Master User Fee Schedule.

RESOLUTION NO. 24-3435

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING THE MASTER USER FEE SCHEDULE

WHEREAS, the City of Montclair has the statutory authority to impose fees, charges, and rates under its regulatory and police power as authorized by the State of California; and

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

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

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

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

WHEREAS, the City Council has determined that such user fees are based on reasonable costs to the City for providing said services; and

WHEREAS, the City of Montclair finds it necessary to correct and/or adjust fees or add new fees to the current Master User Fee Schedule that was adopted pursuant to Resolution No. 22-3372.

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

Section 1. Master User Fee Revisions. The Master User Fee Schedule Revisions, attached hereto as "Exhibit A," are hereby adopted, and all fees contained therein shall be included in the City's current Master User Fee Schedule.

Section 2. Effective Date. This Resolution shall be in full force and effect immediately upon adoption.

APPROVED AND ADOPTED this XX day of XX, 2024.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 24-3435 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2024, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk

Exhibit "A"
Resolution No. 24-3435
Annual Fire Inspection Fees

Commercial Day Care	
7-49 persons	\$150
50-149 persons	\$463
150 or more persons	\$695

Educational	
Pre-School	\$346
Elementary/Middle	\$555
High School	\$831

Institutional	
Hospitals	\$462
Jail	\$150

Pre-Inspection (R-2.1, R-3.1 and R-4 Facilities - H&S 13235)	
Facilities with 25 or less persons	\$150
Facilities with 26 or more persons	\$300

Residential Apartments (per building)	
Up to 4 units	\$174
5- 25 Units	\$385
26- 100 Units	\$695
101 - 300 Units	\$925
Each additional 100 units	\$150

Residential Care Facilities/Skilled Nursing Facilities Initial Fire Clearance/Annual	
Inspection 0-25 beds	\$462
26-100 beds	\$695
>100 beds	\$925

Hotel/Motel	
7-25 units	\$462
26-100 units	\$695
>100 units	\$925

Assemblies	
<300	\$150
300	\$300

Annual Inspection - Other Occupancies	
0-5,000 sq. ft.	\$230
5,001 - 20,000 sq. ft.	\$462
20,001- 50,000 sq. ft.	\$695
50,001 - 100,000 sq. ft.	\$925
100,001 - 250,000 sq. ft.	\$1,155
Each additional 100,000 sq. ft.	\$462



CITY COUNCIL AGENDA REPORT

DATE:	MAY 6, 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 May 6, 2024, and the Payroll Documentation dated April 7, 2024, and April 21, 2024, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated May 6, 2024, totals \$2,892,101.97.

The Payroll Documentation dated April 7, 2024, totals \$843,009.11 gross, with \$597,644.04 net being the total cash disbursement.

The Payroll Documentation dated April 21, 2024, totals \$853,400.93 gross, with \$602,509.18 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:	MAY 6, 2024	FILE I.D.:	PDT430
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	POLICE
ITEM NO.:	2	PREPARER:	B. VENTURA
SUBJECT:	CONSIDER RECEIVING AND FILING THE MONTCLAIR POLICE DEPARTMENT 2023-24 MILITARY EQUIPMENT ANNUAL REPORT PURSUANT TO GC §7072		

CONSIDER AUTHORIZING THE SCHEDULING OF A FOLLOW-UP POLICE DEPARTMENT COMMUNITY ENGAGEMENT MEETING ON THURSDAY, MAY 9, 2024, AT 5:00 P.M. IN THE POLICE DEPARTMENT'S EMERGENCY OPERATIONS CENTER COMMUNITY ROOM AT 4870 ARROW HIGHWAY, MONTCLAIR

REASON FOR CONSIDERATION: State law requires the Police Department to implement a Military Equipment Policy in compliance with Assembly Bill 481 (2021). AB 481 codified Government Code (GC) Sections (§§) 7070-7075. In compliance with GC § 7072, the Police Department is required to annually submit for review a Military Equipment Annual Report to the City Council.

BACKGROUND: On March 21, 2022, the City Council adopted Ordinance No. 22-1000 approving the Montclair Police Department's Military Equipment Policy §707 in compliance with AB 481. AB 481, codified as GC §§ 7070-7075, places requirements on California law enforcement agencies relating to the funding, acquisition, or use of "military equipment" as defined in GC §7070.

Montclair Police Department Policy §707.7 and GC§7072 requires the Police Department to submit to City Council and post on the City's website the attached Military Equipment 2023-24 Annual Report. This report is required to contain a summary of the following:

- How the military equipment was used and the purpose of its use
- Complaints or concerns received concerning the military equipment
- The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response
- The total annual cost and quantity for each type of military equipment, including acquisition, personnel training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of this report
- The Montclair Police Department's intention to acquire additional military equipment in the next year, including the quantity sought for each type of military equipment

Government Code §7072(b) requires that, within 30 days of submitting and publicly releasing an annual military equipment report, the law enforcement agency hold at least one well-publicized and conveniently located community engagement meeting at which the general public may discuss and ask questions regarding the annual military equipment report, including the funding, acquisition, or use of military equipment. In accordance with the procedure set forth in GC §7072(b), this required meeting is

requested to occur at the Montclair Police Department's Emergency Operations Center Community Room on Thursday, May 9, 2024 at 5:00 p.m. Those wishing to attend via Zoom may do so as well. This meeting will also be well publicized by utilizing the City's website, social media platforms, and a press release.

FISCAL IMPACT: Approval of the Military Equipment 2023-24 Annual Report would not have any fiscal impact to the City.

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

1. Receive and file the Montclair Police Department 2023-24 Military Equipment Annual Report pursuant to GC §7072; and
2. Consider authorizing the scheduling of a follow-up Police Department community engagement meeting on Thursday, May 9, 2024, at 5:00 p.m. in the Police Department's Emergency Operations Center Community Room at 4870 Arrow Highway, Montclair.



MEMORANDUM

Date: April 18, 2024

To: Jason Reed, Chief of Police

From: Brian Ventura, Captain

Subject: *Military Equipment – April 2023/April 2024 Annual Report*

On March 21, 2022, the City Council adopted Ordinance No. 22-1000 approving our Military Equipment Policy §707 in compliance with Assembly Bill 481. AB 481, codified as Government Code Sections 7070 through 7075, places requirements on California law enforcement agencies relating to the funding, acquisition, or use of “military equipment” as defined in GC §7070.

Policy § 707.7 and GC §7072 requires the Police Department to submit to City Council an annual military equipment report regarding the following:

1. A summary of how the military equipment was used and the purpose of its use.
2. A summary of any complaints or concerns received concerning the military equipment.
3. The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
4. The total annual cost and quantity for each type of military equipment, including acquisition, personnel training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of this report.
5. The Montclair Police Department’s intention to acquire additional military equipment in the next year, including the quantity sought for each type of military equipment.



Military Equipment Usage and Purpose of Use

Following implementation of the Military Equipment Policy, the Department established internal tracking mechanisms regarding the usage of the equipment. Throughout the past year, the Department utilized equipment pertaining to this Policy on four (5) occasions listed below:

- *On 9/7/23, the Montclair Police Department utilized the Lenco G3 Armored Personnel Carrier during a high-risk search warrant. The armored carrier was utilized as a ballistic protection as officers approached a high-risk location and remained at the location for a position of retreat if needed. The armored carrier was used for approximately one and a half hours.*
- *On 11/27/23, the Montclair Police Department utilized the Lenco G3 Armored Personnel Carrier during a dangerous high-speed vehicle pursuit. The suspect was evading officers feloniously. Officers attempted to pin the suspect vehicle in a parking lot when the suspect intentionally rammed a marked police vehicle and continued to evade officers. The armored carrier was deployed to the pursuit by two officers with the intention of using its weight and size to intervene and stop the suspect from evading. The armored carrier was not utilized as the suspect was taken into custody before it arrived on-scene. The armored carrier was deployed for approximately 1 hour and 10 minutes.*
- *On 2/28/24, the Montclair Police Department was involved in a vehicle pursuit. The pursuit led officers to the City of Pomona where the suspect stopped and refused to exit the vehicle. Officers on scene gave commands to the suspect to exit the vehicle, but the suspect failed to comply. The suspect turned on and off the headlights to the vehicle while also raising the volume of the stereo. An officer on-scene utilized an air-powered projectile launching system. Glass-Breaker balls were deployed at the rear windshield of the suspect vehicle with the intention of breaking out the rear windshield. The glass breakers were unsuccessful. A 12-gauge beanbag launching system was utilized during the incident. An officer deployed beanbag rounds at the rear windshield, which successfully broke the glass. Commands to have the suspect exit the vehicle resumed and were again unsuccessful. Inert Pepper Ball rounds were deployed from an air powered launcher into the vehicle. Afterwards, the suspect complied with the officers' commands to exit the vehicle. The suspect was then taken into custody without injury or further incident.*
- *On 4/3/24, the Montclair Police Department utilized the Lenco G3 Armored Personnel Carrier during a high-risk search warrant. The armored carrier was utilized as a ballistic*

protection as officers approached a high-risk location and remained at the location for a position of retreat if needed. The armored carrier was used for approximately two hours.

- *On 4/17/24, the Montclair Police Department utilized the Lenco G3 Armored Personnel Carrier during a high-risk search warrant. The armored carrier was utilized as a ballistic protection as officers approached a high-risk location and remained at the location for a position of retreat if needed. The armored carrier was used for approximately four hours.*

Complaints or Concerns

No complaints or concerns regarding the Department's Policy or usage of Military Equipment were received. In compliance with the Military Equipment Policy, the Department's website maintained information and a means for the public to reach out for any questions, complaints, or concerns regarding the Policy. An audit was conducted of complaints received throughout the year, and none were related to the Military Equipment Policy or its usage.

Internal Audits or Violations

Throughout the year, multiple audits were conducted of the possession, maintenance, cleaning, and training of the Military Equipment, mainly by the Technical Services Division as part of their normal duties. No violations were found to have occurred.

Annual Cost / Ongoing Cost / Funding Sources

Attached to this report is an entire inventory of the Montclair Police Department's Military Equipment List, which will also be attached to our Policy Manual. The Department did not incur any additional costs associated with the transportation, maintenance, or storage of any of the equipment. Funding sources for the existing Military Equipment will remain in the calendar year following the submission of this report.

- In Category 12, Tear Gas, the Department was budgeted for acquiring approximately \$1,066 worth of various items of CS gas within this category. The purchase was made on July 11, 2023. None of these projectiles were utilized in the field during the past year. The funding source for these items was the *General Fund*.
- In Category 12, Projectile Launch Platforms, the Department was budgeted for acquiring approximately \$1,578 for various 40MM rubber impact rounds. The

purchase of these projectiles was to replenish those projectiles utilized for training purposes throughout the year. The purchase was made on July 11, 2023. None of these projectiles were utilized in the field during the past year. The funding source for these items is the *General Fund*.

- In *Category 12, Projectile Launch Platforms*, the Department is budgeted for acquiring approximately \$1,145 for various 40-gram lead-filled cotton-ballistic fiber blend projectiles for the listed Remington 870, 112 Gauge Multi-Shot Beanbag Launcher. The purchase of these projectiles is to replenish those projectiles utilized for training purposes throughout the year. The purchase is tentatively scheduled for May 2024. The funding source for these items is the *General Fund*.
- In *Category 2, Armored Personnel Carrier*, the Department is in possession of one (1) "Peacekeeper" brand Armored Rescue Vehicle, as listed in the current Military Equipment List. Listed in the "Expected Lifespan" portion of the vehicle, it is noted the Department has been in possession of the 1980 model Peacekeeper for over 25 years, and it is due for replacement. On June 6, 2022, the Montclair City Council approved the purchase of a Lenco BearCat G3 Armored Personnel Carrier.

In August 2023, the Montclair Police Department took possession of the Lenco BearCat G3 armored vehicle. The BearCat was placed into active service and the Peacekeeper was taken out of service.

Intention to Acquire Additional Military Equipment

- Nothing to report.

Military Equipment

707.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

707.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The elected or appointed body that oversees the Department.

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

Montclair Police Department

Montclair PD Policy Manual

Montclair PD Policy Manual

Military Equipment

707.2 POLICY

It is the policy of the Montclair Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

707.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Montclair Police Department (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 - 1. Publicizing the details of the meeting.
 - 2. Preparing for public questions regarding the department's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

707.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the Department:

[See attachment: Military Equipment List 10-23.pdf](#)

707.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.

Montclair Police Department

Montclair PD Policy Manual

Montclair PD Policy Manual

Military Equipment

- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

707.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

707.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

707.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

Military Equipment List 10-23.pdf

Montclair Police Department

Military Equipment List

1. Armored Personnel Carrier, vehicle with entry apparatus attached (Category 3)

a. Quantity, Description, Capabilities, and Purchase Cost:

2023 Lenco BEARCAT G3 cost: approximately \$336,000, quantity: 1. The Lenco Bearcat G3 is an armored vehicle that seats 10-12 personnel with open floor plan that allows for rescue of downed personnel or civilians. The BearCat G3 includes a heavy-duty upgraded suspension system, off-road tires and run flats, to provide enhanced off-road performance. The increased ground clearance and robust suspension allows for emergency response in rural regions and natural disaster scenarios. It can stop various projectiles, which provides greater safety to the community and officers beyond the protection level of shield and personal body armor, and is equipped with a hydraulic ram breaching system.

b. Purpose:

To be used in response to critical incidents to enhance officer and community safety, improve scene containment and stabilization, assist in resolving critical incidents, or display at a community events.

c. Authorized Use:

The use of armored vehicles shall only be authorized by a Watch Commander, based on the specific circumstances of a given critical incident. Armored vehicles shall be used only by officers trained in their deployment and in a manner consistent with Department policy and training.

d. Expected Lifespan:

Approximately 25 years

e. Fiscal Impact:

Annual maintenance cost estimated between \$0 and \$1000 annually

2. Armored Personnel Carrier, vehicle with entry apparatus attached (Category 2)

a. Quantity, Description, Capabilities, and Purchase Cost:

One (1) "Peacekeeper" brand Armored Rescue Vehicle, Cadillac Gage Peacekeeper, built on a 1980 Dodge chassis; Cost: Obtained through the California State Agency for Surplus Property in 2002 as non-operable, and refurbished through donations by various local vendors; The Peacekeeper is designed to provide ballistic protection during tactical events (designed to withstand multiple bullet strikes from small arms fire as well as low level explosions). Equipped with emergency lights/siren and a public address system. Common uses for the Peacekeeper include citizen and officer rescues, evacuations, and the deployment of officers and approved equipment. The

Peacekeeper is a regional mutual-aid asset that has been requested and deployed to surrounding cities as well as public community outreach events for display.

- b. **Purpose:**
To be used in response to critical incidents to enhance officer and community safety, improve scene containment and stabilization, assist in resolving critical incidents, or display at a community event that is taking place.
- c. **Authorized Use:**
The use of armored vehicles shall only be authorized by a Watch Commander based on the specific circumstances of a given critical incident. Armored vehicles shall be used only by officers trained in their deployment and in a manner consistent with Department policy and training.
- d. **Expected Lifespan:**
Approximately 25 years
- e. **Fiscal Impact:**
Annual maintenance cost estimated between \$0 and \$1000 annually

3. **Command and Control Vehicles (Category 5)**

- a. **Quantity, Description, Capabilities, and Purchase Cost:**
One (1) Model Year 2014 “Ultra Haulers” brand Command Trailer; Cost: \$37,286,. The Command Trailer is a mobile command post and an equipment storage trailer. Computerized screen used for tracking operations or projecting public information on the exterior. Desk with radios for dispatch on the interior. Several storage areas for the different equipment used by department members. Water, generator, tables, chairs and televisions.
- b. **Purpose:**
To be used based on the specific circumstances of a given critical incident, large event, natural disaster, or display at a community event that is taking place.
- c. **Authorized Use:**
The Command Trailer shall be used by officers trained in it deployment and in a manner consistent with Department policy and training. The driver of the vehicle towing the trailer shall have a valid California driver’s license.
- d. **Expected Lifespan:**
25 Years
- e. **Fiscal Impact:**
Annual maintenance cost estimated between \$0 and \$1000 annually.

4. **Specialized Firearms and Ammunition (Category 9)**

- a. **Quantity, Description, Capabilities, and Purchase Cost:**
Twenty-four (24) Colt Carbine Rifle LE6945CQB, and five (5) personally owned (P/O) rifles including one (1) Daniel Defense M4V7 SLW, three (3) Geissele Automatics SD-556, and one (1) Bravo Company Manufacturing BCM4 firearm,

all capable of accurately stopping an armed subject at various distances. The Colt Carbine and approved P/O rifles are lightweight, air-cooled, gas operated, magazine fed, shoulder fired weapons, designed for semi-automatic fire. The Colt Carbine and P/O rifles do not have an expiration and will need to be serviced or replaced when the rifle fails or breaks. The 5.56 NATO cartridge is used as a lethal option designed to stop a violent encounter. The projectile is capable of penetrating soft body armor worn by armed subjects. Cost: The purchase of the rifles was a "\$0" cost in 2015, as the Department was credited for an exchange of previously owned rifles. Optics for \$9,795 and suppressors for \$7,694 were purchased to make the rifle patrol ready. P/O rifles are maintained by the member and serviced and/or replaced at their own cost.

- I. The Hornady 5.56 NATO, 75 grain, BTHP T2 Tap Precision cartridge is the primary duty ammunition deployed during potential lethal encounters.
- b. **Purpose:**
To be used as precision weapons to address a threat with more precision and/or at greater distances than a handgun, if present and feasible within Department Policy and Applicable Law
- c. **Authorized Use:**
Only members that are POST certified Peace Officers, and have completed the POST Firearms / Tactical Rifle Course
- d. **Expected Lifespan:**
 - I. Carbine Rifle – No expiration.
 - II. The Hornady 5.56 NATO, 75 grain BTHP T2 TAP – No expiration.
- e. **Fiscal Impact:**
 - I. Carbine Rifle – Annual cost between \$0 - \$1000.
 - II. The Hornady 5.56 NATO, 75 grain BTHP T2 TAP– Annual cost between \$0 -\$1,380 for all rifles combined, duty ammunition, excluding training rounds.

5. **Tear Gas (Category 12)**

- a. **Quantity, Description, Capabilities, and Purchase Cost:**
Various Quantities of Chemical agent munitions, which are commonly referred to as "tear gas," are used by the Montclair Police Department as a non-lethal tool to disperse rioting suspects and on barricaded suspects per Montclair Police Department Policy and applicable law. The Montclair Police Department uses chemical agents which are used by law enforcement across the United States: CS (2 Chlorobenzylidenemalononitrile) and OC (Oleoresin Capsicum). CS is an irritating agent and lachrymator (irritates the eyes and causes tears to flow). CS has been medically tested in the UK and US, specifically by the U.S. Army. There are no known allergic reactions to CS. OC was de-regulated in California in 1996, is endorsed by the FBI, and is available to civilians to legally possess (2.5 oz. or less). OC is an inflammatory agent which causes involuntary closure of eyes (open in 2-5 minutes) and respiratory inflammation (subsides in approximately 2 minutes).

- I. Pocket Tactical SAF-Smoke White™ – Pyrotechnic grenade emitting non-irritant SAF Smoke through multiple emission ports for 20 to 30 seconds to cover small areas. May be launched or hand-thrown Cost: \$17.50 per munition.
- II. SAF-Smoke White™ – Pyrotechnic grenade emitting non-irritant SAF Smoke through multiple emission ports for 30 to 40 seconds to cover large areas. May be launched or hand-thrown Cost: \$33.83 per munition.
- III. 8230 – Pyrotechnic canister grenade emitting CS smoke through multiple emission ports for 20 to 30 seconds. May be launched or hand-thrown. Cost: \$17.50 per munition.
- IV. 9230 – The 9230 CS Jet-Lite Rubber Ball Grenade is one of the smaller diameter burning grenades that discharges a high volume of chemical agents through multiple emission ports. Can be hand thrown. Cost: \$29.26 per munition.
- V. 9590 – Stinger™ 32-Caliber Rubber Balls is designed to deliver rubber pellets from a handheld rubber ball grenade to disperse the intended target. Cost: \$56.80 per munition.
- VI. Spede-Heat SAF Smoke™ 40mm Short Range Round incorporates an aluminum shell and utilizes black powder as the propellant. The Spede-Heat™ 40mm Short Range Round is designed to deliver one dual-ported chemical canister from a 40mm launcher 75 yards to the intended target zone. Cost: \$26.40 per munition.
- VII. 4558 – 40mm Short Range Rubber Pellets incorporates an aluminum shell and utilizes black powder as the propellant. The 4558 40mm Short Range Round is designed to deliver 60 caliber rubber pellets from a 40mm launcher at close range to disperse the intended target. Cost: \$25.60 per munition.
- VIII. 4233 – 40mm Short Range CS Round incorporates an aluminum shell and utilizes black powder as the propellant. The 4233 40mm Short Range Round is designed to deliver three multi-ported chemical canisters from a 40mm launcher 75 yards to the intended target zone. Cost: \$40.05 per munition.
- IX. 5231 – CS Pyrotechnic grenade emitting CS smoke through three chemical canister that discharges a high volume of chemical agents through multiple emission ports to the intended target zone. Cost: \$34.61 per munition.

b. **Purpose:**

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Situations for use of the less-lethal weapon systems may include, but are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.
- ii. Riot/crowd control and civil unrest incidents.
- iii. Circumstances where a tactical advantage can be obtained.
- iv. Potentially vicious animals.
- v. Training exercises or approved demonstrations.

c. **Authorized Use:**

Only officers who have received POST certification or manufacturer-specific training in the use of chemical agents are authorized to use chemical agents.

d. **Expected Lifespan:**

- I. Pocket Tactical SAF-Smoke White™ – 5 years
- II. SAF-Smoke White™ – 5 years
- III. 8230 – 5 years
- IV. 9230 – 5 years
- V. 9590 – 5 years
- VI. Spede-Heat SAF Smoke™ 40mm – 5 years
- VII. 4558 – 5 years
- VIII. 4233 – 5 years
- IX. 5231 – 5 years

e. **Fiscal Impact:**

- I. Pocket Tactical SAF-Smoke White™ – Estimated between \$0 and \$140 annually.
- II. SAF-Smoke White™ – Estimated between \$0 and \$271 annually.
- III. 8230 – Estimated between \$0 and \$140 annually.
- IV. 9230 – Estimated between \$0 and \$234 annually.
- V. 9590 – Estimated between \$0 and \$341 annually.
- VI. Spede-Heat SAF Smoke™ 40mm – estimated between \$0 and \$211 annually.
- VII. 4558 – Estimated between \$0 and \$213 annually.
- VIII. 4233 – Estimated between \$0 and \$641 annually.
- IX. 5231 – Estimated between \$0 and \$347 annually.

6. **PepperBall Launcher (Category 12)**

a. **Quantity, Description, Capabilities, and Purchase Cost:**

Four (4) Pepperball Patrol Carbine (PPC) Launchers. In July 2022, the PPC Launchers were purchased through Pepperball Inc. for \$5,618.65. The PPC Launchers are lightweight and portable designed to give patrol officers an easy to operate non-lethal option to deploy .68 caliber round or VXR projectiles that deliver PAVA powder, MAXSAICIN PAVA powder, inert powder, paint solution, or solid composite projectiles (similar to a paintball delivery system). The PPC Launcher is powered by either High-Pressure Air (HPA) or an 88-gram single use CO2 cartridge. The system is capable of launching projectiles at a subject of a distance up to 150 feet and area saturation up to 390 feet. It is a non-lethal option for law enforcement officers to deliver chemical agents and 8–15 j of kinetic energy impacts to subjects in a potentially violent encounter. It is a de-escalation tool used to avoid further injuries or lethal options on a subject; Cost: \$990 per launcher

- I. PepperBall LIVE PROJECTILE, The basic PepperBall projectile contains 2.5 grams of PAVA powder, and is designed for direct impact and area saturation, especially in confined, interior spaces. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-300 feet per second (FPS). The projectile has a direct impact of 60 feet and an area of saturation of 150 + feet. The projectile contains 2% PAVA powder; Cost \$967 (300 Count).
- II. PepperBall LIVE-X PROJECTILE, A PepperBall projectile contains 2.5 grams of PAVA powder, and is designed for direct impact and area saturation, especially in confined, interior spaces. Discharged from a PepperBall Launcher, the projectile has a

velocity of 280-300 feet per second (FPS). The projectile has a direct impact of 60 feet and an area of saturation of 150 + feet. The projectile contains 5% PAVA powder; Cost \$322 (90 Count).

- III. PepperBall Marking PROJECTILE, A PepperBall projectile contains 2.5 grams of paint solution that can be used to mark suspects for later apprehension and/or marking doors, openings, or objects for identification, and is designed for direct impact. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-300 feet per second (FPS). The projectile has a direct impact of 60 feet and an area of saturation of 150 + feet. The projectile contains 2% PAVA powder; Cost: \$81 (90 Count).
- IV. PepperBall INERT PROJECTILE, A PepperBall projectile contains 2.5 grams of inert powder Containing a harmless, scented powder. This projectile is best suited for training, qualifications, and direct impact when chemical exposure is not desired. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-300 feet per second (FPS). The projectile has a direct impact of 60 feet and an area of saturation of 150 + feet. The projectile contains inert powder; Cost \$323 (300 Count).
- V. PepperBall Glass Breaker Projectiles, a solid projectile used to shatter windows only. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-300 feet per second (FPS); Cost: \$27 (10 Count).

b. **Purpose:**

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Situations for use of the less-lethal weapon systems may include but, are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.
- ii. Riot/crowd control and civil unrest incidents.
- iii. Circumstances where a tactical advantage can be obtained.
- iv. Potentially vicious animals.
- v. Training exercises or approved demonstrations.

c. **Authorized Use:**

Only those officers who have been trained in the use of PepperBall launchers are authorized to use the PepperBall launchers.

d. **Expected Lifespan:**

- I. PepperBall Launcher – No expiration
- II. Live Projectile – 3 years
- III. Inert Projectiles – 3 years
- IV. Marking Projectiles – 3 years
- V. Glass Breaker Projectiles – No expiration

e. **Fiscal Impact:**

- I. PepperBall Launcher – Repairs estimated between \$0 and \$1000 annually.
- II. Live Projectile – Estimated between \$0 and \$967 annually.

- III. Inert Projectiles – Estimated between \$0 and \$200 annually
- IV. Marking Projectiles – Estimated between \$0 and \$400 annually
- V. Glass Breaker Projectiles – Estimated between \$0 and \$100 annually.

7. Projectile Launch platforms and associated munitions (Category 14)

- a. Quantity, Description, Capabilities, and Purchase Cost:
Two (2) Defense Technology 40mm Single Launcher: Cost: Unknown, purchased @ 20 years ago. The Defense Technology 40mm Single Launcher is not a firearm, but a Less-Lethal launching system that uses smokeless powder to deliver 40MM projectiles from a safe distance. The Less-Lethal launcher is capable of launching 40MM munitions at a subject up to 40 yards. The Less-Lethal launcher is a single launcher, which allows the Officer to assess after every spent munition. Less-Lethal launcher does not have an expiration and will need to be serviced or replaced when the launcher fails or breaks.
 - I. The 40MM munition is a Direct Impact Spin Stabilized Smokeless Sponge Munition. The Sponge Baton munition is used as a Less-Lethal weapon designed to de-escalate a potentially violent encounter; Cost: \$17.50 per unit.

- b. Quantity, Description, Capabilities, and Purchase Cost:
Twenty-three (23) Remington 870 12 Gauge Multi-Shot Beanbag Launcher: Cost: Unknown, purchased over 25 years ago. The Remington 870 12 Gauge Multi-Shot Beanbag Launcher is a converted Remington 870 used as a Less-Lethal launching system. The launching system uses smokeless powder to deliver a 12 gauge 40-gram lead-filled cotton-ballistic fiber blend projectile from a safe distance. The Less-Lethal launcher is capable of launching munitions at a subject up to 75 feet. The Less-Lethal launcher is a pump-action launcher, which allows the officer to assess after every spent munition. Less-Lethal launcher does not have an expiration and will need to be serviced or replaced when the launcher fails or breaks.
 - I. ALS1212T – 12 gauge 40-gram lead-filled cotton-ballistic fiber blend stabilized bean bag munition is designed to produce blunt trauma and pain compliance The bean bag munition is used as a Less-Lethal weapon designed to de-escalate a potentially violent encounter; Cost: \$1,117.

- c. Purpose:
To limit the escalation of conflict where employment of lethal force is prohibited or undesirable.

- d. Authorized Use:
Situations for use of the less-lethal weapon systems may include, but are not limited to:
 - i. Self-destructive, dangerous and/or combative individuals.
 - ii. Riot/crowd control and civil unrest incidents.
 - iii. Circumstances where a tactical advantage can be obtained.
 - iv. Potentially vicious animals.
 - v. Training exercises or approved demonstrations.

- e. **Expected Lifespan:**
 - I. 40mm Launcher: No expiration
 - II. 40mm Sponge Munition – 5 years
 - III. Bean Bag Launcher – 5 years
 - IV. Bean Bag Munitions – 5 years

- f. **Fiscal Impact:**
 - I. 40mm Launcher – Estimated between \$0 and \$1000 annually
 - II. 40mm Sponge Munition – Estimated between \$0 and \$1000 annually.
 - III. Bean Bag Launcher – Estimated between \$0 and \$1000 annually.
 - IV. Bean Bag Munitions – Estimated between \$0 and \$1117 annually.

8. **Long Range Acoustic Device (Category 13)**

- a. **Quantity, Description, Capabilities, and Purchase Cost:**
 One (1). The Montclair Police Department shares a Genasys Systems Long Range Acoustic Device LRAD-1000 with the cities of Ontario, Chino, and Upland. The device is owned by the San Bernardino County Sheriff's Department. The device is a power-efficient, long-distance communication system designed for applications ranging from critical infrastructure protection, border and port security, and search and rescue applications. It features a rugged carbon fiber emitter head integrated with electronics and amplification has an extremely high decibel capacity. The device is used as a less-lethal weapon for crowd control and broadcasting emergency messages;
 Cost: \$0;

- b. **Purpose:**
 To limit the escalation of conflict where deployment of higher force is prohibited or undesirable.

- c. **Authorized Use:**
 Only Montclair officers who are trained in the use of the device shall be authorized to deploy the device. Situations for use of the less lethal weapon system may include, but are not limited to:
 - i. Riot/crowd control and civil unrest incidents.
 - ii. Circumstances where a tactical advantage can be obtained.
 - iii. Training exercises or approved demonstrations.

- d. **Expected Lifespan:**
 - I. Long Range Acoustic Device: No expiration

- e. **Fiscal Impact:**
 - I. Long Range Acoustic Device: \$0 annually.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 6, 2024	FILE I.D.:	EQS051/052/VEH120/150
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	POLICE
ITEM NO.:	3	PREPARER:	J. RIEDELL
SUBJECT:	CONSIDER DECLARING CERTAIN CITY PROPERTY AS SURPLUS AND AVAILABLE FOR AUCTION, PARTS, OR DESTRUCTION		

REASON FOR CONSIDERATION: The Police, Information Technology, Public Works, Community Development, Human Services, and Administrative Services Departments have submitted requests to declare items as surplus. City Council is requested to declare certain City property as surplus and available for auction, parts, or destruction.

BACKGROUND: The items included on the attached property logs are submitted to the City Council for consideration as surplus City property. Upon being declared as surplus by the City Council, the items will be made available for auction, parts, or destruction.

FISCAL IMPACT: There is no estimation as to the amount of proceeds the City would receive through the auction of these items.

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

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT Police Department MONTH April PAGE 1 of 1

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF SURPLUS ITEM	SERIAL #	CR #	PRICE SOLD FOR
			1	Radar Trailer VIN# 1M9BS0819PC325221	E917181		
			1	92 Toyota Camry VIN# JT2SK12EXN0090193	7UXS841		
			3	Federal Signal light bars			
			2	Santa Cruze vehicle rifle and shotgun rack			
			1	Santa Cruze vehicle rifle rack			

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT Information Technology MONTH February 2024 PAGE 1 of 2

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE AUCTIONED	SERIAL #	CR #	PRICE SOLD FOR
24-001	16403		1	ViewSonic VG2028WM	S17114700203		
24-002	17247		1	Samsung S27D380H	02X4HCHG600408X		
24-003			1	HP Z24n Monitor	CN47290J2N		
24-004			1	HP Z24n Monitor	CN47290J2M		
24-005	17232		1	Samsung S24D590PL	02K4HCKG101021T		
24-006	17266		1	Microsoft Surface	13605672053		
24-007	16869		1	Apple iPad	DLXP4035GSVW		
24-008			1	Apple iPad	DMPHM41BDNQV		
24-009	17168		1	HP V221 MONITOR	6CM42923WG		
24-010	17169		1	HP V221 MONITOR	6CM42923VQ		
24-011			1	AXIS CAMERA	ACCC8E90B761		
24-012	17222		1	HP ELITEDESK 800 G1 SFF	MXL4151Q96		
24-013	16350		1	HP COMPAQ 6000 PRO SFF	MXL02803QN		
24-014	17327		1	HP COMPAQ 6000 PRO SFF	2UA2280LFF		
24-015	16997		1	HP PRODESK 600 G1 SFF	MXL51613X0		
24-016			1	MITEL 5340 IP	AVADC7923		
24-017			1	MITEL 5340 IP	AVADC4548		
24-018			1	MITEL 5340 IP	AVADC6745		
24-019			1	MITEL 5340 IP	AVADC6263		
24-020			1	MITEL 5340 IP	AVADC7929		
24-021			1	MITEL 5340 IP	AVAEP9593		
24-022			1	TOPAZ T-LBK57GCBHSBR	R14A5140		
24-023				TOPAZ T-LBK57GCBHSBR	R14A5135		
24-024				TOPAZ T-LBK57GCBHSBR	R14A5138		
24-025	16366		1	HP COLOR LJ CP6015dn	JPRCC580SP		
24-026			1	Misc. furniture			
24-027			1	Misc. furniture			
24-028			1	Misc. furniture			
24-029			1	Misc. cabinet			

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT Information Technology MONTH February 2024 PAGE 2 of 2

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE AUCTIONED	SERIAL #	CR #	PRICE SOLD FOR
24-030			1	Misc. bookshelf			
24-031			1	Misc. desk			
24-032			1	Misc. table			
24-033			1	Misc. bookshelf			
24-034			1	Misc. bookshelf			
24-035			1	Misc. cabinet			
24-036			1	Misc. chair			
24-037			1	Misc. chair			
24-038				Misc. chair			
24-039				Misc. chair			
24-040				Misc. chair			
24-041	11578			Cabinet			
24-042				Large chair			
24-043				Large chair			
24-044				chair			
24-045				chair			
24-046				chair			
24-047				chair			
24-048	15293			chair			
24-049	15289			chair			
24-050	15299			chair			
24-051	15281			chair			
24-052	24052			cabinet			
24-053				Basketball Scoreboard Set			
24-054				Basketball Scoreboard Set			

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT Public Works MONTH Feb 2024 PAGE 1 of 1

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF SURPLUS ITEM	SERIAL #	CR #	PRICE SOLD FOR
	204PW	\$1,000	1	2003 Honda CRV	JHLRD68493C 005340		
	223PW	\$1,000	1	2000 Chevrolet S-10 Blazer	1GNCS13W9Y 2374787		
	411 PW	\$1,000	1	1979 Smith Air compressor	100P3361		
	404 PW	\$1,000	1	1985 Asplundh wood chipper	EA400562		

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT Community Development MONTH April 2024 PAGE 1 of 1

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF SURPLUS ITEM	SERIAL #	CR #	PRICE SOLD FOR
		\$2,000	1	2006 Ford Crown Victoria / Lic. 1191148	2FAFP74V16X 157279		
		\$2,000	1	2003 Ford Crown Victoria / Lic. 1604035	2FAHP74W73 X162239		

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT Human Services MONTH February PAGE 1 of 2

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF SURPLUS ITEM	SERIAL #	CR #	PRICE SOLD FOR
1	11890		1	Narrow 4 drawer filling cabinet (Racquetball)			
2			1	wide 2 drawer			
3	14713		1	Wide 4 drawer			
4			1	Tall wide 6 drawer			
6			1	Small Basketball Hoop			
7			1	Wall Projector Screen			
8			1	Portable Projector Screen			
9			1	Kids Bike			
10			1	Checkers Table			
11			1	Rectangle folding table			
12			1	Square Folding Table			
13			1	Lamp			
14			1	Rolling Medical Table			
15			1	Kids Bed			
16			1	Black Office Chair			
17			1	Red Office Chair			
18			1	Black Office Chair			
19			1	Black Office Chair			
20			1	Black Office Chair			
21			1	Patterned Lounge Chair			
22			1	Brown Lounge Chair			
23			1	Cream Lounge Chair			
24			1	Green Floral Lounge Chair			
25			1	Green Floral Lounge Chair			
34			1	Brown Fold Chair			
35			1	Brown Fold Chair			
36			1	Brown Fold Chair			
37			1	Brown Fold Chair			
38			1	Brown Fold Chair			

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT Human Services MONTH February PAGE 2 of 2

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF SURPLUS ITEM	SERIAL #	CR #	PRICE SOLD FOR
39			1	Brown Fold Chair			
40			1	Brown Fold Chair			
43			1	Large Wooden Desk (lounge)			
44			1	Narrow 5 Cabinet			
46			1	Wooden bookshelf			
47			1	Portable Stage			
48			1	Black 4 cabinet			
50			1	Blue Lounge Chair			
51			1	115p Guitar Amp			
52			1	Blue Lounge Chair			
53			1	White Lounge Chair			
54			1	Brown Table Square			
55			1	Brown Table Square			
56			1	Brown Rectangle Table			
57			1	Brown Rectangle Table			
59			1	Wooden Desk			
63			1	Coat Hanger			
64			1	TV Stand in Rec			
65	10993		1	2 Drawer wood filing cabinet			
66			1	Blue Table			
67	11262		1	Wooden Table/Stand			
68			1	Black Filing Cabinet (CC office)			
69			1	10 Ft wood table (CC)			
70			1	Black Filing 2 drawer Cabinet (Pottery Room)			
71			1	Wood book shelf (Pottery Room)			
72			1	Striped couch-3 seater (CC)			
73			1	White with grey letters single chair sofa			
74			1	White with grey letters single chair sofa			
75			1	White with grey letters single chair sofa			

CITY OF MONTCLAIR PROPERTY AUCTION LOG

DEPARTMENT Administration MONTH February PAGE 1 of 1

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF SURPLUS ITEM	SERIAL #	CR #	PRICE SOLD FOR
			1	bookshelf			
			1	green chair			
			1	purple chair			
			3	desks			
			2	faux plants			



CITY COUNCIL AGENDA REPORT

DATE: MAY 6, 2024 **FILE I.D.:** PUB355
SECTION: CONSENT - AGREEMENTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 1 **PREPARER:** M. PARADIS

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 24-28 WITH ANDERSON AIR CONDITIONING, L.P., TO REPLACE TWO 25-TON HVAC CONDENSING UNITS AT FIRE STATION NO. 151, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 24-28 with Anderson Air Conditioning, L.P., to replace two 25-ton HVAC condensing units at Fire Station No. 151.

BACKGROUND: The two 25-ton HVAC condensing units at Fire Station No. 151 were originally installed in 2002. Both units have been diagnosed and serviced by qualified HVAC vendors. In recent summers, both units repeatedly tripped the main 50-amp breakers due to their aging condition, causing the air conditioning unit to stop working at the Fire Station almost daily. To ensure the problem wasn't with the electrical system, an electrical contractor was hired to inspect the connections between the main switch gear and the HVAC disconnects and found them to be in good working order.

The HVAC system consists of a condensing unit and an air handling unit. After communicating with the manufacturer, staff learned there was an option to swap out the air condensing unit feeding into the air handler section instead of replacing the entire HVAC system. The coils within the air handler unit were originally designed for R-22 pressures; however, the R-22 refrigerant is no longer produced. The manufacturer confirmed that an R-410A refrigerant can be safely used as an alternative, even though it operates at higher pressures. This will allow the City to replace the condensing units without having to replace the air handling units as well.

On January 22, 2024, the United States Department of Energy approved the City's Energy Efficiency and Conservation Block Grant (EECBG) Voucher application to purchase an air conditioning unit for Fire Station No. 151. On February 5, 2024, the City Council approved Agreement No. 24-16 with the U.S. Department of Energy to accept the EECBG Equipment Rebate Voucher Award.

Staff obtained three estimates from vendors to replace two 25-ton condensing units:

Vendor	Amount
Anderson Air Conditioning, L.P.	\$99,480
Air-Ex Air Conditioning, Inc.	\$115,075
Los Angeles Air Conditioning, Inc.	\$400,000

After reviewing the estimates, staff selected Anderson Air Conditioning, L.P. as the vendor of choice.

FISCAL IMPACT: Funds for replacement of the condensing units at Fire Station No. 151 were included in the Fiscal Year 2023-24 budget.

The Energy Efficiency and Conservation Block Grant Program in the amount of \$76,320 will cover most of the cost. The remainder \$23,160 cost will be paid using 2021 Lease Revenue Bond Funds.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 24-28 with Anderson Air Conditioning, L.P., to replace two 25-ton HVAC condensing units at Fire Station No. 151, subject to any revisions deemed necessary by the City Attorney.

KNOW ALL MEN BY THESE PRESENTS: That the following Agreement is made and entered into as of the date executed by the City Clerk and the Mayor, by and between Anderson Air Conditioning, L.P., hereinafter referred to as "CONTRACTOR" and the CITY OF MONTCLAIR, hereinafter referred to as "CITY."

A. Recitals.

- (i) CITY accepts the CONTRACTOR's proposal.
- (ii) CITY authorizes the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of:

REPLACEMENT OF TWO 25-TON HVAC CONDENSING UNITS

"PROJECT" hereinafter.

B. Resolution.

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

1. GENERAL SCOPE OF WORK: CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for and do all work contemplated and embraced for the PROJECT. Said PROJECT to be performed in accordance with the CONTRACTOR'S proposal dated April 16, 2024, a copy of which is attached hereto as Exhibit "A". This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. In the event there is any conflict or inconsistency between the Contractor's proposal and this written Agreement, the provisions of this written Agreement shall control.
2. TERMS OF CONTRACT: The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of PROJECT within 365 days of executing the contract.
3. GOVERNING LAW: The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Montclair.
4. INSURANCE: The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been obtained. The CONTRACTOR shall take out and maintain at all times during the life of this contract the following policies of insurance:

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

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

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

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

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

- c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:

- (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;
- (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.

- d. Each such policy of insurance provided for in paragraph b. shall:
- (1) Be issued by an insurance company approved in writing by CITY, which is qualified to do business in the State of California;
 - (2) Name as additional insureds the CITY, its officers, agents and employees;
 - (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
 - (4) Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."
 - (5) Otherwise be in form satisfactory to CITY.
- e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraphs a. and b., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.

5. CONTRACTOR'S LIABILITY: The City of Montclair and its respective officers, agents and employees shall not be answerable or accountable in any manner for any loss or damage that may happen to the project or any part thereof, or for any of the materials or other things used or employed in performing the project; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors or the public, whatsoever arising out of or in connection with the performance of the project. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the project or at any time before its completion and final acceptance. The CONTRACTOR will indemnify CITY against and will hold and save CITY harmless from any and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of the CONTRACTOR, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY, and in connection therewith:

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

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

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

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

8. CONTRACT PRICE AND PAYMENT: CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **April 16, 2024**.

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

[Signatures on Following Page]

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

CONTRACTOR

CITY

ANDERSON AIR CONDITIONING, L.P.
2100 Walnut Avenue
Fullerton, CA 92831

CITY OF MONTCLAIR, CALIFORNIA
5111 Benito Street
Montclair, CA 91763

By: _____

Mitch Haynam, General Manager
Name, Title

By: _____
Javier John Dutrey
Mayor

ATTEST:

By: _____

Name, Title

By: _____
Andrea M. Myrick
City Clerk

APPROVED AS TO FORM:

By: _____
Diane E. Robbins
City Attorney



ANDERSON AIR CONDITIONING, L.P.

2100 E. Walnut Avenue, Fullerton, CA 92831 – OFFICE: (714) 888-6800 FAX: (714) 888-2697

www.aac-ams.com

CA License No. 1075333 – B, C-10, C-20, C-38 – DIR# 1000765095

April 16, 2024

Attention: Mathew Paradis

5111 Benito St.
Montclair, CA 91763

Project Location:

8901 Monte Vista Ave.
Montclair, CA 91763

RE: **City of Montclair (Fire Station #151 CU's)**

AMS/Anderson Air Conditioning, L.P. is pleased to submit our proposal to furnish the following scope of work at the above referenced location AS PER JOB WALK.
CL# 1075333- Ex:4-30-25, DIR# 1000765095- Ex:6-30-25.

SCOPE OF WORK:

1. Recover R-22 refrigerant, demo and dispose of (2) existing Carrier condensing units following EPA guidelines.
2. Flush existing DX lines out with flush kit and nitrogen to prepare for new R-410A system.
3. Furnish and install (2) new 25-ton Carrier condensing units to match existing with R-410A in lieu of R-22 refrigerant. **(21-week lead time) currently.**
4. Demo existing, furnish and install (2) new liquid line dryers and (2) TXV's.
5. Furnish and install (2) new fused disconnects with fuses.
6. Furnish and install (2) new galvanized cap sheets.
7. Rework existing piping, conduit, and wire as needed for a proper and complete install.
8. Start-up and test new equipment for proper operation.
9. Clean up all trash and debris from the above scope.
10. Crane/rigging included.
11. All labor quoted during normal business hours (M-F) at **Prevailing Wage** rates. No overtime or weekend work is included at this time.

EXCLUSIONS:

- Structural modifications, pads, framing or calculations.
- Any and all engineering and/or calculations.
- Cutting and leveling of roof for curbs.
- Fire smoke dampers.
- Duct cleaning, TAB, or air leakage testing.
- Shop drawings.



ANDERSON AIR CONDITIONING, L.P.

2100 E. Walnut Avenue, Fullerton, CA 92831 – OFFICE: (714) 888-6800 FAX: (714) 888-2697

www.aac-ams.com

CA License No. 1075333 – B, C-10, C-20, C-38 – DIR# 1000765095

- Concrete coring or cutting.
- Drywall patching or painting.
- Roofing and patching.
- Door louvers.
- Condensate or gas piping.
- Any fire/life/safety systems.
- Any equipment or scope of work not listed in this proposal is excluded.
- City permits, or any other item not specifically mentioned above.

Our price for the above: \$99,480.00 (tax included) good for 30 days.

NOTES:

- Please add 1% to the sale price for payment and performance bonds if required.
- Lead times may vary.
- **If ductwork, piping or equipment installation details are not provided then AMS will default to SMACNA standards and any other installation methods, engineering and or calculations required will be an additional charge.**

Submitted By,

Scott Hecker
Sales/Estimator



ANDERSON AIR CONDITIONING L.P.

2100 E. Walnut Ave. Fullerton, CA 92831

m: (714) 882-0519

e: shecker@amsfusa.com

www.aac-ams.com



CITY COUNCIL AGENDA REPORT

DATE: MAY 6, 2024

FILE I.D.: HSV030

SECTION: CONSENT - AGREEMENTS

DEPT.: HUMAN SVCS.

ITEM NO.: 2

PREPARER: A. COLUNGA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 24-29 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO SUPPORT THE MONTCLAIR AFTER-SCHOOL PROGRAM AT VARIOUS SITES FOR THE 2024-2025 SCHOOL YEAR

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 24-29 with Ontario-Montclair School District (OMSD) to support the Montclair After-school Program at various sites for the 2024-2025 school year.

BACKGROUND: The Human Services Department has delivered after-school programs within OMSD schools since 1999. Funding for this program originates from the California Department of Education, through grants made available to local education authorities, such as OMSD. The purpose of the funding is to provide communities with enhanced community-based after-school services in an effort to strengthen healthy child development.

In Spring 2024, OMSD opened a competitive bidding process for their after-school programs. The competitive bidding included “Gap” time and the regular after-school program. “Gap” is the time between the end of the school day for Transitional-Kindergarten and Kindergarten students and the after school program start time. OMSD provided bidders with an estimated number of student attendance for each of the programs as seen in the table below. The City was awarded contracts to provide 2024-2025 school year programming at the school sites listed in the table below.

School	Est. Gap Enrollment Grades TK/K	Est. Afterschool Enrollment Grades TK/K	Est. Afterschool Enrollment Grades 1-8	Per Student Daily Rate			Total Est. Costs
				Gap	Afterschool Grades TK/K	Afterschool Grades 1-8	
Buena Vista ES	36	18	91	\$15	\$15	\$13.50	\$ 366,930
Elderberry ES	43	21	143	\$15	\$15	\$13.50	\$ 520,290
Kingsley ES	48	24	127	\$15	\$15	\$13.50	\$ 503,010
Lehigh ES	42	21	113	\$15	\$15	\$13.50	\$ 444,690
Monte Vista ES	38	19	151	\$15	\$15	\$13.50	\$ 520,830
Ramona ES	57	28	150	\$15	\$15	\$13.50	\$ 594,000
Vernon MS	0	0	185	\$15	\$15	\$13.50	\$ 449,550
Total Estimated Funding							\$3,399,300

Beginning the 2024-2025 school year, the City of Montclair will no longer provide After-school Programs at Serrano Middle School and El Camino, Montera and Moreno Elementary schools.

FISCAL IMPACT: Should the City Council approve proposed Agreement No. 24-29, OMSD would provide funding at \$15.00 per Transitional-Kindergarten/Kindergarten student per day and \$13.50 per first- to eighth-grade student per day to fund personnel, training, supplies, and grant oversight. The term of proposed Agreement No. 24-29 is July 1, 2024, through June 30, 2025.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 24-29 with the Ontario-Montclair School District to support the Montclair After-school Program at various sites for the 2024-2025 school year.



AFTER-SCHOOL PROVIDER SERVICES AGREEMENT

ONTARIO-MONTCLAIR SCHOOL DISTRICT

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

THIS AGREEMENT is made and entered into this **1st day of July, 2024** by and between the Ontario-Montclair School DISTRICT, hereinafter referred to as the "DISTRICT," and **CITY OF MONTCLAIR**, hereinafter referred to as the "PROVIDER" to provide After School program services to DISTRICT pupils. The parties hereby agree to the following terms:

1. SERVICES TO BE PERFORMED BY PROVIDER

PROVIDER agrees to operate the After School Programs every day during the regular school calendar year, in accordance with the policies and procedures by the DISTRICT, including the coordination of the academic assistance, homework support, and physical education and enrichment portions of the After School Program at the school site(s) below ("Site")

- o School(s):
 - Buena Vista Elementary School
 - Elderberry Elementary School
 - Kingsley Elementary School
 - Lehigh Elementary School
 - Monte Vista Elementary School
 - Ramona Elementary School
 - Vernon Middle School

2. TERM OF AGREEMENT

The term of this Agreement is from July 1, 2024 through June 30, 2025, unless sooner terminated pursuant to the provisions of Section 9 of this Agreement. DISTRICT and PROVIDER may mutually agree in writing to extend the term of this Agreement provided, however, DISTRICT shall not be obligated to pay PROVIDER any additional consideration unless PROVIDER undertakes additional services, in which instance the consideration shall be increased as DISTRICT and PROVIDER shall agree in writing.

3. PROVIDER RESPONSIBILITIES

PROVIDER agrees to the following in support of the After School Program:

- PROVIDER will work collaboratively with DISTRICT and awarded Sites to design and operate the ASES Program. The ASES Program shall include the academic components to promote participating students' achievement and a range of services and programs to support the mental, physical, social and emotional development of participating students.

- PROVIDER shall designate a PROVIDER employee at each of the various schools to serve as liaison between the PROVIDER, the school Site, and the DISTRICT. For the purposes of this agreement, the individual liaison shall be deemed the "Site Coordinator".
 - Site Coordinator shall maintain ongoing communication between PROVIDER staff and School Site staff regarding student needs and progress, including, but not limited to, attendance at school-day meetings and/or one-on-one meetings with teachers.
- PROVIDER will maintain a waiting list of students to ensure that vacancies are filled as soon as they occur. Site Supervisors will ensure priority enrollment to Foster Youth and McKinney Vento (Homeless) students in agreement with Grant requirements.
- PROVIDER will cooperate in the recruiting and retaining of students to achieve the number of budgeted students to be served.
- PROVIDER, working with DISTRICT, shall ensure staffing sufficient to operate program and perform the requirements in accordance with the DISTRICT staffing ratios and the terms and conditions of the ASES Program grant, relevant Education Code provisions, as applicable at each school throughout the 2024-2025 school year, including on days designated as "minimum" or "modified" days.
- Staffing ratios must minimally meet the 1:20 ratio for the ASES Program/Site's targeted Average Daily Attendance (ADA).
- If the program does not meet 95% of the ADA target for any month, beginning October 1, 2024, a meeting will be scheduled between the PROVIDER, the Site, and the DISTRICT to discuss strategic plans to improve attendance and identify opportunities for the program to improve services.
- PROVIDER shall submit to the DISTRICT a roster of PROVIDER's staff at each Site to include contact information (work telephone, cellular phone, e-mail address). The initial roster is due to the DISTRICT prior to the start of the new school year and every first of the month thereafter.
- PROVIDER shall provide each program staff with a PROVIDER name photo identification badge and lanyard.
- PROVIDER shall provide all necessary training and supervision of staff to meet all contractual obligations.
- PROVIDER shall provide training to all agency staff in areas including but not limited to health and safety protocols from California Department of Education, California Department of Public Health, and the DISTRICT.
- PROVIDER shall comply with the DISTRICT's safety procedures, including but not limited to:
 - PROVIDER shall develop and train PROVIDER's staff and volunteers in emergency and disaster procedures aligned with the Site emergency disaster plan shall be provided by DISTRICT to PROVIDER upon execution of this MOU, including an evacuation and reunification plan for use during program hours.
 - PROVIDER shall ensure that the disaster preparedness kit provided by the DISTRICT is maintained and stored in a locked cabinet.
 - PROVIDER shall train staff and conduct the following emergency procedure drills per semester at each schools during program hours: fire, disaster, and lock down.

- PROVIDER shall complete the emergency preparedness drill log. PROVIDER shall report any injury or incident (i.e. an injury involving medical attention or involving police or social services, student leaving area for students under the direct supervision, student behaving inappropriately while participating in virtual activities) to the parent/guardian, school administrator, the Site's Teacher on Assignment/Expanded Learning Opportunity Program Coordinator ("Site ELOP Coordinator"), the DISTRICT's ELOP Coordinator, and the PROVIDER administrative office within 24 hours of the incident, utilizing the DISTRICT's incident report form or the injury report form.
 - In addition to the injury report form, all head injuries must be reported to the parent/guardian on the DISTRICT's head injury report form.
 - Any severe incident/injury must be reported to the parent/guardian, school administrator, Site ELOP Coordinator, DISTRICT ELOP Coordinator, if available, and DISTRICT immediately.
 - PROVIDER shall report all minor accidents or injuries on the DISTRICT designated form with one copy provided to the parent/guardian and one copy placed in the student's file on campus.
- All PROVIDER staff shall be trained in positive behavior management, instructional, academic and enrichment activities aligned with the DISTRICT standards. PROVIDER shall submit current training plan to the contract prior to the start of the new school year.
- PROVIDER shall ensure program staff conforms to appropriate professional conduct, which includes but is not limited to positive interaction with students, parent/guardians and school staff, use of personal cell phone and dress code.
- PROVIDER certifies that all PROVIDER employees who work directly with pupils at the Site will have a TB test and live scan investigation, which consists of FBI and DOJ clearances, and at a minimum, meet the qualifications for an Instructional Aide (Ed Code 8483.4) prior to employment. PROVIDER shall provide verification to DISTRICT of such qualifications prior to assigning the employees to a Site.
- PROVIDER assumes financial responsibility for PROVIDER staff taking or being placed on leave (i.e. sick leave, workers compensation, vacation, administrative leave).
- The PROVIDER certifies its employees who work directly with pupils at the Site will be trained in First Aid and CPR, Child Abuse/Mandated Reporting, Classroom Management, Curriculum, etc. prior to placement at the Site.
- The PROVIDER shall ensure that all staff members who work directly with the pupils at the Site will be trained on and comply with child abuse and missing children reporting obligations and procedures under California law, including but not limited to, California Education Code Section 49370 and California Penal Code section 111666, et seq. prior to placement at the Site. PROVIDER shall adopt a written child abuse reporting procedure and provide annual training to all its employees regarding mandated reporting of child abuse and missing children. The PROVIDER shall provide verification to the DISTRICT that all employees have received annual training. The PROVIDER warrants that all staff members will timely abide by such laws.
- The PROVIDER employees will work collaboratively with the Site in order to maximize program resources. This collaboration includes attending and

supporting special events, program development, professional development and meetings.

- PROVIDER to provide training and professional development to employees assigned to the Site and DISTRICT program staff, as stated in the professional development plan, afterhours or on weekends.
- The PROVIDER acknowledges the DISTRICT's right to institute a program audit with or without cause and agrees to provide best efforts in assisting in the DISTRICT's completion of program audits.
- The PROVIDER acknowledges the DISTRICT's right to examine and audit all of PROVIDER books, records, documents, accounting procedures and practices and other evidence that reflect all costs claimed to have been incurred or fees claimed to have been earned under this Agreement.
- PROVIDER will make available to DISTRICT all budgetary information including operating budgets submitted for the relevant contract period being audited. PROVIDER will make such evidence and documents available at the DISTRICT office at all reasonable times and without charge within 5 days of a written request from DISTRICT. PROVIDER will, at no cost to DISTRICT, provide assistance for such examination or audit.
- PROVIDER agrees to meet with each participating Site to determine their budget (based on NOT TO EXCEED amount in Exhibit A, modified by Site program staffing and costs), and will prepare and submit to the DISTRICT a detailed budget no later than August 10, 2024.
- PROVIDER will submit a completed Professional Development Plan for all staff including DISTRICT staff no later than August 10, 2024.
- PROVIDER shall exercise care when utilizing DISTRICT facilities or equipment. Any DISTRICT classroom or school equipment, which is established to have been damaged by the negligence or misconduct of PROVIDER's staff, will be replaced or repaired at the expense of the PROVIDER. PROVIDER agrees to provide replacement for missing or damaged classroom materials and school equipment attributable to the negligence or misconduct of PROVIDER's employees in classrooms and other areas utilized by PROVIDER. PROVIDER shall ensure facility space used by the program shall be clean and organized by program staff at each location.
- PROVIDER shall assist the Site Coordinator on the content and calendar for a monthly parent newsletter and calendar of activities and events for each assigned school and submit a copy to the DISTRICT no later than the first day of each month.
- PROVIDER shall conduct a minimum of two (2) family events annually at each school, which may be conducted during program hours. Such events may include student performances, or other celebratory themes. The goal of such events should be to build communication with parents/guardians and create stronger family involvement within the program. PROVIDER's program staff shall work collaboratively with school staff to coordinate the events. PROVIDER shall submit a copy of the flyer detailing the event, prior to the event for distribution by Site staff.
- PROVIDER shall not permit staff to be on School campuses prior to the start time of the Program unless otherwise agreed upon between Site Principal and Site Supervisor.

- All Program services shall be completed by 6:00 p.m. and/or until the last student is picked up by the student's designated parent and/or legal guardian.
 - Pupil discipline is the PROVIDER'S responsibility. PROVIDER will give written notice to the relevant School Principal of any pupil dismissed from the Program, and any incident involving physical injury to a pupil. PROVIDER shall not direct or discipline any pupil during compulsory school hours, except in exigent circumstances.
 - Work with the DISTRICT to implement a comprehensive annual program Evaluation Plan. As required, attend and participate in evaluation subcommittee meetings. Evaluation Plan shall include, but not be limited to, attendance tracking, collection of teacher, parent and participating student surveys, and data entry of survey results. Evaluations will be completed by PROVIDER in accordance with CDE guidelines and due dates.
 - Regularly attend and participate in governance and operations meetings.
 - Provide monthly attendance reports and quarterly expenditure reports to the DISTRICT by the 15th of the month for the previous month; including all required documents and reports required by DISTRICT Food Services Department.
- a) **Emergency Procedures.** Program staff will hold quarterly Site emergency drills based on the complete Site emergency plan and related staff training at each of the Schools.

In the event an emergency occurs after any School office is closed, or during a period when the PROVIDER is hosting a special event, Site Supervisor will employ agreed-upon emergency and/or evacuation procedures. Site Supervisors must have student identification information, including emergency contact information, to be able to notify parents, police, medical support, and anyone else who might need to be contacted.

- b) **Staffing.** PROVIDER shall, at PROVIDER's own expense, employ such agents/assistants as PROVIDER deems necessary to perform the services required of PROVIDER by this Agreement. DISTRICT will not train, control, direct, or supervise PROVIDER's assistants or employees in the performance of those services.

Each School's Principal reserves the right to review the performance of the Program staff and make recommendations for changes as he/she sees fit to the PROVIDER, who will communicate on a monthly basis with certain individuals, to include and not limited to: the Schools' Principals, City personnel and DISTRICT coordinator. All Program staff who directly supervises students must meet the minimum requirements for an instructional aide pursuant to the policies of the DISTRICT. Program staff must also meet the No Child Left Behind (NCLB) requirements of a highly qualified paraprofessional.

PROVIDER will recruit and train volunteers to lower the student/adult ratios, based on PROVIDER guidelines in the Program.

- c) **Independent Contractor.** PROVIDER is, and shall at all times be deemed to be, an independent contractor and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the

terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between DISTRICT and PROVIDER or any of PROVIDER's agents or employees. PROVIDER assumes exclusive responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. PROVIDER, its agents and employees, shall not be entitled to any rights and/or privileges of DISTRICT's employees and shall not be considered in any manner to be DISTRICT's employees.

- d) **Public Entity Employee.** If PROVIDER is a regular employee of a public entity, all services which PROVIDER renders under this Agreement will be performed at times other than PROVIDER's regular assigned work day for said entity or during periods of vacation or leave of absence from said entity, using PROVIDER's own resources.

4. **DISTRICT RESPONSIBILITIES**

DISTRICT agrees to the following in support of the After School Program:

- Provide access to on-site indoor and outdoor facilities for the Site ASSETS/ASES Program appropriate to the number of participants and activity.
- Promote and foster a positive environment for the development of a successful site Program.
- Coordinate collaborative meetings with PROVIDER staff to discuss programs goals and effectiveness.
- Provide a site after-school teacher/DISTRICT liaison for a portion of the Program hours.
- DISTRICT agrees to comply with all reasonable requests by PROVIDER and to provide access to all documents reasonably necessary for the performance of PROVIDER's duties under this Agreement.
- DISTRICT and/or site(s) will provide PROVIDER with student identification information including student ID numbers, to be able to notify parents, police, medical support, and anyone else who might need to be contacted.
- DISTRICT and/or site(s) reserve the right to make recommendations for appropriate placements for students and will work with Site Supervisors to coordinate services with other established programs, such as after-school academic interventions and other public agency programs/projects, and provide aligned services that meet the needs of the students and Grant requirements.
- Principals or their designees shall cooperate in the recruiting and retaining of students to achieve the number of budgeted students to be served.
- DISTRICT and/or site(s) and PROVIDER will agree which facilities will be used for the Program. Facilities will include the MPR/cafeteria, classroom(s), computer lab, and other facilities the DISTRICT/site(s) and PROVIDER may agree are necessary. Facilities may include the library and gym.
- DISTRICT and/or site(s) reserves the right to review the performance of the Program staff and make recommendations for changes as he/she sees fit and PROVIDER will communicate on a monthly basis with certain individuals, to include and not limited to: the Schools' Principals, City personnel and DISTRICT coordinator.

- DISTRICT agrees to comply with all reasonable requests by PROVIDER and to provide access to all documents reasonably necessary for the performance of PROVIDER'S duties under this Agreement. PROVIDER will abide by applicable federal and state laws, rules and regulations concerning the rights of privacy and/or confidentiality of any information provided by DISTRICT, including both student and personnel records.
- The DISTRICT understands the difficulty staffing for this Program and may provide support to PROVIDER in addressing the necessary steps to meet the staffing expectations. The DISTRICT is not, however, taking on the responsibility of the PROVIDER to staff all Sites at appropriate staffing levels.

5. COMPENSATION

- a) Compensation for Services. Except as otherwise provided in this Agreement, DISTRICT agrees to compensate PROVIDER for services rendered under this Agreement as detailed in Exhibit 'X'.
- b) Travel Expenses. DISTRICT will pay no additional amount for travel or other expenses of PROVIDER under this Agreement unless specified below under section 2(c). Should travel or other expenses be specified below, PROVIDER shall be entitled to the lesser amount of

1. The not to exceed amount stated, or
2. The actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to this Agreement.

c) Summary of Compensation

Total estimated contract amount: \$3,400,000 based on daily rate of \$13.50 per 1-8 grade and \$15.00 per TK/K, and TK/K Gap student rate breakdown included in 'Attachment A'.

- d) Retired STRS or PERS. If this Agreement is with an individual PROVIDER, PROVIDER shall notify the DISTRICT whether or not PROVIDER is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS). DISTRICT undertakes no responsibility to award contracts or hours in a way which protects PROVIDER's retirement benefits.
- e) Income Tax. DISTRICT will not withhold any federal or state income tax for payment made pursuant to this Agreement but, if applicable, will provide PROVIDER with a statement of earnings at the end of each calendar year. PROVIDER is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.
- f) Documentation Required For Payment. Unless specified below, payment for services and travel shall be made by DISTRICT to PROVIDER after services/travel has been completed and PROVIDER submits documentation for payment (e.g. PROVIDER invoice).

6. GENERAL OBLIGATIONS OF PROVIDER

a) **Services Performed.** During the term of this Agreement, PROVIDER agrees to diligently prosecute the work specified in the "Services to be Performed by PROVIDER" to completion. PROVIDER may represent, perform services for, and be employed by such additional clients, persons, or companies as PROVIDER, in PROVIDER's sole discretion, sees fit.

b) **Use of DISTRICT Space and Resources.**

DISTRICT and/or site(s) and PROVIDER will confer on which facilities will be used for the Program. Facilities may include the MPR/cafeteria, classroom(s), computer lab, and other facilities the DISTRICT/site(s) and PROVIDER may agree are necessary. Facilities may include the library and gym. PROVIDER staff shall ensure that the facilities and work areas used for the Program are left clean and tidy at the end of each day the Program is operated.

c) **Regulatory Compliance.** PROVIDER shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.

d) **Fingerprinting.** PROVIDER shall comply with the requirements of Education Code section 45125.1 and Business and Professions Code section 18975 with respect to fingerprinting of employees and regular volunteers who may have any interaction with the DISTRICT's pupils (whether such interaction is in person or electronic, and whether the interaction is through writing, voice or video). If at any time during the term of this Agreement PROVIDER is either notified by the Department of Justice or otherwise becomes aware that any employee of PROVIDER, including PROVIDER, performing services under this Agreement has been arrested or convicted of a violent or serious felony as defined in California Education Code Section 45122.1, PROVIDER agrees immediately to notify the DISTRICT and remove said employee from performing services on this Agreement. PROVIDER shall certify in writing to the DISTRICT that neither the PROVIDER nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Education Code section 45122.1 (Exhibit X).

e) **Indemnification.** PROVIDER shall indemnify, pay for the defense of, and hold harmless DISTRICT and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of PROVIDER's acts and/or omissions in rendering any services hereunder, including but not limited to the negligent or willful acts and/or omissions of PROVIDER's employees and agents. PROVIDER shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning

PROVIDER or any employee/agent of PROVIDER and shall further indemnify, pay for the defense of, and hold harmless DISTRICT of and from any such payment or liability arising out of or in any manner connected with PROVIDER's performance under this Agreement.

f) **Insurance Requirements.** During the entire term of this Agreement, PROVIDER shall procure, pay for and keep in full force and effect the following types of insurance:

1. **General Liability Insurance.**

2. Commercial general liability insurance, covering bodily injury liability, property damage liability and personal injury liability of PROVIDER with respect to the services provided by, or on behalf of, PROVIDER under this Agreement. The policy limits shall not be less than Two Million dollars (\$2,000,000) per occurrence with a general aggregate limit of not less than Four Million dollars (\$4,000,000).

a. The DISTRICT requires the Certificate of Liability Insurance to show the DISTRICT as the "Certificate Holder" and "Additional Insured" on the PROVIDER'S general liability insurance policy. Requested wording in the "Description box" is as follows:

The Ontario-Montclair School DISTRICT, its departments, officers, agents, and employees are additional insureds with regard to liability and defense of suits arising from the operations and uses performed by or on behalf of the named "Insured."

3. **Auto Liability Insurance.**

PROVIDER agrees that services in conjunction with this agreement will be conducted in PROVIDER's office or at a DISTRICT school Site and PROVIDER will not drive Student in private or commercial vehicle to conduct assessments or conduct other business in conjunction with this agreement. Accordingly, commercial automobile insurance will not be required in conjunction with this agreement. Should PROVIDER need to provide services in conjunction with this agreement that do require Student transportation in a private or commercial vehicle, the DISTRICT and PROVIDER will mutually agree on services to be provided, and PROVIDER will provide insurance as follows: Business auto liability insurance covering the use of "owned, non-owned and hired" autos by or on behalf of PROVIDER respect to the services to be performed under this Agreement. The policy limits shall not be less than One Million dollars (\$1,000,000) per occurrence. The Auto Liability Insurance policy shall include waiver of subrogation via separate endorsement.

4. **Workers' Compensation Insurance.** This coverage is required unless PROVIDER provides written verification it has no employees. Coverage must be at least as broad as that which is required by the State of California, with Statutory Limits. PROVIDER must also maintain Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Workers'

compensation policy shall include waiver of subrogation via separate endorsement.

5. **Sexual Molestation and/or Abuse.** The general liability policy above may not contain an exclusion for coverage of claims arising from claims for sexual molestation or abuse. In the event that PROVIDER's policy should have an exclusion for sexual molestation or abuse claims, then PROVIDER shall be required to procure a supplemental policy providing such coverage of not less than \$2,000,000 per occurrence with an aggregate of not less than \$4,000,000 for damages because of bodily injury by reason of negligent hiring and supervision.

6. **Cyber Security Liability.** Coverage for both electronic and non-electronic data breach of \$1,000,000 per occurrence with an aggregate limit of not less than \$2,000,000 and shall cover all of Company's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Company or District's computers or servers to affect, alter, copy, corrupt, delete, disrupt or destroy a computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer of computer virus, Trojan horse, worms or any other type of malicious or damaging code; and for Third-Party Liability encompassing judgments or settlement and defense costs arising out of litigation due to a data breach and data breach response costs for customer notification and credit monitoring service fees.

The policies of insurance described above shall be carried with responsible and solvent insurance companies authorized to do business in the State of California. True and correct copies of all certificates of insurance reflecting the coverage required in Paragraph (4g.1-3) shall be provided to DISTRICT prior to the commencement of services under this Agreement. PROVIDER agrees that it shall not cancel or change the coverage provided by the policies of insurance described in Paragraph (4g.1-3) above without first giving the DISTRICT's Chief Business Official, thirty (30) days prior written notice. Should any such policy of insurance be canceled or changed, PROVIDER agrees to immediately provide DISTRICT true and correct copies of all new or revised certificates of insurance.

The PROVIDER shall not commence performing any portion of the services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to DISTRICT. Certificates and insurance policies shall include the following:

- A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to DISTRICT, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

- Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- An endorsement stating that DISTRICT and its agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that PROVIDER's insurance policies shall be primary to any insurance or self-insurance maintained by DISTRICT.
- If the PROVIDER or PROVIDER's subcontractor(s) maintains broader coverage and/or higher limits than the minimums shown above, DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by the PROVIDER. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to DISTRICT.
- PROVIDER, or its subcontractors as the case may be, shall be responsible for payment of all deductibles on all insurances required to be furnished by DISTRICT or subcontractors.
- All policies shall be written on an occurrence form.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to DISTRICT.

g) **Written Consent**. Neither this Agreement nor any duties or obligations under this Agreement may be assigned or transferred by PROVIDER without the prior written consent of DISTRICT.

7. **CHILD ABUSE, MANDATED REPORTER, AND CPR REQUIREMENTS:**

PROVIDER shall ensure that all staff members who work directly with students, are trained on and comply with child abuse and missing children reporting obligations and procedures under California law, including but not limited to, California Education Code Section 49370 and California Penal Code section 11165.7, 11166, et seq. PROVIDER shall adopt a written child abuse reporting procedure and provide annual training to all its employees regarding mandated reporting of child abuse and missing children. The PROVIDER shall provide verification to the District that all employees have received annual training. The PROVIDER warrants that all staff members will timely abide by such laws.

PROVIDER certifies its employees who work directly with pupils will be trained, including but not limited to, in First Aid, CPR, and Classroom Management,.. prior to placement at the Site.

8. **CONFIDENTIALITY**

PROVIDER and its subcontractors agree to comply with all applicable laws in the performance of its obligations under this Agreement, and in particular applicable federal and state regulations regarding student records, student privacy, and the commercial use of student information, including the Family Educational Rights and

Privacy Act (FERPA), Student Online Personal Information Protection Act (SOPIPA), AB 1584 (Ed. Code 49073.1) Pupil Data Privacy and the District (including but not limited to Administrative Regulation and Policy No. 5022 and 5125) to the end that the rights and privacy of the students enrolled in the District and of their parents are not violated or invaded.

These provisions include, but are not limited to, ensuring that:

- A. No identification of students or their parent/guardians by persons other than representatives of PROVIDER is permitted.
- B. The individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained.
- C. No access to individual student data shall be granted by PROVIDER to any other person, persons, agency or organization without the written consent of the pupil's parent/guardian, except for sharing with other persons within the District or representatives of PROVIDER so long as those persons have a legitimate interest in the information.
- D. PROVIDER recognizes and agrees that such access will be extended in reliance on representations made in this assurance, and that the District shall have the right to enforcement of this assurance, or revocation of such access (including return of all physical forms of such data and destruction of all such electronic data) immediately upon evidence of noncompliance by PROVIDER. This assurance is binding PROVIDER on and such persons as may be employed by PROVIDER to assist in any phase of the contractual obligation to the District.

PROVIDER further represents and warrants that District's and District users' access to and use of the PROVIDER's software or other services as described in this MOU will not infringe any third party copyright.

9. TERMINATION OF AGREEMENT

- a) Termination without Cause. Unless otherwise terminated as provided below, this Agreement shall continue in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.
- b) Termination for Breach. Should PROVIDER default in the performance of this Agreement or breach any of its provisions, DISTRICT may terminate this Agreement by giving Thirty (30) Days' Notice in writing to PROVIDER to the address stated in this Agreement. If, within ten (10) calendar days prior to the expiration of the Thirty (30) Days' notice period, the PROVIDER provides evidence of a cure or corrects the default or breach, the DISTRICT may withdraw the Thirty (30) Days' notice.
- c) Immediate Suspension/Termination by DISTRICT. If at any time during the performance of this Agreement DISTRICT determines, at its sole discretion, to

suspend indefinitely or abandon the work under this Agreement, DISTRICT shall have the right to terminate the performance of PROVIDER's services hereunder by giving written notification to PROVIDER of its intention to terminate.

d) **Effect of Termination.** In the event that DISTRICT terminates this Agreement under paragraph (b) or (c) of this Section, PROVIDER shall only be paid for those services rendered and reimbursable expenses incurred up to the date of termination. All cash deposits made by DISTRICT to PROVIDER, if any, shall be refundable to DISTRICT in full upon termination of this Agreement unless specified to the contrary below.

e) **Budget Contingency**

It is mutually agreed that if sufficient funds are not appropriated for the Program in the current year budget and/or subsequent years covered under this Agreement, then this Agreement shall be of no further force and effect. In this event, the DISTRICT shall have no liability to pay any funds to the PROVIDER or furnish any other considerations under this Agreement, and the PROVIDER shall not be obligated to perform any provisions of this Agreement.

10. GENERAL PROVISIONS

a) **Notices.** Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be deemed given and served upon delivery personally, or three (3) days after depositing in the United States Mail. Mailed notices shall be addressed to the parties at the addresses set forth in this Agreement for DISTRICT and PROVIDER. The foregoing addresses may be changed by written notice to the other party as provided herein.

b) **Validity of Agreement.** This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by PROVIDER and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, signed by both parties, except DISTRICT may unilaterally amend the Agreement to accomplish the changes listed below:

(1) Increase dollar amounts; (2) Administrative changes; and (3) Changes as required by law.

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

way. In the event any party to this Agreement shall commence any action against the other party relating to this Agreement or for the breach of any obligation contained in this Agreement, the prevailing party shall be entitled to recover such party's legal fees and other legal costs and expenses from the other party.

- d) **California Laws.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Venue for any legal action shall be San Bernardino County, California. Each person executing this Agreement warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind the parties hereto.
- e) **Audit.** Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records and files of DISTRICT, PROVIDER, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of the DISTRICT or as a part of any audit of DISTRICT, for a period of three (3) years after final payment is made under this Agreement. PROVIDER shall preserve and cause to be preserved such books, records and files for the audit period.
- f) **Non-discrimination.** Parties shall ensure that services and benefits are provided without regard to sex, sexual orientation, gender, ethnic group, race, ancestry, origin, immigration status, religion, color, mental disability, or physical disability, age, marital or parental status or any other unlawful consideration in accordance with Title VI of the Civil Rights Act of 1964, California Government Code, Section 503-504 of the Rehabilitation Act of 1973, as amended, and Title IX of the Education Amendments of 1972 (Pub. L. 92-318).
- g) **Contractual/Equitable Remedies.** PROVIDER agrees that the DISTRICT is the sole entity against whom the PROVIDER may seek either contractual or equitable remedies, and further agrees not to seek contractual or equitable remedies (including, but not limited to injunctive relief and quantum meruit) against DISTRICT employees or beneficiaries of the Agreement.
- h) **Board of Trustees Approval.** PROVIDER warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind it hereto. This Agreement shall not become binding upon the DISTRICT until it has been duly approved or ratified by the Board of Trustees.

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

"OMSD"

"City of Montclair"

Signature

Signature

Date

Javier John Dutrey, Mayor

Printed Name/Title

May 6, 2024

Date

Phil Hillman, Chief Business Official

Ontario-Montclair School DISTRICT
950 West D Street Ontario, CA 91762

Email Address/

5111 Benito Street

Street Address

Montclair CA 91763

City, State, Zip Code

909-625-9459

Telephone Number

Approved by OMSD
Board:

Exhibit X

Certification of Compliance with California Education Code Section 45125.1 and Business and Professions Code Section 18975 (Fingerprinting)

In compliance with California Education Code Section 45125.1 and California Business and Professions Code section 18975, I hereby certify that no owner or employee of City of Montclair [name of PROVIDER] ("PROVIDER") who may have any interaction with pupils (whether such interaction is in person or electronic, and whether the interaction is through writing, voice or video), shall be permitted to have any contact with students until after I have received and reviewed a report based on their LiveScan fingerprint report that they have not been convicted of a felony as defined in California Education Code Section 45122.1. In advance of their contact with pupils, I shall certify receipt and review of a report from the LiveScan report that they have not been convicted of a felony as defined in California Education Code Section 45122.1. I also understand that I must provide to the Ontario-Montclair School DISTRICT any subsequent arrest and conviction information that we receive concerning these individuals, and that I shall immediately remove the person from performing services on this Agreement. The Ontario-Montclair School DISTRICT is entitled to rely upon my representations in this Certification. PROVIDER hereby agrees to indemnify Ontario-Montclair School DISTRICT for any and all claims, damages, suits and liability that arise out of, relate to or is associated with a failure of PROVIDER to comply with California Education Code Section 45125.1 or with a failure to exercise reasonable care with respect to proper selection and/or supervision of PROVIDER's employees who may come in contact with pupils.

PROVIDER INFORMATION

Signature

Javier John Dutrey, Mayor
Printed Name/Title

May 6, 2024
Date

Email Address/
5111 Benito Street
Street Address

Montclair CA 91763
City, State, Zip Code

909-625-9459
Telephone Number

Attachment A

School of Attendance	TK/K Only Enrollment	All Grades Enrollment	Estimated Gap Enrollment Grades TK/K	Estimated ExLP Enrollment Grades TK/K	Estimated ExLP Enrollment Grades 1-8	Per Student Daily Rate			Total Costs
						Gap	TK/K ExLP	ExLP	
Buena Vista ES	72	275	36	18	91	15	15	13.5	\$ 366,930.00
Elderberry ES	85	434	43	21	143	15	15	13.5	\$ 520,290.00
Kingsley ES	95	384	48	24	127	15	15	13.5	\$ 503,010.00
Lehigh ES	84	341	42	21	113	15	15	13.5	\$ 444,690.00
Monte Vista ES	75	457	38	19	151	15	15	13.5	\$ 520,830.00
Ramona ES	113	456	57	28	150	15	15	13.5	\$ 594,000.00
Vernon MS		562			185	15	15	13.5	\$ 449,550.00



CITY COUNCIL AGENDA REPORT

DATE: MAY 6, 2024

FILE I.D.: HSV030

SECTION: CONSENT - AGREEMENTS

DEPT.: HUMAN SVCS.

ITEM NO.: 3

PREPARER: A. COLUNGA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 24-30 AND AMENDMENT NO. 1 TO AGREEMENT NO. 24-30 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO SUPPORT THE MONTCLAIR AFTER-SCHOOL SUMMER PROGRAM AT FOUR SCHOOL SITES

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 24-30 and Amendment No. 1 to Agreement No. 24-30 with Ontario-Montclair School District (OMSD) to support the Montclair After-school Summer Program at four school sites.

BACKGROUND: The Human Services Department has delivered after-school programs within OMSD schools since 1999. Funding for this program originates from the California Department of Education, through grants made available to local education authorities, such as OMSD. The purpose of the funding is to provide communities with enhanced community-based after-school services in an effort to strengthen healthy child development.

In Spring 2024, OMSD began a competitive bidding process for their summer after-school programs. OMSD provided bidders with an estimated number of student attendance for each of the programs. The City of Montclair submitted a proposal and was awarded contracts to provide summer programming at the following school sites, as shown in the table below:

School	Total Enrollment	Est. Enrollment Grades TK/K	Est. Enrollment Grades 1-8	Per Student Daily Rate		Total Est. Costs
				Grades TK/K	Grades 1-8	
Vernon MS (30 Days)	200	0	200	-	\$14.15	\$ 84,900.00
Kingsley ES (15 Days)	200	66	134	\$16.50	\$15.60	\$ 47,691.00
Lehigh ES (15 Days)	40	13	27	\$16.50	\$15.60	\$ 9,535.50
Monte Vista ES (15 Days)	31	10	21	\$16.50	\$15.60	\$ 7,389.00
Total Estimated Funding						\$149,515.50

Amendment No.1 to Agreement No. 24-30 includes an updated cost schedule based on the number of program days requested by OMSD.

FISCAL IMPACT: Should the City Council approve proposed Agreement No. 24-30 and Amendment No.1 to Agreement No. 24-30, OMSD will provide funding at the following rates:

- Kingsley, Lehigh, and Monte Vista Elementary Schools: \$16.50 per student grades TK/K per day, and \$15.60 per student grades 1-8 per day
- Vernon Middle School: \$14.15 per student grades 1-8 per day

Funding will be used for personnel, training, supplies, and grant oversight. The term of proposed Agreement No. 24-30 and Amendment No. 1 to Agreement No. 24-30 is May 31, 2024 through July 26, 2024.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 24-30 and Amendment No. 1 to Agreement No. 24-30 with the Ontario-Montclair School District (OMSD) to support the Montclair After-school Summer Program at four school sites.



AFTER-SCHOOL PROVIDER SERVICES SUMMER AGREEMENT

ONTARIO-MONTCLAIR SCHOOL DISTRICT

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

THIS AGREEMENT is made and entered into this **31st day of May, 2024** by and between the Ontario-Montclair School DISTRICT, hereinafter referred to as the "DISTRICT," and **CITY OF MONTCLAIR**, hereinafter referred to as the "PROVIDER" to provide summer school program services to DISTRICT pupils. The parties hereby agree to the following terms:

1. SERVICES TO BE PERFORMED BY PROVIDER

PROVIDER agrees to operate the summer school programs every day during the summer school dates, in accordance with the policies and procedures by the DISTRICT, including the coordination of the academic assistance, homework support, and physical education and enrichment portions of the summer school program at each of the school sites ("Site"):

- SITES (X)
 - Kingsley Elementary School
 - Lehigh Elementary School
 - Monte Vista Elementary School
 - Vernon Middle School

2. TERM OF AGREEMENT

The term of this Agreement is from May 31, 2024 through July 26, 2024, unless sooner terminated pursuant to the provisions of Section 9 of this Agreement. DISTRICT and PROVIDER may mutually agree in writing to extend the term of this Agreement provided, however, DISTRICT shall not be obligated to pay PROVIDER any additional consideration unless PROVIDER undertakes additional services, in which instance the consideration shall be increased as DISTRICT and PROVIDER shall agree in writing.

3. PROVIDER RESPONSIBILITIES

PROVIDER agrees to the following in support of the summer school Program:

- PROVIDER will work collaboratively with DISTRICT and Sites to design and operate the summer school Program. The summer school Program shall include the academic components to promote participating students' achievement and a range of services and programs to support the mental, physical, social and emotional development of participating students.
- PROVIDER shall designate a PROVIDER employee at each of the various schools to serve as liaison between the PROVIDER, the school Site, and the DISTRICT. For

the purposes of this agreement, the individual liaison shall be deemed the "Site Coordinator".

- Site Coordinator shall maintain ongoing communication between PROVIDER staff and School Site staff regarding student needs and progress, including, but not limited to, attendance at school-day meetings and/or one-on-one meetings with teachers.
- PROVIDER will maintain a waiting list of students to ensure that vacancies are filled as soon as they occur. Site Supervisors will ensure priority enrollment to Foster Youth and McKinney Vento (Homeless) students in agreement with Grant requirements.
- PROVIDER will cooperate in the recruiting and retaining of students to achieve the number of budgeted students to be served.
- PROVIDER, working with DISTRICT, shall ensure staffing sufficient to operate program and perform the requirements in accordance with the DISTRICT staffing ratios and the terms and conditions of the expanded learning opportunities program, relevant Education Code provisions, as applicable at each school throughout the 2024-2025 school year, including on days designated as "minimum" or "modified" days.
- Staffing ratios must minimally meet the 1:20 ratio for the ELOP requirements for Average Daily Attendance (ADA).
- PROVIDER shall submit to the DISTRICT a roster of PROVIDER's staff at each Site to include contact information (work telephone, cellular phone, e-mail address). The initial roster is due to the DISTRICT prior to the start of the new school year and every first of the month thereafter.
- PROVIDER shall provide each program staff with a PROVIDER name photo identification badge and lanyard.
- PROVIDER shall provide all necessary training and supervision of staff to meet all contractual obligations.
- PROVIDER shall provide training to all agency staff in areas including but not limited to health and safety protocols from California Department of Education, California Department of Public Health, and the DISTRICT.
- PROVIDER shall comply with the DISTRICT's safety procedures, including but not limited to:
 - PROVIDER shall develop and train PROVIDER's staff and volunteers in emergency and disaster procedures aligned with the Site emergency disaster plan shall be provided by DISTRICT to PROVIDER upon execution of this MOU, including an evacuation and reunification plan for use during program hours.
 - PROVIDER shall ensure that the disaster preparedness kit provided by the DISTRICT is maintained and stored in a locked cabinet.
 - PROVIDER shall train staff and conduct the following emergency procedure drills per semester at each schools during program hours: fire, disaster, and lock down.
 - PROVIDER shall complete the emergency preparedness drill log. PROVIDER shall report any injury or incident (i.e. an injury involving medical attention or involving police or social services, student leaving area for students under the direct supervision, student behaving inappropriately while participating in virtual activities) to the parent/guardian, school administrator, the Site's Teacher on Assignment/Expanded Learning Opportunity Program

Coordinator ("Site ELOP Coordinator"), the DISTRICT's ELOP Coordinator, and the PROVIDER administrative office within 24 hours of the incident, utilizing the DISTRICT's incident report form or the injury report form.

- In addition to the injury report form, all head injuries must be reported to the parent/guardian on the DISTRICT's head injury report form.
 - Any severe incident/injury must be reported to the parent/guardian, school administrator, Site ELOP Coordinator, DISTRICT ELOP Coordinator, if available, and DISTRICT immediately.
 - PROVIDER shall report all minor accidents or injuries on the DISTRICT designated form with one copy provided to the parent/guardian and one copy placed in the student's file on campus.
- All PROVIDER staff shall be trained in positive behavior management, instructional, academic and enrichment activities aligned with the DISTRICT standards. PROVIDER shall submit current training plan to the contract prior to the start of the new school year.
 - PROVIDER shall ensure program staff conforms to appropriate professional conduct, which includes but is not limited to positive interaction with students, parent/guardians and school staff, use of personal cell phone and dress code.
 - PROVIDER certifies that all PROVIDER employees who work directly with pupils at the Site will have a TB test and live scan investigation, which consists of FBI and DOJ clearances, and at a minimum, meet the qualifications for an Instructional Aide (Ed Code 8483.4) prior to employment. PROVIDER shall provide verification to DISTRICT of such qualifications prior to assigning the employees to a Site.
 - PROVIDER assumes financial responsibility for PROVIDER staff taking or being placed on leave (i.e. sick leave, workers compensation, vacation, administrative leave).
 - The PROVIDER certifies its employees who work directly with pupils at the Site will be trained in First Aid and CPR, Child Abuse/Mandated Reporting, Classroom Management, Curriculum, etc. prior to placement at the Site.
 - The PROVIDER shall ensure that all staff members who work directly with the pupils at the Site will be trained on and comply with child abuse and missing children reporting obligations and procedures under California law, including but not limited to, California Education Code Section 49370 and California Penal Code section 111666, et seq. prior to placement at the Site. PROVIDER shall adopt a written child abuse reporting procedure and provide annual training to all its employees regarding mandated reporting of child abuse and missing children. The PROVIDER shall provide verification to the DISTRICT that all employees have received annual training. The PROVIDER warrants that all staff members will timely abide by such laws.
 - The PROVIDER employees will work collaboratively with the Site in order to maximize program resources. This collaboration includes attending and supporting special events, program development, professional development and meetings.
 - PROVIDER to provide training and professional development to employees assigned to the Site and DISTRICT program staff, as stated in the professional development plan, afterhours or on weekends.

- The PROVIDER acknowledges the DISTRICT's right to institute a program audit with or without cause and agrees to provide best efforts in assisting in the DISTRICT's completion of program audits.
- The PROVIDER acknowledges the DISTRICT's right to examine and audit all of PROVIDER books, records, documents, accounting procedures and practices and other evidence that reflect all costs claimed to have been incurred or fees claimed to have been earned under this Agreement.
- PROVIDER will make available to DISTRICT all budgetary information including operating budgets submitted for the relevant contract period being audited. PROVIDER will make such evidence and documents available at the DISTRICT office at all reasonable times and without charge within 5 days of a written request from DISTRICT. PROVIDER will, at no cost to DISTRICT, provide assistance for such examination or audit.
- PROVIDER agrees to meet with each participating Site to determine their budget (based on NOT TO EXCEED amount in Exhibit A, modified by Site program staffing and costs), and will prepare and submit to the DISTRICT a detailed budget no later than August 10, 2024.
- PROVIDER will submit a completed Professional Development Plan for all staff including DISTRICT staff no later than August 10, 2024.
- PROVIDER shall exercise care when utilizing DISTRICT facilities or equipment. Any DISTRICT classroom or school equipment, which is established to have been damaged by the negligence or misconduct of PROVIDER's staff, will be replaced or repaired at the expense of the PROVIDER. PROVIDER agrees to provide replacement for missing or damaged classroom materials and school equipment attributable to the negligence or misconduct of PROVIDER's employees in classrooms and other areas utilized by PROVIDER. PROVIDER shall ensure facility space used by the program shall be clean and organized by program staff at each location.
- PROVIDER shall assist the Site Coordinator on the content and calendar for a monthly parent newsletter and calendar of activities and events for each assigned school and submit a copy to the DISTRICT no later than the first day of each month.
- PROVIDER shall conduct a minimum of two (2) family events annually at each school, which may be conducted during program hours. Such events may include student performances, or other celebratory themes. The goal of such events should be to build communication with parents/guardians and create stronger family involvement within the program. PROVIDER's program staff shall work collaboratively with school staff to coordinate the events. PROVIDER shall submit a copy of the flyer detailing the event, prior to the event for distribution by Site staff.
- PROVIDER shall not permit staff to be on School campuses prior to the start time of the Program unless otherwise agreed upon between Site Principal and Site Supervisor.
- All Program services shall be completed by 6:30 p.m. and/or until the last student is picked up by the student's designated parent and/or legal guardian.
- Pupil discipline is the PROVIDER'S responsibility. PROVIDER will give written notice to the relevant School Principal of any pupil dismissed from the Program, and any

incident involving physical injury to a pupil. PROVIDER shall not direct or discipline any pupil during compulsory school hours, except in exigent circumstances.

- Work with the DISTRICT to implement a comprehensive annual program Evaluation Plan. As required, attend and participate in evaluation subcommittee meetings. Evaluation Plan shall include, but not be limited to, attendance tracking, collection of teacher, parent and participating student surveys, and data entry of survey results. Evaluations will be completed by PROVIDER in accordance with CDE guidelines and due dates.
 - Regularly attend and participate in governance and operations meetings.
 - Provide monthly attendance reports and quarterly expenditure reports to the DISTRICT by the 15th of the month for the previous month; including all required documents and reports required by DISTRICT Food Services Department.
- a) **Emergency Procedures.** Program staff will hold quarterly Site emergency drills based on the complete Site emergency plan and related staff training at each of the Schools.

In the event an emergency occurs after any School office is closed, or during a period when the PROVIDER is hosting a special event, Site Supervisor will employ agreed-upon emergency and/or evacuation procedures. Site Supervisors must have student identification information, including emergency contact information, to be able to notify parents, police, medical support, and anyone else who might need to be contacted.

- b) **Staffing.** PROVIDER shall, at PROVIDER's own expense, employ such agents/assistants as PROVIDER deems necessary to perform the services required of PROVIDER by this Agreement. DISTRICT will not train, control, direct, or supervise PROVIDER's assistants or employees in the performance of those services.

Each School's Principal reserves the right to review the performance of the Program staff and make recommendations for changes as he/she sees fit to the PROVIDER, who will communicate on a monthly basis with certain individuals, to include and not limited to: the Schools' Principals, City personnel and DISTRICT coordinator. All Program staff who directly supervises students must meet the minimum requirements for an instructional aide pursuant to the policies of the DISTRICT. Program staff must also meet the No Child Left Behind (NCLB) requirements of a highly qualified paraprofessional.

PROVIDER will recruit and train volunteers to lower the student/adult ratios, based on PROVIDER guidelines in the Program.

- c) **Independent Contractor.** PROVIDER is, and shall at all times be deemed to be, an independent contractor and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between DISTRICT and PROVIDER or any of PROVIDER's agents or employees. PROVIDER assumes exclusive responsibility for the acts of its employees or agents as they

relate to services to be provided during the course and scope of their employment. PROVIDER, its agents and employees, shall not be entitled to any rights and/or privileges of DISTRICT's employees and shall not be considered in any manner to be DISTRICT's employees.

- d) **Public Entity Employee**. If PROVIDER is a regular employee of a public entity, all services which PROVIDER renders under this Agreement will be performed at times other than PROVIDER's regular assigned work day for said entity or during periods of vacation or leave of absence from said entity, using PROVIDER's own resources.

4. **DISTRICT RESPONSIBILITIES**

DISTRICT agrees to the following in support of the summer school program:

- Provide access to on-site indoor and outdoor facilities for the school program appropriate to the number of participants and activities.
- Promote and foster a positive environment for the development of a successful site Program.
- Coordinate collaborative meetings with PROVIDER staff to discuss program goals and effectiveness.
- Provide a site summer school teacher/DISTRICT liaison for a portion of the Program hours.
- DISTRICT agrees to comply with all reasonable requests by PROVIDER and to provide access to all documents reasonably necessary for the performance of PROVIDER's duties under this Agreement.
- DISTRICT and/or site(s) will provide PROVIDER with student identification information including student ID numbers, to be able to notify parents, police, medical support, and anyone else who might need to be contacted.
- DISTRICT and/or site(s) reserve the right to make recommendations for appropriate placements for students and will work with Site Supervisors to coordinate services with other established programs, such as after-school academic interventions and other public agency programs/projects, and provide aligned services that meet the needs of the students and Grant requirements.
- Principals or their designees shall cooperate in the recruiting and retaining of students to achieve the number of budgeted students to be served.
- DISTRICT and/or site(s) and PROVIDER will agree which facilities will be used for the Program. Facilities will include the MPR/cafeteria, classroom(s), computer lab, and other facilities the DISTRICT/site(s) and PROVIDER may agree are necessary. Facilities may include the library and gym.
- DISTRICT and/or site(s) reserves the right to review the performance of the Program staff and make recommendations for changes as he/she sees fit and PROVIDER will communicate on a monthly basis with certain individuals, to include and not limited to: the Schools' Principals, City personnel and DISTRICT coordinator.
- DISTRICT agrees to comply with all reasonable requests by PROVIDER and to provide access to all documents reasonably necessary for the performance of PROVIDER'S duties under this Agreement. PROVIDER will abide by applicable federal and state laws, rules and regulations concerning the rights of privacy

and/or confidentiality of any information provided by DISTRICT, including both student and personnel records.

- The DISTRICT understands the difficulty staffing for this Program and may provide support to PROVIDER in addressing the necessary steps to meet the staffing expectations. The DISTRICT is not, however, taking on the responsibility of the PROVIDER to staff all Sites at appropriate staffing levels.

5. COMPENSATION

- a) **Compensation for Services.** Except as otherwise provided in this Agreement, DISTRICT agrees to compensate PROVIDER for services rendered under this Agreement as detailed in Exhibit 'X'.
- b) **Travel Expenses.** DISTRICT will pay no additional amount for travel or other expenses of PROVIDER under this Agreement unless specified below under section 2(c). Should travel or other expenses be specified below, PROVIDER shall be entitled to the lesser amount of
 1. The not to exceed amount stated, or
 2. The actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to this Agreement.
- c) **Summary of Compensation**

Total estimated contract amount: \$205,000 based on daily rate of \$14.15 per 1-8 grade students and \$15.75 per TK/K student rate breakdown included in 'Attachment A'.
- d) **Retired STRS or PERS.** If this Agreement is with an individual PROVIDER, PROVIDER shall notify the DISTRICT whether or not PROVIDER is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS). DISTRICT undertakes no responsibility to award contracts or hours in a way which protects PROVIDER's retirement benefits.
- e) **Income Tax.** DISTRICT will not withhold any federal or state income tax for payment made pursuant to this Agreement but, if applicable, will provide PROVIDER with a statement of earnings at the end of each calendar year. PROVIDER is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.
- f) **Documentation Required For Payment.** Unless specified below, payment for services and travel shall be made by DISTRICT to PROVIDER after services/travel has been completed and PROVIDER submits documentation for payment (e.g. PROVIDER invoice).

6. GENERAL OBLIGATIONS OF PROVIDER

- a) **Services Performed.** During the term of this Agreement, PROVIDER agrees to diligently prosecute the work specified in the "Services to be Performed by

PROVIDER" to completion. PROVIDER may represent, perform services for, and be employed by such additional clients, persons, or companies as PROVIDER, in PROVIDER's sole discretion, sees fit.

b) **Use of DISTRICT Space and Resources.**

DISTRICT and/or site(s) and PROVIDER will confer on which facilities will be used for the Program. Facilities may include the MPR/cafeteria, classroom(s), computer lab, and other facilities the DISTRICT/site(s) and PROVIDER may agree are necessary. Facilities may include the library and gym. PROVIDER staff shall ensure that the facilities and work areas used for the Program are left clean and tidy at the end of each day the Program is operated.

c) **Regulatory Compliance.** PROVIDER shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.

d) **Fingerprinting.** PROVIDER shall comply with the requirements of Education Code section 45125.1 and Business and Professions Code section 18975 with respect to fingerprinting of employees and regular volunteers who may have any interaction with the DISTRICT's pupils (whether such interaction is in person or electronic, and whether the interaction is through writing, voice or video). If at any time during the term of this Agreement PROVIDER is either notified by the Department of Justice or otherwise becomes aware that any employee of PROVIDER, including PROVIDER, performing services under this Agreement has been arrested or convicted of a violent or serious felony as defined in California Education Code Section 45122.1, PROVIDER agrees immediately to notify the DISTRICT and remove said employee from performing services on this Agreement. PROVIDER shall certify in writing to the DISTRICT that neither the PROVIDER nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Education Code section 45122.1 (Exhibit X).

e) **Indemnification.** PROVIDER shall indemnify, pay for the defense of, and hold harmless DISTRICT and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of PROVIDER's acts and/or omissions in rendering any services hereunder, including but not limited to the negligent or willful acts and/or omissions of PROVIDER's employees and agents. PROVIDER shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning PROVIDER or any employee/agent of PROVIDER and shall further indemnify, pay for the defense of, and hold harmless DISTRICT of and from any such payment or liability arising out of or in any manner connected with PROVIDER's performance under this Agreement.

f) **Insurance Requirements.** During the entire term of this Agreement, PROVIDER shall procure, pay for and keep in full force and effect the following types of insurance:

1. **General Liability Insurance.**

2. Commercial general liability insurance, covering bodily injury liability, property damage liability and personal injury liability of PROVIDER with respect to the services provided by, or on behalf of, PROVIDER under this Agreement. The policy limits shall not be less than Two Million dollars (\$2,000,000) per occurrence with a general aggregate limit of not less than Four Million dollars (\$4,000,000).

a. The DISTRICT requires the Certificate of Liability Insurance to show the DISTRICT as the "Certificate Holder" and "Additional Insured" on the PROVIDER'S general liability insurance policy. Requested wording in the "Description box" is as follows:

The Ontario-Montclair School DISTRICT, its departments, officers, agents, and employees are additional insureds with regard to liability and defense of suits arising from the operations and uses performed by or on behalf of the named "Insured."

3. **Auto Liability Insurance.**

PROVIDER agrees that services in conjunction with this agreement will be conducted in PROVIDER'S office or at a DISTRICT school Site and PROVIDER will not drive Student in private or commercial vehicle to conduct assessments or conduct other business in conjunction with this agreement. Accordingly, commercial automobile insurance will not be required in conjunction with this agreement. Should PROVIDER need to provide services in conjunction with this agreement that do require Student transportation in a private or commercial vehicle, the DISTRICT and PROVIDER will mutually agree on services to be provided, and PROVIDER will provide insurance as follows: Business auto liability insurance covering the use of "owned, non-owned and hired" autos by or on behalf of PROVIDER respect to the services to be performed under this Agreement. The policy limits shall not be less than One Million dollars (\$1,000,000) per occurrence. The Auto Liability Insurance policy shall include waiver of subrogation via separate endorsement.

4. **Workers' Compensation Insurance.** This coverage is required unless PROVIDER provides written verification it has no employees. Coverage must be at least as broad as that which is required by the State of California, with Statutory Limits. PROVIDER must also maintain Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Workers' compensation policy shall include waiver of subrogation via separate endorsement.

5. **Sexual Molestation and/or Abuse.** The general liability policy above may not contain an exclusion for coverage of claims arising from claims for sexual

molestation or abuse. In the event that PROVIDER's policy should have an exclusion for sexual molestation or abuse claims, then PROVIDER shall be required to procure a supplemental policy providing such coverage of not less than \$2,000,000 per occurrence with an aggregate of not less than \$4,000,000 for damages because of bodily injury by reason of negligent hiring and supervision.

6. **Cyber Security Liability.** Coverage for both electronic and non-electronic data breach of \$1,000,000 per occurrence with an aggregate limit of not less than \$2,000,000 and shall cover all of Company's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Company or District's computers or servers to affect, alter, copy, corrupt, delete, disrupt or destroy a computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer of computer virus, Trojan horse, worms or any other type of malicious or damaging code; and for Third-Party Liability encompassing judgments or settlement and defense costs arising out of litigation due to a data breach and data breach response costs for customer notification and credit monitoring service fees.

The policies of insurance described above shall be carried with responsible and solvent insurance companies authorized to do business in the State of California. True and correct copies of all certificates of insurance reflecting the coverage required in Paragraph (4g.1-3) shall be provided to DISTRICT prior to the commencement of services under this Agreement. PROVIDER agrees that it shall not cancel or change the coverage provided by the policies of insurance described in Paragraph (4g.1-3) above without first giving the DISTRICT's Chief Business Official, thirty (30) days prior written notice. Should any such policy of insurance be canceled or changed, PROVIDER agrees to immediately provide DISTRICT true and correct copies of all new or revised certificates of insurance.

The PROVIDER shall not commence performing any portion of the services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to DISTRICT. Certificates and insurance policies shall include the following:

- A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to DISTRICT, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
- Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- An endorsement stating that DISTRICT and its agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An

endorsement shall also state that PROVIDER's insurance policies shall be primary to any insurance or self-insurance maintained by DISTRICT.

- If the PROVIDER or PROVIDER's subcontractor(s) maintains broader coverage and/or higher limits than the minimums shown above, DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by the PROVIDER. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to DISTRICT.
- PROVIDER, or its subcontractors as the case may be, shall be responsible for payment of all deductibles on all insurances required to be furnished by DISTRICT or subcontractors.
- All policies shall be written on an occurrence form.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to DISTRICT.

g) **Written Consent**. Neither this Agreement nor any duties or obligations under this Agreement may be assigned or transferred by PROVIDER without the prior written consent of DISTRICT.

7. CHILD ABUSE, MANDATED REPORTER, AND CPR REQUIREMENTS:

PROVIDER shall ensure that all staff members who work directly with students, are trained on and comply with child abuse and missing children reporting obligations and procedures under California law, including but not limited to, California Education Code Section 49370 and California Penal Code section 11165.7, 11166, et seq. PROVIDER shall adopt a written child abuse reporting procedure and provide annual training to all its employees regarding mandated reporting of child abuse and missing children. The PROVIDER shall provide verification to the District that all employees have received annual training. The PROVIDER warrants that all staff members will timely abide by such laws.

PROVIDER certifies its employees who work directly with pupils will be trained, including but not limited to, in First Aid, CPR, and Classroom Management,.. prior to placement at the Site.

8. CONFIDENTIALITY

PROVIDER and its subcontractors agree to comply with all applicable laws in the performance of its obligations under this Agreement, and in particular applicable federal and state regulations regarding student records, student privacy, and the commercial use of student information, including the Family Educational Rights and Privacy Act (FERPA), Student Online Personal Information Protection Act (SOPIPA), AB 1584 (Ed. Code 49073.1) Pupil Data Privacy and the District (including but not limited to Administrative Regulation and Policy No. 5022 and 5125) to the end that the rights and privacy of the students enrolled in the District and of their parents are not violated or invaded.

These provisions include, but are not limited to, ensuring that:

- A. No identification of students or their parent/guardians by persons other than representatives of PROVIDER is permitted.
- B. The individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained.
- C. No access to individual student data shall be granted by PROVIDER to any other person, persons, agency or organization without the written consent of the pupil's parent/guardian, except for sharing with other persons within the District or representatives of PROVIDER so long as those persons have a legitimate interest in the information.
- D. PROVIDER recognizes and agrees that such access will be extended in reliance on representations made in this assurance, and that the District shall have the right to enforcement of this assurance, or revocation of such access (including return of all physical forms of such data and destruction of all such electronic data) immediately upon evidence of noncompliance by PROVIDER. This assurance is binding PROVIDER on and such persons as may be employed by PROVIDER to assist in any phase of the contractual obligation to the District.

PROVIDER further represents and warrants that District's and District users' access to and use of the PROVIDER's software or other services as described in this MOU will not infringe any third party copyright.

9. **TERMINATION OF AGREEMENT**

- a) **Termination without Cause.** Unless otherwise terminated as provided below, this Agreement shall continue in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.
- b) **Termination for Breach.** Should PROVIDER default in the performance of this Agreement or breach any of its provisions, DISTRICT may terminate this Agreement by giving Thirty (30) Days' Notice in writing to PROVIDER to the address stated in this Agreement. If, within ten (10) calendar days prior to the expiration of the Thirty (30) Days' notice period, the PROVIDER provides evidence of a cure or corrects the default or breach, the DISTRICT may withdraw the Thirty (30) Days' notice.
- c) **Immediate Suspension/Termination by DISTRICT.** If at any time during the performance of this Agreement DISTRICT determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, DISTRICT shall have the right to terminate the performance of PROVIDER's services hereunder by giving written notification to PROVIDER of its intention to terminate.
- d) **Effect of Termination.** In the event that DISTRICT terminates this Agreement under paragraph (b) or (c) of this Section, PROVIDER shall only be paid for those services rendered and reimbursable expenses incurred up to the date of termination. All cash deposits made by DISTRICT to PROVIDER, if any, shall be refundable to

DISTRICT in full upon termination of this Agreement unless specified to the contrary below.

e) **Budget Contingency**

It is mutually agreed that if sufficient funds are not appropriated for the Program in the current year budget and/or subsequent years covered under this Agreement, then this Agreement shall be of no further force and effect. In this event, the DISTRICT shall have no liability to pay any funds to the PROVIDER or furnish any other considerations under this Agreement, and the PROVIDER shall not be obligated to perform any provisions of this Agreement.

10. GENERAL PROVISIONS

a) **Notices.** Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be deemed given and served upon delivery personally, or three (3) days after depositing in the United States Mail. Mailed notices shall be addressed to the parties at the addresses set forth in this Agreement for DISTRICT and PROVIDER. The foregoing addresses may be changed by written notice to the other party as provided herein.

b) **Validity of Agreement.** This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by PROVIDER and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, signed by both parties, except DISTRICT may unilaterally amend the Agreement to accomplish the changes listed below:

(1) Increase dollar amounts; (2) Administrative changes; and (3) Changes as required by law.

c) **Court Findings.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way. In the event any party to this Agreement shall commence any action against the other party relating to this Agreement or for the breach of any obligation contained in this Agreement, the prevailing party shall be entitled to recover such party's legal fees and other legal costs and expenses from the other party.

d) **California Laws.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Venue for any legal action

shall be San Bernardino County, California. Each person executing this Agreement warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind the parties hereto.

- e) **Audit.** Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records and files of DISTRICT, PROVIDER, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of the DISTRICT or as a part of any audit of DISTRICT, for a period of three (3) years after final payment is made under this Agreement. PROVIDER shall preserve and cause to be preserved such books, records and files for the audit period.
- f) **Non-discrimination.** Parties shall ensure that services and benefits are provided without regard to sex, sexual orientation, gender, ethnic group, race, ancestry, origin, immigration status, religion, color, mental disability, or physical disability, age, marital or parental status or any other unlawful consideration in accordance with Title VI of the Civil Rights Act of 1964, California Government Code, Section 503-504 of the Rehabilitation Act of 1973, as amended, and Title IX of the Education Amendments of 1972 (Pub. L. 92-318).
- g) **Contractual/Equitable Remedies.** PROVIDER agrees that the DISTRICT is the sole entity against whom the PROVIDER may seek either contractual or equitable remedies, and further agrees not to seek contractual or equitable remedies (including, but not limited to injunctive relief and quantum meruit) against DISTRICT employees or beneficiaries of the Agreement.
- h) **Board of Trustees Approval.** PROVIDER warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind it hereto. This Agreement shall not become binding upon the DISTRICT until it has been duly approved or ratified by the Board of Trustees.

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

"OMSD"

"City of Montclair"

Signature

Signature

Date

Javier John Dutrey, Mayor

Printed Name/Title

May 6, 2024

Date

Phil Hillman, Chief Business Official

Ontario-Montclair School DISTRICT
950 West D Street Ontario, CA 91762

Email Address/

5111 Benito Street

Street Address

Montclair CA 91763

City, State, Zip Code

909-625-9459

Telephone Number

Approved by OMSD
Board:

Exhibit X

Certification of Compliance with California Education Code Section 45125.1 and Business and Professions Code Section 18975 (Fingerprinting)

In compliance with California Education Code Section 45125.1 and California Business and Professions Code section 18975, I hereby certify that no owner or employee of City of Montclair [name of PROVIDER] ("PROVIDER") who may have any interaction with pupils (whether such interaction is in person or electronic, and whether the interaction is through writing, voice or video), shall be permitted to have any contact with students until after I have received and reviewed a report based on their LiveScan fingerprint report that they have not been convicted of a felony as defined in California Education Code Section 45122.1. In advance of their contact with pupils, I shall certify receipt and review of a report from the LiveScan report that they have not been convicted of a felony as defined in California Education Code Section 45122.1. I also understand that I must provide to the Ontario-Montclair School DISTRICT any subsequent arrest and conviction information that we receive concerning these individuals, and that I shall immediately remove the person from performing services on this Agreement. The Ontario-Montclair School DISTRICT is entitled to rely upon my representations in this Certification. PROVIDER hereby agrees to indemnify Ontario-Montclair School DISTRICT for any and all claims, damages, suits and liability that arise out of, relate to or is associated with a failure of PROVIDER to comply with California Education Code Section 45125.1 or with a failure to exercise reasonable care with respect to proper selection and/or supervision of PROVIDER's employees who may come in contact with pupils.

PROVIDER INFORMATION

Signature

Javier John Dutrey, Mayor
Printed Name/Title

May 6, 2024
Date

Email Address/
5111 Benito Street
Street Address

Montclair CA 91763
City, State, Zip Code

909-625-9459
Telephone Number

Attachment A

School of Attendance	Days	30		Per Student Daily Rate		Total Costs
	Total Enrollment	Estimated Gap Enrollment Grades TK/K	Estimated ExLP Enrollment Grades 1-8	TK/K	1-8	
Vernon MS	200		200		14.15	\$ 84,900.00
Kingsley ES	200	66	134	15.75	14.15	\$ 88,068.00
Lehigh ES	40	13	27	15.75	14.15	\$ 17,604.00
Monte Vista ES	31	10	21	15.75	14.15	\$ 13,639.50



ONTARIO-MONTCLAIR SCHOOL DISTRICT
Ontario, California

AMENDMENT TO CONSULTANT SERVICES

Contract #: C -234-450A Amendment: M 1 Original Start Date May 31, 2024 Original End Date July 26, 2024

Contract C-234-450A is herewith amended between the Ontario-Montclair School District and City of Montclair as authorized by the Terms and Conditions of the original Agreement except for:

AMENDMENT TO TERM (only to be filled out if the original date of agreement is changing):

Start Date: May 31, 2024 End Date: July 26, 2024 REQUIRED IF EXTENDING TERM

AMENDMENT TO SERVICES:

AMENDMENT TO COMPENSATION:

DISTRICT agrees to compensate CONSULTANT in the following manner:

Revise to rates due to change in working days and hours.

In witness whereof, the parties hereto have caused this Agreement to be executed on Date of Board Meeting:

DISTRICT

CONSULTANT

Signature Phil Hillman
Printed Name Chief Business Official
Title Ontario-Montclair School District
950 West D Street Ontario, CA 91762
(909) 459-2500

Signature Javier John Dutrey
Printed Name Mayor
Title 5111 Benito Street, Montclair CA 91763
Address 909-625-9459
Telephone Number

Approved by Board of Trustees:

Summer Cost Proposal- City of Montclair
 Projected Enrollment

School of Attendance	Total Enrollment	Estimated Enrollment		TK/K	Per Student Daily Rate		Total Costs
		Gap Grades TK/K	ExLP Grades 1-8		1-8		
Vernon MS (30 Days)	200		200		14.15	\$	84,900.00
Kingsley ES (15 Days)	200	66	134	16.50	15.60	\$	47,691.00
Lehigh ES (15 Days)	40	13	27	16.50	15.60	\$	9,535.50
Monte Vista ES (15 Days)	31	10	21	16.50	15.60	\$	7,389.00



CITY COUNCIL AGENDA REPORT

DATE:	MAY 6, 2024	FILE I.D.:	GRT125
SECTION:	CONSENT - AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	4	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 24-31 WITH BLAIS & ASSOCIATES, INC. FOR GRANT WRITING SERVICES		

CONSIDER AUTHORIZING A \$75,000 APPROPRIATION FROM THE CONTINGENCY RESERVE FUND FOR COSTS RELATED TO AGREEMENT NO. 24-31

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 24-31 with Blais & Associates, Inc. (Blais) for grant writing services.

BACKGROUND: In 2017, the City of Montclair began utilizing Blais for their grant writing services. The City has seen much success in working with Blais, with twelve major grant awards that will transform the City totaling nearly eighteen million dollars, including:

- \$5,701,000 for Safe Routes to School Implementation
- \$5,137,000 for Reeder Ranch Park
- \$4,174,097 for the Sunset Park Beautification Project
- \$771,000 for the Ramona Avenue/Howard Street Roundabout
- \$750,000 for the San Antonio Creek Trail Crossing Designs
- \$362,070 for the Orchard Street Pedestrian Safety Improvements
- \$249,930 for Pedestrian Crossing Enhancements
- \$227,554 for the Pacific Electric Bridge Replacement
- \$200,000 for the Active Transportation Plan
- \$177,000 for the San Antonio Creek Trail Multimodal Plan
- \$95,901 for Homeless Outreach
- \$76,320 for the Energy Efficiency and Conservation Block Grant

Utilizing Blais and Associates' grant writing services, the City of Montclair has applied for twenty-eight grants, four of which are currently under review. Additionally, five grant applications are in process to be submitted within the next thirty to sixty days. The return on investment to the City is \$54 in funding received for every dollar spent on grant writing services.

The City would like to continue to pursue grant funding when possible to address a variety of needs in the community. There are current funding announcements that staff would like to pursue, along with announcements of future opportunities. Each of these funding opportunities requires an extraordinary amount of time and specific expertise.

Although there are no guarantees stipulated in the agreement for future expenditures or awards, it is anticipated that aggregate expenses for future services through Agreement No. 24-31 will be approximately \$75,000 through the end of the fiscal year.

Before the execution of the original agreement with Blais, City staff went through a vetting process to make sure that Blais was the best value for the City. Therefore, proposals from other firms were not sought. Staff recommends it is in the best interest and value of the City to continue utilizing Blais to provide grant writing services;

however, the City is not obligated to exclusively work with Blais for grant writing services.

FISCAL IMPACT: Staff estimates preparing future grant applications will cost approximately \$75,000 through the end of the fiscal year. It is recommended that the Contingency Reserve Fund be utilized to fund the grant writing services from May 6, 2024 through June 30, 2024.

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

1. Approve Agreement No. 24-31 with Blais & Associates, Inc. for grant writing services.
2. Authorize a \$75,000 appropriation from the Contingency Reserve Fund for costs related to Agreement No. 24-31.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

GRANT WRITING

THIS AGREEMENT is made and effective as of May 6, 2024, between the City of Montclair, a municipal corporation ("City") and Blais and Associates, LLC, a Texas limited liability company ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on May 6, 2024 and shall remain and continue in effect for a period of 2 months until tasks described herein are completed, but in no event later than June 30, 2024, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 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.. This amount shall not exceed \$75,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

(c) Consultant will submit invoices monthly. 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 6(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. Contractor 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 Contractor herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Contractor, including its subcontractors, employees, agents, and other persons or entities performing work for Contractor.

(b) Contractual Indemnity. To the fullest extent permitted under California law, Contractor 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 Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to Contractor's officers, agents, representative, employees, independent contractors, subcontractors 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 Contractor, including its subcontractors, employees, agents and other persons or entities performing work for Contractor. Indemnification shall include any claim that Contractor, or Contractor'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. Contractor'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 and Indemnification. Contractor 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 Contractor in the performance of any aspect of this Agreement. In the event Contractor fails to obtain such indemnity

obligations, Contractor 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 Contractor 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. Contractor 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 Contractor or of Contractor’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. Contractor 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 Contractor under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Contractor begins the work and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Contractor. The indemnity obligations of Contractor 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 Contractor, or for the City to dispute Contractor’s refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Contractor 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 Contractor 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 Contractor expressly waives any statutory immunity under such statutes or laws as to the Indemnified Parties. The Contractor’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 Contractor pursuant to this Agreement.

(h) The Contractor’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 Contractor shall procure and maintain in full force and effect during the term of the Contract, the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$3,000,000 per occurrence, and \$5,000,000 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 \$5,000,000 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 \$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 Contractor 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 Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. 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, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The City may require the Contractor 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 Contractor or the City.

(g) Contractual Liability/Insurance Obligations

The coverage provided shall apply to the obligations assumed by the Contractor 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 Contractor; 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 Contractor under this Agreement.

(h) Failure to Maintain Coverage

Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Contract. In addition, the City may either immediately terminate this

Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon.

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Contractor's 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

Contractor shall be responsible for causing Subcontractors 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' policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as good 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: City of Montclair
 Attn: Alyssa Colunga, Asst. Director of Human Services/Grants Manager
 5111 Benito Street
 Montclair, CA 91763

To Consultant: Blais and Associates, LLC
Attn: Jordan P. Carter
2807 Allen Street, Suite 2050
Dallas, TX 75204

17. ASSIGNMENT AND SUBCONTRACTING

The Contractor 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 Contractor 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 Contractor 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 Contractor 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 REQUEST FOR PROPOSALS

Not Applicable.

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

Contractor 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 Contractor 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

Blais and Associates, LLC

By: _____
Javier John Dutrey, Mayor

By: _____
Jordan Carter, CEO

Attest:

By: _____
Andrea Myrick, City Clerk

Date: _____

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

Date: _____

EXHIBIT A

May 9, 2023

Ms. Alyssa Colunga, DrPH
Assistant Director of Human Services & Grants Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763

Subject: B&A Proposal for Provision of Grant Services to the City of Montclair

Dear Ms. Colunga:

Blais & Associates, LLC (B&A) is pleased to provide the City of Montclair with the following grant services proposal for your consideration.

B&A has been honored to work with the City for the past 6 years. As you know, we can provide the City with a variety of grant-funding services including conducting timely and relevant research, writing grant applications, and post-award grant management administration.

Founded in 2000, B&A is a full-service dedicated grant services firm that provides strategic grant research, grant writing, and grant management support to municipal government agencies. Comprised of more than 25 staff members – all working remotely since founding – B&A has served local municipal clients for more than 20 years. Throughout this time, we have achieved a consistent history of delivering a positive Return on Investment (ROI) for our clients of between \$25 and \$70 for every \$1 spent on B&A consulting services. Specifically, for the City of Montclair, we have returned \$105 in grant funding for every \$1 spent.

The primary location of services is our California office with oversight from our Texas headquarters.

Office	Address	Telephone
California HQ	7545 Irvine Center Dr., Ste 200, Irvine, CA 92618	949-589-6338
Headquarters	2807 Allen St., Ste 2050, Dallas, TX 75204	949-589-6338

The information presented in this proposal is true and correct. I will serve as your primary point of contact with respect to this proposal. All statements in this proposal, including proposal price, remain valid for 90 calendar days from the submission date.

For budgeting purposes, we have developed this proposal to reflect one 12-month period. The City can engage B&A to help with any set of services and support as contained in this proposal. The development of grant applications and/or management of awarded grants can be approved on a project-by-project basis – for each of which B&A will provide a fixed-fee, not-to-exceed quote.

We look forward to the opportunity to serve and support the City. Our goal is to assist you to bring funding to key projects – to be your most efficient and effective option as a team. Should you have any questions about the proposal, please contact me at (949) 589-6338, or wguajardo@blaisassoc.com. We look forward to working together with you.

Respectfully yours,



Whitten Guajardo
Director of Operations

COST PROPOSAL

B&A provides services on a customized basis, tailored to specifically meet your needs. This means the City will only pay for desired services as requested. Below provides B&A's proposed compensation by task for a 12-month period.

Task 1: Grant Research and Support Services (Ongoing). B&A can also provide grant intelligence and monitoring services for all applicable federal, state, regional, and foundation (project-specific) grant funding opportunities and we will alert staff when an announcement is released. This effort includes notification of open grant solicitations utilizing our proprietary Fact Sheets. B&A will also maintain a Grant Activity Report (GAR) and organize monthly grant coordination conference calls. The GAR ensures that all are aware of the specifics of each prospective grant program. B&A will provide key decision-making guidance regarding the “go” or “no-go” determinations on specific grant programs, as well as respond to various questions from staff. Direct consultation time with B&A supports your ability to achieve a high return on investment for grant program efforts.

Task 2: Grant Application Development (Quoted upon request). Grant application development activity levels are based on the availability of applicable grant programs, status, and availability of competitive projects for those programs, and independent determination of the grant agencies. B&A will submit grant applications in a timely manner and in accordance with all program guidelines. *B&A will only charge as grant writing projects are requested and approved to proceed.*

Task 3: Grant Reporting and Management Services (Quoted upon request). B&A has a dedicated and experienced grant management team standing ready to administer all requirements and deadlines for any grants that you have been awarded. A scope of work is defined, and an estimate is provided and reviewed before receiving authorization to proceed. B&A reviews the draft grant contract/agreement to ensure it aligns with the grant application (no major deviations in scope of work, schedule, and budget), helps identify rules and regulations that may warrant increased attention and focus, and assists with progress reporting and reimbursement requests. B&A proactively ensures the grant agreement is successfully executed on-time, that you can successfully administer and utilize a grant (given the conditions and requirements of the award), and the agreement correctly articulates the scope of work, budget, and schedule. *B&A will only charge as grant management projects are requested and approved to proceed.*

Task 4: Grant and Project Management Software (Quoted upon request). B&A developed a proprietary grant and project management software system to significantly improve and make more efficient the entire project management, coordination, reporting, and administration process from beginning-to-closeout of managing the full life of a grant award. This allows our clients the option to manage your own grants in a more efficient manner or to collaboratively work with B&A as desired on awarded grants. Please see www.bgapstech.com or request a demo to discuss your needs and how BGAPS can help. *B&A will offer a FREE 6-month trial period (with a small fee to upload up to three current grant agreements).*



SCHEDULE OF ESTIMATED FEES – 12-MONTH PROGRAM

Task	Description	Frequency	Estimated Total Cost
1 Grant Monitoring, Intelligence, Fact Sheets, and Grant Activity Reports Grant Research Consultation Requests	Monitor/send targeted grant opportunities using our proprietary and proactive grant research methodologies; Develop summaries; Pros/cons; Attend workshops/webinars; Develop Monthly Grant Activity Reports (GARs); Monthly calls to review opportunities and grants in-progress. Go/no-go consultation; Liaison with funding agencies; Participate in coordination calls with client; Develop Year-End Grant Roll-Up Reports.	Monthly Fixed Fee	\$35,250
2 Grant Proposal Development	Full turnkey or collaborative grant writing development to include submission (cost will vary by application complexity and client involvement).	Estimate of two grant applications at \$7,000 each.*	\$14,000
3 Grant Reporting & Mgmt. Services	Grant Reporting and Management Services.	Quoted upon request**	TBD
4 Grant Reporting & Mgmt. Services	B&A BGAPS Grant and Project Management Software (6-month FREE trial).	6-month FREE trial	TBD
TOTAL			\$49,250

*All grant proposal development projects are quoted upon request based on specific project requirements (costs typically range between \$5,000 – \$18,000 per grant application). Budget optional.

**All grant reporting and management projects are quoted upon request based on specific project requirements. Budget optional.



STANDARD FEE SCHEDULE

Description	Fee
Professional Services	Fixed Fee based on \$125/hour blended rate
External Consultants (e.g., BCA analysis)	Cost – no markup
Mileage	Prevailing standard IRS rate
Travel (tolls, taxi, airfare, hotel)	Cost – no markup
Printing, Copying, Binding, etc.	Cost – no markup
Shipping, Express Mail, or Courier	Cost – no markup

B&A performs work on a fixed-fee, not-to-exceed basis. Each project is independently and carefully analyzed to determine a projected scope of work. B&A then provides a fixed-fee, not-to-exceed quote for client review and approval prior to beginning work. Any additional one-off requests or activities that fall outside of the scope of work are performed and billed at a blended billing rate of \$125 per hour. This streamlined approach enables B&A to serve as a good steward of the City’s capital resources and be the most efficient and effective grant services provider possible. B&A reserves the right to adjust rates annually to align with the cost of doing business. All external consultant fees and direct out-of-pocket direct expenses are billed at cost (no markup).

Our proposed rates shall remain firm for a period of 90 calendar days from the date of submission of this fee schedule. Invoices are provided monthly, payable within 30 days after receipt.

B&A actively integrates the following “cost saving” practices into its operational procedures:

- All out-of-pocket expenses are billed at cost, with zero markup to our clients.
- B&A utilizes company discounted commercially available printing services (e.g., Staples), as needed, for bulk printing, copying, and binding support, which significantly reduces required direct costs.
- B&A utilizes company discounted commercially available shipping and delivery services (e.g., FedEx, UPS, or USPS), as needed, for delivery of hard copy materials, which significantly reduces required direct costs.
- B&A can, at your request, provide receipts for all direct expenses.





CITY COUNCIL AGENDA REPORT

DATE: MAY 6, 2024

FILE I.D.: EDD100

SECTION: CONSENT - AGREEMENTS

DEPT.: ECONOMIC DEV.

ITEM NO.: 5

PREPARER: M. FUENTES

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 24-32 WITH HINDERLITER, DE LLAMAS AND ASSOCIATES TO PROVIDE SERVICES RELATED TO THE DEVELOPMENT OF ORDINANCES REGULATING COMMERCIAL CANNABIS ACTIVITIES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER APPROVAL OF AGREEMENT NO. 24-33 WITH COLE HUBER ATTORNEYS LLP FOR CANNABIS LEGAL CONSULTING SERVICES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 24-32 to retain the services of Hinderliter, de Llamas and Associates (HdL) to provide services related to development of ordinances regulating commercial cannabis activities; and Agreement No. 24-33 to retain the services of Cole Huber Attorneys LLP (Cole Huber LLP) to provide cannabis legal consulting services.

A copy of proposed Agreement No. 24-32 with HdL and proposed Agreement No. 24-33 with Cole Huber LLP are attached for City Council review and consideration.

BACKGROUND: In 2019, the City Council conducted a series of special meetings regarding compliance with Proposition 64 (Adult Use of Marijuana Act, or "AUMA") and the potential for a series of draft ordinances, collectively known as the Medicinal and Adult-Use Cannabis Regulation and Safety Law (MAUCRSL) of the City of Montclair regulating commercial cannabis activities in the City of Montclair. The special meetings were conducted to present the City Council with concepts contained in the draft ordinances and to determine if the City Council desired to proceed with public hearings and possible adoption of said ordinances.

At the conclusion of the series of special meeting, the City Council elected to table the draft ordinances in order to further evaluate the regulation of commercial cannabis activities in the City of Montclair given the nascent nature of the cannabis industry in the State, provide City staff with the opportunity to develop appropriate tax and fee-based revenue scenarios; and survey likely voters on the level of support for legalized cannabis.

Since concluding the series of special meetings, staff continued monitoring the regulation and evolution of the commercial cannabis industry at both the state and local levels, paying close attention to agencies that have chosen to allow commercial cannabis activities to occur in their respective jurisdictions.

At the March 7, 2022 meeting of the City Council, staff received direction to conduct a public opinion survey focusing on cannabis-related issues including the viability of a commercial cannabis tax measure on the ballot of the November 2022 election, and to hire a firm to conduct such a public opinion survey. The City Council approved Agreement No. 22-15 with Fairbank, Maslin, Maullin, Metz & Associates (FM3) for polling, educational, and outreach services to conduct the survey. The public opinion survey was conducted, in part, in response to past statements made by some members

of the City Council to test the support of the public regarding cannabis legalization in the community.

At the August 1, 2022 meeting of the City Council, the City Council adopted Resolution No. 22-3374 ordering the submission to the voters of the City of Montclair a measure to consider a general business license tax on commercial retail sale of cannabis at the General Municipal Election to be held on Tuesday, November 8, 2022 (Ballot Measure R).

In addition, the City Council also adopted Resolution No. 22-3375 ordering the submission to the voters of the City of Montclair an advisory measure for the City Council to consider and approve ordinances legalizing and licensing medical and adult-use of cannabis businesses in the City of Montclair to be held on Tuesday, November 8, 2022 (Ballot Measure II).

On November 8, 2022, City of Montclair voters approved Measure R by 70.22 percent, which enacted Ordinance No. 22-999 adding Chapter 4.76 to Title 4 of the Montclair Municipal Code related to imposing a gross receipts tax on the privilege of conducting the following activities within the City of Montclair's jurisdiction: transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, selling, delivering, distributing, or testing cannabis or cannabis products by commercial cannabis businesses in the City of Montclair up to a maximum of seven percent. The voter-approved ordinance establishes only the permissible maximum rates that may be imposed on cannabis businesses. In addition, the City of Montclair voters also approved Measure II by 51.91 percent of voters.

Department of Cannabis Control Retail Access Grant

In 2023, the Department of Cannabis Control (DCC) announced the availability of \$10 million in grant funding for Phase I of the Cannabis Local Jurisdiction Retail Access Grant. The application period opened on February 24, 2023, and closed on April 28, 2023.

In June of 2023, the DCC announced awards of over \$4 million in funding to 18 cities and counties to develop and implement local commercial cannabis retail licensing programs. Of the cities and counties that submitted applications, the City of Montclair was one of eighteen selected to receive grant funds from the Cannabis Local Jurisdiction Retail Access Grant.

Staff was notified that the City of Montclair was awarded \$150,000 for development and implementation of a local cannabis retailer licensing program (commercial cannabis ordinances) and \$45,000 for establishment of an equity program as it relates to the issuance of commercial cannabis licenses. In January of 2024, the City of Montclair entered into an agreement with the DCC for disbursement of grant funds and received an initial amount of \$120,000 with the remainder of the grant funds to be dispersed upon adoption of the commercial cannabis ordinances and adoption of an equity program.

Development of Ordinances Regulating Commercial Cannabis Activities and Cannabis Legal Consulting Services

Staff reached out to various firms related to the development of ordinances regulating commercial cannabis activities and found that the majority of cities across the state have utilized the services of HdL for development of commercial cannabis ordinances, as well as for the management of commercial cannabis compliance programs and their initial development.

As a result, staff requested and obtained a quote from HdL for development of ordinances regulating commercial cannabis activities in the City of Montclair and for the development of a regulatory program. HdL provided a quote of \$75,000.00.

Hinderliter, de Llamas and Associates

HdL is recognized as an industry leader in the development, implementation and enforcement of cannabis management programs for local governments in California. HdL has partnered with over 175 California cities and counties on cannabis-related programs, including ordinance development and review, community outreach and education, merit-based application and permitting processes, cost recovery studies, compliance inspections, revenue audits, fiscal analyses and law enforcement training.

HdL's cannabis team has unmatched expertise, with more than 80 years' combined experience in the development, implementation and enforcement of cannabis regulatory and tax programs.

Proposed Agreement No. 24-32 with HdL includes the full scope of services to be provided by HdL. The services that will be covered by proposed Agreement No. 24-32 will include the following:

- Attendance, Support or Presentations at Meetings or Workshops: HdL shall provide attendance or presentations at up to 4 meetings or workshops to help inform discussion and development of a potential cannabis ordinance and associated regulatory program. It is anticipated that this objective may include meetings with City Council Members, a public meeting of the City Council to provide policy direction, attendance at a Planning Commission hearing, and attendance at another City Council meeting for the first reading of the ordinance.
- Develop Draft Cannabis Regulatory Ordinance: HdL shall develop a draft commercial cannabis regulatory ordinance that is consistent with State laws and reflects industry best practices. HdL will work with City staff to identify local concerns and priorities, including land use issues and sensitive uses, and to design appropriate regulatory processes and mitigations as necessary to protect the health, safety and welfare of the community. The ordinance will allow the City to specify the number and types of businesses to be permitted, location requirements, site security measures, inspections and enforcement protocols, operational procedures, and other requirements specific to each allowable type of cannabis business.
- Conduct a Fiscal Analysis: Consultant HdL shall conduct a fiscal analysis of the potential cannabis industry in the City of Montclair. The analysis would seek to develop estimates for the number and size of each type of commercial cannabis business that may seek to locate in the City, as well as estimates for the gross receipts and tax revenue that may be generated from each type of business under a variety of tax structures and rates.
- Application Process Development: HdL shall design an application process that includes review and evaluation of all cannabis business applications to ensure that they meet all City requirements. The process shall be tailored to provide a quality assurance standard to ensure applicants have addressed all City requirements before being allowed to move forward to the final selection process.

- Cost Recovery Fee Analysis: HdL will conduct a fee study to determine appropriate application and permitting fees to ensure that all City costs are paid by the applicants or permittees. The analysis shall consider the costs of all City staff time, overhead, fringe benefits, consultants and any other services associated with each step of the cannabis permitting and regulatory process, including both initial application processing and annual permit renewals. HdL staff has experience developing cannabis regulatory fees and conducting a “fit gap” analysis of staff responsibilities and time allotted to this program to establish appropriate fees for the City’s desired level of oversight and enforcement of the regulatory process
- Technical Assistance and Subject Matter Expertise: HdL will provide up to 40 hours of general consulting to be utilized on an as-needed basis at the City’s request. Such assistance may include technical assistance, subject matter expertise, education, monitoring of changes to State laws and regulations, participation in conference calls, responding to staff inquiries via phone and email, reviewing staff reports to the City Council, assisting with responses to inquiries from the public, or other issues as mutually agreed to by the City and HdL.

Legal Review of Cannabis Regulations

In addition to finding a firm to assist with development of the regulations, staff reached out to various firms that specialize in the field of cannabis law to provide cannabis legal consulting services for review of the proposed commercial cannabis ordinances. In researching those firms, staff found that the firm Cole Huber LLP has several staff members who worked in crafting regulations for the Department of Cannabis Control.

As a result, staff requested and obtained a quote from Cole Huber LLP for cannabis legal consulting services. Cole Huber LLP provided a general scope of services to be provided and staff anticipates costs to be roughly \$50,000 based on the provided rates.

Proposed Agreement No. 24-33 includes the full scope of services that may be provided by Cole Huber LLP. The services that may be covered by proposed Agreement No. 24-33 will include the following:

- Regulatory Review and Analysis: Cole Huber LLP will review existing documents, resolutions, and regulations relevant to cannabis in the City of Montclair and will analyze current cannabis regulations in other jurisdictions to provide insight into real-life implementation and potential outcomes.
- Cannabis Regulatory Expertise: Cole Huber LLP will provide ongoing legal counsel on all matters related to cannabis regulation including guidance on licensing, zoning, taxation, public safety, and other relevant areas.
- Meeting Participation: Cole Huber LLP will participate in meetings with city staff, stakeholders, City Council members, and others, regarding the overall design and implementation of the cannabis regulatory system.
- Collaboration: Cole Huber LLP will work collaboratively with the City Attorney, staff, City Council members, designated cannabis consultants, and any other relevant parties to ensure the successful development and implementation of the City's cannabis regulatory framework.

HdL's team members have conducted over 11,000 cannabis compliance inspections and audits in California, Colorado and Nevada, and have reviewed, scored and processed over 1,700 cannabis business applications in the last six years in California. HdL Companies works for the benefit of public agencies and has no private-sector clients in the cannabis industry.

Cole Huber Attorneys LLP

Founded in 2007, Cole Huber LLP is a law firm founded on a commitment to legal excellence. From their Northern California (Roseville) and Southern California (Ontario) offices, Cole Huber Attorneys provide full-service advisory services and representation to local agencies throughout the state. Cole Huber Attorney's, 19 full-time attorneys advise municipal clients on the broad range of issues affecting California local government.

Cole Huber Attorneys serve as city attorney to nine cities, general counsel to several special districts, and special legal counsel to a number of cities and counties. Cole Huber Attorneys also regularly author articles and publications for and speak at events sponsored by Cal Cities (League of California Cities Cannabis Regulatory Committee), California Cannabis Control Summit (Infocast), and other municipal-focused organizations.

FISCAL IMPACT: The fees associated with the agreements with Hinderliter, de Llamas and Associates and Cole Huber Attorneys would be funded by the Department of Cannabis Control Retail Access Grant of \$150,000.

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

1. Approve Agreement No. 24-32 with HdL to provide services related to the development of ordinances regulating commercial cannabis activities, subject to any revisions deemed necessary by the City Attorney; and
2. Approve Agreement No. 24-33 with Cole Huber LLP for cannabis legal consulting services, 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 May 6, 2024, between the City of Montclair, a California Municipal Corporation ("City") and Hinderliter, de Llamas and Associates ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on May 6, 2024 and shall remain and continue in effect until modified by the parties or terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

The parties intend Consultant to assist the City with development of ordinances regulating commercial cannabis activities in the City of Montclair. Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, and the review and approval of all products submitted by Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services to be Performed or change Consultant's compensation as provided in Section 5(b) below.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment Schedule of Fees 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 tasks detailed in Exhibit A.

(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.

(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. Consultant also may terminate this Agreement by serving upon the City at least thirty (10) days prior written notice.

(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. Notwithstanding the above, computer software (including without limitation financial models, compilations of formulas and spreadsheet models), prepared by Consultant are Instruments of Service of Consultant and shall remain the property of Consultant. Consultant shall likewise retain all common law, statutory and other reserved rights, including the copyright thereto.

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, 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 \$2,000,000 per occurrence, and \$4,000,000 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 \$1,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers’ Compensation: Workers’ Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (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: Mikey Fuentes, Dir. of Economic Development
City of Montclair
5111 Benito Street
Montclair, CA 91763

To Consultant: Andy Nickerson, President
Hinderliter, de Llamas and Associates
120 S. State College Blvd, Suite 200
Brea, CA 92821

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. PRIORITY OF AGREEMENT

To the extent any provision of Consultant's Proposal attached hereto as Exhibit "A" conflicts with the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control and shall take precedence over those contained in 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 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. 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.

[Signatures on Following Page]

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

CITY

CONSULTANT

By: _____
Javier John Dutrey, Mayor

By: _____
Andy Nickerson, President

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

City of Montclair

Cannabis Management Services

April 17, 2024

HdL[®] Companies

SUBMITTED BY

HdL Companies
120 S. State College Blvd., Ste 200
Brea, CA 92821
hdlcompanies.com

CONTACT

Matt Eaton
T: 714.879.5000
E: meaton@hdlcompanies.com

TABLE OF CONTENTS

I. COVER LETTER	2
II. PROPOSED SCOPE OF SERVICES	3
III. COST	6
IV. OPTIONAL SERVICES	8
V. EXPERIENCE AND RESOURCES.....	8
VI. REFERENCES	14

I. COVER LETTER

April 17, 2024

Mikey Fuentes, MPA
Director of Economic Development
City of Montclair
5111 Benito Street
Montclair CA 91763

Re: Proposal for Cannabis Monitoring and Compliance Services

Dear Mr. Fuentes,

Thank you for the opportunity to submit this proposal for cannabis management services for the City of Montclair. The enclosed scope of services provides a comprehensive program to assist the City with a series of meetings or workshops, development of a cannabis regulatory ordinance, preparation of a fiscal analysis, design of an application review process, conducting a cost recovery fee study, and additional hours of general subject matter expertise to be used as needed or requested by the City.

HdL is recognized as the industry leader in the development, implementation and enforcement of cannabis management programs for local governments in California. We have partnered with over 175 California cities and counties on cannabis-related programs, including ordinance development and review, community outreach and education, merit-based application and permitting processes, cost recovery studies, compliance inspections, revenue audits, fiscal analyses and law enforcement training.

Our cannabis team has unmatched expertise, with more than 80 years' combined experience in the development, implementation and enforcement of cannabis regulatory and tax programs. Our team members have conducted over 11,000 cannabis compliance inspections and audits in California, Colorado and Nevada, and have reviewed, scored and processed over 1,700 cannabis business applications in the last six years in California. HdL Companies works for the benefit of public agencies and has no private-sector clients in the cannabis industry.

We look forward to the opportunity to partner with the City of Montclair in developing a strategy which meets your program needs. If you have any questions or require additional information, please feel free to contact me by email at anickerson@hdlcompanies.com or Matt Eaton at meaton@hdlcompanies.com or by phone at 714.879.5000.

Sincerely,



Andy Nickerson
President, HdL Companies

II. PROPOSED SCOPE OF SERVICES

The City of Montclair currently has a voter-approved cannabis tax measure that establishes a rate of up to 7% of gross receipts for all cannabis business types, though the City does not yet allow any commercial cannabis businesses. City staff believe that there is support on the City Council to move forward with the development of a commercial cannabis regulatory ordinance and other steps necessary to allow for commercial cannabis businesses within the City.

To assist with this process, the City is requesting that HdL provide a proposal with a scope of services to include all of the following objectives:

- Attendance at meetings and workshops, including a series of meetings with City Council members, a presentation at a City Council workshop, attendance at a meeting of the Planning Commission, and attendance at a City Council meeting for the 1st reading of the ordinance.
- Development of a cannabis regulatory ordinance. The City may desire for the ordinance to require applicants to enter into an operating agreement to provide additional community benefits, as well as payment into a litigation fund.
- Preparation of a fiscal analysis that would include revenue estimates, along with a discussion of the revenue implications of different retail locations (neighborhood-serving commercial vs. freeway-serving commercial) and a discussion of the general demographics of cannabis consumers.
- Design of a process to review and evaluate cannabis business applications, including development of application forms. The process will include a “pass/fail” quality assurance review with a lottery process for final selection.
- A cost recovery fee study for both initial permitting fees and annual renewal fees
- Additional hours of general subject matter expertise to be used as needed.

These objectives are described in greater detail below.

Objective 1: Attendance, Support or Presentations at Meetings or Workshops

HdL shall provide attendance or presentations at up to 4 meetings or workshops to help inform discussion and development of a potential cannabis ordinance and associated regulatory program. It is anticipated that this objective may include meetings with City Council Members, a public meeting of the City Council to provide policy direction, attendance at a Planning Commission hearing, and attendance at another City Council meeting for the first reading of the ordinance. These meetings are described below.

- A series of meetings with members of the City Council individually or in pairs to provide a common baseline understanding of the cannabis industry and to address potential questions or concerns from the community. This series of 3 meetings will count as a single meeting for purposes of this proposal.

- A presentation at a public meeting or workshop to provide an overview of what a regulated cannabis industry might look like for the City, including revenue projections. This meeting would also provide an opportunity for the City Council to provide policy direction to staff for development of a regulatory ordinance.
- Attendance and support at a Planning Commission hearing for consideration of the draft cannabis regulatory ordinance.
- Attendance and support at the first reading of the cannabis regulatory ordinance before the City Council.

The use and scheduling of these meetings would be determined in consultation with City staff. The cost for this objective includes all planning, consultation, preparation of presentations, pre-meetings with staff and reasonable follow up from each meeting. This objective assumes that all meeting attendance would be virtual. Physical attendance would incur an additional travel charge.

Objective 2: Develop Draft Cannabis Regulatory Ordinance

HdL shall develop a draft commercial cannabis regulatory ordinance that is consistent with State laws and reflects industry best practices. HdL will work with City staff to identify local concerns and priorities, including land use issues and sensitive uses, and to design appropriate regulatory processes and mitigations as necessary to protect the health, safety and welfare of the community. The ordinance will allow the City to specify the number and types of businesses to be permitted, location requirements, site security measures, inspections and enforcement protocols, operational procedures, and other requirements specific to each allowable type of cannabis business.

Objective 3: Conduct a Fiscal Analysis

Consultant HdL shall conduct a fiscal analysis of the potential cannabis industry in the City of Montclair to help inform development of a potential cannabis tax ordinance and associated ballot measure. The analysis would seek to develop estimates for the number and size of each type of commercial cannabis business that may seek to locate in the City, as well as estimates for the gross receipts and tax revenue that may be generated from each type of business under a variety of tax structures and rates.

This proposal assumes that HdL will provide one initial draft report for staff to review and critique plus one iterative draft that will incorporate any requested revisions prior to providing the final report. Any additional drafts, iterations or documentation that may be requested by the City would be in addition to the costs shown in the table below and shall be billed at HdL's hourly rate. HdL will advise the City in advance if additional requested revisions may result in potential exceedances.

Objective 4: Application Process Development

HdL shall design an application process that includes review and evaluation of all cannabis business applications to ensure that they meet all City requirements. The process shall be tailored to provide a quality assurance standard to ensure applicants have addressed all City requirements before being allowed to move forward to the final selection process. All applications scoring above a minimum baseline will be entered into a drawing from which applications will be selected at random, consistent with the number of permits available. Those applications selected will be allowed to move forward to the permitting process.

HdL shall provide all necessary application forms, as well as procedures, guidelines, indemnification forms, background information releases, and other required documents and shall ensure that all information desired by the City is incorporated into the cannabis business application form and procedures.

Objective 5: Cost Recovery Fee Analysis

HdL will conduct a fee study to determine appropriate application and permitting fees to ensure that all City costs are paid by the applicants or permittees. The analysis shall consider the costs of all City staff time, overhead, fringe benefits, consultants and any other services associated with each step of the cannabis permitting and regulatory process, including both initial application processing and annual permit renewals. HdL staff has experience developing cannabis regulatory fees and conducting a “fit gap” analysis of staff responsibilities and time allotted to this program to establish appropriate fees for the City’s desired level of oversight and enforcement of the regulatory process.

Objective 6: Technical Assistance and Subject Matter Expertise

HdL will provide up to 40 hours of general consulting to be utilized on an as-needed basis at the City’s request. Such assistance may include technical assistance, subject matter expertise, education, monitoring of changes to State laws and regulations, participation in conference calls, responding to staff inquires via phone and email, reviewing staff reports to the City Council, assisting with responses to inquiries from the public, or other issues as mutually agreed to by the City and HdL.

III. COST

This proposal does not include any additional services that are not specifically enumerated herein. The proposal assumes HdL will not be asked to review any supplemental information provided by applicants or businesses, and that HdL will not be a part of any enforcement action, appeal, arbitration, or civil litigation resulting from the findings of an inspection and/or audit. Any such additional reports, documentation or assistance that may be required would be in addition to the costs shown in the table below and shall be billed at HdL’s hourly rate. This includes assistance with administrative hearings and/or civil litigation involving cannabis applicants or licensees.

Prices are valid for 90 days from the date of this proposal to allow time for consideration and negotiating a service agreement. Once under contract, prices shall be honored for the first full year, with successive years subject to an annual increase based upon the Consumer Price Index for the Los Angeles-Long Beach-Anaheim region.

Scope of Service Objectives	Estimated Cost
Objective 1: Attendance or Presentations at Meetings or Workshops Assumes 4 meetings at \$2,400 each	\$9,600
Objective 2: Develop Draft Cannabis Regulatory Ordinance Assumes up to 40 hours at \$300/hr (billed at hourly rate)	\$12,000 ¹
Objective 3: Conduct a Fiscal Analysis Assumes up to 60 hours at \$300/hr (billed at hourly rate)	\$18,000 ¹
Objective 4: Cost Recovery Fee Analysis Assumes up to 40 hours at \$300/hr (billed at hourly rate)	\$12,000 ¹
Objective 5: Application Process Development Assumes up to 40 hours at \$300/hr (billed at hourly rate)	\$12,000 ¹
Objective 6: Technical Assistance and Subject Matter Expertise Assumes up to 40 hours at \$300/hr (billed at hourly rate)	\$12,000 ¹
Travel: As needed for site visits or in-person meetings	Hourly Rate ² plus expenses
TOTAL NOT TO EXCEED	\$75,600
¹ Objective billed at hourly rate ² Or at a flat rate to be determined in consultation with the City All City costs may be fully recoverable from applicants or permittees	

Services Billed at Hourly Rate

Service objectives shown as being billed at HdL's hourly rate may be billed up to the maximum estimated hours. HdL will not exceed the maximum estimated hours without first notifying the City and receiving written approval in advance.

Drafts and Final Work Products

All work products assume one initial draft for review and comment, one iterative draft to incorporate any desired changes, and one final draft for presentation or publication. Additional drafts requested by the client may result in additional charges at HdL's hourly rate.

Conflicts of Interest and Non-Disclosure

HdL Companies works for the benefit of public agencies and has no private-sector clients in the cannabis industry. All cannabis business information will be kept confidential by HdL and will not be shared internally beyond those HdL employees who are required to have access for purposes of conducting the work contemplated herein, or for administrative purposes as necessary.

IV. OPTIONAL SERVICES

Optional services are described here for information purposes, only. No additional services will be provided without the expressed mutual agreement of both parties.

Hourly Rates for HdL Staff

The prices in this proposal are based on the hourly rates for HdL staff as shown in the chart below. Any additional services requested by the client that are not specifically described in this proposal would be billed at the standard rate for the assigned staff person.

HdL Staff Person	Title	Hourly Rate
Matt Eaton	Director of Compliance	\$300
Mark Lovelace	Senior Policy Advisor	\$300
Elizabeth Eumurian	Director of Audits	\$300
Michelle Shaw	Compliance Inspector	\$235
Teresa Schnieder	Compliance Inspector	\$235
Valerie Carter	Senior Auditor	\$250
Tao Lu	Senior Auditor	\$250
Pamela Davis	Auditor	\$235
Eric Magana	Auditor	\$235
Jennifer Erwin	Auditor	\$235
Dante Chegini	Audit Analyst	\$225
Michael Cimino	Audit Analyst	\$225
Kristi Lervold	Compliance Administrator	\$200
All rates current as of the date of this proposal		

V. EXPERIENCE AND RESOURCES

Company Profile

Founded in 1983, HdL is a consortium of three companies established to maximize local government revenues by providing audit, compliance, economic development, consulting services and software products. Our audit and consulting services include sales, use and transaction taxes, property taxes, transient occupancy taxes, and a Cannabis Management Program. The firm also provides a variety of enterprise software processing tools for business licensing, code enforcement, animal control, building permits and tracking/billing of false alarms.

HdL's systematic and coordinated approach to revenue management and economic data analysis is currently being utilized by over 600 agencies in six states. The firm currently serves 49 counties, 311 cities and 132 transactions tax districts in California.

HdL's key staff has extensive experience serving local government and many have previously held positions in city management, finance, planning, economic development or revenue collection. HdL is a Corporate Partner of the League of California Cities and California State Association of Counties and works extensively with the County Auditor's Association of California, California Society of Municipal Finance Officers (CSMFO) and California Municipal Revenue and Tax Association (CMRTA) on anticipation and planning of programs to strengthen local government revenues.

This close understanding of local government needs coupled with extensive databases and advanced methodology provides for the most relevant, productive and responsive revenue recovery; forecasting; and economic services available.

Our team of professionals has over 80 years of direct experience establishing and implementing cannabis regulatory and taxation programs, including establishing land-use regulations, permit processes, staffing plans, and cost recovery fees; structuring cannabis business tax fees; regulatory compliance; financial audits; and law enforcement training. Our team has conducted over 11,000 cannabis compliance inspections and investigations in California, Colorado and Nevada.

Key Personnel

Matt Eaton; Deputy Compliance Director

Matt Eaton is the Deputy Compliance Director at HdL and plays a critical role in implementing the Cannabis Compliance Program for local agencies. Prior to joining the firm, he was a progressive law enforcement professional with 30 years' experience conducting criminal/regulatory investigations, and corporate/individual background investigations.

While working as a Supervisory Investigator at the Colorado Department of Revenue in the Marijuana Enforcement Division (MED), Matt managed criminal investigators and civilian staff in the Denver Metro and Longmont field offices. During his six-year tenure at the MED, he conducted approximately 10,000 criminal investigations and compliance reviews,

including regulatory and financial investigations. He is a subject matter expert on track and trace systems and understands the complexity of reviewing data to ensure businesses are in compliance with state and local regulations. Matt was responsible for planning, developing and implementing report and field inspection protocols for the agency. He also played an instrumental role in recommending changes to current regulations and identifying essential language for new legislation in Colorado. Matt is well known for his ability to maintain working relationships with cannabis industry leaders and external stakeholders in resolving issues.

Matt received his Bachelor of Science Degree from Biola University and maintained Police Officer Service Training (POST) certification for over 30 years in California and Colorado. He has also served as an adjunct instructor teaching law enforcement principle related to criminology, correctional processes, procedural law, interviews, interrogations and criminal evidence at AIMS Community College in Greeley, Colorado.

Mark Lovelace; Senior Policy Advisor

Mark Lovelace has 23 years of broad experience in public policy, community engagement and advocacy and is recognized as a leader in advancing the statewide discussion of medical and recreational cannabis as a legitimate policy issue in California. Mark served on the Humboldt County Board of Supervisors from 2009 through 2016 where he was instrumental in developing a comprehensive approach to regulating cannabis, including a voter-approved tax on commercial cultivation and an innovative track and trace pilot program. Mark established and co-chaired the Cannabis Working Group for the California State Association of Counties (CSAC) and helped draft CSAC's cannabis legislative platform.

Mark has worked extensively with public agencies and statewide organizations on cannabis issues and has led numerous presentations, workshops and panel discussions. Prior to his time on the Board, he worked for many years as a respected advocate on land use, planning, development, resource management and environmental issues. Mark received his Bachelor of Science degree in Industrial Design from San Jose State University.

Michelle Shaw; Compliance Inspector

Michelle conducts onsite inspections, examinations and other actions to monitor compliance with established standards for local licensed cannabis businesses. Prior to joining HdL, she was a Compliance Specialist Officer at a large, multinational bank where she managed, validated and oversaw the effectiveness and accuracy of numerous compliance issues within the consumer retail space. Throughout her eight years of experience at the bank, she performed assessments of affiliate businesses to determine compliance/non-compliance of their processes and procedures pursuant to bank standards and state regulations.

A graduate of Cypress College, Michelle holds a Foundations of Banking Risk certificate from the Global Association of Risk Professionals and a paralegal certificate from the Southern California College of Business and Law.

Teresa Schneider; Compliance Inspector

Teresa Schneider served for 28 years with the Montclair Police Department, including 12 years in the Background Investigations Unit. In this capacity, Teresa was responsible for conducting background investigations of all City business license applicants, as well as all sworn and non-sworn positions within the police and fire departments and of civilians requesting access to police department records.

Theresa previously served 4 years in the U.S. Army's nursing program at Fort Campbell, Kentucky. During this time she attended college at the University of Kentucky and Austin Peay State University. After receiving an Honorable Discharge in 1990, Teresa was hired by the Montclair Police Department. During her 28-year career, she worked numerous assignments, including patrol, K9, detective bureau, court liaison, volunteer coordinator, and red-light automated enforcement. Teresa received many awards throughout her career, including Officer of the Year.

Elizabeth Eumurian; Director of Audits

Elizabeth Eumurian is the Director of Audits for HdL. Her primary role is to oversee and review the audits conducted by team members to assure accuracy and consistency. She also conducts financial audits, evaluates cannabis applications and conducts background checks. As part of the audit program, she will be conducting and preparing analytical information through the CATS™ program to prepare Tax Analytical Remittance Reports (TARR) summaries to evaluate under reporting or anomalies in the remittance of tax payments to local jurisdictions.

Elizabeth previously worked as a senior auditor in the entertainment industry. In this role, she executed testing procedures for targeted audit programs, analyzed findings and prepared audit and compliance reports. She also has experience working for a large financial institution analyzing data for reporting anomalies and performing internal audits. Elizabeth has recently done work for Blythe, California City, Coachella, Cotati, Desert Hot Springs, Long Beach, Mammoth Lakes, Moreno Valley, Perris, San Bernardino, and Vallejo.

Elizabeth earned her Bachelor of Arts degree in History from California State University and holds a certificate in CannaBusiness from Oaksterdam University.

Valerie Carter; Senior Auditor

Valerie Carter works as an Auditor for HdL's Cannabis Management Team. Valerie has over 5 years of public sector work experience focusing on public policy, auditing and revenue tax implementation. She was a Tax Auditor II for the City of Oakland's Revenue Management Bureau and an Assistant Management Analyst for the City of Berkeley's Transportation division.

Valerie earned a Bachelor's Degree in Business Administration from Cal Poly Pomona, with an emphasis on Finance, Real Estate, and Law.

Tao Lu; Senior Auditor

Tao Lu works as an Auditor for HdL's Cannabis Management Team. Tao has two and a half years' experience as an accountant with an emphasis in information technology and food manufacturing industries. He also has public audit work experience at RSM China. Tao was born and raised in China.

Tao earned a Bachelor's Degree in Accounting and Finance from Syracuse University in New York before relocating to Southern California with his family.

Pam Davis; Auditor

Pam Davis conducts revenue audits of licensed cannabis businesses as a member of HdL's Cannabis Management Team. Prior to joining HdL, Pam served as the Director for the Richland County (South Carolina) Business Service Center for over 15 years, where she was responsible for auditing businesses to ensure accurate reporting and remittance of a variety of local taxes. Pam also conducted research and rate impact analyses and developed policies, procedures and user manuals to ensure business and governmental compliance.

Pam received a Master's of Public Administration degree from the University of Georgia and a Bachelor's Degree in Political Science from Clemson University. She also holds a certificate in CannaBusiness from Oaksterdam University as well as numerous other certifications.

Eric Magana; Auditor

Eric Magana works as an Auditor for HdL's Cannabis Management Team, conducting revenue audits of licensed cannabis businesses to ensure they are accurately reporting their revenues and remitting the proper amount of fees or taxes. Prior to joining HdL, Eric worked as a Loan Specialist for the U.S. Small Business Administration, where he processed over 5,000 business loans and grant applications. Eric holds a Bachelor's Degree in Economics and Administrative Studies from University of California at Riverside.

Jennifer Erwin; Auditor

Jennifer Erwin is an Auditor for HdL's Cannabis Management Team. Jennifer conducts revenue audits of licensed cannabis businesses to ensure they are reporting and remitting the proper amount of cannabis tax revenue to their host jurisdiction. Jennifer previously served as Finance Director for the City of Perris, California and as Assistant Controller for the Morongo Band of Mission Indians. Jennifer brings extensive experience with complex financial analyses, fee studies, cost accounting procedures and collections.

Jennifer is a Certified Public Accountant (CPA #108992) and received her Bachelor of Science degree in Business Administration from the University of Phoenix.

Dante Chegini; Audit Analyst

Dante Chegini conducts revenue audits as a member of HdL's Cannabis Management Team to ensure that licensed cannabis businesses are reporting and remitting the proper amount of cannabis taxes to their host jurisdiction. Dante previously worked as a financial analyst at a public finance investment banking firm in Los Angeles, where he was lead analyst on over 30 deals with a total value exceeding \$1 billion. Dante brings experience with organizing and analyzing large volumes of financial data to determine accurate revenues and debts.

Dante received a Bachelor of Science degree in Business Administration from the University of Southern California, Marshall School of Business in May of 2022 with a focus on financial and managerial accounting and business finance.

Michael Cimino; Audit Analyst

Michael Cimino is an Audit Analyst for HdL's Cannabis Management Team. Michael conducts revenue audits of licensed cannabis businesses to ensure they are reporting and remitting the proper amount of cannabis taxes to their host jurisdiction.

Michael previously worked as an information technology manager at an international manufacturing company where he performed internal security audits and risk analyses and implemented policies to ensure compliance with ISO standards. He also assisted with integration of ERP/CRM software across multiple departments and locations. Michael holds an Associate of Arts degree from Fullerton College.

Kristi Lervold; Compliance Administrator

Kristi is the Compliance Administrator for HdL's cannabis team. In this role she supports individual team members, coordinates internal processes, and assists with client requests, contracts, billing reconciliation and invoicing. Kristi's 18-year career includes ten years as the administrative assistant to HdL's CFO, handling various operational responsibilities and supporting financial functions, as well as experience in the occupational health industry, facilitating services for federal, state, and local government clients. Kristi holds a Bachelor's of Science degree in Business Management with a minor in Business Administration.

VI. REFERENCES

City of Claremont

Alex Cousins
Management Analyst, Community Development
Phone: 909.399.5323
Email: acousins@ci.claremont.ca.us

City of Baldwin Park

Benjamin Martinez
Community Development Director
Phone: 626-960-4011, Ext: 477
Email: bmartinez@baldwinpark.com

City of Duarte

Kristen Petersen
Finance Director
Phone: 626.357.7931
Email: petersenk@accessduarte.com

City of El Monte

Betty Donovanik
Director of Community & Economic Development
Phone: 626.580.2056
Email: bdonavanik@elmonteca.gov

City of Visalia

Devon Jones
Economic Development Manager
Phone: 559.713.4190
Email: Devon.Jones@visalia.city

CITY OF MONTCLAIR
AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and effective as of May 6, 2024, between the City of Montclair, a California Municipal Corporation ("City") and Cole Huber LLP ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on May 6, 2024 and shall remain and continue in effect until modified by the parties or terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

The parties intend Consultant to assist the City with cannabis legal services. Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, and the review and approval of all products submitted by Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services to be Performed or change Consultant's compensation as provided in Section 5(b) below.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment Schedule of Fees 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 tasks detailed in Exhibit A.

(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.

(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. Consultant also may terminate this Agreement by serving upon the City at least thirty (10) days prior written notice.

(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. Notwithstanding the above, computer software (including without limitation financial models, compilations of formulas and spreadsheet models), prepared by Consultant are Instruments of Service of Consultant and shall remain the property of Consultant. Consultant shall likewise retain all common law, statutory and other reserved rights, including the copyright thereto.

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, 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 \$2,000,000 per occurrence, and \$4,000,000 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 \$1,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers’ Compensation: Workers’ Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (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: Mikey Fuentes, Dir. of Economic Development
City of Montclair
5111 Benito Street
Montclair, CA 91763

To Consultant: Derek Cole, Managing Partner
Jennifer A. Mizrahi, Partner
Cole Huber LLP
2855 E Guasti Rd Suite 402.
Ontario, CA 91761

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. PRIORITY OF AGREEMENT

To the extent any provision of Consultant's Proposal attached hereto as Exhibit "A" conflicts with the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control and shall take precedence over those contained in 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 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. 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.

[Signatures on Following Page]

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

CITY

CONSULTANT

By: _____
Javier John Dutrey, Mayor

By: _____
Derek Cole, Managing Partner

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

Jennifer A. Mizrahi
jmizrahi@colehuber.com

REPLY TO:
ROSEVILLE ONTARIO

April 24, 2024

VIA ELECTRONIC MAIL ONLY

Edward C. Starr
City Manager
5111 Benito Street
Montclair, CA 91763
Email: estarr@cityofmontclair.org

**Re: *Proposal for Cannabis Special Counsel Services
City of Montclair***

Dear Mr. Starr:

Cole Huber LLP is pleased to submit this proposal for Cannabis Special Counsel Services for the City of Montclair. Below, we explain our firm’s qualifications for providing legal services, provide biographies for the attorneys who would provide these services, a scope of services, and propose rates and terms for compensation.

FIRM OVERVIEW

Founded in 2007, Cole Huber LLP is a law firm founded on a commitment to legal excellence. From our Northern California (Roseville) and Southern California (Ontario) offices, our firm provides full-service advisory services and representation to local agencies throughout the state. Our 19 full-time attorneys advise our municipal clients on the broad range of issues affecting California local government. The firm’s tagline, “Advancing Your Agenda,” is more than a tagline; it’s what we do.

Cole Huber LLP currently serves as City Attorney to nine cities, general counsel to several special districts, and special counsel to a number of cities and counties. Our attorneys also regularly author articles and publications for and speak at events sponsored by Cal Cities (League of California Cities), California Cannabis Control Summit (Infocast), and other municipal-focused organizations. In particular, Jennifer Mizrahi was Chairperson of the Cannabis Regulation Committee of Cal Cities. She was one of a team of cannabis attorneys who drafted “Seed to Sale: A Guide to Regulating Cannabis in California Cities,” a leading legal treatise used throughout the State of California. Nationally, Jennifer has spoken in New Orleans at the National Cannabis Bar Association, where she was invited by and sat on a panel with Sal Pace, the former Minority Leader of the House of Representatives for the State of Colorado.

The touchstones of the firm’s philosophy are responsiveness, communication, and accuracy. We make great efforts to ensure our attorneys are always available to clients, we regularly communicate with clients regarding the status of pending matters, and, most important, we correctly interpret the law. Our firm is mindful of the budgetary challenges public agencies face in today’s environment. To provide cost-effective legal services, we provide competitive hourly and flat-rate packages to our clients to ensure they get the best value for their scarce public funds.

PROPOSED LEGAL TEAM

If retained as Cannabis Special Counsel, we would propose a team of the following attorneys to provide legal services. Although we are proposing multiple attorneys, we would take great care to ensure that work is performed only by the necessary legal professionals and there is no duplication of work performed. The goal of assigning multiple personnel is to ensure that the proposed team can cover the broad scope of subjects that might arise during our representation.

Cannabis Special Counsel. Jennifer Mizrahi, Bar No. 224043, admitted January 2023.

Jennifer Mizrahi is a partner with Cole Huber, and has practiced municipal law for her entire career, spanning well-over two decades. Prior to joining Cole Huber, Jennifer served as City Attorney for Desert Hot Springs for over a decade. She also served as Assistant City Attorney for the cities of Cathedral City, Rancho Mirage, and Victorville, and Deputy General Counsel for the Southern California Logistics Airport Authority, Glendale Oversight Board, the Victorville Water District, and the Victor Valley Economic Development Authority. At the commencement of her career, Jennifer represented the City of Lynwood and the Water Replenishment District, as Deputy Legal Counsel.

During her career representing public entities, Jennifer has acquired extensive experience in many facets of municipal law, including land use planning, environmental analysis, annexation proceedings, contract negotiations, public works, prevailing wage compliance, Proposition 218, eminent domain, and sales and property tax measures.

Jennifer is also one of the leaders in cannabis law regulation, having the distinct pleasure to represent the City of Desert Hot Springs from stem to stern in the cannabis arena. Jennifer worked with elected officials to solidify their ideas and was a key player in creating a highly regulated and developer-friendly space where the cannabis industry flourished. To that end, Jennifer drafted all ordinances, regulations, policies, and procedures and oversaw the legal aspects of the regulatory field. Jennifer also worked with representatives at the State level providing input on State cannabis regulations, often being asked to give real-life experience on policies and procedures. Further, Jennifer was instrumental in working with several public agencies, including CalFire and water districts, to effectively develop a comprehensive inter-agency cannabis regulatory structure within the County of Riverside. Most importantly, Jennifer oversaw the implementation of the City Council’s zero-tolerance stance on non-compliant cannabis activity.

Jennifer was admitted to the State Bar of California in January 2003, and received her Juris Doctor from Southwestern University School of Law, and her Bachelor of Arts degree in Latin American Studies/Economics from the University of California, Santa Cruz, where she graduated with honors. Jennifer also attended the University of Madrid, Complutense, where she studied international political economy, and is fluent in speaking, reading, and writing in Spanish.

Jennifer is admitted to practice before all courts of the State of California, the United States District Court, District 7, and the Ninth Circuit Court of Appeals.

Land Use and Environmental Counsel. *Derek P. Cole*, Bar No. 204250, admitted 1999.

Mr. Cole is a co-founder of Cole Huber LLP. He serves as the City Attorney for the Cities of Oakley (since 2010) and Sutter Creek (since 2010). He twice served as Interim City Attorney for the City of Antioch while that city recruited for its in-house attorney (2015-2016 and 2017-2019). Mr. Cole also previously served as the City Attorney for Angels Camp (2012-2017) and as County Counsel for Trinity County (2008-2013).

Since 2019, Mr. Cole has served as Cannabis Program counsel for Trinity County, where he advised regarding that county's adoption of a programmatic environmental impact report for its significant commercial cannabis program and the subsequent implementation of the report's mitigation measures.

Although Mr. Cole is familiar with all aspects of municipal government, he has an emphasis in land use and environmental law. He has ample experience in matters concerning CEQA, planning and zoning, development agreements, the Subdivision Map Act, and air and water quality laws. He also has significant experience in litigating post-approval challenges to projects under CEQA, the Planning and Zoning Law, and other applicable land use and environmental laws.

Mr. Cole was selected to the Northern California *Super Lawyers* list from 2015 to 2023; was named as a "Top Lawyer" in *Sacramento* magazine from 2015 to 2022; and was honored by the *Sacramento Business Journal* with "Best of the Bar" awards in 2014, 2016, and 2018.

Mr. Cole is active in the City Attorneys' Department of the League of California Cities. He presently serves on the Department's Attorney Development Succession Committee. He previously served on the Department's Nominating Committee, which is responsible for appointing the Department's Officers, and as Chair of the Municipal Law Handbook Committee, which is responsible for publishing Cal Cities' comprehensive guide concerning municipal law. For two years, Mr. Cole served on the Department's Legal Advocacy Committee, which provides counsel to the Cal Cities on its amicus or "friend-of-the-court" efforts.

Mr. Cole has further authored several amicus briefs on behalf of Cal Cities, the California State Association of Counties, California Special Districts Association, and International Municipal Lawyers Association, and other local government organizations. He has submitted amicus briefs to the United States Supreme Court, Ninth Circuit Court of Appeals, California Supreme Court, and California District Courts of Appeals.

Mr. Cole graduated with distinction from the University of the Pacific, McGeorge School of Law in 1999. At McGeorge, Mr. Cole was admitted to the Order of the Coif, Order of Barristers, and Traynor Honor Society. He was also a member of the Editorial Board of the *McGeorge Law Review* and published two student comments in that journal. Prior to attending law school, Mr. Cole graduated from the University of California at Santa Barbara in 1996 with a Bachelor of Arts degree in Law and Society.

PROPOSED SCOPE OF SERVICES

The firm will collaborate with the City and its cannabis consultants to assist in developing a comprehensive commercial cannabis regulatory framework. Such assistance can include, but is not limited to: a) reviewing documents, , resolutions and regulations, b) provide insight into real-life cannabis regulatory frameworks, and 3) overall cannabis counsel provided on an as-needed basis. The firm can attend meetings with Staff, shareholders, members of City Council and others to discuss strategy, land use issues, and the overall cannabis system, on an as-needed basis. The firm can also prepare for, present at and/or attend meetings (such as Planning Commission and/or City Council) and meeting with others as may be deemed appropriate by the City. The firm will collaborate with the City Attorney, Staff, Councilmembers, consultants and any other persons to assist the City in its cannabis framework.

COMPENSATION

If retained as Cannabis Special Counsel, the firm would charge the following rates for such services. For 2024, the rate schedule is as follows:

Attorneys (21 or more years in practice)	\$325/hour
Attorneys (11-20 years in practice)	\$300/hour
Attorneys (0-10 year in practice)	\$275/hour
Paralegals	\$250/hour

In addition, the firm would seek reimbursement for standard “out of pocket” and reimbursable items. Given the proximity of the City to the Ontario office, the firm would not charge mileage for any vehicle trips associated with our travel to and from the District office.

Edward C. Starr, City Manager
April 24, 2024
Page 5

CONCLUSION

We appreciate the opportunity to provide the City with this proposal. Any questions regarding our response may be directed to me. My mail and email addresses are listed on this page; you may also reach me by phone at 323-559-3424 (mobile). I will be happy to respond to any questions you may have.

Sincerely,

Jennifer Mizrahi
COLE HUBER LLP

JAM



ADVANCING YOUR AGENDA

MONTCLAIR CITY COUNCIL MEETING - 05/06/2024

Northern California:
2281 Lava Ridge Court, Suite 300
Roseville, CA 95661
Phone: 916.780.9009
Fax: 916.780.9050

Southern California:
2855 E. Guasti Road, Suite 402
Ontario, CA 91761
Phone: 909.230.4209
Fax: 909.230.4204

Page 158 of 198



CITY COUNCIL AGENDA REPORT

DATE:	MAY 6, 2024	FILE I.D.:	CCK350
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	6	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 24-34 AMENDING AGREEMENT NO. 22-93 WITH RECORDS CONTROL SERVICES, INC. FOR RECORDS MANAGEMENT CONSULTING SERVICES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City has been working with Records Control Services, Inc. (RCS), a records management consultant, to update the City's records retention schedules to comply with all applicable legal retention periods and reflect the City's existing records more accurately, and to provide records management training and best practice recommendations to staff in each department.

Due to gaps in staffing in the City Clerk's Office, which has been managing this project over the past year-and-a-half, the project has experienced delays exceeding the project timeline. The original contract with RCS expires on June 30, 2024; however, while the retention schedule and policy are almost complete, the implementation and training portions of the contract have yet to be completed.

The City Council is requested to consider approval of Agreement No. 24-34 amending Agreement No. 22-93 with Records Control Services, Inc. (RCS) for records management consulting services.

BACKGROUND: At its November 19, 2012 meeting, the City Council adopted Resolution No. 12-2973 adopting a Records Retention Schedule as the City of Montclair's Official Records Management Program. The Records Retention Schedule was adopted in order to ensure the City's compliance with various State and Federal statutes, which require records of public agencies to be maintained for specified periods of time. The retention of public records is in accordance with Government Code §7920.000, the California Public Records Act (CPRA) — an act designed to allow the inspection and/or disclosure of public agency and government records to the public upon request.

The CPRA defines a public record as, "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." While the CPRA provides an expansive definition of "writing," it does not specify the retention period for public records.

Instead, Government Code §34090 provides general retention periods for various categories of documents classified as public records. The General Records Retention Law is applicable to most types of public agency records and is actually a records destruction law instead of a retention schedule.

In December of 2018, the City Council adopted Resolution No. 18-3224 in order to update the Records Retention Schedule to comply with changes to various State and Federal statutes. While the updated Schedule included statutory changes and guidelines for retention of records, the City of Montclair Records Management Program does not include a comprehensive Records Management Policy to support the Records Retention Schedule and other records management activities within the City.

On September 19, 2022, the City Council approved a contract with RCS to develop a Records Management Policy, and to revise and improve the Records Retention Schedule to include new or updated Federal and State statutory retention requirements and to accurately represent all types of records maintained in the Departments.

The project timeline was split into three phases, as follows:

- *Phase 1 – Discovery, Assessment, Gap Analysis, and Records Classification System (estimated time 16 to 18 weeks)*

In the first phase, the consultant will review the City’s current policies and develop a project timeline. There will be a kick-off meeting with key City staff (the project team), and then RCS will separately hold meetings with representatives from each department who are familiar with the department’s records to review and inspect active and inactive files including paper, electronic, and microfilm; perform on-site reviews of currently available storage space and equipment; and determine adherence to current records retention schedules and records management policies. From these meetings and reviews, RCS will assess the most appropriate methods and procedures for each department and record type. RCS will then prepare a report summarizing the result of the review of the City’s records and provide a presentation of findings and gap analysis to the project team.

- *Phase 2 – Records Information and Management Policies/Procedures & Retention Schedule (estimated time 8 to 10 weeks)*

During Phase 2, RCS will develop a comprehensive proposal for a Records Management Program customized to the City’s records and staff preferences to maximize use of the City’s available on-site storage space, including an updated Records Retention Schedule, policies and procedures for records and information management based on best practices, and recommendations for physical and digital records storage and a centralized, all-inclusive system for quickly navigating and locating records.

- *Phase 3 – Records Management Program Implementation Strategy & Training (estimated time 7 to 9 weeks)*

In the final phase, RCS will develop and provide training and procedure guides to staff for Records Management Program maintenance and preservation—including guidance for the City Council’s future adoption of a policy that complies with the state’s Trustworthy Electronic Document requirements to convert paper records to electronic format, disposing of the paper versions permanently, and designating the electronic copy as the new original record, which will be essential for “going paperless” with any forms or documents that originated on paper.

Bruce Meier, the Principal Consultant of RCS, conducted in-depth meetings with each department in May of 2023 to review records inventories and processes. He then held several follow-up meetings with departments separately to draft the retention schedules.

The updated schedules have been reviewed and approved by each of the Departments' management and by the City Attorney, and the Records Management Policy is currently under staff review. Once the Policy is complete, it will be presented to the City Council, along with a resolution adopting the updated Records Retention Schedule, for adoption.

The original contract is scheduled to expire on June 30, 2024; however, staff is requesting to amend the contract to extend the term through December 31, 2024. This would provide the consultant with adequate additional time to complete Phase 3 of the project, which includes providing staff training.

FISCAL IMPACT: The funds for this contract were budgeted in the FY 2023-24 budget, and remaining funds to cover the contract will be carried over to FY 2024-25 to cover the remaining payments on the contract.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 24-34 amending Agreement No. 22-93 with Records Control Services, Inc., for records management consulting services, subject to any revisions deemed necessary by the City Attorney.

CITY OF MONTCLAIR

AMENDMENT TO AGREEMENT FOR

RECORDS MANAGEMENT CONSULTING SERVICES

THIS AMENDMENT to Agreement No. 22-93 (AGREEMENT) is made and effective as of May 6, 2024, between the City of Montclair, a municipal corporation ("City") and Records Control Services, Inc., a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth in AGREEMENT, the parties agree to amend AGREEMENT by replacing "Section 1. TERM" in its entirety with the following:

1. TERM

This Agreement shall commence on September 19, 2022, and shall remain and continue in effect for a period of 28 months until tasks described herein are completed, but in no event later than December 31, 2024, unless sooner terminated pursuant to the provisions of this Agreement.

The remaining sections of AGREEMENT shall remain in full force and effect.

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Javier John Dutrey
Mayor

By: _____
Bruce G. Meier, CRM
President/CEO, Records Control
Services

Attest:

By: _____
Andrea M. Myrick
City Clerk

Approved as to Form:

By: _____
Diane E. Robbins
City Attorney



CITY COUNCIL AGENDA REPORT

DATE:	MAY 6, 2024	FILE I.D.:	HSV105
SECTION:	CONSENT - AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	7	PREPARER:	A. COLUNGA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 24-35, AMENDMENT NO. 2 TO AGREEMENT NO. 21-42 WITH THE SAN BERNARDINO COUNTY DEPARTMENT OF AGING AND ADULT SERVICES TO ACCEPT ADDITIONAL FUNDING TO SUPPORT SENIOR CENTER ACTIVITIES AND THE SENIOR TRANSPORTATION PROGRAM

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 24-35, Amendment No. 2 to Agreement No. 21-42 with San Bernardino County Department of Aging and Adult Services (DAAS) to accept additional funding to support the Senior Center activities and transportation program.

BACKGROUND: In Spring 2021, the Human Services Department applied for and was awarded a contract through DAAS, Senior Supportive Services Program to provide funding to support the Senior Center activities and transportation program for older adults, ages 60 and over. On July 19, 2021, the City Council approved Agreement No. 21-42 for a three-year grant not-to-exceed amount of \$165,000. The City of Montclair is contracted to annually serve 40 participants and provide 3,500 units of service (one unit is equivalent to a one-way trip) plus 48 equivalent hours of Senior Center Activities.

In 2023, DAAS provided the City Amendment No. 1 to Agreement No. 21-42 for an additional \$50,000 to support the Senior Center activities and transportation program through the term of the contract.

To date during the 2023-2024 fiscal year, the Human Services Department has served 525 individual seniors through activities (Classes, special senior center events, workshops) and provided 4,600 one-way trips through the Senior Transportation Program on the Montclair Golden Express shuttle bus.

FISCAL IMPACT: Should Agreement No. 24-35 be approved, DAAS will provide the City with an additional \$85,000 for a not-to-exceed total of \$300,000, which will assist the City in paying for staff salaries and program costs to support Senior Center activities and transportation programs. The term of the contract is extended from July 1, 2021, through June 30, 2025.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 24-35, Amendment No. 2 to Agreement No. 21-42 with the San Bernardino County Department of Aging and Adult Services to provide additional funding to support Senior Center activities and the Senior Transportation Program.

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

21-562 A-2

SAP Number

4400017289

Department of Aging and Adult Services

Department Contract Representative	Diane Ettari
Telephone Number	(909) 386-8313
Contractor	City of Montclair
Contractor Representative	Marcia Richter
Telephone Number	(909) 625-9453
Contract Term	July 1, 2021, through June 30, 2025
Original Contract Amount	\$ 215,000
Amendment Amount	\$ 85,000
Total Contract Amount	\$ 300,000
Cost Center	5292001036

IT IS HEREBY AGREED AS FOLLOWS:

AMENDMENT NO. 2

It is hereby agreed to amend Contract No. 21-562 as follows:

SECTION III. CONTRACTOR GENERAL RESPONSIBILITIES

Add Paragraph QQ. to read as follows:

QQ. **Campaign Contribution Disclosure (SB 1439)** – Contractor has disclosed to the County using Attachment F – Campaign Contribution Disclosure (AB 1439), whether it has made any campaign contributions of more than \$250 to any member of the Board of Supervisors within the earlier of: (1) the date of the submission of Contractor’s proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. Contractor acknowledges that under Government Code section 84308, Contractor is prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors for twelve (12) months after the County’s consideration of the Contract.

In the event of a proposed amendment to this Contract, the Contractor will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board of Supervisors within the preceding twelve (12) months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary, or otherwise related business entity of contractor.

SECTION V. FISCAL PROVISIONS

Amend Section V., Paragraph A. to read as follows:

- A. The maximum amount of cost reimbursement under this Contract shall not exceed a cumulative total of \$300,000, of which \$300,000 may be Federally funded, and shall be subject to availability of funds to the County. The consideration to be paid to each Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem. Overtime and holiday make-up time will not be permitted. Payments are subject to provisions in the Payments, Budgets, Closeout, and Audits.

SECTION VIII. TERM

Amend Section VIII. to read as follows:

This Contract is effective as of July 1, 2021 and expires June 30, 2025, but may be terminated earlier in accordance with provisions of Section IX of the Contract. The Contract term may be extended for one (1) additional one (1) year period by mutual agreement of the parties.

ATTACHMENTS

Amend Attachment Section as follows:

ATTACHMENT F – CAMPAIGN CONTRIBUTION DISCLOSURE (SB 1439)

Add **ATTACHMENT F**, attached, 3 pages.

All other terms and conditions of Contract No. 21-562 remain in full force and effect.

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF, or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

SAN BERNARDINO COUNTY

City of Montclair

(Print or type name of corporation, company, contractor, etc.)

►

 Dawn Rowe, Chair, Board of Supervisors

By ► _____
(Authorized signature - sign in blue ink)

Dated: _____
 SIGNED AND CERTIFIED THAT A COPY OF THIS
 DOCUMENT HAS BEEN DELIVERED TO THE
 CHAIRMAN OF THE BOARD

Name Javier John Dutrey
(Print or type name of person signing contract)

Lynna Monell
 Clerk of the Board of Supervisors
 San Bernardino County

Title Mayor
(Print or Type)

By _____
 Deputy

Dated: _____

Address 5111 Benito Street
Montclair, CA 91763

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Jacqueline Carey-Wilson, Deputy County Counsel	► Patty Steven, Contracts Manager	► Sharon Nevins, Director
Date _____	Date _____	Date _____



ATTACHMENT F

Campaign Contribution Disclosure (SB 1439)

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the County's decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor: City of Montclair

2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?
 Yes If yes, skip Question Nos. 3-4 and go to Question No. 5
 No

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: N/A

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded (“closed corporation”), identify the major shareholder(s):N/A

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
N/A	

6. Name of agent of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months)
N/A		

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and//or Agent(s):
N/A		

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
N/A	

9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors on or after January 1, 2023, by any of the individuals or entities listed in Question Nos. 1-8?

No If **no**, please skip Question No. 10.

Yes If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors while award of this Contract is being considered and for 12 months after a final decision by the County.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 6, 2024	FILE I.D.:	SEW600
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	8	PREPARER:	M. HEREDIA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 24-36 WITH CASC ENGINEERING AND CONSULTING FOR SANITARY SEWER ORDER CONSULTING SERVICES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 24-36 with CASC Engineering and Consulting (CASC) to assist the City with complying with the General Sanitary Sewer Order. A copy of proposed Agreement No. 24-36 with CASC is attached for City Council review and consideration.

BACKGROUND: The City is subject to General Sanitary Sewer Order 2022-0103-DWQ, effective June 5, 2023. To comply with regulatory mandates, the sewer permit requires critical updates to the City's Sewer System Management Plan (SSMP) and Annual Reporting processes. Requirements include updating and obtaining City Council approval of the SSMP within twelve months of the enrollment Water Board approval date. Once the SSMP is approved, staff will upload the SSMP to the State's online CIWQS Sanitary Sewer System Database.

As outlined in the attached scope of services, CASC will provide Sanitary Sewer Order (SSO) Annual Reporting services and training to ensure personnel compliance with the SSO. CASC's efforts will support the City in meeting regulatory obligations effectively and efficiently. They offer a comprehensive approach to complying with the General Sanitary Sewer Order through updated SSMPs, accurate Annual Reporting, and targeted training services.

Currently, CASC provides a variety of stormwater compliance services, including Qualified Storm Water Pollution Prevention Plan Practitioner (QSP) services for Capital Improvement Projects under the State Construction General Permit (CGP) and Qualified Industrial Stormwater Pollution Prevention Plan Developer (QISD) services per the Industrial General Permit. CASC has also been reviewing Water Quality Management Plans (WQMP) for the City since July 2006 and has performed these reviews exceptionally well. CASC is very responsive to the City regarding WQMP issues and reviews and has continually maintained its knowledge of state water quality requirements.

FISCAL IMPACT: The cost for consulting services related to the General Sanitary Sewer Order is \$30,635 and will be covered as part of the Fiscal Year 2023-24 Sewer Maintenance budget. Future consulting service fees will be paid by Sewer Maintenance Funds.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 24-36 with CASC Engineering and Consulting for Sanitary Sewer Order Consulting Services, 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 May 6, 2024, between the City of Montclair, a municipal corporation ("City") and CASC Engineering, Inc., a California corporation/a partnership/a sole proprietor ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on May 6, 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 May 6, 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 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 \$30,635 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 twenty percent (20%) of the amount of the Agreement, but in no event shall total compensation exceed Ten Thousand Dollars (\$10,000). Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Said invoices shall detail all costs, rates and hours for individual tasks. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month.

Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(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, Subconsultant, 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/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.

(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 \$2,000,000 per occurrence, and \$4,000,000 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 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 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 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 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 Consultant.

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/Sunconsultants

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

To Consultant: CASC Engineering and Consulting
1470 E. Cooley Drive
Colton, CA. 92324

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 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 OF MONTCLAIR

CONSULTANT

By: _____
Javier "John" Dutrey, Mayor

By: _____
Name:
Title:

Attest:

By: _____
Andrea M. Myrick, City Clerk

By: _____
Name:
Title:

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

**Sanitary Sewer Order Consulting Services
City of Montclair**

SCOPE OF SERVICES

Task 1 – Sewer System Management Plan (SSMP) Update

Montclair, subject to the General Sanitary Sewer Order 2022-0103-DWQ effective from June 5th, 2023, requires critical updates to its Sewer System Management Plan (SSMP) and Annual Reporting processes to comply with regulatory mandates. Requirements include updating and City Council approval of the Sewer System Management Plan (SSMP) within twelve months of the application enrollment Water Board approval date. Once approved, Montclair must upload the SSMP to the State's online CIWQS Sanitary Sewer System Database.

Per an initial review, it appears that Montclair's SSMP, developed in 2007, is not aligned with the current Order WQ 2022-0103-DWQ, necessitating significant updates to meet regulatory requirements in accordance with the new Sanitary Sewer Order. Below, is an outline of each required element and how they can be incorporated into the SSMP:

- **Plan Development:** Provide details on the development process of the SSMP, including stakeholder involvement, timelines, and any revisions made to comply with the new order.
- **Plan Goal and Introduction:** Clearly state the goals and objectives of the SSMP in alignment with the requirements of the new Sanitary Sewer Order.
- **Certification:** Outline the certification process for personnel involved in sewer system management and ensure compliance with any new certification standards mandated by the order.
- **Organization:** Describe the organizational structure responsible for managing the sewer system, including roles and responsibilities of key personnel and departments.
- **Audits:** Detail the auditing procedures to ensure ongoing compliance with the requirements outlined in the new order.
- **Legal Authority:** Clearly define the legal authority under which Montclair operates and manages its sanitary sewer system.
- **Six Year Updates:** Specify how the SSMP will be updated and reviewed at least every six years as mandated by the order.
- **Operations and Maintenance:** Provide updated procedures and schedules for the operation and maintenance of the sewer system to meet the new regulatory standards.
- **System Resilience:** Address measures to enhance the resilience of the sewer system against potential hazards and disruptions.
- **Design and Performance Revisions:** Document any revisions made to the design and performance standards of the sewer system to comply with the new order.

- **Allocation of Resources:** Describe how resources, including funding and personnel, will be allocated to support the implementation of the SSMP.
- **Spill Emergency Response Plan:** Update the spill emergency response plan to meet any new requirements specified in the order, including reporting procedures and remedial actions.
- **System Capacity:** Provide a detailed assessment of the capacity of Montclair's sanitary sewer system, including current capacity, projected demand, and any limitations or deficiencies. System capacity will be provided by the City per their latest study of their sanitary sewer collections system.
- **Sewer Pipe Blockage Control Plan:** Develop a plan to control sewer pipe blockages, including preventive maintenance measures and emergency response protocols.
- **Performance Analysis:** Implement procedures for analyzing the performance of the sewer system and identifying areas for improvement.
- **System Evaluation, Capacity Assurance CIP:** Conduct regular evaluations of the sewer system's capacity and develop a Capital Improvement Program (CIP) to ensure capacity assurance.
- **Spill Emergency and Remedial Action:** Detail procedures for responding to spills and implementing remedial actions to mitigate environmental impacts.
- **Monitoring, Measurement, & Program Modifications:** Establish monitoring and measurement protocols to assess the effectiveness of the SSMP and make necessary modifications as required.
- **Notification Requirements:** Outline notification requirements for reporting incidents, spills, and other relevant information to regulatory authorities and stakeholders.
- **Communications Program:** Develop a communications program to inform and engage stakeholders about the SSMP and its objectives.
- **Electronic Boundary Maps:** Include electronic boundary maps of the sewer system to aid in planning and management efforts. Casc will work with the City GIS Department to obtain this information.
- **Plan Change Log:** Maintain a log of changes made to the SSMP, including revisions, updates, and approvals.
- **Unintended Failure to Report:** Address procedures for addressing unintended failures to report incidents or comply with regulatory requirements.

The City must provide access to documents, Public Works Sewer Division staff, and any other relevant information to accurately complete the SSMP. Any delays in these items by the City may postpone the completion of the updated SSMP.

After completion of the SSMP the Legally Responsible Official (LRO) shall review the draft SSMP for accuracy and provide one set of comments. After Casc has addressed comments and uploaded the document on the States CIWQS website, the LRO must certify the report on the CIWQS website.

A digital copy of the Sanitary Sewer Management Plan will be provided upon completion of the document.

Task 2 – Sanitary Sewer Order Annual Report Services

Casc will assist in preparing and submitting Annual Reports, meeting the compliance requirements of Order 2022-0103-DWQ:

- Collect and enter annual compliance data into CIWQS.
- Update population served and service area boundary maps.
- Detail system operation and maintenance staff certifications.
- Provide information on treatment plants, tributaries, sewer crossings, and system evaluations.
- Report spill causes, infrastructure failures, ongoing investigations, and corrective actions.

After completion of the Annual Report the Legally Responsible Official (LRO) shall review the draft Annual Report for accuracy and provide one set of comments. After Casc has addressed comments in CIWQS, the LRO must certify the report on the States CIWQS website.

Task 3 – Training

Casc will conduct one tailored training session to ensure personnel compliance with the Sanitary Sewer Order (SSO):

- Curriculum Development:
 - Develop a comprehensive curriculum tailored to address the requirements of the SSO.
 - Include modules covering regulatory requirements, spill prevention and response, safety protocols, and environmental protection measures.
- Training Materials Preparation:
 - Prepare training materials such as Power Point presentation and if necessary, handouts. Spill Volume Calculation work sheets for up to 20 individuals.
 - Ensure all materials are accurate, up-to-date, and aligned with the SSO regulations.
- Training Delivery:
 - Conduct onsite training session using various instructional methods to enhance learning effectiveness.

Compensation for Services

A budget has been developed for the tasks in the proposal. The total cost of services shall not exceed **\$30,635**. Casc estimates are based on the Hourly Rates Table provided below. The project should take approximately 205 hours to complete.

TASK #	Task Description	Estimated Task Total
1	Sanitary System Management Plan revision and update	\$16,470.00
2	Sanitary Sewer Order Annual Report Services	\$1,500.00
3	Training + Printing and Travel	\$12,665.00
Not to Exceed Total		\$30,635.00

Hourly Rates Table	
Position	Rate
Project Manager/ Sr Program Manager	\$163.00
Senior Environmental Analyst	\$150.00
Environmental Analyst	\$145.00

Casc's proposal offers a comprehensive approach to promote Montclair's compliance with the General Sanitary Sewer Order through updated SSMPs, accurate Annual Reporting, and targeted training services. Casc's collaborative efforts will support Montclair in meeting regulatory obligations effectively and efficiently.

Should you require further details or have any questions, please do not hesitate to contact us. We look forward to partnering with Montclair to achieve and maintain regulatory compliance.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 6, 2024	FILE I.D.:	GRT200
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	PUBLIC WORKS
ITEM NO.:	1	PREPARER:	M. HEREDIA/A. COLUNGA

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 24-3436 AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR GRANT FUNDS FOR THE URBAN AND COMMUNITY FORESTRY GRANT PROGRAM OF THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION AND AUTHORIZING THE EXECUTION OF APPLICATION-RELATED DOCUMENTS BY THE CITY MANAGER OR HIS DESIGNEE

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Resolution No. 24-3436 authorizing the submission of an application for grant funds for the Urban and Community Forestry Grant Program of the California Department of Forestry and Fire Protection (CALFIRE) and authorizing the execution of application-related documents by the City Manager or his designee.

BACKGROUND: According to CALFIRE, urban forests provide greenhouse gas reductions while providing increased climate resilience; reducing the impacts of extreme heat; increasing energy conservation; reducing storm-water runoff; extending the life of surface streets; improving local air, soil, and water quality; providing high-quality jobs and improving public health. The mission of the CALFIRE Urban & Community Forestry Program is to advance the development of sustainable and accessible urban and community forests in California.

The United States Department of Agriculture Forest Service Urban and Community Forestry program awarded \$1.5 billion to states, projects and national initiatives through the Inflation Reduction Act of 2022. The funding provides for urban and community forestry investments across the nation that foster:

- Increased and equitable access to urban tree canopy and associated human health, environmental, and economic benefits in disadvantaged communities,
- Broadened community engagement in local urban forest planning, tree planting, and management activities, and
- Improved community and urban forest resilience to climate change, extreme heat, forest pests and diseases, and storm events through best management and maintenance practices.

CALFIRE received a state allocation of Inflation Reduction Act funds, of which \$30.8 million is available for grant projects working at a community, regional, or statewide scale.

The City plans to submit an application for this funding opportunity, which will include this required resolution.

FISCAL IMPACT: Adoption of proposed Resolution No. 24-3436 would have no direct fiscal impact on the City's General Fund at this time, but may result in the award to increase the City's urban forest. The requested funding amount is still being determined.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 24-3436 authorizing the submission of an application for grant funds for the Urban and Community Forestry Grant Program of the California Department of Forestry and Fire Protection and authorizing the execution of application-related documents by the City Manager or his designee.

RESOLUTION NO. 24-3436

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR GRANT FUNDS FOR THE URBAN COMMUNITY FORESTRY GRANT PROGRAM OF THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION AND AUTHORIZING THE EXECUTION OF APPLICATION-RELATED DOCUMENTS BY THE CITY MANAGER OR HIS DESIGNEE

WHEREAS, the City of Montclair proposes to implement the Montclair Urban Forestry Project;

WHEREAS, the Governor of the State of California in cooperation with the State Legislature has appropriated General Funds for the state’s urban forestry programs; and

WHEREAS, the State Department of Forestry and Fire Protection has been delegated the responsibility for the administration of the program within the State, setting up necessary procedures governing application by local agencies and non-profit organizations under the program, and;

WHEREAS, said procedures established by the Department of Forestry and Fire Protection require the applicant to certify by resolution the approval of application before submission of said application to the State; and

WHEREAS, the applicant will enter an agreement with the State of California to carry out an urban forestry project;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Montclair as follows:

1. Approved the filing of an application for the Urban and Community Forestry grant program funds; and
2. Certifies that said applicant has or will have sufficient funds to operate and maintain the project; and,
3. Certifies that funds under the jurisdiction of Montclair are available to begin the project.
4. Certifies that said applicant will expend grant funds prior to March 31, 2028.
5. Appoints City Manager or his designee, as agent of the City of Montclair to conduct negotiations, execute and submit all documents including, but not limited to applications, agreements, amendments, payment requests and so on, which may be necessary for the completion of the afore mentioned project.

APPROVED AND ADOPTED this XX day of XX, 2024.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 24-3436 was duly adopted by the City Council of the City of Montclair and was approved by the Mayor of said city at a regular meeting of said City Council held on this XX day of XX, 2024, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
APRIL 15, 2024, AT 5:32 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 5:32 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Johnson, Council Member Ruh, City Manager Starr, and Assistant City Manager/Director of Human Services Richter

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of April 1, 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 April 1, 2024.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION


At 5:33 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 5:52 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 5:52 p.m., Mayor Pro Tem Johnson adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager

MINUTES OF THE SPECIAL MEETING OF THE MONTCLAIR CITY COUNCIL HELD ON MONDAY, APRIL 15, 2024, AT 6:00 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 6:00 p.m.

II. ROLL CALL

Present: Mayor Dutrey; Mayor Pro Tem Johnson; Council Members Ruh, Martinez, and Lopez

City Manager Starr; Assistant City Manager/ Director of Human Services Richter; 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

III. COMMUNITY ACTIVITIES COMMISSION PRESENTATION OF 2024 VOLUNTEER RECOGNITION AWARDS

Community Activities Commission Chair Richard Escalante recognized the following volunteers for their volunteerism with the City:

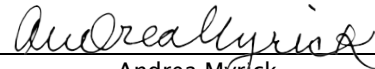
- **Loyce Mejias** for her dedication to homebound seniors who are part of Aging Next, as well as the Montclair community.
- **Elizabeth Ortega-Gingrich** for her dedication to the families of the Foothill Family Shelter and the Montclair community.
- **David Flores** for his dedication to the children and families of the Montclair Little League, and the Montclair community.
- **Paul Malacara** for his commitment to the Montclair Meals on Wheels Program and Montclair Senior Citizen residents.
- **Dr. Brian Loveless** for his commitment to making a difference to those in need and to the Montclair community.
- **Emma Casillas** for her dedication to the community's health and wellness through Healthy Montclair (Por La Vida Program), and the Montclair community.
- **Gwen Alber** for her commitment to the Montclair Senior Center and senior community.
- **Eric and Khoi Phan** for their commitment to Our Lady of Lourdes Church and the Montclair community.

All volunteers were presented with plaques from the City and Certificates of Recognition from the offices of **San Bernardino County Fourth District Supervisor Curt Hagman**, **California Assemblymember Freddie Rodriguez**, **Senator Susan Rubio**, and **U.S. Representative Norma Torres**.

IV. ADJOURNMENT

At 6:27 p.m., the City Council was adjourned.

Submitted for City Council approval,



Andrea Myrick,
City Clerk

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, APRIL 15, 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 Joe McTarsney of **Calvary Montclair** and Montclair Police Department Chaplain, gave the invocation.

III. PLEDGE OF ALLEGIANCE

Fourth District San Bernardino County Supervisor Curt Hagman 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; Assistant City Manager/Director of Human Services Richter; 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. Fourth District Update by San Bernardino County Supervisor Curt Hagman

Supervisor Hagman provided countywide and fourth district updates including updates on countywide ambulance service, homelessness committee, federal funding, a new stadium, and park construction projects.

B. Proclamation Declaring April 26, 2024 as “Arbor Day” in the City of Montclair

Mayor Dutrey presented a proclamation declaring April 26, 2024 as “Arbor Day” in the City of Montclair to Public Works Director Heredia.

Public Works Director Heredia announced upcoming tree planting events at Sunset Park and invited residents to volunteer.

VI. PUBLIC COMMENT

Mayor Dutrey apologized to Council Member Martinez for comments he made to her after the April 1, 2024 meeting, noting he values her input as a representative of the younger residents in the community.

- **Bill Kaufman** urged the City Council to move forward with legalizing commercial cannabis businesses, noting he still has a secured location on Central Avenue to open a business. He added Pomona is benefitting from tax revenue by allowing it in their city.
- **Frank Sanchez, STIIIZY**, encouraged the City Council to allow the cannabis industry to operate in Montclair, and stated he looks forward to submitting an application on behalf of his company.
- **Mike Cargile** introduced himself as a candidate running to represent the 35th Congressional District, which includes Montclair, and stated that if elected, he would be happy to speak to residents about any federal issues they would like him to bring to Capitol Hill.

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

ACTION - Consent Calendar	
ACTING:	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
DISCUSSION:	Item C-1
MOTION:	Approve the Consent Calendar as presented.
MADE BY: SECOND BY:	Council Member/Director Lopez Council Member/Director Ruh
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
RESULT:	Motion carried 5-0.

A. Approval of Minutes

1. Regular Joint Meeting — April 1, 2024

ACTION - Consent Calendar - Item A-1	
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 - March 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 - March 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 – March 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 – March 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 – March 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 – March 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 – March 2024**

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

9. **Consider Authorizing the Receipt of \$16,729 from the 2021 Justice Assistance Grant to Purchase Three Electric Bikes and Safety Equipment for the Police Department**

Carolyn Raft, resident, stated she thinks electric bikes would be great for the Police Department, making them more accessible to the community.

ACTION – Consent Calendar – Item B-9	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

C. Agreements

1. **Consider Approval of Agreement No. 24-27 with TKE Engineering, Inc. for On-Call Contract Inspection Services, Subject to Any Revisions Deemed Necessary by the City Attorney**

Consider Authorizing a \$60,000 Appropriation from 2021 Lease Revenue Bond Proceeds for Costs Related to Agreement No. 24-27

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

D. Resolutions

- 1. Consider Adoption of Resolution No. 24-3432 Approving the Tree City USA Application for 2024 and Authorizing the Director of Public Works to Sign the Application**

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

IX. PULLED CONSENT CALENDAR ITEMS — None

X. BUSINESS ITEMS

- A. Consider Adoption of One of the Following Resolutions:**

Resolution No. 24-3433 Affirming as Policy the City Council's Practice to Not Act on Matters Considered the Purview and Maintenance of the State or National Governments; and, Further, to Not Consider or Adopt Resolutions, Issue Proclamations or Otherwise Engage in Discourse or Advocacy Adverse to the Interests Of Montclair, or that Would Place the City Council in the Position of Advocacy on Matters Outside the Purview of Local Government, or that Would Potentially Pit Against Each other Factions or Groups Within Montclair, or that are Otherwise Not Directly Connected with the City Council's Governance or Administration of the City, its Provision of Public Services, or its Objective to Improve the Quality of Life for Montclair Residents;

Resolution No. 24-3434 Demonstrating Support for the Biden Administration's Call for "An Immediate Ceasefire" to Hostilities in the Israel-Gaza Strip Conflict, and that "Specific, Concrete, and Measurable Steps" be Taken to Curb Civilian Casualties and Prevent Harm to Aid Workers, that All Hostages, Prisoners of War and Detainees be Immediately Returned to their Respective States and, Further, that Humanitarian Aid be Permitted to Flow into the Conflict-Torn Areas

Mayor Dutrey invited comments from the public.

City Clerk Myrick read written comments submitted by the following:

- 1. Pastor Josh Matlock** in support of Resolution No. 24-3433; and
 - 2. Sally Sanders** in support of Resolution No. 24-3434.
- Guy Bouk** stated he prays for everyone on all sides of the matter.

The following spoke in support of the City Council's adoption of proposed Resolution No. 24-3433, affirming the City Council's policy to focus on local issues:

- | | |
|-----------------------------|--------------------------------|
| 1. Bernice Navarro | 12. Sharon Stein |
| 2. Catherine Lara | 13. Carolyn Raft |
| 3. Tom Long | 14. Paul Santillanez |
| 4. Enrique Guzman | 15. Rabbi Shalon Harlig |
| 5. Lonnie Marion | 16. Chanie Harlig |
| 6. Dyane McTarsney | 17. Edna Tzobery |
| 7. Katelyn McTarsney | 18. Shoshana |
| 8. Joseph McTarsney | 19. Jacob Haiavy |
| 9. Jimmy Crowell | 20. Sigalif Raviv |
| 10. Sandra Crowell | 21. Linor Geld |
| 11. Matthew Munson | |

The following spoke in support of the City Council's adoption of proposed Resolution No. 24-3434, calling for a ceasefire:

- | | |
|------------------------------|-------------------------------|
| 1. Samar Khalife | 23. Youssef Abdelmonen |
| 2. Fernando | 24. Kenneth Tea |
| 3. Jessica Gaytan | 25. Kayo Nguyen |
| 4. Tahseen Sultana | 26. Ziad |
| 5. Alejandra | 27. Saffi Khan |
| 6. Huda | 28. Chapo |
| 7. Zain | 29. Zuhair |
| 8. Celeste Guerrero | 30. Thoraya |
| 9. Noor Abdallah | 31. Nazli Janjue |
| 10. Rheyanah Williams | 32. Anonymous 1 |
| 11. Elvis Caceres | 33. Anonymous 2 |
| 12. Raina Ramirez | 34. Nicole |
| 13. Ehaab Zubi | 35. Phillip Gomez |
| 14. Madeline | 36. Selma Maytah |
| 15. Estee Chandler | 37. Sawsan |
| 16. Janel | 38. Julian Gonzalez |
| 17. Farzana | 39. Nour T. |
| 18. Liza Pena | 40. Ibrahim Shaheed |
| 19. Avraham Stern | 41. MD Shaheed |
| 20. Mirvette | 42. Abu Elias |
| 21. Alex Rocha | 43. Abdul Rahman Kotat |
| 22. Maggie Moe | |

At 9:56 p.m., Mayor Dutrey called for a brief recess.

The City Council reconvened at 10:05 p.m. with all members present.

Mayor Dutrey returned the matter to the City Council for discussion and consideration.

Mayor Pro Tem Johnson discussed her empathy for what the people of both Israel and Palestine are enduring. She stated she would support the resolution in favor of a ceasefire based on comments she heard tonight, although her primary focus as a Council Member is on local issues and she does not feel Resolution No. 24-3434 will have a significant impact on the war.

Council Member Martinez thanked the residents and students for speaking on this issue and noted she does not feel that by adopting Resolution No. 24-3434 the City Council would be acting "on matters considered the purview and maintenance of the state or national governments," as proposed Resolution No. 24-3433 implies, but simply supporting the call for a ceasefire in Israel.

Council Member Ruh questioned how this item came to be on tonight's agenda when there was not a majority of the City Council voting in support of its placement on the agenda.

City Manager Starr advised it was staff's decision to place it on the agenda, as staff does for all items placed on the agenda for City Council consideration.

Council Member Ruh expressed he does not agree that local governments should be involved with international issues.

Council Member Lopez moved that the City Council adopt Resolution No. 24-3433.

Council Member Martinez requested to amend the motion to instead adopt Resolution No. 24-3434.

City Attorney Robbins advised the City Council must take action on the amended motion and, if that fails, can take action on the original motion.

Council Member Lopez requested to further amend the motion to adopt Resolution No. 24-3434 by adding provided language.

ACTION 1 – Business Items – Item A	
ACTING:	City Council
MOTION:	Adopt Resolution No. 24-3434 with added language: <i>Whereas, the Montclair City Council condemns Hamas for their unprovoked attack on Israel on October 7, 2023, resulting in their terrorist acts of violence, murder, destruction, fear, and intimidation of innocent people.</i> <i>Whereas, the Montclair City Council condemns Hamas's taking of innocent human beings as hostages and calls for all nations to enact sanctions of every kind until every hostage is released in good health, free of harm.</i> <i>Whereas, the Montclair City Council recognizes the nation of Israel's right to defend its borders, its people, its national interests and their right to rescue their citizens held hostage.</i>
MADE BY: SECOND BY:	Council Member Lopez Council Member Ruh
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Ruh, Johnson, Dutrey Martinez None None
RESULT:	Motion carried 4-1.

Mayor Dutrey called for a vote on Council Member Martinez's motion.

City Attorney Robbins advised that the prior vote was to adopt Resolution No. 24-3434 as amended.

Mayor Dutrey and Council Member Lopez stated their understanding of the motion was to only amend proposed Resolution No. 24-3434.

Mayor Pro Tem Johnson stated she understood the motion to be voting to adopt Resolution No. 24-3434 as amended.

Mayor Dutrey requested the City Council vote to rescind the prior action so that a discussion can take place with everyone understanding the motion prior to voting.

ACTION 2 – Business Items – Item A	
ACTING:	City Council
MOTION:	Rescind the previous vote to adopt Resolution No. 24-3434 with added language: <i>Whereas, the Montclair City Council condemns Hamas for their unprovoked attack on Israel on October 7, 2023, resulting in their terrorist acts of violence, murder, destruction, fear, and intimidation of innocent people.</i> <i>Whereas, the Montclair City Council condemns Hamas's taking of innocent human beings as hostages and calls for all nations to enact sanctions of every kind until every hostage is released in good health, free of harm.</i> <i>Whereas, the Montclair City Council recognizes the nation of Israel's right to defend its borders, its people, its national interests and their right to rescue their citizens held hostage.</i>
MADE BY: SECOND BY:	Mayor Dutrey Council Member Lopez
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Ruh, Johnson, Dutrey Martinez None None
RESULT:	Motion carried 4-1.

At 11:00 p.m., Mayor Dutrey called for a brief recess.

The City Council reconvened at 11:10 p.m. with all members present.

Mayor Pro Tem Johnson asked if the second clause could be removed from the amendments or replace “ Hamas ” with “ all nations . ”

Council Member Lopez declined to remove any clauses from his proposed amendments or change the language as requested. He explained the importance of calling out Hamas, enacting sanctions on them, and demanding the release of hostages.

City Attorney Robbins asked if the clause could be amended for clarity as follows: *Whereas, the Montclair City Council condemns Hamas’s taking of innocent human beings as hostages and calls for all nations to enact sanctions of every kind on Hamas until every hostage is released in good health, free of harm.*

Council Member Lopez agreed.

Council Member Martinez stated she feels the amendments are unnecessarily divisive, noting they do not address all perspectives on the matter, such as Israel’s taking of Palestinian hostages nor Palestine’s right to defend its borders.

ACTION 3 - Business Items - Item A	
ACTING:	City Council
MOTION:	Adopt Resolution No. 24-3434 with added language: <i>Whereas, the Montclair City Council condemns Hamas for their unprovoked attack on Israel on October 7, 2023, resulting in their terrorist acts of violence, murder, destruction, fear, and intimidation of innocent people.</i> <i>Whereas, the Montclair City Council condemns Hamas’s taking of innocent human beings as hostages and calls for all nations to enact sanctions of every kind on Hamas until every hostage is released in good health, free of harm.</i> <i>Whereas, the Montclair City Council recognizes the nation of Israel’s right to defend its borders, its people, its national interests and their right to rescue their citizens held hostage.</i>
MADE BY: SECOND BY:	Council Member Lopez Mayor Dutrey
AYES: NOES: ABSTAIN: ABSENT:	None Lopez, Martinez, Ruh, Johnson, Dutrey None None
RESULT:	Motion failed 0-5.

ACTION 4 - Business Items - Item A	
ACTING:	City Council
MOTION:	Adopt Resolution No. 24-3434.
MADE BY: SECOND BY:	Council Member Martinez Mayor Pro Tem Johnson
AYES: NOES: ABSTAIN: ABSENT:	Martinez, Johnson Lopez, Ruh, Dutrey None None
RESULT:	Motion failed 2-3.

ACTION 5 – Business Items – Item A	
ACTING:	City Council
MOTION:	Adopt Resolution No. 24-3433.
MADE BY: SECOND BY:	Council Member Lopez Council Member Ruh
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Ruh, Dutrey Martinez, Johnson None None
RESULT:	Motion carried 3-2.

XI. COUNCIL WORKSHOP

A. Update on Affordable Housing and Homeless Assistance Grant Applications, Awards, and Projects

The City Council continued this presentation to an adjourned meeting to be held on Monday, May 6, 2024, at 5:45 p.m. in the City Council Chambers.

XII. COMMUNICATIONS

- A. Department Reports** — None
- B. City Attorney**— None
- C. City Manager/Executive Director** — None
- D. Mayor/Chair**

1. Announcement of Three Vacancies on Community Activities Commission for Four-Year Terms from July 1, 2024, to June 30, 2028

Mayor Dutrey announced there are three vacancies on the Community Activities Commission. The deadline to apply is by May 15, 2024, at 5:00 p.m.

- E. Council Members/Directors** — None
- F. Committee Meeting Minutes**

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

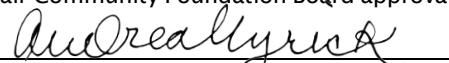
- 1. Personnel Committee - April 1, 2024

XIII. ADJOURNMENT

At 11:30 p.m., the Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board were adjourned.

At 11:30 p.m., the City Council was adjourned to Monday, May 6, 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

The meeting was adjourned in memory of Jacob Tuscher, husband of former Community Activities Commissioner Myrna Tuscher, and a longtime Montclair resident.