

NOTICE

THIS MEETING WILL BE CONDUCTED VIA WEBINAR/TELECONFERENCE. THE COUNCIL CHAMBERS WILL NOT BE OPEN TO THE PUBLIC.

Pursuant to Executive Orders issued by Governor Newsom to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, this meeting will be conducted remotely via the ZOOM virtual meeting platform. In compliance with the Executive Orders, there will be no in-person meeting location, however the public may participate using any of the remote methods described below.

LISTEN TO THE MEETING LIVE VIA ZOOM

Members of the public may participate in this meeting by joining the ZOOM conference via PC, Mac, iPad, iPhone, or Android device using the URL:

<https://zoom.us/j/95239872725>

LISTEN TO THE MEETING LIVE VIA TELEPHONE

The public may participate via phone only (without a computer/smart device) by dialing the below numbers:

Dial Number: 1-669-900-6833

Meeting ID: 952 3987 2725

**ALL PARTICIPANTS WILL BE MUTED AUTOMATICALLY UPON ENTERING THE MEETING.
THE CITY CLERK WILL UNMUTE THOSE WHO WISH TO SPEAK AT THE APPROPRIATE TIME.
PLEASE KEEP YOURSELF ON MUTE WHEN NOT SPEAKING.**

VERBAL PARTICIPATION USING ZOOM

Please use the "Raise Hand" button to request to speak. Raised hands will only be acknowledged during the Public Hearing and Public Comment sections of the agenda and when the Meeting's presiding officer requests comments from the public.

If you want to provide public comments and are using a computer or laptop without a microphone connected or built in, you will also need to call in using the Teleconference Number and Meeting ID highlighted below, and dial your Participant ID on the phone when prompted. Your Participant ID is found in the "Phone Call" tab of the "Join Audio" settings. This option will also switch your audio over to the phone. Please do not use speaker mode and turn off your computer audio when speaking to prevent audio feedback.

VERBAL PARTICIPATION OVER THE PHONE

Please dial *6 to mute and unmute yourself, and *9 to "raise your hand" to request to speak. Raised hands will only be acknowledged during the Public Hearing and Public Comment sections of the agenda and when the Meeting's presiding officer requests comments from the public. Do not use speaker mode when speaking.

ADA COMPLIANCE INFORMATION

Meetings are accessible to people with disabilities. Requests in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the City Clerk at cityclerk@cityofmontclair.org or call (909) 625-9416. Every attempt will be made to swiftly address each request. (28 CFR 35.102-35.104 ADA Title II)

PUBLIC COMMENT PROCEDURES

MAKING VERBAL COMMENTS

To provide verbal comments during the meeting, please visit www.cityofmontclair.org/cc-comment to fill out a Virtual Speaker Card to request to speak in advance. You may also call the City Clerk in advance at (909) 625-9416 to fill out the Virtual Speaker Card over the phone or e-mail your name, phone number if calling in during the meeting, and subject of comment or agenda item to cityclerk@cityofmontclair.org with "[Meeting Date] Virtual Speaker Card" as the subject line.

Meeting attendees who did not fill out the Virtual Speaker Card in advance will be given an opportunity to speak after those who requested to speak in advance.

SUBMITTING WRITTEN COMMENTS

Written comments (250 word limit) may be submitted prior to the meeting by filling out the Virtual Speaker Card (www.cityofmontclair.org/cc-comment), via e-mail (cityclerk@cityofmontclair.org), or via U.S. Mail (Mailing Address: City of Montclair, Attn: City Clerk, Re: [Meeting Date] Public Comment, 5111 Benito Street, Montclair, CA 91763), and will be read aloud during the meeting by the City Clerk at the appropriate time.

Please submit all requests to speak or written comments at least one hour prior to the start of the meeting. The City cannot be held responsible for U.S. Mail that does not arrive on time prior to the subject meeting.



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

AGENDA

Monday, April 20, 2020
7:00 p.m.

*As a courtesy, please place yourself on mute while the meeting is in session, unless speaking (Dial *6 on the phone to toggle mute), and turn off/mute/disable all video/web cameras.*

*Persons wishing to make a public comment or speak on an agenda item, including public hearing and closed session items, are requested to complete a Virtual Speaker Card (VSC) at www.cityofmontclair.org/cc-comment. The Mayor/Chair (or the meeting's Presiding Officer) will recognize those who have submitted a VSC at the time of the item's consideration and invite those individuals to provide comments on the item at that time. Those who did not fill out a VSC will have an opportunity to speak after those who did by using the "raise hand" function on the ZOOM meeting platform or over the phone by dialing *9.*

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. Proclamation Declaring May 7, 2020 as the National Day of Prayer in the City of Montclair

VI. PUBLIC COMMENT

This section is intended to provide members of the public with an opportunity to comment on any subject that does not appear on this agenda. Each speaker will be afforded up to five minutes to address the City Council/Boards of Directors/Commissioners. (Government Code Section 54954.3).

If you did not submit a Virtual Speaker Card and would like to speak on an item that is on the agenda, please request to speak during Public Comment to announce the agenda item on which you would like to comment so you may be called on to provide your comments at the time of that item's consideration.

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

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

A. Approval of Minutes

1. Regular Joint Meeting — April 6, 2020 [CC/SA/MHC/MHA/MCF]

B. Administrative Reports

1. Consider Receiving and Filing of Treasurer’s Report [CC] 5
2. Consider Approval of Warrant Register & Payroll Documentation [CC] 6
3. Consider Receiving and Filing of Treasurer’s Report [SA] 7
4. Consider Approval of Warrant Register [SA] 8
5. Consider Receiving and Filing of Treasurer’s Report [MHC] 9
6. Consider Approval of Warrant Register [MHC] 10
7. Consider Receiving and Filing of Treasurer’s Report [MHA] 11
8. Consider Approval of Warrant Register [MHA] 12
9. Consider Approval of the Filing of a Notice of Completion of Contract With OCC Builders, Inc. for the Reeder Ranch Roof Replacement and Electrical Improvement Project [CC] 13
Consider Release of Retention 30 Days After Recordation of Notice of Completion [CC]

C. Agreements

1. Consider Approval of Agreement No. 20-19 Amending Agreement No. 19-41 with Econolite Systems for Traffic Signal Maintenance Services [CC] 15
2. Consider Approval of Agreement No. 20-25 with Verizon Wireless for a Grant Deed Providing an Easement to Operate and Maintain Telecommunication Facilities [CC] 37
3. Consider Approval of Agreement No. 20-26 Amending Agreement No. 18-76, a Passenger Amenities Program Agreement with Omnitrans [CC] 44
4. Consider Approval of Agreement No. 20-27, the First Amendment to Reimbursement Agreement No. 17-76 with 5060 Montclair Plaza Lane Owner, LLC Related to Costs Associated with the Montclair Place District Specific Plan [CC] 66

D. Resolutions

1. Consider Adoption of the Resolution No. 20-3264 Designating Authorized Agents of the City of Montclair for California Governor’s Office of Emergency Services (Cal OES) Public Assistance Grants [CC] 63
Consider Authorizing Submittal of the Approved Cal OES Form 130 to the State [CC]

IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

A. City Department Reports — None

B. City Attorney

1. Request for City Council to Meet in Closed Session Pursuant to Government Code §54956.9(d)(1) Regarding Pending Litigation [CC]

Carrillo v. City of Montclair

Correlo v. City of Montclair

C. City Manager/Executive Director

1. COVID-19 Update

D. Mayor/Chairperson

E. Council Members/Directors

F. Committee Meeting Minutes (*for informational purposes only*) — None

XI. CLOSED SESSION

XII. CLOSED SESSION ANNOUNCEMENTS

XIII. 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, May 4, 2020, at 7:00 p.m.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the Acting Bodies after publication of the Agenda packet are available for public inspection in in the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. Pursuant to the Governor’s Executive Orders in relation to the COVID-19 pandemic, please call the City Clerk’s Office at (909) 625-9416 or send an e-mail to cityclerk@cityofmontclair.org to request such review of items via e-mail.

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 or e-mail cityclerk@cityofmontclair.org. Notification prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)

I, Andrea M. 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 City’s website at www.cityofmontclair.org and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, April 16, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 20, 2020	FILE I.D.:	FIN520
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	1	PREPARER:	J. KULBECK
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending March 31, 2020, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending March 31, 2020.

FISCAL IMPACT: Routine—report of City's cash and investments.

RECOMMENDATION: Staff recommends the City Council receive and file the Treasurer's Report for the month ending March 31, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 20, 2020	FILE I.D.:	FIN540
SECTION:	CONSENT - 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 April 20, 2020; and the Payroll Documentation dated March 15, 2020; and recommends their approval.

FISCAL IMPACT: The Warrant Register dated April 20, 2020, totals \$2,500,191.87; and the Payroll Documentation dated March 15, 2020, totals \$628,986.54 gross, with \$441,904.12 net being the total cash disbursement.

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



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 20, 2020	FILE I.D.:	FIN510
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	3	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending March 31, 2020, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending March 31, 2020.

FISCAL IMPACT: Routine—report of the Agency's cash.

RECOMMENDATION: Staff recommends the City Council acting as Successor to the Redevelopment Agency Board of Directors receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending March 31, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 20, 2020	FILE I.D.:	FIN530
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	4	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending March 31, 2020, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Successor to the Redevelopment Agency Warrant Register dated 03.01.20-03.31.20 in the amounts of \$8,031.50 for the Combined Operating Fund; \$0.00 for the Redevelopment Obligation Retirement Funds and finds it to be in order.

FISCAL IMPACT: Routine—report of Agency's obligations.

RECOMMENDATION: Vice Chairperson Raft recommends the City Council as Successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending March 31, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 20, 2020	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	5	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending March 31, 2020, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending March 31, 2020.

FISCAL IMPACT: Routine—report of the Montclair Housing Corporation's cash and investments.

RECOMMENDATION: Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending March 31, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 20, 2020	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	6	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending March 31, 2020, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Warrant Register dated 03.01.20-03.31.20 in the amount of \$57,754.23 for the Montclair Housing Corporation and finds it to be in order.

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

RECOMMENDATION: Vice Chairperson Raft recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending March 31, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 20, 2020	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	7	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The Montclair Housing Authority Board of Directors is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending March 31, 2020, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending March 31, 2020.

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

RECOMMENDATION: Staff recommends the Montclair Housing Authority Board of Directors receive and file the Treasurer's Report for the month ending March 31, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 20, 2020	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	8	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The Montclair Housing Authority Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending March 31, 2020, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Warrant Register dated 03.01.20-03.31.20 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

RECOMMENDATION: Vice Chairperson Raft recommends the Montclair Housing Authority Board of Directors approve the Warrant Register for the period ending March 31, 2020.



CITY COUNCIL AGENDA REPORT

DATE: APRIL 20, 2020 **FILE I.D.:** PUB400-A
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 9 **PREPARER:** S. STANTON

SUBJECT: CONSIDER APPROVAL OF THE FILING OF A NOTICE OF COMPLETION OF CONTRACT WITH OCC BUILDERS, INC. FOR THE REEDER RANCH ROOF REPLACEMENT AND ELECTRICAL IMPROVEMENT PROJECT

CONSIDER RELEASE OF RETENTION 30 DAYS AFTER RECORDATION OF NOTICE OF COMPLETION

REASON FOR CONSIDERATION: State law requires Notices of Completion to be recorded with the County Recorder upon acceptance of a Public Works project. The City Council is requested to consider approving the filing of a Notice of Completion with the San Bernardino County Recorder concerning the Reeder Ranch Roof Replacement and Electrical Improvement Project.

BACKGROUND: On February 19, 2019, OCC Builders, Inc. was awarded a construction contract for the Reeder Ranch Roof Replacement and Electrical Improvement Project and entered into Agreement No. 19-12 with the City. The remodel project included a new roof, new electrical panel, and an electrical sub panel to the barn.

OCC Builders, Inc. was awarded a construction contract for \$110,000 and the City Council authorized a construction contingency of \$15,000, bringing the total award authority to \$125,000. During the course of construction, the contractor was directed to expand the scope of work to incorporate additional expenses that resulted in a price increase. The roofing over the rear patio had water damage and required additional wood replacement. In total, there was one change order in the amount of \$10,683.00, bringing the overall construction cost to \$120,683.

FISCAL IMPACT: The Reeder Ranch Roof Replacement and Electrical Improvement Project has been completed under Capital Improvement Program (CIP) appropriations using Community Development Block Grant funds.

RECOMMENDATION: Staff recommends that the City Council take the following actions related to the Reeder Ranch Roof Replacement and Electrical Improvement Project:

1. Approve the filing of a Notice of Completion of contract with OCC Builders, Inc. for the Reeder Ranch Roof Replacement and Electrical Improvement Project with the San Bernardino County Recorder.
2. Authorize release of retention 30 days after recordation of Notice of Completion.

RECORDING REQUESTED BY:

City of Montclair

AND WHEN RECORDED MAIL DOCUMENT AND
TAX STATEMENT TO:

NAME: **City of Montclair**

STREET ADDRESS: **5111 Benito Street**

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

Government Code 6103

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

NOTICE OF COMPLETION

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

fee

The full name and address of the undersigned is
Noel Castillo
Public Works Director/
City Engineer
5111 Benito Street
Montclair, CA 91763

The work was completed on that certain work known as:

Reeder Ranch Roof Replacement and Electrical Improvement Project

for the undersigned City of Montclair,
a Municipal Corporation, on the 6th day of April 2020

The City accepted the job on the 6th day of April 2020

The Contractor on said job was
OCC Builders, Inc.
17050 Bushard St. Suite 325
Fountain Valley, CA 92708

The improvement consisted of:
Street Improvements

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

4405 Holt Boulevard, Montclair, CA. 91763

(1012-051-03-0000)

VERIFICATION

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

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

Executed on: April 20, 2020 at 5111 Benito Street, Montclair, California

Noel Castillo
Public Works Director
City Engineer



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 20, 2020	FILE I.D.:	TRC600
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	1	PREPARER:	N. CASTILLO
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-19 AMENDING AGREEMENT NO. 19-41 WITH ECONOLITE SYSTEMS FOR TRAFFIC SIGNAL MAINTENANCE SERVICES		

REASON FOR CONSIDERATION: Agreement No. 19-41 with Econolite Systems for traffic signal maintenance expires on June 30, 2020. Both the City and Econolite Systems wish to enter into a new contract for a one-year term. The City Council is requested to consider approval of Agreement No. 20-19 with Econolite Systems for Traffic Signal Maintenance Services.

A copy of Proposed Agreement No. 20-19 with Econolite Systems for traffic signal maintenance services is attached for the City Council's review and consideration.

BACKGROUND: On June 3, 2019, City Council approved Agreement No. 19-41 with Econolite Systems. The City of Montclair has been using Econolite's services for many years and they have been outstanding. The institutional knowledge brought by the Econolite team provides unsurpassed value to the City's traffic signal system. Additionally, the rapport that has been built between Econolite Systems and the City's Traffic Engineering Consultant, Albert Grover & Associates, provides excellent traffic signal performance. A recent audit from the San Bernardino County Transportation Authority (SBCTA) resulted in a 96 percent reliability of our signals being in coordination for the efficient and safe movement of traffic. City staff went through a vetting process to make sure that Econolite provides the best value for the City. The rates in the new agreement are essentially remaining the same as the prior contract. A rate increase of 1.43% has been proposed to absorb costs related to increases in the prevailing wage rates. Because Econolite continues to be the best value for the City, proposals from other firms were not sought. Staff recommends to continue utilizing Econolite to provide traffic signal maintenance services, since it is in the best interest and value of the City and within our purchasing guidelines.

FISCAL IMPACT: Under the terms of the proposed contract, the monthly preventative maintenance cost will be \$77.76 per intersection. The rates are shown in Exhibit B of Agreement No. 20-19.

The Preliminary Budget for fiscal year 2020-21 has monies appropriated utilizing the rates established in Agreement No. 19-41. Since the amount of the proposed increases will vary based upon need and future scheduled maintenance, any adjustment necessary in the fiscal year 2020-21 budget will be assessed and made during the Midyear Budget Review.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 20-19 amending Agreement No. 19-41 with Econolite Systems for traffic signal maintenance services.

AMENDMENT TO AGREEMENT NO. 19-41
WITH
ECONOLITE SYSTEMS
FOR
TRAFFIC SIGNAL MAINTENANCE SERVICES

This agreement is made and entered into this 1st day of July 2020, by and between the CITY OF MONTCLAIR, a municipal corporation hereinafter designated as "City," and ECONOLITE SYSTEMS, hereinafter designated as "Contractor," and collectively designated as the "Parties."

RECITALS

WHEREAS, Parties have previously entered into Agreement No. 19-41 on July 1, 2019, for traffic signal maintenance services; and

WHEREAS, Agreement No. 19-41 included Exhibit B which includes a rate schedule; and

WHEREAS, Parties desire to extend the agreement and amend the rate schedule.

AGREEMENT

NOW, THEREFORE, IT IS AGREED by and between City and Contractor to extend agreement for a one-year term expiring on June 30, 2021.

BE IT FURTHER AGREED by and between City and Contractor that EXHIBIT B of Agreement No. 19-41 referencing COST OF SERVICES shall be replaced with EXHIBIT B of Agreement 20-19 and that that all other terms of Agreement No. 19-41 shall remain as set forth therein.

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

ECONOLITE SYSTEMS

By: _____
Javier John Dutrey, Mayor

By: _____
Title:

Attest: _____
Andrea Phillips, City Clerk

By: _____
Title:

Approved as to form:

Diane E. Robbins, City Attorney

EXHIBIT B

RATE SCHEDULE

**EXHIBIT B
COST OF SERVICE 2020**

Monthly Maintenance / Preventative Maintenance Check per Intersection 77.76

Description (Hourly Labor Rate)	Regular	Overtime	Double Time
Supervisor	109.28	N/A	N/A
Lead Technician	129.36	174.36	219.39
Technician	129.36	174.36	219.39
Lead Utility Technician	129.36	174.36	219.39
Utility Technician	129.36	174.36	219.39
Lab Technician	129.36	174.36	219.39
Laborer	129.99	174.36	219.39
Relamper	71.96	108.63	145.30

Description (Hourly Equipment Rate)			
Technician Van	14.10	N/A	N/A
Bucket Truck to 36 feet	39.14	N/A	N/A
Utility Truck	39.14	N/A	N/A
Bucket Truck above 36 feet	59.12	N/A	N/A
Crane Truck	153.15	N/A	N/A
Arrow Board	17.02	N/A	N/A
Air Compressor w/ tools	25.53	N/A	N/A
Dump Truck	63.82	N/A	N/A

Materials			
All	Cost Plus 20%	N/A	N/A

Miscellaneous			
6-foot diameter loop and lead-in cable	569.12		

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

WITH ECONOLITE SYSTEMS FOR TRAFFIC SIGNAL MAINTENANCE

THIS AGREEMENT is made and effective as of July 1, 2019, between the City of Montclair, a municipal corporation ("City") and ECONOLITE SYSTEMS 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 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 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.

(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. 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. 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 Consultant'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. 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. 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 Consultant from liability under this section.

10. INSURANCE

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

(a) **Types of Required Coverages**

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

- (1) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$10,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (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 \$10,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) **Professional Liability:** Professional Liability insurance with limit of not less than \$10,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) **Endorsements**

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

- (1) Commercial General Liability

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

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"

3. Restrict coverage to the "Sole" liability of contractor
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Agreement

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

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

(2) Auto Liability

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

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

(3) Workers' Compensation

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

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

(e) Evidence of Insurance

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

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

(k) Insurance for Subcontractors

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

11. INDEPENDENT CONTRACTOR

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

(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: Brian Akerley
Associate Vice President
Econolite Systems
1250 N. Tustin Ave. Anaheim, CA 92807

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 Mike Oliver (responsible employee) shall perform the services described in this Agreement; or a City approved designee.

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 incorporated herein by this reference, and the contents of the proposal submitted by the Consultant. 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.

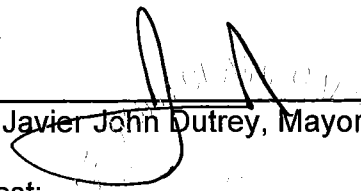
25. AUTHORITY TO EXECUTE THIS AGREEMENT

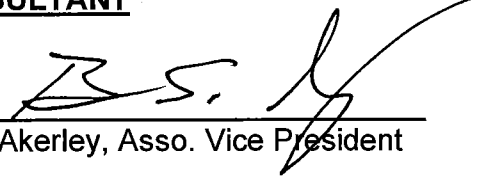
The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

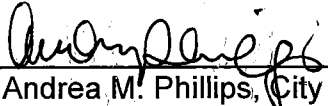
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

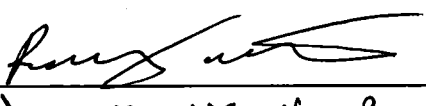
CITY OF MONTCLAIR

CONSULTANT

By: 
Javier John Dutrey, Mayor

By: 
Brian Akerley, Asso. Vice President

Attest:
By:  6/3/19
Andrea M. Phillips, City Clerk

By: 
Rodney Mathis, Vice President

Approved as to Form:

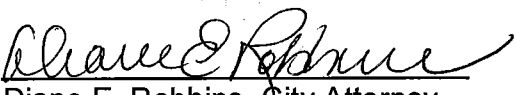
By: 
Diane E. Robbins, City Attorney

EXHIBIT A**SCOPE OF MAINTENANCE SERVICES REQUIRED****ADMINISTRATIVE REQUIREMENTS**

General – Contractor shall furnish all tools, equipment, apparatus, facilities, labor, material, services, traffic control, etc., and perform all work necessary to maintain in good working order all traffic signal facilities at the locations listed herein. All work performed or equipment, parts, or materials supplied shall be subject to the inspection and approval of the City Engineer or his designated representative.

Contact – Contractor shall maintain a single, local or toll free telephone number where it can be reached 24 hours per day, seven days per week for reporting signal problems. Contractor shall also provide names and telephone numbers for at least three (3) responsible individuals representing Contractor that may be contacted 24 hours per day in the event of a signal related emergency.

Equipment/Labor – Contractor shall have available and readily accessible all required tools, equipment, apparatus, materials, facilities, and skilled labor necessary to perform all work necessary to maintain traffic signal systems and safety lighting in good working order. Skilled labor is further defined as traffic signal maintenance technicians that are certified as Level II Traffic Signal Technicians as issued by the International Municipal Signal Association (IMSA). Non-skilled labor may be used for certain tasks such as relamping, cleaning, painting, etc. Prior to commencement of contract, Contractor shall submit certification papers on all employees potentially working on City signals.

Contractor shall be equipped with spare parts sufficient to return a defective signal to operation following ordinary and extraordinary trouble calls. Examples of trouble calls where spare parts may be required include damages to controller cabinets, controller cabinet components, signal poles/heads, pedestrian indications/poles, and conduit/wiring. The substitute components shall be equal to or better than those they are replacing.

Prevailing Wage – Pursuant to Section 1773 of the Labor Code of the State of California, the General Prevailing Rates of Wages have been determined and these are listed in the California Department of Transportation publication, General Prevailing Wage Rates. The contractor and any subcontractors used in connection with this maintenance contract shall not pay its employees less than the prevailing wage. This requirement is applicable to routine maintenance, preventative maintenance checks, extraordinary maintenance and any other work requested by City or required under this contract. Certified payrolls shall be submitted to City on a monthly basis.

Notification – Contractor shall provide a toll-free emergency contact telephone number for reporting signal related problems, damages, and emergencies. The number shall be in service 24 hours per day, seven days per week, and 365 days per year.

Response Time – Contractor should expect service requests outside of the Contractor's normal working or service hours. These service requests may be given by telephone, fax, e-mail, written correspondence, or other means. Contractor shall maintain 24-hour response capabilities in order to effectively address and respond to service requests.

The Contractor will need to ascertain whether service requests are of an "emergency" nature requiring an immediate response or whether the request is general in nature requiring routine response. Requests deemed to be "emergencies" shall be responded to immediately with all possible haste, arriving at the signal location within one hour of first notification. Routine requests shall be responded to within 24 hours of first notification unless other arrangements are agreed to.

The following events shall establish an emergency condition and the following action shall be taken:

1. Failure or malfunction of the traffic signal system or interruption of normal signal operations caused by or from:
 - Vehicle collisions or accidents
 - Acts of God
 - Civil disorder
 - Malicious mischief or vandalism
 - Actions of other contractors or utility companies

Under these conditions the Contractor shall immediately restore the traffic signal to normal operations. If that is not possible due to the extent of damage, sufficient repairs shall be made to enable the intersection to operate in all red flash.

2. Whenever any traffic signal indication or indications fail at any location such that less than two indications for any one direction of travel are functional, the Contractor shall immediately restore the indication(s) to normal operation.
3. Any appurtenant traffic signal equipment such as safety lighting, traffic signal heads, street name signs, block number or other regulatory signs, warning or guide signs affixed to mast arms or poles, reported to be knocked down, dangling, or otherwise creating a public safety hazard shall be immediately repaired or removed in order to eliminate the hazard or unsafe condition. Any equipment so removed shall be scheduled for replacement.
4. Any requests received by the Contractor where the nature of the call is unclear because of incomplete or inaccurate information shall be treated as an emergency.

Record Keeping and Reporting – The Contractor shall keep a current, permanent operational record of each and every piece of traffic control or safety equipment that the Contractor is required to maintain by this contract. These records shall be kept at each maintained location on a form approved by the City. The form shall include, at a

minimum, the date, time, description of device including all model, part, and serial number, narrative of deficiencies encountered, and a detail of any and all corrective action(s) taken. Entries shall be made legibly in indelible ink and shall be initialed by the technician making the entry.

The Contractor shall also submit to the City monthly summary reports of all activities relating to traffic signal and safety lighting maintenance for each maintained location. The summary report shall list the maintenance history for the entire reporting period for each individual signal location. A chronological report of all maintenance activities throughout the month is unacceptable. The summary reports shall be submitted to the City prior to the end of the month following the reporting period. The preferred method for reporting would be by e-mail as a Word or Excel document.

The following information, at a minimum, is required for each signal location:

- Signal location
- Date and approximate time of service
- Reason for service (callout or self-initiated)
- Description of service provided
- Notation of routine, extraordinary, emergency

For the purpose of this contract a month is defined as a calendar month. A year, except as may otherwise be defined elsewhere for specific purposes, is defined as a calendar year running from January 1 to December 31.

Salvaged or Damaged Equipment – Salvaged or damaged equipment shall become the property of Contractor unless otherwise directed by the City.

MONTHLY MAINTENANCE/PREVENTATIVE MAINTENANCE CHECK-TRAFFIC SIGNALS

The Contractor shall carry on a program of continuing comprehensive routine maintenance designed to reduce or eliminate the incidences of malfunctions and operational complaints, and extend the useful life of the equipment. The Contractor shall perform the following services at each signalized intersection on a monthly basis. Unless otherwise indicated, payment for the work would be considered part of the monthly service charge for the preventative maintenance check.

1. Clean the inside and outside of all controller cabinet assemblies and meter service pedestals.
2. Ensure proper working of fan/cooling system. Clean filters as necessary. Replace filters every six months.
3. Visually inspect all relays, clocks, dials, motors, switches, etc., and adjust, make minor repairs, make major repairs, or replace as necessary. Major repairs and replacements are considered non-routine and shall be compensated based on agreed prices or on a time and materials basis with prior approval from the City.

4. Walk all the approaches of the intersection and visually inspect all signal poles, mast arms, signal heads, and indications, traffic control signs, pedestrian signals, internally illuminated street name signs, loop sealants, pull box covers, and other signal appurtenances. All traffic signal heads and pedestrian signal heads found out of alignment shall be properly aligned. Missing signs shall be replaced. Cracked or damaged loop sealants shall be resealed. All other equipment found missing or damaged shall be replaced or repaired. Realigning heads, replacing missing signs, loop repairs or recutting loops, and other damage repairs shall be compensated based on agreed prices or on a time and materials basis with prior approval from the City.
5. Check the timing of individual signal phases and internal timing circuits for all timed devices in the cabinet.
6. Maintain an accurate chronograph and set all real-time clocks to the National Bureau of Standards (WWV) time. When and where necessary, adjust clocks Daylight Savings Time within 48 hours of time changes.
7. Check the yellow phase duration on all phases by stopwatch.
8. Check detector units and systems including, but not limited to, inductive loops, video detection, microwave sensors, radio transmitters/receivers, and pedestrian push buttons for correct detection of both vehicles and pedestrians. Adjust or repair as necessary.
9. Immediately correct all safety deficiencies found during routine inspections and schedule non-emergency work with the City.
10. Check all traffic signal controller communications equipment for proper operation and adjust or repair as necessary.
11. Check all field wiring for inadequacies (i.e., proper grounding, splices etc.).
12. Check and record incoming voltage at all intersections to prevent excessive wear on the signal control equipment.
13. Paint traffic signal visors and back plates at a rate of two intersections per month.
14. Report any change out of controllers or signal timing to City's Traffic Engineer, Albert Grover and Associates.

MONTHLY MAINTENANCE/PREVENTATIVE MAINTENANCE CHECK-SAFETY LIGHTING

The Contractor shall carry on a program of continuing comprehensive routine maintenance designed to reduce or eliminate the incidences of malfunctions and operational complaints and extend the useful life of the equipment. The program shall include, but not necessarily be limited to, the following:

1. On a monthly basis, check all safety lighting systems for proper operation and replace any burned out bulbs or electronic components. Field inspections shall be conducted at night unless the electrical service is of a type that permits daytime inspection.
2. The Contractor shall repair or furnish and replace any inoperative starter boards or photoelectric controls, and any damaged or knocked down safety light assemblies.

EXTRAORDINARY MAINTENANCE

The failure or malfunction of the signal system shall be considered extraordinary when it is mainly caused by "Acts of God," civil disorder, vehicle collision, vandalism, construction activities, metal fatigue or defects, or merely equipment failure due to age or deterioration. Examples include the following:

1. Replacement of vehicle detection equipment (loop or video detection).
2. Relamping – Clean, polish, and inspect all fixtures at the time the traffic signals are relamped. All lamps are LEDs and will be replaced only when they burn out or at the direction of the City Engineer. At this time all broken or deteriorated parts will be replaced or changed as necessary, signal heads realigned, and mast arm mounted street name signs adjusted. This work may also be required as directed by the City Engineer.
3. Damage to interconnect communications components including cable, communications terminal panels, and system field master controllers.
4. Underground Service Alert (USA) marking, if requested.
5. Adjustment, relamping, or repair of flashing beacon at Fire Station No. 1.
6. Replacement of signal equipment due to damage by vandalism, wind, rain, fire, accident, etc.
7. Requests for information or other services from the City.

EXHIBIT B



**EXHIBIT B
COST OF SERVICES**

Monthly Maintenance / Preventative Maintenance Check per Intersection **\$76.66**

Description (Hourly Labor Rate)	Regular	Overtime	Double Time
Supervisor	\$107.74	N/A	N/A
Lead Technician	\$127.52	\$169.99	\$212.48
Technician	\$127.52	\$169.99	\$212.48
Lead Utility Technician	\$127.52	\$169.99	\$212.48
Utility Technican	\$127.52	\$169.99	\$212.48
Lab Technician	\$127.52	\$169.99	\$212.48
Laborer	\$127.52	\$169.99	\$212.48
Relamper	\$70.95	\$107.10	\$143.26

Description (Hourly Equipment Rate)			
Technician Van	\$13.90		
Bucket Truck to 36 feet	\$38.59	N/A	N/A
Utility Truck	\$38.59	N/A	N/A
Bucket Truck above 36 feet	\$58.29	N/A	N/A
Crane Truck	\$151.00	N/A	N/A
Arrow Board	\$16.78	N/A	N/A
Air Compressor w/ tools	\$25.17	N/A	N/A
Dump Truck	\$62.92	N/A	N/A

Materials			
All	Cost Plus 20%	N/A	N/A

Miscellaneous	
6-foot diameter loop and lead-in cable (per unit)	\$561.12



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 20, 2020	FILE I.D.:	LDA210
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	2	PREPARER:	N. CASTILLO
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-25 WITH VERIZON WIRELESS FOR A GRANT DEED PROVIDING AN EASEMENT TO OPERATE AND MAINTAIN TELECOMMUNICATION FACILITIES		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 20-25 with Verizon Wireless. The Grant Deed will allow Verizon Wireless to operate and maintain telecommunication facilities to better serve the community. Agreements with the City require City Council approval.

BACKGROUND: The City is the owner of the property known as Freedom Park. Verizon Wireless is owner of the antenna on the site. Verizon Wireless already operates and maintains telecommunication equipment on the site. The City is agreeing to convey an easement that consist of two twelve-foot-wide spaces across the property. Verizon Wireless proposes to install fiber optic lines to this facility to help with the impact of cellular use now and future development in the area. Adding to the telecommunications infrastructure at Freedom Park would diversify cell traffic in case of any fiber cuts. Also, the additional infrastructure will help protect communication to these cell sites, especially network reliability in case of natural disasters.

FISCAL IMPACT: The execution of this agreement has no fiscal impact to the City. The improvements within the easement will provide for enhanced telecommunications for the community.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 20-25 with Verizon Wireless for a grant deed providing an easement to operate and maintain telecommunication facilities.

GRANT OF EASEMENT

THIS GRANT OF EASEMENT ("Easement") is dated as of the ____ day of ____, 2020, by the City of Montclair, a municipal corporation ("Grantor") and Los Angeles SMSA Limited Partnership, dba Verizon Wireless (hereinafter "Grantee").

WHEREAS, Grantor is the owner of certain real property known as Assessor's Parcel Numbers 1008-332-03 and 1008-332-06, located in San Bernardino County, California, legally described in Exhibit "A" attached hereto (collectively, the "Property").

WHEREAS, Grantee is the owner of a leasehold estate at the Property (the "Leased Premises"), pursuant to that certain Antenna Site License Agreement dated May 25, 2000, as amended (the "Lease"), between Grantee, as sublicensee, and SBA 2012 TC Assets, LLC, as sublicensor.

WHEREAS, Grantee operates and maintains a telecommunications facility on the Leased Premises.

WHEREAS, Grantor has agreed to convey to Grantee certain easement areas consisting of two (2) twelve-foot (12') wide portions of ground space over and across the Property (the "Easement Area"), as described in Exhibit "A" and depicted in Exhibit "B" attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the facts contained in the Recitals above, the mutual covenants and conditions below, and other good and valuable consideration, including the benefits of enhanced wireless communications at the Property, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, a non-exclusive easement over and across the Easement Area for the purposes of ingress and egress and for constructing, maintaining, operating, repairing and replacing two (2) utility lines, including cables, conduits, pull boxes and related appurtenances (collectively, the "Improvements") over, under, across and through the Property, to and from the Leased Premises.
 - a. Prior to installation of the Improvements, Grantor shall permit Grantee free ingress and egress to the Easement Area to conduct such surveys, inspections, structural strength analysis, subsurface soil tests, and other activities of a similar nature as Grantee may deem necessary, at the sole cost of Grantee.
 - b. Each party shall utilize its estate in a manner which will minimize interference with the other party's use of its estate.
 - c. Upon completion of construction, Grantee shall restore the Easement Area to substantially its pre-existing condition.

2. Term. The easement, rights, and privileges herein granted shall be for a term coinciding with the term of the Lease, including any renewals, extensions and/or replacements thereof, and shall, without any further action on the part of Grantor or Grantee, terminate immediately upon the termination of said Lease or replacement. Upon termination of this Easement for any reason, at Grantor's request Grantee shall execute with acknowledgement and deliver a

notice of termination in form suitable for recording in the official records of the County.

3. No Permanent Structures. Grantor hereby covenants for and on behalf of itself, its heirs, successors or assigns, that neither it, nor any of them, shall construct or permit to be constructed, any building or any other permanent structure within the Easement Area, or make any permanent excavation, or permit any permanent excavation to be made within the Easement Area.
4. Governmental Approvals. It is understood and agreed that Grantee's ability to use the Easement Area is contingent upon its obtaining after the execution date of this Easement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit Grantee use of the Easement Area as set forth above. Grantor shall cooperate with Grantee in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by Grantee. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Grantee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Grantee determines that such Governmental Approvals may not be obtained in a timely manner; (iv) Grantee determines that any soil boring tests are unsatisfactory; (v) Grantee determines that the Easement Area is no longer technically compatible for its use, or (vi) Grantee, in its sole discretion, determines that the use the Easement Area is obsolete or unnecessary, Grantee shall have the right to terminate this Easement.
5. Termination for Default. Upon Grantee's default hereunder, Grantor may deliver to Grantee a written notice of default, stating with specificity the nature of Grantee's default. If Grantee has not cured the default within a reasonable time (but not less than 30 days for a monetary default and 60 days for a non-monetary default) after receipt of the notice of default, Grantor may terminate this Easement effective immediately upon receipt by Grantee of Grantor's written notice of termination.
6. Indemnification. Grantee agrees to indemnify, defend and hold Grantor harmless from and against any direct injury, loss, damage or liability (or any third party claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) resulting from its use of the Easement Area, except to the extent attributable to the negligent or intentional act or omission of Grantor or its agent. Grantor agrees to indemnify, defend and hold Grantee harmless from and against any and all direct injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising from the negligence or willful act or omission of Grantor or its agents, except to the extent attributable to the negligent or intentional act or omission of Grantee or its agent.

Except for indemnification pursuant to this Paragraph, neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

7. Insurance. Grantee will carry, at its own cost and expense, the following insurance: (i) commercial general liability insurance with a limit of liability of \$1,000,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (ii) Workers' Compensation Insurance as required by law. Grantee will name the Grantor as an additional insured under its commercial general liability policy. Notwithstanding anything in this Easement, with respect to all loss, damage, or destruction to a party's property (including rental value and business interruption) occurring during the term of this Easement, Grantor and Grantee hereby release and waive all claims (except for willful misconduct) against the other party and its employees, agents, officers, and directors. With respect to property damage, each party hereby waives all rights of subrogation against the other party, but only to the extent that collectible commercial insurance is available for said damage.
8. Assignment. Grantee may, at its discretion and upon written notification to Grantor, assign and delegate all or any portion of its rights and liabilities under this Easement in connection with any assignment of the Lease, or sublease or license of all or a portion of the Leased Premises, without Grantor's consent. Grantee shall be released from its obligations hereunder only with the prior written consent of Grantor.
9. Dominant and Servient Tenements. This Easement is granted for the benefit of the Leased Premises, and is appurtenant to the Leased Premises. The Leased Premises are the dominant tenement and the Property is the servient tenement.
10. Entire Agreement. This Easement constitutes the entire agreement between Grantor and Grantee relating to the above easement. Any prior agreements, promises, negotiations or representations not expressly set forth in this Easement are of no force and effect.
11. Binding Effect. This Easement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of Grantor and Grantee.
12. Amendments. Any modification or other termination of this Easement shall become effective only upon the execution by Grantor and Grantee of a written instrument.
12. Recording. Grantor agrees to execute a Memorandum of this Easement, and any amended Memorandum of Easement reflecting any material modifications to this Easement, which Grantee may record in the office of the County Clerk of San Bernardino County, California.
13. Notices. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

GRANTOR: Director of Public Works, City of Montclair
 Post Office Box 2308
 5111 Benito Street,
 Montclair, California 91763

GRANTEE: Los Angeles SMSA Limited Partnership,
 d/b/a Verizon Wireless
 180 Washington Valley Road
 Bedminster, New Jersey 07921

Attention: Network Real Estate
Site: Montclair

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

IN WITNESS WHEREOF, this Grant of Easement has been executed and delivered as of the day and year first above written.

GRANTOR:

City of Montclair, a municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

GRANTEE:

Los Angeles SMSA Limited Partnership,
dba Verizon Wireless

By: AirTouch Cellular Inc.
Its: General Partner

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT "A"

The legal description of the easement is as follows:

All that certain real property situated in the County of San Bernardino, State of California, described as follows:

PARCEL 1 OF PARCEL MAP NO. 11837, IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 154, PAGES 7 AND 8 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WITHIN THE FOLLOWING DESCRIBED BOUNDARIES:

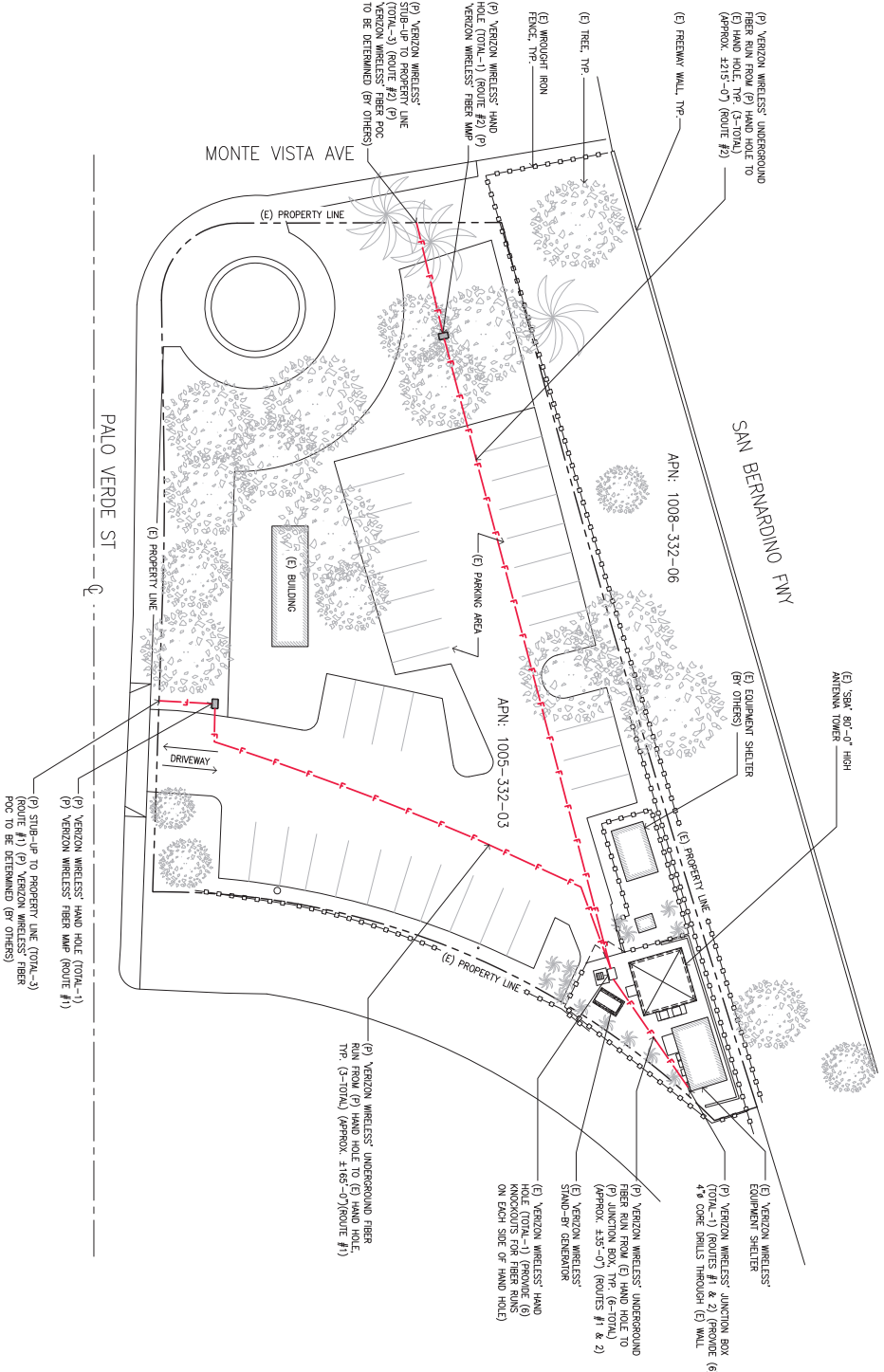
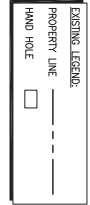
A 12.00 FOOT STRIP OF LAND, LYING 6.00 FEET ON EACH SIDE OF ROUTE #1 AND A 12.00 FOOT STRIP OF LAND, LYING 6.00 FEET ON EACH SIDE OF ROUTE #2, AS INSTALLED BY GRANTEE, LYING WITHIN SAID LAND.

AND AS SHOWN ON THE PLAT ATTACHED HERETO AS EXHIBIT "B" AND MADE A PART HEREOF.

EXCEPT THEREFROM ANY AND ALL OIL, GAS, MINERALS, AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, WITHOUT THE RIGHT OF SURFACE ENTRY, AS MORE PARTICULARLY SET FORTH AND PROVIDED IN THAT CERTAIN DOCUMENT RECORDED FEBRUARY 25, 1969 IN BOOK 7187, PAGE 622 OF OFFICIAL RECORDS.

APN: 1008-332-03 & 1008-332-06

LEASE EXHIBIT



PLAT TO ACCOMPANY LEGAL DESCRIPTION OF RIGHT OF WAY FOR UNDERGROUND FIBER PURPOSES IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

EXHIBIT "B"

NOTE:

- ALL UNDERGROUND FIBER SHALL BE 12'-0" WIDE



<p>MONTECLAIR</p> <p>4936 PALO VERDE ST MONTECLAIR, CA 91763</p> <p>SAN BERNARDINO COUNTY</p>		<p>verizon</p> <p>15505 SAND CANYON AVENUE, D1 IRVINE, CALIFORNIA 92618 949.286.7000</p>		<p>core</p> <p>DEVELOPMENT SERVICES A&E SERVICES 210 W. BAY ST., #201 IRVINE, CA 92614 (714) 725-8484 OR 949.534-4116 WWW.COREA&E.COM</p>		<p>ISSUE STATUS</p> <table border="1"> <thead> <tr> <th>REV.</th> <th>DATE</th> <th>DESCRIPTION</th> <th>BY</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>02/27/18</td> <td>LEASE EXHIBIT</td> <td>CAP</td> </tr> <tr> <td>2</td> <td>05/07/18</td> <td>LEASE EXHIBIT</td> <td>CAP</td> </tr> <tr> <td>3</td> <td>05/24/19</td> <td>LEASE EXHIBIT</td> <td>CAP</td> </tr> <tr> <td>4</td> <td>09/19/19</td> <td>LEASE EXHIBIT</td> <td>CAP</td> </tr> <tr> <td>5</td> <td>03/16/20</td> <td>LEASE EXHIBIT</td> <td>CAP</td> </tr> </tbody> </table>	REV.	DATE	DESCRIPTION	BY	1	02/27/18	LEASE EXHIBIT	CAP	2	05/07/18	LEASE EXHIBIT	CAP	3	05/24/19	LEASE EXHIBIT	CAP	4	09/19/19	LEASE EXHIBIT	CAP	5	03/16/20	LEASE EXHIBIT	CAP
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4	09/19/19	LEASE EXHIBIT	CAP																											
5	03/16/20	LEASE EXHIBIT	CAP																											
<p>SHEET TITLE: LEASE EXHIBIT</p>		<p>LE-1</p>		<p><small>THIS DOCUMENT IS THE PROPERTY OF CORE A&E SERVICES. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF CORE A&E SERVICES.</small></p>																										



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 20, 2020	FILE I.D.:	TRN150
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	3	PREPARER:	N. CASTILLO
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-26 AMENDING AGREEMENT NO. 18-76, A PASSENGER AMENITIES PROGRAM AGREEMENT WITH OMNITRANS		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 20-26 amending Agreement No. 18-76, a Passenger Amenities Program Agreement (PAPA) with Omnitrans.

Omnitrans has bus stops within the City that have some form of amenity. The current PAPA in place provides for the maintenance of these amenities in the exchange for the revenue, including advertising, from said amenities. The proposed amendment simply subjects advertisements installed on the amenities to the current Omnitrans advertising policy.

Proposed Agreement No. 20-26 amending Agreement No. 18-76 with Omnitrans is attached for the City Council's consideration, and the Commercial Advertising Policy is also attached. A copy of Agreement No. 18-76 with Omnitrans is included in the Council's agenda packet.

BACKGROUND: Omnitrans and the City entered into Agreement No. 18-76, a Passenger Amenity Program Agreement (PAPA) dated January 9, 2019, which was approved by the City Council at its August 20, 2018 meeting. In December of 2018, Omnitrans adopted a Commercial Advertising Policy that is applicable to the PAPA. Omnitrans now desires to amend the PAPA deleting Section 3.1.11 and would like to incorporate, by reference, the Advertising Policy in place.

The deleted section 3.1.11 would be replaced with the following language:

Advertising Content: All advertisements installed on the Amenities will comply with the Omnitrans Advertising Policy and Content Guidelines, as may be updated from time to time ("Advertising Policy"), and of which a copy has been provided to the City and is available on file with Omnitrans or online at https://omnitrans.org/wp-content/themes/omnitrans/omni_pdf/Omnitrans_System_Advertising_Policy.pdf.

FISCAL IMPACT: The execution of this amendment has no fiscal impact to the City. Omnitrans is solely responsible for the operations and maintenance of the bus stops owned by the transit agency.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 20-26 amending Agreement No. 18-76, a Passenger Amenities Program Agreement with Omnitrans.

AMENDMENT 1
TO
CITY OF MONTCLAIR PASSENGER
AMENITY PROGRAM AGREEMENT
BY AND BETWEEN
OMNITRANS
AND
CITY OF MONTCLAIR

This Amendment 1, effective _____, 2020 is entered into by and between Omnitrans (“Omnitrans”) and City of Montclair (“City”).

RECITALS

WHEREAS:

- I. Omnitrans and City have entered into City of Montclair Passenger Amenity Program Agreement dated January 9, 2019 (“Agreement”); and
- II. Omnitrans has adopted an Omnitrans System Commercial Advertising Policy and Content Guidelines, effective January 1, 2019 (the “Advertising Policy”); and
- III. The Advertising Policy is applicable to the Agreement, and governs the advertising that may be installed on the Amenities (as that term is defined in the Agreement); and
- IV. Omnitrans and City now desire to amend the Agreement to delete Section 3.1.11, Advertising Content, and to incorporate, by reference, the Advertising Policy in place of the content guidelines in the Agreement.

NOW THEREFORE, Omnitrans and City hereby amend the Agreement as follows:

- I. Delete Section 3.1.11, Advertising Content, in its entirety and replace with the following:

Advertising Content. All advertisements installed on the Amenities will comply with the Omnitrans Advertising Policy and Content Guidelines, as may be updated from time to time (“Advertising Policy”), and of which a copy has been provided to City and is available on file with Omnitrans or online at https://omnitrans.org/wp-content/themes/omnitrans/omni_pdf/Omnitrans_System_Advertising_Policy.pdf.

- II. As hereby amended, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment 1 to be executed on the date written above.

**SIGNATURE PAGE TO AMENDMENT 1 OF CITY OF MONTCLAIR
PASSENGER AMENITY PROGRAM AGREEMENT**

CITY OF MONTCLAIR

By: _____
Javier John Dutrey
Mayor

Dated: _____

OMNITRANS

By: _____
Erin Rogers
Interim CEO/General Manager

Dated: _____

ATTEST

By: _____
Andrea M. Phillips
City Clerk

APPROVED AS TO FORM

By: _____
Diane E. Robbins
City Attorney

APPROVED AS TO FORM

By: _____
A. Haviva Shane
Omnitrans Legal Counsel



OMNITRANS SYSTEM COMMERCIAL ADVERTISING POLICY AND CONTENT GUIDELINES

*Adopted by the Omnitrans Board of Directors December 5, 2018;
Effective Date January 1, 2019*

I. POLICY STATEMENT

Omnitrans' purpose in adopting this Commercial Advertising Policy and Content Guidelines ("Policy") is to promote transit ridership in a safe environment for its riders. With any advertising, Omnitrans seeks to maintain government neutrality, avoid any content that disrupts the safe enjoyment of public transit, respect First Amendment rights in accordance with established law, and maximize advertising revenues.

Omnitrans allows for advertising on its transit vehicles, shelters and stations to generate revenue for the agency in consideration of applicable laws and regulations. Omnitrans' assets with opportunities for revenue advertising include, but are not limited to, bus, paratransit and rail vehicles, shelters and stations, and the San Bernardino Transit Center.

Omnitrans may utilize a contractor to handle the sales and administration of Omnitrans' transit vehicle, shelter and stations advertising program. Any contractor is selected through a competitive procurement process and responsibilities may include soliciting, placing, administering and managing advertisements on Omnitrans' assets in accordance with applicable laws, regulations and Omnitrans policies and procedures.

Non-commercial advertisements will not be accepted unless such advertisements are considered informational material and are in compliance with the guidelines below. Omnitrans expressly reserves its proprietary right to display notices and advertisements relating to its transit operations, and transit operations of related public entities.

II. GUIDELINES

Generally, Omnitrans requires that any contractor adhere to the following guidelines:

1. Advertisements shall be of a reputable character, shall conform to recognized business standards and shall not conflict with the laws of the United States, or any state or political subdivision thereof having jurisdiction over Omnitrans or the rules and regulations of any arm, branch or agency of any such governmental bodies.
2. Advertisements objectionable to Omnitrans shall, at the request of the Project Manager, be expeditiously removed by the contractor, or if warranted be immediately removed by Omnitrans, and, after removal by Omnitrans' staff, written notice of removal shall be conveyed to contractor.
3. Contractor shall remove expired or obsolete ads within twenty-one (21) days of expiration or ten (10) days of notification by Omnitrans and at contractor's sole expense and liability.



A. Permitted Advertising Content

The following classes of advertising are authorized on Omnitrans assets subject to final authorization by Omnitrans or a designated contractor:

1. Commercial and Promotional Advertising. Advertisements that promote or solicit the lawful sale, rental, distribution or availability of goods, services, food, entertainment, events, programs, transactions, donations, products or property (real or personal) for lawful commercial or noncommercial purposes or more generally promotes an entity that lawfully engages in such activities.
2. Governmental Advertising. Notices or messages from government entities, meaning public entities specifically created by government action and recognized as public agencies under California law, that advance specific government purposes.
3. Public Service Announcements. Announcements which are sponsored by either a government entity or a nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which are directed to the general public or a significant segment of the public and relate to:
 - a. Prevention or treatment of illnesses;
 - b. Promotion of safety or personal well-being;
 - c. Education or training;
 - d. Art or culture;
 - e. Provision of children and family services;
 - f. Solicitation by broad-based contribution campaigns which provide funds to multiple charitable organizations; or
 - g. Provision of services and programs that provide support to low income citizens, senior citizens and people with disabilities.

B. Prohibited Advertising Content:

The following classes of advertising are prohibited on Omnitrans assets:

1. False, Misleading, or Deceptive Commercial Speech. The advertisement proposes a commercial transaction, and the advertisement or information contained in the advertisement is false, misleading, or deceptive.
2. Libelous Speech, Copyright Infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject Omnitrans to litigation.
3. Unlawful Goods or Services. The advertisement or material contained in it, promotes unlawful or illegal goods, services, or activities.
4. Endorsement. The advertisement or any material contained in it, implies or declares an endorsement by Omnitrans, its Directors, management, or employees of any service, product, or point of view without prior written authorization from Omnitrans.
5. Prurient Interest. The advertisement contains material that describes, depicts, or represents sexual activities, or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults. For purposes of these guidelines, the term "minor" shall have the meaning contained in California Penal Code Section 313.
6. "Adult" – Oriented Goods or Services. The advertisement promotes or encourages or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans

or other materials which are identifiable with, films rated “X” or “NC – 17,” adult book stores, adult video telephone services, adult internet sides, and escort services.

7. Obscenity or Nudity. The advertisement contains obscene materials or images of nudity. For purposes of these Guidelines, the term “obscene matter” shall have the meaning set forth in the California Penal Code Section 311.
8. Unlawful and Detrimental Conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities, and promotes behavior or activities which are detrimental to the maintenance and safe operations of Omnitrans.
9. Harmful or Disruptive to Public Transit Services. The advertisement contains material that is so objectionable that a reasonably prudent person, knowledgeable of Omnitrans’ ridership, and using prevailing community standards, would believe that it is reasonably foreseeable that the material will result in harm to, disruption of or interference with the provision by Omnitrans of public transit services.
10. Violence. The advertisement either (a) contains images or descriptions of graphic violence, including, but not limited to, the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal; or (b) the advertisement, or any material contained in it, incites or encourages, or appears to incite or encourage violence or violent behavior.
11. Firearms. The advertisement either (a) contains an image of a firearm in the foreground of the main visual, or (b) contains image(s) of firearms that occupy 15% or more of the overall advertisement.
12. Profanity. The advertisement contains words recognized by the community as vulgar indecent or profane for display in a public setting that includes minors.
13. Alcohol/Tobacco/Smoking/Marijuana. The advertisement promotes the use of alcohol, tobacco, smoking and/or marijuana, or related products.
14. Graffiti. The advertisement contains graphics or language that promotes, resembles, or otherwise encourages graffiti or vandalism.
15. Graphic Images. The advertisement contains graphic images which impair government neutrality, or the safe enjoyment of public transit including, but not limited to, the depiction of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement.
16. Political Information. The advertisement contains political information including, but not limited to, candidates running for elected office, local or national controversial subjects, or subjects not in accordance with the statutes, ordinances, and court decisions pertaining to the Omnitrans service area. This includes messages that are political in nature including, but not limited to, messages of political advocacy, that support or oppose any candidate or referendum, or that feature any current political office holder or candidate for public office, or take positions on issues of public debate.
17. Religious Information. The advertisement contains direct or indirect reference to religion, or to any religion, or to any deity or deities, or which includes the existence, nonexistence or other characteristics of any deity or deities, or to any religious creed, denomination, belief, tenet, cause or issue relating to (including opposing or questioning) any religion. This prohibition shall include the depiction of text, symbols, or images commonly associated with any religion or with any deity or deities, or any religious creed, denomination, belief, tenet, cause or issue relating to (including opposing or questioning) any religion.



C. Omnitrans' Rights

The Omnitrans Board reserves the right to amend this Policy and at any time. Further, Omnitrans may review any advertising content to determine conformance with these guidelines. Omnitrans reserves the right to reject any advertising content submitted for display on its properties, and/or to order the removal of any advertising posted on its properties for failure to comply with this Policy. Decisions regarding the rejection or removal of advertising are made by the Director of Marketing or his or her designee based upon the criteria in this Policy.



CITY COUNCIL AGENDA REPORT

DATE:	APRIL 20, 2020	FILE I.D.:	MPL500
SECTION:	CONSENT - AGREEMENTS	DEPT.:	CITY MGR.
ITEM NO.:	4	PREPARER:	M. STAATS
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-27, THE FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT NO. 17-76 WITH 5060 MONTCLAIR PLAZA LANE OWNER, LLC RELATED TO COSTS ASSOCIATED WITH THE MONTCLAIR PLACE DISTRICT SPECIFIC PLAN		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 20-27, the first amendment to reimbursement Agreement No. 17-76 with 5060 Montclair Plaza Lane owner, LLC related to costs associated with the Montclair Place District Specific Plan. Costs for consulting services that are incurred by the City related to development of the Montclair Place District Specific Plan are subject to reimbursement pursuant to Reimbursement Agreement No. 17-76 with 5060 Montclair Plaza Lane Owner, LLC (CIM Group).

Initially, three consulting firms were identified in Reimbursement Agreement No. 17-76 to provide legal, planning and design, and environmental services related to development of the Montclair Place District Specific Plan. Reimbursement Agreement No. 17-76 presumed that additional professional consulting services would be necessary in the future to complete the Specific Plan.

Staff has determined that the professional consulting services of David Evans and Associates, Inc., are necessary for analyses related to the sewer system in the context of the Montclair Place District Specific Plan.

As such, staff is proposing approval of Agreement No. 20-27, which would amend Reimbursement Agreement No. 17-76 to include the cost of services provided by David Evans and Associates, Inc., related to analyses of the sewer system for the Montclair Place District Specific Plan.

A copy of proposed Agreement No. 20-27 is attached for City Council consideration. Reimbursement Agreement No. 17-76 is also attached in the agenda packet for City Council reference.

BACKGROUND: The City and 5060 Montclair Plaza Lane Owner, LLC executed Reimbursement Agreement No. 17-76 on January 8, 2018. Through the Reimbursement Agreement, the City is reimbursed for professional consulting services associated with preparation of a Specific Plan for the Montclair Place area. The proposed Specific Plan includes the area north of the 1-10 Freeway and south of Moreno Street between Monte Vista and Central Avenues.

As indicated above, Reimbursement Agreement No. 17-76 originally identified the necessity for three consulting firms to provide legal, planning and design, and environmental services. Reimbursement Agreement No. 17-76 presumed that additional professional consulting services would be necessary in the future to complete the Specific Plan.

Staff has determined that the professional consulting services of David Evans and Associates, Inc., are necessary for analyses related to sewer system capacity in the context of the Montclair Place District Specific Plan.

Under the authority provided to the City Manager, a proposal for professional consulting services was executed with David Evans and Associates Inc., so the sewer analyses could promptly begin without further delay to the schedule of the Specific Plan.

Proposed Agreement No. 20-27 would add the costs of professional consulting services to be performed by David Evans and Associates Inc., to Reimbursement Agreement No. 17-76. In addition, proposed Agreement No. 20-27 restates the total amount to be reimbursed to the City which includes the amount to be paid to David Evans and Associates Inc., and includes costs associated with additional work previously approved for environmental and design and planning services.

The work to be performed by David Evans and Associates Inc., would utilize the existing City Sewer Master Plan and generate additional conditions for future scenarios reflecting implementation of the proposed Montclair Place District Specific Plan. The scenarios would include “peak/worst case” conditions for the sewer system over a 24-hour period. Results of the future scenarios would be compared to existing sewer capacity and identify any capacity issues along with corresponding required pipe sizing to correct any future deficiencies. David Evans and Associates Inc., prepared the City’s Sewer Master Plan. As the firm most familiar with the City’s sewer system, staff recommended the use of David Evans and Associates Inc., to perform the necessary analyses for the Montclair Place District Specific Plan.

FISCAL IMPACT: Approval of Agreement No. 20-27 by the City Council would create no fiscal impact for the City. The City would be reimbursed by 5060 Plaza Lane Owner, LLC for costs associated with the professional consulting services to be provided by David Evans and Associates Inc. The cost for the work to be performed by David Evans and Associates Inc., is estimated to be roughly \$7,500 excluding expenses. Expenses are not anticipated to exceed \$200.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 20-27, the First Amendment to Agreement No. 17-76 with 5060 Montclair Plaza Lane Owner, LLC related to costs associated with the Montclair Place District Specific Plan.

AGREEMENT NO. 20-27

FIRST AMENDMENT TO AGREEMENT NO. 17-76

THIS FIRST AMENDMENT TO AGREEMENT NO. 17-76 (this “First Amendment”) is entered into as of April 6, 2020, by and between the City of Montclair, a Municipal Corporation (“City”) and Montclair Plaza Lane Owner, LLC, a Delaware limited liability company (“Applicant”). In consideration of the mutual covenants and conditions set forth in Agreement No. 17-76 and herein, the parties agree as follows:

RECITALS

A. The City and Applicant executed a Reimbursement Agreement on January 8, 2018 regarding reimbursement of fees incurred by the City related to the professional services necessary to develop the Montclair Place District Specific Plan.

B. The City retained the services of three professional consulting firms (“Consultants”) to provide the needed expertise and information necessary for the City’s review process concerning the proposed Project.

C. The City and Applicant now propose to document previously approved reimbursable costs for additional consultant services into Agreement No. 17-76 and to include the services of an additional Consultant, David Evans and Associates, Inc., to provide expertise and information pursuant to Section 4 of the Agreement.

NOW THEREFORE, the City and Applicant hereby agree as follows:

1. Section 4 of Agreement No. 17-76 shall be amended to read as follows:

4. City's Selection of Consultants. The City has retained the following as Consultants pursuant to this Agreement, but may retain additional Consultants or sub-consultants pursuant to the terms of this Agreement: (1) Dudek & Associates, Inc. (environmental and traffic) including any sub-consultants determined by Dudek & Associates, Inc. and City to be necessary; (2) Moule & Polyzoides Architects (planning and design); (3) Best Best & Krieger LLP (legal services) and (4) David Evans and Associates, Inc. (sewer capacity analyses). The City will provide Applicant with written notice of any additional Consultants or sub-consultants engaged within ten (10) days of that engagement; provided, however, any engagement that would result in a Change in Scope (defined in Section 5) shall be subject to the terms and conditions of Section 5.

2. Section 5.1 of Agreement No. 17-76 shall be amended to read as follows:

5.1 Estimated Costs; Deposit Account: The City has reviewed the scope of work required and the estimated aggregated initial costs for all consultant work were \$983,982. In addition to the initial costs, the City and Applicant have approved supplemental services by Dudek in the amount of \$128,410 and by Moule & Polyzoides in the amount of \$10,000. The consultant services to be provided by David Evans and Associates, Inc. are estimated to be no more than \$7,700. Total estimated costs for consultant services are estimated at One Million One Hundred Thirty Thousand and Ninety-Two Dollars (\$1,130,092) (the "**Estimated Costs**"). Notwithstanding the details provided for the Estimated Costs, the Estimated Costs also include Costs expended by the City for the Project that were incurred prior to the submittal of a formal application, and a portion of the Estimated Costs will be used to reimburse the City for its previous Costs. Within forty-five (45) calendar days after the execution of this Agreement, the Applicant shall submit a deposit in the amount of One Hundred Thousand Fifty Dollars (\$150,000) to cover the Estimated Costs, which amount the City shall separately account for in a Project deposit account (the "**Deposit Account**").

3. Exhibit B-Scope of Services for Consultants and Exhibit C-Estimated Costs for Each Consultant are hereby amended and attached to this First Amendment to Agreement No. 17-76.

4. Except as provided above, all other terms of Agreement No. 17-76 shall remain in full force and effect as written. All terms used herein and not defined but defined in Agreement No. 17-76 shall have the meaning given to such terms therein.

5. This First Amendment shall become effective as of April 6, 2020.

IN WITNESS WHEREOF, the City and Consultant have executed this First Amendment as of the date set forth above.

CITY
CITY OF MONTCLAIR,
a Municipal Corporation

By: _____
Name: Javier "John" Dutrey
Its: Mayor
Date: _____

ATTEST:

Andrea M. Phillips
City Clerk

APPROVED AS TO FORM:

Diane E. Robbins
City Attorney

APPLICANT
5060 MONTCLAIR PLAZA LANE
OWNER, LLC
a Delaware Limited Liability
Company

By: _____
Name: _____
Its: _____
Date: _____

EXHIBIT B

SCOPE OF SERVICE FOR CONSULTANTS

DUDEK

Any and all environmental and traffic engineering services needed for the Project, including CEQA compliance, and all needed experts or sub-consultants as described in the Scope of Work submitted by Dudek & Associates. (See Exhibit B-1)

MOULE & POLYZOIDES ARCHITECTS

Any and all architectural other design services needed for the Project, including but not limited to needed experts or sub-consultants. Any and all land use planning services related to the development of the specific plan document, as described in the Scope of Work submitted by Moule & Polyzoides Architects. (See Exhibit B-2)

BEST BEST KRIEGER LLP

Any and all legal services as needed for the Project, including, but not limited to, review of the environmental documents, specific plan and related documents and any City approval documents needed for the Project.

DAVID EVANS AND ASSOCIATES LLC

Provide any and all analyses, reports or studies of the City Sewer Master Plan and develop peak/worst case scenarios for the sewer system given project proposal. Evaluate sewer generation levels where sewer capacity would become deficient compared to future scenario models. Provide project management and administrative functions related to sewer analyses. (See Exhibit B-3)

OTHER CONSULTANTS

Any and all other consultants determined by the City to be reasonably necessary for its review and processing of the Project application(s).

EXHIBIT C

ESTIMATES COSTS FOR EACH CONSULTANT

DUDEK

Dudek & Associates' current published rates for an initial total estimated amount of \$267,982.54. Amendments to the scope of work are estimated at \$128,410.00. Total estimated amount of consultant agreement is \$396,392.54.

MOULE & POLYZOIDES ARCHITECTS

Moule & Polyzoides Architects' current published rates for an initial total estimated amount of \$543,000. An addition to the scope of work is estimated at \$10,000. Total estimated amount of consultant agreement is \$553,000.

BEST BEST KRIEGER LLP

Standard private rates per attorney (minus 10% discount) for a total estimated amount of \$173,000.

DAVID EVANS AND ASSOCIATES LLP

David Evans and Associates rate for the sewer system analyses is a fixed fee of \$7,500 not including expenses. Expenses are not anticipated to exceed \$200.00.

OTHER CONSULTANTS

To be determined.

AUTHORIZATION FOR PROFESSIONAL SERVICES

CLIENT: City of Montclair DATE: 04/06/2020

ADDRESS: 5111 Benito Street, Montclair, CA 91763

The signing of this Authorization (together with the attached Standard Provisions and all attachments, the "Agreement") by Client and David Evans and Associates, Inc. ("DEA", together with Client, the "Parties") authorizes DEA to carry out and complete the services as described below in consideration of the mutual covenants set forth herein.

1. **PROJECT:** Client intends to engage in the following project (the "Project"):

Montclair Place District Specific Plan - Sewer Analysis

2. **SCOPE OF SERVICES:** DEA will perform the following services (the "Services") related to the Project (the "Scope of Services"), as described below or in the attached **Attachment A, Scope of Services**:

See Attachment A - Scope of Services

3. **FEE FOR SERVICES:** DEA's fee for performing the Scope of Services is as indicated below:

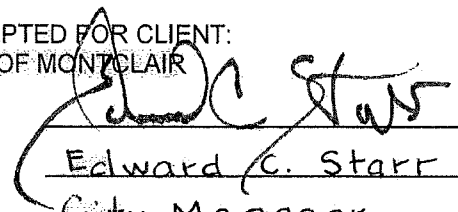
- Client will pay a retainer amount of \$ (the "Retainer") upon execution of the Agreement. The Retainer will be used to pay the fees due under the Agreement, as such fees become due. Each month Client will pay the new estimated amount to cover the Service to be performed the following month.
- A fixed fee of \$.
- A fee amount based on the **Attachment B - Fee for Services**.
- Other: .

4. **ATTACHMENTS:** The following attached documents are incorporated ad by this reference made part of this Agreement:

- Standard Provisions
- Attachment A - Scope of Services
- Attachment B - Fee for Services

Client and DEA acknowledge that they are in agreement with the terms and conditions as set forth in this Agreement and that modification to this Agreement may only be made by written amendment duly executed by both Parties.

ACCEPTED FOR CLIENT:
CITY OF MONTCLAIR

BY 

NAME Edward C. Starr

TITLE City Manager

DATE 04/06/20

ACCEPTED FOR DEA:
DAVID EVANS AND ASSOCIATES, INC.

BY Gavin Powell

NAME Gavin Powell

TITLE Project Manager / Associate

DATE 04/06/2020

STANDARD PROVISIONS

These Standard Provisions for Small Projects are entered into and agreed upon between Client and DEA.

- S-1. The Services provided by DEA under this Agreement will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). Any references in this Agreement to "defects", "errors", "noncompliance", "nonconformance" or "deficiency" refers to the Services failing to meet the Standard of Care. DEA makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with the Services.
- S-2. The unbilled portion of the Services will be invoiced on or about the 10th day of the month for the portion of the Services completed as of the end of the prior month. Client will pay the invoiced amounts within 30 days of the date on the invoice, after which time payment will be considered delinquent ("Delinquent Payment"). Client will pay monthly late charges on all Delinquent Payments at a rate of 1.5% per month (or the maximum rate allowed by law, if less) for each month from the date of invoice. Payments will be credited first to interest and then to principal. DEA may, at Client's sole risk and without liability or legal exposure to DEA or its subconsultants, suspend all Services until all Delinquent Payments have been remedied. If a Delinquent Payment remains outstanding for 60 days or more, Client will be considered in material breach of this Agreement.
- S-3. DEA retains ownership, whether or not the Project is completed, and all right, title to and interest in all reports, plans, specifications, field data and notes, and other documents, whether in electronic media form or otherwise, including but not limited to software, e-mail or internet transfers whether prepared by DEA or DEA's subconsultants, are instruments of professional service ("Instruments of Service") and are not products. In a discrepancy between a hardcopy document and electronic media, the hardcopy document will govern. Client agrees that any copies provided to Client by DEA are only for convenience and are not suitable for reuse by Client or others. Upon execution of this Agreement, DEA grants to the Client a nonexclusive license (the "License") to use the final Instruments of Service solely and exclusively for the Project so long as the Client substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The License permits the Client to authorize the Contractors, material or equipment suppliers, Client's consultants and other contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services related to the Project. If the Client is found to be in violation of this Agreement, the License will automatically terminate. Client will not assign, delegate, sublicense, pledge or otherwise transfer the License to another party without the prior written agreement of DEA. Any unauthorized use of the Instruments of Service will be at Client's sole risk and without liability to DEA.
- S-4. At DEA's request, Client will remove all title blocks with the name or other company identifiers of DEA, including names of employees and other professionals. Client acknowledges that incomplete Instruments of Service are not reviewed for errors or omissions, and are not appropriate for further use.
- S-5. The use of the term DEA, Client or Party in the Standard Provisions, also refers to each Party's respective officers, directors, employees, affiliated companies, agents, volunteers and subcontractors. Allocations of risk and indemnities in this Agreement are business understandings between the Parties and will apply to all the different theories of recovery, including breach of contract or warranty, tort, including, without limitation, negligence, strict or statutory liability, or any other cause of action. Client will not seek damages in excess of these limitations indirectly through suits with other parties who may join DEA as a third-party defendant.
- S-6. To the fullest extent permitted by law, each Party (the "Indemnifying Party") will indemnify the other party (the "Indemnified Party") from any claims, damages, losses, costs and expenses (including reasonable attorneys' fees and costs of appeals), but only to the extent arising out of the negligent acts or omissions or willful misconduct of the Indemnifying Party. The Indemnified Party must give reasonable notice to the Indemnifying Party of any claim, and must not act or fail to act in any manner that would compromise the Indemnifying Party's position with respect to resolution or defense of the claim. The Parties expressly exclude any obligation to defend in an action to which indemnification obligations may apply.
- Without limiting the forgoing, this indemnification also applies to third party claims including, but not limited to, injuries to Client's employees. It is further agreed that the applicable state workers compensation immunity, including but not limited to, Title 51 of the Rev. Code of Washington ("RCW") and RCW § 4.24.115 is expressly waived by Client solely for the purposes of this indemnification.
- S-7. To the fullest extent permitted by law, each Party waives against each other any and all claims for or entitlement to special, incidental, indirect, punitive or consequential damages arising out of, resulting from, or in any way related to the Project.
- S-8. **In recognition of the relative risks and benefits of the Project to both Client and DEA, the risks have been allocated such that Client agrees, to the fullest extent permitted by law, to limit the liability of DEA and its subconsultants to Client and to all Contractors on any Task Order for any and all claims, losses, costs, damages or expenses so that the total aggregate liability of DEA and its subconsultants to all those named will not exceed \$100,000. These claims and causes include, but are not limited to, negligence, professional malpractice, strict liability, breach of contract, or warranty.**
- DEA and Client have carefully considered and actually negotiated the allocation of risk, and expressly consent to the allocation of risk listed above.**
- S-9. Any claim brought by Client against DEA must be filed no later than one (1) year after the date of substantial completion of the Services performed pursuant to the Agreement or the expiration of the appropriate statute of limitations applicable to the Services performed pursuant to the Agreement, whichever is earlier.
- S-10. DEA reserve all rights under state lien statutes. DEA and Client are not obligated to comply with any mediation, arbitration or claims procedures prior to filing a lien. The parties agree that the choice of law and jurisdiction for such action will be with the state in which the work is or was performed.
- S-11. This Agreement gives no rights or benefits to anyone other than Client and DEA and has no third-party beneficiaries.
- S-12. Neither DEA nor Client will transfer, sublet or assign any rights under or interest in this Agreement (including, but not limited to, rights of action, monies that are due or monies that may be due) without the prior written consent of the other party. DEA may, however, employ any other party or entity it deems necessary or proper for any part of the services required to be performed by it under the terms of this Agreement.

¹ Including but not limited to, Ariz. Rev. Stat. § 23-901 to 1104; Cal. Labor Code § 3200-6208; Colo. Rev. Stat. § 8-41; Or. Rev. Stat. § 656; Idaho Code § 72; and New York W.K.C. Law § 1-11.

Deliverables

Results of the analysis will be prepared as a stand-alone report and include the following elements:

1. Project description
2. Analysis methodology
3. Summary of analysis
4. Conclusions of analysis and recommendation
5. Appendix items to include:
 - a. Vicinity Map
 - b. Exhibit depicting downstream impacts
 - c. Hydraulic calculations
 - d. Cost comparison summary

ATTACHMENT A
SCOPE OF SERVICES

Montclair Place District SP – Sewer Analysis

The following items describe the Scope of Services that DEA will perform for Client under this Agreement.

Task 1: Calculate Wastewater Generation

DEA will review the existing City of Montclair Sewer Master Plan (SMP) to determine currently modeled wastewater generation and diurnal patterns associated with the existing mall. In addition, based on applying duty factors consistent with the current SMP, wastewater generation rates will be determined for the proposed Montclair Place SP. Dwelling units and retail square footage will be based on the Montclair Place Development Yield Study dated 11/21/2019.

Task 2: Conduct Sewer Analysis/Modification to the Current Sewer Master Plan (SMP) Scenario's

DEA will take the current SMP and generate an additional scenario for the "Future" condition reflecting the implementation of the Montclair Place SP. This scenario will only change the Montclair Place SP property within the model, the remaining portions of the model will remain as-is. An evaluation will compare the following results:

- Existing Condition (as currently modeled in the SMP)
- Future Condition (as currently modeled in the SMP)
- Existing Condition revised to reflect the proposed Montclair Place SP generation rates
- Future Condition revised to reflect the proposed Montclair Place SP generation rates

For these scenarios, the "peak/worst case" conditions for the sewer system over a 24-hour period will be identified. Results of these scenarios will be compared and any sewer capacity deficiencies will be identified along with corresponding required pipe sizing to correct the deficiency. Findings will be evaluated to determine whether revising proposed point-of-connections (POC's) or diverting sewer flows within the Montclair Place SP would improve overall system performance.

Upon determination of a recommended flow distribution, a cost comparison will be performed based on the corresponding recommended pipe size upgrades. Unit costs will be assigned consistent with the existing SMP and presented for the City and CMI Group's use in determining appropriate development impact / fair share costs to implement the required upgrades.

Task 3: Incremental/Proportional Assessment

As a separate analysis, DEA will evaluate at what sewer generation levels sewer capacity becomes deficient when compared to the current Future Condition scenario model. This analysis will identify a dwelling unit count and retail square footage that would trigger implementation of system upgrades. The dwelling unit count and retail square footage will be proportional in percentage to the ultimate build-out percentage of the Montclair Place SP. For the purpose of this agreement, we are proposing three (3) different "phases" of upgrade implementation.

Task 4: Project Management/Admin, Meetings, Coordination, and Miscellaneous Consulting Services

This task includes providing project management/administration services, attendance at project meetings and/or conference calls, project coordination efforts, and miscellaneous consulting services for a project of this size and duration. It is assumed the project will be completed within two (2) weeks of being provided a notice to proceed.

Examples of services that may be included under this task include: Contract administration and invoicing; Coordination with Client, project team, and City; participation in project meetings and conference calls; miscellaneous exhibit preparation (if requested by Client); responding to Client requests for drawings, plans, and reports; other project related coordination and support efforts not specifically included within the Contracted scope of services.

This task is based on providing a maximum of eight (8) hours of Project Management/Administration, Meetings (including preparation and travel time), Coordination and Miscellaneous Consulting Services. Additional hours will be subject to additional compensation upon approval by Client.

**ATTACHMENT B
FEE FOR SERVICES**

Montclair Place SP – Sewer Analysis

Client will pay DEA a fixed fee of \$7,500 (Seven Thousand Five Hundred dollars), which does not include expenses, for the Services. The fee, if any, for changes will be added by addendum.

"Expenses" may include, but are not limited to, costs for transportation and subsistence incidental to same; outside photographic or reproduction services; equipment rental; fees for permits, filings, applications; services provided by professional firms, outside consultants, and testing firms; postage and freight; etc.

Expenses will be invoiced on a Time & Materials basis as they are incurred. Expenses are not included within the fixed fee identified above. It is estimated that for a project of this size and scope that expenses will be on the order of \$100 to \$200.



CITY COUNCIL AGENDA REPORT

DATE: APRIL 20, 2020 **FILE I.D.:** STG250/FIN250-A
SECTION: CONSENT - RESOLUTIONS **DEPT.:** CITY MGR.
ITEM NO.: 1 **PREPARER:** J. KULBECK
SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 20-3264 DESIGNATING AUTHORIZED AGENTS OF THE CITY OF MONTCLAIR FOR CALIFORNIA OFFICE OF EMERGENCY SERVICES (CAL OES) PUBLIC ASSISTANCE GRANTS

CONSIDER AUTHORIZING SUBMITTAL OF THE APPROVED CAL OES FORM 130 TO THE STATE

REASON FOR CONSIDERATION: On March 16, 2020, the City Council approved Resolution No. 20-3263 declaring that a local public health emergency exists in the City of Montclair, and by that Resolution the City Council started the processes required to receive state and federal funding assistance for expenses related to the COVID-19 pandemic.

BACKGROUND: The Cal OES Designation of Applicant’s Agent Resolution (Cal OES Form 130) designates the agents authorized to submit applications for the purpose of obtaining federal financial assistance, under (1) the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as administered by the Federal Emergency Management Agency (FEMA); and/or (2) state financial assistance made available under the California Disaster Assistance Act, as administered by the Governor’s Office of Emergency Service (Cal OES). A Cal OES Form 130 is required of all applicants to be eligible to receive funding. Staff recommends that the form designate agents by title, instead of specific names, and be effective for all open and future disasters declared by the state or federal government for up to three years following the date of approval by City Council so as to expedite processing of requests in the future.

FISCAL IMPACT: Adoption of the resolution will permit the City to obtain financial assistance for all open and future disasters declared by the state or federal government up to three (3) years following the date of approval.

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

1. Adopt Resolution No. 20-3264 designating authorized agents of the City of Montclair for California Governor’s Office of Emergency Services (Cal OES) Public Assistance Grants
2. Authorize submittal of the approved Cal OES Form 130 to the State.

RESOLUTION NO. 20-3264

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR DESIGNATING AUTHORIZED AGENTS FOR CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES (CAL OES) PUBLIC ASSISTANCE GRANTS

WHEREAS, in the event of an emergency declaration by the President of the United States or the Governor of the State of California; and

WHEREAS, federal financial assistance is made available under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 and administered by the Federal Emergency Management Agency (FEMA), and state financial assistance is made available under the California Disaster Assistance Act and administered by the Governor's Office of Emergency Service (Cal OES); and

WHEREAS, in order to be eligible for public assistance, the City of Montclair must designate the appropriate application agents, titles only, to engage with FEMA or Cal OES by resolution and file Cal OES Form 130 with the Governor's Office of Emergency Services,

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair designate the following agents, titles only, to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services as follows:

- 1. City Manager
- 2. Police Chief
- 3. Finance Manager

This is a universal resolution and is effective for all open and future disasters up to three (3) years following the date of approval. The City Clerk is authorized to complete any forms and undertake any other actions required to implement this resolution.

APPROVED AND ADOPTED this XX day of XX, 2020.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 20-3264 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, 2020, and that it was adopted by the following vote, to-wit:

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

Andrea M. Phillips
City Clerk

**DESIGNATION OF APPLICANT'S AGENT RESOLUTION
FOR NON-STATE AGENCIES**

BE IT RESOLVED BY THE City Council OF THE City of Montclair
(Governing Body) (Name of Applicant)

THAT City Manager, OR
(Title of Authorized Agent)

Police Chief, OR
(Title of Authorized Agent)

Finance Manager
(Title of Authorized Agent)

is hereby authorized to execute for and on behalf of the City of Montclair, a public entity
(Name of Applicant)
established under the laws of the State of California, this application and to file it with the California Governor's Office of Emergency Services for the purpose of obtaining certain federal financial assistance under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

THAT the City of Montclair, a public entity established under the laws of the State of California,
(Name of Applicant)
hereby authorizes its agent(s) to provide to the Governor's Office of Emergency Services for all matters pertaining to such state disaster assistance the assurances and agreements required.

Please check the appropriate box below:

- This is a universal resolution and is effective for all open and future disasters up to three (3) years following the date of approval below.
- This is a disaster specific resolution and is effective for only disaster number(s) _____

Passed and approved this 20th day of April, 2020

(Name and Title of Governing Body Representative)

(Name and Title of Governing Body Representative)

(Name and Title of Governing Body Representative)

CERTIFICATION

I, Andrea M. Phillips, duly appointed and City Clerk of
(Name) (Title)

City of Montclair, do hereby certify that the above is a true and correct copy of a
(Name of Applicant)

Resolution passed and approved by the City Council of the City of Montclair
(Governing Body) (Name of Applicant)

on the 20th day of April, 2020.

(Signature)

(Title)

Cal OES Form 130 Instructions

A Designation of Applicant's Agent Resolution for Non-State Agencies is required of all Applicants to be eligible to receive funding. A new resolution must be submitted if a previously submitted Resolution is older than three (3) years from the last date of approval, is invalid or has not been submitted.

When completing the Cal OES Form 130, Applicants should fill in the blanks on page 1. The blanks are to be filled in as follows:

Resolution Section:

Governing Body: This is the group responsible for appointing and approving the Authorized Agents.
Examples include: Board of Directors, City Council, Board of Supervisors, Board of Education, etc.

Name of Applicant: The public entity established under the laws of the State of California. Examples include: School District, Office of Education, City, County or Non-profit agency that has applied for the grant, such as: City of San Diego, Sacramento County, Burbank Unified School District, Napa County Office of Education, University Southern California.

Authorized Agent: These are the individuals that are authorized by the Governing Body to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the Applicant. There are two ways of completing this section:

1. **Titles Only:** If the Governing Body so chooses, the titles of the Authorized Agents would be entered here, not their names. This allows the document to remain valid (for 3 years) if an Authorized Agent leaves the position and is replaced by another individual in the same title. If "Titles Only" is the chosen method, this document must be accompanied by a cover letter naming the Authorized Agents by name and title. This cover letter can be completed by any authorized person within the agency and does not require the Governing Body's signature.
2. **Names and Titles:** If the Governing Body so chooses, the names **and** titles of the Authorized Agents would be listed. A new Cal OES Form 130 will be required if any of the Authorized Agents are replaced, leave the position listed on the document or their title changes.

Governing Body Representative: These are the names and titles of the approving Board Members.
Examples include: Chairman of the Board, Director, Superintendent, etc. The names and titles **cannot** be one of the designated Authorized Agents, and a minimum of two or more approving board members need to be listed.

Certification Section:

Name and Title: This is the individual that was in attendance and recorded the Resolution creation and approval.
Examples include: City Clerk, Secretary to the Board of Directors, County Clerk, etc. This person **cannot** be one of the designated Authorized Agents or Approving Board Member (if a person holds two positions such as City Manager and Secretary to the Board and the City Manager is to be listed as an Authorized Agent, then the same person holding the Secretary position would sign the document as Secretary to the Board (not City Manager) to eliminate "Self Certification.")