

**CITY OF MONTCLAIR
AGENDA FOR CITY COUNCIL, SUCCESSOR AGENCY,
MONTCLAIR HOUSING CORPORATION, MONTCLAIR
HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY
FOUNDATION MEETINGS**

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

July 1, 2019

7:00 p.m.

As a courtesy, please silence your cell phones and other electronic devices while the meeting is in session.

Persons wishing to speak on an agenda item, including closed session items, are requested to complete a yellow Speaker Information Card located at the entrance of the Council Chambers and present it to the City Clerk prior to consideration of the item. The Mayor/Chair (or the meeting's Presiding Officer) will recognize those who have submitted a card at the time of the item's consideration by the City Council/Board of Directors/Commissioners, and speakers may approach the podium to provide comments on the item at that time.

Audio recordings of the CC/SA/MHC/MHA/MCF meetings are available on the City's website at www.cityofmontclair.org and can be accessed by the end of the next business day following the meeting.

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

II. INVOCATION

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

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

V. PRESENTATIONS

- A. Recognition of Montclair Police Department 2018 Officer of the Year, Josh Garabedian, and Recipient of the Department's Annual Achievement Award, Officer Gloria Perez
- B. Proclamation Bestowing Upon Luis Flores the Honorary Title of Planning Commissioner Emeritus for 35 Years of Distinguished Service on the Planning Commission

VI. PUBLIC HEARINGS — None

Page No.

VII. PUBLIC COMMENT

This section is intended to provide members of the public with an opportunity to comment on any subject that does not appear on this agenda. Each speaker will be afforded up to five minutes to address the City Council/Boards of Directors/Commissioners. (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.

VIII. CONSENT CALENDAR

- A. Approval of Minutes
1. Adjourned Meeting — June 17, 2019 [CC]
 2. Regular Joint Meeting — June 17, 2019 [CC/SA/MHC/MHA/MCF]

B. Administrative Reports

1. Consider Designation of Mayor Dutrey as Voting Delegate and Council Members Ruh and Johnson as Alternate Voting Delegates for the Annual Business Meeting at the League of California Cities Annual Conference on October 18, 2019, in Long Beach [CC] 4
2. Consider Approval of Warrant Register and Payroll Documentation [CC] 5

C. Agreements

1. Consider Approval of Agreement No. 19-38 Amending Agreement No. 17-30, as amended by Agreement No. 18-30, with Mariposa Landscapes, Inc., for Landscape Maintenance Services [CC] 6
2. Consider Approval of Agreement No. 19-49 with Ontario-Montclair School District to Provide Navigation Services for the Homeless Emergency Aid Program [CC] 17
3. Consider Approval of Agreement No. 19-50 with Nutrition Ink to Provide Nutrition-Education Services for the City's Senior Citizen Nutrition Program [CC] 30
4. Consider Approval of Agreement No. 19-51 with Catering Systems, Inc., to Provide Meals for the Senior Citizen Nutrition Program [CC] 37
5. Consider Approval of Agreement No. 19-53 with Ontario-Montclair School District to Support the Montclair After-School Program [CC] 58
6. Consider Approval of Irrevocable Annexation Agreement No. 19-54-I-101 with Hilma E. Morales for the Property Located at 11336 Monte Vista Avenue; Lot 24 and the North ½ of Lot 25 of Tract No. 3976 (APN 1013-071-03-0000) [CC] 69
7. Consider Approval of Agreement No. 19-55 with Consolidated Fire Agencies of San Bernardino County (CONFIRE) for Continued Dispatch and Communication Services [CC] 75
8. Consider Approval of Agreement Nos. 19-56 and 19-57 with Ontario-Montclair School District and Chaffey Joint Union High School District to Provide Specialized School Zone Law Enforcement Services During Fiscal Year 2019-20 [CC] 92
9. Consider Approval of Agreement No. 19-60 with Ontario-Montclair School District to Provide a Licensed Clinical Social Worker for the Case Management Program [CC] 101
10. Consider Approval of Agreement No. 19-61 with Misha L. Penn to Provide Grant Management and Fiscal Compliance for the Human Services Department [CC] 107
11. Consider Approval of Agreement No. 19-62 with KOA Corporation for Preparation of Professional Final Design Services for the Fremont Avenue and Arrow Highway Streetscape Improvement Project [CC]

Consider Authorizing a \$529,320 Appropriation from the Redevelopment Project Area No. III Tax Allocation Bond Fund for Final Design Services Related to Agreement No. 19-62 [CC] 119
12. Consider Approval of Agreement No. 19-63 with Moule & Polyzoides for Collaboration in the Preparation of Professional Final Design Services for the Fremont Avenue and Arrow Highway Streetscape Improvement Project [CC]

(continued on following page)

Consider Authorization of a \$30,000 Appropriation from the Redevelopment Project Area No. III Tax Allocation Bond Fund for Final Design Services Related to Agreement No. 19-63 [CC] 139

D. Resolutions

1. Consider Adoption of Resolution No. 19-3240 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges [CC] 154

IX. PULLED CONSENT CALENDAR ITEMS

X. BUSINESS ITEMS — None

XI. RESPONSE — None

XII. COMMUNICATIONS

A. City Department Reports

1. Human Services Department — Upcoming Summer Programs & Events

B. City Attorney

1. Request for City Council to Meet in Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with Designated Labor Negotiator Edward C. Starr

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

C. City Manager/Executive Director

D. Mayor/Chairperson

E. Council Members/Directors

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

1. Personnel Committee Meeting— June 17, 2019 [CC] 161

XIII. CLOSED SESSION

XIV. CLOSED SESSION ANNOUNCEMENTS

XV. ADJOURNMENT

The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, July 15, 2019, at 7:00 p.m. in the Council Chambers.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the Acting Bodies after distribution of the Agenda packet are available for public inspection in the City Clerk's Office at 5111 Benito Street, Montclair, California, between 7:00 a.m. and 6:00 p.m., Monday through Thursday.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (909) 625-9416. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)

I, Andrea M. Phillips, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on June 27, 2019.



AGENDA REPORT

DATE:	JULY 1, 2019	FILE I.D.:	LCC050
SECTION:	ADMIN. REPORTS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	1	PREPARER:	A. PHILLIPS
SUBJECT:	CONSIDER DESIGNATION OF MAYOR DUTREY AS VOTING DELEGATE AND COUNCIL MEMBERS RUH AND JOHNSON AS ALTERNATE VOTING DELEGATES FOR THE ANNUAL BUSINESS MEETING AT THE LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE ON OCTOBER 18, 2019, IN LONG BEACH		

REASON FOR CONSIDERATION: The City of Montclair is a member of the League of California Cities. Policy development is a key part of the League of California Cities' legislative effectiveness. The League's Annual Conference Resolutions process is one way that city officials can directly participate in the development of League policy.

It is necessary that the City Council designate a voting delegate and up to two alternates to attend the League of California Cities Annual Conference so that the City of Montclair can participate in the vote on League policies.

BACKGROUND: The League's 2019 Annual Conference is scheduled for October 16-18, 2019, in Long Beach, California. An important part of the event is the General Assembly's Annual Business Meeting scheduled for 12:30 p.m. on Friday, October 18, 2019.

Participating cities will be given a vote at the Annual Business Meeting of the General Assembly if a voting delegate is determined in advance. Cities are eligible to appoint up to two alternate voting delegates. Montclair has traditionally designated our Mayor and Mayor Pro Tem as the respective voting delegate and alternate; however, Mayor Pro Tem Raft is not available to attend this year's conference. Council Members Ruh and Johnson have indicated they both are available to attend the conference this year as the City's alternate voting delegates.

FISCAL IMPACT: The City Council's designation of a voting delegate to the League of California Cities Annual Conference would create no fiscal impact to the City's General Fund. Funds have been allocated in the FY 2019-20 budget for Council representatives to attend the conference.

RECOMMENDATION: Staff recommends the City Council designate Mayor Dutrey as Montclair's voting delegate and Council Members Ruh and Johnson as alternate voting delegates for the Annual Business Meeting at the League of California Cities Annual Conference on October 18, 2019.



AGENDA REPORT

DATE:	JULY 1, 2019	FILE I.D.:	FIN540
SECTION:	ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	2	PREPARER:	L. LEW/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 Raft has examined the Warrant Register dated July 1, 2019; and the Payroll Documentation dated June 9, 2019; and recommends their approval.

FISCAL IMPACT: The Warrant Register dated July 1, 2019, totals \$847,460.92; and the Payroll Documentation dated June 9, 2019, totals \$668,174.53 gross, with \$457,703.06 net being the total cash disbursement.

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



AGENDA REPORT

DATE: JULY 1, 2019

FILE I.D.: STA500

SECTION: AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 1

PREPARER: M. MCGEHEE

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 19-38 AMENDING AGREEMENT NO. 17-30, AS AMENDED BY AGREEMENT NO. 18-30, WITH MARIPOSA LANDSCAPES, INC., FOR LANDSCAPE MAINTENANCE SERVICES

REASON FOR CONSIDERATION: Agreement No. 17-30 with Mariposa Landscapes, Inc., for landscape maintenance services, which was previously amended by Agreement No. 18-30, is currently in the second year of a three-year term that expires on June 30, 2020. Mariposa Landscapes, Inc., is requesting a monetary increase of 2.7 percent for FY 2019-20. Modifications to existing agreements require City Council approval.

BACKGROUND: At the June 5, 2017 meeting, the City Council approved Agreement No. 17-30 with Mariposa Landscapes, Inc., for landscape maintenance services. Agreement No. 17-30 is a three-year agreement expiring on June 30, 2020 that includes a clause allowing for a maximum 3 percent monetary increase commensurate with the current CPI for Fiscal Years 18-19 and 19-20. In Fiscal year 18-19, City Council approved Agreement No. 18-30 with a 3 percent rate increase. Mariposa Landscapes, Inc., is requesting a 2.7 percent increase for Fiscal Year 19-20. In addition to the 2.7 percent rate increase, the City of Montclair is requesting to remove certain items of work as outlined in Agreement No. 19-38 due to the Central Avenue Median Island Rehabilitation Project.

FISCAL IMPACT: The cost to provide landscape maintenance services under Agreement No. 19-38 would be \$24,079.30 per month for the next 12 months. Funds for this purpose are included in the Fiscal Year 2019-20 Public Works budget.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 19-38 amending Agreement No. 17-30, as amended by Agreement No. 18-30, with Mariposa Landscapes, Inc., for landscape maintenance services.

AMENDMENT TO AGREEMENT NO. 18-30
WITH
MARIPOSA LANDSCAPES, INC.
FOR
MEDIAN ISLAND, PARK, AND PARKWAY MAINTENANCE

This agreement is made and entered into this 1st day of July 2019, by and between the CITY OF MONTCLAIR, a municipal corporation hereinafter designated as "City," and MARIPOSA LANDSCAPES, INC., hereinafter designated as "Contractor," and collectively designated as the "Parties."

RECITALS

WHEREAS, Parties have previously entered into Agreement No. 13-41 on July 1, 2013, for landscape maintenance services for a period of one year, and further entered into Agreement No. 14-55 on July 1, 2014 for a period of three years expiring on June 30, 2017; and further entered into Agreement 17-30 on July 1, 2017 expiring on June 30, 2020 (the "Agreement"); and further entered into Agreement 18-30 on July 1, 2018 expiring on June 30, 2020 (the "Agreement, as Amended"); and

WHEREAS, the City entered into a contract with Sully Miller Contracting Company who will start the Central Avenue Median Island Rehabilitation Project on June 3, 2019. The median islands from Phillips at the southern border of the City of Montclair to the last median island south of the I-10 Freeway will be removed from the maintenance contract; and

WHEREAS, the Agreement, as Amended, includes a monthly rate of \$24,343.44 and both parties desire to reduce the monthly rate to \$23,446.25 by modifying the following work items in Agreement No. 13-41 as originally outlined in Section XIV; and

Item No.	Location	Decrease of Monthly Contract Amount
Remove "D"	Central Avenue Landscaping	(\$1,196.25)
Add "SS"	Central Avenue Median Island Landscaping North of I-10 to City Limit North of Richton	\$299.06
Total Decrease Amount		(\$897.19)

WHEREAS, the Agreement, as Amended, includes SECTION II which includes a clause allowing for an increase to the monthly rate equal to the annual CPI (Consumer Price Index) not to exceed 3 percent per year.; and

WHEREAS, the current CPI, as reported by the US Bureau of Labor Statistics, has increased by 2.7% and the Contractor wishes to exercise this clause and is asking for an increase in their monthly rate by 2.7%, as allowed by the Agreement, as Amended. Currently the monthly rate as modified above, due to removal of some work, is \$23,446.25 and the new monthly rate, with the requested CPI 2.7% increase, would be \$24,079.30.

AGREEMENT

NOW, THEREFORE, IT IS AGREED by and between City and Contractor to further amend Agreement No. 17-30, as amended by Agreement No. 18-30, as follows:

Replace Section III with the following:

SECTION III

All of the work and services to be performed pursuant to this Agreement shall be performed in a good and workmanlike manner for the total monthly sum of \$24,079.30 in Fiscal Year 2019-20.

Replace Section IV with the following:

SECTION IV

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

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law,

CONTRACTOR shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents ("Indemnified Parties") from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by CONTRACTOR or by any individual or entity for which CONTRACTOR is legally liable, including but not limited to officers, agents, employees or subcontractors of CONTRACTOR. Said indemnification shall include any claim that CONTRACTOR, or CONTRACTOR's employees or agents, are considered to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law. Said obligation to indemnify, defend and hold harmless the Indemnified Parties shall apply to all liability as defined above whether the Indemnified Parties were actively or passively negligent, except that it shall not apply to claims arising from the sole negligence or willful misconduct of the Indemnified Parties. The CONTRACTOR's obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

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

CONTRACTOR agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of CONTRACTOR and shall survive the termination of this Agreement or this section. These indemnification provisions are independent of and shall not in any way be limited by the insurance requirements of this Agreement. City approval of the insurance required by this Agreement does not in any way relieve the CONTRACTOR from liability under this section.

Replace Section V with the following:

SECTION V

(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, with minimum limits of at least \$3,000,000 per occurrence for bodily injury, personal injury and property damage, and \$5,000,000 aggregate total bodily injury, personal injury and property damage. Commercial General Liability insurance

and endorsements shall be kept in force at all times during the performance of this Agreement.

(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 \$3,000,000 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.

(b) Endorsements. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

(1) The insurance coverages required by Section (a)(1) Commercial General Liability; and (a)(2) Automobile Liability Insurance shall contain the following provisions or be endorsed to provide the following:

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 performance of the Contract. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

- i. Be limited to "Ongoing Operations"
- ii. Exclude "Contractual Liability"
- iii. Restrict coverage to the "Sole" liability of contractor
- iv. Exclude "Third-Party-Over Actions"
- v. Contain any other exclusion contrary to the Contract

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.

(2) The policy or policies of insurance required by Section (a)(3) Workers' Compensation shall be endorsed, as follows:

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.

(e) Evidence of Insurance. The Contractor, concurrently with the execution of the contract, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms

approved by the City. 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.

(g) Contractual Liability. The coverage provided shall apply to the obligations assumed by the Contractor under the indemnity provisions of this contract.

(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 Contract with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least three (3) years from termination or expiration of this Contract.

Upon expiration or termination of coverage of required insurance, Contractor shall procure and submit to City evidence of "tail" coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from the time that all work under this contract is completed.

(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 Contract/Agreement, including adding the City as an Additional Insured to the Subcontractor's policies.

Replace the first paragraph of Section XI with the following:

If the work performed by CONTRACTOR is not satisfactory, the CITY's Public Works Superintendent or his designated representative may suspend the Agreement for any period of time or terminate the Agreement as set forth herein. No sums shall be due

or payable to the CONTRACTOR for or during any time of such suspension or after termination.

Except as modified above, all other terms and provisions of Agreement No. 17-30, dated July 1, 2017, as amended by Agreement No. 18-30, dated July 1, 2018, shall remain in full force and effect.

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.

CITY OF MONTCLAIR, CALIFORNIA

MARIPOSA LANDSCAPES, INC.

By: _____
Javier John Dutrey, Mayor

By: _____
Name/Title:

Date: _____

Date: _____

Attest:

By: _____
Andrea M. Phillips, City Clerk

By: _____
Name/Title:

Approved as to form:

By: _____
Diane E. Robbins, City Attorney



AGENDA REPORT

DATE:	JULY 1, 2019	FILE I.D.:	HSV046
SECTION:	AGREEMENTS	DEPT.:	HUMAN SVCS./COMMUNITY DEV.
ITEM NO.:	2	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 19-49 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO PROVIDE NAVIGATION SERVICES FOR THE HOMELESS EMERGENCY AID PROGRAM		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 19-49 with Ontario-Montclair School District (OMSD) to provide navigation services for the Homeless Emergency Aid Program.

A copy of proposed Agreement No. 19-49 with OMSD is attached for City Council review and consideration.

BACKGROUND: On May 6, 2019, the City Council approved Agreement No. 19-31 with the San Bernardino County Office of Homeless Services to accept an award for the Homeless Emergency Aid Program (HEAP).

The City's HEAP program will enhance the City's homelessness prevention efforts and will be utilized to create a sustainable system to provide services to those that are chronically homeless and at-risk of becoming homeless. Services for the chronically homeless will be implemented through street outreach led by code enforcement officers. Through proposed Agreement No. 19-49, those at-risk of homelessness will be provided with navigation services through the Montclair Community Collaborative.

The OMSD Clinical Supervisor, Behavioral Health will be responsible for overseeing navigation services for those at risk of homelessness in an effort to prevent them from becoming homeless. Navigation services include an intake process to determine other services that may be needed. In addition, OMSD staff will submit all data reports as required in the Homeless Management Information System.

FISCAL IMPACT: Should the City Council approve Agreement No. 19-49, the City's contractual obligation for navigation services will not exceed \$25,000 for Fiscal Year 2019-20. The funding for proposed Agreement No. 19-49 is included in Agreement No. 19-31 with the San Bernardino County Office of Homeless Services; no impact to the City's general fund is expected. The term of proposed Agreement No. 19-49 is July 1, 2019, through June 30, 2020.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 19-49 with OMSD to provide navigation services for the Homeless Emergency Aid Program.

AGREEMENT NO. 19-49

**CITY OF MONTCLAIR
5111 BENITO STREET
MONTCLAIR, CALIFORNIA 91763**

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, executed in Montclair, California, is made by and between the City of Montclair, a California Municipal Corporation, hereinafter referred to as the "Contractor," and Ontario-Montclair School District, hereinafter referred to as the "Subcontractor."

WHEREAS, the Contractor and the County of San Bernardino Community Development and Housing Agency, Office of Homeless Services, hereinafter referred to as "County," have entered into an Agreement which authorizes the Contractor to provide certain services, said City Agreement being No. 19-31 dated May 6, 2019 (County Contract No. 19-290); and

WHEREAS, the aforesaid Agreement provides that the Contractor may subcontract for certain professional services subject to prior County approval; and

WHEREAS, the Contractor desires to engage the Subcontractor to provide professional services as detailed elsewhere in this Agreement; and

WHEREAS, the Subcontractor desires to perform and provide such services.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Contractor and the Subcontractor agree as follows:

Section 1. Statement of Work and Schedule

The Subcontractor shall perform and provide the services set forth in the Scope of Work, which is attached hereto as "Attachment 1" and by this reference incorporated herein. The rights and obligations of the parties to this Agreement shall be subject to and governed by said Scope of Work as well as by the general provisions herein.

Section 2. Representatives of the Parties and Service of Notice

The representatives of the respective parties who are authorized to administer this Agreement and to whom formal notices, demands, and communications shall be given are as follows:

- A. The representative of the Contractor shall be, unless otherwise stated in the Agreement:

Marcia Richter, Director of Human Services
City of Montclair
5111 Benito Street
Montclair, California 91763
(909) 625-9453

Phil Hillman, Chief Business Officer
Ontario-Montclair School District
950 West "D" Street
Ontario, CA 91762
(909) 445-2500

- B. If the name of the person designated to receive the notices, demands, or communications or the address of such person is changed, written notice shall be given, in accord with this Section, within five (5) working days of said change.

Section 3. Compensation to the Subcontractor

The Contractor shall pay to the Subcontractor an amount not to exceed \$25,000 for complete and satisfactory performance of the terms of this Agreement. The Subcontractor shall be paid for providing services set forth in this Agreement. Payment shall be made on a monthly basis in arrears based on the actual cost of staff time expended in performance of the Scope of Work (plus any applicable employee fringe benefits). Subcontractor shall submit monthly invoices on or before the 10th of each month beginning on August 10, 2019.

Section 4. Time of Performance

The term of this Agreement shall commence on July 1, 2019 and terminate on June 30, 2020, provided that said term is subject to the provisions of Section 13, "Indemnity, Liability, and Insurance Requirements," and Section 18, "Termination," and the availability of funds through the County.

Section 5. Records and Retention

Subcontractor shall maintain all records and books pertaining to the delivery of services under this Agreement and demonstrate accountability for performance. All records shall be complete and current and comply with all requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Agreement.

All records relating to the Subcontractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Subcontract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

Contractor shall retain all records described above for a minimum period of five (5) years after the termination of this Agreement. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been commenced before the expiration of the required record retention period, all records must be retained until completion of the action and resolution of all issues which arise from it.

Section 6. Amendments to Agreement

Any changes in the terms of this Agreement, including changes in the scope of services to be performed by the Subcontractor and any increase or decrease in amount of compensation which are agreed to by the Contractor and the Subcontractor, shall be incorporated into this Agreement by a written amendment properly executed by both parties. Prior written approval shall be received from County.

Section 7. Permit and Licenses

The Subcontractor shall hold valid permits, license, certificates, and other documents as are required by the State, County, City, or other governmental or regulatory bodies to legally engage in and perform the services to be provided under this Agreement, such as public health license, annual Fire Inspection Certificates, and other documents attached for County's approval. The Subcontractor shall notify the Contractor immediately of any suspension, termination, lapses, non-renewals, or restrictions of required licenses, certificates, or other documents that may be cause for termination of this Agreement.

Section 8. Conflict of Interest

- A. The Subcontractor, during the period to be covered by this Agreement, shall have no interest, direct or indirect, with respect to the Contractor that could create a conflict of interest.
- B. No member, officer, or employee of the Contractor and no official, officer, or employee of the County who exercises any responsibilities or functions with respect to the Contractor during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- C. The Subcontractor warrants that no person has been employed to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Contractor the right to terminate this contract or, at the discretion of the Contractor, to deduct from the Subcontractor's fees the amount of such commission, percentage, brokerage, or contingent fees.

Section 9. Independent Contractor Status of the Subcontractor

The parties agree that the performance of the Subcontractor's services hereunder shall be in the capacity of an Independent Contractor and that no employees of the Subcontractor have been, are, or shall be employees of the Contractor or County by virtue of this Agreement, and the Subcontractor shall so inform each employee organization and each employee who is hired or retained under this Agreement.

Section 10. Assignment or Transfer of Interest

The Subcontractor shall not assign or transfer any interest in this Agreement, except that claims for moneys due or to become due from the Contractor under this Agreement may be assigned to a bank, trust company, or other financial institution.

Section 11. Applicable Sections of Agreement between County and the Contractor

The Contractor and the Subcontractor agree that all conditions set forth in the Agreement, including Attachment 1, between the County and the Contractor, as applicable in the performance of this Agreement, are hereby included herein by reference as though set forth herein in full. Referenced sections are available at the Contractor and County for review during normal business hours.

Section 12. Employment Discrimination

During the term of this Agreement, Subcontractor shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, gender identify, gender expression, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), genetic information, marital status, military and veteran status, and denial of medical and family care leave or pregnancy disability leave. Subcontractor shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Subcontractor shall comply with the provisions of the Fair Employment and Housing Act (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of hereof as if set forth in full. Subcontractor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Section 13. Indemnity, Liability, and Insurance Requirements

- A. The Subcontractor agrees to defend, indemnify, and hold harmless the Contractor and the County, their officers, employees, and assigns, against any and all claims arising from acts, omissions, or negligence of the Subcontractor, its officers, or employees in the performance of this Agreement.

The Contractor agrees to defend, indemnify, and hold harmless the Subcontractor and the County, their officers, employees, and assigns, against any and all claims arising from acts, omissions, or negligence of the Contractor, its officers, or employees in the performance of this Agreement.

- B. The Contractor shall promptly notify the Subcontractor in writing of any claims against the Contractor or Subcontractor and, in the event of a suit being filed, the Contractor shall promptly forward to the Subcontractor all papers in connection therewith. The Contractor shall not incur any expenses or make any settlement without the Subcontractor's consent. However, if Subcontractor refuses or neglects to defend any such suit, the Contractor may defend, adjust, or settle any such claim, and the cost of such defense, adjustment, or settlement, including reasonable attorney's fees, shall be charged to the Subcontractor.
- C. The Subcontractor shall furnish proof in the form of a hand-signed certificate of insurance that it carries insurance in the minimum amounts listed below prior to commencement of performance under this Agreement. Such coverage shall be maintained currently effective until receipt of final payment under the terms of this Agreement.

- 1. Comprehensive General \$1,000,000 combined Single Liability
[including (CSL) minimum Product Liability]
 - 2. Professional Liability \$1,000,000 per occurrence
- D. Comprehensive Auto Liability (owned and non-owned)
- 1. Bodily Injury \$ 100,000 each person
\$ 300,000 each accident
\$ 300,000 aggregate products
 - 2. Property Damage \$ 50,000 each accident
\$ 250,000 aggregate operations
\$ 250,000 aggregate protection
\$ 250,000 aggregate products
\$ 250,000 aggregate contractual
- E. Worker's Compensation. The statutory limit shall be in accordance with Sections 3700 and 3800 of the Labor Code of the State of California.
- F. Additional Insured. The City of Montclair and County of San Bernardino shall be named as additional insured on all policies or certificates.
- G. Cancellation Notice. A 30-day Notice of Cancellation shall be mailed to the Contractor.
- H. Failure on the part of the Subcontractor to procure or maintain required insurance shall constitute a material breach of Agreement and Contractor may immediately terminate or suspend this Agreement.

Section 14. Compliance with Statutes and Regulations

Subcontractor agrees to comply with all State and Federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, environmental protection, equal opportunity, fair housing, and all other matters applicable and/or related to the HEAP program, Contractor, its subcontractors, and all eligible activities.

Section 15. Confidentiality

Subcontractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant. Subcontractor shall not use or disclose any identifying information for any other purpose other than carrying out the Subcontractor's obligations under this Agreement, except as may be otherwise required by law. This provision will remain in force even after the termination of the Agreement.

Section 16. Federal, State and Local Taxes

Federal, State, and local taxes shall be the responsibility of the Subcontractor as an independent contractor and not as a Contractor employee.

Section 17. Compliance with County Policy

In performing the Services and while at County facilities, Subcontractor personnel shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

The County shall have the right to require Subcontractor's employees, agents, and representatives to exhibit identification credentials issued by the County in order to exercise any right of access under this Agreement.

Section 18. Termination

The Contractor may terminate this Agreement at any time within the period of its duration upon not less than thirty (30) days written notice by the Contractor to the Subcontractor or immediately for cause. The Subcontractor may terminate this contract upon not less than thirty (30) days written notice to the Contractor. Notice shall be provided as in Section 5 herein.

In addition, this Agreement may be terminated because of lack of funds, repeated citations by County, and failure to make corrective actions required by County. In the event funds to finance this contract, or part of this contract, become unavailable, the obligations of each party hereunder may be terminated upon no less than ten days written notice to the other party. Said notice shall be delivered by certified mail or in person. County shall be the final authority as to the availability of Federal or State funds. Waivers of breach of any provision of this Agreement shall not be construed to be a modification of the terms of this Agreement.

Section 19. Disputes

Any disputes of law or fact between the Contractor and the Subcontractor shall be settled between the parties concerned in such a manner that they will not delay or adversely affect the performance of the Contractor. Should any questions remain unresolved, the dispute would be submitted to the County's Chief of Homeless Services his designee to render a decision. Said decision will be binding upon the Contractor and the Subcontractor.

Section 20. Prior Approval of Subcontracts

The Subcontractor shall not enter into any subcontracts, for all or part of the services contemplated under this Agreement, without obtaining prior written approval of the Contractor and the Area Agency on Aging, which shall then be made a part of the original Agreement. No subcontracts shall be approved which would incur an obligation higher than the original agreed-upon price.

Section 21. Fair Labor Standards Compliance

Subcontractor agrees to indemnify, defend, and hold harmless the County of San Bernardino and the Contractor, its agents, officers, and employees from any and all liability including, but not limited to, wages, overtime party, liquidated damages, penalties, court costs, and attorney's fees arising under any wage and hour law including, but not limited to, the Federal Fair Labor Standards Act for services performed by the Subcontractor's employees for which the Contractor or the County of San Bernardino may be found jointly or solely liable.

Section 22. Debarment and Suspension

Subcontractor certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

Section 23. Drug-Free Workplace Certification

Certification of Compliance: By signing this Agreement, Subcontractor hereby certify, under penalty of perjury under the laws of the State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

1. Publish a statement notifying employees and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a)(1).
2. Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
 - a. The dangers of drug abuse in the workforce;
 - b. Contractor's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation, and employee assistance programs; and,
 - d. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3), that every employee and/or subcontractor who works under this Agreement:
 - a. Will receive a copy of Subcontractor's drug-free policy statement; and
 - b. Will agree to abide by the terms of Contractor's condition of employment or subcontract.

Section 24. Child Support Compliance Act

For any contract in excess of \$100,000, Subcontractor acknowledges in accordance with Public Contract Code 7110, that:

1. Subcontractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family code; and
2. Subcontractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

Section 25. Inspections

1. The Contractor, County and the State reserve the right to inspect any work performed hereunder to ensure that the work is being and has been performed in accordance with the applicable Federal, State and/or local requirements, and this Agreement.
2. Subcontractor agrees to correct all work that is determined based on such inspections not to conform to the applicable requirements; and the Contractor/County reserves the right to withhold payments to Subcontractor until it is corrected.

Section 26. Right to Monitor and Audit

1. The Contractor, County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Subcontractor in the delivery of services provided under this Agreement. Subcontractor shall give full cooperation, in any auditing or monitoring conducted. Subcontractor shall cooperate with the Contractor and County in the implementation, monitoring, and evaluation of this Agreement and comply with any and all reporting requirements established by the County.
2. The County or the State reserves the right to perform or cause to be performed a financial audit. At the request of the County or the State, Subcontractor shall provide, at its own expense, a financial audit prepared by a certified public accountant. If there are audit findings, Subcontractor must submit a detailed response acceptable to the County and/or the State for each audit finding within forty-five (45) days from the date of the audit finding report.
3. If audit findings reveal ineligible/disallowed expenditures, Subcontractor will be required to repay disbursed funds to the Contractor/County.
4. All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a minimum period of five (5) years after termination of this Agreement or until all pending County, State and federal audits are completed, whichever is later.

Section 27. Date of Execution

The parties hereto agree that the first party to execute this Agreement shall enter the date executed in the blank provided herein on both duplicate originals, which date shall be the date this Agreement is made provided, however, the term shall be for the period set forth in Section 4 herein.

Section 28. Complete Agreement

This Agreement and Attachment 1 contain the full and complete Agreement between the two parties. No verbal agreement or conversation with any officer or employee of either party shall affect or modify any of the terms and conditions of this Agreement.

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

Subcontractor:

Contractor:

**ONTARIO-MONTCLAIR
SCHOOL DISTRICT**

CITY OF MONTCLAIR

**Phil Hillman
Chief Business Officer**

**Javier John Dutrey
Mayor**

Date

Date

ATTEST:

**Andrea Phillips
City Clerk**

APPROVED AS TO FORM:

**Diane E. Robbins
City Attorney**

ATTACHMENT 1

SCOPE OF WORK

The Ontario–Montclair School District (OMSD), Subcontractor under this Agreement, shall provide navigation services in support of the City of Montclair’s Homeless Emergency Aid Program (HEAP).

The HEAP program is intended to enhance the City’s homelessness prevention efforts and will be utilized to create a sustainable system to provide services to those that are chronically homeless and at-risk of becoming homeless. Services for the chronically homeless will be implemented through street outreach led by the City’s code enforcement officers. Through this Agreement No. 19-49, those at-risk of homelessness will be provided with navigation services through the Montclair Community Collaborative.

The OMSD Clinical Supervisor of Behavioral Health will be responsible for overseeing navigation services for those at risk of homelessness in an effort to prevent them from becoming homeless. Navigation services include an intake process to determine other services that may be needed. In addition, OMSD staff will submit all data reports as required in the Homeless Management Information System as defined below:

Homeless Management Information System

The HMIS is a local database application used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness in the County. Subcontractor must ensure that data on all persons served are entered into the County-wide HMIS. HMIS is managed and operated by OHS. HMIS technical and data standards are set forth in the Final 2017 HMIS Data Standards, on file with OHS.

1. Subcontractor shall submit a copy of HMIS reports (see Exhibit 4 – HMIS CLIENT DATA REPORT SAMPLE) with the monthly expenditure reports
2. Subcontractor must ensure all required data elements, as listed below, are entered into the HMIS system for HEAP participants, in a timely manner, and is inputted no later than two (2) working days after program entry. Services rendered to clients must be entered into HMIS no later than two (2) working days from date of service(s). All clients who exit the program must have an updated status in HMIS within two (2) working days from actual exit date. Failure to meet the above data inputting requirements will constitute a violation of the terms and conditions of this Contract. Contractor will be notified by OHS, and if not rectified, the Contract may be terminated at the County’s sole and absolute discretion.
3. In addition to the timely entry of HMIS data, Subcontractor is required to enter accurate and complete data. The County will ensure Contractor adheres to Data Quality Standards, as established by HUD, and data entry requirements, as set forth in the HMIS MOU and the OHS Policy Handbook. The Data Quality Standards assess the data quality and completeness of the following Data Elements entered:
 - a. Client Demographic Data
 - 1) Name
 - 2) Social Security Number

- 3) Date of Birth
 - 4) Race
 - 5) Ethnicity
 - 6) Gender
 - 7) Veteran Status
- b. Universal Data**
- 1) Disabling Condition
 - 2) Project Start Date
 - 3) Project Exit Date
 - 4) Destination
 - 5) Relationship to Head of Household
 - 6) Client Location
 - 7) Housing Move-in Date
 - 8) Living Situation
- c. Common Program Specific Data Elements**
- 1) Income and Sources
 - 2) Non-Cash Benefits
 - 3) Health Insurance
 - 4) Disability Elements
 - 5) Physical Disability
 - 6) Developmental Disability
 - 7) Chronic Health Condition
 - 8) HIV/AIDS
 - 9) Mental Health Problem
 - 10) Substance Abuse
 - 11) Domestic Violence
 - 12) Contact
 - 13) Date of Engagement
 - 14) Bed-Night Date
 - 15) Housing Assessment Disposition
- d. Data Timeliness**
- 1) Entry Timeliness
 - 2) Exit Timeliness

4. According to Data Quality Standards, Subcontractor is required to have a five-percent (5%) or less error rate to ensure data accuracy and less than a five-day lapse in timeliness for entry of data at time of client entry, services are rendered, and client exit. Any performance benchmarks not meeting these standards will be flagged and captured on a Contractor HMIS Data Quality Report Card (Report Card) generated by the OHS (see Exhibit 5 - HMIS DATA QUALITY REPORT CARD). The Report Card will be generated and reviewed on a quarterly basis. The Report Card will be provided to Contractor when available, and data deficiencies, if any, will be identified and discussed with Contractor to determine methods to remediate and/or improve data quality scores.
5. If Subcontractor continues to not meet data entry and data quality benchmarks, as established by HUD and set forth in the HMIS MOU and the OHS Policy Handbook, County may terminate Contract as set forth in CORRECTION OF PERFORMANCE DEFICIENCIES Section.
6. Subcontractor agrees to provide the County and/or the State access to HMIS data collected and entered into HMIS, upon request, and to participate in any statewide data initiative as directed by the State including, but not limited to, a statewide data integration environment.

Housing First

Any housing-related activities funded with HEAP funds, including but not limited to, emergency shelter, rapid-rehousing, rental assistance, transitional housing and permanent supportive housing must be in compliance or otherwise aligned with the Core Components of Housing First, pursuant to Welfare and Institution Code Section 8255(b).

Ineligible Costs

HEAP funds shall not be used for costs associated with activities in violation of any law or for any activities not consistent with the intent of HEAP and the eligible uses identified in California Health and Safety Code Section 50214.

The County or the State reserves the right to request additional information and clarification to determine the reasonableness and eligibility of all costs to be paid with funds made available by this Contract. If Contractor or its subcontractors use HEAP funds to pay for ineligible activities, Contractor shall be required to reimburse these funds to the County within thirty (30) days of the request.

1. An expenditure which is not authorized by this Contract, or which cannot be adequately documented, shall be disallowed and must be reimbursed to the County by Contractor.
2. The State, at its sole and reasonable discretion, shall make the final determination regarding the allowability of expenditures of HEAP funds.
3. Program funds shall not be used for overhead or planning activities, including HMIS or Homelessness Plans.



AGENDA REPORT

DATE:	JULY 1, 2019	FILE I.D.:	HSV105
SECTION:	AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	3	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 19-50 WITH NUTRITION INK TO PROVIDE NUTRITION-EDUCATION SERVICES FOR THE CITY'S SENIOR CITIZEN NUTRITION PROGRAM		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 19-50 with Nutrition Ink to provide nutrition-education services for the City's Senior Citizen Nutrition Program.

A copy of proposed Agreement No. 19-50 with Nutrition Ink is attached for the City Council's review and consideration.

BACKGROUND: On June 3, 2019, the City Council approved Agreement No. 19-47 with the San Bernardino County Department of Aging and Adult Services (DAAS) to provide a three-year Senior Citizen Nutrition Program for participants aged 60 and over. The City of Montclair is required to provide nutrition-education services to program participants, volunteers, and staff.

Nutrition Ink will be responsible for providing nutrition-education services. Some of their responsibilities include: monitoring the site for safe food handling and sanitation practices of facilities; provide input, review, and approve the Nutrition Education Plan for staff and participants; provide nutrition education a minimum of four (4) times per year for food service staff (paid and volunteers) and participants; and provide technical support and assistance as needed.

FISCAL IMPACT: There would be no cost to the General Fund as a result of the City Council's approval of Agreement No. 19-50 with Nutrition Ink to provide nutrition education services. The cost of nutrition education services, \$2,200, will be completely grant funded under Agreement No. 19-47 with DAAS.

The term of Agreement No. 19-50 will be from July 1, 2019, through June 30, 2020.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 19-50 with Nutrition Ink to provide nutrition-education services for the City's Senior Citizen Nutrition Program.

NUTRITION INK AGREEMENT

I. OBJECTIVE:

To provide consultation to the City of Montclair’s Senior Nutrition Program (Agency/Contractor) regarding nutrition provider requirements as outlined in Title 22, Division 1.8 of the California Department of Aging Regulations, including, but not limited to, the following:

- A. Give preference to older individuals in greatest economic or social need with particular attention to low-income minority individuals.
- B. Promote good health behaviors through nutrition education and nutrition screening of participants.
- C. Promote or maintain coordination with other nutrition-related supportive services for older individuals.

PROGRAM DESCRIPTION:

- A. Purpose – The purpose of the Elderly Nutrition Program (ENP) is to provide nutrition services as described in the Older Americans Act (OAA) of 1965, as amended, and to assist older individuals in California to live independently, by promoting better health through improved nutrition, and reduced isolation through programs coordinated with nutrition-related supportive services.
- B. Definition – Nutrition services means the procurement, preparation, transport, and service of meals, nutrition education, nutrition screening, and nutrition counseling, to eligible individuals at congregate sites or in their homes.
- C. Goals – to maintain or improve the physical, psychological, and social well being of older individuals, by providing or securing appropriate nutrition services.
- D. Target Population – The ENP Provider (City of Montclair) shall target individuals who are sixty (60) years of age or older, minorities, low income and living in rural areas of the County of San Bernardino.

2. TERMS OF AGREEMENT:

This is to certify that the City of Montclair’s Senior Nutrition Program has engaged the services of *NUTRITION INK* (Sub-Contractor) for its nutrition consultation to one (1) site, Montclair Senior Center. This service is effective July 1, 2019 through June 30, 2020.

3. RESPONSIBILITIES OF SUB-CONTRACTOR:

- A. At a minimum, quarterly monitor site for safe food handling and sanitation practices of facilities.
- B. Provide input, review, and approve the Nutrition Education Plan for staff and participants prior to presentation.
- C. Develop, or review and approve the cycle menus unless provided and signed by RD of approved caterer.
- D. Provide technical support and assistance as needed.
- E. Plans, organizes and conducts Nutrition Education a minimum of four (4) times per year for food service staff (paid and volunteers) and participants in congregate meal programs. Nutrition Education for congregate sites is defined as demonstrations, presentations, lectures or small group discussions, all of which may be augmented with printed materials. Training sessions shall be evaluated by those receiving the training.
- F. Nutrition Education shall be based on the particular need of congregate meal participants. An annual Needs Assessment shall be performed by the ENP Provider to make this determination.
- G. Since the Staff Training/Nutrition Education Plan and annual Needs Assessment must be submitted by the City of Montclair to DAAS by July 26, 2019, Sub-Contractor shall be required to support that timeline accordingly.
- H. Nutrition Education sessions must be reported monthly to DAAS using the Nutrition Education Monthly Service Unit Report.

Nutrition Education Units of Service:

Program: C-1 (Congregate Meals)	Program: C-2 (Home-Delivered Meals)
# of Units to be Provided: 350	# of Units to be Provided: N/A
# of Sites to be Presented at: 1	# of Participants to be Presented to: N/A

4. RESPONSIBILITIES OF AGENCY/CONTRACTOR

- A. Identify person designated as supervisor or designee.
- B. Provide a general orientation for the dietitian to the Agency including its staff, policies, recording systems.
- C. Provide suitable space, equipment and materials.
- D. Make records available and if necessary send monthly menus to dietitian for review, analysis, and approval.
- E. Maintain documentation of each training session including sign-in sheets, agendas, handouts, and completed evaluations.
- F. An annual Needs Assessment shall be performed by the ENP Provider to determine the particular Nutrition Education need of congregate meal participants.
- G. Will send Nutrition Education Service Unit Report monthly to DAAS.
- H. Agrees not to hire or contract with a Nutrition Ink Dietitian for a period of one year from termination of this contract unless facility pays RD's annual salary as buyout fee.

5. COPIES of subcontracts, licenses and insurance memoranda and/or letters of understanding shall be on file with the Contractor. Contractor shall be responsible to ensure all subcontractors meet the insurance requirements and for monitoring the insurance requirements in accordance with Article III, Section N.

6. The Sub-Contractor shall provide the following:

- (1). Indemnification - The Sub-Contractor agrees to indemnify, defend and hold harmless the Contractor and County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising from Sub-Contractor's acts, errors or omissions and for any costs or expenses incurred by the Contractor on account of any claim therefore, except where such indemnification is prohibited by law.
- (2). Insurance - Without in any way affecting the indemnity herein provided and in addition thereto, the Sub-Contractor shall secure and maintain throughout the term of the Contract the following types of insurance with minimum limits as shown:
 - a. Sub-Contractor will maintain Worker's Compensation - in amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the Sub-Contractor and all risks to such persons under this Contract.
 - b. Professional Liability - Professional liability insurance shall have limits of at least \$1,000,000 per claim or occurrence.
- (3). Proof of coverage – Sub-Contractor shall immediately furnish certificates of the required insurance policies to contractor evidencing the insurance coverage, above required prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (3) days prior written notice to Contractor, and Sub-Contractor shall maintain such insurance from the time Sub-Contractor commences performance of services hereunder until the termination of the Contract. Within sixty (60) days of the commencement of this Contract, the Sub-Contractor shall furnish copies of the policies.

7. The Sub-Contractor shall complete all reporting and expenditure documents requested by Contractor. These reporting and expenditure documents shall be sent to the Contractor in a timely manner and at intervals as determined by Contractor.

8. Sub-Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for Contract performance. Said records shall be kept and maintained at 3164 W. Ramsey St., Banning, Ca. 92220.

9. Sub-Contractor shall notify Contractor in writing of any change in mailing address, telephone or fax numbers and/or physical location within ten (10) days of the change.

10. HIPAA Law:

The Sub-Contractor recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Institution, hereunder, Sub-Contractor will have access to certain information of Institution that is confidential and constitutes valuable, special and unique property of Institution. Sub-Contractor agrees that they will at no time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Institution’s express written consent, except pursuant to their duties hereunder, any confidential or proprietary information of Institution, including, but not limited to, information which concerns Institution’s participants, cost, prices and treatment methods at any time used, developed or made by Institution, and which is not otherwise available to the public. Sub-Contractor shall not disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Institution in writing, any participant or medical record information regarding Institution’s participants, and Sub-Contractor shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of Institution, regarding the confidentiality of such information. In addition, if necessary, Sub-Contractor agrees to assist in judicial proceedings any effort to obtain access to such records or information except such access as is expressly permitted by the aforementioned federal regulations.

11. Elderly Abuse. In accordance with the State of California – Health and Human Services Agency requirements, Sub-Contractor and its employees shall comply with and return completed copies of Attachment A, Statement Acknowledging Requirement to Report Suspected Abuse of Dependent Adults and Elders (SOC 341A).

Costs:

Nutrition Education and materials plus yearly plan	\$800
Site Monitoring quarterly.....	\$600
Staff Training quarterly.....	\$600
Mileage.....	\$200
Total.....	<u>\$2200</u>

(951) 849-5150 (951) 849-4799 Fax	Federal Tax I.D. Number 20-4651795
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SUB-CONTRACTOR:

CONTRACTOR:

NUTRITION INK

CITY OF MONTCLAIR

Jessica Lopez, RDN
CEO

Javier John Dutrey, Mayor

Date: _____

Date: _____

ATTEST:

Andrea Phillips, City Clerk

APPROVED AS TO FORM:

Diane Robbins, City Attorney

ATTACHMENT A

STATE OF CALIFORNIA - HEALTH AND HUMAN SERVICES AGENCY

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

STATEMENT ACKNOWLEDGING REQUIREMENT TO REPORT SUSPECTED ABUSE OF DEPENDENT ADULTS AND ELDERS

NOTE: RETAIN IN EMPLOYEE/ VOLUNTEER FILE

NAME _____

POSITION _____ FACILITY _____

California law REQUIRES certain persons to report known or suspected abuse of dependent adults or elders. As an employee or volunteer at a licensed facility, you are one of those persons - a "mandated reporter."

PERSONS WHO ARE REQUIRED TO REPORT ABUSE

Mandated reporters include care custodians and any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not paid for that responsibility (Welfare and Institutions Code (WIC) Section 15630(a)). Care custodian means an administrator or an employee of most public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff (WIC Section 15610.17).

PERSONS WHO ARE THE SUBJECT OF THE REPORT

Elder means any person residing in this state who is 65 years of age or older (WIC Section 15610.27). Dependent Adult means any person residing in this state, between the ages of 18 and 64, who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age and those admitted as inpatients in 24-hour health facilities (WIC Section 15610.23).

REPORTING RESPONSIBILITIES AND TIME FRAMES

Any mandated reporter, who in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be abuse or neglect, or is told by an elder or dependent adult that he or she has experienced behavior constituting abuse or neglect, or reasonably suspects that abuse or neglect occurred, shall complete form SOC 341, "Report of Suspected Dependent Adult/Elder Abuse" for each report of known or suspected instance of abuse (physical abuse, sexual abuse, financial abuse, abduction, neglect (self-neglect), isolation, and abandonment) involving an elder or dependent adult.

Reporting shall be completed as follows:

- If the abuse occurred in a Long-Term Care (LTC) facility (as defined in WIC Section 15610.47) and resulted in serious bodily injury (as defined in WIC Section 15610.67), report by telephone to the local law enforcement agency immediately and no later than two (2) hours after observing, obtaining knowledge of, or suspecting physical abuse. Send the written report to the local law enforcement agency, the local Long-Term Care Ombudsman Program (LTCOP), and the appropriate licensing agency (for long-term health care facilities, the California Department of Public Health; for community care facilities, the California Department of Social Services) within two (2) hours of observing, obtaining knowledge of, or suspecting physical abuse.
- If the abuse occurred in a LTC facility, was physical abuse, but did not result in serious bodily injury, report by telephone to the local law enforcement agency within 24 hours of observing, obtaining knowledge of, or suspecting physical abuse. Send the written report to the local law enforcement agency, the local LTCOP, and the appropriate licensing agency (for long-term health care facilities, the California Department of Public Health; for community care facilities, the California Department of Social Services) within 24 hours of observing, obtaining knowledge of, or suspecting physical abuse.
- If the abuse occurred in a LTC facility, was physical abuse, did not result in serious bodily injury, and was perpetrated by a resident with a physician's diagnosis of dementia, report by telephone to the local law enforcement agency or the local LTCOP, immediately or as soon as practicably possible. Follow by sending the written report to the LTCOP or the local law enforcement agency within 24 hours of observing, obtaining knowledge of, or suspecting physical abuse.
- If the abuse occurred in a LTC facility, and was abuse other than physical abuse, report by telephone to the LTCOP or the law enforcement agency immediately or as soon as practicably possible. Follow by sending the written report to the local law enforcement agency or the LTCOP within two working days.

- If the abuse occurred in a state mental hospital or a state developmental center, mandated reporters shall report by telephone or through a confidential internet reporting tool (established in WIC Section 15658) immediately or as soon as practicably possible and submit the report within two (2) working days of making the telephone report to the responsible agency as identified below:
 - If the abuse occurred in a State Mental Hospital, report to the local law enforcement agency or the California Department of State Hospitals.
 - If the abuse occurred in a State Developmental Center, report to the local law enforcement agency or to the California Department of Developmental Services.
- For all other abuse, mandated reporters shall report by telephone or through a confidential internet reporting tool to the adult protective services agency or the local law enforcement agency immediately or as soon as practicably possible. If reported by telephone, a written or an Internet report shall be sent to adult protective services or law enforcement within two working days.

PENALTY FOR FAILURE TO REPORT ABUSE

Failure to report abuse of an elder or dependent adult is a MISDEMEANOR CRIME, punishable by jail time, fine or both (WIC Section 15630(h)). The reporting duties are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report (WIC Section 15630(f)).

CONFIDENTIALITY OF REPORTER AND OF ABUSE REPORTS

The identity of all persons who report under WIC Chapter 11 shall be confidential and disclosed only among APS agencies, local law enforcement agencies, LTCOPs, California State Attorney General Bureau of Medi-Cal Fraud and Elder Abuse, licensing agencies or their counsel, Department of Consumer Affairs Investigators (who investigate elder and dependent adult abuse), the county District Attorney, the Probate Court, and the Public Guardian. Confidentiality may be waived by the reporter or by court order. Any violation of confidentiality is a misdemeanor punishable by jail time, fine, or both (WIC Section 15633(a)).

DEFINITIONS OF ABUSE

Physical abuse means any of the following: (a) Assault, as defined in Section 240 of the Penal Code; (b) Battery, as defined in Section 242 of the Penal Code; (c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code; (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water; (e) Sexual assault, that means any of the following: (1) Sexual battery, as defined in Section 243.4 of the Penal Code; (2) Rape, as defined in Section 261 of the Penal Code; (3) Rape in concert, as described in Section 264.1 of the Penal Code; (4) Spousal rape, as defined in Section 262 of the Penal Code; (5) Incest, as defined in Section 285 of the Penal Code; (6) Sodomy, as defined in Section 286 of the Penal Code; (7) Oral copulation, as defined in Section 288a of the Penal Code; (8) Sexual penetration, as defined in Section 289 of the Penal Code; or (9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code; or (f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions: (1) For punishment; (2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given; or (3) For any purpose not authorized by the physician and surgeon (WIC Section 15610.63).

Serious bodily injury means an injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of a bodily member, organ, or of mental faculty, or requiring medical intervention, including, but not limited to, hospitalization, surgery, or physical rehabilitation (WIC Section 15610.67).

Neglect (a) means either of the following: (1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise; or (2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise. (b) Neglect includes, but is not limited to, all of the following: (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter; (2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment; (3) Failure to protect from health and safety hazards; (4) Failure to prevent malnutrition or dehydration; or (5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health (WIC Section 15610.57).

Financial abuse of an elder or dependent adult occurs when a person or entity does any of the following: (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both; (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both; or (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70 (WIC Section 15610.30(a)).

Abandonment means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody (WIC Section 15610.05).

Isolation means any of the following: (1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls; (2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons; (3) False imprisonment, as defined in Section 236 of the Penal Code; or (4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors (WIC Section 15610.43).

Abduction means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court (WIC Section 15610.06).

AS AN EMPLOYEE OR VOLUNTEER OF THIS FACILITY, YOU MUST COMPLY WITH THE DEPENDENT ADULT AND ELDER ABUSE REQUIREMENTS, AS STATED ABOVE. IF YOU DO NOT COMPLY, YOU MAY BE SUBJECT TO CRIMINAL PENALTY. IF YOU ARE A LONG-TERM CARE OMBUDSMAN, YOU MUST COMPLY WITH FEDERAL AND STATE LAWS, WHICH PROHIBIT YOU FROM DISCLOSING THE IDENTITIES OF LONG-TERM RESIDENTS AND COMPLAINANTS TO ANYONE UNLESS CONSENT TO DISCLOSE IS PROVIDED BY THE RESIDENT OR COMPLAINANT OR DISCLOSURE IS REQUIRED BY COURT ORDER (Title 42 United States Code Section 3058g(d)(2); WIC Section 9725).

I, _____, have read and understand my responsibility to report known or suspected abuse of dependent adults or elders. I will comply with the reporting requirements.

SIGNATURE	DATE
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AGENDA REPORT

DATE:	JULY 1, 2019	FILE I.D.:	HSV105
SECTION:	AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	4	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 19-51 WITH CATERING SYSTEMS, INC., TO PROVIDE MEALS FOR THE SENIOR CITIZEN NUTRITION PROGRAM		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 19-51 with Catering Systems, Inc., to provide meals for the City’s Senior Citizen Nutrition program.

A copy of proposed Agreement No. 19-51 with Catering Systems, Inc., is attached for the City Council’s review and consideration.

BACKGROUND: On June 3, 2019, the City Council approved Agreement No. 19-47 with the San Bernardino County Department of Aging and Adult Services (DAAS) to provide a three-year Senior Citizen Nutrition Program for participants aged 60 and over at the Montclair Senior Center. The Human Services Department is managing and operating the nutrition program with grant funds awarded by DAAS.

The Human Services Department recommends a subcontract with Catering Systems, Inc., for nutrition program meals. City Staff have had difficulty in finding other meal providers that serve high-quality food that will work within the DAAS requirements. Staff requested recommendations for meal providers from DAAS and unfortunately, other meal providers are significantly higher in cost and subjectively lower in quality.

In order to maintain the current program standards, Human Services is recommending that the City subcontract with Catering Systems, Inc., for Fiscal Year 2019-20. Should the City Council approve Agreement No. 19-51, Catering Systems, Inc. would continue to deliver prepared meals every weekday until June 30, 2020. The meal cost will be \$5.25 per meal. All of these costs will be covered by the existing cost reimbursement DAAS grant.

The suggested donation for meals in many surrounding cities in San Bernardino County is \$3.00. Montclair’s current suggested donation is \$2.00 per meal, which is one of the lowest in the surrounding communities. The funding for the meal cost would be paid through participant donations and funding from Agreement No. 19-47 with the San Bernardino County Department of Aging and Adult Services (DAAS) that was approved by the City Council on June 3, 2019. Note that the DAAS contract has a three-year term and covers the period from July 1, 2019 through June 30, 2022.

FISCAL IMPACT: There would be no cost to the General Fund as a result of the City Council’s approval of proposed Agreement No. 19-51 with Catering Systems, Inc., to provide the Senior Nutrition meals. All of these costs would be completely grant-funded under Agreement No. 19-47 with DAAS. The term of proposed Agreement No. 19-51 is July 1, 2019, through June 30, 2020.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 19-51 with Catering Systems, Inc., to provide meals for the Senior Citizen Nutrition Program.

FOOD SERVICE AGREEMENT

THIS AGREEMENT, executed in Montclair, California, is made by and between the City of Montclair, a California Municipal Corporation, hereinafter referred to as the "Contractor," and Catering Systems, Inc., hereinafter referred to as the "Subcontractor."

WHEREAS, the Contractor and the County of San Bernardino Department of Aging and Adult Services (DAAS), hereinafter referred to as "County," have entered into an Agreement which authorizes the Contractor to provide certain services, said City Agreement being No. 19-47 signed June 3, 2019; and

WHEREAS, the aforesaid Agreement provides that the Contractor may subcontract for certain professional services subject to prior County approval; and

WHEREAS, the Contractor desires to engage the Subcontractor to provide professional services as detailed elsewhere in this Agreement; and

WHEREAS, the Subcontractor desires to perform and provide such services.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Contractor and the Subcontractor agree as follows:

AGREEMENT

Section 1. Statement of Work and Schedule

The Subcontractor shall perform and provide the services set forth in the Food Service Specifications, which is attached hereto as "Attachment 1" and by this reference incorporated herein. The rights and obligations of the parties to this Agreement shall be subject to and governed by said Food Service Specifications as well as by the general provisions herein.

Section 2. Representatives of the Parties and Service of Notice

The representatives of the respective parties who are authorized to administer this Agreement and to whom formal notices, demands, and communications shall be given are as follows:

- A. The representative of the Contractor shall be, unless otherwise stated in the Agreement:

Marcia Richter, Director of Human Services
City of Montclair
5111 Benito Street
Montclair, California 91763
(909) 625-9453

- B. The representative of the Subcontractor shall be:

Lordwin Dsouza
Catering Systems, Inc.
2512 East Fender Avenue, Suite E
Fullerton, California 92831
(714) 278-9294

Section 3. Compensation to the Subcontractor

The Contractor shall pay to the Subcontractor an amount not to exceed \$5.25 per meal for approximately 80 meals per day for complete and satisfactory performance of the terms of this Agreement. The Subcontractor shall be paid for providing services set forth in this Agreement. Payment shall be made on a monthly basis.

Section 4. Time of Performance

The term of this Agreement shall commence on July 1, 2019 and terminate on June 30, 2020, provided that said term is subject to the provisions of Section 14, "Indemnity, Liability, and Insurance Requirements," and Section 18, "Termination," and the availability of funds through the County.

There are 251 serving days during Fiscal Year 2019-20 not including the following holidays and special occasions:

Independence Day - July 4, 2019
Labor Day - September 2, 2019
Veterans Day - November 11, 2019
Thanksgiving Day - November 28, 2019
Christmas Eve and Christmas Day - December 24-25, 2019
New Year's Eve and New Year's Day - December 31, 2019 - January 1, 2020
Marin Luther King Jr. Day - January 20, 2020
Presidents' Day - February 17, 2020
Memorial Day - May 25, 2020

Section 5. Notices, Demands, and Communications

- A. Formal notices, demands, and communications to be given hereunder by either party shall be made in writing and may be affected by personal delivery or by registered or certified mail, return receipt requested, and shall be deemed effective as the date of mailing.
- B. Such notices, demands, or communications shall be addressed as set forth below:
1. For the Contractor:

Marcia Richter, Director of Human Services
City of Montclair
5111 Benito Street
Montclair, California 91763
(909) 625-9453

2. For the Subcontractor:

Lordwin Dsouza
 Catering Systems, Inc.
 2512 East Fender Avenue, Suite E
 Fullerton, California 92831
 (310) 619-1218

- C. If the name of the person designated to receive the notices, demands, or communications or the address of such person is changed, written notice shall be given, in accord with this Section, within five (5) working days of said change.

Section 6. Audit Records and Bonding

- A. The Subcontractor shall maintain financial records and reports related to funds received under this Agreement.
- B. The Subcontractor shall maintain books, records, documents, and other accounting procedures and practices, which reflect all costs of any nature, including cost of raw food and labor costs, expended in the performance of this Agreement.
- C. These records shall be subject to audit or inspection by duly authorized County, State, or Federal personnel.
- D. The Subcontractor shall maintain all books, records, and other documents relative to this Agreement for three (3) years after final payment or audit by the United States Department of Health and Human Services, the California Department of Aging, and County for five years if no audit occurred.
- E. The Subcontractor shall provide to the Contractor, on an annual fiscal year basis, a statement that all persons handling funds received or disbursed by this Agreement are covered by Fidelity Insurance.
- F. The Subcontractor shall provide, on an annual basis, an official copy of the Certified Public Accountant audit, which shall be conducted following generally accepted audit practices, to determine that there has been a proper accounting for and use of contract funds. All records of the Subcontractor bearing upon food purchases, storage, and food preparation directly related to said program under this Agreement shall be made available to the Contractor upon request.
- G. The Subcontractor shall furnish reports as required by the Contractor, County, California Department of Aging, and the U.S. Administration on Aging.
- H. Subcontractors shall use standardized recipes which meet Hazard Analysis requirements and which shall be available to Contractor and County.
- I. The Subcontractor shall supply raw food and labor costs to the Contractor as needed.
- J. The Subcontractor shall permit periodic monitoring of contracted activities by Contractor, Centralized Dietary Services, County, State, or Federal personnel.

Section 7. Amendments to Agreement

Any changes in the terms of this Agreement, including changes in the scope of services to be performed by the Subcontractor and any increase or decrease in amount of compensation which are agreed to by the Contractor and the Subcontractor, shall be incorporated into this Agreement by a written amendment properly executed by both parties. Prior written approval shall be received from County.

Section 8. Permit and Licenses

The Subcontractor shall hold valid permits, license, certificates, and other documents as are required by the State, County, City, or other governmental or regulatory bodies to legally engage in and perform the services to be provided under this Agreement, such as public health license, Orange County Inspection Reports, annual Fire Inspection Certificates, and other documents attached for County's approval. The Subcontractor shall notify the Contractor immediately of any suspension, termination, lapses, non-renewals, or restrictions of required licenses, certificates, or other documents that may be cause for termination of this Agreement.

Section 9. Conflict of Interest

- A. The Subcontractor, during the period to be covered by this Agreement, shall have no interest, direct or indirect, with respect to the Contractor that could create a conflict of interest.
- B. No member, officer, or employee of the Contractor and no official, officer, or employee of the County who exercises any responsibilities or functions with respect to the Contractor during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- C. The Subcontractor warrants that no person has been employed to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Contractor the right to terminate this contract or, at the discretion of the Contractor, to deduct from the Subcontractor's fees the amount of such commission, percentage, brokerage, or contingent fees.

Section 10. Independent Contractor Status of the Subcontractor

Subcontractor is and shall at all times remain as to the Contractor and County a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Subcontractor shall at all times be under Subcontractor's exclusive direction and control and shall not be construed to be employees of Contractor or County for any purpose, including eligibility under Public Employees Retirement Law. Neither Contractor nor County nor any of their respective officers, employees, or agents shall have control over the conduct of Subcontractor or any of Subcontractor's officers, employees, or agents, except as set forth in this Agreement. The parties agree that the performance of the Subcontractor's services hereunder shall be in the capacity of an Independent Contractor and that no employees of the Subcontractor have been, are, or shall be employees of the Contractor or County by virtue of this Agreement, and the Subcontractor shall so inform each employee organization and each employee who is hired or retained under this Agreement.

Section 11. Assignment or Transfer of Interest

The Subcontractor shall not assign or transfer any interest in this Agreement, except that claims for moneys due or to become due from the Contractor under this Agreement may be assigned to a bank, trust company, or other financial institution.

Section 12. Applicable Sections of Agreement between County and the Contractor

The Contractor and the Subcontractor agree that all conditions set forth in the Agreement, including Addendum and Attachment 1, between the County and the Contractor, as applicable in the performance of this Agreement, are hereby included herein by reference as though set forth herein in full. Referenced sections are available at the Contractor and County for review during normal business hours.

Section 13. Discrimination Prohibited

- A. The Subcontractor shall not discriminate against any employee or person served on account of race, color, sex, religious background, ancestry, national origin, or disability in its performance of this contract and hereby agrees to comply with all Federal, State, and County laws or regulations pertaining hereto including the Americans With Disabilities Act and applicable Civil Rights Acts.
- B. It is expressly understood that upon receipt of evidence of such discrimination, the Contractor shall have the right to terminate said contract.
- C. Affirmative Action: A written affirmative action plan, embodying both (1) goals and timetables of minority manpower utilization; and (2) specific affirmative action steps directed at increasing minority utilization by means of applying good faith efforts to carry out such steps, is to be included.

Section 14. Indemnity, Liability, and Insurance Requirements

- A. The Subcontractor agrees to defend, indemnify, and hold harmless the Contractor and the County, their officers, employees, and assigns, against any and all claims arising from acts, omissions, or negligence of the Subcontractor, its officers, or employees in the performance of this Agreement. The Subcontractor shall defend any suit against the Contractor and County alleging personal injury, sickness, or disease arising out of meals served at the project sites (or home delivered) provided food is served one hour after delivery (or eaten immediately after home delivery). This indemnification provision shall apply regardless of the existence or degree of fault of the indemnified parties. Subcontractor's indemnification obligation applies to the Contractor's and County's active as well as passive negligence, but does not apply to the Contractor or County's sole negligence or willful misconduct.
- B. The Contractor shall promptly notify the Subcontractor in writing of any claims against the Contractor or Subcontractor and, in the event of a suit being filed, the Contractor shall promptly forward to the Subcontractor all papers in connection therewith. The Contractor shall not incur any expenses or make any settlement without the Subcontractor's consent. However, if Subcontractor refuses or neglects to defend any such suit, the Contractor may defend, adjust, or settle any such claim, and the cost of such defense, adjustment, or settlement, including

Title III-C requirement per person of one third of the Recommended Daily Dietary Allowance (RDA).

- C. The Subcontractor shall comply with the California Uniform Retail Food Facilities Law (CURFFL), the Hazard Analysis (HACCP) requirements and San Bernardino County Department of Aging and Adult Services Policy and Procedures for Senior Nutrition Sites.

Section 16. Federal, State and Local Taxes

Subcontractor is responsible for paying when due all Federal, State, and local taxes, including estimated taxes, incurred as a result of the compensation paid by Contractor to Subcontractor for services under this Agreement. On request, Subcontractor will provide Contractor with proof of timely payment. Subcontractor agrees to indemnify, defend, and hold harmless Contractor for any claims, costs, losses, fees, penalties, interest, or damages suffered by Contractor resulting from Subcontractor’s failure to comply with this provision. In addition, in the event Contractor is required to respond to a request from any State or Federal taxing agency as a result of Subcontractor’s failure to comply with this provision, Subcontractor shall pay to Contractor the sum of \$300.00 for each occasion Contractor is required to so respond.

Section 17. Termination

The Contractor may terminate this Agreement at any time within the period of its duration upon not less than thirty (30) days written notice by the Contractor to the Subcontractor or immediately for cause. The Subcontractor may terminate this contract upon not less than thirty (30) days written notice to the Contractor. Notice shall be provided as in Section 5 herein.

In addition, this Agreement may be terminated because of lack of funds, repeated citations by County, and failure to make corrective actions required by County. In the event funds to finance this contract, or part of this contract, become unavailable, the obligations of each party hereunder may be terminated upon no less than ten days written notice to the other party. Said notice shall be delivered by certified mail or in person. County shall be the final authority as to the availability of Federal or State funds. Waivers of breach of any provision of this Agreement shall not be construed to be a modification of the terms of this Agreement.

Section 18. Negotiation of Disputes

Any disputes of law or fact between the Contractor and the Subcontractor shall be settled between the parties concerned in such a manner that they will not delay or adversely affect the performance of the Contractor. Should any questions remain unresolved, the dispute would be submitted to the Director of the Area Agency on Aging or his designee to render a decision. Said decision will be binding upon the Contractor and the Subcontractor.

Section 19. Prior Approval of Subcontracts

The Subcontractor shall not enter into any subcontracts, for all or part of the services contemplated under this Agreement, without obtaining prior written approval of the Contractor and the Area Agency on Aging, which shall then be made a part of the

original Agreement. No subcontracts shall be approved which would incur an obligation higher than the original agreed-upon price.

Section 20. Fair Labor Standards Compliance

Subcontractor agrees to indemnify, defend, and hold harmless the County of San Bernardino and the Contractor, their respective agents, officers, and employees from any and all liability including, but not limited to, wages, overtime party, liquidated damages, penalties, court costs, and attorney’s fees arising under any wage and hour law including, but not limited to, the Federal Fair Labor Standards Act for services performed by the Subcontractor’s employees for which the Contractor or the County of San Bernardino may be found jointly or solely liable.

Section 21. Citizenship Laws

Subcontractor warrants its full compliance with all laws regarding employment of aliens and others and that all of its employees performing services hereunder meet the citizenship or alien status requirements contained in Federal Immigration Reform and Control Act of 1986. Subcontractor shall obtain from all covered employees services hereunder all verification and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. Subcontractor shall retain such documentation for all covered employees for the period prescribed by law. Subcontractor shall indemnify, defend, and hold harmless the County and Contractor, their respective officers, agents and employees from employer sanctions and any other liability which may be assessed against either Subcontractor, Contractor, or County in connection with any alleged violation of Federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this contract.

Section 22. Subcontractor Staffing Requirements

To assure that meals are prepared in a safe, sanitary environment in compliance with the California Health and Safety Code, the San Bernardino County Department of Aging and Adult Services Policies and Procedures, and Contracts Management Manual, the Subcontractor shall comply with the following requirements:

The Subcontractor shall hire a part-time Registered Dietitian (minimum 20 hours a week) who possesses a Bachelor's degree and/or Master's degree in Nutrition/Dietetics with an institutional food service management emphasis from an accredited college or university for supervision of the food services operation within the catering company and/or central kitchen. The Dietitian shall be both qualified as specified in sections 2585 and 2586, Business and Professions Code, and registered by the Commission on Dietetic Registration.

or

The Subcontractor shall hire a qualified Food Service Manager who possesses a Bachelor of Science degree in Food and Nutrition with emphasis on food service management or restaurant management from an accredited college or university, plus two (2) years' professional experience as a food service supervisor; no less than six (6) years of experience in the

food service industry at a supervising level can be substituted for the four-year degree requirements. The Subcontractor must submit to the Contractor the registration identification number and expiration date of Registered Dietitian along with complete verifiable résumés of the Registered Dietitian or Food Service Manager for County's approval.

The County may, at its sole discretion, waive this requirement or, for repeated deficiencies of noncompliance, require the Subcontractor to fill both positions and/or to expand the required positions to full-time positions.

Section 23. Date of Execution

The parties hereto agree that the first party to execute this Agreement shall enter the date executed in the blank provided herein on both duplicate originals, which date shall be the date this Agreement is made provided, however, the term shall be for the period set forth in Section 4 herein.

Section 24. Complete Agreement

This Agreement, Addendum, Appendices, if applicable, and Attachment 1 contain the full and complete Agreement between the two parties. No verbal agreement or conversation with any officer or employee of either party shall affect or modify any of the terms and conditions of this Agreement.

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

Subcontractor:

Contractor:

CATERING SYSTEMS, INC.

CITY OF MONTCLAIR

Rosanna Rojas, President

Javier John Dutrey, Mayor

Date: _____

Date: _____

ATTEST:

Rosanna Rojas, Secretary

Andrea Phillips, City Clerk

Date: _____

APPROVED AS TO FORM:

Diane E. Robbins, City Attorney

ADDENDUM**OTHER REQUIREMENTS
(Contractor's Option)**

"Penalties for discrimination in employment - Any contractor who shall be found in violation of the nondiscrimination provisions of the State of California Fair Employment Practice Act or similar provisions of federal law or executive order in the performance of any contract with the City, thereby shall be found in material breach of such contract and thereupon the City shall have power to cancel or suspend the contract, in whole or in part, or to deduct from the amount payable to such contractor the sum of \$25 for each person for each calendar day during which such person was discriminated against, as damages for said breach of contract, both. Only a finding of the State of California Fair Employment Practices Commission or the equivalent federal agency or officer shall constitute evidence of a violation of contract under this section."

"Penalties for violation of affirmative action provisions - Any contractor who shall be found in violation of the agreement to pursue an affirmative course of action, or in violation of any provision of the affirmative action guidelines pertaining to the contract, shall be found in material breach of such contract and thereupon the City shall have power to cancel or suspend the contract, in whole or in part, or to deduct from the amount payable to such contractor the sum of \$250 for each calendar day during which the contractor is found to have been in noncompliance, damages for said breach of contract, or both."

ATTACHMENT 1

FOOD SERVICE SPECIFICATIONS

BETWEEN

CITY OF MONTCLAIR

AND

CATERING SYSTEMS INC.

STATEMENT OF WORK AND SCHEDULE

During the time of performance as set forth herein, the Subcontractor shall furnish all food, labor, and equipment necessary to prepare and deliver individual meals and/or bulk food for persons 60 years of age and older in compliance with the Title III Congregate and Home-Delivered Nutrition standards as described in Federal, State, and County regulatory statutes and the California Health and Safety Codes, more specifically, the California Uniform Retail Food Facilities Law (CURFFL) as amended January 1, 1996, the Older Americans Act (OAA), Amendment of 1992, and the San Bernardino County Department of Aging and Adult Services (County).

To assure that meals are prepared in a safe, sanitary environment, in compliance with the California Health and Safety Code, the DAAS Policies and Procedures and Contracts Management Manual, the Subcontractor shall comply with the following requirements:

The Subcontractor shall hire a part-time Registered Dietitian (minimum 20 hours a week) who possesses a Bachelor's degree and/or Master's Degree in Nutrition/Dietetic with an institutional food service management emphasis from an accredited college or university, for supervision of the food services operation within the catering company and/or central kitchen.

The Subcontractor shall hire a qualified Food Service Manager who possess a BS degree in Food and Nutrition with emphasis on food service management or restaurant management from an accredited college or university, plus two (2) years professional experience as a food service supervisor; no less than six (6) years of experience in the food service industry at a supervising level can be substituted for the 4 year degree requirements.

The Subcontractor must submit, to the Contractor, the registration identification number and expiration date of the Registered Dietitian along with complete verifiable resumes of the Registered Dietitian or Food Service Manager for the County's DAAS approval.

The County may, at its sole discretion, waive this requirement or for repeated deficiencies of non-compliance, require the Subcontractor to fill both positions, and/or to expand the required positions to full time positions.

ATTACHMENT 1

A. Number of Meals

The estimated number of meals required per day is between 60 and 90, Monday through Friday. The maximum requirement is outlined below.

	<i>Total Maximum Annual Meals</i>	<i>Catered Cost of Meal</i>
Monday through Friday	90	\$ 5.25
Saturday	N/A	---
Sunday	N/A	---
Box lunches	N/A	---
Breakfast	N/A	---
Frozen meals	N/A	---
Other food items	N/A	---
Total Max Annual Meals	22,680	\$ 119,070.00

B. Delivery

1. The meals shall be delivered as follows:

<i>Meal Location</i>	<i>Approx. Number of Meals</i>	<i>Time Food Prep. Completed</i>	<i>Time Food Leaves Kitchen</i>	<i>Time Food Arrives at Site</i>
Montclair Senior Ctr. 5111 Benito Street Montclair, California	60 - 90	10:00 a.m.	10:30 a.m.	11:00 a.m.

2. The Contractor reserves the right to add or delete meal sites or designate alternate meal locations, as appropriate, subject to approval by County.
3. The Contractor may change the days and time of delivery and service by giving the Subcontractor seven (7) days notice.
4. The Contractor may change the number of meals to be delivered to any of the meal locations by notifying the Subcontractor by 10:00 a.m. the day prior to delivery.
5. The Subcontractor shall deliver the meals no more than 60 minutes prior to or 30 minutes after the agreed upon serving time.
6. Box lunch delivery time may be as early as 9:00 a.m. as long as appropriate holding facilities are available for perishable food items and meals are transported under appropriate packing, heating and cooling temperature requirements.

ATTACHMENT 1

7. The Contractor reserves the right to require Subcontractor to deliver food on all holidays that food service is needed.
8. The contractor shall serve foods for congregate meals; within two (2) hours after food preparation has been completed.

C. Delivery Service Specifications

1. Meals are to be delivered in (bulk/individual) prepackaged servings.
2. The Subcontractor shall supply the following food service items.

<i>Item</i>	<i>Specifications</i>
Rectangular disposable plates	Five compartment
Disposable bowls	Eight-ounce soup bowls
Disposable flatware	Bulk or pre-packaged, good quality
Napkins	Good quality
Table coverings	Paper placemats
Disposable cups	Eight-ounce cups for bulk milk
Other	Straws, plastic gloves, boxes, or bags as needed for box lunches

3. The Subcontractor shall provide all serving trays and utensils, warming, refrigerating and freezing equipment, where necessary, for the maintenance of proper temperatures as specified herein, and shall provide servicing of the equipment and/or replacement (depending on needs of Project).
4. All food must be packaged and transported under conditions that will ensure temperature control to prevent bacterial contamination, spillage, and/or infestation. All hot foods should be packaged individually or in bulk containers to ensure a minimum delivery temperature of 145° F. All cold foods must be packaged to ensure a maximum delivery temperature of 40° F. All foods intended to be delivered frozen shall be packaged to maintain a hard frozen state until such food reaches point of delivery.

Temperature of bulk and home-delivered meals must be taken daily at the end of production/packaging and on delivery at the nutrition site by the Subcontractor and Contractor. Hot and cold foods must be placed immediately into insulated hot and cold transport equipment upon completion of packing.

Daily written documentation of temperature logging/monitoring must be kept by Subcontractor and will be subject to audit by the centralized dietary services and the County nutritionist.

ATTACHMENT 1

The sites shall be assumed correct on shortages unless the caterer proves them wrong. All calls regarding shortages and food replacement will be communicated by the Contractors office.

5. Meals must be delivered in refrigerated trucks and/or approved for bulk-insulated containers for hot pack and cold pack. Delivery standards shall comply with applicable local health department regulations.
6. Food and supplies must be packed and handled in a sanitary manner to assure absence of contamination and spillage.
7. The program may require replacement of any cold food that is received on site at above 45 F and any hot food that falls below 140 F.
8. Food shortages and/or spoiled foods that are reported to the caterer by agree time of delivery must be replaced or the enclosed deduction schedule will be utilized.
9. Packing of food for delivery to the sites will be negotiated as mutually acceptable to the Contractor and Subcontractor. Sites may differ on packaging of some items due to available site equipment and time/distance.
10. The Subcontractor shall be responsible for cleaning and care of equipment returned to his facility each day.
11. The Subcontractor shall place food in areas designated by meal location managers.
12. Food shall be transported no longer than 60 minutes after packaging.
13. Food shall be kept in heat retaining equipment no longer than **60 minutes** prior to serving.
14. Each delivery shall be accompanied by a delivery slip, in triplicate, designating number of meals and supplies delivered. Project Director or designated person will sign receipt, if in order, and one copy shall be left with the Project Director.
15. Instructions shall be attached to each food product delivered indicating name of meal location, number of servings, size of servings, and size of utensil to be used in serving.
16. Cake, cornbread, and casserole dishes, i.e. meatloaf, lasagna, tuna noodle casserole shall be pre-scored by the Subcontractor for the appropriate number of servings.
17. All Subcontractor delivery equipment shall be removed from the meal location by the next service day. Contractor is not responsible after this time.

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18. The Subcontractor shall provide a back-up delivery system in the event of vehicle breakdown.
19. Electrical items required to be provided herein shall have the UNDER-RITERS LABORATORY approval and meet all current OSHA and COSHA laws and regulations. Subcontractor shall provide Contractor with a current copy of the health certificate and any corrected deficiencies with bid. To ensure that all regulations are followed, the Subcontractor must have a qualified food service manager or part-time registered dietitian (20 hours per week) or staff who will assure that meals are prepared in a safe and sanitary condition throughout the meal service operation.
20. Authorized representatives of the Contractor, County, centralized dietary services, State, and Federal shall have the right to inspect food preparation, storage, and packaging sites during the term of the contract.

D. Meal Standards

1. A Chemical analysis of any food delivered by the Subcontractor may be requested by the Contractor or County at any time. The Subcontractor agrees to cooperate in having the analysis done. If the analysis discloses that the food does not comply with required meal specifications, the Subcontractor shall be liable for the cost of this analysis and meals served to seniors out of compliance.
2. The Subcontractor shall be liable for meals that do not meet the nutritional standards and requirements, are spoiled or unwholesome at time of delivery, are incomplete or insufficient in number ordered, or are delivered after the time specified by the Contractor. In the event the Subcontractor fails to deliver complete meals, other foods, or supplies as agreed upon, the Contractor may provide a substitute meal with emergency meals of supplies purchased from other places and charge the cost of the purchased meal to the Subcontractor. The replacement cost shall not exceed **100** percent of the contract catered meal cost.
3. If any portion of a meal other than the entree is delivered in an unacceptable condition, such as incorrect temperature (potentially hazardous)* less than contracted portion, spoiled or too late, the Subcontractor shall be liable for the cost of that portion. If the entree is unacceptable, the Subcontractor shall be liable for the cost of the entire meal. In order to ensure conformance to the above, the delivery driver shall remain at the site until the food is checked by the location manager. All shortages shall be noted on delivery slip for proper crediting.

E. Menu Requirements

1. All menus shall comply with Title III-C meal pattern requirements.
2. A **six-week** cycle menu shall be used that is written once yearly.

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3. The Contractor has the responsibility for menu writing with input from the Project Council and Subcontractor. The menu shall be approved by the centralized dietary services dietitian.
4. The Contractor is responsible for typing and duplicating the menu.
5. All menus must be signed by the Project Director, Project Council Chairman or designee, the centralized dietary services dietitian, and certified by the County nutritionist prior to the start of the menu cycle.
6. The Project Director or centralized dietary services dietitian shall submit all menu substitutions by the Subcontractor at least 2 days prior to the serving date. The subcontractor may, however, in an emergency make menu substitutions on verbal approval of the Project Director or centralized dietary services dietitian, with a written notice to follow for documentation.
7. Provisions shall be made by the Subcontractor to provide in-service training regarding food sanitation and safety for their food service staff. Documentation of such training shall be submitted to the Contractor. County may require the Contractor, based upon major finding of non-compliance items in food and safety, to provide additional food service training.

*See definition of Potentially Hazardous Food, DAAS Contract Management for Service Providers.

F. Meal Pattern Specifications

1. All food must be of the highest quality standard and conform to USDA requirements. It must be prepared in a manner to preserve optimum flavor and appearance while retaining nutrients and food value. Special consideration should be given to tenderness of meat because of the age of our participants. The Subcontractor is responsible for assuring its high quality before it is sent to the meal sites.

Title III - Meal Pattern:

Meat or meat alternatives	A minimum of 15 g protein per meal required. Specification for all processed preformed meat must be approved by the County nutritionist before adding to menu. Two-and one-half-ounce edible portion of meat/meat alternate in casserole dishes.
Vegetable/Fruits	Two half cup servings each per meal (exclusive of dessert).
Juice*	One-half cup Vitamin C fortification required to satisfy Vitamin C requirement.

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Starch or alternate	One slice bread or one-half cup serving cooked starch, such as rice, pasta, etc. Selections made from whole grains are preferred.
Fortified margarine or butter	One teaspoon.
Dessert*	One-half (1/2) cup portions or fresh fruit equivalent. Limit of 1 dessert high in sugar, refined grains, or saturated fat per week.
Milk or milk product	Eight-fluid-ounce serving or calcium equivalent. Liquid milk served must be 1% fat, nonfat, or buttermilk.

- (a) In the preparation of all meals, the Subcontractor shall use a minimum of simple sugars. Each meal shall not exceed 1000 milligrams of sodium and shall be low in fat (standard is no more than 30 percent or less of total calories). Limit of 2 high-sodium meals served in any week.
- (b) Subcontractor shall provide all condiments that are normally served with specific menus including, but not limited to, salt; pepper; salad dressing; tartar sauce; mustard; catsup; cream; sugar; and garnishes, such as lemon slices and parsley (as agreed upon). A low-sodium salad dressing choice shall be offered and used in sodium and other nutrient calculations for menus with green salads.
- (c) Ground beef may be used no more often than twice a week and must be in solid form such as meat loaf or Salisbury steak for one of the servings. The fat content cannot exceed 15 percent.
- (d) Textured vegetable protein may be used at no greater amount than 30 percent of the total protein.
- (e) Meat alternates (dried beans, peas, lentils, nuts, nut butters) shall not be served more often than one time per week.
- (f) Desserts, such as fruits or high-nutrient density desserts shall be served throughout the week in one-half (1/2) cup portions. High-calorie desserts, such as plain gelatin desserts, cakes, pies, cookies, and similar foods, shall also be included but are to be limited to once per week. Milk-based dessert may be served once per week. A dessert consisting of 50 percent fruit (fruited Jell-O, etc.) may be served once a week.
- (g) Different fruits will be served once per meal. Whole fresh fruit in season shall be served at least once during each week. Canned fruit will be water packed or packed in its own juice.

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2. Minimum grades for all foods shall be as follows:
 - (a) Beef: USDA Grade A choice
 - (b) Pork: USDA Number 1 (as defined in S R.A., No. 171, U.S. Standards and Grades of Pork Carcasses)
 - (c) Lamb USDA choice
 - (d) Poultry USDA Grade A to be used for all fresh or frozen poultry products. Necks, backs, and wings alone shall not be used prior approval of the Project Director or project designee. Reconstructed roll products are not acceptable (optional).
 - (e) Variety meats: Grade No. 1 from USDA Government-inspected plants.
 - (f) Dairy products: Following is to be used as minimum specifications for all graded dairy products:
 - (1) Eggs, fresh USDA or State Graded A
 - (2) Cheese, USDA Grade A non-processed cheese
 - (3) Milk, low fat, shall be available
 - (g) Fish and seafood must be fresh or frozen and be a nationally distributed brand packed under continuous inspection of the U.S. Department of Interior.
 - (h) Canned fruits and juices: USDA Grade A (Fancy) and Grade B (Choice) are to be used for all graded fruits and fruit juices. Grade C (Standard) may be used for pie and cobbler products only.
 - (i) Fresh fruits: USDA Fancy to USDA No. 1 to be used for all graded fresh fruits as a minimum standard.
 - (j) Fresh vegetables: USDA Fancy and No. 1 to be used for all graded fresh vegetables as a minimum standard.
 - (k) Frozen fruits and vegetables: USDA Grade A is to be used for all graded frozen fruits and vegetables as a minimum standard.
3. Meal Component/Nutrient Analysis
 - (a) A meal component /nutrient analysis of the entire menu cycle conducted and/or approved by a Registered Dietitian shall be completed in compliance with OAA, Section 339, and California Regulations, Title 22, Division 1.8, Chapter 4, Article 5, Section 7638.5.

ATTACHMENT 1**Computerized Nutrient Analysis Requirements:**

Although not required, use of computerized nutrient analysis is strongly recommended and will help ensure and verify the nutritional adequacy of meals. The goal of assessing nutrient intakes of groups is to determine the prevalence of inadequate or excessive nutrient intakes within a particular group of individuals. While meal patterns serve as a basic framework for menu planning, providers are encouraged to use computerized nutrient analysis because it provides specific information on nutrients the menu may **not** be providing. The information that a menu is not supplying all of the desired nutrients will guide the development of future menus. As required menu elements are expanded, it is more difficult to meet all of the requirements on a daily basis. Nutrition programs for the elderly should focus on:

- Vitamin A
- Vitamin C
- Protein
- Fat
- Sodium
- Fiber

Not all nutrient guidelines will be met with each meal. However, areas that do not meet the requirements should be the focus of future menu revisions and nutrition education.

The following nutrients should be included in the analysis when the computerized nutrient analysis method is used: calories; protein; carbohydrates; total fat; saturated fat; total fiber; Vitamins A, C, D, E, K, thiamin, riboflavin, niacin, B6, folate, B12; calcium, chromium, copper, iron, magnesium, sodium, and zinc. In addition to meeting one third of the Dietary Reference Intakes, the menus should also follow the Dietary Guidelines for Americans.

- (b) Menu cycle shall be analyzed on a regular basis and documentation maintained for County review.

G. Supplies Specification Procedures

The Subcontractor shall provide disposable table service based upon the supplies specification included. These supplies shall be ordered and delivered weekly at each site. A minimum of one week's supply on hand at all times. The Contractor shall supply order forms and monitor supply usage.

ATTACHMENT 1

The Subcontractor shall furnish, as part of supplies, the cleaning and other miscellaneous supplies (see Supplies Specification Sheet). These supplies will be ordered as needed. The Contractor shall supply order forms and monitor supply usage. (This is subject to negotiation.)

EVALUATION OF SUBCONTRACTOR

The Contractor and centralized dietary services dietitian shall evaluate the Subcontractor's performance to determine if the Agreement is in compliance in meeting requirements. All evaluations must be sent to the County nutritionist.

RECEIPTS AND INVOICES PROCEDURES

- A. The Subcontractor shall issue daily delivery receipts to each site.
- B. After the close of each week, the Subcontractor will furnish to the program an invoice of meals ordered by the program, the previous week. The Contractor will pay such invoices for the prior week within 30 days after receipt of same invoice or as agreed between the Contractor and Subcontractor.

DEDUCTION PROCEDURE

- A. The Subcontractor shall deliver meals that meet Title III-C menu regulations. If the Subcontractor fails to deliver all menu items or appropriate substitute items and/or the program rejects food, the Subcontractor shall be reimbursed as outlined in Section 4, "Meal Standards."



AGENDA REPORT

DATE:	JULY 1, 2019	FILE I.D.:	HSV030
SECTION:	AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	5	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 19-53 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO SUPPORT THE MONTCLAIR AFTER-SCHOOL PROGRAM		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 19-53 with Ontario-Montclair School District (OMSD) to support the Montclair After-School Program.

A copy of proposed Agreement No. 19-53 with OMSD is attached for the City Council's review and consideration.

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's After-School Education and Safety (ASES) Program through grants made available to local education authorities, such as OMSD. The goal of the Montclair After-School Program (MAP) is to improve the academic performance and success of students in the program by providing high-quality academic programming after school while ensuring a safe physical and emotional environment for all.

Proposed Agreement No. 19-53 would provide funding for MAP at the following nine elementary school sites: El Camino, Howard, Kingsley, Lehigh, Mission, Monte Vista, Montera, Moreno, and Ramona; and two middle school sites: Serrano and Vernon.

The funding for MAP at these eleven school sites will be used to support academic, enrichment, and physical activities for children in the after-school programs.

FISCAL IMPACT: Should the City Council approve proposed Agreement No. 19-53, OMSD would provide \$1,221,739.47 to fund personnel, training, program supplies and grant oversight. The term of proposed in Agreement No. 19-53 is July 11, 2019, through June 30, 2020.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 19-53 with Ontario-Montclair School District to support the Montclair After-school Program.



AGREEMENT FOR SERVICES

ONTARIO-MONTCLAIR SCHOOL DISTRICT

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

THIS AGREEMENT is made and entered into this 11th day of July, 2019 by and between the Ontario-Montclair School District, hereinafter referred to as the "DISTRICT," and City of Montclair, hereinafter referred to as the "CONSULTANT."

1. SERVICES TO BE PERFORMED BY CONSULTANT

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

Provide staff and materials for the ASES expanded learning program. See Attachment A for details.

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

2. COMPENSATION

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

Not to exceed \$1,221,739.47; see Attachment B and Schedule A for details.

- b) **Travel Expenses.** DISTRICT will pay no additional amount for travel or other expenses of CONSULTANT under this Agreement unless specified below under section 2(c). Should travel or other expenses be specified below, CONSULTANT shall be entitled to the lesser amount of
 - 1. The not to exceed amount stated, or
 - 2. The actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to this Agreement.
- c) **Summary of Compensation**

Services:	\$1,221,739.47
Travel Expense:	N/A
Total contract amount not to exceed (<i>services + travel</i>)	
	\$1,221,739.47
- d) **Retired STRS or PERS.** If this Agreement is with an individual consultant, CONSULTANT shall notify the DISTRICT whether or not CONSULTANT is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS).
- 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 CONSULTANT with a statement of earnings at the end of each calendar year. CONSULTANT is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.
- f) **Documentation Required For Payment.** Unless specified below, payment for services and travel shall be made by DISTRICT to CONSULTANT after services/travel has been completed and consultant submits documentation for payment (e.g. consultant invoice).

3. TERM OF AGREEMENT

The term of this Agreement is from July 11, 2019 through June 30, 2020, unless sooner terminated pursuant to the provisions of Section 6 of this Agreement. DISTRICT and CONSULTANT may mutually agree in writing to extend the term of this Agreement provided, however, DISTRICT shall not be obligated to pay CONSULTANT any additional consideration unless CONSULTANT undertakes additional services, in which instance the consideration shall be increased as DISTRICT and CONSULTANT shall agree in writing.

4. OBLIGATIONS OF CONSULTANT

- a) **Services Performed.** During the term of this Agreement, CONSULTANT agrees to diligently prosecute the work specified in the "Services to be Performed by Consultant" to completion. CONSULTANT may represent, perform services for, and be employed by such additional clients, persons, or companies as CONSULTANT, in CONSULTANT's sole discretion, sees fit.
- b) **Use of District Space and Resources.** CONSULTANT will provide all space, materials, tools, and instrumentalities required to perform the services under this Agreement at CONSULTANT's expense, and shall not be entitled to reimbursement. CONSULTANT shall not be entitled to any benefits the DISTRICT may make available to its employees, including, but not limited to, office or business equipment, office space, supplies, group health, life insurance, vacation or retirement benefits.

- c) **Regulatory Compliance.** CONSULTANT shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.
- d) **Asbestos Hazard Emergency Response Act (AHERA) and Lead Based Paint Compliance.** CONSULTANT shall comply with the DISTRICT's Asbestos Hazard Emergency Response Act (AHERA) and Lead Based Paint compliance procedures. Prior to starting any construction work at a DISTRICT facility (including demolition, drilling/penetrating, cutting/tearing, sanding, scraping, screwing/unscrewing, or other similar activities) the following requirements must be met:
1. Contact the Facilities Planning and Operations Department (909-418-6366) to discuss the project and the planned method of construction or installation to occur.
 2. Receive and review the District's Asbestos Hazard Emergency Response Act (AHERA) Management Plan Book that identifies the known location(s) of asbestos and/or lead-based paint containing materials for the subject site to confirm these materials will not be disturbed during the course of your work.
 3. Obtain authorization from the Facilities Planning and Operations Department.
- e) **Fingerprinting.** CONSULTANT shall comply with the requirements of Education Code section 45125.1 with respect to fingerprinting of employees who may have any contact with the DISTRICT's pupils if CONSULTANT, including but not limited to CONSULTANT if CONSULTANT is among the agents providing services, provides any of the following services: school and classroom janitorial; school site administrative; school site grounds and landscape maintenance; pupil transportation; school site food-related; tutoring, mentoring services. If at any time during the term of this Agreement CONSULTANT is either notified by the Department of Justice or otherwise becomes aware that any employee of CONSULTANT, including CONSULTANT, performing services under this Agreement has been arrested or convicted of a violent or serious felony listed in Penal Code section 667.5(c) or Penal Code section 1192.7, respectively, CONSULTANT agrees immediately to notify the DISTRICT and remove said employee from performing services on this Agreement. CONSULTANT shall certify in writing to the DISTRICT that neither the CONSULTANT nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Education Code section 45122.1 (Exhibit A).
- f) **Indemnification.** CONSULTANT shall indemnify, pay for the defense of, and hold harmless DISTRICT and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of CONSULTANT's negligent or willful acts and/or omissions in rendering any services hereunder, including but not limited to the negligent or willful acts and/or omissions of CONSULTANT's employees and agents. CONSULTANT shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning CONSULTANT or any employee/agent of CONSULTANT and shall further indemnify, pay for the defense of, and hold harmless DISTRICT of and from any such payment or liability arising out of or in any manner connected with CONSULTANT's performance under this Agreement.
- g) **Insurance Requirements.** During the entire term of this Agreement, CONSULTANT shall procure, pay for and keep in full force and effect the following types of insurance:

1. **General Liability Insurance.** Commercial general liability insurance, covering bodily injury liability, property damage liability and personal injury liability of CONSULTANT with respect to the services provided by, or on behalf of, CONSULTANT under this Agreement. The policy limits shall not be less than One Million dollars (\$1,000,000) per occurrence. The policy may not contain an exclusion for coverage of claims arising from claims for sexual molestation or abuse. In the event that CONSULTANT's policy should have an exclusion for sexual molestation or abuse claims, then CONSULTANT shall be required to procure a supplemental policy providing such coverage.
 - a. The DISTRICT requires the Certificate of Liability Insurance to show the DISTRICT as the "Certificate Holder" and "Additional Insured" on the CONSULTANT'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."

2. **Auto Liability Insurance.** CONSULTANT agrees that services in conjunction with this agreement will be conducted in CONSULTANT's office or at a DISTRICT school site and CONSULTANT 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 CONSULTANT need to provide services in conjunction with this agreement that do require Student transportation in a private or commercial vehicle, the DISTRICT and CONSULTANT will mutually agree on services to be provided, and CONSULTANT will provide insurance as follows: Business auto liability insurance covering the use of "owned, non-owned and hired" autos by or on behalf of CONSULTANT 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.
3. **Workers' Compensation Insurance.** This coverage is required unless CONSULTANT 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. CONSULTANT 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.

The policies of insurance described in Paragraph (4g.1-3) listed 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. CONSULTANT 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, CONSULTANT agrees to immediately provide DISTRICT true and correct copies of all new or revised certificates of insurance.

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

5. **OBLIGATIONS OF DISTRICT**

- a) **Professional Services.** DISTRICT agrees to comply with all reasonable requests by CONSULTANT and to provide access to all documents reasonably necessary for the performance of CONSULTANT's duties under this Agreement.
- b) **Indemnification.** DISTRICT shall defend, indemnify and hold CONSULTANT and its council members, officers, employees, agents, and staff harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), claims for injury or damages arising out of the performance of or in connection with this agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the improper conduct and/or negligence or intentional acts or omissions of DISTRICT, its officers, employees, agents, or staff.

6. **TERMINATION OF AGREEMENT**

- a) **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 CONSULTANT default in the performance of this Agreement or breach any of its provisions, DISTRICT may terminate this Agreement by giving written notification to CONSULTANT.
- c) **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 CONSULTANT's services hereunder by giving written notification to CONSULTANT 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, CONSULTANT shall only be paid for those services rendered to the date of termination. All cash deposits made by DISTRICT to CONSULTANT, if any, shall be refundable to DISTRICT in full upon termination of this Agreement unless specified to the contrary below.

N/A

7. **GENERAL PROVISIONS**

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

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

- c) **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.
- d) **California Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 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, CONSULTANT, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of the DISTRICT or as a part of any audit of DISTRICT, for a period of three (3) years after final payment is made under this Agreement. CONSULTANT shall preserve and cause to be preserved such books, records and files for the audit period.
- f) **Contractual/Equitable Remedies.** CONSULTANT agrees that the DISTRICT is the sole entity against whom the CONSULTANT 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.
- g) **Board of Trustees Approval.** CONSULTANT warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind it hereto. This Agreement shall not become binding upon the DISTRICT until it has been duly approved or ratified by the Board of Trustees.

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

<p>“DISTRICT”</p> <hr/> <p style="text-align: center;">Signature</p> <p style="text-align: center;">Phil Hillman, Chief Business Official</p> <hr/> <p style="text-align: center;">Printed Name/Title</p> <hr/> <p style="text-align: center;">Date</p> <p style="text-align: center;">Ontario-Montclair School District 950 West D Street Ontario, CA 91762</p> <p style="text-align: center; color: red;">Approved by OMSD Board:</p> <p style="text-align: center;">_____</p>	<p>“CONSULTANT”</p> <hr/> <p style="text-align: center;">Signature</p> <p style="text-align: center;">Javier John Dutrey, Mayor</p> <hr/> <p style="text-align: center;">Printed Name/Title</p> <hr/> <p style="text-align: center;">Date</p> <hr/> <p style="text-align: center;">Email Address</p> <p style="text-align: center;">5111 Benito Street</p> <hr/> <p style="text-align: center;">Street Address</p> <p style="text-align: center;">Montclair, CA 91763</p> <hr/> <p style="text-align: center;">City, State, Zip Code</p> <p style="text-align: center;">(909) 626-8571</p> <hr/> <p style="text-align: center;">Telephone Number</p> <hr/> <p style="text-align: center;">Attest: _____</p> <p style="text-align: center;">Andrea Phillips, City Clerk</p>
---	---

Exhibit A

Certification of Compliance with California Education Code Section 45125.1

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

CONSULTANT INFORMATION

Signature
Javier John Dutrey, Mayor

Printed Name/Title

Date

Email Address
5111 Benito Street

Street Address
Montclair, CA 91763

City, State, Zip Code
(909) 626-8571

Telephone Number

END OF AGREEMENT FOR CONSULTANT SERVICES

Attachment A

CONSULTANT: City of Montclair

Services to be performed by **CONSULTANT:**

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

- I. **CONSULTANT** will provide staff and materials to operate the expanded learning program services at the following sites:
 - a. El Camino
 - b. Howard
 - c. Kingsley
 - d. Lehigh
 - e. Mission
 - f. Monte Vista
 - g. Moreno
 - h. Montera
 - i. Ramona
 - j. Serrano
 - k. Vernon.
- II. **CONSULTANT** will have the following responsibilities in support of the ASES program:
 - a. Coordinate the academic assistance, homework support, and enrichment portions (including time for physical activity) of the ASES program at each school site.
 - b. Hire, train, and supervise site staff, including the site coordinators and program leaders.
 - c. Seek regular input from principals regarding performance evaluations, including recommendations for retraining and terminating a site coordinator and/or other site staff.
 - d. Participate in all cross-training for site coordinators and program leaders.
 - e. Maintain ongoing communication between City of Montclair staff and school staff regarding student needs and progress, including, but not limited to attendance at school-day meetings and/or one-on-one meetings with teachers.
 - f. Coordinate ASES activities with school staff to assure program supports current academic goals of teachers and administrators.
 - g. Provide academic assistance and other activities specifically supporting, but not duplicating, daytime curriculum and academic goals.
 - h. Foster communication with and involvement of parents through parent orientations, parent handbook, development and distribution of periodic newsletters, and hosting, at a minimum, one parent night.
 - i. Regularly attend and participate in regularly scheduled operation meetings with **DISTRICT** liaison.
 - j. Provide the **DISTRICT**, in a timely manner, with any required documentation, such as, but not limited to, monthly program evaluations, attendance, and supper counts.

Attachment B

CONSULTANT: City of Montclair

Compensation:

- I. Except as otherwise provided in this Agreement, **DISTRICT** agrees to compensate **CONSULTANT** for services rendered under this Agreement as follows:
 - a. **CONSULTANT** will be paid 92.5% of grant award from the California Department of Education (henceforth **CDE**), according to Schedule A, attached hereto.
 - b. Administrative costs may not exceed 7.5% of grant award from **CDE**, according to Schedule A, attached hereto.
 - c. If **DISTRICT** fails to receive ASES grant funding, **CONSULTANT** will hold **DISTRICT** harmless for any financial liabilities or obligations it has incurred.
 - d. Timing and amounts of payments will be made according to Schedule A, attached hereto. If the funds received from **CDE** change, a pro rata adjustment to the maximum amount available for payment to **CONSULTANT** will be made.
 - e. **CONSULTANT** fee will only be paid out of funds received by **DISTRICT** from the State and only up to the limits of this agreement.
 - f. **CONSULTANT** is to provide documentation necessary for annual independent audits, in accordance with **CDE** requirements. Any additional audit cost bill to **DISTRICT** due to lack of documentation will be billed to **CONSULTANT** for payment.
 - g. **DISTRICT** may reduce funding if the annual attendance average does not meet at least 75% of the attendance required by **CDE** in a single year or is less than 85% in two consecutive years.

Ontario-Montclair School District
 ASES Payment Schedule—City of Montclair
 July 1, 2019 through June 30, 2020

			Schedule A			
No.	School	Program	Allocation	7.50% Admin	Balance	Tenthly Payment
060	El Camino	ASES After-school Base	122,850.00	9,213.75	113,636.25	11,363.63
064	Howard	ASES After-school Base	122,850.00	9,213.75	113,636.25	11,363.63
065	Kingsley	ASES After-school Base	131,105.52	9,832.91	121,272.61	12,127.26
066	Lehigh	ASES After-school Base	134,152.20	10,061.42	124,090.78	12,409.08
071	Mission	ASES After-school Base	113,386.08	8,503.96	104,882.12	10,488.21
072	Monte Vista	ASES After-school Base	146,207.20	10,965.54	135,241.66	13,524.17
073	Moreno	ASES After-school Base	122,850.00	9,213.75	113,636.25	11,363.63
045	Montera	ASES After-school Base	122,850.00	9,213.75	113,636.25	11,363.63
074	Ramona	ASES After-school Base	122,850.00	9,213.75	113,636.25	11,363.63
382	Serrano	ASES After-school Base	112,040.84	8,403.06	103,637.78	10,363.78
383	Vernon	ASES After-school Base	69,657.59	5,224.32	64,433.27	6,443.33
			<u>1,320,799.43</u>	<u>99,059.96</u>	<u>1,221,739.47</u>	<u>122,173.98</u>



AGENDA REPORT

DATE:	JULY 1, 2019	FILE I.D.:	SEW080/LDA050
SECTION:	AGREEMENTS	DEPT.:	COMMUNITY DEV.
ITEM NO.:	6	PREPARER:	M.DIAZ
SUBJECT:	CONSIDER APPROVAL OF IRREVOCABLE ANNEXATION AGREEMENT NO. 19-54-I-101 WITH HILMA E. MORALES FOR PROPERTY LOCATED AT 11336 MONTE VISTA AVENUE; LOT 24 & THE NORTH ½ OF LOT 25 OF TRACT NO. 3976 (APN 1013-071-03-0000)		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 19-54-I-101, an Irrevocable Annexation Agreement with Hilma E. Morales for the property located at 11336 Monte Vista Avenue, Lot 24 of Tract No. 3976 (APN 1013-071-03-0000). Irrevocable Annexation Agreements are subject to City Council review and approval.

A copy of proposed Agreement No. 19-54-I-101 is attached for the City Council’s review and consideration.

BACKGROUND: The proposed Irrevocable Annexation Agreement would permit the property owner of the subject parcels located in unincorporated County territory to connect the existing residence and potentially an accessory dwelling unit to the sanitary sewer system owned and maintained by the City of Montclair and located in the Monte Vista Avenue roadway (see “Exhibit A” of the Agreement). The property currently has a single-family residence with an attached two-car garage that is proposed to be converted to an accessory dwelling unit. Staff confirmed that the County of San Bernardino has issued a building permit to allow a legal accessory dwelling unit within the existing attached garage. In addition, the County informed City that the existing septic tank on the site is failing and that there is an urgency to connect the property to a sanitary sewer. As a matter of health and safety concerns, City staff is requesting approval from the City Council to allow sewer connection to the existing single-family home and the proposed accessory dwelling unit on the subject site. In exchange, the Agreement would require annexation of the property to the City when feasible at a future date.

If approved by the City Council, Agreement No. 19-54-I-101 would be forwarded to the Local Agency Formation Commission (LAFCO) for their review and approval. The proposed Agreement and sewer connection request is consistent with City policy and meets all applicable City requirements. Following City Council and LAFCO approvals, the Agreement is recorded against the property and becomes binding on future owners, heirs, successors, or assigns.

FISCAL IMPACT: There would be no fiscal impact as a result of execution of the Irrevocable Annexation Agreement.

RECOMMENDATION: Staff recommends the City Council approve Irrevocable Annexation Agreement No. 19-54-I-101 with Hilma E. Morales for the property at 11336 Monte Vista Avenue, Lot 24 and the north ½ of Lot 25 of Tract No. 3976 (APN No 1013-071-03-0000).

Recording Requested by:

Michael Diaz
City of Montclair

When Recorded Mail To:

Michael Diaz
City Planner
City of Montclair
5111 Benito Street, P.O. Box 2308
Montclair, CA 91763

This Space for Recorder's Use Only

FREE RECORDING PURSUANT TO GOVERNMENT CODE §27383

AGREEMENT NO. 19-54-I-101

**AN IRREVOCABLE AGREEMENT TO ANNEX
TO THE CITY OF MONTCLAIR**

**Hilma E. Morales
11336 Monte Vista Avenue
Montclair, CA 91763-6427**

**APNs: 1013-071-03-0000
1013-071-04-0000**

AGREEMENT NO. 19-54-I-101

**AN IRREVOCABLE AGREEMENT TO ANNEX
TO THE CITY OF MONTCLAIR**

Hilma E. Morales
11336 Monte Vista Avenue, Montclair, CA 91763-6427

Lot 24 and the north ½ of Lot 25 of Tract No. 3976
APNs: 1013-071-03 and 1013-071-04

This agreement is entered into this ____ day of July, 2019, between Hilma E. Morales, hereinafter referred to as "Owner," and the City of Montclair, hereinafter referred to as "City."

WHEREAS, Owner is the legal property owner of the real property located at 11336 Monte Vista Avenue, comprised of two (2) separate parcels referenced by San Bernardino County Tax Assessor Parcel Numbers (APNs) 1013-071-03, and 1013-071-04, shown as Exhibit "A" attached, and is further described as follows:

Lot 24, and the north ½ of Lot 25, of Tract No. 3976, in the County of San Bernardino, as per map recorded in Book 51, Page 66, of Maps, in the Office of the County Recorder of said County.

WHEREAS, the subject properties together are approximately 0.25 acres in total size, and located within unincorporated San Bernardino County and the Sphere of Influence of the City of Montclair; and

WHEREAS, on Lot 24 currently exists a single family dwelling unit, approximately 1,000 square feet in size, and a detached 360 square foot garage. The existing single structures were constructed in 1953; and

WHEREAS, the portion of Lot 25 owned by the property owner, is undeveloped with structures but utilized as outdoor yard area by the site residents; and

WHEREAS, the Owner obtained permits from the County of San Bernardino to convert and enlarge the existing detached garage into a 450 square foot accessory dwelling unit (ADU) located on Lot 24 (Assessor Parcel 1013-071-03); and

WHEREAS, the Owner desires to connect the existing single family residential unit and the accessory dwelling unit as described above to the sanitary sewer system in the Monte Vista Avenue roadway, which is owned and maintained by the City of Montclair; and

WHEREAS, the City is willing to allow a connection to said sanitary sewer system if a request is made at the earliest possible time to annex to the City of Montclair; and

WHEREAS, Owner desires to annex to the City of Montclair; and

WHEREAS, the City intends to pursue annexation of Owner's property, but said annexation would cause a delay in connecting to said sewer line, which would create a substantial hardship for Owner of said property; and,

WHEREAS, the agreements, conditions, and covenants contained herein are made for the direct benefit of the land subject to this Agreement and described herein and shall create an equitable servitude upon the land and operate as a covenant running with the land for the benefit of the Owner of the land and his heirs, successors, and assigns.

NOW, THEREFORE, the parties do agree as follows:

1. Owner does hereby give irrevocable consent to annex to the City of Montclair at such time as the annexation may be properly approved through appropriate legal proceedings, and Owner does further agree to provide all reasonable cooperation and assistance to the City in the annexation proceedings. Said cooperation is contemplated to include signing any applications of consent prepared by the City, and submitting any evidence reasonably within the control of the Owner to the various hearings required for the annexation. Said cooperation does not include, however, any obligation on behalf of the Owner to institute any litigation of judicial proceeding whatsoever to force annexation to the City.

2. The City of Montclair does hereby agree to allow a connection of said property to the sewer line owned by the City of Montclair, which is located in Monte Vista Avenue, at such time as all applicable permits have been obtained and associated fees have been paid.

3. Owner agrees to pay such annexation fees and costs and other municipal charges as would ordinarily be charged in the annexation of property to the City. Said fees shall be payable when the same becomes due and payable. (In some circumstances, these fees may be borne by the City.)

4. Owner shall pay all fees and charges and make all deposits required by the City to connect to and use the sewer, and Owner agrees to be bound by all City ordinances, rules, and regulations with respect to the sewer system. Owner agrees to pay monthly sewer charges beginning on the date this agreement is approved by the City Council.

5. Owner shall be responsible for the maintenance and repair of the sewer lateral from the building, and/or structure to which the sewer lateral is connected to the public sewer main in the street or City easement. This responsibility includes both the portion of the sewer lateral on private property and the portion located beneath the sidewalk and street up to the point where the lateral connects to the public sanitary sewer main. Property owners' responsibilities include maintenance and repair of the lateral, overflow cleanup, and damages to sewer main and/or pavement. The City **may** respond

and take corrective action in the event of a sewage overflow from a lateral where there is an immediate threat to health or safety. However, the property owner shall be responsible for all costs incurred by the City.

6. Owner shall install any and all future improvements upon said property to the City's standards, except that the County standard(s) shall apply when more restrictive than the City standard(s).

7. Owner shall execute this agreement on behalf of himself, his heirs, successors, and assigns, and said agreement shall be irrevocable without the prior written consent of both parties hereto.

8. The benefit and responsibilities to the subject property shall inure to the benefit and responsibilities of subsequent owners, their heirs, successors, and assigns; and the agreements, conditions, and covenants contained herein shall be binding upon them and upon the land.

9. This agreement shall be recorded with the Office of the Recorder of the County of San Bernardino.

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

CITY:

OWNER:

CITY OF MONTCLAIR, CALIFORNIA

Hilma E. Morales

Javier John Dutrey, Mayor

Hilma E. Morales

ATTEST:

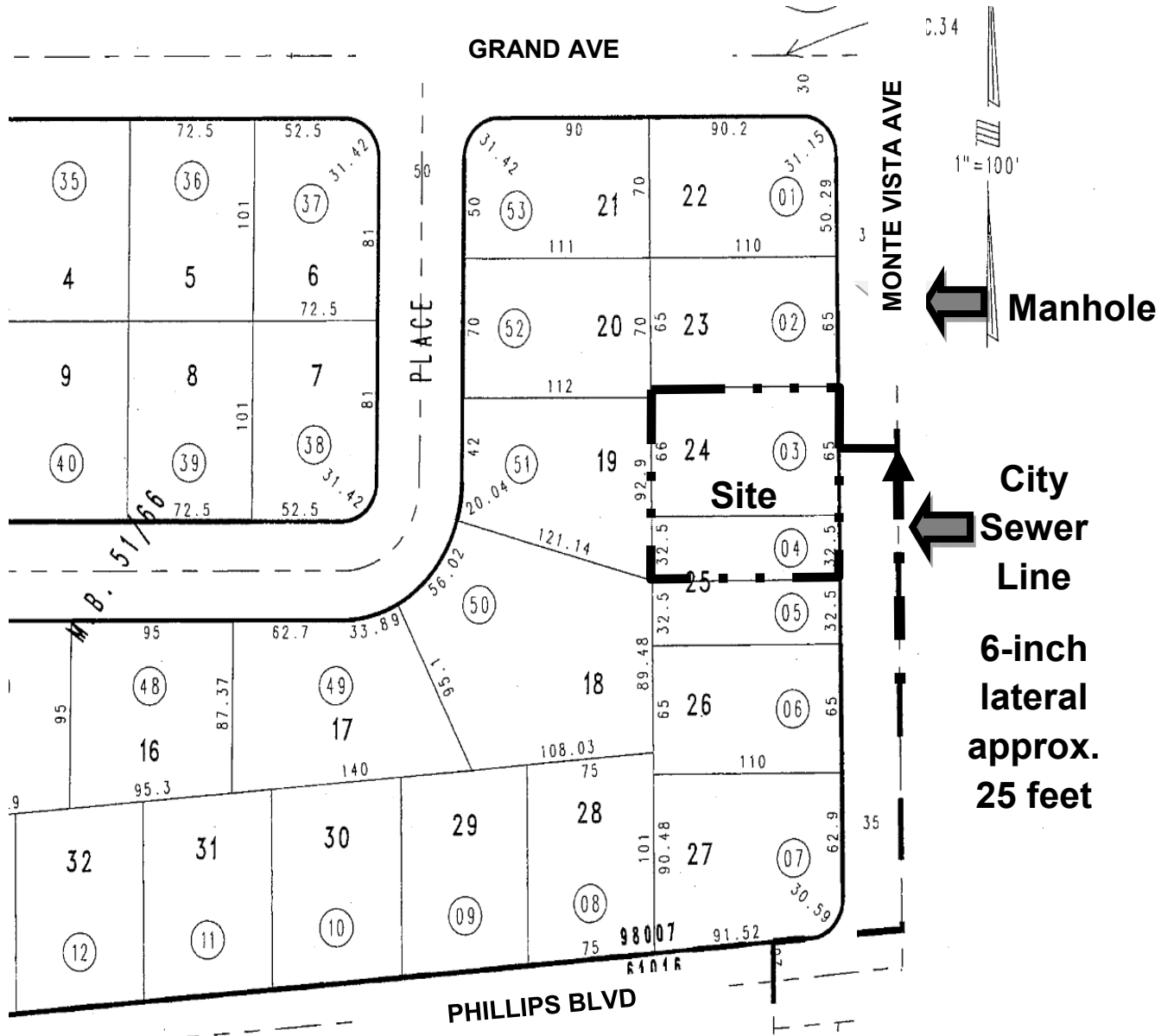
Andrea M. Phillips
City Clerk

Date

APPROVED AS TO FORM:

Diane E. Robbins
City Attorney

Exhibit A



Irrevocable Annexation Agreement IAA No. 19-54-I-101

11336 Monte Vista Avenue, Montclair, CA

APN: 1013-071-03-000

(Lot 24 & north 1/2 of Lot 25 of Tract Map No. 3976)



AGENDA REPORT

DATE: JULY 1, 2019

FILE I.D.: FRD057

SECTION: AGREEMENTS

DEPT.: FIRE

ITEM NO.: 7

PREPARER: R. AVELS

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 19-55 WITH CONSOLIDATED FIRE AGENCIES OF SAN BERNARDINO COUNTY (CONFIRE) FOR CONTINUED DISPATCH AND COMMUNICATION SERVICES

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 19-55 with Consolidated Fire Agencies of San Bernardino County (CONFIRE) for continued dispatch and communication services.

A copy of proposed Agreement No. 19-55 is attached for the City Council's review and consideration.

BACKGROUND: On December 16, 2013, the City approved Agreement No. 13-100, a Memorandum of Understanding between the Cities of Montclair and Upland for Joint Sharing of Fire Department Command Staff and Expansion of Automatic Mutual Aid through Mutual Agreement to Vacate Service Boundaries. This Agreement set into action a two-year pilot program that was intended to determine the feasibility and practicality of combining Fire Department Command/Administrative structures into one single structure under direction of a jointly designated Fire Chief.

Prior to adoption of Agreement No. 13-100, Montclair and Upland were contracted with the City of Ontario's Communication Division to receive dispatch and communication services. Montclair and Upland mutually agreed to evaluate dispatch services for the purpose of fully implementing the boundary drop concept. To achieve this objective, Montclair and Upland evaluated alternative approaches to providing dispatch services by considering implementation of a jointly shared dispatch center utilizing dispatch services provided through CONFIRE and other available dispatch agencies capable of satisfactorily meeting dispatch service requirements. As part of Agreement No. 13-100, Montclair and Upland jointly elected to terminate dispatch services with the City of Ontario's Communication Division and transition to CONFIRE; thus, resulting in Agreement No. 14-42 with CONFIRE that the City Council approved on June 16, 2014.

The City of Upland, however, elected to terminate Agreement No. 13-100 on September 26, 2016, which caused the cessation of all joint sharing of Fire Department command staff and non-safety administrative personnel, suspended vacation of service boundaries (except for mutual and automatic aide protocols), all cost sharing provisions, and all other provisions of the Agreement excluding separate agreements with CONFIRE. In response, a notice of intent to terminate Agreement No. 14-42 effective June 30, 2018, was provided to CONFIRE. In May 2018, the City instead approved Agreement No. 18-17 with CONFIRE—an interim agreement for a period not to exceed twelve months while City staff evaluated alternatives for the provision of dispatch and communication services.

During the course of the interim agreement, a thorough and thoughtful evaluation of alternatives for the provision of dispatch and communication services was considered, which included the possibility of the Montclair Police Department assuming the responsibility of Fire dispatch as a viable alternative. However, this evaluation revealed it is prudent and more cost-effective to continue the services with CONFIRE.

CONFIRE is a multiagency fire, emergency medical service, and local government dispatch center located at the southwest end of Rialto Municipal Airport adjacent to the County Emergency Operations Center. CONFIRE's primary mission is to provide direct fire/EMS dispatch service 24 hours a day, seven days a week for the CONFIRE Joint Powers Authority as well as contracting fire agencies.

CONFIRE utilizes state-of-the-art computer systems running TriTech CAD with ProQA for emergency medical dispatching, Automatic Vehicle Location (AVL) software, integrated telephone systems running VESTA, and radio systems consisting of VHF and Motorola 800 MHz trunked Smartnet Systems. One of the main advantages provided by contracting with CONFIRE is the use of AVL software, which allows dispatchers to know where fire units are located in real time via a satellite surveillance system. This system allows for the closest fire unit available to be dispatched to an emergency regardless of jurisdictional geography.

The term of proposed Agreement No. 19-55 would commence on July 1, 2019, and unless terminated or otherwise cancelled in accordance with the provisions of the proposed Agreement, would be in effect through June 30, 2020.

FISCAL IMPACT: Approval of Agreement No. 19-55 would result in a net cost of approximately \$203,660 for Fiscal Year 2019-20, which is included in the proposed Fiscal Year 2019-20 Budget. The cost of service for each contracting agency is based on each contracting agency's call volume for the prior calendar year, as well as costs associated with equipment replacement, technology support, administration, etc.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 19-55 with Consolidated Fire Agencies of San Bernardino County (CONFIRE) for continued dispatch and communication services.

**CONSOLIDATED FIRE AGENCIES
CONTRACTING AGENCY AGREEMENT
(City of Montclair)**

This Agreement (“Agreement”) is by and between the Consolidated Fire Agencies (“CONFIRE”), a joint powers authority duly authorized and existing under Government Code, § 6500 et seq., and the City of Montclair (“Contracting Agency”), a fire protection district duly authorized and existing under Health & Safety Code § 13800 et seq. CONFIRE and Contracting Agency may be individually referred to as a “Party” and collectively as the “Parties.”

1. EXHIBITS

This Agreement has multiple Exhibits. Any Exhibit that is specified in this Agreement is by this reference made a part of it.

Exhibits include:

- Exhibit A: Scope of Services
- Exhibit B: Compensation
- Exhibit C: Effective Date and Term
- Exhibit D: General Terms and Conditions
- Exhibit E: HIPAA Business Associate Agreement
 - Appendix 1 to Exhibit E: General Terms and Conditions to HIPAA Business Associate Agreement

2. INDEPENDENT CONTRACTOR

- a. CONFIRE, in the performance of this Agreement, is and shall act as an independent contractor.
- b. Neither Contracting Agency, nor any of Contracting Agency’s employees, shall be considered officers, employees, agents, partner, or joint venture of CONFIRE; nor shall such persons be entitled to benefits of any kind or nature normally provided to employees of CONFIRE.
- c. Neither CONFIRE nor any of CONFIRE’s employees shall be considered officers, employees, agents, partner, or joint venture of Contracting Agency; nor shall such persons be entitled to benefits of any kind or nature normally provided to employees of Contracting Agency.

3. SCOPE OF SERVICES

CONFIRE shall furnish to the Contracting Agency the services described in Exhibit A (“Services”).

4. COMPENSATION

CONFIRE shall receive payment, for Services rendered pursuant to this Agreement, as specified in Exhibit B (“Compensation”).

5. EFFECTIVE DATE AND TERM

The Effective Date and Term are set forth in Exhibit C.

6. GENERAL TERMS AND CONDITIONS

The General Terms and Conditions are set forth in Exhibit D.

7. NOTICE

Any notice required by this Agreement may be given either by personal service or by deposit (postage prepaid) in the U.S. mail addressed as follows:

To CONFIRE:

Consolidated Fire Agencies
Attn: Mike Bell, Communications Director
1743 Miro Way
Rialto, CA 92376

To Contracting Agency:

City of Montclair
Attn: Robert Avels, Police Chief/Executive
Director, Office of Public Safety
5111 Benito St,
Montclair, CA 91763

8. HIPPA BUSINESS ASSOCIATE AGREEMENT

The “Business Associate Agreement by and between Contracting Agency and CONFIRE” is set forth in Exhibit E.

The Parties have executed this Agreement on the dates indicated below.

Consolidated Fire Agencies (CONFIRE)

City of Montclair

Date: _____, 20__

Date: July 1, 2019

By: _____

By: _____

Print Name: _____

Print Name: Javier John Dutrey

Its: _____

Its: Mayor

ATTEST

By: _____

By: _____

Print Name: _____

Print Name: Andrea M. Phillips

Its: _____

Its: City Clerk

APPROVED AS TO FORM

By: _____

By: _____

Print Name: _____

Print Name: Diane E. Robbins

Its: _____

Its: City Attorney

**EXHIBIT A
to CONTRACTING AGENCY AGREEMENT**

SCOPE OF SERVICES

1. CONFIRE shall provide the following services to the Contracting Agency (“Services”):
 - a. Utilizing Contracting Agency’s primary public-safety answering point or other authorized reporting mechanism, answering emergency telephone calls from the public.
 - (1) In connection with emergency medical calls, CONFIRE shall utilize an accredited Emergency Medical Dispatch (EMD) protocol.
 - b. Providing emergency fire, rescue, and ambulance dispatch services to Contracting Agency on a twenty-four (24) hours per day basis, seven (7) days a week.
 - c. Upon receiving an emergency call, alerting Contracting Agency’s appropriate station, personnel, and equipment, identifying the appropriate equipment.
 - (1) The primary modes of alerting are: Motorola 800 MHz SIMS, voice delivered over an 800 MHz trunked radio system, 900 MHz paging, and an IP-based data stream delivered over a circuit that must be received and broadcast in stations by Contracting Agency-owned equipment.
 - d. Recording and, for a duration equal to that for which CONFIRE generally stores such records, maintaining audio recordings of all requests for emergency service and the primary radio traffic associated with the emergency incident.
 - (1) CONFIRE may record radio traffic as well, and may retain such recordings for a duration equal to that for which CONFIRE generally stores such records.
 - e. Recording and, for a duration equal to that for which CONFIRE generally stores such records, maintaining incident records stored in CONFIRE’s computer aided dispatch system, which includes information related to the incident that includes reported times, location, nature of emergency, call-back number, units responding to the incident, and any other data recorded electronically during the incident.
 - f. As deemed appropriate by CONFIRE, providing trained and certified staff, supervision, and management personnel to support the services CONFIRE provides.
 - g. Providing, on an ongoing basis, Geofile maintenance services for the purpose of maintaining the accuracy of the geographic information in the computer-aided dispatch system.

- (1) This may include updating the Street Network, modifying response areas and various overlays (ambulance, mutual threat areas etc), and providing other Geofile services necessary to the dispatch services described above.
 - h. Making available to the Contracting Agency the Agency Fire Response Map.
 - (1) This is an electronic map of the Contracting Agency's immediate area of responsibility and adjacent jurisdictions. The map references (pages) will be the only map referenced in the dispatching process.
 - (2) CONFIRE will make these electronic maps available to agencies through electronic means.
 - (3) Agencies may print maps and created hard copy map books at their own expense.
 - i. Providing Contracting Agency use and access to the following software programs:
 - (1) Pulse Point.
 - (2) Firstwatch (includes FOAM and First Pass modules)
 - j. Providing all equipment and support reasonably necessary for CONFIRE to deliver the services described in 1.a. through 1.i. above.
2. Should Contracting Agency desire additional (optional) services from CONFIRE, and should CONFIRE agree to provide such services, the Parties must execute an amendment to this Agreement incorporating those services into the Services as "Additional Services" and setting forth the additional compensation to be paid for the added services.
3. Examples of Additional Services might include:
 - a. Telestaff (Kronos).
 - b. Tablet Command.
 - c. WestNet Station Alerting
4. In receiving the Services, Contracting Agency shall do the following:
 - a. To the extent that such policies and procedures are not inconsistent with the policies and procedures of Contracting Agency, Contracting Agency shall comply with the policies and procedures of CONFIRE.
 - (1) The policies and procedures of CONFIRE include, by way of illustration and not by limitation, all information technology security policies applicable to the Services.

- (2) CONFIRE shall provide Contracting Agency access to CONFIRE's existing policies and procedures upon execution of this Agreement and any updates as they are updated.
 - b. Comply with the latest technology directives issued by CONFIRE.
 - (1) The directives include, by way of illustration and not by limitation, the directive mandating the installation of a CONFIRE-approved modem on all response vehicles for the provision of Automated Vehicle Location (AVL) services.
 - c. Acquire and maintain station alerting equipment which meets adopted CONFIRE standards and specifications.
 - d. Maintain all CONFIRE owned-equipment according to the specifications and requirements of CONFIRE.
 - e. Maintain all radio and pager frequencies as required by CONFIRE.
5. The Contracting Agency is authorized to use CONFIRE's radio talkgroups and frequencies by virtue of this Agreement. Authorization for use of these frequencies and talkgroups shall terminate upon termination of this Agreement. The intent of the Parties is to keep primary dispatching and communications on existing CONFIRE JPA frequencies and talkgroups.

EXHIBIT B
to CONTRACTING AGENCY AGREEMENT

COMPENSATION

Compensation to be paid as follows:

A. FEES FOR SERVICES:

1. In exchange for the Services set forth in **Exhibit A**, paragraph 1, commencing with the 2019/2020 fiscal year, Contracting Agency shall pay CONFIRE a sum identified by CONFIRE through its annual budget process, which shall be limited to Contracting Agency's proportionate share of CONFIRE's projected operating costs. CONFIRE shall provide written notice of this sum to Contracting Agency, delivered no later than May 30 of the preceding Fiscal Year.
 - a. Contracting Agency's proportionate share of CONFIRE's projected operating costs shall be computed as follows:
 - (1) All incidents dispatched by CONFIRE for Contracting Agency during the preceding calendar year; divided by
 - (2) All incidents dispatched by CONFIRE during the preceding calendar year; results in
 - (3) Contracting Agency's percentage of the total number of incidents dispatched.
 - b. This formula does not include direct costs incurred for ISD radio billing pass-through (optional service) or other 'seat' or inventory-based items such as software licenses, voice and data circuit charges, cellular device charges etc. These costs, including support costs, are passed-through to each agency and are not subject to the cost per call formula.
2. Invoices are issued on a quarterly basis.
3. Payment is due within thirty (30) days upon receipt of the invoice.

B. ADDITIONAL FEES:

1. Contracting Agency shall also pay an annual premium.
 - a. This premium shall be paid annually and shall be five percent (5%) of Contracting Agency's annual fee for services (see Paragraph A.1. above).
 - b. Dollars paid pursuant to this provision shall:

- (1) Be collected for and held in CONFIRE's Term Benefit Reserve Fund (5011).
 - (2) Be available to the Contracting Agency for use to offset membership costs should the Contracting Agency seek such status.
 - (3) If not used to offset membership costs, remain in this fund for use by CONFIRE as deemed appropriate.
- c. For 2019/2020, and each succeeding Fiscal Year: This annual premium will be assessed and paid, in the first quarter of each fiscal year. The amount will be included in the annual written notice referenced in Section A.1 of Exhibit B.
2. In the event that CONFIRE agrees to provide Contracting Agency with Additional Services, Contracting Agency shall pay CONFIRE for those Additional Services at the rate agreed by the Parties.
 3. Contracting Agency shall pay directly to the appropriate telephone company(ies) all costs of telephone service to the Contracting Agency, and any foreign exchange telephone service, utilized for emergency numbers to CONFIRE. The Contracting Agency has the option to use the countywide emergency number (909-822-8071 or 800-340-9110) at no additional charge as a backup to the Emergency 9-1-1 System.
 4. Contracting Agency shall pay CONFIRE the equipment replacement costs assessed by CONFIRE for damage to CONFIRE issued equipment caused by Contracting Agency's use or misuse of said CONFIRE issued equipment, which shall be added to Contracting Agency's payment set forth in Section A of this Exhibit B.
 5. In the event that CONFIRE incurs additional costs or expenses as a result of Contracting Agency's delay or failure in complying with the terms and conditions of this Agreement, Contracting Agency shall pay CONFIRE the amount of CONFIRE's additional costs or expenses so resulting.
 6. In the event of temporary complete disruption of service by CONFIRE, Contracting Agency has the right to assume dispatch functions at its discretion. As used herein, "temporary" means a period of time not to exceed twenty-four (24) hours from the time such service disruption occurs. If disruption occurs beyond twenty-four (24) hours, Contracting Agency shall not be charged for those days during the complete disruption period of time. A complete disruption shall mean all communication services by CONFIRE, including all backup methods, systems and protocols have become unavailable.

**EXHIBIT C
to CONTRACTING AGENCY AGREEMENT**

EFFECTIVE DATE AND TERM

1. This Agreement is effective on July 1, 2019 (“Effective Date”).
2. Unless terminated or otherwise cancelled in accordance with this Agreement, the term of this Agreement shall be: (i) from the Effective Date through (ii) June 30, 2020 (the “Term”).
3. At any time during the term of this agreement the Contracting Agency may submit to CONFIRE (in accordance with CONFIRE policies and regulations) an application to become a party to the CONFIRE Joint Powers Agreement.
4. Upon admission as a member of CONFIRE, the provisions of the CONFIRE Joint Powers Agreement and any bylaws, policies, or other instruments promulgated thereunder will govern the relationship between the parties of that CONFIRE Joint Powers Agreement and this Agreement will terminate.

EXHIBIT D
to CONTRACTING AGENCY AGREEMENT

GENERAL TERMS AND CONDITIONS

1. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either Party, the Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject which are in effect as of the date of this Agreement, and any later changes which do not materially and substantially alter the positions of the Parties.
2. **ASSIGNMENT AND SUCCESSORS.** Neither Party shall, without the prior written consent of the other Party, assign the benefit or in any way transfer their respective obligations under this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and, except as otherwise provided herein, upon their executors, administrators, successors, and assigns.
3. **SEVERABILITY.** In the event that any provision of this Agreement shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this Agreement.
4. **FORCE MAJEURE.** No Party shall be liable to any other Party for any loss or damage of any kind or for any default or delay in the performance of its obligations under this Agreement (except for payment obligations) if and to the extent that the same is caused, directly or indirectly, by fire, flood, earthquake, elements of nature, epidemics, pandemics, quarantines, acts of God, acts of war, terrorism, civil unrest or political, religious, civil or economic strife, or any other cause beyond a Party's reasonable control.
5. **VENUE/GOVERNING LAWS.** This Agreement shall be governed by the laws of the State of California. The venue of any action or claim brought by any Party to this Agreement shall be the County of San Bernardino.
6. **ATTORNEY'S FEES.** If suit is brought by either Party to enforce any of the terms of this Agreement, each Party shall bear its own attorney's fees and costs.
7. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement between Parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by an agreement in writing, signed by both Contracting Agency and CONFIRE.
8. **MODIFICATION.** This Agreement may be amended at any time by the written agreement of CONFIRE and Contracting Agency.
9. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
10. **AUTHORITY.** The individual executing this Agreement on behalf of Contracting Agency warrants that he/she is authorized to execute the Agreement on behalf of Contracting Agency and that Contracting Agency will be bound by the terms and conditions contained herein.
11. **HEADINGS AND CONSTRUCTION.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs, and subsections are to this Agreement.

12. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, when signed by all of the Parties hereto, shall constitute one and the same instrument. A facsimile or electronic signature shall be as valid as an original.

13. **INDEMNIFICATION.**

- A. By CONFIRE. CONFIRE shall indemnify, defend and hold harmless Contracting Agency, and all of its employees, officials, and agents (“Contracting Agency Parties”), from and against any and all claims, demands, suits, judgments, expenses and costs of any and every kind, whether actual, alleged or threatened, including attorney’s fees and costs, court costs, interest, defense costs, and expert witness fees, insofar as it may legally do so, arising from the negligent or wrongful acts or omissions of CONFIRE’S officers, agents, volunteers or employees (“CONFIRE’s Parties”) arising out of, or in any way attributable to, the performance of this Agreement. CONFIRE shall not be held responsible or liable for any loss, damage, detention or delay caused by strike, lockout, fire, flood, act or civil or military authority, insurrection or riot, or by any other cause which is not foreseeably within its control. CONFIRE’s obligation to defend the Contracting Agency Parties is not contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions, and/or costs.
- B. By Contracting Agency. Contracting Agency shall indemnify, defend and hold harmless CONFIRE Parties from and against any and all claims, demands, suits, judgments, expenses and costs of any and every kind, whether actual, alleged or threatened, including attorney’s fees and costs, court costs, interest, defense costs, and expert witness fees, insofar as it may legally do so, arising from the negligent or wrongful acts or omissions of Contracting Agency Parties arising out of, or in any way attributable to the performance of this Agreement. Contracting Agency shall not be held responsible or liable for any loss, damage, detention or delay caused by strike, lockout, fire, flood, act or civil or military authority, insurrection or riot, or by any other cause which not foreseeably within its control. Contracting Agency’s obligation to defend CONFIRE Parties is not contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions, and/or costs.

14. **INSURANCE.**

- A. Each Party shall carry \$1,000,000/\$2,000,000 (occurrence/general and product/completed operations aggregate) of commercial general liability coverage (or participate in a public agency risk pool for such amount) and each Party agrees to give the other, its directors officers, employees, or authorized volunteers insured status under its policy using ISO “occurrence” form CG 00 01 or equivalent and to provide a certificate of insurance and additional insured endorsement. Commercial general liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- B. Each Party shall carry 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.
- C. Each Party shall carry Automobile Liability Insurance (or participate in a public agency risk pool for such amount) with coverage at least as broad as ISO Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the equivalent with minimum limits of \$1,000,000 each accident.

**EXHIBIT E
to CONTRACTING AGENCY AGREEMENT**

**BUSINESS ASSOCIATE AGREEMENT
BY AND BETWEEN
CONTRACTING AGENCY AND CONFIRE**

This Business Associate Agreement (“BAA”) is entered into by and between Consolidated Fire Agencies (“Business Associate”), a California joint powers authority existing pursuant to Gov. Code, § 6500 et seq., and the City of Montclair (“Covered Entity”), a fire protection district duly authorized and existing under Health & Safety Code § 13800 et seq. Business Associate and Covered Entity may be collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

Covered Entity is contracting with Business Associate for the performance of certain services (“Services”), as set forth in the Agreement to which this BAA is attached as Exhibit E;

Covered Entity is a covered entity as defined in 45 C.F.R. § 160.103;

Business Associate is a business associate, as defined in 45 C.F.R. § 160.103, of Covered Entity;

45 C.F.R. § 164.504 requires that covered entities enter into agreements with their business associates that satisfy the requirements of 45 C.F.R. § 164.504(e)(2); and

Business Associate and Covered Entity are both governmental entities for the purposes of 45 C.F.R. § 164.504 (e)(3)(i).

AGREEMENT

1. General Terms and Conditions

The General Terms and Conditions to this BAA are set forth in Appendix 1.

The Parties have executed this Agreement on the dates indicated below. The last of the two dates shall be the “Effective Date” of this BAA.

Consolidated Fire Agencies

City of Montclair

Date: _____, 20__

Date: _____ July 1 _____, 2019

By: _____

By: _____

Print Name: _____

Print Name: Javier John Dutrey

Its: _____

Its: Mayor

**APPENDIX 1 TO EXHIBIT E
to CONTRACTING AGENCY AGREEMENT**

General Terms and Conditions to Business Associate Agreement

I. DEFINITIONS.

- a. Generally. Capitalized terms used within the BAA without definition, including within this Appendix 1, shall have the meanings ascribed to them in the Health Insurance Portability and Accountability Act and 45 C.F.R. Part 160 and 164 (“HIPAA and HIPAA Regulations”), and the Health Information Technology for Economic and Clinical Health Act and 45 C.F.R. Part 170 (“HITECH Act and Regulations”), as applicable, unless otherwise defined herein. HIPAA and HIPAA Regulations and HITECH Act and Regulations are collectively referred to herein as “Applicable Law”.
- b. Catch-all Definition. The following terms used in this BAA shall have the same meaning as those terms in the HIPAA and HIPAA Regulations: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;

- e. Make available Protected Health Information in a Designated Record Set to Covered Entity or to an individual whose Protected Health Information is maintained by Business Associate, or the individual’s designee, and document and retain the documentation required by 45 CFR 164.530(j), as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524;
- f. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.526;
- g. Maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.528;
- h. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- i. Make its internal practices, books, and records available to the Secretary for purposes of determining Business Associate’s or Covered Entity’s compliance with HIPAA and HIPAA Regulations.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

Business Associate agrees to:

- a. Not use or disclose Protected Health Information other than as permitted or required by this BAA, the Agreement, or as required by law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this BAA;
- c. Report to Covered Entity any Use or Disclosure of Protected Health Information not provided for by this BAA of which it becomes aware, including breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware;
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive,

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

- a. Business Associate may only Use or Disclose Protected Health Information as necessary to perform the Agreement(s).
- b. Business Associate may Use or Disclose Protected Health Information as required by law.
- c. Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity’s Minimum Necessary policies and procedures.

- d. Business Associate may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

IV. PERMISSIBLE REQUESTS BY COVERED ENTITY.

- a. Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

V. TERM AND TERMINATION.

- a. Term. This BAA is effective as of the Effective Date and will continue in force until terminated.
- b. Termination for Convenience. Either Party may terminate this BAA at any time, for any reason or for no reason, by giving the other Party at least thirty (30) days' prior written notice.
- c. Obligations of Business Associate Upon Termination. Upon termination of this BAA for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information. Upon termination of this BAA for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

- iv. Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions which applied prior to termination; and
- v. Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- d. Survival. The obligations of Business Associate under this Section shall survive the termination of this BAA.

VI. MISCELLANEOUS.

- a. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the Applicable Law. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.
- b. Public Access and Ownership of Records. Covered Entity is a local agency subject to the Public Records Act, Government Code § 6250 et seq. ("PRA"). In the event that Business Associate receives a request for records prepared, owned, used, or retained by Covered Entity or for records prepared, owned, used, or retained by Business Associate in the course and scope of providing the services for Covered Entity described in the Agreement as amended from time to time ("PRA Request"), Business Associate shall promptly forward a copy of the PRA Request to Covered Entity for fulfillment by the Covered Entity. Business Associate understands and agrees that all records produced under the Agreement as amended from time to time are hereby the property of Covered Entity and cannot be used without Covered Entity's express written permission. Covered Entity shall have all right, title and interest in said records, including the right to secure and

maintain the copyright, trademark and/or patent of said records in the name of the Covered Entity.

- c. Minimum Necessary. To the extent required by the HITECH Act and Regulations, Business Associate shall limit its Use, Disclosure or request of PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, respectively. Effective on the date the Secretary issues guidance on what constitutes “minimum necessary” for purposes of the Applicable Law, Business Associate shall limit its Use, Disclosure or request of PHI to only the minimum necessary as set forth in such guidance.
- d. State Privacy Laws. Business Associate shall comply with California laws to the extent that such state privacy laws are not preempted by Applicable Law.
- e. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. Effect on Underlying Arrangement. In the event of any conflict between this BAA and any underlying arrangement between

Covered Entity and Business Associate, including the Agreements as amended from time to time, the terms of the BAA shall control with respect to Protected Health Information.

- g. Interpretation. This BAA shall be interpreted as broadly as necessary to implement and comply with Applicable Law. The Parties agree that any ambiguity in the BAA shall be resolved in favor of a meaning that complies and is consistent with the Applicable Law.
- h. Governing Law. This BAA shall be construed in accordance with the laws of the State of California.
- i. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this BAA shall be deemed to be inserted herein and this BAA shall be read and enforced as though it were included therein.
- j. Severability. In the event that any provision of this BAA shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this BAA shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this BAA.



AGENDA REPORT

DATE:	JULY 1, 2019	FILE I.D.:	PDT175/SCH125/SCH500
SECTION:	AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	8	PREPARER:	B. VENTURA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NOS. 19-56 AND 19-57 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT AND CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT TO PROVIDE SPECIALIZED SCHOOL ZONE LAW ENFORCEMENT SERVICES DURING FISCAL YEAR 2019-20		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 19-56 with Ontario-Montclair School District (OMSD) for one dedicated Safe School Zone Officer for assignment at Vernon and Serrano Middle Schools and Agreement No. 19-57 with Chaffey Joint Union High School District (CJUHSD) for one dedicated Safe School Zone Officer for assignment at Montclair High School.

Copies of proposed Agreement Nos. 19-56 and 19-57 are attached for the City Council's review and consideration.

BACKGROUND: The City currently has agreements with both OMSD and CJUHSD for Safe School Zone Officers. Pursuant to the terms of Agreement No. 19-56, OMSD would pay \$82,944 toward the cost of a Safe School Zone Officer; and pursuant to the terms of Agreement No. 19-57, CJUHSD would pay \$89,856 toward the cost of a Safe School Zone Officer. The slight increase in cost for CJUHSD is due to the district's request for additional coverage during summer school hours. The Police Department would be obligated to provide a presence of one officer for both middle schools and one officer for the high school for eight hours each school day.

FISCAL IMPACT: OMSD would pay \$82,944 and CJUHSD would pay \$89,856 toward the salaries of Safe School Zone Officers beginning July 1, 2019, through the remainder of Fiscal Year 2019-20, should these contracts be approved.

RECOMMENDATION: Staff recommends the City Council approve Agreement Nos. 19-56 and 19-57 with OMSD and CJUHSD to provide specialized school zone law enforcement services during Fiscal Year 2019-20.

**AGREEMENT
FOR SPECIALIZED LAW ENFORCEMENT SERVICES**

This Agreement is made and entered into this 1st day of July, 2019 by and between the City of Montclair (hereinafter referred to as CITY) and the Ontario-Montclair School District (hereinafter referred to as DISTRICT), as follows:

WITNESSETH

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

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

- A. Beginning with the school year through the end of the school year 2020, the CITY will perform specialized law enforcement services for the DISTRICT at and about the campuses of Serrano Middle School and Vernon Middle School. It is understood that these services are to be provided, to the extent possible, on regularly scheduled school days between 7:00 a.m. and 3:00 p.m., and during mutually agreed upon “in-service” or familiarization periods.
 - 1. It is acknowledged that the provision of services may be interrupted by the normal working conditions experienced by law enforcement agencies, which include, but are not limited to: employee illness, court appearances, training requirements, prisoner transportation, emergency circumstances taxing on other departmental resources, etc. Should the interruption of services, for any reason, extend beyond two successive days, the CITY shall meet its obligation through the assignment of an alternate sworn employee.

- B. This Agreement will allow the CITY, through its Police Department, to provide the following specialized law enforcement services to the DISTRICT:
 - 1. One Sworn Community Oriented Officer, known as a Safe School Zone Officer, shall, through random patrol and their on-campus presence, strive to maintain a crime-free zone on and around each middle school campus.
 - 2. Through the Safe School Zone Officer, provide a consistent and timely response to calls for assistance from the middle schools or concerning students from the middle schools.
 - 3. Through the Safe School Zone Officer, provide a consistent liaison for the middle schools administration on law enforcement matters.

4. Through the Safe School Zone Officer, provide resources and materials necessary for classroom presentations on law enforcement matters.
 5. Through the Safe School Zone Officer, maintain a physical presence on both campuses during the hours of approximately 7:00 a.m. and 3:00 p.m. on each school day subject to possible interruptions as described in paragraph A(1) above. While on campus, the role of the officer is to:
 - a. Act as a positive role model for students.
 - b. Facilitate a positive and interactive student/law enforcement relationship.
 - c. Maintain a proactive stance toward crime prevention and order maintenance.
 - d. Act as first responder to criminal conduct or order maintenance issues occurring on or about the middle school campuses.
 - e. Within the confines of the law, act as information resource for school administrators on matters of mutual concern.
- C. At the request of the DISTRICT, the Safe School Zone Officer will not provide services to the middle schools during the summer session of 2020.
- D. In consideration for providing these services, the DISTRICT will pay to the CITY a total of \$82,944 invoiced in two equal amounts of \$41,472 each; the first payment is due during November 2019, and the second payment is due in May 2020.
- E. It is understood by both parties that the Safe School Zone Officer or other CITY police officers providing this service shall remain CITY's employee(s) at all times. As such, the CITY shall be responsible for all employment costs, supervision, control, and assignment of said officers.
- F. This Agreement is not assignable, either in whole or in part, by the DISTRICT without the prior written consent of the CITY. The laws of the State of California shall govern the rights, obligation, duties, and liabilities of the parties to this Agreement and shall also govern the interpretation of the Agreement, if in dispute.
- G. If the DISTRICT in its reasonable discretion is dissatisfied with a School Zone Officer, the CITY shall assign a different School Zone Officer.
- H. The School Zone Officer shall defer to the Principal in all school discipline issues, except those that place students, faculty and staff at risk of harm.
- I. It will be the responsibility of the School Zone Officer to report all crimes originating on campus.

- J. The School Zone Officer shall share information with the principal about persons and conditions that pertain to campus safety concerns.
- K. The School Zone Officer shall coordinate all of his or her activities with the principal and staff members concerned and will seek permission, guidance and advice prior to enacting any programs within the school.
- L. CITY shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner performance of the services or those engaged to perform services under this Agreement. CITY shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the services.
- M. CITY 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 CITY or any of CITY's agents or employees. CITY 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. CITY, 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.

TERMINATION OR MODIFICATION OF AGREEMENT

This Agreement shall end on June 30, 2020, unless extended by both the CITY and DISTRICT as agreed in writing. The CITY or DISTRICT may terminate all or any portion of this Agreement at any time upon providing a thirty (30) day written notice delivered to the addresses below. In the event the Agreement is terminated by either party prior to June 30, 2020, DISTRICT shall prorate its final payment for services rendered at \$6,912 per month.

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 personal service or by mail addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

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

DISTRICT: Ontario-Montclair School District
950 West D Street
Ontario, California 91762

INDEMNIFICATION

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

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

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

ONTARIO-MONTCLAIR SCHOOL DISTRICT

CITY OF MONTCLAIR

Phil Hillman
Chief Business Officer

Javier John Dutrey
Mayor

ATTEST:

Andrea M. Phillips
City Clerk

APPROVED AS
TO FORM:

Diane E. Robbins
City Attorney

APPROVED BY OMSD BOARD

APPROVED BY CITY COUNCIL

**AGREEMENT
FOR SPECIALIZED LAW ENFORCEMENT SERVICES**

This Agreement is made and entered into this 1st day of July, 2019 by and between the City of Montclair (hereinafter referred to as CITY) and the Chaffey Joint Union High School District (hereinafter referred to as DISTRICT), both of whom understand as follows:

WITNESSETH

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

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

- A. Beginning with the school year through the end of the school year 2020, the CITY will perform specialized law enforcement services for the DISTRICT at and about the campus of Montclair High School. It is understood that these services are to be provided, to the extent possible, on regularly scheduled school days between 7:00 a.m. and 3:00 p.m., and during mutually agreed upon “in-service” or familiarization periods.
 - 1. It is acknowledged that the provision of services may be interrupted by the normal working conditions experienced by law enforcement agencies, which include, but are not limited to: employee illness, court appearances, training requirements, prisoner transportation, emergency circumstances taxing on other departmental resources, etc. Should the interruption of services, for any reason, extend beyond two successive days, the CITY shall meet its obligation through the assignment of an alternate sworn employee.

- B. This Agreement will allow the CITY, through its Police Department, to provide the following specialized law enforcement services to the DISTRICT:
 - 1. One Sworn Community Oriented Officer, known as a Safe School Zone Officer, shall, through random patrol and their on-campus presence, strive to maintain a crime-free zone on and around each school campus.
 - 2. Through the Safe School Zone Officer, provide a consistent and timely response to calls for assistance from the high school or concerning students from the high school.
 - 3. Through the Safe School Zone Officer, provide a consistent liaison for the high school administration on law enforcement matters.

4. Through the Safe School Zone Officer, provide resources and materials necessary for classroom presentations on law enforcement matters.
 5. Through the Safe School Zone Officer, maintain a physical presence on campus during the hours of approximately 7:00 a.m. and 3:00 p.m. on each school day subject to possible interruptions as described in paragraph A(1) above. While on campus, the role of the officer is to:
 - a. Act as a positive role model for students.
 - b. Facilitate a positive and interactive student/law enforcement relationship.
 - c. Maintain a proactive stance toward crime prevention and order maintenance.
 - d. Act as first responder to criminal conduct or order maintenance issues occurring on or about the high school campus.
 - e. Within the confines of the law, act as information resource for school administrators on matters of mutual concern.
- C. In addition to the above, beginning with the summer session of 2020, the Safe School Zone Officer will provide services to the high school, adjusting the hours to the school schedule.
1. One Safe School Zone Officer will maintain a physical presence on campus each day during the regularly scheduled school hours.
- D. In consideration for providing these services, the DISTRICT will pay to the CITY a total of \$89,856 invoiced in two equal \$44,928 amounts; the first during November 2019, and the second due in May 2020.
- E. It is understood by both parties that the Safe School Zone Officer or other CITY officers providing this service shall remain CITY's employee at all times. As such, the CITY shall be responsible for all employment costs, supervision, control, and assignment of said officers.
- F. This Agreement is not assignable, either in whole or in part, by DISTRICT without the prior written consent of the CITY. The laws of the State of California shall govern the rights, obligation, duties, and liabilities of the parties to this Agreement and shall also govern the interpretation of the Agreement, if in dispute.
- G. If the DISTRICT in its reasonable discretion is dissatisfied with a School Zone Officer, the CITY shall assign a different School Zone Officer.
- H. The School Zone Officer shall defer to the Principal in all school discipline issues, except those that place students, faculty and staff at risk of harm.

- I. It will be the responsibility of the School Zone Officer to report all crimes originating on campus.
- J. The School Zone Officer shall share information with the principal about persons and conditions that pertain to campus safety concerns.
- K. The School Zone Officer shall coordinate all of his or her activities with the principal and staff members concerned and will seek permission, guidance and advice prior to enacting any programs within the school.
- L. CITY shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner performance of the services or those engaged to perform services under this Agreement. CITY shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the services.
- M. CITY 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 CITY or any of CITY's agents or employees. CITY 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. CITY, 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.

TERMINATION OR MODIFICATION OF AGREEMENT

This Agreement shall end on June 30, 2020, unless extended by both the CITY and DISTRICT. The CITY or DISTRICT may terminate all or any portion of this Agreement at any time upon providing a thirty (30) day written notice delivered to the addresses below. In the event the Agreement is terminated by either party prior to June 30, 2020, DISTRICT shall pro-rate its final payment for services rendered at \$7,488 per month.

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

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

INDEMNIFICATION

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

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

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

CHAFFEY JOINT UNION
HIGH SCHOOL DISTRICT

CITY OF MONTCLAIR

Dr. Kern Oduro
Assistant Superintendent of Personnel

Javier John Dutrey
Mayor

ATTEST:

Andrea M. Phillips
City Clerk

APPROVED AS
TO FORM:

Diane E. Robbins
City Attorney

APPROVED BY CJUHSD BOARD

APPROVED BY CITY COUNCIL



AGENDA REPORT

DATE:	JULY 1, 2019	FILE I.D.:	HSV044
SECTION:	AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	9	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 19-60 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO PROVIDE A LICENSED CLINICAL SOCIAL WORKER FOR THE CASE MANAGEMENT PROGRAM		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 19-60 with Ontario-Montclair School District (OMSD) to continue the services of a Licensed Clinical Social Worker (LCSW) for the Montclair Community Collaborative's case management program.

A copy of proposed Agreement No. 19-60 is attached for the City Council's review and consideration.

BACKGROUND: In December 1999, the City Council approved Agreement No. 99-108 with OMSD to provide LCSW services for the Montclair Community Collaborative's case management program. This original contract was designed as a partnership between the City of Montclair and OMSD whereby each agency contributes 50 percent of the salary and benefits for the LCSW position.

The LCSW position works with other service delivery providers to intervene and assist at-risk children and adults in the Montclair community. Through the case management system and coordination of services with other professionals including Police and Code Enforcement Officers, Child or Adult Protective Services, community-based organizations, and mental health professionals, there is a higher level of effectiveness and less duplication of services.

FISCAL IMPACT: Should the City Council approve Agreement No. 19-60, the City's contractual obligation for the LCSW position will be \$4,178 per month. The funding for proposed Agreement No. 19-60 was allocated and approved in the Fiscal Year 2019-20 Human Services Department budget. The term of proposed Agreement No. 19-60 is July 1, 2019, through June 30, 2020.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 19-60 with OMSD to provide a Licensed Clinical Social Worker for the case management program.

**CITY OF MONTCLAIR
5111 BENITO STREET
MONTCLAIR, CALIFORNIA 91763
(909) 626-8571**

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into this 1st day of July 2019 by and between the City of Montclair, hereinafter referred to as the “**CITY**,” and the Ontario-Montclair School District, hereinafter referred to as the “**CONSULTANT**.”

1. Services To Be Performed by Consultant.

(a) **CONSULTANT** agrees to perform the following services on the dates and times herein stated in accordance with directions stipulated by the **CITY**.

(b) **CONSULTANT** may, at **CONSULTANT's** own expense, employ such assistants as **CONSULTANT** deems necessary to perform the services required of **CONSULTANT** by this Agreement.

(c) **CONSULTANT** is, and shall at all times be deemed to be an independent contractor, and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between **CITY** and **CONSULTANT's** agent or employees. **CONSULTANT** assumes exclusively the responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment, **CONSULTANT**, its agents and employees, shall not be entitled to any rights and/or privileges of **CITY's** employees and shall not be considered in any manner to be **CITY's** employees.

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

2. Compensation.

(a) Except as otherwise provided in the Agreement, **CITY** agrees to compensate **CONSULTANT** for services rendered under the Agreement in the total amount of \$4,178 per month.

(b) **CITY** will pay no additional amount for travel or other expenses of **CONSULTANT** under this Agreement.

(c) **CONSULTANT** will invoice **CITY** for each month of service through the contract term.

(d) **CITY** will not withhold any federal or state income tax for payment made pursuant to this Agreement, but will provide **CONSULTANT** with a statement of earnings at the end of each calendar year. **CONSULTANT** is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.

3. Term of Agreement

The term of this Agreement is from July 1, 2019 through June 30, 2020, unless sooner terminated, pursuant to the provisions of Section 6 of this Agreement. **CITY** and **CONSULTANT** may mutually agree in writing to extend the term of this Agreement provided, however, **CITY** shall not be obligated to pay **CONSULTANT** any additional consideration unless **CONSULTANT** undertakes additional services, in which instance the consideration shall be increased as **CITY** and **CONSULTANT** shall agree in writing.

4. Obligations of Consultant.

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

(b) At all times during the term of this Agreement, **CONSULTANT** agrees to provide workers' compensation insurance for **CONSULTANT's** employees and agents as required by law. **CONSULTANT** shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.

(c) **CONSULTANT** shall defend, indemnify and hold **CITY** and its Council Members, officers, employees, agents and staff harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), claims for injury or damages arising out of the performance of or in connection with this agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the improper conduct and/or negligence or intentional acts or omissions of **CONSULTANT**, its officers, employees, agents or staff.

(d) Neither this Agreement nor any duties or obligations under this Agreement may be assigned by **CONSULTANT** without the prior written consent of **CITY**.

5. Obligations of City.

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

(b) **CITY** shall defend, indemnify and hold **CONSULTANT** and its Board Members, officers, employees, agents and staff harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), claims for injury or damages arising out of the performance of or in connection with this agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the improper conduct and/or negligence or intentional acts or omissions of **CITY**, its officers, employees, agents or staff.

6. Termination of Agreement.

(a) Unless otherwise terminated as provided below, this Agreement shall continue in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.

(b) Should **CONSULTANT** default in the performance of this Agreement or breach any of its provisions, **CITY** may terminate this Agreement by giving written 30-day notification to **CONSULTANT**.

(c) If at any time during the performance of this Agreement **CITY** determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, **CITY** shall have the right to terminate the performance of **CONSULTANT's** services hereunder by giving written notification to **CONSULTANT** of its intention to terminate.

(d) In the event that **CITY** terminates this Agreement under paragraph (b) or (c) of this Section, **CONSULTANT** shall only be paid for those services rendered to the date of termination. All cash deposits made by **CITY** to **CONSULTANT**, if any, shall be refundable to **CITY** in full termination of this Agreement unless specified to the contrary below.

7. General Provisions.

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

(b) **CITY** and **CONSULTANT** mutually agree that for copyright purposes, any written material or any copyrightable work of any nature created by **CONSULTANT** pursuant to this Agreement shall be owned by **CONSULTANT** and shall not be considered a "work made for hire" as such term is defined in Title 17 of the United States Code, Section 101, and that **CITY** shall own all of the rights comprised in the copyright of said written material or copyrightable work.

(c) This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by **CONSULTANT** and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any matter 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 promises 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 **CITY** may unilaterally amend the Agreement to accomplish the changes listed below:

1. Increase dollar amount;
2. Administrative changes; and
3. Changes as required by law.

(d) 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.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) Pursuant to and in accordance with the provisions of Government Code Section 8546.7, or any amendment thereto, all books, records and files of **CITY**, **CONSULTANT**, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the

administration thereof, shall be subject to the examination and audit of the State Auditor or the State of California, at the request of **CITY** or as part of any audit of **CITY**, for a period of three (3) years after final payment is made under this Agreement. **CONSULTANT** shall preserve and cause to be preserved such books, records and files for the audit period.

(g) 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.

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

“CITY”

“CONSULTANT”

By:

By:

Signature

Signature

Javier John Dutrey
Printed Name

Phil Hillman
Printed Name

Mayor
Title

Chief Business Officer
Title

ATTEST:

950 West “D” Street
Address

Andrea Phillips
City Clerk

Ontario CA 91762
City State Zip

(909) 445-2500
Telephone Number

Date: _____

Date: _____

APPROVED AS TO FORM:

Diane Robbins
City Attorney

Date of City Council’s Approval:

Date of OMSD Board’s Approval:

END OF AGREEMENT FOR CONSULTANT SERVICES

Description of Services

Services to be initiated through the attached agreement will be performed through the case management portion of the Montclair Community Collaborative, a partnership between the City of Montclair, Ontario-Montclair School District, and other community partners. The following description of services specify the scope of work for a contracted “Case Manager” which include:

- 1) Serve as coordinator of the case management system by working with City staff from all departments. Primary City interactions will occur through the Human Services Department.
- 2) Follow all protocol, mandates, and confidentiality laws while providing case management services and receiving referrals through designated City of Montclair staff.
- 3) Work with school district, County, and other service providers to implement case management services.
- 4) Process assessment and intakes for referred individuals and gather necessary information from referring City staff, school, family members, and other service providers as needed. Maintain appropriate records.
- 5) Provide triage for counseling services as needed.
- 6) Oversee the extension of services through the supervision of LCSW, MFCC, and/or MSW interns. Interns will provide allied case management services.
- 7) Provision of services will occur through the City of Montclair Human Services Department as needed.
- 8) Monthly service delivery meetings will occur between the Case Manager and the City’s Human Services Director.



AGENDA REPORT

DATE:	JULY 1, 2019	FILE I.D.:	HSV020
SECTION:	AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	10	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 19-61 WITH MISHA L. PENN TO PROVIDE GRANT MANAGEMENT AND FISCAL COMPLIANCE FOR THE HUMAN SERVICES DEPARTMENT		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 19-61 for contracted services with Misha L. Penn to provide grant management and fiscal compliance for the Human Services Department.

A copy of proposed Agreement No. 19-61 with Misha L. Penn is attached for the City Council's review and consideration.

BACKGROUND: Healthy Montclair is part of a countywide effort to improve the health and well-being of all county residents by creating healthy environments and promoting healthy life choices. In Montclair, the programs focus on improving access to physical activity, nutritious food and appropriate health care, in addition to serving as a resource for the community to learn about Montclair's healthy places to live, work, learn and play.

As part of the Healthy Montclair Initiative, the Human Services Department applies for and receives grant funding for various programs from private foundations, San Bernardino County, and the State of California—some of which include Federal Funding. For the past six years, Misha Penn has supported the Human Services Department in its grant management and fiscal compliance. Misha Penn has a bachelor's degree in Business Administration and a combined 30 years of experience in contract management, grant compliance, program finance, and project implementation covering public, private, and non-profit sectors. Under this proposed contract services agreement, Misha L. Penn will continue to support the Human Services Department as an independent contractor.

FISCAL IMPACT: This contract position (\$24,000) will be funded with existing Human Services Department grant budgets. The funding for proposed Agreement No. 19-61 was allocated and approved within the fiscal year 2019-2020 Human Services Department budget. Should the City Council approve Agreement No. 19-61, there will be no adverse impact to the City's General Fund. The term of proposed Agreement No. 19-61 is July 1, 2019 through June 30, 2020.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 19-61 with Misha L. Penn to provide grant management and fiscal compliance for the Human Services Department.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

HUMAN SERVICES - PROGRAM FISCAL AND CONTRACT COMPLIANCE

THIS AGREEMENT is made and effective as of July 1, 2019 between the City of Montclair, a municipal corporation (“City”) and Misha L. Penn, a California 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 July 1, 2019 and shall remain and continue in effect for a period of 12 months until tasks described herein are completed, but in no event later than June 30, 2020 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 Human Services Director 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 Human Services Director shall be authorized to act on City’s behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant’s compensation, subject to Section 5 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full. This amount is subject to receipt of grant funding and shall not exceed \$24,000 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. 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 by program. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

7. DEFAULT OF CONSULTANT

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

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

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

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

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

or individual that consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

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

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

10. INSURANCE

(a) **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) **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 \$100,000 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.

- (2) **Workers' Compensation:** If applicable, 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.

(b) Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

- (1) The insurance coverages required by Section (a)(1) Automobile Liability Insurance shall contain the following provisions or be endorsed to provide the following:

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 performance of the Contract. 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 Contract)
- (2) The policy or policies of insurance required by Section (a)(2) Workers' Compensation shall be endorsed, as follows:

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.

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect,

in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

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

16. NOTICES

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

address of the party as set forth below or at any other address as that party may later designate by notice:

To City: Marcia Richter
Human Services Director
City of Montclair
5111 Benito Street
Montclair, CA 91763

To Consultant: Misha L. Penn
808 Cloverview Drive
Glendora, CA 91741

17. ASSIGNMENT

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

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are

merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. CONFIDENTIALITY

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

22. DISCRIMINATION

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

23. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Javier John Dutrey, Mayor

By: _____
Misha L. Penn, Consultant

Attest:

By: _____
Andrea Phillips, City Clerk

Approved as to Form:

By: _____
City Attorney

EXHIBIT A

During the term of this Agreement and in accordance with Section 2, **CONSULTANT** shall provide the services described below:

- a) Share technical expertise and provide guidance to the Human Services staff on the basics of public and private contracting, contract administration, project management, cost control, and project scheduling.
- b) Support and advise Human Services staff on action planning including prioritization and identification of best practices to consider for department activities, projects, and grant-funded programs.
- c) Provide guidance and technical assistance for grant contract and subcontract compliance including requirements unique to state and federally-funded fixed price and cost reimbursement contract types, which may include but are not limited to the County of San Bernardino's Department of Aging and Adult Services, the California Office of Traffic Safety, the Southern California Association of Governments, as well as other private foundations.
- d) Provide guidance and technical assistance in drafting agreements/subcontracts and proper flowdown of contract requirements.
- e) Provide guidance and technical assistance for grant proposals/applications and grant fiscal reporting.
- f) Support preparation for grant contract administrative and fiscal compliance monitoring.
- g) Support and advise on short-term capacity building priorities for Human Services' staff.
- h) Support and advise on mid-term capacity building priorities for marketing, communications, training, adaptability to change, and basic infrastructure issues.
- i) Provide monthly invoices along with a written accounting and confirmation of tasks performed each month.

EXHIBIT B

Payment Schedule – Fiscal Year 2019/2020

<u>Month</u>	<u>Amount</u>
July	\$2,000.00
August	\$2,000.00
September	\$2,000.00
October	\$2,000.00
November	\$2,000.00
December	\$2,000.00
January	\$2,000.00
February	\$2,000.00
March	\$2,000.00
April	\$2,000.00
May	\$2,000.00
June	<u>\$2,000.00</u>
Total	\$24,000.00



AGENDA REPORT

DATE: JULY 1, 2019

FILE I.D.: STA800-D

SECTION: AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 11

PREPARER: N. CASTILLO

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 19-62 WITH KOA CORPORATION FOR PREPARATION OF PROFESSIONAL FINAL DESIGN SERVICES FOR THE FREMONT AVENUE AND ARROW HIGHWAY STREETScape IMPROVEMENT PROJECT

CONSIDER AUTHORIZING A \$529,320 APPROPRIATION FROM THE REDEVELOPMENT PROJECT AREA NO. III TAX ALLOCATION BOND FUND FOR FINAL DESIGN SERVICES RELATED TO AGREEMENT NO. 19-62

REASON FOR CONSIDERATION: KOA Corporation, in collaboration with Moule & Polyzoïdes (M&P), provided preliminary and conceptual design services for the Fremont Avenue and Arrow Highway Streetscape Improvement Project. The conceptual design is a guiding document. The planning document's goal is to revitalize its downtown area as a transit-oriented, mixed-use center.

M&P led the Conceptual Design portion of the project. The preliminary design is now complete and has established the aesthetics and vision of the project. The Construction Documents and the Construction Administration phases would be led by KOA Corporation. KOA Corporation would perform a hydraulic analysis, as well as prepare civil and traffic engineering plans. The team would include the Landscape Architect *Fong Hart + Schneider*, the surveying firm *Truxaw and Associates*, and Geotechnical Engineers *Twining*. *Fong Hart + Schneider* is the firm that M&P collaborated with to develop the Beverly Hills Golden Triangle and the Lancaster Boulevard streetscape projects—two of the premier examples of complete streetscapes in Southern California.

A copy of proposed Agreement No. 19-62 with KOA Corporation is attached for the City Council's review and consideration.

BACKGROUND: The City Council approved Agreement Nos. 17-14 and 19-28 with Moule & Polyzoïdes (M&P) to provide consulting services for the preparation of an amendment to the North Montclair Downtown Specific Plan (NMDSP) and a streetscape plan for the Fremont Avenue and Arrow Highway Streetscape Improvement Project respectively. KOA Corporation led the civil construction task for the Fremont Avenue and Arrow Highway Streetscape Improvement Project. Through their involvement, KOA Corporation is well-versed with the goals, priorities, and objectives established by the conceptual design process and provides a material advantage over other firms. The City is committed to providing developer-friendly services and partnering with the developer community to further guide the development of the NMDSP area. The City has committed to designing and building the street improvements on Fremont adjacent to the Bravo Development. Additionally, several pending developments would benefit from a final design level of detail street scheme to guide the development of Arrow Highway and Fremont Avenue.

Moule & Polyzoides has extensive knowledge and understands the vision for NMDSP, and would continue to guide KOA through the final design process. Since KOA Corporation in collaboration with M&P developed the streetscape plan for the Fremont Avenue and Arrow Highway Streetscape Improvement Project, staff is recommending the retention of this firm for the preparation of the final design plans. Their institutional knowledge of the Streetscape plan provides a value that could not be matched by any other firm. Accordingly, proposals from other firms were not sought, since no other firm has the institutional knowledge gained by participating in the development of the Streetscape plan. Staff recommends a new agreement with KOA Corporation to provide final design services, since it is in the best interest and value of the City and within our purchasing guidelines.

Staff is recommending a new agreement with KOA Corporation for the development of Final Design plans for the Arrow Highway and Fremont Avenue Streetscape Improvement Project.

FISCAL IMPACT: The proposal is for \$481,200 and staff is recommending a 10 percent contingency. Should the City Council approve Agreement No. 19-62, the estimated total costs would be \$529,320.

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

1. Approve Agreement 19-62 with KOA Corporation for preparation of professional final design services for the Fremont Avenue and Arrow Highway Streetscape Improvement Project.
2. Authorize a \$529,320 appropriation from the Redevelopment Project Area No. III Tax Allocation bond fund for final design services related to Agreement No. 19-62.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

**FREMONT AVENUE & ARROW HIGHWAY
STREETSCAPE IMPROVEMENT PROJECT**

THIS AGREEMENT is made and effective as of July 1, 2019, between the City of Montclair, a municipal corporation ("City") and KOA Corporation a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on July 1, 2019 and shall remain and continue in effect for a period of 24 months until tasks described herein are completed, but in no event later than July 1, 2021, 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 B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed \$481,200.00 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed Five Hundred and Twenty Nine Thousand Three Hundred and Twenty Dollars (\$529,320.00). Any additional work in excess of this amount shall be approved by the City Council.

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 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) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error

or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

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

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

10. INSURANCE

(a) 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, with minimum limits of at least \$1,000,000 per occurrence for bodily injury, personal injury and property damage, and \$2,000,000 aggregate total bodily injury, personal injury and property damage. Commercial General Liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

- (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 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) *Professional Liability*: Professional Liability Insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 aggregate. Covered Professional Services shall specifically include all work to be performed under the contract and delete any exclusion that may potentially affect the work to be performed.
- (4) *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.

(b) Endorsements. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

- (1) The insurance coverages required by Section (a)(1) Commercial General Liability; and (a)(2) Automobile Liability Insurance shall contain the following provisions or be endorsed to provide the following:

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 performance of the Contract. 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 Contract)

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.

- (2) The policy or policies of insurance required by Section (a)(4) Workers' Compensation shall be endorsed, as follows:

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.

(e) Evidence of Insurance. The Consultant, concurrently with the execution of the contract, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. 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.

(g) Contractual Liability. The coverage provided shall apply to the obligations assumed by the Consultant under the indemnity provisions of this contract.

(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 Contract with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least three (3) years from termination or expiration of this Contract. Upon expiration or termination of coverage of required insurance, Consultant shall procure and submit to City evidence of "tail" coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from the time that all work under this contract is completed.

(k) Insurance for Subconsultants. Consultant shall be responsible for causing Subconsultants to purchase the same types and limits of insurance in compliance with the terms of this Contract/Agreement, including adding the City as an Additional Insured to the Subconsultant's policies.

(l) Insurance Obligations of Consultant. The insurance obligations under this contract 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 contract; 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 contract are sufficient to cover the obligations of the Consultant under this contract.

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

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

16. NOTICES

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

To City: Noel Castillo,
Public Works Director/City Engineer
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant: Min Zhou
KOA Corporation
2141 Orangewood Ave
Orange, CA 92868

17. ASSIGNMENT

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

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF REQUEST FOR PROPOSALS

Consultant is bound by the contents of City's Request for Proposal, Exhibit "C" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Consultant, Exhibit "D" hereto. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Consultant's proposals.

22. CONFIDENTIALITY

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

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. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Javier John Dutrey, Mayor

By: _____
(Name/Title)

Attest:

By: _____
Andrea M. Phillips, City Clerk

By: _____
(Name/Title)

Approved as to Form:

Date: _____

By: _____
Diane E. Robbins, City Attorney

Date: _____

EXHIBIT A
Scope of Services

- Task 1 – Project Management and Administration**
- Task 2 - Surveying and Base Mapping**
- Task 3 – Utility Potholing and Utility Coordination**
- Task 4 – Hydrology and Hydraulics Analysis**
- Task 5 – Geotechnical Investigations**
- Task 6 – Traffic Evaluation for Intersections with Added U-Turn Movements**
- Task 7 – Design Progress Submittal (60%)**
- Task 8 –Complete Plans, Specifications, and Estimate (90%)**
- Task 9 – Final Plans, Specifications and Estimate (100%)**
- Task 10 – Bidding Support**
- Task 11- Construction Support**
- Task 12 – Public Outreach**

Work is proposed to be completed in a 12 month schedule.

EXHIBIT B – Fee Summary

Principal II	Senior Engineer II	Senior Engineer I	Senior Designer II	Associate Engineer II	Senior Office Admin.	KOA Total Hours	KOA Direct Costs	KOA Costs	Tenax and Associates	Twining, Inc.	Patholing	Fong, Hart, and Schneider	Total Costs
\$265.00	\$215.00	\$180.00	\$165.00	\$115.00	\$80.00	152	\$500.00	\$23,980.00	\$11,800.00				\$23,980.00
32	40	24		40	80	68	\$200.00	\$9,980.00					\$21,780.00
	4	16		40		60	\$200.00	\$8,540.00			\$49,000.00		\$57,540.00
	4	40		60		104	\$200.00	\$15,160.00					\$15,160.00
	2			4		6		\$890.00		\$12,590.00			\$13,480.00
4	8			40		52	\$500.00	\$7,880.00					\$7,880.00
	2			16		18		\$2,270.00					\$2,270.00
	2			25		28		\$3,305.00					\$3,305.00
	6			30		30		\$4,740.00					\$4,740.00
	40			220		260		\$33,900.00					\$33,900.00
	12	16		40		68		\$10,060.00					\$10,060.00
	6			80		86		\$10,490.00					\$10,490.00
	2			20		22		\$2,730.00				\$10,000.00	\$12,730.00
	7	30		120		157		\$20,705.00					\$20,705.00
	2			20		22		\$2,730.00				\$13,400.00	\$16,130.00
	4		80	20		104		\$16,360.00					\$16,360.00
	2	6		40		48		\$6,110.00					\$6,110.00
32						32		\$8,480.00					\$8,480.00
	2			12		14		\$1,810.00					\$1,810.00
	2			18		30		\$2,500.00					\$2,500.00
	6			24		40		\$4,050.00					\$4,050.00
	32			180		212		\$27,580.00					\$27,580.00
	12	20		40		60		\$10,780.00					\$10,780.00
	6			60		66		\$8,190.00					\$8,190.00
	4			20		24		\$3,160.00				\$13,000.00	\$16,160.00
4	6	24		80		114		\$15,870.00				\$29,000.00	\$15,870.00
	2			20		22		\$2,730.00					\$31,730.00
	2		80	15		97		\$15,355.00					\$15,355.00
	2			30		32		\$3,880.00					\$3,880.00
32						32		\$8,480.00					\$8,480.00
8	12	12		80		112		\$16,560.00					\$16,560.00
	8	10		25		43		\$6,395.00					\$6,395.00
	20	20		40		80		\$13,000.00				\$5,000.00	\$19,000.00
4	16			24		44		\$7,760.00					\$7,760.00
112	257	218	160	1429	80	2265	\$3,100.00	\$36,410.00	\$11,800.00	\$12,590.00	\$49,000.00	\$73,400.00	\$481,200.00

EXHIBIT C Proposal

SCOPE OF SERVICES

Task 1 – Project Management and Administration

The KOA Team staff will meet with the City engineering staff at the outset of the project to establish the design parameters for this project. Under the project management task, KOA will be responsible for maintaining contact with the

City's Project Manager to keep him informed of the developments on the project. The following specific subtasks will be performed:

- Management of project team including sub-consultants
- Participating in coordination and progress meetings which include preparing minutes
- Submitting Monthly Progress Reports and Invoices including updating Schedules
- Quality Control of Submittals

An initial Kick-off meeting will be held at the beginning of the project. As part of this meeting, KOA will prepare a draft agenda for the meeting that will include:

- Introductions
- Project goals and expectations
- Discussion of proposed work plan and schedule
- Available data
- Communications protocol

KOA will prepare minutes of the meeting and will circulate the draft minutes back to City staff for review and comments. The minutes will document decisions made and identify action items for KOA and the City. We will setup monthly meeting schedule on our calendar after the kickoff meeting.

Deliverables:

- Meeting agendas
- Meeting minutes
- Monthly invoices and progress reports

Task 2 - Surveying and Base Mapping

An aerial survey has been provided as a base for the design development. However, in order to achieve ADA compliance at critical locations, such as intersection corner ramps, more detailed elevation survey will be required. Furthermore, some features were not picked up in the aerial survey. KOA will field check the existing survey and will subcontract out most of the survey services.

Joseph C. Truxaw and Associates, Inc., KOA subconsultant provided the detail proposal. See the attached. KOA has worked with Truxaw in the past and trusts their work quality.

The resulting base mapping will be prepared at a 1"=20' scale to allow for a sufficient level of detail design development.

Deliverables:

Updated survey base map with TIN surface in AutoCAD .DWG format

Task 3 – Utility Potholing and Utility Coordination

Preliminary utility research has been performed as part of the conceptual plan development, and potential conflicts between utilities and the proposed construction have been identified. KOA will subcontract with a potholing company to expose the potential conflicts and note the lateral and vertical locations. After identifying locations that will require potholing, we will contact Dig Alert to field mark buried utilities. We anticipate that to adequately identify utility potential utility conflicts up to 13 slot potholes may be required. Once we have identified the actual locations of the buried utilities, we will contact the utility companies to inform them of the conflicts and begin discussions with them on utility protection, adjustment, or relocation.

We reached out to a potholing company Ultra Engineering Contractors, Inc.. Their proposal includes 30 potholing locations which we only include 13 potholing locations in the fee. Additional locations will be an optional task.

Deliverables:

- Potholing report

Task 4 – Hydrology and Hydraulics Analysis

The KOA team will gather and perform a thorough review of any available drainage plans, the City of Montclair's Drainage Master Plan, utility plans, drainage reports, plans for the surrounding streets, and other plans relevant to the project. In addition, the team will investigate the existing hydrology and drainage conditions along the project alignment and adjacent areas; perform a thorough field review of flow patterns, design constraints, and existing drainage improvements; perform a hydrology/hydraulic calculation for the existing condition and existing drainage system (if any) and also the proposed condition due to roadway improvement, based on the 10-year, 25-year, and 50-year storm events utilizing the San Bernardino County Flood Control District and Department of Public Works' procedure and methodology; determine preliminary sizes and locations of the proposed storm drain mainlines, laterals and inlets based on the specific situation; comply with the requirement of water quality and low impact development (LID); design the drainage PS&E plans for the best solution. KOA has in-house capability performing drainage study.

Deliverables:

- Drainage report

Task 5 – Geotechnical Investigations

KOA will subcontract the geotechnical investigation services. Geotechnical services will include borings to evaluate the existing pavement, and to determine the permeability of the existing soil for stormwater treatment. They will conduct subsurface investigations at 11 locations at depths ranging from 5 feet to 15 feet. Bulk and in-place samples of the soils will be collected for analysis. Testing may include in-situ moisture content and dry density, Atterberg Limits, grain size analysis, shear strength, expansion index, R-value, and soil corrosivity. To assist in evaluating subsurface infiltration conditions for the possible design of bio filtration storm runoff management, shallow infiltration testing may be performed to a depth of 5 feet or refusal, in accordance with the County of San Bernardino guidelines at 2 locations. KOA will provide an illustrated written report of the findings, conclusions, and recommendations for design and construction of the project.

Twining, Inc., a geotechnical consultant provided a fee proposal for the services. Their proposal is attached. KOA has good working relationship with Twining, Inc.

Deliverables:

Geotechnical report

Task 6 – Traffic Evaluation for Intersections with Added U-Turn Movements

The construction of the medians will change traffic patterns in the corridor as vehicles are restricted from left turns in and out of drives. We anticipate this will result in an increase in U-turns at signalized intersections, and create some impact to the signal operation. KOA will compile existing traffic turning movement counts in the corridor and will estimate the traffic reassignments. We will perform capacity analysis based on the new roadway geometry and traffic assignments to determine changes in level of service and vehicle queue lengths.

Deliverables:

- Traffic Analysis Tech Memo

Task 7 – Design Progress Submittal (60%)

KOA will prepare the preliminary level of design for the project. The plans will include:

- Title Sheet
- Typical Sections
- Demolition Plan
- Roadway Plan and Profiles
- Drainage Plans, Profiles and Details
- Signing and Striping Plan
- Intersection Details
- Hardscape Details
- Traffic Signal Plans
- Landscaping and Irrigation Plan
- Pedestrian Lighting Plan
- Erosion Control Plan
- Cross-sections

KOA will prepare a draft set of specifications and an opinion of probable construction cost. We will submit the plans, specifications, and estimate to the City staff for review. KOA will meet with City staff to review the City's comments. Edits to the plans, specifications, and estimate will be made as part of the 90% design submittal.

KOA will identify potential utility conflicts and will summarize them in a utility conflict matrix. 60% plans will be sent to the utility companies.

Should right of way or easements be required, KOA will subcontract preparation of parcel descriptions for acquisition of the easements or right of way by the City.

Deliverables:

- Preliminary plans (60%)
- Preliminary specifications (60%)
- Preliminary cost estimate (60%)
- Right of way and easement descriptions (if required)
- Utility conflict matrix
- Review meeting agenda
- Review meeting minutes
- Comment response form

Task 8 –Complete Plans, Specifications, and Estimate (90%)

KOA will complete any edits to the plans, specifications, and estimate based on City comments to the 60% design.

Additional level of detail will be added to the sheets assembled for the 60% design. The plans will include:

- Title Sheet
- Typical Sections
- Demolition Plan
- Roadway Plan and Profiles
- Drainage Plans, Profiles and Details
- Signing and Striping Plan
- Intersection Details
- Hardscape Details
- Traffic Signal Plans

- Landscaping and Irrigation Plan
- Pedestrian Lighting Plan
- Erosion Control Plan
- Cross sections

KOA will prepare a complete set of specifications and an opinion of probable construction cost. We will submit the plans, specifications, and estimate to the City staff for review. KOA will meet with City staff to review the City's comments. Edits to the plans, specifications, and estimate will be made as part of the 100% design phase. We will prepare a comment response form to track the edits for the preparation of final design.

Deliverables:

- Complete plans (90%)
- Complete specifications (90%)
- Complete cost estimate (90%)

Task 9 – Final Plans, Specifications and Estimate (100%)

KOA will address any comments from the 90% City review. The final plans will include:

- Title Sheet
- Typical Sections
- Demolition Plan
- Roadway Plan and Profiles
- Drainage Plans, Profiles and Details
- Signing and Striping Plan
- Intersection Details
- Hardscape Details
- Traffic Signal Plans
- Landscaping and Irrigation Plan
- Pedestrian Lighting Plan
- Erosion Control Plan
- Cross sections

KOA will prepare a final set of specifications and an engineer's opinion of probable construction cost.

We will submit signed and sealed reproducible [plans, specifications and estimate in AutoCAD and MS Word and Excel formats for bidding purposes.

Deliverables:

- Final plans in AutoCAD
- Final specifications in MS Word
- Final Engineer's estimate in MS Excel

Task 10 – Bidding Support

KOA will prepare responses to Request for Information (RFI) during the bid advertisement period, and will assist the City in issuing any bid addendums.

Deliverables:

- RFI responses
- Bid addendum assistance

Task 11- Construction Support

KOA will provide construction support services, which may include material submittal reviews, site visits, and preparation of RFI responses. KOA will prepare as-built drawings based on redline mark ups of changes provided by the City or the contractor.

Deliverables:

- Material submittal reviews
- Review tag tree material
- RFI responses
- As built drawings

Task 12 – Public Outreach

KOA will assist the City in providing information to, and receiving comments from stakeholders and other interested public. We will conduct one-on-one interviews with major adjacent property stakeholders to inform them of the design and receive their specific input. We will also facilitate a general public information meeting on the project and receive comments and answer questions. KOA will assist the City in conflict resolution on design issues, should they arise during the course of the project.

Deliverables:

- Exhibits for public meeting and stakeholder interviews
- Notes, photos, and videos from workshops and stakeholder interviews

STAFFING

KOA has assembled a team to deliver the project as scoped, on schedule, and in budget. Our proposed staffing plan is summarized in the following matrix.

Arrow Highway and Fremont Avenue Staffing Plan		
Name	Classification	Role
Min Zhou	Principal II	Principal in Charge
Chuck Stephan	Principal II	QAQC Manager
Charlie Schwinger	Senior Engineer II	Project Manager/Lead Civil Engineer
Ray Wang	Senior Engineer I	Lead Drainage Engineer
Eric Yang	Senior Engineer I	Lead Traffic Engineer
Edward Okitsu	Senior Designer II	Lighting Designer
Ling Luo	Associate Engineer II	Production Engineer
Raisa Garcia	Associate Engineer II	Production Engineer
Jennifer Miller	Associate Engineer II	Production Engineer
Christine Adley	Senior Office Administrator	Project Administrator
Survey by Joseph C. Truxaw and Associates		
Geotech by Twining		
Landscape Architecture by Fong Hart Schneider		
Potholing by Ultra Engineering Contractors		



AGENDA REPORT

DATE: JULY 1, 2019

FILE I.D.: STA800-D

SECTION: AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 12

PREPARER: N. CASTILLO

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 19-63 WITH MOULE & POLYZOIDES FOR COLLABORATION IN THE PREPARATION OF PROFESSIONAL FINAL DESIGN SERVICES FOR THE FREMONT AVENUE AND ARROW HIGHWAY STREETScape IMPROVEMENT PROJECT

CONSIDER AUTHORIZATION OF A \$30,000 APPROPRIATION FROM THE REDEVELOPMENT PROJECT AREA NO. III TAX ALLOCATION BOND FUND FOR FINAL DESIGN SERVICES RELATED TO AGREEMENT NO. 19-63

REASON FOR CONSIDERATION: Moule & Polyzoides (M&P) provided services for an amendment to the North Montclair Downtown Specific Plan (NMDSP) and preliminary and conceptual design services for the Fremont Avenue and Arrow Highway Streetscape Improvement Project. The conceptual design is a guiding document. The planning document's goal is to revitalize its downtown area as a transit-oriented, mixed-use center. It was agreed that the services be provided in two phases and through two contracts by a coordinated team of consultants.

M&P led the Conceptual Design portion of the project. The preliminary design is now complete and has established the aesthetics and vision of the project. The Construction Documents and Construction Administration phases would be led by KOA Corporation. KOA Corporation would perform a hydraulic analysis, as well as prepare civil and traffic engineering plans. The team would include the Landscape Architect *Fong Hart + Schneider*, the surveying firm *Truxaw and Associates*, and Geotechnical Engineers *Twinning*. M&P would also participate in the Construction Documents phase of the work. *Fong Hart + Schneider* is the firm that M&P collaborated with to develop the Beverly Hills Golden Triangle and the Lancaster Boulevard streetscape projects—two of the premier examples of complete streetscapes in Southern California.

Moule & Polyzoides has extensive knowledge and understands the vision for NMDSP and the Fremont Avenue and Arrow Highway Streetscape Improvement Project. They would continue to guide KOA through the final design process. In the final design, the role of M&P would be to assure that the spirit of the Streetscape Plan is followed and is in accordance with the vision of the NMDSP. Additionally, M&P would provide advisory services for the fire truck turning design policy, which is critical in the redesign of Fremont Avenue and Arrow Highway. The fire truck turning design is key and would generate "Complete Streets" that encourage walkability and the use of diverse transportation modes, including cars, buses, bicycles, and pedestrians.

A copy of proposed Agreement No. 19-63 with M&P is attached for the City Council's review and consideration.

BACKGROUND: The City Council approved Agreement Nos. 17-14 and 19-28 with Moule & Polyzoides (M&P) to provide consulting services for the preparation of an amendment

to the North Montclair Downtown Specific Plan (NMDSP) and a Streetscape Plan for the Fremont Avenue and Arrow Highway Streetscape Improvement Project, respectively. This firm is well-versed with the goals, priorities, and objectives established by the amended NMDSP and provides a material advantage over other firms. The City is committed to providing developer-friendly services and partnering with the developer community to further guide the development of the NMDSP area. Several pending developments would benefit from a more detailed street scheme to guide the development of Arrow Highway and Fremont Avenue.

Moule & Polyzoides has extensive knowledge and understands the vision for NMDSP. Since M&P developed the planning and environmental documents for the original and amended NMDSP, staff is recommending the retention of this firm. M&P possess the background information and knowledge to develop a Streetscape Plan on Fremont Avenue and Arrow Highway. Their expertise and understanding has grown through their work on the NMDSP.

Staff is recommending the City enter into a new agreement with M&P for the collaboration in the development of final design plans for the Streetscape Plans on Arrow Highway and Fremont Avenue.

FISCAL IMPACT: The proposal is for \$25,000, and staff recommends a \$5,000 contingency. Should the City Council approve Agreement No. 19-63, the estimated total costs would be \$30,000, which would be allocated from the Redevelopment Project Area No. III Tax Allocation Bond Fund.

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

1. Approve Agreement No. 19-63 with Moule & Polyzoides for collaboration in the preparation of professional final design services for the Fremont Avenue and Arrow Highway Streetscape Improvement Project.
2. Authorize a \$30,000 appropriation from the Redevelopment Project Area No. III Tax Allocation Bond Fund for final design services related to Agreement No. 19-63.

CITY OF MONTCLAIR
AGREEMENT FOR CONSULTANT SERVICES
FREMONT AVENUE & ARROW HIGHWAY
STREETSCAPE IMPROVEMENT PROJECT

THIS AGREEMENT is made and effective as of July 1, 2019, between the City of Montclair, a municipal corporation ("City") and Moule & Polyzoides a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on July 1, 2019 and shall remain and continue in effect for a period of 24 months until tasks described herein are completed, but in no event later than July 1, 2021, 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 B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed \$25,000 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 Thirty Thousand Dollars (\$30,000.00). Any additional work in excess of this amount shall be approved by the City Council.

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 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) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error

or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

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

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

10. INSURANCE

(a) 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, with minimum limits of at least \$1,000,000 per occurrence for bodily injury, personal injury and property damage, and \$2,000,000 aggregate total bodily injury, personal injury and property damage. Commercial General Liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

- (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 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) *Professional Liability*: Professional Liability Insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 aggregate. Covered Professional Services shall specifically include all work to be performed under the contract and delete any exclusion that may potentially affect the work to be performed.
- (4) *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.

(b) Endorsements. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

- (1) The insurance coverages required by Section (a)(1) Commercial General Liability; and (a)(2) Automobile Liability Insurance shall contain the following provisions or be endorsed to provide the following:

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 performance of the Contract. 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 Contract)

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.

- (2) The policy or policies of insurance required by Section (a)(4) Workers' Compensation shall be endorsed, as follows:

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.

(e) Evidence of Insurance. The Consultant, concurrently with the execution of the contract, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. 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.

(g) Contractual Liability. The coverage provided shall apply to the obligations assumed by the Consultant under the indemnity provisions of this contract.

(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 Contract with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least three (3) years from termination or expiration of this Contract. Upon expiration or termination of coverage of required insurance, Consultant shall procure and submit to City evidence of "tail" coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from the time that all work under this contract is completed.

(k) Insurance for Subconsultants. Consultant shall be responsible for causing Subconsultants to purchase the same types and limits of insurance in compliance with the terms of this Contract/Agreement, including adding the City as an Additional Insured to the Subconsultant's policies.

(l) Insurance Obligations of Consultant. The insurance obligations under this contract 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 contract; 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 contract are sufficient to cover the obligations of the Consultant under this contract.

11. INDEPENDENT CONTRACTOR

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

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

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

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

16. NOTICES

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

To City: Noel Castillo
City Engineer
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant: Stefanos Polyzoides
Moule & Polyzoides
180 East California Blvd
Pasadena, CA 91105

17. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Because of the personal nature of the services to be rendered pursuant to this

Agreement, only Stefanos Polyzoides (responsible employee) shall perform the services described in this Agreement.

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONFIDENTIALITY

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

22. DISCRIMINATION

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

23. 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.

24. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Javier John Dutrey, Mayor

By: _____
(Name/Title)

Attest:

By: _____
Andrea M. Phillips, City Clerk

By: _____
(Name/Title)

Approved as to Form:

Date: _____

By: _____
Diane E. Robbins, City Attorney

Date: _____

EXHIBIT A
Scope of Services

1: SCOPE OF WORK

Our services will be executed under three tasks: *Meetings, Design Review, and Adoption Hearings.*

Task 1: Meetings

M&P Will prepare for and attend meetings, including attending a City Council Workshop to present the Phase 1 Streetscape; participate in a kick-off meeting to review and resolve any outstanding Phase 1 design issues (particularly fire truck turning requirements and adjustments made in relation to the Village at Montclair project); and any other meetings that may be required during the duration of the project.

Task 2: Design Review

M&P will answer design questions that may arise during the KOA Engineering consultant team's preparation of the Construction Documents. M&P will also review the Construction Documents prepared by KOA and their consultants at key intervals, including at the end of the preparation of the Design Development documents and at the completion of 30% Construction Documents, 60% Construction Documents, and 90% Construction Documents.

Task 2 Deliverables:

1. Memorandum summarizing comments for up to four (4) reviews.

EXHIBIT B
Fee Summary

Task 1 Deliverables:

1. Attendance at and preparation of PowerPoint presentation for City Council Workshop.
2. Attendance at kick-off meeting
3. Meetings with City Staff and/or KOA at two (2) meetings.

Task 1 Fees: \$ 3,000

Task 2: Design Review

M&P will answer design questions that may arise during the KOA Engineering consultant team's preparation of the Construction Documents. M&P will also review the Construction Documents prepared by KOA and their consultants at key intervals, including at the end of the preparation of the Design Development documents and at the completion of 30% Construction Documents, 60% Construction Documents, and 90% Construction Documents.

Task 2 Deliverables:

1. Memorandum summarizing comments for up to four (4) reviews.

Task 2 Fees: \$ 15,000

Task 3: Adoption Hearings

M&P will participate in meetings before the Planning Commission and the City Council.

Task 3 Deliverables:

1. Attendance at up to two (2) hearings.

Task 3 Fees: \$ 2,000

2: FEE SUMMARY

Task 1: Meetings	\$ 3,000
Task 2: Design Review	\$ 15,000
Task 3: Adoption Hearings	\$ 2,000
Total Moule & Polyzoides Fee	\$ 20,000

Consultant Fees

Our work on this project will be supported by Peter Swift, P.E. who will advise on urban-friendly techniques of integrating fire apparatus access and turning movements. Peter Swift will be contracted directly with Moule & Polyzoides:

<i>Fire Apparatus Consultation – Peter Swift</i>	<i>\$ 5,000</i>
TOTAL CONSULTANT ALLOWANCE	\$ 5,000
ESTIMATED TOTAL FEE	\$25,000



AGENDA REPORT

DATE: JULY 1, 2019

FILE I.D.: STB300-17

SECTION: RESOLUTIONS

DEPT.: FINANCE

ITEM NO.: 1

PREPARER: C. GRAVES

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 19-3240 AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH CHARGES

REASON FOR CONSIDERATION: Staff has identified 200 sewer and trash accounts in the odd-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien.

BACKGROUND: Ordinance No. 02-815 authorizes the placement of liens on properties on which delinquent civil debts have accrued and makes property owners responsible for delinquent sewer and trash charges accrued after the effective date of the Ordinance (March 1, 2002) for accounts in tenants' names. Prior to the City Council's adoption of Ordinance No. 02-815, property owners were responsible for only those accounts in their own names.

The 200 liens presented for approval are for accounts that are at least 90 days delinquent.

FISCAL IMPACT: Recoverable amount is \$58,641.86, plus \$1,600.00 for release of lien fees, plus \$10,000.00 in lien fees, for a total of \$70,241.86.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 19-3240 authorizing placement of liens on certain properties for delinquent sewer and trash charges as listed on Exhibit A of said Resolution.

RESOLUTION NO. 19-3240

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH ACCOUNTS

WHEREAS, Chapter 1.12 of the Montclair Municipal Code authorizes the City to place liens on properties on which delinquent civil debts have accrued; and

WHEREAS, all owners of property in the City of Montclair were notified about the adoption of Ordinance No. 02-815 authorizing placement of liens on properties on which delinquent civil debts have accrued; and

WHEREAS, it has been determined that there are 200 sewer and/or trash accounts on which there are delinquencies in excess of 90 days; and

WHEREAS, the owners of these properties have received regular billing statements and late notices since the onset of such delinquencies; and

WHEREAS, the owners of these properties were notified on June 6, 2019, that their delinquent accounts are subject to causing a lien to be placed on their properties for settlement of such delinquencies; and that such liens would be considered for approval by the Montclair City Council on Monday, July 1, 2019.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair approves the placement of liens on the properties and in the amounts specified in Exhibit A, entitled Report of Delinquent Civil Debts - July 2019, attached hereto.

BE IT FURTHER RESOLVED that the City Clerk is authorized to provide the San Bernardino County Auditor/Controller-Recorder with the documents required to cause such liens to be placed.

APPROVED AND ADOPTED this XX day of XX, 2019.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 19-3240 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, 2019, and that it was adopted by the following vote, to-wit:

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

Andrea M. Phillips
City Clerk

Exhibit A to Resolution No. 19-3240
Report of Delinquent Civil Debts - July 2019

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
4334	Alamitos Street	Residential	265.34	8.00	50.00	323.34
5356	Alamitos Street	Residential	257.23	8.00	50.00	315.23
5371	Alamitos Street	Residential	264.49	8.00	50.00	322.49
5634	Alamitos Street	Residential	244.94	8.00	50.00	302.94
4587	Allesandro Street	Residential	372.25	8.00	50.00	430.25
4667	Allesandro Street	Residential	265.34	8.00	50.00	323.34
9825	Amherst Avenue	Residential	265.75	8.00	50.00	323.75
9910	Amherst Avenue	Residential	265.34	8.00	50.00	323.34
10085	Amherst Avenue	Residential	271.53	8.00	50.00	329.53
5577	Armsley Street	Residential	372.25	8.00	50.00	430.25
5363	Arrow Hwy	Commercial	323.46	8.00	50.00	381.46
9910	Bel Air Avenue	Residential	240.00	8.00	50.00	298.00
9950	Bel Air Avenue	Residential	372.25	8.00	50.00	430.25
9982	Bel Air Avenue	Residential	269.50	8.00	50.00	327.50
4354	Benito Street	Senior	211.72	8.00	50.00	269.72
4460	Benito Street	Residential	265.34	8.00	50.00	323.34
4814	Benito Street	Senior	222.81	8.00	50.00	280.81
5108	Benito Street	Residential	240.57	8.00	50.00	298.57
5233	Benito Street	Senior	239.00	8.00	50.00	297.00
5429	Benito Street	Residential	265.34	8.00	50.00	323.34
5590	Benito Street	Residential	343.94	8.00	50.00	401.94
9656	Benson Avenue	Residential	265.34	8.00	50.00	323.34
9944	Benson Avenue	Residential	265.34	8.00	50.00	323.34
9974	Benson Avenue	Residential	230.35	8.00	50.00	288.35
4266	Berkeley Street	Residential	266.75	8.00	50.00	324.75
4843	Berkeley Street	Residential	265.58	8.00	50.00	323.58
5382	Berkeley Street	Residential	265.34	8.00	50.00	323.34
5402	Berkeley Street	Residential	265.31	8.00	50.00	323.31
9576	Bolton Avenue	Senior	333.71	8.00	50.00	391.71
9598	Bolton Avenue	Residential	265.34	8.00	50.00	323.34
9608	Bolton Avenue	Residential	211.72	8.00	50.00	269.72
4541	Bonnie Brae Street	Residential	265.34	8.00	50.00	323.34
5450	Bonnie Brae Street	Residential	265.34	8.00	50.00	323.34
4392	Brooks Street #B	Residential	295.69	8.00	50.00	353.69
4412	Brooks Street #C	Commercial	295.43	8.00	50.00	353.43
9851	Camarena Avenue	Residential	265.49	8.00	50.00	323.49
4443	Cambridge Street	Residential	508.32	8.00	50.00	566.32
4853	Cambridge Street	Residential	265.34	8.00	50.00	323.34
5428	Cambridge Street	Residential	444.59	8.00	50.00	502.59
5470	Cambridge Street	Residential	265.34	8.00	50.00	323.34
5471	Cambridge Street	Residential	265.34	8.00	50.00	323.34
9151	Camulos Avenue	Residential	265.29	8.00	50.00	323.29
9242	Camulos Avenue	Residential	304.20	8.00	50.00	362.20
9243	Camulos Avenue	Residential	265.34	8.00	50.00	323.34
9426	Camulos Avenue	Residential	265.34	8.00	50.00	323.34

Exhibit A to Resolution No. 19-3240
Report of Delinquent Civil Debts - July 2019

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
9433	Camulos Avenue	Residential	238.18	8.00	50.00	296.18
9511	Camulos Avenue	Residential	265.34	8.00	50.00	323.34
9530	Camulos Avenue	Residential	372.25	8.00	50.00	430.25
9539	Camulos Avenue	Residential	305.60	8.00	50.00	363.60
9540	Camulos Avenue	Residential	292.62	8.00	50.00	350.62
9577	Camulos Avenue	Residential	331.09	8.00	50.00	389.09
9737	Camulos Avenue	Residential	265.34	8.00	50.00	323.34
9770	Camulos Avenue	Residential	266.68	8.00	50.00	324.68
9859	Camulos Avenue	Residential	268.53	8.00	50.00	326.53
9877	Camulos Avenue	Residential	292.62	8.00	50.00	350.62
5666	Caroline Street	Residential	265.34	8.00	50.00	323.34
9634	Central Avenue	Residential	281.67	8.00	50.00	339.67
9845	Central Avenue	Residential	203.08	8.00	50.00	261.08
9855	Central Avenue	Residential	261.50	8.00	50.00	319.50
10338	Central Avenue	Commercial	277.59	8.00	50.00	335.59
10385	Central Avenue	Commercial	266.85	8.00	50.00	324.85
9775	Coalinga Avenue	Residential	392.99	8.00	50.00	450.99
9795	Coalinga Avenue	Residential	265.34	8.00	50.00	323.34
9875	Coalinga Avenue	Residential	265.01	8.00	50.00	323.01
11207	College Avenue	Residential	225.17	8.00	50.00	283.17
9390	Columbine Avenue	Residential	442.02	8.00	50.00	500.02
10039	Columbine Avenue	Residential	266.58	8.00	50.00	324.58
9550	Del Mar Avenue	Residential	298.00	8.00	50.00	356.00
9964	Del Mar Avenue	Residential	263.27	8.00	50.00	321.27
10081	Del Mar Avenue	Residential	261.47	8.00	50.00	319.47
4285	Denver Street	Senior	271.33	8.00	50.00	329.33
4286	Denver Street	Residential	255.24	8.00	50.00	313.24
4304	Denver Street	Residential	423.77	8.00	50.00	481.77
4305	Denver Street	Residential	372.25	8.00	50.00	430.25
4324	Denver Street	Residential	265.34	8.00	50.00	323.34
4405	Denver Street	Residential	265.36	8.00	50.00	323.36
4485	Denver Street	Residential	236.17	8.00	50.00	294.17
5616	Denver Street	Residential	265.34	8.00	50.00	323.34
5626	Deodar Street	Residential	359.37	8.00	50.00	417.37
4461	El Morado Street	Senior	237.94	8.00	50.00	295.94
4481	El Morado Street	Residential	209.89	8.00	50.00	267.89
4853	El Morado Street	Residential	372.25	8.00	50.00	430.25
5168	El Morado Street	Residential	265.47	8.00	50.00	323.47
5274	El Morado Street	Residential	224.09	8.00	50.00	282.09
5416	El Morado Street	Residential	265.34	8.00	50.00	323.34
5429	El Morado Street	Residential	261.42	8.00	50.00	319.42
9463	Exeter Avenue	Residential	264.74	8.00	50.00	322.74
9151	Felipe Avenue	Residential	265.34	8.00	50.00	323.34
9378	Felipe Avenue	Residential	277.12	8.00	50.00	335.12
9020	Fremont Avenue	Senior	265.16	8.00	50.00	323.16

Exhibit A to Resolution No. 19-3240
Report of Delinquent Civil Debts - July 2019

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
9567	Fremont Avenue	Residential	292.62	8.00	50.00	350.62
9802	Fremont Avenue	Residential	226.42	8.00	50.00	284.42
9823	Fremont Avenue	Residential	265.34	8.00	50.00	323.34
9847	Fremont Avenue	Residential	459.79	8.00	50.00	517.79
9844	Galena Avenue	Residential	265.34	8.00	50.00	323.34
9932	Geneva Avenue	Residential	267.38	8.00	50.00	325.38
9985	Geneva Avenue	Residential	265.34	8.00	50.00	323.34
10057	Geneva Avenue	Residential	272.25	8.00	50.00	330.25
4328	Granada Street	Residential	265.34	8.00	50.00	323.34
4436	Granada Street	Residential	240.21	8.00	50.00	298.21
4947	Granada Street	Residential	444.48	8.00	50.00	502.48
4948	Granada Street	Residential	223.49	8.00	50.00	281.49
4992	Granada Street	Senior	269.62	8.00	50.00	327.62
9627	Greenwood Avenue	Residential	265.34	8.00	50.00	323.34
9783	Greenwood Avenue	Residential	265.34	8.00	50.00	323.34
9934	Greenwood Avenue	Residential	236.17	8.00	50.00	294.17
4430	Harvard Street	Residential	265.34	8.00	50.00	323.34
4883	Harvard Street	Residential	280.66	8.00	50.00	338.66
5430	Harvard Street	Residential	214.56	8.00	50.00	272.56
5462	Harvard Street	Residential	285.20	8.00	50.00	343.20
5141-43	Harvard Street	Senior	530.69	8.00	50.00	588.69
4531	Hawthorne Street	Residential	277.12	8.00	50.00	335.12
9607	Helena Avenue	Residential	283.66	8.00	50.00	341.66
9743	Helena Avenue	Senior	479.30	8.00	50.00	537.30
4864	Highland Street	Residential	292.62	8.00	50.00	350.62
5044	Highland Street	Residential	265.36	8.00	50.00	323.36
4488	Holt Blvd.	Commercial	331.02	8.00	50.00	389.02
5118-20	Holt Blvd.	Commercial	325.07	8.00	50.00	383.07
5190	Howard Street A & B	Multifamily	591.42	8.00	50.00	649.42
9725	Kimberly Avenue	Residential	265.34	8.00	50.00	323.34
4555	La Denev Street	Residential	402.65	8.00	50.00	460.65
5430	La Denev Street	Residential	372.25	8.00	50.00	430.25
9958	Lindero Avenue	Residential	265.34	8.00	50.00	323.34
10041	Lindero Avenue	Residential	278.62	8.00	50.00	336.62
10042	Lindero Avenue	Residential	269.25	8.00	50.00	327.25
9527	Marion Avenue	Residential	265.34	8.00	50.00	323.34
9547	Marion Avenue	Residential	265.34	8.00	50.00	323.34
10049	Marion Avenue	Residential	400.04	8.00	50.00	458.04
9663	Mills Avenue	Residential	246.52	8.00	50.00	304.52
9985	Mills Avenue	Residential	207.25	8.00	50.00	265.25
9056	Monte Vista Avenue	Residential	274.09	8.00	50.00	332.09
9066	Monte Vista Avenue	Residential	286.68	8.00	50.00	344.68
9608	Monte Vista Avenue	Residential	227.21	8.00	50.00	285.21
9721	Monte Vista Avenue	Residential	260.09	8.00	50.00	318.09
5616	Moreno Street	Residential	265.01	8.00	50.00	323.01

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Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
9886	Norton Avenue	Residential	273.85	8.00	50.00	331.85
4633	Olive Street	Residential	216.45	8.00	50.00	274.45
4644	Olive Street	Residential	291.99	8.00	50.00	349.99
4684	Olive Street	Residential	265.34	8.00	50.00	323.34
4872	Olive Street	Residential	232.12	8.00	50.00	290.12
4893	Olive Street	Residential	265.34	8.00	50.00	323.34
4322	Orchard Street	Residential	292.62	8.00	50.00	350.62
5058	Orchard Street	Residential	265.36	8.00	50.00	323.36
5690	Orchard Street	Residential	265.34	8.00	50.00	323.34
5257	Palo Verde Street	Senior	237.88	8.00	50.00	295.88
9585	Poulsen Avenue	Residential	267.81	8.00	50.00	325.81
9633	Poulsen Avenue	Residential	284.85	8.00	50.00	342.85
9935	Poulsen Avenue	Residential	292.77	8.00	50.00	350.77
9966	Poulsen Avenue	Residential	287.91	8.00	50.00	345.91
9375	Pradera Avenue	Senior	1,170.10	8.00	50.00	1,228.10
4426	Princeton Street	Residential	265.01	8.00	50.00	323.01
4438	Princeton Street	Residential	298.59	8.00	50.00	356.59
4467	Princeton Street	Residential	265.28	8.00	50.00	323.28
4825	Princeton Street	Senior	211.72	8.00	50.00	269.72
4833	Princeton Street	Residential	236.17	8.00	50.00	294.17
4846	Princeton Street	Residential	328.63	8.00	50.00	386.63
9060	Ramona Avenue	Residential	236.67	8.00	50.00	294.67
9151	Ramona Avenue	Residential	308.49	8.00	50.00	366.49
9587	Ramona Avenue	Residential	265.37	8.00	50.00	323.37
9729	Ramona Avenue	Residential	372.25	8.00	50.00	430.25
9380	Rose Avenue	Senior	263.71	8.00	50.00	321.71
9413	Rose Avenue	Residential	319.89	8.00	50.00	377.89
9434	Rose Avenue	Residential	265.34	8.00	50.00	323.34
9720	Rose Avenue	Residential	410.50	8.00	50.00	468.50
9866	Rose Avenue	Senior	237.88	8.00	50.00	295.88
9966	Rose Avenue	Residential	265.34	8.00	50.00	323.34
4613	Rosewood Street	Residential	693.28	8.00	50.00	751.28
4683	Rosewood Street	Residential	265.35	8.00	50.00	323.35
4860	Rosewood Street	Residential	259.28	8.00	50.00	317.28
5012	Rosewood Street	Residential	305.60	8.00	50.00	363.60
5361	Rosewood Street	Residential	265.34	8.00	50.00	323.34
5389	Rosewood Street	Residential	248.32	8.00	50.00	306.32
4164	Rudisill Street	Residential	265.34	8.00	50.00	323.34
5360	Rudisill Street	Residential	292.62	8.00	50.00	350.62
4711	San Bernardino Street	Residential	265.34	8.00	50.00	323.34
4749	San Bernardino Street	Residential	265.13	8.00	50.00	323.13
4843	San Bernardino Street	Residential	265.09	8.00	50.00	323.09
5418	San Bernardino Street	Residential	266.46	8.00	50.00	324.46
4485	San Jose Street	Residential	288.30	8.00	50.00	346.30
4594	San Jose Street	Residential	298.42	8.00	50.00	356.42

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Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
5412	San Jose Street	Residential	466.64	8.00	50.00	524.64
5422	San Jose Street	Residential	301.42	8.00	50.00	359.42
4424	San Jose Street #05	Residential	285.68	8.00	50.00	343.68
4424	San Jose Street #10	Residential	277.12	8.00	50.00	335.12
4424	San Jose Street #12	Residential	265.34	8.00	50.00	323.34
4424	San Jose Street #18	Residential	265.34	8.00	50.00	323.34
4424	San Jose Street #24	Residential	306.35	8.00	50.00	364.35
4424	San Jose Street #27	Residential	265.34	8.00	50.00	323.34
4630	San Jose Street K	Residential	291.33	8.00	50.00	349.33
9821	Santa Anita Avenue	Residential	300.90	8.00	50.00	358.90
10016	Santa Anita Avenue	Residential	298.59	8.00	50.00	356.59
9584	Surrey Avenue	Residential	287.42	8.00	50.00	345.42
9617	Surrey Avenue	Residential	265.34	8.00	50.00	323.34
9563	Tudor Avenue	Residential	281.48	8.00	50.00	339.48
9773	Tudor Avenue	Residential	356.59	8.00	50.00	414.59
10036	Tudor Avenue	Residential	374.84	8.00	50.00	432.84
9784	Vernon Avenue	Residential	265.34	8.00	50.00	323.34
9851	Vernon Avenue	Residential	316.18	8.00	50.00	374.18
5174	Village Drive	Residential	236.17	8.00	50.00	294.17
4878	Yale Street	Residential	265.88	8.00	50.00	323.88
		Totals:	\$58,641.86	\$1,600.00	\$10,000.00	\$70,241.86

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
JUNE 17, 2019, AT 7:45 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Raft called the meeting to order at 7:45 p.m.

II. ROLL CALL

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

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of June 3, 2019.

Moved by Council Member Ruh, seconded by Mayor Pro Tem Raft, and carried unanimously to approve the minutes of the Personnel Committee meeting of June 3, 2019.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION


At 7:46 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 7:58 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Raft stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 7:58 p.m., Mayor Pro Tem Raft adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager