

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/93717150550>

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: 937 - 1715 - 0550

**ALL PARTICIPANTS WILL BE MUTED AUTOMATICALLY UPON ENTERING THE MEETING.
THOSE WHO WISH TO SPEAK WILL BE UNMUTED 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 toggle mute/unmute, 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 the phone's 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, May 4, 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. San Bernardino County COVID-19 Update by Fourth District Supervisor and Chair
of the Board of Supervisors Curt Hagman

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. Special Joint Meeting — December 16, 2019 [CC/PC]
- 2. Regular Joint Meeting — April 20, 2020 [CC/SA/MHC/MHA/MCF]

B. Administrative Reports

- 1. Consider Authorizing a \$1,080 Appropriation from the Prop 30/AB 109 Fund for the Annual Usage Fee of Five Electronic Stakeout Tracker Systems [CC] 5
- 2. Consider Extending the Terms of Community Activities Commissioners Padilla, Hernandez, and Wells by One Year Through June 30, 2021 [CC] 6
- 3. Consider Approval of Warrant Register & Payroll Documentation [CC] 8

C. Agreements

- 1. Consider Approval of Agreement No. 20-15 with West Coast Arborists for Tree Maintenance Services [CC] 9
- 2. Consider Approval of Agreement No. 20-24 with Monte Vista Water District for the Use of Recycled Water Associated with the Central Avenue Street Rehabilitation Project [CC] 30
- 3. Consider Approval of Agreement No. 20-28 with LSA & Associates, Inc., for Consulting Services Related to a Peer Review of Technical Reports Associated with the Environmental Impact Report Prepared for the Proposed Mission Boulevard and Ramona Avenue Business Park Project at 10798 Ramona Avenue [CC]
- Consider Approval of Agreement No. 20-29 with Mission Boulevard Industrial Owner, LP to Reimburse the City for Legal Review Services and Peer Analysis of Environmental Documents Prepared for the Proposed Mission Boulevard and Ramona Avenue Business Park Project [CC] 31
- 4. Consider Approval of Agreement No. 20-30 with Southern California Transcription Services for Transcription of Digital, Audio-Recorded Material [CC] 47
- 5. Consider Approval of Agreement No. 20-31 with San Bernardino County for Construction of the Pipeline Avenue Pavement Rehabilitation Project [CC] 55
- 6. Consider Approval of Agreement No. 20-32 with San Bernardino County Transportation Authority Amending Agreement No. 15-64 (SBCTA Cooperative Agreement No. 15-1001297) for the Construction Phase of the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project [CC] 65
- 7. Consider Approval of Agreement No. 20-33 with the San Bernardino County Fire Protection District Authorizing the Receipt of \$16,672 from the FY 2018 Homeland Security Grant Program [CC]
- Consider Authorizing a \$16,672 Appropriation from the Public Safety Grand Fund to Purchase 20 Batteries for the Uninterruptable Power Supply Device in the Communications Center, 71 Batteries for Handheld Radios, and Evidence Storage Systems for the Evidence/Property Room [CC] 70

- 8. Consider Approval of Agreement No. 20-34 with LexisNexis Risk Solutions For a Coplogic Desk Officer Reporting System for Online Crime Reporting Services [CC]
Consider Authorizing a \$26,040 Expenditure from the COVID-19 Fund for Costs Associated with Agreement No. 20-34, with the Potential for Reimbursement through the Bureau of Justice Assistance 2020 Coronavirus Emergency Supplemental Funding Program [CC] 106
- 9. Consider Approval of Agreement No. 20-35 with the San Bernardino County Department of Public Health Preparedness and Response Program for Use of the Montclair Civic Center [CC] 120

D. Resolutions

- 1. Consider Adoption of the Resolution No. 20-3266 Approving a List of Projects to be Funded by Senate Bill 1, the California Road Repair and Accountability Act of 2017 [CC] 128

IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

- A. City Department Reports — None
- B. City Attorney
- C. City Manager/Executive Director
 - 1. Montclair COVID-19 Response 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 18, 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 on the City's website and 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 30, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 4, 2020	FILE I.D.:	PDT405
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	POLICE
ITEM NO.:	1	PREPARER:	M. BUTLER
SUBJECT:	CONSIDER AUTHORIZING A \$1,080 APPROPRIATION FROM THE PROP 30/AB 109 FUND FOR THE ANNUAL USAGE FEE OF FIVE ELECTRONIC STAKEOUT TRACKER SYSTEMS		

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing a \$1,080 appropriation from the Proposition 30/AB 109 Fund for the annual usage fee of the Department's five Electronic StakeOut (ESO) tracker systems, ensuring the devices continue to operate as expected on the cellular network and secure web portal.

BACKGROUND: The Police Department received funding under Proposition 30 for implementation of Public Safety Realignment efforts. Funding is to be used by frontline law enforcement to implement re-entry programs and/or address crime impacts to communities affected by Realignment.

ESO tracker systems are apprehension tools that actively target criminals perpetrating property crimes affecting our community. This highly effective and fiscally efficient tool is part of the next wave of modern policing; in fact, Montclair Police Department has utilized the devices since 2014. The number of police agencies turning to Global Positioning System (GPS) technology to protect assets is increasing. 3SI Security Systems, the ESO tracker system provider, uses Electronic Satellite Pursuit (ESP), a proven GPS tracking system that combines high-sensitivity GPS, cellular, and radio frequency (RF) location technologies to provide a powerful and effective tracking and location tool.

An ESO tracking system is a small, electronic GPS device capable of being concealed within or on many objects. The fully automatic devices stay hidden until needed and have high-sensitivity GPS systems built in. Only one high-speed Internet computer is needed to track the device via a secured website. The system is completely silent, giving no indication to the thief that a tracking system is in progress. RF technology provides an additional location method. The device battery status and history is available via a secured website. Device tracking and event history are also stored on a secured website. The devices are easy to maintain and require minimal installation time. They utilize few resources and have remote access, which reduces manpower deployment. The battery system self-checks and is serviced once every 12 months.

Through ESO deployment, the device alerts law enforcement to crimes in progress, resulting in the arrest of criminals. The different uses for the ESO tracking systems are virtually endless. Various applications include bait cars, bicycles, motor scooters, metal theft, construction sites, laptop computers, cash packs, and various other crime trends.

FISCAL IMPACT: If authorized by the City Council, funding to cover the recurring usage fee for continued support of the Department's five ESO tracker systems would result in an appropriation from the Proposition 30/AB 109 Fund (1141) in the amount of \$1,080.

RECOMMENDATION: Staff recommends that the City Council authorize a \$1,080 appropriation from the Proposition 30/AB 109 Fund for the annual usage fee of five Electronic StakeOut tracker systems.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 4, 2020	FILE I.D.:	CCK175
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	ADMIN. SVCS./HUMAN SVCS.
ITEM NO.:	2	PREPARER:	A. PHILLIPS
SUBJECT:	CONSIDER EXTENDING THE TERMS OF COMMUNITY ACTIVITIES COMMISSIONERS PADILLA, HERNANDEZ, AND WELLS BY ONE YEAR THROUGH JUNE 30, 2021		

REASON FOR CONSIDERATION: The terms of three Commissioners on the Community Activities Commission (CAC)—Arturo Padilla, Edwin Hernandez, and Diane Wells—are set to expire on June 30, 2020.

Due to the current Public Health Emergency related to the COVID-19 pandemic, non-essential City activities, events, and programs have been suspended until further notice. Accordingly, the CAC, which oversees many of the City's community, holiday, and recreational events and programs, cancelled its April and May meetings. The CAC does not hold meetings in the summer months of June, July, and August, and resumes its meetings in September.

With the current stay-at-home orders in place, community events for the foreseeable future cancelled, and families being impacted by financial hardships, staff feels it would not be productive to conduct the appointment process at this time, and is recommending the City Council consider extending the terms of these Commissioners for one year. When those terms are up in 2021, the new terms would be advertised as three-year terms from July 1, 2021 through June 30, 2024, to put the CAC back on its even-year appointment schedule.

The City Council is requested to consider extending the terms of Community Activities Commissioners Padilla, Hernandez, and Wells by one year. Because the length of terms and appointment process for the CAC was adopted by the City Council, these modifications require Council action.

BACKGROUND: To improve public participation in the City's governance, the City Council formalized the appointment process for various commissions, boards, and committees in 1995, which was last updated in 2016. The process requires commissioners whose terms are expiring to apply for re-appointment along with community members interested in serving for the first time. The current appointment process takes two to three months, consisting of the following steps:

1. An open application period of 30 days;
2. Interview of applicants by a panel of two Council Members and a staff member;
3. Recommendation for appointments by the panel to the full City Council; and
4. Nominations by the Mayor, which must be confirmed by a majority of the City Council.

With the current process in place, a vacancy notice and invitation to apply is provided to the public in several ways during the 30-day application period including:

- Sharing from the City’s official social media accounts;
- Announcing at Council Meetings;
- Posting of the notice at all City facilities and the Montclair Branch Library; and
- Publication in the City Manager’s Weekly Report and on the City’s website.

During this public health emergency, several of the avenues for advertising the vacancy notice to the public may not be as effective or are not available. Publication of the City Manager’s Weekly Report has been suspended until further notice as staff redirects its efforts to vital services, and the public will not likely be visiting City facilities, which are currently closed to the public outside of pre-scheduled appointments, to view the posted notices or pick up hard copy applications in person. In addition, Council Meetings are being conducted remotely in compliance with stay-at-home and social distancing orders, and public participation in these virtual meetings has not been as high as typical meetings held in the Council Chambers.

The Maddy Act of 1975 (GC 54972) requires that an annual list of scheduled vacancies on boards and commissions appointed by a legislative body be posted for the public’s information. The purpose of the Act is to provide an opportunity for the public to be informed about opportunities to participate in government processes by serving in such appointed positions. The posting includes the names of incumbents, their dates of appointment, the dates their terms expire, and the qualifications for the position.

The Council’s action to extend terms of CAC members would necessitate the revision of this posting, as noted below.

COMMUNITY ACTIVITIES COMMISSION

Qualifications: Must be a legally registered voter in the City of Montclair. Term length: 4 years, unless advertised otherwise.

<u>Current Appointee</u>	<u>Initial Appointment Date</u>	<u>Current Term Ends</u>
Padilla, Arturo	July 2012	June 30, 2020 2021
Hernandez, Edwin	July 2016	June 30, 2020 2021
Wells, Diane	July 2016	June 30, 2020 2021
Milhisier, Laurie	July 2014	June 30, 2022
Ferraro, Darlene	July 2015	June 30, 2022
Rangel, Rosa	July 2018	June 30, 2022
Escalante, Richard	June 2019	June 30, 2022

FISCAL IMPACT: This action would have no direct fiscal impact, but would allow staff’s time and efforts toward administering the appointment process to instead remain focused on vital emergency-related functions and securing emergency funding to keep vital services in place.

RECOMMENDATION: Staff recommends the City Council extend the terms of Community Activities Commissioners Padilla, Hernandez, and Wells by one year through June 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 4, 2020	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	3	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 May 4, 2020; and the Payroll Documentation dated March 29, 2020; and recommends their approval.

FISCAL IMPACT: The Warrant Register dated May 4, 2020, totals \$1,142,547.87; and the Payroll Documentation dated March 29, 2020, totals \$587,601.74 gross, with \$426,409.73 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:	MAY 4, 2020	FILE I.D.:	STA700
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	1	PREPARER:	X. MENDEZ
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-15 WITH WEST COAST ARBORISTS FOR TREE MAINTENANCE SERVICES		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 20-15 with West Coast Arborists (WCA) for tree maintenance services. Prior Agreement No. 19-79 with WCA was a temporary extension of the contract expiring on December 15, 2019, which was adopted while negotiations for a new contract continued. Approval of Agreement No. 20-15 would extend tree maintenance services from WCA for an additional three years, through June 30, 2023. City Council approval is required for all Agreement renewals and extensions.

A copy of proposed Agreement No. 20-15 is attached for the City Council's review and consideration.

BACKGROUND: At its meeting of June 6, 2016, the City Council approved Agreement No. 16-42 with WCA for tree maintenance services. Agreement No. 16-42 was a three-year agreement expiring on June 30, 2019. Agreement No. 16-42 was renewed with a 3 percent cost of living increase with Agreement No. 17-42 in July of 2017 and then again in July of 2018 with Agreement No. 18-32. Upon expiration of Agreement 18-32 the City of Montclair proposed new insurance requirements from WCA prior to entering into a new multi-year agreement for tree trimming services. Unfortunately, WCA was unable to obtain quotes for the new insurance requirements from their vendors prior to the start of Fiscal Year 2019-20. Agreement No. 19-79, approved by the City Council at its meeting on October 21, 2019, extended the term of Agreement No. 18-32 through December 15, 2019, allowing WCA time to obtain new insurance quotes and provide new rates for tree-trimming services to the City of Montclair.

WCA continues to provide the City with high quality tree-trimming and other tree-related services. WCA has been under contract with the City to trim trees since October 2000. The company is responsive to staff's requests and has established an internet-based inventory of all City trees at no additional cost. Public Works staff uses the inventory in its annual tree-trimming program. The inventory provides location, species, work history, and value of each City tree. WCA continues to update a full inventory of all City-owned, privately-owned, and vacant locations of trees on public, residential, and commercial properties, and has incorporated them into a geographic information system (GIS) form.

FISCAL IMPACT: The cost to provide tree-maintenance services for Fiscal Year 2019-20 was unknown at the time; however, \$142,000 is included in the Fiscal Year 2019-20 Public Works budget for this purpose and would be used to cover the new contract.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 20-15 with West Coast Arborists for tree maintenance services.

CITY OF MONTCLAIR

AGREEMENT FOR CONTRACTOR SERVICES

TREE TRIMMING SERVICES

THIS AGREEMENT is made and effective as of February 18, 2020, between the CITY OF MONTCLAIR, a municipal corporation (the "City") and WEST COAST ARBORISTS, INC., a California corporation (the "Contractor"). The City and the Contractor are sometimes referred to herein collectively as the "Parties" and singularly as "Party." In consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

1. **TERM**

This Agreement shall commence on February 18, 2020 and shall remain and continue in effect for a period of approximately three years, expiring on June 30, 2023, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all tasks described herein. Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement. If the work performed by Contractor is not satisfactory, the City's Public Works Superintendent or his designated representative may suspend the Agreement for any period of time or terminate the Agreement as set forth herein. No sums shall be due or payable to the Contractor for or during any time of such suspension or after termination.

4. **CITY MANAGEMENT**

City's Public Works Superintendent or his/her designee shall represent City in all matters pertaining to the administration of this Agreement, and the review and approval of all work to be performed by Contractor.

5. **PAYMENT**

(a) City agrees to pay Contractor monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, for work completed.

(b) Contractor 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's Public Works Superintendent. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by City's Public Works Superintendent and Contractor at the time City's written authorization is given to Contractor for the performance of said services.

(c) Contractor 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 Contractor's fees, it shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(d) Prior written approval from the City shall be required prior to any and all work performed by Contractor. If prior written approval is not obtained by the Contractor, no payment will be approved.

6. TERMINATION OF AGREEMENT

(a) The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor not less than thirty (30) calendar days' prior written notice. The Contractor may only terminate this Agreement for cause, and by giving the City prior notice in writing with a reasonable opportunity to cure any purported default. If the Agreement is terminated by the City, and provided Contractor is not then in breach, the Contractor shall be paid for services satisfactorily rendered to the last working day the Agreement is in effect, and the Contractor shall have no other claim against the City by reason of such termination. This Agreement may be extended beyond the term only by the written agreement of both Parties prior to the expiration of the term of the Agreement.

(b) Upon termination of the Agreement pursuant to this Section, Contractor shall submit an invoice to the City for all unpaid work completed.

7. DEFAULT OF CONTRACTOR

(a) The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

(b) If the City's Public Works Superintendent or his/her designee determines that the Contractor 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 Contractor a written notice of the default. The Contractor 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 Contractor 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) Contractor 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. Contractor 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. Contractor 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 Contractor. With respect to computer files, Contractor shall make available to the City, at the Contractor's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Contractor shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Contractor herein, caused by or arising out of the negligent acts or omissions, or intentional

misconduct of Contractor, including its subcontractors, employees, agents, and other persons or entities performing work for Contractor.

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

(c) Subcontractors and Indemnification. Contractor agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subcontractor, Sub consultant, or other person or entity involved by, for, with, or on behalf of Contractor in the performance of any aspect of this Agreement. In the event Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible for each and every Subcontractor, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set forth above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns, or heirs of Contractor and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Contractor further agrees to pay or cause to be paid to the Indemnified Parties' benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Contractor or of Contractor's officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such

actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Contractor further agrees to waive all rights of subrogation against the Indemnified Parties.

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

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

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

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

10. INSURANCE

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

(a) Types of Required Coverages

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

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office

“occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$20,000,000 per occurrence, and \$25,000,000 in the aggregate.

- (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 officials, officers, employees, volunteers, boards, agents, and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor.

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

(3) Workers' Compensation

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

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

(e) Evidence of Insurance

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

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

insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

(k) Insurance for Subcontractors

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

11. INDEPENDENT CONTRACTOR

(a) Contractor 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 Contractor shall at all times be under Contractor'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 Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor 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. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. Contractor shall be solely responsible and hold the City harmless for all matters relating to the payment of Contractor's employees, including compliance with Social Security withholdings and all other regulations governing such matters.

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

12. LEGAL RESPONSIBILITIES

The Contractor 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 Contractor shall at all times observe and comply with all such laws and regulations, including compliance with CAL/OSHA requirements as may be applicable. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this Section.

13. UNDUE INFLUENCE

Contractor 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 Contractor, or from any officer, employee or agent of Contractor, 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 Contractor in performance of this Agreement shall be considered confidential and shall not be released by Contractor without City's prior written authorization. Contractor, its officers, employees, agents, or subContractors, 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 Contractor gives City notice of such court order or subpoena.

(b) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subContractors 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 Contractor and/or be present at any deposition, hearing, or similar proceeding. Contractor agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Contractor. 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) Contractor shall comply with all applicable federal, state and local Conflict of Interest laws, including the Political Reform Act (California Government Code, Section 81000, *et. seq.*) and California Government Code, Section 1090, *et. seq.* Contractor 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. Contractor 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 subContractor. Contractor further covenants that Contractor 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 Contractor and/or its subContractors shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement. Further, Contractor covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to the City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by the Contractor. The Contractor's covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

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

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

To Contractor: West Coast Arborists
Attn: Patrick Mahoney
2200 E. Via Burton
Anaheim, CA 92806

17. ASSIGNMENT AND SUBCONTRACTING

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

18. LICENSES

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF REQUEST FOR PROPOSALS

Not applicable.

22. CONFIDENTIALITY

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

23. DISCRIMINATION

The Contractor 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 Contractor agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

26. EXHIBITS; PRECEDENCE

All documents reference as exhibits in this Agreement are hereby incorporated into this Agreement by this reference. In the event of any inconsistency between the express provisions of this Agreement and any provision of an exhibit, the provisions of this Agreement, then the City's request for proposals, if any, shall prevail.

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

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

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

CITY

City of Montclair
A Municipal Corporation

CONTRACTOR

West Coast Arborists, Inc.
A California Corporation

By: _____
Javier John Dutrey, Mayor

By: _____
Patrick Mahoney, President

Date: _____

Date: _____

Attest:

By: _____
Andrea M. Phillips, City Clerk

By: _____
Victor Gonzalez, V.P., Marketing

Date: _____

Date: _____

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

Date: _____

EXHIBIT A

A. Scope of Work

The work shall consist of furnishing all materials, labor, equipment, and incidentals necessary for pruning and removal of street and park trees in accordance with the Contractor's request for proposals.

1. **WORKING HOURS:** All work shall be performed between the hours of 7:00 a.m. and 5:00 p.m. weekdays. No weekend or holiday work shall be permitted unless authorized by the Public Works Superintendent.
2. **PUBLIC SAFETY AND COOPERATION:** All work shall be conducted in such a manner as to cause the least possible interference with, or annoyance to others and maintain safe conditions at all times while work operation are in progress.
3. **INSPECTION BY THE CITY:** The City shall inspect all work performed under this contract for compliance to the specifications and report any deficiencies to the Contractor.
4. **DAMAGE TO PROPERTY:** The Contractor shall not damage any public or private property as a result of the work specified. Any damage resulting from the Contractor's work shall be repaired, restored or replaced in kind within twenty-four (24) hours.
5. **CERTIFIED ARBORIST:** The Contractor shall employ a full-time, permanent Certified Arborist, as accredited by the International Society of Arboriculture at the time of proposal submittal, bid award and for the duration of the Agreement.

The Certified Arborist shall be responsible for the Contractor's employees performing the work as specified herein, daily inspections of the worksite, and supervision of the Contractor's employees. The Certified Arborist shall represent the Contractor regarding any disputes that may arise with the City, public, and the Contractor's employees.

6. **WORKMANSHIP:** All work shall be completed in a timely and workmanlike manner. The Contractor shall provide qualified tree workers trained according to the tree care standards accepted by the International Society of Arboriculture and the National Arborists Association.

All work shall be performed in a safe manner in compliance with the American National Safety Institute, Z133.1 Safety Standards for Tree Care Operations, as published by American National Safety Institute, Inc., 1430 Broadway, New York, New York 10018.

The Contractor shall provide qualified tree workers certified to perform tree work near energized primary and secondary electrical distribution lines. The Contractor shall comply with the Electrical Safety Orders issued by the State of California Occupational Health and Safety Administration (Cal/OSHA) including all amendments and revisions.

7. MEASUREMENT AND PAYMENT: The unit prices called for in the Agreement shall be full compensation for all labor, materials, and equipment necessary to complete the work as specified

No further compensation shall be made unless authorized by the Public Works Superintendent or his designated representative.

8. NOTIFICATION TO RESIDENTS: The Contractor shall notify all affected residents and businesses of tree pruning and removal operations twenty-four (24) hours before the start of work. The Contractor is responsible for posting "Temporary No Parking" signs at least twenty-four (24) hours before using any parking lanes for tree trimming operations. Every effort shall be made by the Contractor to minimize the duration of driveway blocking. Further, the Contractor shall provide access to each residential or commercial establishment each evening.

9. TRAFFIC AND SAFETY REQUIREMENTS: Any contractor performing work in a public right-of-way or parks shall conduct the operations so as to cause the least possible obstruction and inconvenience to public traffic and pedestrians and take all necessary measures to maintain an adequate traffic flow to prevent accidents and to protect the worksite.

All traffic controls shall be in accordance with the Manual of Traffic Controls for Construction and Maintenance Work Zones published by State of California, Department of Transportation. All traffic devices, safety lights, and flagmen shall be provided by the Contractor.

The Contractor shall receive approval from the Public Works Superintendent prior to the partial or complete closure of any lanes, streets, or intersections.

B. Complete Tree Pruning Specifications

All trees shall be pruned only in such a manner as to maintain the natural structure, form, health, and appearance of the tree species. Tree pruning shall consist of the total removal of those dead and living branches that might compromise the health, strength, and natural form of the tree. Specifically, mature trees shall be pruned in such a manner as to:

1. Prevent branch and foliage interference with the requirements of safe public passage. Over residential streets, limbs shall be maintained gradually from eight (8) feet at the curb to seventeen (17) feet over traffic lanes. Over

arterial streets, limbs shall be maintained at a maximum height of fourteen (14) feet from grade to wood.

Over sidewalks, limbs shall be maintained at a height of seven (7) feet from the grade to wood.

2. Remove all dead and dying branched and branch stubs that are ½ inch or larger.
3. Remove all broken or loose braches.
4. Remove any live branches that interfere with the tree's structural strength and healthful development, which will include the following:
 - Limbs that rub and abrade a more important branch.
 - Limbs of weak structure that are not important to the framework of the tree.
 - Limbs that, if allowed to grow, would wedge apart the junction of more important branches.
 - Branches near the end of a limb that will produce more weight or offer more resistance to wind that the limb are able to support.
 - Undesirable sucker and water sprout growth giving specific attention not to nick or damage the sprout "burl."
 - Selective removal of one or more developing leaders where multiple branch growth exists near the end of broken or stubbed limbs.
 - Selective removal of limbs obstructing buildings or other structures, streetlights or traffic signs.
5. Cut back ends of branches and reduce weight where excessive overburden appears likely to result in breakage of supporting limbs.
6. On mature trees only, clear water sprout or sucker growth to a minimum height of eight (8) feet above ground level.
7. Maintain a balanced appearance when viewed from the opposite side of the street immediately opposite the tree.
8. Remove all vines entwined in trees and on tree trunks. Vine tendrils shall be removed without injury to the trees.
9. Clear all branches and foliage within four (4) to six (6) feet of primary electrical lines.
10. When pruning cuts are made to a side limb, the remaining limb shall possess a basal thickness of at least one third the diameter of the cut. Such cuts shall be considered proper only when the remaining limb is vigorous enough to maintain adequate foliage to produce wood growth capable of callusing the pruning cut within a reasonable amount of time.

11. All final pruning cuts shall be made in such a manner so as to favor the earliest possible covering of the wound by natural callus growth. Flush cuts shall be made and the branch collar shall not be removed.
12. Tree limbs shall be removed and controlled in such a manner as to cause no damage to other parts of the tree, or to other plants or property.
13. All tools used on a tree known to contain an infectious tree disease shall be properly disinfected immediately before and after completing work on the tree. All significant pest, disease or structural weakness or defects observed by the Contractor while performing this work shall be promptly reported to the City.
14. All pruning tools and saws used for tree pruning shall be kept sharpened at all times to result in final cut with a nonabrasive wood surface and secure bark. All trees six (6) inches in diameter (DBH) or less shall be pruned with hand tools only. Chain saws will not be permitted on any trees with six (6) inches or less (DBH).
15. Whenever pruning cuts are made, while removing limbs too large to hold securely in one hand during the curing operation, the limb shall be cut off first, one (1) to two (2) feet beyond the intended final cut. Then the final cut shall be made in a manner to prevent the tearing of bark and wood.
16. Live, healthy limbs with a diameter of three (3) inches or greater shall not be removed without prior approval from the Public Works Superintendent.
17. No more than twenty (20) percent of live wood may be removed from the crown of any tree. The exception to this is Live Oaks, which are limited to no more than ten (10) percent.
18. Any extraneous metal, wire, rubber or other material interfering with the natural growth of the tree shall be removed.
19. The use of climbing spurs or spike shoes is strictly prohibited except in the case of aerial rescue.
20. All pruning shall be performed in such a manner as to encourage and promote the natural growth and shape of the tree species. The Contractor shall not perform any of the following procedures:
 - The severe cutting back of growing tips including topping, dehorning, heading back, pollarding, hat racking.
 - Flush cutting where a cut is made even with the surface with the trunk or limb, removing the branch collar and branch bark ridge.

- Stub cutting where branch removal results in the base of the branch removed protruding more than approximately one-quarter inch beyond the zone of the branch collar and branch bark ridge.
- Removal of all the inner branches and foliage also know as lion tailing.

C. Removals

Removals of trees shall be completed in the safest and most efficient manner possible while providing minimal inconvenience to the resident. Removals shall include the total removal of all brush, surface roots, and stumps.

Stumps may be removed in whole by digging out each individual stump or by grinding the stump to a minimum of twelve (12) inches below the top of the curb. In each instance, the areas shall be backfilled and graded to conform to the surrounding area. Whenever a tree is removed, the Contractor is responsible for notifying Dig Alert at 1 (800) 227-2600, two (2) days before digging. Stumps must be removed within two (2) days of the date that the tree is removed.

D. Disposal of Tree Branches, Brush, and Stumps

All tree branches, brush, and stumps produced as a result of the Contractor's operations shall be reduced, reused, recycled, and/or transformed whenever possible.

1. Reducing will include, but not limited to, chipping, grinding, and/or shredding. Disposal at a landfill is acceptable only if the material is accepted by the landfill for use as alternate daily cover.
2. Reusing shall include, but not limited to, using chipped, ground, and/or shredded tree materials as mulch.
3. Recycling shall include, but not limited to, chipped, ground, or shredded tree material used to produce compost utilizing either a low or high technology.
4. Transformation will include, but not limited to, burning green waste, such as tree wood chips, for the purpose of producing energy. Worksites shall be cleaned on a daily basis with no limbs, brush or debris left overnight.

EXHIBIT B

All of the work and services to be performed pursuant to this Agreement shall be performed in a good and workmanlike manner. Contractor shall pay prevailing wages in accordance with the laws of the State of California. Payment for work completed will be based on the following schedule:

<i>Description</i>	<i>Unit Prices</i>	<i>Unit Description</i>
Tree Pruning	\$70.65	Each
Palm Tree Pruning	\$70.65	Each
Tree and Stump Removal	\$25.15	Diameter inch
Stump only removal	\$7.55	Diameter inch
Planting 15-gallon w/out RB	\$185.50	Each
Planting 24-inch box w/out RB	\$383.40	Each
Specialty Planting 15-gal w/out RB	\$202.85	Each
Specialty Planting 24" Box w/out RB	\$405.45	Each
Root Pruning	\$11.75	Each (foot)
Crew rental, aerial unit, dump truck, and chipper	\$62.10	Man Hour
Emergency work call out	\$131.00	Man Hour

Payment will be made on the 15th day of each and every calendar month during the term of this Agreement, which will be paid to the Contractor for all work and services to be performed pursuant to the Agreement.

Payment of additional services requested, in writing, by City and not included in the Scope of Services as set forth in this Agreement, shall be negotiated on an item-by-item basis. Any additional services cost will include labor, equipment, overhead, and profit.

Any and all work done under this Section of this Agreement will be with prior written approval from the CITY. If prior written approval is not obtained by the CONTRACTOR, no payment will be approved. Charges for additional services shall be invoiced on a monthly basis and shall be paid by the CITY within a reasonable time after said invoices are received by the CITY.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 4, 2020	FILE I.D.:	STA805D
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	2	PREPARER:	N. CASTILLO
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-24 WITH MONTE VISTA WATER DISTRICT FOR THE USE OF RECYCLED WATER ASSOCIATED WITH THE CENTRAL AVENUE STREET REHABILITATION PROJECT		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 20-24 with Monte Vista Water District (MVWD) for the use of recycled water. MVWD provides retail municipal water service to land within its boundaries, and owns and operates infrastructure to effectuate service of said water. On August 8, 2007, MVWD adopted Ordinance No. 31 ("District Ordinance"), which establishes procedures, specifications, and limitations for the safe and orderly development and operation of recycled water facilities and systems within the District's service area, and to adopt rules and regulations controlling such use. This agreement is intended to comply with the District Ordinance.

A copy of proposed Agreement No. 20-24 with MVWD is provided in the City Council's agenda packet for review and consideration.

BACKGROUND: On September 18, 2017, the City Council adopted the Fiscal Years 2017-2022 Capital Improvement Program, which included the Central Avenue Street Rehabilitation Project. Along with the pavement rehabilitation, the project includes landscape and irrigation improvements within the existing medians. A new 8' recycled water main is being installed as part of the project to provide recycled water to the medians.

As the population in the region continues to increase and place more demands on the potable water sources, conservation efforts must be increased and alternate sources of water must be found. One way to reduce the demands on the potable water sources is to use recycled water for irrigation purposes. With this agreement we will be able to maximize the use of available recycled water supplies. The City will be one of the primary users of the recycled water for parks and other city-owned facilities. The recycled water will also be available to other potential users like the Ontario-Montclair School District and California Department of Transportation (Caltrans).

FISCAL IMPACT: The execution of this agreement would have an unknown, but minimal impact to the overall maintenance budget. Existing potable water services will be discontinued and replaced with the recycled water services. The new landscaping being installed is drought-tolerant and is expected to utilize less water.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 20-24 with Monte Vista Water District for the use of recycled water associated with the Central Avenue Street Rehabilitation Project.



CITY COUNCIL AGENDA REPORT

DATE: MAY 4, 2020 **FILE I.D.:** LDU065/LDA025
SECTION: CONSENT - AGREEMENTS **DEPT.:** COMMUNITY DEV.
ITEM NO.: 3 **PREPARER:** M. DIAZ
SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 20-28 WITH LSA & ASSOCIATES, INC., FOR CONSULTING SERVICES RELATED TO A PEER REVIEW OF TECHNICAL REPORTS ASSOCIATED WITH THE ENVIRONMENTAL IMPACT REPORT PREPARED FOR THE PROPOSED MISSION BOULEVARD AND RAMONA AVENUE BUSINESS PARK PROJECT AT 10798 RAMONA AVENUE

CONSIDER APPROVAL OF AGREEMENT NO. 20-29 WITH MISSION BOULEVARD INDUSTRIAL OWNER, LP TO REIMBURSE THE CITY FOR LEGAL REVIEW SERVICES AND PEER ANALYSIS OF ENVIRONMENTAL DOCUMENTS PREPARED FOR THE PROPOSED MISSION BOULEVARD AND RAMONA AVENUE BUSINESS PARK PROJECT

REASON FOR CONSIDERATION: Mission Boulevard Industrial Owner, LP (Owner/ Developer) obtained the 27.74-acre site at the northwest corner of Mission Boulevard and Ramona Avenue in property in 2019. The site has been the longtime home of the Mission Tiki Drive-In Theater, which is scheduled to close at the end of the year. The owner is proposing to redevelop the site as a new business park, referred to as the Mission Avenue and Ramona Boulevard Business Park Project.

As part of the process to develop the proposed business park project, the owner is required to prepare an Environmental Impact Report (EIR) that is being prepared by the owner's environmental consultant, Dudek. Given the size of the proposed development, City staff is recommending that Best Best & Krieger (BB&K) be retained to oversee the legal review of the EIR. Staff is recommending that LSA & Associates, Inc. (LSA) be retained to conduct a peer review of specified technical reports/studies associated with the EIR. The City currently has a retainer agreement with BB&K for legal analysis related to land use, zoning, and environmental compliance in connection with projects similar in nature to this proposal. However, the City Council is requested to enter into Agreement No. 20-28 with LSA to provide peer review of specific reports/studies for the EIR supplied by Dudek.

A copy of proposed Agreement No. 20-28 is included in the City Council's agenda packet for review and consideration.

Staff is also recommending consideration of a Reimbursement Agreement with Mission Boulevard Industrial Owner, LP, to pay for the proposed environmental documentation, and legal fees associated with the development of the subject property as the Mission Avenue and Ramona Boulevard Business Park.

A copy of proposed Agreement No. 20-29 is attached for City Council review and consideration.

BACKGROUND: The proposed Project consists of removing all existing on-site structures and the construction of an eight-building business park approximately 534,838 square feet in total combined size. Existing site structures, including screens, snack building, and two industrial buildings, will be removed to accommodate the project. The new business park proposal divides the site into roughly two halves by means of the eastward extension of Third Street from its current terminus on the west

side of the site, then through the site to intersect with Ramona Avenue. On the northern half of the site, there will be two conventional tilt-up warehouse buildings. On the southern half of the site, with frontage on Mission Boulevard, there will be six smaller tilt-up buildings architecturally designed with the flexibility to accommodate both office and/or industrial users in a campus-like setting.

To accommodate the proposed planning efforts for the site, a series of approved entitlements will be necessary, including a General Plan Amendment, zone change, subdivision map, and design review.

Agreement No. 20-28: Consultant Agreement

Through proposed Agreement No. 20-28, the City would retain the services of LSA & Associates, Inc., to provide a peer review analysis of specific technical studies/reports prepared for the project. The technical studies/reports to be reviewed by LSA include, Air Quality Impacts, Greenhouse Gas Emissions, Energy, Noise and Vibration Impacts, Transportation Impact and Vehicle Miles Traveled (VMT), and Cultural Resources Assessment.

Agreement No. 20-29: Reimbursement Agreement

Proposed Agreement No. 20-29 contains the terms of owner/developer, Mission Boulevard Industrial Owner, LP, reimbursement of City-incurred legal review costs associated with the review of the EIR for the proposed Project. A synopsis of proposed Agreement No. 20-29 includes the following:

- The City would retain the services of LSA & Associates to provide a peer review of technical reports/studies related to elements of the EIR prepared for the Project as indicated above. The estimated total costs for LSA's services would be approximately \$18,100 to be borne by the Applicant.
- The City would retain the services of BB&K to provide legal analysis and oversight of the project's environmental review process. The estimated cost for BB&K services would be approximately \$132,471 to be borne by the Applicant.
- Within 30 days of execution of the Agreement, the Applicant would be required to submit an initial deposit in the sum of \$50,000 to the City. This amount is held by the City in a separate account as the "Project Deposit Account." When consultants invoice the City for fees, costs, and expenditures associated with the project, City staff would concurrently provide a duplicate invoice to the Applicant. When the Applicant deposit drops below \$10,000, the City would make a written demand to the Applicant to replenish the deposit by an addition \$50,000.
- The City would not exceed the estimated \$150,571 of total costs without first consulting with the Applicant in writing regarding the need for additional services. The City would be required to provide the Applicant with appropriate documentation of the reason for the excess costs so the Applicant may reasonably evaluate such costs. The City would also be required to inform the Applicant in writing prior to amending the scope of work for any consultant service and the estimated cost thereof. The City would have to notify the Applicant ten days prior to commencement of the excess work to be performed by a consultant. Once the City has provided such ten-day notice to the Applicant, the Applicant would be obligated to pay the excess cost in the same manner as the estimated costs. However, if the Applicant objects to the excess costs, the Applicant's sole and exclusive remedy would be to terminate the agreement and reimburse the City for all costs incurred to the date of termination.

- The City would be required to maintain accurate records of invoices received from, and payments made to, the consultants. The City would be required to provide an accounting of payments within 30 days to the Applicant upon request.
- The term of the Agreement would commence on the day the Agreement would be executed by both parties and would terminate when all services described in the Agreement have been completed to the City's reasonable satisfaction and the Applicant has satisfied all the obligations under the Agreement.
- The City would be able to terminate the Agreement prior to the terms set forth above, without cost or liability, upon 30 days' written notice to the Applicant in the event the Applicant developer fails to satisfy any material obligation of the agreement or fails to prosecute its applications for the project. The Applicant would be able to terminate the Agreement upon 30 days' prior written notice provided that the Applicant gives the City written notice withdrawing its application for the project and the Applicant would be required to satisfy all of its obligations under the Agreement through the effective date of the termination.
- The Agreement would not be assignable by either party without the prior written consent of the other party.

FISCAL IMPACT: By means of the Reimbursement Agreement, the owner/developer will bear the costs for legal and technical peer review associated with the environmental documents prepared for the proposed development. As such, there will be no impact the City's General Fund.

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

1. Approve Agreement No. 20-28 with LSA & Associates, Inc. for consulting services related to a peer review of technical reports associated with the Environmental Impact Report prepared for the proposed Mission Boulevard and Ramona Avenue Business Park Project at 10798 Ramona Avenue.
2. Approve Agreement No. 20-29 with Mission Boulevard Industrial Owner, LP to reimburse the City for legal review services and peer analysis of environmental documents prepared for the proposed Mission Boulevard and Ramona Avenue Business Park Project.

Agreement No. 20-29

REIMBURSEMENT AGREEMENT

Between

**CITY OF MONTCLAIR
a California Municipal Corporation**

and

Mission Boulevard Industrial Owner, LP

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made this 5th day of May, by and between the City of Montclair, a California Municipal Corporation (the "City"), and Mission Boulevard Industrial Owner, LP ("Applicant").

RECITALS

This Agreement is made with respect to the following facts.

A. The Applicant is the owner of that certain real property ("Property") located within the City of Montclair, County of San Bernardino, California. The Property is more particularly described as an area of approximately 27.74-acres; also identified by APNs: 1012-215-120, 122, 127, 128, 129; and 1012-216-101, 102, 103, 104, 105, and 106; and as 10798 Ramona Avenue. The Property is further described in Exhibits "A" and "B" attached hereto and incorporated herein by reference.

B. The Applicant is contemplating the development of the Property into an eight-building business park approximately 534,838 square feet in total combined size. The new business park proposal divides the site into roughly two halves by means of the eastward extension of Third Street from its current terminus on the west side of the site then through the site to intersect with Ramona Avenue. On the northern half of the site will be two conventional tilt-up warehouse buildings. On the southern half of the site, with frontage on Mission Boulevard, there will be six smaller tilt-up buildings architecturally designed with the flexibility to accommodate both office and/or industrial users in a campus like setting ("Project").

C. The Applicant has or will submit applications for various discretionary land use approvals for the development of the Property, including, without limitation, a General Plan Amendment, zone change, and Precise Plan of Design, as well as all related environmental review pursuant to the California Environmental Quality Act ("CEQA"). All of the above shall be referred to collectively as the "Project Approvals." Applicant understands that if the Project is approved, the conditions of approval may require Applicant to execute additional Reimbursement Agreements to fund the preparation of other Project elements including, but not limited to, additional environmental review.

D. The Planning Commission of the City of Montclair and/or the City Council of the City of Montclair are the bodies responsible for the review and consideration of the Project Approvals.

E. To provide the City with the needed expertise and information necessary for the City's review and processing of the Project Approvals for the Project, it is or may become necessary for the City to retain certain outside legal, financial, appraisal, and other experts ("Consultants").

F. As a condition of the City's processing of the Project Approvals, the Applicant has agreed to reimburse the City for the City's Consultants' costs and expenses related to the City's review and processing of the Project Approvals in the manner and amounts set forth in this Agreement. The Applicant's reimbursement of Consultants' costs and expenses under this Agreement will ensure that the City has the necessary resources to diligently and efficiently process the Project Approvals.

TERMS

NOW, THEREFORE, in consideration of the following mutual promises and agreements, City and Applicant agree as follows:

1. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City and the Applicant have entered into this Agreement. The City and the Applicant each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. City to Retain Consultants. In connection with its review, subject to Applicant's review and approval rights as set forth in Section 5, and processing of the Project Approvals, the City may retain the services of those Consultants named in Section 4 of this Agreement to provide such advice as the City may deem necessary in its reasonable and sole discretion. The Consultants' contemplated general scope of work is attached hereto as Exhibit "B", but the City reserves the right, in its reasonable and sole discretion, to amend the scope of work as it deems necessary and appropriate to the City's proper review and consideration of the Applicant's Project Approvals. However, if such amendment will cause, or will be likely to cause, the Estimated Costs (as defined in Section 5) to be exceeded, the City shall promptly notify Applicant thereof in writing as set forth in Section 5.

The Applicant agrees that, notwithstanding the Applicant's reimbursement obligations under this Agreement, Consultants shall be the contractors exclusively of the City and not of the Applicant. Except for those disclosures required by law, including, without limitation, the Public Records Act, all conversations, notes, memoranda, correspondence and other forms of communication by and between the City and its Consultants which are deemed under law to be privileged and confidential shall not be subject to disclosure to the Applicant. The Applicant agrees that it shall have no claim to, nor shall it assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work product produced by the Consultants which is privileged or confidential under law; provided, however, the Applicant shall be provided with photocopies of all such documents or work product for which it has reimbursed the City which are not so privileged or confidential under law.

3. Applicant to Cooperate with Consultants. The Applicant agrees to cooperate in good faith with the Consultants. The Applicant agrees that it will instruct its agents, employees, consultants, contractors and attorneys to reasonably cooperate with the Consultants and to provide all necessary documents or information reasonably requested of them by the City and/or the Consultants; provided, however, that the foregoing shall not require the disclosure of any documents or information which by law is proprietary, confidential, a trade secret, or subject to attorney-client communication, attorney work product or other legal privilege.

4. City's Selection of Consultants. The City has proposed to retain the following as Consultants pursuant to Section 2 of this Agreement, but shall have the right to retain any additional consultants or sub-consultants, subject to the Applicant's review and approval rights set forth below: (1) LSA & Associates, Inc. to conduct a peer review of specific reports/studies associated with the Environmental Impact Report prepared for the Project, including any sub-consultants reasonably determined by LSA & Associates, Inc., and the City to be necessary, (2) Best Best & Krieger LLP (Legal Services) for legal analysis related to land use, zoning, and environmental compliance in connection with the project. If and when the City proposes to retain additional consultants or sub-consultants, it shall first so inform the Applicant of its intent to do so, and include with such information the terms and conditions (including fees) upon which such parties will be retained. The Applicant shall have seven (7) calendar days in which to review and approve or disapprove the retention of any additional consultants or sub-consultants (approval shall not be unreasonably withheld or conditioned). Provided that the Applicant has not notified the City of its disapproval on or prior to the expiration of said seven (7) calendar day period, the City may thereafter retain the additional consultants or sub-consultants upon the terms and conditions submitted to the Applicant. In the event that the Applicant reasonably objects to any such retention, the Applicant's objection shall state the reasons for its objection in sufficient detail to allow the City to address, and potentially remedy, such objection if the City so determines. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such objection) communicate in order to resolve any such objection, but if the parties are unable to resolve such objection, and if the City thereafter retains the disputed party, the Applicant shall have the right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to any Consultants.

5. Applicant's Reimbursement of Fees, Costs and Expenditures. The Applicant shall reimburse the City for all actual, fees, costs and other expenditures incurred by the City relative to the Consultant costs ("Costs"), subject to the terms of this Agreement. Applicant understands and agrees that Costs are based upon the estimates provided by the Consultants and summarized in Exhibit "C" attached hereto.

The City has reviewed the Consultants' scope of work and has estimated the aggregate Costs for all Consultants to be approximately \$150,571 ("Estimated Costs"). On or before June 4, 2020, or upon the Applicant's submittal of any formal or informal application, whichever is earlier, and prior to City's review of such application(s),

the Applicant shall submit a deposit in the amount of \$50,000 to defray the Estimated Costs, which amount the City shall separately account for in a Project deposit account ("Deposit Account"). Applicant further understands and agrees that Costs have been incurred prior to the execution of this Agreement. As a result, a portion of the estimate of Costs identified in Exhibit "C" shall include reimbursement of these Estimated Costs already incurred by City on behalf of the Applicant.

As the Consultants invoice the City for fees, costs, and expenditures associated with the Project, the City or the Consultant shall provide copies of the invoices to the Applicant, who shall have seven (7) calendar days from its receipt of the invoice in which to review and approve or disapprove the same (approval shall not be unreasonably withheld or conditioned). Provided that the Applicant has not notified the City of its disapproval of the invoices on or prior to the expiration of said seven (7) calendar day period, the City may draw upon the Deposit Account to pay the invoices. If the Applicant reasonably objects to any invoice, the Applicant's objection shall state the reasons for its objection in sufficient detail to allow the City to address, and potentially remedy, such objection if the City so determines. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such objection) communicate in order to resolve any such objection, but if the parties are unable to resolve such objection, and if the City thereafter pays the disputed amounts, the Applicant shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to the Consultants .

At any time that the Deposit Account balance drops below \$10,000 and it is determined that the Estimated Costs will exceed that amount or Excess Costs will be incurred pursuant to the conditions stated in this Section 5, the City may make written demand on Applicant to replenish the Deposit Account up to the additional amount of the Excess Cost described below, and Applicant shall submit the required amount of funds to the Deposit Account within ten (10) calendar days. In the event the Applicant fails to make any required deposit, City shall have the right to consider Applicant's Project applications withdrawn and cease processing such application or take other actions as necessary to declare the Project withdrawn.

The City may not exceed the Estimated Costs without first informing the Applicant in writing regarding the need for additional services which cause the Costs to exceed the Estimated Costs ("Excess Costs"), and shall provide appropriate documentation of such Excess Costs in sufficient detail that the Applicant shall be able to reasonably evaluate such costs. The City shall also inform the Applicant in writing prior to amending any scope of services, or adding services, to be provided by the Consultants, and shall provide appropriate documentation of such amended or additional scope of work in sufficient detail to allow the Applicant to reasonably evaluate such amended scope and Excess Costs. The Applicant's obligation to reimburse the City for the Excess Costs shall be contingent upon the City providing Applicant with written notice of the amendment of the scope of services to be performed by any Consultants and the

estimated cost thereof as described hereinabove prior to the commencement of work. Once the City provides such notice, Applicant shall be obligated to pay the Excess Costs in the same manner as the Estimated Costs provided above, including, but not limited to, replenishing the Deposit Account; provided, however, in the event that the Applicant reasonably objects to any Excess Costs, the Applicant shall provide the City with a written objection not later than seven (7) calendar days after receipt of the City's written notice stating the reasons for its objection to the Excess Costs in sufficient detail to allow the City to address, and potentially remedy, such objection if the City so determines. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such objection) communicate in order to resolve any such objection, but if the parties are unable to resolve such objection, and if the City thereafter pays any disputed Excess Costs, the Applicant shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to any Consultants.

The City shall maintain accurate records of invoices received from, and payments made to, the Consultants, and will provide a payment summary to Applicant within a reasonable time upon request. In the event that excess funds remain in the Deposit Account following final disposition of the Project Approvals or the termination of this Agreement, whichever occurs first, and after all final payments to the Consultants have been made, the City will refund the excess amount, if any, to Applicant within fifteen (15) days of final payment to the Consultants. Alternatively, if following final disposition of the Project Approvals or the termination of this Agreement, whichever occurs first, the Costs exceed the Estimated Costs and Excess Costs, if any, then, subject to the terms and limitations of this Agreement, Applicant shall remain obligated to pay for all such Costs. Applicant shall pay any such amount within fifteen (15) calendar days of written demand for payment by City.

6. [Reserved]

7. Term. The effective date of the Agreement shall be the date this Agreement is approved by the City Council and executed by the Applicant. The Agreement shall terminate when 1) all services described in this Agreement have been completed to the City's reasonable satisfaction and the Applicant has satisfied all of its obligations under this Agreement, or 2) Applicant withdraws the application(s). For purposes of this section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse the City for all Estimated Costs and Excess Costs incurred, whether or not paid by the City to Consultants prior to the date of termination. The Applicant's obligation to reimburse (Section 5) the City as provided in the Agreement shall survive the termination of this Agreement pursuant to Section 8.

8. Early Termination. Notwithstanding Section 7 above, this Agreement may be terminated early in accordance with the following:

8.1 By City. The City may, in its reasonable discretion, terminate this Agreement prior to the end of the term set forth in Section 7, without cost or liability to the City, if the Applicant (a) fails to satisfy any obligation of this Agreement within any applicable cure period; or (b) fails to reasonably prosecute its application(s) for the Project; provided that, prior to such termination, City must provide Applicant with a thirty (30) day written notice of such termination, which notice shall contain enough information to reasonably inform Applicant of (x) the reason for such termination and (y) what must be done to effectuate a cure, and Applicant must fail to cure within such thirty (30) days to complete, fails to commence and diligently prosecute such cure within such thirty (30) day period. In the event of such termination, Applicant shall be deemed to have withdrawn its application(s) for the Project.

8.2 By Applicant. The Applicant may, in its reasonable and sole discretion, terminate this Agreement prior to the end of the term set forth in Section 7 above, upon thirty (30) days' prior written notice to the City; provided, however, that Applicant's right to so terminate this Agreement is expressly contingent upon Applicant satisfying both of the following: (1) Applicant shall give City written notice withdrawing its application(s) for the Project; and (2) Applicant shall satisfy all of its obligations under this Agreement up through the effective date of termination. For purposes of this section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse the City for Estimated Costs and Excess Costs incurred prior to the date of termination, whether or not paid by the City to Consultants prior to the date of termination, so long as such Costs are incurred in accord with the terms of this Agreement.

Within two (2) business days following either the City's decision to terminate this Agreement or the City's receipt of written notice indicating the Applicant's decision to terminate this Agreement, the City shall notify all Consultants and instruct them to cease work on the Project. Consultants shall also be instructed to bill the City for any services completed prior to the date of termination.

9. Assignability. This Agreement may not be assigned by either party without the prior and express written consent of the other party, which consent shall not be unreasonably withheld. In determining whether to approve a request by the Applicant to assign this Agreement, the City may consider, among other things, the proposed assignee's financial status and commitment to the Project. Any attempted assignment of this Agreement not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee.

10. No Oral Modifications. This Agreement represents the entire understanding of the City and the Applicant, and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, only by a writing signed by both the

authorized representatives of both the City and the Applicant. All modifications to this Agreement must be approved by the City Council of the City of Montclair.

11. Binding Upon Successors. This Agreement and each of its terms shall be binding upon the City, the Applicant and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

12. Legal Challenges. Nothing herein shall be construed to require City to defend any third party claims and suits challenging any action taken by the City with regard to any procedural or substantive aspect of the City's approval of development of the Property, the environmental process, or the proposed Project. The Applicant may, however, in its sole and absolute discretion, appear as real party in interest in any such third party action or proceeding, and in such event, it and the City shall defend such action or proceeding and the Applicant shall be responsible and reimburse the City for whatever reasonable legal fees and expert or other costs, in their entirety, including reasonable attorneys' fees, which may be incurred by the City in defense of such action or proceeding. The City shall have the absolute right to retain such legal counsel as the City deems necessary and appropriate, and the Applicant shall reimburse the City for any and all reasonable attorneys' fees and expert or other costs incurred by the City as a result of such third party action or proceeding; provided, however, the Applicant may, at any time, notify the City in writing of its decision to terminate such reimbursement obligation and, thereafter, the City may choose, in its sole discretion, to defend or not defend such third party action or proceeding. In the event that the City decides not to continue the defense of such third party action or proceeding, Applicant shall be obligated to reimburse City for any and all reasonable costs, fees, penalties or damages associated with dismissing the action or proceeding. In the event that the City decides to continue the defense of such third party action or proceeding, Applicant shall have no further obligation to reimburse City for its attorney fees and expert or other costs.

13. Attorneys' Fees. In the event that any action or proceeding, including arbitration, is commenced by the City to establish the validity of this Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its reasonable attorneys' fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys' fees on appeal.

14. Jurisdiction and Venue. This Agreement is executed and is to be performed in Montclair, San Bernardino County, California. Any action or proceeding brought relative to this Agreement will be heard in the appropriate court in the County of San Bernardino, California.

15. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable, the City and the Applicant both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The

invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

16. Headings. The headings of each Section of this Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each Section.

17. Representations of Authority. Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants to the other party that all necessary legal prerequisites to that party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.

18. Notices. Notices required under this Agreement shall be sent to the following:

If to City:

Edward C. Starr, City Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763
Fax: 909-621-1584

If to the Applicant:

Steven L. Nelson
Mission Boulevard Industrial Owner, L.P.
3520 Piedmont Road, Suite 100
Atlanta, GA 30305

Notices given pursuant to this Agreement shall be deemed received as follows:

- (1) If sent by United States Mail - five (5) calendar days after deposit into the United States Mail, first class postage prepaid.
- (2) If by facsimile - upon transmission and actual receipt by the receiving party.
- (3) If by express courier service or hand delivery - on the date of receipt by the receiving party.

The addresses for notices set forth in this Section 18 may be changed upon written notice of such change to either the City or the Applicant, as appropriate.

[SIGNATURES ON FOLLOWING PAGES]

CITY OF MONTCLAIR
a California Municipal Corporation

By: _____
Javier John Dutrey, Mayor

ATTEST:

By: _____
Andrea M. Phillips, City Clerk

APPROVED AS TO FORM:

Diane E. Robbins, City Attorney

Applicant:

MISSION BOULEVARD INDUSTRIAL OWNER, LLP

By: _____
Name & Title:

By: _____
Name & Title:

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

The real property in the City of Montclair, County of San Bernardino, State of California, more particularly described as follows:

THE LAND REFERRED TO IN THIS COMMITMENT IS SITUATED IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:
LOTS 9 AND 10, IN BLOCK "A", POMONA GRANDE TRACT OF SAN ANTONIO TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 19 OF MAPS, PAGES 11 AND 12, RECORDS OF SAID COUNTY;

EXCEPTING THEREFROM THE WEST 9 FEET OF LOT 9.

ALSO EXCEPTING THE SOUTHERLY 265 FEET OF SAID LOTS 9 AND 10.

APN:1012-161-03-0-000

PARCEL 2:
LOTS 19 AND 20, BLOCK "A", OF THE POMONA GRANDE TRACT OF SAN ANTONIO TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 19 OF MAPS, PAGES 11 AND 12, RECORDS OF SAID COUNTY;

EXCEPTING THEREFROM THE NORTH 200 FEET THEREOF.

APN:1012-151-20-0-000

PARCEL 3:
PORTION OF LOT 33, OF SAN ANTONIO TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 3 OF MAPS, PAGE 16, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 33 AT THE INTERSECTION OF THE CENTER LINE OF OLIVE AVENUE (NOW KNOWN AS RAMONA AVENUE) WITH THE CENTER LINE OF FIFTH AVENUE AS SHOWN ON SAID MAP; THENCE NORTH ALONG THE CENTER LINE OF OLIVE AVENUE, 696.4 FEET TO A STAKE; THENCE WESTERLY ON A LINE PARALLEL WITH FIFTH AVENUE, 663 FEET, MORE OR LESS, TO THE EAST LINE OF THE AMENDED MAP OF POMONA GRANDE TRACT, RECORDED IN BOOK 19 OF MAPS, PAGE 11, RECORDS OF SAID COUNTY; THENCE SOUTHERLY ON A LINE PARALLEL WITH RAMONA AVENUE, AND ALONG THE EAST LINE OF LOT "A" AND LOT 10 IN BLOCK "A" OF THE AMENDED MAP OF POMONA GRANDE TRACT, 696.4 FEET, MORE OR LESS, TO THE CENTER LINE OF FIFTH AVENUE; THENCE EASTERLY ALONG THE CENTER LINE OF FIFTH AVENUE, 663 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE PORTIONS THEREOF IN RAMONA AND FIFTH AVENUE.

ALSO EXCEPT THAT PORTION LYING SOUTHERLY OF A LINE THAT IS PARALLEL WITH AND 100 FEET NORTHERLY OF THE CENTER LINE OF FIFTH AVENUE AS SHOWN ON MAP OF SAN ANTONIO TRACT, RECORDED IN BOOK 3 OF MAPS, PAGE 16, RECORDS OF SAID COUNTY, CONVEYED TO THE STATE OF CALIFORNIA, BY DEED RECORDED MAY 3, 1944 IN BOOK 1682 OF OFFICIAL RECORDS, PAGE 67.

APN:1012-161-01-0-000

PARCEL 4:
THAT PORTION OF LOT 33, OF THE SAN ANTONIO TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 15 OF MAPS, PAGE 57, RECORDS OF SAID COUNTY; BEING AN AMENDMENT OF SAID TRACT AS RECORDED IN BOOK 3 OF MAPS, PAGE 16 THEREOF; SHOWING VACATION OF RAILROAD AVENUE AND DEDICATION OF RAILROAD AVENUE ON NEW LOCATION ON AND ACROSS LOT 33 OF THE SAN ANTONIO TRACT, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF OLIVE AVENUE (NOW KNOWN AS RAMONA AVENUE) AND THE SOUTH LINE OF RAILROAD AVENUE, AS THE SAME EXISTS; THENCE SOUTHERLY ALONG THE CENTER LINE OF RAMONA AVENUE, TO A POINT 696.4 FEET NORTH OF THE INTERSECTION OF THE CENTER LINE OF 5TH STREET AND RAMONA AVENUE; THENCE WEST 663 FEET, MORE OR LESS, TO THE EAST LINE OF THE WEST 21.2 ACRES OF SAID LOT 33 (SAID POINT ALSO BEING THE EAST LINE OF BLOCK "A" OF THE POMONA GRANDE TRACT, AS PER PLAT RECORDED IN BOOK 19 OF MAPS, PAGE 11, RECORDS OF SAID COUNTY); THENCE NORTHERLY ALONG SAID LINE, 394.8 FEET, MORE OR LESS TO A POINT 300 FEET SOUTHERLY OF THE SOUTHERLY LINE OF RAILROAD AVENUE; THENCE EASTERLY 180.5 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID BLOCK "A", 300 FEET TO THE SOUTHERLY LINE OF RAILROAD AVENUE; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF RAILROAD AVENUE TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION LYING WITHIN RAMONA AVENUE.

APN:1012-151-27-0-000 AND 1012-151-28-0-000

PARCEL 5:
THE EAST 330 FEET OF LOT "A" IN BLOCK "A" OF POMONA GRANDE TRACT OF SAN ANTONIO TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 19 OF MAPS, PAGES 11 AND 12, RECORDS OF SAID COUNTY;

APN:1012-161-04-0-000

PARCEL 6:
THAT PORTION OF LOT 33, OF THE SAN ANTONIO TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 15 OF MAPS, PAGE 57, RECORDS OF SAID COUNTY, BEING AN AMENDMENT OF SAID TRACT AS RECORDED IN BOOK 3, PAGE 16, THEREOF, SHOWING VACATION OF RAILROAD AVENUE AND DEDICATION OF RAILROAD AVENUE ON NEW LOCATION ON AND ACROSS LOT 33 OF THE SAN ANTONIO TRACT, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF BLOCK "A" OF THE POMONA GRANDE TRACT, AS PER PLAT RECORDED IN BOOK 19 OF MAPS, PAGE 11, RECORDS OF SAID COUNTY, SAID POINT BEING DISTANT SOUTHERLY 300 FEET FROM THE SOUTH LINE OF RAILROAD AVENUE, AS SAME NOW EXISTS; THENCE NORTH 300 FEET ALONG SAID EAST LINE TO THE SOUTH LINE OF SAID RAILROAD AVENUE; THENCE EAST ALONG SAID RAILROAD AVENUE 180.5 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID BLOCK "A", 300 FEET; THENCE WESTERLY 180.5 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 7:
THOSE PORTIONS OF LOTS 18, 19 AND 20 IN BLOCK "A" AND THE UNNUMBERED LOT IN THE NORTHEAST CORNER OF BLOCK "A", ALL IN THE POMONA GRANDE TRACT IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 19 OF MAPS, PAGES 11 AND 12, IN THE OFFICE OF THE RECORDER OF SAID COUNTY, AS SHOWN ON THE CERTIFICATE OF MERGER #90-1, OF THE CITY OF MONTCLAIR, RECORDED MARCH 13, 1990, AS INSTRUMENT NO. 90-094697 OFFICIAL RECORDS, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 18, SAID POINT BEING THE NORTHEAST CORNER OF THAT CERTAIN PARCEL DESCRIBED IN DEED TO C. R. WELTY, ET UX, RECORDED FEBRUARY 7, 1949 IN BOOK 2357, PAGE 126, OFFICIAL RECORDS OF SAID COUNTY; THENCE SOUTH 89°20'16" WEST ALONG THE NORTH LINE OF SAID WELTY PARCEL, 85.00 FEET TO THE EAST LINE OF THAT CERTAIN PARCEL DESCRIBED IN DEED TO SAMUEL RUSSELL WEAVER AND RUTH ELIZABETH WEAVER RECORDED MAY 15, 1948 IN BOOK 1901, PAGE 174, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 0°55'43" WEST ALONG SAID LAST MENTIONED EAST LINE, 155.17 FEET TO THE SOUTH LINE OF RAILROAD AVENUE (NOW STATE STREET); THENCE NORTH 88°17'51" EAST ALONG SAID SOUTH LINE, 85.00 FEET TO SAID EAST LINE OF LOT 18; THENCE ALONG SAID LAST MENTIONED EAST LINE TO THE NORTHWEST CORNER OF SAID LOT 19; THENCE NORTH 88°17'51" EAST ALONG THE NORTH LINE OF SAID LOTS 19, 20 AND UNNUMBERED LOT, 330.02 FEET TO THE NORTHEAST CORNER OF SAID UNNUMBERED LOT; THENCE SOUTH 0°55'48" EAST ALONG THE EAST LINES OF SAID UNNUMBERED LOT AND LOT 20, A DISTANCE OF 200.02 FEET TO THE SOUTH LINE OF THE NORTH 200.00 FEET OF SAID LOTS 19 AND 20; THENCE SOUTH 88°17'51" WEST ALONG SAID LAST MENTIONED SOUTH LINE, 330.02 FEET TO THE WEST LINE OF SAID LOT 19 (SAID EAST LINE OF LOT 18); THENCE NORTH 0°55'46" WEST ALONG SAID WEST LINE, 43.31 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE WELLSITE LOCATED IN SAID UNNUMBERED LOT, INTERESTS IN SAID WELLSITE HAVING BEEN CONVEYED TO VARIOUS PARTIES BY DEED RECORDED AUGUST 13, 1930 IN BOOK 648, PAGE 3 OF OFFICIAL RECORDS OF SAID COUNTY, AND IN VARIOUS OTHER DEED OF RECORD.

APN:1012-151-29-0-000

PARCEL 8:
THE NORTH 200.00 FEET OF THE SOUTH 265.00 FEET OF THE LAND COMPRISED OF LOTS 9 AND 10, BLOCK "A", POMONA GRANDE TRACT, AS PER MAP RECORDED IN BOOK 19 OF MAPS, PAGES 11 AND 12, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

EXCEPTING THEREFROM THE WEST 9 FEET

ALSO EXCEPTING THEREFROM THE EAST 200.00 FEET

APN:1012-161-05-0-000

PARCEL 9:
THE EAST 200 FEET OF THE NORTH 200 FEET OF THE SOUTH 265.00 FEET OF THE LAND COMPRISED OF LOTS 9 AND 10, BLOCK "A", POMONA GRANDE TRACT, AS PER MAP RECORDED IN BOOK 19, OF MAPS, PAGES 11 AND 12, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

APN:1012-161-02-0-000

EXHIBIT "B"

LOCATION MAP WITH ASSESSOR PARCEL NUMBERS (APN)



EXHIBIT "C"

SCOPE OF SERVICE FOR CONSULTANTS

BEST BEST & KREIGER Attorneys at Law (BBK)

- BBK will supply legal services related to legal analysis and oversight of the project's environmental review process.

LSA & ASSOCIATES, INC.

- LSA & ASSOCIATES, INC., will supply peer review of specific reports/studies associated with the EIR prepared for the project.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 4, 2020	FILE I.D.:	PDT175
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	4	PREPARER:	M. BUTLER
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-30 WITH SOUTHERN CALIFORNIA TRANSCRIPTION SERVICES FOR TRANSCRIPTION OF DIGITAL, AUDIO-RECORDED MATERIAL		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 20-30 with Southern California Transcription Services for transcription of digital, audio-recorded material.

A copy of proposed Agreement No. 20-30 is attached for the City Council's review and consideration.

BACKGROUND: The Police Department has utilized Southern California Transcription Services for the past six years for transcription of audio-recorded material on an as-needed basis. Services provided include, but are not limited to, transcription of employee interviews and meetings, dispatch recordings, and officer belt recordings.

Staff proposes to enter into another 36-month contract with Southern California Transcription Services that would be effective starting June 5, 2020. In accordance with proposed Agreement No. 20-30, Southern California Transcription Services would be paid an hourly rate of \$35 per hour for transcription from English and \$40 per hour for transcription and translation from Spanish. The total amount paid for services rendered would not exceed \$13,000 over the 36-month term of said Agreement.

To ensure confidentiality of the recorded media, staff would have access to a secure internet-based resource to allow for the transfer of digital audio files from the Department to the contractor. Completed documents would be made available in a Microsoft Word format and emailed to the requestor within four business days of receipt.

Southern California Transcription Services would be bound by the confines of said Agreement with regard to confidentiality. Information obtained by Southern California Transcription Services in performance of said Agreement shall be considered confidential and not releasable by Southern California Transcription Services, its officers, employees, agents, or subcontractors without prior written authorization from the City Manager or City Attorney.

FISCAL IMPACT: The total cost of services to be provided by Southern California Transcription Services, pursuant to Agreement No. 20-30, would not exceed \$13,000 for the 36-month term of the Agreement without prior authorization of the City Manager and/or the City Council. Funding for transcription services is allocated annually in the Police Department Fiscal Year Budget in the SB 509 Public Safety Fund 1143.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 20-30 with Southern California Transcription Services for transcription of digital, audio-recorded material.

CITY OF MONTCLAIR

AGREEMENT FOR TRANSCRIPTION SERVICES

THIS AGREEMENT is made and effective as of June 5, 2020, between the City of Montclair, a municipal corporation ("City") and Laureen Minnich, Owner, Southern California Transcription Services, a sole proprietor ("Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on the fifth day of June, 2020, and shall remain and continue in effect for a period of 36 months unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Contractor shall provide the following Services: (1) digital transcription of recorded materials, to include but not limited to recorded employee interviews and meetings, dispatch recordings, and officer belt recordings, (2) access to a secure internet based resource to allow for the transfer of digital audio files from City to Contractor, (3) completed transcription in Microsoft Word format emailed to the requestor within four business days of receipt.

3. PERFORMANCE

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

4. CITY MANAGEMENT

City's Police Chief shall represent City in all matters pertaining to the administration of this Agreement, and review and approval of all products submitted by Contractor, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Contractor. City's Police Chief shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Contractor's compensation, subject to Section 5 hereof.

5. PAYMENT

(a) The City agrees to pay Contractor monthly based upon actual time spent on the above tasks. Compensation for Services shall be based on the actual amount of time spent in adequately performing the Services, and shall be billed at the hourly rates of \$35.00 per hour for transcription from English and \$40.00 per hour for transcription/translation from Spanish. This total amount shall not exceed \$13,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Contractor 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. Contractor shall be compensated for any additional services in the amounts and in the

manner as agreed to by City Manager and Contractor at the time City's written authorization is given to Contractor for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed Fifteen Thousand Dollars (\$15,000.00). Any additional work in excess of this amount shall be approved by the City Council.

(c) Contractor 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 Contractor's fees, it shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(d) Contractor agrees that, in no event shall City be required to pay to Contractor 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 Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor 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 Contractor 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 Contractor will submit an invoice to the City pursuant to Section 5(c).

7. DEFAULT OF CONTRACTOR

(a) The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Contractor 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 Contractor a written notice of the default. The Contractor 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 Contractor 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) Contractor 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. Contractor 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. Contractor 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 Contractor. With respect to computer files, Contractor shall make available to the City, at the Contractor'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 Contractor's services, to the fullest extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents (indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Contractor, its officers, agents, employees or Subcontractors (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of professional services under this Agreement.

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

agents, employees or Subcontractors of Contractor. Said indemnification shall include any claim that Contractor, or Contractor's employees or agents, are considered to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law.

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

10. WORKERS COMPENSATION

(a) Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents as required by law, and agrees to defend, hold harmless and indemnify City for any and all claims arising out of any injury, disability or death of any of Contractor's employees or agents.

11. INDEPENDENT CONTRACTOR

(a) Contractor 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 Contractor shall at all times be under Contractor'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 Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor 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. Contractor 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 Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

The Contractor 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 Contractor 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 Contractor to comply with this Section.

13. UNDUE INFLUENCE

Contractor 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 Contractor, or from any officer, employee or agent of Contractor, 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 Contractor in performance of this Agreement shall be considered confidential and shall not be released by Contractor without City's prior written authorization. Contractor, its officers, employees, agents, or Subcontractors, 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 Contractor gives City notice of such court order or subpoena.

(b) Contractor shall promptly notify City should Contractor, its officers, employees, agents or Subcontractors 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 Contractor and/or be present at any deposition, hearing, or similar proceeding. Contractor agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Contractor. 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) Contractor covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Contractor 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 Subcontractor.

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: Robert Avels, Chief of Police
City of Montclair
5111 Benito
Montclair, CA 91763

To Contractor: Laureen Minnich, Owner
Southern California Transcription Services
4354 Avon Drive
La Mesa, CA 91941

17. ASSIGNMENT

The Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

18. LICENSES

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

20. ENTIRE AGREEMENT

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

21. CONFIDENTIALITY

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

22. DISCRIMINATION

The Contractor 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 Contractor agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

23. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Contractor warrants and represents that he/she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor 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

By: _____
Javier John Dutrey, Mayor

Attest:

By: _____
Andrea M. Phillips, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

CONTRACTOR

Southern California Transcription Services

By: _____
Laureen Minnich, Owner



CITY COUNCIL AGENDA REPORT

DATE:	MAY 4, 2020	FILE I.D.:	STA666A
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	5	PREPARER:	N. CASTILLO
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-31 WITH SAN BERNARDINO COUNTY FOR CONSTRUCTION OF THE PIPELINE AVENUE PAVEMENT REHABILITATION PROJECT		

REASON FOR CONSIDERATION: The City and San Bernardino County desire to enter into an agreement for joint participation in a pavement rehabilitation project on Pipeline Avenue. Cooperative agreements allow the City to get the added value in the economy of scales of larger projects. Agreements with the City require City Council approval.

A copy of proposed Agreement No. 20-31 with San Bernardino County is attached for the City Council's review and consideration.

BACKGROUND: The Pipeline Avenue Pavement Rehabilitation Project is a joint venture between the City of Montclair and the County of San Bernardino. The total project cost is estimated to be \$6,410,000. While the majority of the work is occurring outside of the City limits, the City will benefit from construction unit bid prices that are much lower than if the portion of the work within the city was bid as a standalone project.

The paving will extend from Phillips Boulevard north to Mission Boulevard. The rehabilitation project will repair damaged concrete, curb, gutter, and sidewalk. The main focus of project is pavement rehabilitation, and to that end the project will grind the existing pavement and resurface the street with new asphalt pavement. The County has agreed to take the lead in the design and construction of the project. The City will be billed for the project.

FISCAL IMPACT: The City's project cost is currently estimated to be \$250,000, and will be funded with Senate Bill 1 Road Maintenance and Rehabilitation Account funds.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 20-31 with San Bernardino County for construction of the Pipeline Avenue Pavement Rehabilitation Project.



Contract Number

SAP Number

CITY AGREEMENT NO. 20-31

Public Works

Department Contract Representative	Sundaramoorthy (Sri) Srirajan, P.E., Engineering Manager - Transportation Planning Division
Telephone Number	(909) 387-8166
Project	Pipeline Avenue and Chino Avenue Rehabilitation Project, Chino and Montclair Areas
Contractor	City of Montclair
Contractor Representative	Noel Castillo, P.E., Director of Public Works
Telephone Number	(909) 625-9444
Contract Term	05/19/2020 – 12/31/2023
Original Contract Amount	\$250,000
Amendment Amount	
Total Contract Amount	\$250,000
Cost Center	6650002000 34H14974

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

WHEREAS, the County of San Bernardino (COUNTY) and the City of Montclair (CITY) (COUNTY and CITY are also each referred to herein as "Party" and collectively referred to herein as "Parties") desire to cooperate and jointly participate in a pavement rehabilitation and other related improvements project on Pipe Line Avenue and Chino Avenue in the Montclair area as described in Exhibit "A", which is attached hereto and incorporated herein by this reference (PROJECT); and

WHEREAS, the PROJECT is located in the unincorporated area of the COUNTY and the incorporated area of the CITY; and

WHEREAS, California Streets and Highways Code sections 1685 and 1803 authorize CITY to contract with COUNTY for the maintenance, construction or repair of CITY streets and roads, if the legislative body of CITY determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads; and

WHEREAS, the legislative body of CITY determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads to contract with COUNTY for the PROJECT; and

WHEREAS, it is anticipated that COUNTY's share of PROJECT costs will be from COUNTY Senate Bill 1 Road Maintenance and Rehabilitation Account funds and CITY's share of PROJECT costs will be financed through its local funds; and

WHEREAS, the total PROJECT cost is estimated to be \$6,410,000; and

WHEREAS, COUNTY's share of PROJECT cost is estimated to be \$4,660,000 and the CITY's share of PROJECT cost is estimated to be \$250,000, as more particularly set forth in Exhibit "B", which is attached hereto and incorporated herein by this reference; and

WHEREAS, the City of Chino is also a participant in this Project and the City of Chino's share of PROJECT cost is estimated to be \$1,500,000 under a separate agreement with the County; and

WHEREAS, the above-described costs are proportioned based on the work to be performed in each Party's jurisdiction; and

WHEREAS, COUNTY and CITY desire to set forth the responsibilities and obligations of each as they pertain to such participation, and to the design, construction, and funding of the proposed PROJECT.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 COUNTY AGREES TO:

- 1.1 Act as the Lead Agency in the design, survey, right-of-way engineering, California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 et seq.), construction, construction engineering, and inspection of the PROJECT. Right-of-way engineering work includes right-of-way document research, right-of-way drafting (line work) for engineering documentation/maps, and verification that there is sufficient right-of-way for the PROJECT.
- 1.2 At its own cost, design and perform all right-of-way acquisition related work for Americans with Disabilities Act (ADA) ramps inside the unincorporated COUNTY jurisdiction that is determined to be necessary for the PROJECT. Right-of-way acquisition related work includes, but is not limited to, right-of-way document preparation (legal description and plat), appraisal, acquisition, temporary construction easements, utility easements, utility relocations, site clearance activities, plant/tree/fence/wall removal and relocation/replacement, legal negotiations, eminent domain proceedings, property settlements, and all right-of-way capital costs (actual cost of right-of-way).
- 1.3 Provide plans and specifications for the PROJECT for CITY's review and approval.
- 1.4 Construct the PROJECT by contract in accordance with the plans and specifications of COUNTY, which have been reviewed and approved by CITY.
- 1.5 Arrange for relocation of all utilities which interfere with construction of the PROJECT within the entire PROJECT limits, subject to paragraph 3.9 below.
- 1.6 Obtain a no-cost permit from the CITY for work performed within the CITY's right-of-way.
- 1.7 Advertise, award, and administer the construction of the PROJECT, in accordance with the provisions of the California Public Contract Code applicable to counties.
- 1.8 Require its contractor to maintain and to comply throughout the term of any contract awarded by COUNTY with the insurance requirements described in County Policy Numbers 11-07 and 11-07SP.
- 1.9 Provide adequate inspection of all items of work performed under the construction contract(s) with COUNTY's contractors or subcontractors for the PROJECT and maintain adequate records of inspection and materials testing for review by CITY. COUNTY shall provide copies of any records of inspection and materials testing to CITY within ten (10) days of COUNTY's receipt of written demand from CITY for such records. This shall be included as a PROJECT cost.

- 1.10 After bid opening and prior to award of the construction contract, submit to the CITY an invoice for the estimated CITY share of PROJECT construction costs based on the COUNTY/CITY percentage share determined from the bid result.
- 1.11 Upon PROJECT completion, calculate actual COUNTY/CITY PROJECT share percentages based on the final contract work and cost, which shall include any changes made within the COUNTY and/or CITY as provided in this Agreement.
- 1.12 Based on the COUNTY percentage calculated pursuant to paragraph 1.11, pay its share of the actual PROJECT costs. The actual PROJECT costs shall include the cost of PROJECT design, survey, right-of-way engineering, CEQA compliance, construction, construction engineering, inspection and COUNTY overhead costs. COUNTY's share of PROJECT costs is estimated to be \$4,660,000 and shall not exceed \$5,825,000 (25% increase over the COUNTY's PROJECT cost estimate) absent a written amendment to this Agreement pursuant to paragraph 3.17.
- 1.13 Upon PROJECT completion and the capture of all PROJECT expenses, submit to the CITY an itemized accounting of actual PROJECT costs incurred by the COUNTY and, if said costs exceed the amount paid by CITY pursuant to paragraphs 1.10 and 2.3, an invoice for the remainder of the CITY's share of the actual PROJECT costs, up to the amount set forth in Section 2.4 hereof, as provided herein. Said invoice shall set forth all actual PROJECT costs incurred by COUNTY, together with adequate documentation of said expenditures and a copy of the overall CITY/COUNTY percentage share calculation spreadsheet. If the actual PROJECT costs incurred by COUNTY are less than the amount paid by CITY pursuant to paragraphs 1.10 and 2.3, then COUNTY shall refund CITY the difference within thirty (30) days after issuance of the itemized accounting.

2.0 CITY AGREES TO:

- 2.1 Review and approve the plans and specifications of the PROJECT.
- 2.2 Provide a no-cost permit to the COUNTY for its work in the CITY's right-of-way.
- 2.3 Within thirty (30) days after receipt of the invoice from the COUNTY pursuant to paragraph 1.10 above, pay to the COUNTY the invoiced amount.
- 2.4 Within thirty (30) days after receipt of the itemized accounting and invoice from the COUNTY pursuant to paragraph 1.13 above, pay to the COUNTY the remainder of its share of the actual PROJECT costs based on the CITY percentage calculated pursuant to paragraph 1.11. The PROJECT costs shall include the cost of PROJECT design, survey, right-of-way engineering, CEQA compliance, construction, construction engineering, inspection and COUNTY overhead costs. CITY's share of PROJECT costs is currently estimated to be \$250,000 and shall not exceed \$312,500 (25% increase over the PROJECT cost estimate) absent a written approval from the CITY's designated representative.

3.0 IT IS MUTUALLY AGREED:

- 3.1 Except for activities that are impossible to perform during the construction phase of PROJECT, before, during and after CITY's and COUNTY's acceptance of completed PROJECT, the COUNTY shall be responsible for performing any and all work (including, but not limited to, maintenance) for the COUNTY maintained highways in the PROJECT limits that are within the COUNTY unincorporated area and the CITY shall be responsible for performing any and all work (including, but not limited to, maintenance) for CITY streets in the PROJECT limits that are in the CITY incorporated area.
- 3.2 COUNTY agrees to indemnify, defend (with counsel approved by CITY) and hold harmless the CITY and its officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from COUNTY's negligent acts or omissions which arise from COUNTY's performance of its obligations under this Agreement.
- 3.3 CITY agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless COUNTY and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability resulting from CITY's negligent acts or omissions which arise from CITY's performance of its obligations under this Agreement.

- 3.4 In the event the COUNTY and/or the CITY is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the COUNTY and/or CITY shall indemnify the other to the extent of its comparative fault.
- 3.5 In the event of litigation arising from this Agreement, each Party to the Agreement shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorney(s) fees relative to paragraphs 3.2, 3.3 and 3.4.
- 3.6 COUNTY and CITY are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability and Worker's Compensation, and warrant that through their respective programs of self-insurance they have adequate coverage or resources to protect against liabilities arising out of COUNTY and CITY's performance of the terms, conditions or obligations of this Agreement.
- 3.7 The Parties acknowledge that actual PROJECT costs may ultimately exceed current estimates of PROJECT costs. Any additional PROJECT costs (including, but not limited to, additional PROJECT costs caused by an increase in engineering cost, higher bid prices, change orders, or arising from unforeseen site conditions, including utility relocation (but not from requested additional work by the COUNTY or CITY, which is addressed in paragraph 3.8 below)) over the estimated total of the PROJECT's cost of \$6,410,000 (which is the sum of \$4,660,000 from COUNTY and \$250,000 from CITY and \$1,500,000 from the City of Chino under a separate agreement) shall be borne by each Party based upon where the work is required (i.e. whether the work is required in the COUNTY's or CITY's jurisdiction) up to the amounts set forth in Section 1.12 and 2.4, respectively.
- 3.8 If either COUNTY or CITY requests additional work that is beyond the scope of the original PROJECT, and not considered by all Parties to be a necessary part of the PROJECT, said work, if approved by both Parties pursuant to paragraph 3.17 will be paid solely by the Party requesting the work.
- 3.9 In the case wherein one of the Parties owns a utility that needs to be relocated for the PROJECT and that Party does not have prior rights for that utility, it will be the sole responsibility of that Party to relocate the utility at that Party's cost. This shall not be included as a PROJECT cost. In the case that a utility relocation is determined to be a PROJECT cost based on that utility having prior rights, the relocation of the utility will be included as a PROJECT cost for which the COUNTY and CITY will be responsible for funding for work located within their respective boundaries.
- 3.10 As design progresses, if it is found by COUNTY's Director of Public Works, or the Director's designee, that a cost overrun of 25% or more of the estimated total of the PROJECT costs will occur, COUNTY shall provide CITY notice of this fact and COUNTY and CITY shall endeavor to agree upon an alternative course of action, including amending the cost estimates. If, after thirty (30) days of COUNTY notice, an alternative course of action is not mutually agreed upon in writing between the COUNTY and CITY, this Agreement shall be deemed to be terminated by mutual consent.
- 3.11 COUNTY shall notify CITY of the bids received and the amounts thereof. In the event that either Party intends to cancel this Agreement based upon the bids or amount thereof, said Party shall notify the other Party at a reasonable time prior to the awarding of a contract to construct the PROJECT to avoid any detrimental reliance by either Party, contractor or potential contractor.
- 3.12 If after opening bids for the PROJECT, it is found that the responsive and responsible low bid amount is 25% or less over the construction cost shown in Exhibit B, COUNTY may award the contract.
- 3.13 If, upon opening of bids, it is found that the responsive and responsible low bid amount is over 25% more than the construction cost shown in Exhibit B or the Amended Exhibit B pursuant to paragraph 3.10 of the Agreement, COUNTY shall not award the contract unless: 1) COUNTY receives written permission from the CITY's City Engineer or designee, to proceed with the award; and 2) COUNTY's Board of Supervisors approves the award of the construction contract. If both of the above described conditions are not met, COUNTY and CITY shall endeavor to agree upon an alternative course of action, including re-bidding of the PROJECT. If, after thirty (30) days of the bid opening, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.

- 3.14 In the event that change orders are required during the course of the PROJECT, said change orders must be in form and substance as set forth in Exhibit "C", which is attached hereto and incorporated herein by this reference, and approved by both COUNTY and CITY. Contract change order forms will be delivered by fax and must be returned within two (2) days. The CITY shall not unreasonably withhold approval of change orders. If a CITY disapproved or modified change order is later found to be a cost of the PROJECT, then the CITY shall be responsible for any costs, awards, judgments or settlements associated with the disapproved or modified change order.
- 3.15 This Agreement may be cancelled upon thirty (30) days advance written notice of either Party, provided however, that neither Party may cancel this Agreement after COUNTY awards a contract to construct the PROJECT. In the event of cancellation as provided herein, including termination pursuant to paragraphs 3.10, 3.11 and 3.13 above, all PROJECT expenses incurred prior to the effective date of cancellation/termination shall be paid by the Parties in the same proportion to their contribution for the PROJECT. The Parties recognize and agree that the provisions governing utility relocation and construction are dependent upon the Parties first satisfying CEQA. As provided in this paragraph, the Agreement may be cancelled with or without cause, before, during and after CEQA review/approval.
- 3.16 Except as provided in paragraphs 3.15 and 3.24, and except for the Parties' operation, maintenance and indemnification obligations contained herein which shall survive termination, this Agreement shall terminate upon completion of the PROJECT and payment of final billing by the CITY for its share of the PROJECT costs or refund by COUNTY pursuant to paragraph 1.13.
- 3.17 This Agreement contains the entire agreement of the Parties with respect to subject matter hereof, and supersedes all prior negotiations, understandings or agreements. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 3.18 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between CITY and COUNTY concerning the interpretation or enforcement of this Agreement, or which arises out of or is in any way connected with this Agreement or the PROJECT, shall be instituted and tried in the appropriate state court, located in the County of San Bernardino, California.
- 3.19 Time is of the essence for each and every provision of this Agreement.
- 3.20 Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed COUNTY work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
- 3.21 No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- 3.22 If a court of competent jurisdiction declares any portion of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of this Agreement is frustrated.
- 3.23 This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.24 This Agreement will be effective on the date signed and approved by both Parties and shall terminate upon satisfaction of the terms identified in paragraph 3.16 or December 31, 2023 (whichever occurs first).
- 3.25 The Recitals are incorporated into the body of this Agreement.

THIS AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of both Parties.
IN WITNESS WHEREOF, the Parties to these presents have hereunto set their hands.

COUNTY OF SAN BERNARDINO



Curt Hagman, Chairman, Board of Supervisors

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

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

CITY OF MONTCLAIR

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



(Authorized signature - sign in blue ink)

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

Title: Mayor
(Print or Type)

Dated: _____

Address: 5111 Benito Street
Montclair, CA 91763

Attest: _____
Andrea Phillips, City Clerk

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
 _____ Suzanne Bryant, Deputy County Counsel	 _____ Mohammad Ali, P.E., Chief	 _____ Brendon Biggs, Interim Director
Date _____	Date _____	Date _____

EXHIBIT A

ROAD REHABILITATION LIST AND ADA CURB RAMP UPDATES

Road Number	Road Name	Limits
232050020	CHINO AVENUE	SH71 E/MC KINLEY AVE
232050030	CHINO AVENUE	MC KINLEY AVE E/.06M W,PIPE LINE AVE
660850030	PIPE LINE AVENUE	CHINO AVE N/RIVERSIDE DR
660850040	PIPE LINE AVENUE	RIVERSIDE N/.28M S,WALNUT(CHINO CL)
660850050	PIPE LINE AVENUE	.13M N,WALNUT AVE(CHI CL) N .25M
660850060	PIPE LINE AVENUE	.04M S,PHILADELPHIA N/MISSION BLVD

EXHIBIT B

**ESTIMATE OF PROJECT COSTS
FOR COUNTY OF SAN BERNARDINO/CITY OF MONTCLAIR
PAVEMENT REHABILITATION AND ADA RAMP PROJECT
IN THE MONTCLAIR AREA**

**Pipe Line Avenue from Chino Avenue north to Mission Boulevard
Chino Avenue from SH 71 east to 0.13 miles east of Pipe Line Avenue**

DESCRIPTION	AMOUNT	COUNTY OF SAN BERNARDINO SHARE	CITY OF MONTCLAIR SHARE	CITY OF CHINO SHARE*
Construction	\$4,910,000	\$3,560,000	\$200,000	\$1,150,000
All Other Costs such as design, survey, CEQA compliance, construction, construction engineering, inspection and County overhead	\$1, 500,000	\$1,100,000	\$50,000	\$350,000
TOTAL	\$6,410,000	\$4,660,000	\$250,000	\$1,500,000

- City of Chino share is addressed under a separate agreement between the City of Chino and the County.

EXHIBIT C

CONTRACT CHANGE ORDER REVIEW/APPROVAL

PROJECT: PIPE LINE AVENUE AND OTHER ROADS

COUNTY OF SAN BERNARDINO CONTRACT #

File: H14974

Proposed Contract Change Order No. _____ has been reviewed in accordance with the existing agreements with the City of Montclair and County of San Bernardino for the above project and the following shall apply:

DATE OF CITY OF MONTCLAIR ACTION: ____/____/____

- APPROVED for Implementation with 100% Participation by CITY OF MONTCLAIR
- APPROVED Subject to Comments/Revisions Accompanying This Document
- APPROVED With Limited Funding Participation by CITY OF MONTCLAIR
 - _____% of Actual Cost to be Funded by CITY OF MONTCLAIR
 - CITY OF MONTCLAIR Participation Not to Exceed \$ _____
- DISAPPROVED -Not Acceptable to CITY OF MONTCLAIR

Note: Approval under any of the above conditions shall in no case be construed as agreement to increase the total financial participation beyond that prescribed in the existing CITY OF MONTCLAIR and COUNTY agreement without a separate amendment to said agreement. Net increases in costs deriving from this and previously approved Contract Change Orders shall not cause the total construction costs to exceed the sum of the authorized contract total and contingency amounts.

Comments, as follows and/or attached, are conditions of the above action? YES NO

SIGNED: _____

TITLE: _____

Distribution:
Signed Original Returned to Resident Engineer (FAX # 909-387-7927)
Signed Original for CITY OF MONTCLAIR File



CITY COUNCIL AGENDA REPORT

DATE:	MAY 4, 2020	FILE I.D.:	STA110L
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	6	PREPARER:	N. CASTILLO
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-32 WITH SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AMENDING AGREEMENT NO. 15-64 (SBCTA COOPERATIVE AGREEMENT NO. 15-1001297) FOR THE CONSTRUCTION PHASE OF THE MONTE VISTA AVENUE/UNION PACIFIC RAILROAD GRADE SEPARATION PROJECT		

REASON FOR CONSIDERATION: On August 4, 2015, the City Council approved Agreement No. 15-64 with San Bernardino County Transportation Authority (SBCTA). Based on the most current project schedule for the Monte Vista Avenue Grade Separation Project, SBCTA now wishes to amend the agreement to extend the contract expiration date. Contract amendments require City Council Approval.

A copy of proposed Agreement No. 20-32 with SBCTA is attached for the City Council's review and consideration.

BACKGROUND: The City had previously entered in to Cooperative Agreement No. 15-64, dated August 4, 2015. The agreement delineates roles, responsibilities, and funding commitments relative to the construction activities. The City then amended Agreement No. 15-64 with Agreement No. 16-41 dated June 6, 2016 to revise the development share percentage used in the original agreement. The amendment also revised the public share to 91.5% and development share to 8.5%, consistent with the Nexus Study. The agreement was further amended by Agreement No. 19-91 to reflect the latest cost estimates. The new proposed amendment is to extend the expiration date by one year to August 31, 2021.

Construction was completed and relief of maintenance was issued in February 2020, however, there are pending invoices from Union Pacific Railroad and an unresolved claim, which will likely not be resolved prior to the current expiration date of August 31, 2020. Amendment No. 3 to the City of Montclair Cooperative Agreement is to extend the expiration date by one-year to August 31, 2021. This additional time is needed to resolve pending invoices, claims, and take the project through the closeout process and all final reports and coordination efforts required to complete project requirements. The overall financial responsibility by the City is not to exceed \$2,435,131.

FISCAL IMPACT: The time extension does not affect the fiscal impact of the project on the City's General Fund. The Project Funding Table is shown on the following page.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 20-32 with San Bernardino County Transportation Authority amending Agreement No. 15-64 (SBCTA Cooperative Agreement No. 15-1001297) for the construction phase of the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project.

MONTE VISTA AVENUE/UPRR GRADE SEPARATION PROJECT

PROJECT FUNDING TABLE

Public Share: 91.5%- \$18,893,462 after buy downs²

Nexus Development Impact Fee Share (DIF, "Development Share" or "Local Share"): 8.5%- \$2,435,131 after buy downs² (including AUTHORITY project management cost)

Phase	Estimated Cost ¹	Buy Downs ²		Shares per Nexus Study After Buy Downs		Actual Contribution			
				Public Share	Developer Share	Public Share			Developer Share
		PUC 190	UPRR			TCIF	PNRS	Measure I	
Construction Management	\$3,354,430	\$731,671	\$0	\$2,399,824	\$222,935			\$1,081,075	\$1,541,684
Construction Capital	\$23,370,472	\$4,268,329	\$1,076,309	\$16,493,638	\$1,532,196	\$1,019,036	\$10,661,442	\$6,131,909	\$213,447
SBCTA Project Management ³	\$680,000			\$0	\$680,000				\$680,000
TOTAL	\$27,404,902	\$5,000,000	\$1,076,309	\$18,893,462	\$2,435,131	\$1,019,036	\$10,661,442	\$7,212,984	\$2,435,131

¹ Estimated Costs are based on current cost.

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

³ In accordance with Measure I Strategic Plan Policy VMS-29 and VMS-30 AUTHORITY Project Management costs are to be paid solely by Development Share.

**AMENDMENT NO. 3 TO
COOPERATIVE AGREEMENT NO. 15-1001297
BETWEEN
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
AND
CITY OF MONTCLAIR
FOR
CONSTRUCTION PHASE FOR THE GRADE SEPARATION AT
MONTE VISTA AVENUE/UPRR IN THE CITY OF MONTCLAIR**

I. PARTIES AND TERM

A. THIS AMENDMENT NO. 3 to COOPERATIVE AGREEMENT (“Amendment No.3”) is made and entered into by and between the San Bernardino County Transportation Authority (hereinafter referred to as “AUTHORITY”) and the City of MONTCLAIR (CITY), (AUTHORITY and CITY may be referred to herein as a “Party” and collectively “Parties”).

II. RECITALS

A. WHEREAS, CITY and AUTHORITY have previously entered into Cooperative Agreement, No. 15-1001297 dated September 2, 2015 (“Agreement”), which delineates roles, responsibilities, and funding commitments relative to the Construction activities of the PROJECT as defined in the Agreement.

B. WHEREAS, the CITY and AUTHORITY previously amended Cooperative Agreement, No. 15-1001297 pursuant to Amendment No.1, dated July 6, 2016, to revise the development share percentage used in the original agreement. The amendment revised the public share to 91.5% and the development share to 8.5%, consistent with the Nexus Study.

C. WHEREAS, the CITY and AUTHORITY previously amended Cooperative Agreement, No. 15-1001297 pursuant to Amendment No.2, dated December 5, 2019, to update Project Management and Construction cost and revise Attachment A.

D. WHEREAS, the CITY and AUTHORITY now wish to further amend Cooperative Agreement, No. 15-1001297, to extend the expiration date by one year to allow for pending closeout activities.

NOW, THEREFORE, the Parties agree to amend Cooperative Agreement No. 15-1001297 between the CITY and AUTHORITY as follows:

1. The entirety of Paragraph B of Section I, entitled “PARTIES AND TERM” is amended to read as follows:

“B. This Agreement shall terminate upon completion of AUTHORITY's project management of the construction, or **August 31, 2021**, whichever is earlier in time, except that the indemnification provisions shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claims arising out of this Agreement be asserted against one of the Parties, the Parties agree to extend the fixed termination date of this Agreement until such time as the claims are settled, dismissed, or paid.”

2. Except as amended by this Amendment No. 3, all other terms and conditions of Cooperative Agreement No. 15-1001297, Amendment No. 1 and Amendment No. 2 shall remain in full force and effect.
3. The recitals are incorporated into the body of this Amendment No. 3.
4. This Amendment No. 3 may be signed in counterparts, each of which shall constitute an original.
5. The Effective Date of this Amendment is the date AUTHORITY executes this Amendment No. 3.

SIGNATURES ON FOLLOWING PAGE:

**SIGNATURE PAGE TO
AMENDMENT NO. 3 TO
COOPERATIVE AGREEMENT NO. 15-1001297
BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
and CITY OF MONTCLAIR**

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

CITY OF MONTCLAIR

By: _____
Darcy McNaboe
Board President

By: _____
Javier John Dutrey
Mayor

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM:

By: _____
Julianna Tillquist
General Counsel

By: _____
Diane E. Robbins
City Attorney

ATTEST

By: _____
Jeffery Hill
Procurement Manager

By: _____
Andrea M. Phillips
City Clerk



CITY COUNCIL AGENDA REPORT

DATE: MAY 4, 2020

FILE I.D.: PDT362

SECTION: CONSENT - AGREEMENTS

DEPT.: POLICE

ITEM NO.: 7

PREPARER: M. BUTLER

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 20-33 WITH THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AUTHORIZING THE RECEIPT OF \$16,672 FROM THE FY 2018 HOMELAND SECURITY GRANT PROGRAM

CONSIDER AUTHORIZING A \$16,672 APPROPRIATION FROM THE PUBLIC SAFETY GRANT FUND TO PURCHASE 20 BATTERIES FOR THE UNINTERRUPTABLE POWER SUPPLY DEVICE IN THE COMMUNICATIONS CENTER, 71 BATTERIES FOR HANDHELD RADIOS, AND EVIDENCE STORAGE SYSTEMS FOR THE EVIDENCE/PROPERTY ROOM

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 20-33 with San Bernardino County Fire Protection District (SBCFPD) authorizing the receipt of \$16,672 from the FY 2018 Homeland Security Grant Program (HSGP), and to authorize a \$16,672 appropriation from the Public Safety Grant Fund to purchase 20 batteries for the uninterruptible power supply (UPS) device in the Communications Center, 71 batteries for handheld radios, and evidence storage systems for the evidence/property room. The Public Safety Grant Fund would be fully reimbursed by the FY 2018 HSGP.

A copy of proposed Agreement No. 20-33 is attached for the City Council's review and consideration.

BACKGROUND: The HSGP is designed to assist organizations, government agencies, and communities in implementing programs and measures to prevent, protect against, mitigate, respond to, and recover from threats, hazards, acts of terrorism, and other catastrophic events that pose a significant risk to local communities and the nation.

The State of California Governor's Office of Emergency Services established that the subgrantee of the HSGP for San Bernardino County is the SBCFPD. In its capacity as subgrantee, SBCFPD is tasked with applying for Department of Homeland Security Grant Program funds on behalf of regional jurisdictions. Through this process, the Montclair Police Department would receive \$16,672. After procurement is completed, a request for reimbursement would be submitted to the SBCFPD.

The Department has received approval from the Homeland Security Grants Unit to procure 20 UPS device batteries and 71 batteries for the Department's handheld, two-way radios using FY 2018 HSGP funds. Batteries for the UPS device would ensure continuous power is provided to the Communications Center during power outages. The UPS device is fueled by batteries that power-up when the device senses a loss of power from the primary source for a short time until a remote power source, such as a backup generator, can come into force when the primary power source is lost. When in operation, the UPS device provides near-instantaneous protection of data and power to the dispatch center and consoles (computers, computer monitors, 9-1-1 telephone system, and security monitors), which are vital in maintaining communications with first responders, mobile command centers, outlying jurisdictions, and the community. The Department's current batteries are out of warranty, are no longer covered by the

manufacturer, have reached the end of their useful life cycle, and must be replaced to prevent failure.

Batteries for the Department's handheld, two-way radios are essential for constant communication by emergency personnel. Each Officer is required to have two batteries for his/her radio—two-way radio communication is a lifeline for first responders, connecting them to the dispatch center and other emergency personnel. It allows for interagency communication during mutual aid responses as well as vital dialogue with command personnel to make strategic decisions concerning coordinated efforts to ensure the safety of first responders and to ensure proper and timely communications to affected communities.

Uninterrupted communications within the public safety sector, particularly during critical or catastrophic events, is paramount to efficient assessment of situations, connecting community members to available resources, collection of data, information sharing, collaboration of efforts and resources, and overall successful outcomes.

Bid quotations for the purchase of 20 batteries for the UPS device were received from the following vendors:

<u>Vendor</u>	<u>Bid Amount</u>
UPSCO Powersafe Systems, Inc.	\$4,579
ePower Network	\$4,909
Odyssey Power	\$4,946

UPSCO Powersafe Systems, Inc. is the selected vendor for the purchase of the UPS batteries. This vendor has the lowest bid offering competitive pricing and has provided reliable, professional service in the past.

Bid quotations for the purchase of 71 handheld radio batteries were received from the following vendors:

<u>Vendor</u>	<u>Bid Amount</u>
Radio.Parts	\$6,240
SBC Information Services Dept.	\$7,022
Motorola Solutions	\$9,327

Staff proposes to purchase the handheld radio batteries from San Bernardino County Information Services Department. This vendor does not offer the lowest cost per battery, but it is a local source that provides a one-year warranty; thus, if necessary, batteries can be repaired or exchanged without the Department incurring shipping and handling fees. SBC Information Services has been a reliable company for many years supplying quality batteries for the Department's radios.

The Department also received approval to purchase evidence storage systems using FY 2018 HSGP funds. This would include the purchase of fiber drums and boxes that would allow for the secure and efficient storage of evidence and property in the Police Station's evidence/property room. Recently, the Department has seen a rise in illegal and unpermitted cannabis dispensaries. As a result, there has been an increase of seized drugs that need to be properly stored. The evidence/property room is in need of evidence storage systems in order to organize and maintain evidence integrity. The procurement of appropriate evidence storage containers would allow for efficient evidence storage, preservation, and retrieval.

Bid quotations for the purchase of fiber drums and boxes were received from the following vendors:

<u>Vendor</u>	<u>Bid Amount</u>
Uline	\$4,585
Amazon	\$6,728
N/A	N/A

Staff researched several different vendors for the purchase of fiber drums and boxes; only two vendors sell both the drums and boxes in the necessary sizes that will fit on the shelves in the evidence/property room. Other vendors offer the fiber drums in the necessary sizes or the boxes in the necessary sizes—but not both. Staff proposes to purchase the fiber drums and boxes from Uline as this company offers both in the needed sizes at the lowest bid. Uline is also a reputable, local company that the Department has used in the past for its evidence/property storage needs.

FISCAL IMPACT: If approved by the City Council, the purchase of 20 UPS device batteries, 71 handheld radio batteries, fiber drums, and boxes would result in an appropriation from the Public Safety Grant Fund (1163) in the amount of \$16,672. The City would receive full reimbursement from the FY 2018 HSGP.

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

1. Approve Agreement No. 20-33 with the San Bernardino County Fire Protection District authorizing the receipt of \$16,672 from the FY 2018 Homeland Security Grant Program.
2. Authorize a \$16,672 appropriation from the Public Safety Grant Fund to purchase 20 batteries for the Uninterruptable Power Supply device in the Communications Center, 71 batteries for handheld radios, and evidence storage systems for the evidence/property room.

CITY OF MONTCLAIR - BID QUOTATION FORM

DEPARTMENT: Police DATE: 4/22/2020

PURCHASE REQUISITION NO. _____

ITEM(S) DESCRIPTION 20 Batteries for the UPS Device

REASON FOR PURCHASE: Current batteries are out of warranty and are no longer covered by the manufacturer; purchase of new batteries is approved under HSGP 2018.

QUOTES OBTAINED BY: John Nguyen

VENDORS CONTACTED

		Quote (1):	
(1) NAME:	<u>UPSCO Powersafe Systems, Inc.</u>	Item #1	3,360.00
REPRESENTATIVE:	<u>Martin Holiday</u>	Item #2	
ADDRESS:	<u>44 N. Central Ave.</u>	Total	3,360.00
	<u>Upland, CA 91786</u>	Tax	268.80
TELEPHONE:	<u>909-920-1088</u>	Shipping	0.00
COMMENTS:		Labor	950.00
		Total	4,578.80

		Quote (2):	
(2) NAME:	<u>ePower Network</u>	Item #1	3,528.00
REPRESENTATIVE:	<u>Holland Truong</u>	Item #2	
ADDRESS:	<u>1020 Segovia Circle</u>	Total	3,528.00
	<u>Placentia, CA 92870</u>	Tax	282.24
TELEPHONE:	<u>800-616-2335</u>	Shipping	148.80
COMMENTS:		Labor	950.40
		Total	4,909.44

		Quote (3):	
(3) NAME:	<u>Odyssey Power</u>	Item #1	3,267.00
REPRESENTATIVE:	<u>Andy Laurenson</u>	Item #2	50.00
ADDRESS:	<u>625 N. Shepard St.</u>	Total	3,317.00
	<u>Anaheim, CA 92806</u>	Tax	294.03
TELEPHONE:	<u>800-675-4545</u>	Shipping	175.00
COMMENTS:	<u>Item #2 is mileage cost</u>	Labor	1,160.00
		Total	4,946.03

** Note: Quotations are to include tax and delivery charges.

RECOMMENDED VENDOR AND JUSTIFICATION:

UPSCO Powersafe Systems, Inc. is the recommended vendor for this purchase. This vendor has the lowest bid offering competitive pricing and has provided reliable, professional service in the past.

CITY OF MONTCLAIR - BID QUOTATION FORM

DEPARTMENT: Police DATE: 4/22/2020

PURCHASE REQUISITION NO. _____

ITEM(S) DESCRIPTION 71 Handheld Radio Batteries

REASON FOR PURCHASE: Each Officer is required to have two batteries for his/her radio; purchase of batteries is approved under HSGP 2018.

QUOTES OBTAINED BY: Marci Butler

VENDORS CONTACTED

		Quote (1):	
(1) NAME:	<u>Radio.Parts</u>	Item #1	5,777.98
REPRESENTATIVE:	<u>Diane Ferguson</u>	Item #2	
ADDRESS:	<u>4015 NE 6th Ave.</u>	Total	5,777.98
	<u>Fort Lauderdale, Florida 33334</u>	Tax	462.24
TELEPHONE:	<u>866-341-8464</u>	Shipping	0.00
COMMENTS:		Labor	0.00
		Total	6,240.22

		Quote (2):	
(2) NAME:	<u>SBC Information Services Department</u>	Item #1	7,021.90
REPRESENTATIVE:	<u>Lorena Reyes</u>	Item #2	
ADDRESS:	<u>670 E. Gilbert Street</u>	Total	7,021.90
	<u>San Bernardino, CA 92415-0915</u>	Tax	
TELEPHONE:	<u>909-387-2019</u>	Shipping	0.00
COMMENTS:	<u>The cost includes an 8% tax and 2% processing fee.</u>	Labor	0.00
		Total	7,021.90

		Quote (3):	
(3) NAME:	<u>Motorola Solutions</u>	Item #1	8,626.50
REPRESENTATIVE:	<u>N/A</u>	Item #2	
ADDRESS:	<u>500 W Monroe Street, Ste. 4400</u>	Total	8,626.50
	<u>Chicago, IL 60661-3781</u>	Tax	690.12
TELEPHONE:	<u>847-576-5000</u>	Shipping	9.99
COMMENTS:		Labor	0.00
		Total	9,326.61

** Note: Quotations are to include tax and delivery charges.

RECOMMENDED VENDOR AND JUSTIFICATION:

SBC Information Services Department is the recommended vendor for this purchase. This vendor does not offer the lowest cost per battery, but it is a local source that provides a one-year warranty; thus, batteries can be repaired or exchanged without incurring shipping and handling costs. This vendor has been a

CITY OF MONTCLAIR - BID QUOTATION FORM

DEPARTMENT: Police DATE: 4/22/2020

PURCHASE REQUISITION NO. _____

ITEM(S) DESCRIPTION Fiber Drums and Boxes

REASON FOR PURCHASE: For the secure and efficient storage of evidence and property; purchase of these items is approved under HSGP 2018.

QUOTES OBTAINED BY: Marci Butler

VENDORS CONTACTED

		Quote (1):	
(1) NAME:	<u>Uline</u>	Item #1	920.00
REPRESENTATIVE:	<u>Kathy Ngo</u>	Item #2	3,325.20
ADDRESS:	<u>2950 Jurupa St.</u>	Total	4,245.20
	<u>Ontario, CA 91761</u>	Tax	339.62
TELEPHONE:	<u>800-295-5510</u>	Shipping	0.00
COMMENTS:	<u>Item #1 is all fiber drums; Item #2 is all boxes.</u>	Labor	0.00
		Total	4,584.82

		Quote (2):	
(2) NAME:	<u>Amazon</u>	Item #1	2,451.70
REPRESENTATIVE:	<u>N/A</u>	Item #2	3,745.84
ADDRESS:	<u>1200 12th Avenue South, Ste. 1200</u>	Total	6,197.54
	<u>Seattle, WA 98144</u>	Tax	495.80
TELEPHONE:	<u>206-266-1000</u>	Shipping	34.99
COMMENTS:	<u>Item #1 is all fiber drums; Item #2 is all boxes.</u>	Labor	0.00
	<u>Some promotions were applied to this quote.</u>	Total	6,728.33

		Quote (3):	
(3) NAME:	<u>N/A</u>	Item #1	
REPRESENTATIVE:	_____	Item #2	
ADDRESS:	_____	Total	
	_____	Tax	
TELEPHONE:	_____	Shipping	
COMMENTS:	_____	Labor	
	_____	Total	

** Note: Quotations are to include tax and delivery charges.

RECOMMENDED VENDOR AND JUSTIFICATION:

Uline is the recommended vendor for this purchase. This vendor offers the fiber drums and boxes in the needed sizes at the lowest bid. It is also a reputable, local company that the Department has used in the past for its evidence/property storage needs.



July 2, 2019

San Bernardino County Fire, Grants Unit
Attn: Tina Sutera
157 W. 5th Street, Fl. 2
San Bernardino, CA 92415

SUBJECT: FY2018 HOMELAND SECURITY GRANT PROGRAM

Please find attached the FY2018 Homeland Security Grant Program (HSGP) package and the following documentation for your review.

Required Documentation:

- Signed Subrecipient Agreement
- Application Workbook Certification
- Certification Letter
- Grants Management Assessment Form
- Proof of SAM Registration

Certification Box:

I certify that the necessary documentation for my project is attached to this package.

Print Name:	Robert Avels
Print Title:	Chief of Police
Signature:	
Phone No.:	(909) 448-3602
E-Mail Address:	ravel@cityofmontclair.org
Fax No.:	(909) 626-4892

CITY OF MONTCLAIR

5111 Benito Street, P.O. Box 2308, Montclair, CA 91763 (909) 626-8571 FAX (909) 621-1584

Mayor Javier John Dutrey • Mayor Pro Tem Carolyn Raft • Council Members: Bill Ruh, Trisha Martinez, Tenice Johnson • City Manager Edward C. Starr

County of San Bernardino
 FY2018 Homeland Security Grant Program
 CFDA 97.067

Subrecipient Agreement / Assurances
 Grant No. 2018-0054

Name of Applicant: Montclair Police Department (hereafter "Applicant" or "Subrecipient")
 Address: 4870 Arrow Highway
 City: Montclair State: CA Zip Code: 91763
 Telephone Number: 909-448-3600 Fax Number: 909-626-4892
 E-Mail Address: ravels@cityofmontclair.org

The Applicant becomes the Subrecipient after obtaining award authorization and approval of this agreement by both Applicant and the County of San Bernardino (hereafter "County")*

As the duly authorized representative of the Applicant, I hereby certify that the Applicant has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management and completion of the project described in this application, within prescribed timelines.

Applicant further acknowledges that it is responsible for reviewing and adhering to all requirements listed below. By accepting this award, Applicant agrees that the funds and allocations under this grant will be in accordance with the requirements listed below:

- a) Applicable Federal Regulations (see below);
- b) Federal Program Notice of Funding Opportunity (NOFO);
- c) California Supplement to the NOFO; and
- d) Federal and State Grant Program Guidelines
- e) Subrecipient Application Workbook

Federal Regulations

Government cost principles, uniform administrative requirements and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (CFR). Updates are issued by the Office of Management and Budget (OMB) and can be found at <http://www.whitehouse.gov/omb/>.

Significant state and federal grant award requirements are set forth below. The Applicant hereby agrees to comply with all applicable state and federal grant award requirements, including, but not limited to, the following:

1. Proof of Authority

The Applicant will obtain written authorization from the city council, governing board or authorized body in support of this project. The written authorization must specify that the Applicant and the city council, governing board, or authorized body agree:

- a) To provide all matching funds required (if applicable) for the grant and that any cash match will be appropriated as required;
- b) Any liability arising out of the performance of this agreement shall be the responsibility of the Applicant and the city council, governing board, or authorized body;
- c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board or authorized body; and
- d) The official executing this agreement is, in fact authorized to do so.

This Proof of Authority must be maintained on file and readily available upon request.

2. Period of Performance

The Applicant will initiate work after approval of the award and complete all work within the performance specified in the grant. Applicant will maintain procedures to minimize the amount of time elapsing between the award of funds and the disbursement of funds.

3. Lobbying and Political Activities

As required by Section 1352, Title 31 of the U.S. Code (U.S.C.), for persons entering into a contract, grant, loan or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, the Application certifies that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding any Federal Contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

The Applicant will also comply with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and §§7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

Finally, the Applicant agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

4. Debarment and Suspension

As required by Executive Orders 12549 and 12689, and 2 CFR §200.213 and codified in 2 CFR Part 180, Debarment and Suspension, the Applicant will provide protection against waste, fraud, and abuse by debarment or suspending those persons deemed irresponsible in their dealings with the federal government. The Applicant certifies that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
- d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where the Applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

5. Non-Discrimination and Equal Employment Opportunity

The Applicant will comply with all federal statutes relating to non-discrimination. These include, but are not limited to, the following:

- a) Title VI of the Civil Rights Act of 1964 (public Law (P.L. 88-352 and 42 U.S.C. §2000d et. Seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
- b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on basis of sex in any federally funded educational program or activity;
- c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794), which prohibits discrimination against those disabilities or access and functional needs;
- d) Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs; (42 U.S.C. §§12101-12213);
- e) Age Discrimination Act of 1975, (42 U.S.C §§6101-6107), which prohibits discrimination on the basis of age;
- f) Public Health Service Act of 1912 (42 U.S.C. §290); relating to confidentiality of patient records regarding substance abuse treatment;
- g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C §3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);
- h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin;
- i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
- j) California Public Contract Code §10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;
- k) DHS policy to ensure the equal treatment of faith-based organizations, under which all applicants and recipients must comply with equal treatment policies and requirements contained in 6 C.F.R Part 19;
- l) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
- m) The requirements of any other nondiscrimination statute(s) which may apply to the application.

In addition to the items listed in a) through m), the Applicant will comply with California's Fair Employment and Housing Act (FEHA). FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth, or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (California Government Code §§12940, 12945,

12945.2), military and veteran status, and/or retaliation for protesting illegal discrimination related to one if these categories, or for reporting patient abuse in tax supported institutions.

6. Drug-Free Workplace

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 ET SEQ.), the Applicant certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

7. Environmental Standards

The Applicant will comply with state and federal environmental standards, which may be prescribed pursuant to the following, as applicable:

- a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000-21177), to include coordination with the city or county planning agency;
- b) CEQA Guidelines (California Code of Regulation, Title 14, Division 6, Chapter 3, §§ 15000-15387);
- c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;
- d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;
- e) Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
- f) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
- g) Executive Order 11514 which sets for the national environmental standards;
- h) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;;
- i) The Safe Drinking Water Act of 1974, (P.L. 93-523);
- j) The Endangered Species Act of 1973, (P.L. 93-205);
- k) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- l) Conformity of Federal actions to State (Clear Air) Implementation Plans under Sections 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); and
- m) Wild and Scenic Rivers Act of 1968 (16 U.S.C § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

The Applicant shall not be 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements for prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.

8. Audits

For subrecipients expending \$750,000 or more in federal grant funds annually, the Applicant will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

9. Access to Records

- a) In accordance with 2 CFR §200.336, the Applicant will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. The Applicant will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.
- b) Subrecipients must give County, DHS and Cal OES access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by County, DHS and Cal OES program guidance, requirements, and applicable laws.
- c) Subrecipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance, and Subrecipients must submit timely, complete, and accurate reports to the County and maintain appropriate backup documentation to support the reports. This includes but is not limited to the Semi-Annual Performance and the Status Reports. Failure to do so may result in loss of funding or future funding.

10. Conflict of Interest

The Applicant will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

11. Financial Management

False Claims for Payment – The Applicant will comply with the requirements of 31 U.S.C. §§ 3729-3733 which sets forth that no subgrantee, recipient or subrecipient of federal payments, shall submit a false claim for payment, reimbursement, or advance. Administrative remedies may be found in 38 U.S.C. §§ 3801-3812, addressing false claims and statements made.

12. Reporting and Accountability

The Applicant agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating \$25,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 C.F.R. part 170 Reporting Subaward and Executive Compensation Information.

13. Whistleblower Protections

The Applicant also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. §4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.

14. Human Trafficking

The Applicant will comply with the requirement of Section 106(g) of the Trafficking Victims Protection Act of 2000, amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; or (3) using forced labor in the performance of the award or subawards under the award.

15. Labor Standards

The Applicant will comply with the following federal labor standards:

- a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts, and
- b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

16. Worker’s Compensation

The Applicant must comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

17. Property-Related

If applicable to the type of project funded by this federal award, the Applicant will:

- a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquires for project purposes regardless of Federal participation in purchase;
- b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires Subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;
- c) Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C §469a-1 et seq.); and
- d) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

18. Certifications Applicable Only to Federally-Funded Construction Projects

For all construction projects, the Applicant will:

- a) Not dispose of, modify the use of, or change the terms of the real property title of other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;
- b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and
- c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

19. Use of Cellular Device While Driving is Prohibited

Applicants are required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving a motor vehicle while using an electronic wireless communication device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.

20. California Public Records Act and Freedom of Information Act

The Applicant acknowledges that all information submitted in the course of applying for funding under this program, or provide in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Act, California Government Code section 6250 et seq. The Applicant should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

HOMELAND SECURITY GRANT PROGRAM – PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS

21. Reporting Accusations and Findings of Discrimination

If during the past three years the subrecipient has been accused of discrimination on any basis the subrecipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS Financial Assistance Office and the DHS Office of Civil Rights and Civil Liberties (CRCL) by e-mail at CRCL@hq.dhs.gov or by mail at the U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties, Building 410, Mail Stop #0190 Washington, D.C. 20528.

In the event any court or administrative agency makes a finding of discrimination on the grounds of race, color, national origin (including LEP), sex, age, disability, religion, or familial status against the subrecipient, or the subrecipients settle a case or matter alleging such discrimination, subrecipients must forward a copy of the complaint and findings to the DHS Financial Assistance Office and the CRCL by email or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

22. Acknowledgment of Federal Funding from DHS

All subrecipients must acknowledge their use of federal funding when issuing statements, press releases, request for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

23. Activities Conducted Abroad

All subrecipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

24. Best Practices for Collection and Use of Personally Identifiable Information (PII)

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All subrecipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Subrecipients may also find as the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template a useful resource respectively.

25. Copyright

All subrecipients must affix the applicable copyright notices of 17 U.S.C §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including award number) to any work first produced under federal financial assistance awards.

26. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statues, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statues, regulations, or the federal financial assistance award terms and conditions.

27. Energy Policy and Conservation Act

All subrecipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

28. Federal Debt Status

All subrecipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefits overpayments. See OMB Circular A-129.

29. Fly America Act of 1974

All subrecipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B-138942.

30. Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all Applicants must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.

31. Non-supplanting Requirement

All subrecipients who receive federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

32. Patents and Intellectual Property Rights

Unless otherwise provided by law, subrecipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All subrecipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14

33. SAFECOM

All subrecipients who receive awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

34. Terrorist Financing

All subrecipients must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individual and organizations associated with terrorism. Subrecipients are legally responsible to ensure compliance with the Order and laws.

35. Reporting of Matter Related to Recipient Integrity Performance

If the total value of the subrecipients' currently active grants, cooperative agreements, and procurement contracts from all federal assistance office exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, the subrecipient must comply with the requirement set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the terms and conditions.

36. USA Patriot Act 2001

All subrecipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175-175c.

37. Use of DHS Seal, Logo and Flags

All subrecipients must obtain DHS permission, via County, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

ADDITIONAL HOMELAND SECURITY ASSURANCES / PROGRAM REQUIREMENTS

- 38. All subrecipients will assure that grant funds are used for allowable, fair, and reasonable costs only and will not be transferred between grant programs (for example: State Homeland Security Program and Urban Area Security Initiative) or fiscal years.
- 39. All subrecipients understand that in the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, Subrecipient will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate subrecipient's acceptance of the changes to the award. Please call the County at (909) 387-5934. Or via e-mail to: hsqp@oes.sbcounty.gov.
- 40. All subrecipients will comply with any cost sharing commitments included in the FY2018 Investment Justifications submitted to DHS/FEMA/Cal OES, where applicable.
- 41. All subrecipients will establish a proper accounting system in accordance with generally accepted accounting standards and awarding agency directives.
- 42. All subrecipients will comply with any other special reporting, assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement, or detailed in the program guidance.
- 43. All subrecipients agree that funds utilized to establish or enhance State and Local fusion centers must support the development of a statewide fusion process that corresponds with the Global Justice/Homeland Security Advisory Council (HSAC) Fusion Center Guidelines, follow the Federal and State approved privacy policies, and achieve (at a minimum) the baseline level of capability as defined by the Fusion Capability Planning Tool.
- 44. All subrecipients understand that a hold is in place on Fusion Center activities and the Subrecipient is prohibited from obligating, expending, or drawing down HSGP – UASI funds in support of their State and/or Major Urban Area Fusion Center. Cal OES will notify the County in writing when DHS/FEMA has lifted the hold.
- 45. All subrecipients will provide timely, completed, accurate reports and maintain appropriate support documentation to support the reports, and other such information as may be required by the awarding agency.
- 46. All subrecipients will provide timely notifications to the County of any developments that have a significant impact on award-supported activities, including changes to key program staff.
- 47. All subrecipients will comply with all applicable provisions of DHS/FEMA's regulations, including Title 44 of the Code of Federal Regulations, Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- 48. All subrecipients will comply with the Office of Management and Budget (OMB) Super Circular 2 C.F.R. part 200 which has consolidated the following:
 - Grant Management: Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (also known as the "A-102 Common Rule"), which are also located found within DHS regulations at Title 44, Code of Federal Regulations (CFR) Part 13, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; will comply with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, relocated to 2 CFR Part 215.
- 49. All subrecipients will comply with the financial and administrative requirements set forth in the current edition of the DHS Financial Management Guide:

- Costing Principles: OMB Circular A-21, Cost Principles for Educational Institutions, relocated to 2 CFR Part 220; OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, relocated to 2 CFR Part 225; OMB Circular A-122, Cost Principles for Non-Profit Organizations, relocated to 2 CFR Part 230; and
- Audits: OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations, and sections of A-50 related to audits performed under Subpart F- Audit requirements as applicable.

50. All subrecipients will comply with all provisions of the Federal Acquisition Regulations, including but not limited to Title 48 CFR Part 31.2, part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations.
51. All subrecipients agree that, to the extent contractors or subcontractors are utilized, to use small, minority-owned, women-owned, or disadvantaged businesses, to the extent of practicability.
52. All subrecipients will comply with all federal and state laws and regulations relating to civil rights protections and nondiscrimination not listed in Section 6. These include:
- a) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
 - b) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - c) Title 44 of the Code of Federal Regulations (CFR) Parts 7, 16, and 19 relating to nondiscrimination;
 - d) The requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, which provides that no otherwise qualified individual with a disability in the United States will, solely by reason of the disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. These requirements pertain to the provision of benefits or services as well as to employment; and
 - e) The nondiscrimination requirements and all other provisions of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1.
53. All subrecipients will comply with all provisions of DHS/FEMA's regulation 44 CFR Part 10, Environmental Considerations.

54. Environmental and Historical Preservation (EHP)

All subrecipients proposing projects or activities (including, but not limited to, training, exercises, the installation of equipment, and construction or renovation projects which have the potential to impact the environment must participate in the environmental and historical preservation review process. Subrecipients will comply with applicable federal, state, and local environmental and historical preservation requirements. Failure to meet federal, state, and local **EHP** requirements and obtain applicable permits may jeopardize federal funding.

Subrecipients with such projects must complete the required DHS/FEMA **EHP** Screening Form (OMB Number 1660-0115/FEMA Form 024-0-01) for each proposed project and submit it for review and approval as soon as possible, including all supporting documentation, to the County. The County will then submit the request to the Cal OES program representative to be processed by the DHS/FEMA GPD **EHP**. The Screening Form is available at: <http://www.caloes.ca.gov/cal-oes-divisions/grants-management/homeland-security-prop-1b-grant-programs/homeland-security-grants-program>.

EHP Screening Memos must include detailed project information and explain the goals and objectives of the proposed project, and include supporting documentation. DHS/FEMA may also require the subrecipient provide a confidential California Historical Resources Information System (CHRIS) report in addition to the EHP Screening Form. Determination on the necessity of a CHRIS report is based upon information disclosed on the EHP Screening Form. The subrecipient must comply with all conditions and restrictions placed on the project as a result of the **EHP** review.

Any construction-related activities initiated without the full environmental and historic preservation (EHP) review and approval will result in a noncompliance finding, and may not be eligible for reimbursement with DHS/FEMA and Cal OES funding. Any change to the scope of work will require re-evaluation of compliance with the EHP. If ground-disturbing activities occur during the project implementation, the subgrantee must ensure monitoring of the disturbance. If any potential archeological resources are discovered, the subrecipient will immediately cease activity in that area and notify DHS/FEMA/ and Cal OES and the appropriate State Historic Preservation Office.

Updated information on Grants Program Directorate (GPD) EHP FEMA Policy #108-023-1 can be accessed at: <https://www.fema.gov/grant-programs-directorate-policy>.

55. All subrecipients will ensure that facilities under its ownership, lease or supervision, which shall be utilized in the accomplishment of this project, are not on the Environmental Protection Agency's (EPAs) List of Violating Facilities, and will notify Cal OES and the DHS/FEMA of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating if a facility to be used in the project is under consideration for listing by the EPA.
56. All subrecipients will provide any information requested by DHS/FEMA and Cal OES to ensure compliance with applicable laws including, but not limited to, the following:
 - a) Institution of environmental quality control measures under the Archaeological and Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), and Environmental Justice (EO12898) and Environmental Quality (EO11514);
 - b) Notification of violating facilities pursuant to EO 11738;
 - c) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 et seq.);
 - d) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523);
 - e) California Environmental Quality Act (CEQA), California Public Resources Code Sections 21080-21098, and California Code of Regulations, Title 14, Chapter 3 §§ 15000-15007;
 - f) Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system; and
 - g) Applicable provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC § 3501 et seq.), which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.
57. All subrecipients will comply with Standardized Emergency Management System (SEMS) requirements as stated in the California Emergency Services Act, Government Code, Chapter 7 of Division 1 of Title 2, § 8607.1(e) and CCR Title 19, §§ 2445, 2446, 2447, and 2448.
58. All subrecipients agree that all DHS/FEMA-funded project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, and approvals are obtained.
59. All subrecipients agree that all publications created or published with funding under this grant shall prominently contain the following statement: ***"This document was prepared under a grant from FEMA's Grant Programs Directorate, U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA's Grant Programs Directorate or the U.S. Department of Homeland Security."*** Subrecipients and recipients also agree that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: ***"Purchased with funds provided by the U.S. Department of Homeland Security."***
60. All subrecipients receiving federal financial assistance to be used to perform eligible work approved in the submitted application for federal assistance and after the receipt of federal financial assistance, through the State of California, agree to the following:

- a) Promptly return to the State of California all funds received which exceed the approved, actual expenditures as determined by the Federal or State government;
- b) In the event the approved amount of the grant is reduced, the reimbursement applicable to the amount of the reduction will be promptly refunded to the State of California;
- c) Property and equipment purchased under the HSGP reverts to Cal OES if the grant funds are deobligated or disallowed and not promptly repaid; and
- d) HSGP funds used for the improvement of real property must be promptly repaid following deobligation or disallowment of costs, and Cal OES reserves the right to place a lien on the property for the amount owed.

Therefore, if any procurement with the HSGP grant funds is determined to be ineligible or inappropriate, the funds must be returned to Cal OES. If a procurement was done incorrectly or if a piece of equipment purchased was not on the AEL list, then the purchase will be considered an unallowable cost and the funds used for the purchase must be returned.

- 61. All subrecipients will comply, if applicable, with the Laboratory Animal Welfare Act of 1966 (P. L. 89-544, as amended, 7 U.S.C. § 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- 62. All subrecipients will comply with the minimum wage and maximum hour provisions of the Federal Fair Labor Standards Act (29 U.S.C. § 201), as they apply to employees of institutions of higher education, hospitals, and other non-profit organizations.
- 63. All subrecipients agree that "Classified national security information," as defined in Executive Order (EO) 12958, as amended or updated via later executive order(s), means information that has been determined pursuant to EO 12958 to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form. No funding under this award shall be used to support a contract, subaward, or other agreement for goods or services that will include access to classified national security information if the award recipient or Subrecipient has not been approved for and granted access to such information by appropriate authorities.
- 64. All subrecipients agree that no funding under this award shall be used to support a contract, subaward, or other agreement for goods or services that will include access to classified national security information by the contractor, Subrecipient, or other entity without prior written approval from the DHS Office of Security, Industrial Security Program Branch (ISPB), or, an appropriate official within the Federal department or agency with whom the classified effort will be performed. Such contracts, subawards, or other agreements shall be processed and administered in accordance with the DHS "Standard Operating Procedures, Classified Contracting by States and Local Entities," dated July 7, 2008; EOs 12829, 12958, 12968, and other applicable executive orders; the National Industrial Security Program Operating Manual (NISPOM); and other applicable implementing directives or instructions. Security requirement documents may be located at: <http://www.dhs.gov/xopnbiz/grants/index.shtm>
- 65. All subrecipients will comply with the requirements regarding Data Universal Numbering System (DUNS) numbers. If recipients are authorized to make subawards under this award, they must first notify potential Subrecipients that no entity may receive or make a subaward to any entity unless the entity has provided a DUNS number.

For purposes of this award term, the following definitions will apply:

- a) "Data Universal Numbering System (DUNS)" number means the nine digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet, currently at <http://fedgov.dnb.com/webform>.
- b) "Entity", as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C, as a Governmental organization, which is a State, local government, or Indian Tribe; or a foreign public entity; or a domestic or foreign nonprofit organization; or a domestic or foreign for-profit organization; or a Federal agency, but only as a Subrecipient under an award or subaward to a non-Federal entity.

- c) "Subaward" means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient, award to an eligible Subrecipient. It does not include your procurement of property and services needed to carry out the project or program (for further explanation, see section 210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations") and may be provided through any legal agreement, including an agreement that you consider a contract.
- d) "Subrecipient" means an entity that receives a subaward under this award, and is accountable for the use of the Federal funds provided by the subaward.

66. All subrecipients agree that equipment acquired or obtained with grant funds:

- a) Will be made available pursuant to applicable terms of the California Disaster and Civil Defense Master Mutual Aid Agreement, in consultation with representatives of the various fire, emergency medical, hazardous materials response services, and law enforcement agencies within the jurisdiction of the Subrecipient, and deployed with personnel trained in the use of such equipment in a manner consistent with the California Law Enforcement Mutual Aid Plan or the California Fire Services and Rescue Mutual Aid Plan.
- b) Is consistent with needs as identified in the State Homeland Security Strategy and will be deployed in conformance with that Strategy.

67. All subrecipients will comply with Homeland Security Presidential Directive (HSPD)-5, Management of Domestic Incidents. The adoption of the National Incident Management System (NIMS) is a requirement to receive Federal preparedness assistance, through grants, contracts, and other activities. The NIMS provides a consistent nationwide template to enable all levels of government, tribal nations, nongovernmental organizations, and private sector partners to work together to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity.

68. All subrecipients will comply with OMB Standard Form 424B Assurances – Non-construction Programs, whereby the awarding agency may require Subgrantees and Subrecipients to certify to additional assurances.

69. All subrecipients will comply with the requirements of the Federal regulations at 45 CFR Part 46 and the requirements in DHS Management Directive 026-04, Protection of Human Subjects, prior to implementing any work with human subjects. The regulations specify additional protections for research involving human fetuses, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 CFR Part 46.

70. All subrecipients will comply with the requirements of section 1306(c) of the National Flood Insurance Act, as amended, which provides for benefit payments under the Standard Flood Insurance Policy for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. These regulations are codified at 44 CFR Part 63.

71. All subrecipients will comply with the requirements of Executive Order 11990, which provides that federally-funded construction and improvements minimize the destruction, loss, or degradation of wetlands. The Executive Order provides that, in furtherance of section 101(b)(3) of NEPA (42 U.S.C. § 4331(b)(3)), Federal agencies, to the extent permitted by law, must avoid undertaking or assisting with new construction located in wetlands unless the head of the agency finds that there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors. The public disclosure requirement described above also pertains to early public review of any plans or proposals for new construction in wetlands. This is codified at 44 CFR Part 9.

72. All subrecipients acknowledge that equipment purchased with grant funds must be accounted for, tagged (if applicable), photographed and reconciled by the County's property records at each scheduled inventory inspection.

FY2018 Homeland Security Grant Program Subrecipient Agreement/Assurances
 Updated 6/6/19

- 73. All subrecipients will develop a control tracking system to ensure adequate safeguards to prevent loss, damage or theft of grant funded equipment.
- 74. When grant funded equipment is no longer needed or is in need of being replaced, Subrecipient will request disposition instructions from the County.
- 75. If items are lost, stolen, or damaged, Subrecipient will provide explanation on the Damage, Lost, Stolen, or Retired (DLSR) form of how it happened and how Subrecipient is going to prevent it from happening in the future.

76. Salary and Personnel Activity Report (PAR)

All subrecipients who request funding for personnel costs must comply with 2 C.F.R. Ch. II § 200.430 and maintain and submit the following documents:

- a. Functional Timesheet(s) from the entity's payroll system that accurately reflects the work performed for the applicable reporting period;
- b. Personnel Activity Report (PAR) that distinguishes grant funded project hours from other hours worked. If the entity's timesheet distinguishes grant hours from other hours, then a PAR is not required (see below);
- c. Proof of hourly rate that is being charged to the grant from a system that provides reasonable assurance that the charges are accurate;
- d. Benefit cost breakdown for each reporting period for grant related project(s), if applicable. Annual or estimated benefit documentation is not sufficient. Benefit costs must match actual benefit costs for each reporting period; and
- e. Proof of payment for salary/benefit costs, such as paycheck statement (paystub) or payroll register. Payroll registers must provide legible salary/benefit costs. If codes are used on the payroll register, then the subrecipient must provide definitions of each code.

Any employee who is partially funded by federal grants must maintain time and effort reporting and document the time they spend working on the grant's objectives. Documentation must reflect "actual" time spent by the employee on grants being charged (2 CFR 225, Appendix B.8.h) on a functional timesheet that includes all hours worked for the reporting period and distinguishes FY18 HSGP project hours from other hours worked. Altered timesheets will not be accepted. If your agency does not have the capability to distinguish grant hours on a functional timesheet, then Subrecipient must maintain grant activity hours on a Personnel Activity Report (PAR). Attached is a Personnel Activity Report (PAR) document to assist in proper grant payroll documentation. PARs must itemize/log the time the employee has worked on a grant funded project. Salary costs that are not accurately and properly documented are "unallowable costs" and will not be reimbursed. If you have been reimbursed for wages that were not properly recorded and supported, the State or Federal Governments may require your agency to return any "unallowable costs."

- 77. Subrecipient will provide photos of each grant purchased equipment that includes the serial number, if applicable. Subrecipient will provide the intended location of deployment/assignment of the equipment.
- 78. Subrecipient understands that failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.
- 79. The undersigned represents that he/she is authorized by the above named Applicant/Subrecipient to enter into this agreement for and on behalf of the said Applicant/Subrecipient.

IMPORTANT

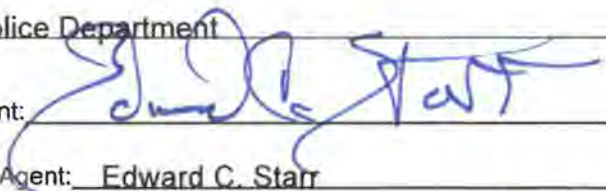
The purpose of the agreement/assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. The Subrecipient recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This agreement/assurance is binding on the Subrecipient, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

FY2018 Homeland Security Grant Program Subrecipient Agreement/Assurances
Updated 6/6/19


All appropriate documentation, as outlined above, must be maintained on file by the Subrecipient and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grants or termination of the grant or both and the Subrecipient may be ineligible for awards of any future grants if the Cal OES determines that any of the following has occurred: (1) the subrecipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of language contained within this document must be included in the awards documents for all subawards at all tiers, including contracts under grants and cooperative agreements and subcontracts. All subrecipients are bound by the Department of Homeland Security Standard Terms and Conditions 201, Version 8.1, hereby incorporated by reference, which can be found at: <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

The Undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the said Applicant.

Applicant: Montclair Police Department
Signature of Authorized Agent: 
Printed Name of Authorized Agent: Edward C. Starr
Title: City Manager Date: 7/01/2019

The Undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the County. The undersigned is the appropriate contact for all notices and documents to be provided under this agreement.

County of San Bernardino
Signature of Authorized Agent: 
Printed Name of Authorized Agent: **Grant Hubbell**
Title: Interim Assistant Chief Date: 4/23/2020

**SAN BERNARDINO COUNTY OPERATIONAL AREA
FY2018 HOMELAND SECURITY GRANT PROGRAM**

APPLICATION WORKBOOK CERTIFICATION

I, Robert Avels as the Authorized Agent
for Montclair Police Department JURISDICTION,
certify that our jurisdiction has read and acknowledges the Homeland Security Grant Program (HSGP)
guidelines specified in the document hereof.



7-2-19

Authorized Agent Signature

Date

Robert Avels, Chief of Police

Print Name



7-2-19

Project Manager Signature

Date

Marci Butler, Administrative Aide

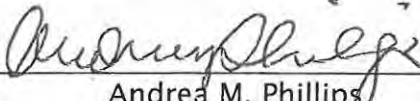
Print Name



MEMORANDUM

AGREEMENT NO. 20-33

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY the attached correspondence dated July 2, 2019, and addressed to San Bernardino County Fire, Grants Unit, is the true and correct original correspondence to the same, and that a copy of the correspondence is on file in the Finance Department of the City of Montclair.



Andrea M. Phillips
City Clerk

Dated: July 2, 2019



July 2, 2019

San Bernardino County Fire, Grants Unit
 Attn: Tina Sutera
 157 W. 5th Street, Fl. 2
 San Bernardino, CA 92415

Subject: City of Montclair Certification Letter
 Regarding Federal Award FY2018 Homeland Security Grant Program

1) Name of Entity receiving the Award: City of Montclair

2) Amount of Award	3) Funding Agency	4) Federal CFDA Number	5) Award Title
127,907.00	U.S. Department of Health and Human Services	93.045/93.053	Special Programs for the Aging Title III, Part C Nutrition Services, and NSIP
10,000.00	U.S. Department of Health and Human Services	93.044	Special Programs for the Aging Title III, Part B for Supportive Services and Senior Centers
28,000.00	U.S. Department of Housing/ Urban Development	14.218	CDBG – Graffiti Eradication Program
10,947.00	U.S. Department of Housing/ Urban Development	14.218	CDBG – Senior Transportation Services
30,000.00	U.S. Department of Housing/ Urban Development	14.218	CDBG – Code Enforcement
9,237.00	U.S. Department of Housing/ Urban Development	14.218	CDBG – Greenwood Ave Alley Improvements
1,211.00	U.S. Department of Homeland Security	97.067	Homeland Security Grant FY 2015
6,792.00	U.S. Department of Homeland Security	97.067	Homeland Security Grant FY 2016
24,414.00	US Dept of Transportation (NHTSA)	20.608/20.600	Selective Traffic Enforcement Program (STEP)
106,957.00	United States Department of Justice (DOJ)	16.922	Department of Justice Asset Forfeiture Program

City of Montclair–Federal Awards
July 2, 2019
Page 2

- 6) Location of the entity and primary location of performance including city, state, and Congressional District:

Montclair, California
California State Assembly District 52
California State Senate District 20
U.S. Congressional District 35

- 7) Dun & Bradstreet (D & B) DUNS Number of the entity and its parent if applicable:

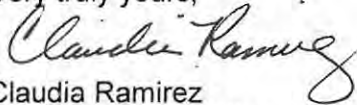
084976919

- 8) Total compensation and names of top five executives, unless the subrecipient is exempt from this requirement as provided in Section (d) of this paragraph.

Not applicable

If you have any questions, just give Administrative Aide Marci Butler, Montclair Police Department, a call at (909) 448–3609.

Very truly yours,



Claudia Ramirez
Accounting Specialist

COUNTY OF SAN BERNARDINO
SUBRECIPIENT GRANTS MANAGEMENT ASSESSMENT

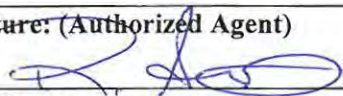
Subrecipient: Montclair Police Department	DUNS #: 084976919	FIPS #:
Grant Disaster/Program Title: Homeland Security Grant Program		
Performance Period: 9/1/18 to 3/31/2021	Subaward Amount Requested: \$16,672	
Type of Non-Federal Entity (Check Box)	<input type="checkbox"/> State Gov. <input checked="" type="checkbox"/> Local Gov. <input type="checkbox"/> JPA <input type="checkbox"/> Non-Profit <input type="checkbox"/> Tribe	

Per Title 2 CFR § 200.331, Cal OES is required to evaluate the risk of noncompliance with federal statutes, regulations and grant terms and conditions posed by each subrecipient of pass-through funding. This assessment is made in order to determine and provide an appropriate level of technical assistance, training, and grant oversight to subrecipients for the award referenced above.

The following are questions related to your organization’s experience in the management of grant awards. This questionnaire must be completed and returned with your grant application materials.

For purposes of completing this questionnaire, *grant manager* is the individual who has primary responsibility for day-to-day administration of the grant, *bookkeeper/accounting staff* means the individual who has responsibility for reviewing and determining expenditures to be charged to the grant award, and *organization* refers to the subrecipient applying for the award, or the governmental implementing agency, as applicable.

Assessment Factors	Response
1. How many years of experience does your current grant manager have managing grants?	<3 years
2. How many years of experience does your current bookkeeper/accounting staff have managing grants?	<3 years
3. How many grants does your organization currently receive?	3-10 grants
4. What is the approximate total dollar amount of all grants your organization receive?	\$347,000
5. Are individual staff members assigned to work on multiple grants?	Yes
6. Do you use timesheets to track the time staff spend working on specific activities/projects?	No
7. How often does your organization have a financial audit?	Annually
8. Has your organization received any audit findings in the last three years?	No
9. Do you have a written plan on how you charge costs to grants?	No
10. Do you have written procurement policies?	Yes
11. Do you get multiple quotes or bids when buying items or services?	Sometimes
12. How many years do you maintain receipts, deposits, cancelled checks, invoices, etc.?	>5 years
13. Do you have procedures to monitor grant funds passed through to other entities?	N/A

Certification: <i>This is to certify that, to the best of our knowledge and belief, the data furnished above is accurate, complete and current.</i>	
Signature: (Authorized Agent) 	Date: 7-2-19
Print Name: Robert Avels	Print Title: Chief of Police

SAM Search Results
List of records matching your search for :

AGREEMENT NO. 20-33

Search Term : City of Montclair*
Record Status: Active

ENTITY	Montclair, City Of	Status: Active
DUNS: 084976919	+4:	CAGE Code: 531U7 DoDAAC:
Expiration Date: 04/08/2020	Has Active Exclusion?: No	Debt Subject to Offset?: No
Address: 5111 Benito St		
City: Montclair	State/Province: CALIFORNIA	
ZIP Code: 91763-2808	Country: UNITED STATES	

AGREEMENT NO. 20-33



A NEW WAY TO SIGN IN - If you already have a SAM account, use your **SAM email** for login.gov. [Log In](#)

[Login.gov FAQs](#)

- ⚠ ALERT:** SAM.gov will be down for scheduled maintenance Saturday 07/13/2019, from 8:00 AM to 1:00 PM (EDT).
- ⚠ ALERT:** CAGE is currently experiencing a high volume of registrations, and is working them in the order in which they are received. When your registration is assigned to a CAGE Technician, you will be contacted by CAGE, if necessary, for any additional information.

Entity Dashboard

Montclair, City Of
 DUNS: 084976919 CAGE Code: 531U7
 Status: Active
 Expiration Date: 04/08/2020
 Purpose of Registration: All Awards

5111 Benito St
 Montclair, CA, 91763-2808,
 UNITED STATES

- Entity Overview
- Entity Registration
 - Core Data
 - Assertions
 - Reps & Certs
 - POCs
- Exclusions
 - Active Exclusions
 - Inactive Exclusions
 - Excluded Family Members

Page Description

This page contains a view of the entire Entity Registration record. To print or save a copy of this registration, select Print. To view a specific section of the registration, select one of the sub-navigation links (for example, Core Data or POCs) under Entity Registration. To access a previous version of this registration, pick from the record drop-down list then select View Selected Record. The page will reload to display the record.

PRINT

Current Record

DUNS Number: 084976919
 D&B Legal Business Name: Montclair, City Of
 Doing Business As: (none)

[RETURN TO SEARCH](#)

Core Data

Business & TIN Information:

Business Information:
 Business Start Date: 07/01/2007
 Fiscal Year End Close Date: 06/30
 Company Division Name:
 Company Division Number:
 Corporate URL: www.cityofmontclair.org
 Congressional District: CA 35
 Initial Registration Date: 05/15/2008
 Submission Date: 04/09/2019
 Activation Date: 04/09/2019
 Expiration Date: 04/08/2020

Physical Address:
 Address Line 1: 5111 Benito St
 City: Montclair
 State/Province: CA
 Country: UNITED STATES
 ZIP/Postal Code: 91763 - 2808

Mailing Address:

AGREEMENT NO. 20-33

Address Line 1: 5111 BENITO STREET
 Address Line 2: HUMAN SERVICES DEPT
 City: MONTCLAIR
 State/Province: CA
 Country: UNITED STATES
 ZIP/Postal Code: 91763 - 2808

CAGE/NCAGE Code

CAGE: 531U7

Does this entity have an Immediate Owner? No

Does this entity have any Predecessors? No

General Information

Country of Incorporation:

State of Incorporation:

Business Types

Check the registrant's Repts & Certs, if present, under FAR 52.212-3 or FAR 52.219-1 to determine if the entity is an SBA-certified HUBZone small business concern. Additional small business information may be found in the [SBA's Dynamic Small Business Search](#) if the entity completed the SBA Supplemental Pages during registration.

Government Type

U.S. Local Government

City

Entity Structure

U.S. Government Entity

Entity Type

US Local Government

Purpose of Registration

All Awards

Financial Information

Do you accept credit cards as a method of payment? Yes

Account Details:

CAGE Code: 531U7

Electronic Funds Transfer:

Automated Clearing House (ACH):

Executive Compensation Questions

Registrants in the System for Award Management (SAM) respond to the Executive Compensation questions in accordance with Section 6202 of P.L. 110-252, amending the Federal Funding Accountability and Transparency Act (P.L. 109-282). This information is not displayed in SAM. It is sent to USAspending.gov for display in association with an eligible award. Maintaining an active registration in SAM demonstrates the registrant responded to the questions.

Proceedings Questions

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AGREEMENT NO. 20-33

Registrants in the System for Award Management (SAM) respond to proceedings questions in accordance with FAR 52.209-7, FAR 52.209-9, or 2.C.F.R. 200 Appendix XII. Their responses are not displayed in SAM. They are sent to FAPIIS.gov for display as applicable. Maintaining an active registration in SAM demonstrates the registrant responded to the proceedings questions.

SAM Search Authorization

I authorize my entity's non-sensitive information to be displayed in SAM public search results: **Yes**

Assertions**Goods & Services:****NAICS Codes Selected**

524230		Emergency and Other Relief Services
921190	Yes	Other General Government Support

Product & Service Codes Selected

PSC	Description
S206	HOUSEKEEPING- GUARD
R799	SUPPORT- MANAGEMENT: OTHER
R499	SUPPORT- PROFESSIONAL: OTHER
9999	MISCELLANEOUS ITEMS
S114	UTILITIES- WATER
G099	SOCIAL- OTHER
U099	EDUCATION/TRAINING- OTHER

Size Metrics**World Wide:****Location (Optional):****EDI Information**

Do you wish to enter EDI Information for your non-government entity? -

Disaster Response Information

Do you wish to be included in the Disaster Response Registry? **No**

Does your company require bonding to bid on Contracts?

Geographic Area Served:**Representations and Certifications****Representations and Certifications:**

Page 25 of 30

AGREEMENT NO. 20-33

I have read each of the FAR and DFARS provisions presented on this page. By submitting this certification, I, Marcia Richter, am attesting to the accuracy of the representations and certifications contained herein, including the entire NAICS table. I understand that I may be subject to criminal prosecution under Section 1001, Title 18 of the United States Code or civil liability under the False Claims Act if I misrepresent Montclair, City Of in any of these representations or certifications to the Government.

READ ONLY PROVISIONS - The following FAR and DFARS provisions are provided for you to read. They do not require completion of any data. Select the provision number to expand and review the full text. When certifying to the information on this page, you are also certifying that you have read each one of these provisions.

[FAR 52.203-11](#): Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

[FAR 52.203-18](#): Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation

[FAR 52.209-10](#): Prohibition on Contracting with Inverted Domestic Corporations.

[FAR 52.212-5](#): Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items.

[FAR 52.222-38](#): Compliance with Veterans' Employment Reporting Requirements

[FAR 52.222-50](#): Combating Trafficking in Persons

[FAR 52.222-56](#): Certification Regarding Trafficking in Persons Compliance Plan.

[FAR 52.223-1](#): Biobased Product Certification

[FAR 52.225-20](#): Prohibition on Conducting Restricted Business Operations in Sudan-Certification

[FAR 52.225-25](#): Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran - Representation and Certifications

[FAR 52.227-6](#): Royalty Information (Alternate I)

The FAR and DFARS provisions shown below have been populated based on data you provided earlier in your registration. Please open and review each provision before you proceed from this page. If you need to correct any data, a link will be provided to the relevant page for editing.

By maintaining an active entity registration in SAM, the entity complied with requirements to report proceedings data in accordance with FAR 52.209-7 Information Regarding Responsibility Matters and with requirements to report executive compensation data in accordance with FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.

[FAR 52.203-2](#): Certificate of Independent Price Determination.

[FAR 52.204-3](#): Taxpayer Identification

[FAR 52.204-5](#): Women-Owned Business (Other Than Small Business)

[FAR 52.204-17](#): Ownership or Control of Offeror

[FAR 52.204-20](#): Predecessor of Offeror

[FAR 52.209-2](#): Prohibition on Contracting with Inverted Domestic Corporations-Representation

[FAR 52.209-5](#): Certification Regarding Responsibility Matters

[FAR 52.209-11](#): Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law

[FAR 52.212-3](#): Offeror Representations and Certifications -Commercial Items

If no NAICS table is displayed, this registrant may not be considered a small business.

[FAR 52.214-14](#): Place of Performance-Sealed Bidding

AGREEMENT NO. 20-33[FAR 52.215-6: Place of Performance](#)[FAR 52.219-1: Small Business Program Representations \(Alternate I\)](#)

If no NAICS table is displayed, this registrant may not be considered a small business.

[FAR 52.219-2: Equal Low Bids](#)[FAR 52.222-18: Certification Regarding Knowledge of Child Labor for Listed End Products](#)[FAR 52.222-22: Previous Contracts and Compliance Reports](#)[FAR 52.222-25: Affirmative Action Compliance](#)[FAR 52.222-48: Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification](#)[FAR 52.222-52: Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Certification](#)[FAR 52.223-4: Recovered Material Certification](#)[FAR 52.223-9: Estimate of Percentage of Recovered Material Content for EPA-Designated Items \(Alternate I\)](#)[FAR 52.223-22: Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representation.](#)[FAR 52.225-1: Buy American Certificate](#)[FAR 52.225-4: Buy American-Free Trade Agreements-Israeli Trade Act Certificate](#)[FAR 52.225-6: Trade Agreements Certificate](#)[FAR 52.226-2: Historically Black College or University and Minority Institution Representation](#)[FAR 52.227-15: Representation of Limited Rights Data and Restricted Computer Software](#)**Grants Certifications**

The Grants Certifications are a common set of certifications and representations required by Federal statutes or regulations in accordance with the grants guidance under Title 2 of the Code of Federal Regulations (2 CFR 200.208 Certifications and Representations). Those non-Federal entities who intend to apply for, or are already recipients of Federal grants or agreements, must read and agree to the corresponding certifications and representations. Registrants who reply yes to the following question are required to keep these certifications and representations current, accurate, and complete as part of their entity registration.

Does Montclair, City Of wish to apply for a Federal financial assistance project or program, or is Montclair, City Of currently the recipient of funding under any Federal financial assistance project or program? **Yes**

Points of Contact**Mandatory Points of Contact:****Accounts Receivable POC****Electronic Business POC**

Title: Director of Human Services
First Name: MARCIA

Page 27 of 30

AGREEMENT NO. 20-33

Middle Name:	
Last Name:	RICHTER
US Phone:	(909)625-9453
Extension:	453
NON US Phone:	
Notes:	
Address Line 1:	CITY OF MONTCLAIR- HUMAN SERVICES DIVISION
Address Line 2:	5111 BENITO STREET
City:	MONTCLAIR
State/Province:	CA
Country:	UNITED STATES
ZIP/Postal Code:	91763 - 2808

Government Business POC	
Title:	Director of Human Services
First Name:	MARCIA
Middle Name:	
Last Name:	RICHTER
US Phone:	(909)625-9453
Extension:	453
NON US Phone:	
Notes:	
Address Line 1:	CITY OF MONTCLAIR- HUMAN SERVICES DIVISION
Address Line 2:	5111 BENITO STREET
City:	MONTCLAIR
State/Province:	CA
Country:	UNITED STATES
ZIP/Postal Code:	91763 - 2808

Optional Points of Contact:

Past Performance POC	
Title:	
First Name:	MARCIA
Middle Name:	
Last Name:	RICHTER
US Phone:	(909)625-9453
Extension:	453
NON US Phone:	
Notes:	
Address Line 1:	CITY OF MONTCLAIR- HUMAN SERVICES DIVISION
Address Line 2:	5111 BENITO STREET
City:	MONTCLAIR
State/Province:	CA
Country:	UNITED STATES

AGREEMENT NO. 20-33

ZIP/Postal Code:	91763 - 2808
Electronic Business Alternate POC	
Title:	
First Name:	ALYSSA
Middle Name:	
Last Name:	COLUNGA
US Phone:	(909)625-9459
Extension:	
NON US Phone:	
Notes:	
Address Line 1:	CITY OF MONTCLAIR- HUMAN SERVICES DIVISION
Address Line 2:	5111 BENITO STREET
City:	MONTCLAIR
State/Province:	CA
Country:	UNITED STATES
ZIP/Postal Code:	91763 - 2808
Government Business Alternate POC	
Title:	
First Name:	ALYSSA
Middle Name:	
Last Name:	COLUNGA
US Phone:	(909)625-9459
Extension:	
NON US Phone:	
Notes:	
Address Line 1:	CITY OF MONTCLAIR- HUMAN SERVICES DIVISION
Address Line 2:	5111 BENITO STREET
City:	MONTCLAIR
State/Province:	CA
Country:	UNITED STATES
ZIP/Postal Code:	91763 - 2808
Past Performance Alternate POC	
Title:	
First Name:	ALYSSA
Middle Name:	
Last Name:	COLUNGA
US Phone:	(909)625-9459
Extension:	
NON US Phone:	
Notes:	
Address Line 1:	5111 Benito Street
Address Line 2:	
City:	Montclair
State/Province:	CA

AGREEMENT NO. 20-33

Country:	UNITED STATES
ZIP/Postal Code:	91763



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- [GSA.gov/IAE](#)
- [GSA.gov](#)
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CITY COUNCIL AGENDA REPORT

DATE:	MAY 4, 2020	FILE I.D.:	PTD175
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	8	PREPARER:	B. KUMANSKI
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-34 WITH LEXISNEXIS RISK SOLUTIONS FOR A COPLOGIC DESK OFFICER REPORTING SYSTEM FOR ONLINE CRIME REPORTING SERVICES		

CONSIDER AUTHORIZING A \$26,040 EXPENDITURE FROM THE COVID-19 FUND FOR COSTS ASSOCIATED WITH AGREEMENT NO. 20-34, WITH THE POTENTIAL FOR REIMBURSEMENT THROUGH THE BUREAU OF JUSTICE ASSISTANCE 2020 CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING PROGRAM

REASON FOR CONSIDERATION: To help assist with the Department's COVID-19 response, the City Council is requested to consider approval of Agreement No. 20-34 with LexisNexis Risk Solutions for a Coplogic Desk Officer Reporting System, an online crime reporting system for the public. The City Council is also requested to authorize a \$26,040 expenditure from the COVID-19 fund to pay for the costs associated with Agreement No. 20-34 with the potential for reimbursement through the Bureau of Justice Assistance 2020 Coronavirus Emergency Supplemental Funding Program.

Proposed Agreement No. 20-34, which includes the LexisNexis Law Enforcement Agreement, "Order No. 1" Scope of Services and Fees Agreement, and a Security and Notification Requirement Exhibit, was reviewed and found acceptable to staff and the City Attorney and is attached for the City Council's review and consideration.

BACKGROUND: On March 4, 2020, the COVID-19 crisis reached a critical point in California when Governor Gavin Newsom declared a State of Emergency to prepare for, contain, and respond to mitigating the effects of, and recovery from, the spread of the COVID-19 virus. This was followed by an Executive Order on March 12, 2020, giving local and public officials guidance on implementing their own recommendations and a local County Department of Health order prohibiting gatherings and issuing social distancing requirements. In response, the City of Montclair declared a local public health emergency, echoing the State and County officials and setting aside funds to facilitate this mission. Shortly thereafter, the Governor issued a stay-at-home order eliminating all non-essential travel outside of the home.

All of these developments had an effect on policing and how officers interact with the public. Key to the swift COVID-19 response are the limitations of gatherings and the requirement of social distancing. Toward this end, the Department enacted several changes on how routine business was to be conducted to both protect personnel from risks of exposure and to help the public comply with the requirements. Some of these measures included limiting proactive and discretionary enforcement activities, not bringing witnesses or victims to the police station, and when possible, handling calls for service by phone. This last step allows for citizens to continue to report minor crimes; however, it is burdensome and inefficient to both the citizen and the Officer.

To take a phone report, the citizen must wait for an Officer to be available to actually call and take the report. Often, documents normally provided for reports like identity theft, receipts for theft, or photos for vandalism still need to be received in person, or emailed to the Officer who must then attach them to the report. In addition, Patrol Officers do not have phones readily available at all times to take these calls and must return to the station each time for a phone report. If an Officer is not available when the citizen calls, he/she often has to wait until an Officer calls back.

Online reporting solves many of these inconveniences and allows for the citizen to report many common, minor crimes online, eliminating physical and live interaction with an Officer. An online reporting system allows for the sharing of relevant documents, which can be uploaded to the system by the public through their computer or smartphone, further limiting interaction with an Officer. Additionally, an online reporting system is more convenient for the public. The citizen does not need to wait for an Officer to respond and can file a report at any time, when convenient and after any needed documentation has been gathered. Often, a citizen simply wants a report for insurance purposes or other reason for documentation, and an online report would allow for the issuance of a case number for this purpose. If a citizen does not have access to the internet, the Department would continue to provide service by phone or in-person if necessary.

Research into online reporting solutions utilized throughout the Southern California region revealed nearly all agencies that currently utilize online reporting use LexisNexis' Coplogic Desk Officer Reporting System. This includes most Los Angeles County agencies including LAPD and the Los Angeles County Sheriff's Department; Riverside County agencies including Riverside PD and the Riverside County Sheriff's Department; Orange County agencies including the Orange County Sheriff's Department; and San Bernardino County agencies such as San Bernardino PD, Rialto PD, Redlands PD, Ontario PD, Fontana PD, and Colton PD. In addition to being the standard for most of the region, agencies utilizing LexisNexis Coplogic are able to share reports of incidents that occur in other jurisdictions. Currently, agencies are required to take certain reports, such as identity theft, regardless of jurisdiction. Once investigated, the case is forwarded to the jurisdiction of occurrence for follow-up investigation. With LexisNexis Coplogic, these cases could be immediately forwarded to the proper jurisdiction upon review, eliminating several time-consuming steps in the process.

As listed above, online reporting is a common function of many law enforcement agencies and the benefits extend beyond the current COVID-19 crisis. Feature sets inherent to online reporting also help assist agencies meet COVID-19 response mandates and keep the Department's staff and the public safe while still fulfilling the need to provide services to the community. Benefits of online reporting would stay long after COVID-19 concerns are gone, and the City could use the system to receive reports for other non-criminal matters, such as to report damage to City facilities, road-repair requests, and other non-criminal reporting needs.

Other than widespread use by nearly all local law enforcement agencies, the most significant factor to consider when choosing any online reporting solution is interoperability with existing systems. The Department recently began a CAD/RMS upgrade cycle with the West Covina Service Group to Mark43. This system is the master repository of all Police Department records and crime statistics and will be the foundation of the Department's paperless reporting system. The system does not have a citizen online reporting component, and any third-party system would need to be able to integrate to realize the full benefit and reduce personnel time to process. Currently,

LexisNexis Coplogic is the only approved vendor for integrating online reporting by Mark43 and can build this integration into our current transition.

Integration takes time, and in the case of Coplogic, the full integration time ranges from four to five months. However, due to the needs of an immediate COVID-19 response, a hybrid implementation approach would be utilized. Within two to three weeks after approval, LexisNexis would have the online reporting component up and running linked to the City's website and available via text link sent by Dispatch or a Patrol Officer. No additional hardware or software is required by the Department and LexisNexis hosts all reports and data on their CJIS compliant servers. Citizens would be given a temporary report number, which would change to a Montclair PD case number once approved by PD staff.

Under a normal integration, the report would then be pushed to our RMS system to be stored and managed per our retention policy. However, this is the part which requires the longest amount of time. To help facilitate rapid implementation to address COVID-19 protocol concerns, LexisNexis would continue to host the reports for the duration of the implementation process. This would allow for use of the system right away, with integration occurring as completed. During this transition time, Department staff can manually enter the data as needed. Once integration is complete, LexisNexis would transfer the data to the Department for storage and retention. It would then purge the reports from their system and no longer store them once approved by our staff.

Costs for online reporting services through LexisNexis, which are based on population size, would be \$1,080 per month. The proposed agreement is for two years at a total cost of \$26,040, which would be billed through Fiscal Year 2021-22. Thereafter, the contract would be renewed on an annual basis, unless a longer term is agreed upon by both parties. As a COVID-19 response measure, funds would be authorized from the City's COVID-19 fund. The City was recently notified of an allotment through the Bureau of Justice Assistance 2020 Coronavirus Emergency Supplemental Funding Program, which could cover COVID-19 related response costs for a period of two years. The Department will be submitting a request to use a portion of this allotment for an online reporting system. If approved, these funds would reimburse any initial costs and cover the duration of the two-year agreement at \$26,040.

FISCAL IMPACT: If authorized by the City Council, funding for Agreement No. 20-34 with LexisNexis Risk Solutions for a Coplogic Desk Officer Reporting System would result in an expenditure of \$26,040 from the General Fund COVID-19 response Account No. 1001-4202-52080-400-00000. If approved, the Bureau of Justice Assistance 2020 Coronavirus Emergency Supplemental Funding Program would reimburse the City for these expended funds. If the agreement is extended beyond the initial two years, there may be an additional financial impact to the City's General Fund for the 2022-23 Fiscal Year depending on funding sources available at the time.

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

1. Approve Agreement No. 20-34 with LexisNexis Risk Solutions for a Coplogic Desk Officer Reporting System for online crime reporting services.
2. Authorize a \$26,040 expenditure from the COVID-19 Fund for costs associated with Agreement No. 20-34, with the potential for reimbursement through the Bureau of Justice Assistance 2020 Coronavirus Emergency Supplemental Funding Program.

LAW ENFORCEMENT AGREEMENT

This Law Enforcement Agreement (“Agreement”) is dated _____ (“Effective Date”) by and between LexisNexis Coplogic Solutions Inc., with its principal place of business at 1000 Alderman Drive, Alpharetta, Georgia 30005 (“Provider”), and City of Montclair Police Department, with its principal place of operations at 4870 Arrow Highway Montclair, CA 91763 (“Agency”). Provider and Agency may be referred to herein individually as a “Party” and collectively referred to as “Parties”.

1. SCOPE. Provider as part of its business has developed several comprehensive products and services for law enforcement. Subject to the terms and conditions of this Agreement, Agency desires to order and Provider agrees to provide the various products and services contained herein (collectively referred to as the “Services”) as described in an applicable order to this Agreement (“Order”). The parties acknowledge Agency is a law enforcement entity with responsibility for the documentation, retention, and management of information and reporting related to vehicle accidents, citations, and incidents occurring within its jurisdiction (as used within this Agreement, each documented event is a “Report”). “Report” shall also include any associated or supplemental information provided with the Report including agency name, images and upload date, as applicable.

2. LICENSE AND RESTRICTIONS.

- 2.1 License Grant and License Restrictions.** Upon execution of an applicable Order, Provider hereby grants to Agency a restricted, limited, revocable license to use the Services only as set forth in this Agreement and any applicable Order, and for no other purposes, subject to the restrictions and limitations set forth below:
- a. Agency shall not use the Services for marketing or commercial solicitation purposes, resell, or broker the Services to any third-party or otherwise use the Services for any personal (non-law enforcement) purposes; and
 - b. Agency shall not access or use Services from outside the United States without Provider’s prior written approval; and
 - c. Agency shall not use the Services to create a competing product or provide data processing services to third parties; and
 - d. Agency’s use of the Services hereunder will not knowingly violate any agreements to which Agency is bound; and
 - e. Agency shall not harvest, post, transmit, copy, modify, create derivative works from, tamper, distribute the Services, or in any way circumvent the navigational structure of the Services, including to upload or transmit any computer viruses, Trojan Horses, worms or anything else designed to interfere with, interrupt or disrupt the normal operating procedures of Services; and
 - f. Agency may not use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights or otherwise infringe on the rights of others; and
 - g. Agency shall not reveal any user accounts or passwords for the Services to any third parties (third parties shall not include Agency’s employees who have a need to know such information); and
 - h. Agency shall not permit any third party (third parties shall not include Agency’s employees who have a need to know such information) to view or use the Services, even if such third party is under contract to provide services to Agency; and
 - i. Agency shall comply with all laws, regulations, and rules which govern the use of the Services.
- 2.2 Other Restrictions.** In addition Provider may, at any time, impose restrictions and/or prohibitions on the Agency’s use of the Services, or certain data or no longer offer certain functionalities or features that may be the result of a modification in Provider policy, a modification of third-party agreements, a modification in industry standards, a Security Event (defined below), a change in law or regulation, or the interpretation thereof. Upon written notification by Provider of such restrictions, Agency agrees to comply with such restrictions or, in the event that Agency is unable to comply, it shall notify Provider in writing of its inability to comply within ten (10) days after receipt of Provider’s written notification. In that event, either Party may immediately terminate this Agreement by providing written notice thereof to the other Party without such termination constituting a breach of this Agreement. Provider shall be Agency’s designated preferred Provider of such Services as are mutually agreed to and defined hereunder, related to the handling of Agency’s Reports.
- 2.3 Violation of License Terms and / or Restrictions.** Agency agrees that, if Provider determines or reasonably suspects that: (i) Agency is violating any license terms, restrictions, or other material provision of the Agreement; or (ii) Agency has experienced a Security Event (as herein defined), Provider may, at its sole option, take immediate action up to and including, without further obligation or liability of any kind, terminating Agency’s account and the license to use the Services.

3. SUPPORT AND MAINTENANCE.

- 3.1. Ongoing Maintenance. Provider will, from time-to-time issue and/or provide maintenance including bug fixes, enhancements, new features, or new functionality that are generally made available to customers along with any corresponding changes to documentation ("Maintenance"). Maintenance does not include work to custom code, customized configurations, or to unauthorized modifications of the Services. Any Provider assistance beyond standard Maintenance will be billed at Provider's then current pricing schedule, as agreed upon in advance by the Parties. Additionally, upon Agency's written notice of new or revised legislation, statutes, or ordinances requiring any Services to be updated, Provider shall update or modify the Services or particular form consistent with such new regulation within a reasonable time.
- 3.2. Support Services. Provider will provide ongoing support services for problems, queries or requests for assistance ("Support") provided that all requests for Support must be made to Provider Monday through Friday from 8:00 AM ET to 8:00 PM ET at 1-888-949-3835. Provider will also provide limited after hours Support including the ability to leave a message and receive a call back the following business day or sooner, if critical. In order to provide Support, Agency will provide all information reasonably required by Provider to identify the issue, including: an Agency point of contact (familiar with the Services and issue), description of issue, screenshots, the impact, and assist in Provider's efforts to reproduce the problem (as applicable). Provider will work to resolve problem with reasonable promptness for issues that are application or Services related (Provider is not responsible for resolving issues caused by Agency hardware). The Agency agrees to provide Provider with data transfers, as requested, remote access to the Services system, and with sufficient test time on the Agency's computer system to duplicate the problem, to certify that the problem is with the Services, and to certify that the problem has been corrected. If the problem cannot readily be resolved, Provider will attempt to identify a work around. Upon resolution of any issue, Provider shall notify the Agency of such resolution via email. The Parties agree that Provider is not obligated to ensure that its Services are compatible with outdated (exceeding 4 years from date of initial release) hardware, computer operating services or database engines.
- 3.3. On Site Support. In response to written Agency requests for Provider to provide on-site routine non-emergency support, Provider shall produce a written estimate of the time required to provide the requested support and state any requirements, such as the presence of Agency staff or other resources or materials. Any on-site support provided by Provider shall only be invoiced by Provider or paid by Agency if the problem arose due to something other than a defect in the Services. The Agency shall reimburse Provider at the rate of two thousand five hundred (\$2,500.00) dollars per day for each Provider employee who provides any on-site support, and such fees will not include any reimbursement for Provider travel time or travel expenses.

4. FEES.

- 4.1. Fees due to Provider. Any fees due to Provider for Services hereunder shall be specified in an Order ("Fees"). For any Order where Fees are specified, Provider will issue an invoice to Agency pursuant to the terms in the Order. Invoices shall be paid in full by Agency within thirty (30) days from invoice date. Provider may increase or decrease the Fee following the Initial Term (as defined in an applicable Order) by providing Agency no less than sixty (60) days written notice prior to the effective date of such pricing change. In the event Agency has a good faith dispute on all or a portion of an unpaid invoice ("Dispute"), Agency shall notify Provider in writing and follow the procedures set forth below. To the extent an interface or other technological development is required to enable an Agency designated third party (i.e., RMS Vendor) to receive Reports from Provider at Agency's request or to enable Provider to intake Agency Data, such cost shall not be borne by Provider. If any invoice (or undisputed portion thereof) remains unpaid and not subject to a Dispute after sixty (60) days from the invoice date, Provider shall have the right to terminate this Agreement (including all Services) or the right to discontinue the applicable Service immediately, without such action constituting a breach or incurring any liability herein. All Fees are calculated for payment made via ACH, Wire, or Agency check. Agency agrees that Fees exclude taxes (if applicable) or other cost incurred by Agency's RMS Vendor or other third parties and agrees such costs shall be passed on to Agency. Provider shall not be required to enter into a third-party relationship to obtain payment for the Service provided to Agency; however, should Provider elect to do so, Provider reserves the right to charge Agency additional fees for such accommodation.
- 4.2. Fees due to Agency. Using the process as herein defined, on behalf of Agency, Provider will collect and remit to Agency a fee for all Reports ("Agency Fee") purchased from the eCommerce portal set forth on the applicable Order, including but not limited to fees for purchases of Reports from that eCommerce portal by an Affiliate. On a monthly basis, Provider will electronically transfer to Agency's designated account, the total amount of applicable Agency Fee collected by Provider during the previous month. Provider will make available a monthly report to Agency identifying the number of Reports provided on its behalf via the LexisNexis® Command Center administration portal and/or its successor.
- 4.2.1. No Agency Fee will be paid with respect to the following:

- 4.2.1.1. When an Affiliate of Provider has paid an Agency Fee to acquire a Report for an Authorized Requestor (including Reports purchased before the applicable Order Effective Date) and such Affiliate later resells that Report from its inventory of previously purchased Reports to another Authorized Requestor; or
- 4.2.1.2. When one or more components of a Report (e.g., VIN number), rather than the Report in its entirety, is provided by Provider to an Authorized Requestor or an Affiliate of Provider ; or
- 4.2.1.3. When a Report is acquired by an Affiliate of Provider from a source other than the eCommerce portal set forth on the applicable Order; or
- 4.2.1.4. When a fee is not charged to an Authorized Requestor for the Report.

Nothing in this Agreement shall require Provider or its Affiliate to pay an Agency Fee to the Agency when an Authorized Requestor provides a Report and/or specific data extracted from the Report to a third party after the Authorized Requestor has purchased such Report from the Affiliate’s inventory of previously purchased Reports. Agency acknowledges that all reports requested by Agency Requestors shall be provided free of charge.

4.3. Fees retained by Provider. Where permitted by law, Provider will charge a convenience fee for each Report provided to an Authorized Requestor (“Convenience Fee”) which shall be retained by Provider. The Convenience Fee shall be established by Provider at its discretion, but in no event shall it exceed the amount Provider may legally charge an Authorized Requestor.

5. **RETENTION / DISTRIBUTION.** For all Services provided hereunder that involve Reports, Provider will maintain a copy of each Report for a period of no less than seven (7) years from the date of the Report. For Services that contemplate the sale of Reports, as more specifically described in an Order, Provider shall distribute Reports and/or specific data extracted from the Report to individuals or legal entities (“Authorized Requestors”) and other authorized law enforcement entities (“Agency Requestors”) in accordance with applicable laws and regulations. Nothing in this Agreement shall prohibit Provider’s Affiliates (defined in Section 16.1, “Affiliates” below) from purchasing Reports from the ecommerce portal set forth in the Order, or from distributing previously purchased Reports and/or specific data extracted from the Report to Authorized Requestors or Agency Requestors in accordance with the terms of the Order and applicable laws and regulations. Nothing in this Agreement shall prohibit Affiliates from acquiring Reports from a source other than the ecommerce portal set forth in the Order.

6. **TERMS AND TERMINATION.**

6.1 Term. This Agreement shall commence upon the Effective Date and shall continue until terminated in accordance with this Agreement. Each Order shall set forth the specified term for the particular Service.

6.2 Termination.

- 6.2.1 Either Party may terminate this Agreement or any Order for cause if the other Party breaches a material obligation under the terms of this Agreement and fails to cure such breach within thirty (30) days of receiving written notice thereof from the non-breaching Party, provided, however, that if such material breach is of a nature that it cannot be cured, immediate termination shall be allowed. Failure to pay by either Party shall be considered a material default.
- 6.2.2 Either Party may elect to terminate this Agreement or any Order by providing at least sixty (60) days written notice to the other of such intent.
- 6.2.3 Provider may, upon six (6) months written notice to Agency, terminate any Service that will no longer be supported or offered by Provider. Provider will make reasonable efforts to transition Agency to a similar Service, if available. Further, Provider may at any time cease to provide Agency access to any portions of features of the Services thereof which Provider is no longer legally or contractually permitted to provide.

6.3 Effect of Termination. Upon termination of this Agreement, each Party shall be liable for payment to the other Party of all amounts due and payable for Services provided through the effective date of such termination. Upon receipt of Agency’s written request after termination, Provider shall provide Agency with access to Reports provided by Agency under this Agreement and/or data provided through provision of the Services by Agency under an applicable Order so Agency may download and/or copy such information. Provider shall not be obligated to delete from its databases (or from other storage media) and/or return to Agency, Reports already provided to Provider by Agency, and shall be permitted to continue to maintain and distribute the Reports already in its possession to Authorized Requestors in compliance with applicable laws and regulations.

7. **RELEVANT LAWS.** Each party shall comply with all applicable federal, state, and local laws and regulations related to its performance hereunder, including:
- 7.1. Fair Credit Reporting Act. The Services provided pursuant to this Agreement are not provided by “consumer reporting agencies” as that term is defined in the Fair Credit Reporting Act (15 U.S.C. § 1681, et seq.) (“FCRA”) and do not constitute “consumer reports” as that term is defined in the FCRA. Agency certifies that it will not use any of the information it receives through the Services in whole or in part as a factor in determining eligibility for credit, insurance, or employment or for any other eligibility purpose that would qualify the information in as a consumer report.
 - 7.2. Protected Health Information. Unless otherwise contemplated by an applicable Business Associate Agreement executed by the Parties, Agency will not provide Provider with any Protected Health Information (as that term is defined in 45 C.F.R. Sec. 160.103) or with Electronic Health Records or Patient Health Records (as those terms are defined in 42 U.S.C. Sec. 17921(5), and 42 U.S.C. Sec. 17921(11), respectively) or with information from such records without the execution of a separate agreement between the Parties.
 - 7.3. Social Security Numbers. Social Security Numbers may be available hereunder as part of Reports and/or related data provided from certain states. However, Agency shall not provide Social Security Numbers to Provider under any circumstances under this Agreement. Should Agency require more information on Social Security Numbers or its obligations in relation thereto, Agency should contact Provider Agency Service at 1-866-215-2771 for assistance.
 - 7.4. Privacy Principles. Agency shall comply with the “Provider Data Privacy Principles” available at <http://www.lexisnexis.com/privacy/data-privacy-principles.aspx>, as updated from time to time. Provider shall notify Agency in writing in the event that material changes are made to the Provider Data Privacy Principles.
 - 7.5. Security. Agency agrees to protect against the misuse and/or unauthorized access of the Services provided to Agency in accordance with this Agreement and as set forth in Exhibit A, attached hereto.
 - 7.6. Additional Requested Terms and Conditions. Provider acts on behalf of Agency in carrying out Agency’s obligations to provide public access to vehicle accident reports under applicable public record laws. Provider will accordingly follow the instruction and direction of Agency in fulfilling requests for Agency’s Reports. Should Agency require any specific terms and conditions for the disclosure or use of Reports on Provider’s eCommerce web portal beyond the terms and conditions otherwise defined herein, including any conditions relating to compliance with any laws restricting the disclosure, obtainment or use of Agency’s Reports, Agency will notify Provider within three (3) business days of Agency’s decision. Otherwise, Provider will rely on Agency to determine that all legal conditions relating to the disclosure, obtainment, and use of Agency’s Reports have been met when Agency authorizes Provider to disclose Agency’s Reports to Authorized Requestors on Provider’s eCommerce web portal pursuant to this Agreement.

8. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY OWNERSHIP.

- 8.1. Definition. “Confidential Information” means all non-public information provided by the disclosing Party to the receiving Party hereunder, including, without limitation, the terms of this Agreement, all information related to technical, financial, strategies and related information, business information, computer programs, algorithms, know-how, processes, databases, systems, ideas, inventions (whether patentable or not), schematics, Trade Secrets (as defined by applicable law) and other information (whether written or oral). Confidential Information does not include Reports and information related thereto. Confidential Information does not include information that was, at the time of the disclosure: (a) or becomes (through no improper action or inaction by the recipient) generally known to the public; (b) lawfully disclosed to recipient by a third-party and received in good faith and without any duty of confidentiality by the recipient or the third-party; (c) in recipient’s possession or known to it prior to receipt from discloser; or (d) independently developed by recipient; provided in each case that such forgoing information was not delivered to or obtained by recipient as a result of any breach of this Agreement.
- 8.2. Treatment of Confidential Information. Each Party agrees to protect the Confidential Information with the same degree of care it uses to protect its own confidential information of a similar nature, but not less than a reasonable standard of care and not to use the other Party’s Confidential Information other than as necessary to perform its obligations or as permitted under this Agreement. A Party shall not remove or destroy any proprietary or confidential legends or markings placed upon or contained within any Confidential Information.
- 8.3. Intellectual Property Ownership. Each Party retains all right, title, and interest under applicable contractual, copyright and related laws to their respective Confidential Information, including the right to use such information for all purposes permissible by applicable laws, rules, and regulations. Provider retains all rights (other than the limited license granted herein), title, interest, ownership and all intellectual property rights in the Services including any improvements or modifications thereto, and Agency shall use such information consistent with such right, title and interest and notify Provider of any threatened or actual infringement thereof. Agency shall not remove or obscure any copyright or other notices from the Services or materials provided hereunder.
- 8.4. Exception for Subpoenas and Court Orders. A Party may disclose Confidential Information solely to the extent required by subpoena, court order or other governmental authority, provided that the receiving Party provides the disclosing Party prompt written notice of such subpoena, court order or other governmental authority so as to allow the disclosing Party an

opportunity to obtain a protective order to prohibit or limit such disclosure at its sole cost and expense. Confidential Information disclosed pursuant to subpoena, court order or other governmental authority shall otherwise remain subject to the terms applicable to Confidential Information.

- 8.5. **Duration.** Each Party’s obligations with respect to Confidential Information shall continue for the term of this Agreement and for a period of five (5) years after termination of this Agreement, provided however, that with respect to Trade Secrets, each Party’s obligations shall continue for so long as such Confidential Information continues to constitute a Trade Secret.
- 8.6. **Return of Confidential Information.** Upon the written request of a Party (and except as otherwise specifically set forth in an applicable Order), each Party shall return or destroy (and certify such destruction in a signed writing) any of the other Party’s Confidential Information unless retention of such information is required by law, regulation, court order, or other similar mandate.
- 8.7. **Injunctive Relief.** In the event of a breach or a threatened breach of the confidentiality or privacy provisions of this Agreement, the non-breaching Party may have no adequate remedy in monetary damages and, accordingly, may seek an injunction against the breaching Party.
- 8.8. **Other.** During the term of this Agreement and subject to approval by Agency, Agency agrees to serve as a reference for the Services, which may include (i) reference calls with mutually acceptable prospects; (ii) a published “success story” describing the partnership with Provider; (iii) the use of Agency’s name in Provider marketing activities; or (iv) a favorable reference of Provider to an industry analyst or at an industry conference.

9. PROVIDER AUDIT RIGHTS. Agency understands and agrees that, in order to ensure Agency’s compliance with the Agreement, as well as with applicable laws, regulations and rules, Provider’s obligations under its contracts with its data providers, and Provider’s internal policies, Provider may conduct periodic reviews of Agency’s use of the services and may, upon reasonable notice, audit Agency’s records, processes and procedures related to Agency’s use, storage and disposal of the Services and information received therefrom. Agency agrees to cooperate fully with any and all audits and to respond to any such audit inquiry within ten (10) business days, unless an expedited response is required. Violations discovered in any review and/or audit by Provider will be subject to immediate action including, but not limited to, invoicing for any applicable fees (if Services are based on number of users and Agency’s use exceeds licenses granted), suspension or termination of the license to use the Services, legal action, and/or referral to federal or state regulatory agencies.

10. REPRESENTATIONS AND WARRANTIES. Agency represents and warrants to Provider that Agency is fully authorized to disclose Reports, information, and related data or images to Provider in accordance with this Agreement and to grant Provider the rights to provide the Services as described herein. Where redaction of Reports is required prior to provision to Provider, Agency represents and warrants it will redact applicable Reports consistent with all laws and regulations. In performing their respective obligations under this Agreement, each Party agrees to use any data and provide any Services, in strict conformance with applicable laws and regulations, and further, to comply with all applicable binding orders of any court or regulatory entity and consistent with the terms of this Agreement.

11. LIMITATION OF WARRANTY. FOR PURPOSES OF THIS SECTION, “PROVIDER” INCLUDES PROVIDER AND ITS AFFILIATES, SUBSIDIARIES, PARENT COMPANIES, AND DATA PROVIDERS. THE SERVICES PROVIDED BY PROVIDER ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING ITS ACCURACY OR PERFORMANCE INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, ORIGINALITY, OR OTHERWISE, OF ANY SERVICES, SYSTEMS, EQUIPMENT OR MATERIALS PROVIDED HEREUNDER.

12. INDEMNIFICATION. To the extent permitted under applicable law, each Party shall defend, indemnify, and hold harmless the other Party, its affiliates, and their officers, directors, employees, and agents (the “indemnified parties”) against and from any and all losses, liabilities, damages, actions, claims, demands, settlements, judgments, and any other expenses (including reasonable attorneys’ fees), which are asserted against the indemnified parties by a third party, but only to the extent caused by (i) violation of law in the performance of its obligations under this Agreement by the indemnifying Party, its affiliates, or the officers, agents or employees of such Party (the “indemnifying parties”); (ii) the gross negligence or willful misconduct of the indemnifying Parties during the term of this Agreement; (iii) violation, infringement or misappropriation of any U.S. patent, copyright, trade secret or other intellectual property right; or (iv) with respect to Agency, violation of any of the license terms or restrictions contained in this Agreement. The indemnities in this section are subject to the indemnified Parties promptly notifying the indemnifying Parties in writing of any claims or suits.

13. LIMITATION OF LIABILITY. To the extent permitted by applicable law, Provider’s entire liability for any claims(s) resulting from its acts or omissions, including, but not limited to negligence claims under this Agreement shall not exceed the total amount of Fees actually received by Provider from Agency (excluding pass through or out of pocket expenses) for the specific services from which liability arises during the twelve (12) month period immediately preceding the event first giving rise to such liability, and if not

yet in the twelfth (12th) month of this Agreement, for the period leading up to such event. To the extent the relevant services are made available at no cost to Agency, then in no event shall Provider's liability to Agency under this Agreement exceed one hundred dollars (\$100.00) in the aggregate. This limitation of liability will not apply to any claims, actions, damages, liabilities or fines relating to or arising from Provider's gross negligence or willful misconduct. In no event shall Provider be liable for any indirect, special, incidental, or consequential damages in connection with this Agreement or the performance or failure to perform hereunder, even if advised of the possibility of such damages.

14. FORCE MAJEURE. Neither Party will be liable for any delay or failure to perform its obligations hereunder due to causes beyond its reasonable control, including but not limited to natural disaster, pandemic, casualty, act of god or public enemy, riot, terrorism, or governmental act; provided, however, that such Party will not have contributed in any way to such event. If the delay or failure continues beyond thirty (30) calendar days, either Party may terminate this Agreement or any impacted Order with no further liability, except that Agency will be obligated to pay Provider for the Services provided under this Agreement prior to the effective date of such termination.

15. NOTICES. All notices, requests, demands or other communications under this Agreement shall be in writing to the address set forth in the opening paragraph and shall be deemed to have been duly given: (i) on the date of service if served personally on the party to whom notice is to be given; (ii) on the day after delivery to a commercial or postal overnight carrier service; or (iii) on the fifth (5th) day after mailing, if mailed to the Party to whom such notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed. Any Party hereto may change its address for the purpose of this section by giving the other party timely, written notice of its new address in the manner set forth above.

16. MISCELLANEOUS.

- 16.1 Affiliates. For purposes of this Agreement, "Affiliate" means any corporation, firm, partnership or other entity that directly or indirectly controls, or is controlled by, or is under common control with Provider. Affiliates shall not be bound by the terms and conditions of this Agreement with respect to the provision of their applicable Services hereunder and nothing in this Agreement shall prevent or limit Affiliates from offering previously purchased Reports or data extracted from Reports for sale.
- 16.2 Independent Contractor/No Agency. Each Party acknowledges that it has no authority to bind or otherwise obligate the other Party. Provider is and shall at all times remain as to Agency a wholly independent contractor.
- 16.3 Assignment. Neither Party shall assign this Agreement in whole or in part without the prior written consent of the other Party, and any such attempted assignment contrary to the foregoing shall be void. Notwithstanding the foregoing, an assignment by operation of law, as a result of a merger or consolidation of a Party, does not require the consent of the other Party. This Agreement will be binding upon the Parties' respective successors and assigns.
- 16.4 Headings, Interpretation, and Severability. The headings in this Agreement are inserted for reference only and are not intended to affect the meaning or interpretation of this Agreement. The language of this Agreement shall not be construed against either Party. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 16.5 Waiver; Remedies Non-Exclusive. No failure or delay on the part of any Party in exercising any right or remedy provided in this Agreement will operate as a waiver thereof. Unless otherwise provided herein, any remedy will be cumulative to any other right or remedy available at law or in equity.
- 16.6 Survival. Sections 2-4, 7-12, and 15 shall survive the termination or rescission of this Agreement.
- 16.7 Provider Shared Facilities. Provider may utilize facilities located outside the United States to provide support or the Services under this Agreement, and if such centers are utilized they shall be under the control of Provider and subject to all Provider policies that govern data access, protection and transport in the United States.
- 16.8 Entire Agreement. This Agreement represents the entire Agreement of the Parties and supersedes all previous and contemporaneous communications or agreements regarding the subject matter hereto. Agency by its signature below hereby certifies that Agency agrees to be bound by the terms and conditions of this Agreement including those terms and conditions posted on web pages specifically set forth herein or contained with any software provided under this Agreement, as may be updated from time to time. Any additional terms or conditions contained in purchase orders or other forms are expressly rejected by Provider and shall not be binding. Acceptance or non-rejection of purchase orders or other forms containing such terms; Provider's continuation of providing Products or Services; or any other inaction by Provider shall not constitute Provider's consent to or acceptance of any additional or different terms from that stated in this Agreement. This Agreement may only be modified by a written document signed by both Parties.
- 16.9 Governing Law. The Agreement will be governed by and construed under the laws of the State of California excluding its conflict of law rules. Any litigation concerning this Agreement shall take place in the superior or federal district court with jurisdiction over the City of Montclair.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives as of the Effective Date.

AGENCY: City of Montclair – Police Department

PROVIDER: LexisNexis Coplogic Solutions Inc.

Signature: _____

Signature: _____

Printed Name: Javier John Dutrey

Printed Name: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

ATTEST

Signature: _____

Printed Name: Andrea M. Phillips

Title: City Clerk

APPROVED AS TO FORM

Signature: _____

Printed Name: Diane E. Robbins

Title: City Attorney

EXHIBIT A - SECURITY AND NOTIFICATION REQUIREMENTS

1. **Data Protection.** Agency shall take appropriate measures to protect against the misuse and unauthorized access through or to Agency's (i) credentials ("Account IDs") used to access the Services; or (ii) corresponding passwords, whether by Agency or any third party; or (iii) the Services and/or information derived therefrom. Agency shall manage identification, use, and access control to all Account IDs in an appropriately secure manner and shall promptly deactivate any Account IDs when no longer needed or where access presents a security risk. Agency shall implement its own appropriate program for Account ID management and shall use commercially reasonable efforts to follow the policies and procedures for account maintenance as may be communicated to Agency by Provider from time to time in writing.

2. **Agency's Information Security Program.** Agency shall implement and document appropriate policies and procedures covering the administrative, physical and technical safeguards in place and relevant to the access, use, storage, destruction, and control of information which are measured against objective standards and controls ("Agency's Information Security Program"). Agency's Information Security Program shall: (1) account for known and reasonably anticipated threats and Agency shall monitor for new threats on an ongoing basis; and (2) meet or exceed industry best practices. Agency will promptly remediate any deficiencies identified in Agency's Information Security Program. Agency shall not allow the transfer of any personally identifiable information received from Provider across any national borders outside the United States without the prior written consent of Provider.

3. **Agency Security Event.** In the event Agency learns or has reason to believe that Account IDs, the Services, or any information related thereto have been misused, disclosed, or accessed in an unauthorized manner or by an unauthorized person (an "Agency Security Event") Agency shall:
 - (i) provide immediate written notice to:
 - a) the Information Security and Compliance Organization at 1000 Alderman Drive, Alpharetta, Georgia 30005; or
 - b) via email to (security.investigations@lexisnexis.com); or
 - c) by phone at (1-888-872-5375) with a written notification to follow within twenty four (24) hours; and
 - (ii) promptly investigate the situation; and
 - (iii) obtain written consent from Provider, not to be unreasonably withheld, prior to disclosing Provider or the Services to any third party in connection with the Agency Security Event; and
 - (iv) if required by law, or in Provider' discretion, Agency shall:
 - a) notify the individuals whose information was disclosed that an Agency Security Event has occurred; and
 - b) be responsible for all legal and regulatory obligations including any associated costs which may arise in connection with the Agency Security Event; and
 - (v) remain solely liable for all costs and claims that may arise from the Agency Security Event, including, but not limited to: litigation (including attorney's fees); reimbursement sought by individuals (including costs for credit monitoring and other losses alleged to be in connection with such Agency Security Event); and
 - (vi) provide all proposed third party notification materials to Provider for review and approval prior to distribution.

In the event of an Agency Security Event, Provider may, in its sole discretion, take immediate action, including suspension or termination of Agency's account, without further obligation or liability of any kind.

Order No. 1
LexisNexis® Desk Officer Reporting System (DORS)

This Order No. 1 ("Order") is entered into this ____ day of _____, 2020 ("Order Effective Date") between City of Montclair Police Department ("Agency") and LexisNexis Coplogic Solutions Inc. ("Provider") and subject to the terms and conditions of the Law Enforcement Agreement effective _____ ("Agreement") between the Parties.

1. TERMS AND CONDITIONS.

All of the terms and conditions contained in the Agreement shall remain in full force and effect and shall apply to the extent applicable to this Order except as expressly modified herein. To the extent that the terms and conditions of this Order are in conflict with the terms and conditions of the Agreement, or any other incorporated item, this Order shall control. Capitalized terms used herein but not defined shall have the same meaning as set forth in the Agreement.

2. DESCRIPTION OF SERVICES.

Provider, as part of its business has developed and makes available to law enforcement entities an online citizen reporting system called LexisNexis® Desk Officer Reporting System ("DORS") enabling individuals, retail companies and other organizations to file reports, crime tips and other forms online to law enforcement.

3. SCOPE OF SERVICES.

Provider agrees to provide the following Services to Agency subject to the provisions of this Order. Any change to the Services as set forth in this Order that occur after the Order Effective Date must be made by amendment to this Order, signed by both Parties. Provider will provide the following Services described below subject to Agency's technology capabilities, processes, and work-flow functionality.

3.1. Services. DORS uses the J2EE standard. DORS is designed to gather information on incidents from a member of the general public (user) via an SSL connection. DORS will issue a temporary report number to the user and place the temporary report into an administrative holding area for review and modification by appropriate Agency administrator. An email is generated to the user that the report has been submitted. The Agency administrator logs in via an SSL connection and approves, rejects, edits or prints reports as appropriate. Rejecting a report deletes it from the DORS system and sends an appropriate email to the user. Approving the report issues a number, places it in a queue to be exported (as determined during implementation), and sends an appropriate email to the user. The Agency administrator and user can download the approved report and/or print the approved report out. Provider shall provide Report retention and distribution services as set forth in in Section 5 of the Agreement, including an on-line Report distribution website such as LexisNexis® PoliceReports.com (or its successors).

3.2. Setup and Access.

Agency Responsibilities.

- a) Coordinate with Provider to establish dates for deployment within the DORS implementation schedule tab;
- b) Provide images for (i) website header image (ii) temporary citizen report image and (iii) final printed PDF report image;
- c) Load provided HTML pages onto Agency website which links to Provider's servers for the Services;
- d) Provide Provider with the schema for the desired file format and/or database schema;
- e) Enable Provider read /write access and test environment with current configuration
- f) Enable Provider VPN access to the exporter, RMS application(s), and other information required for report bridge installation;
- g) Provide timely responses to Provider's questions, which may arise during the setup and configuration process.

Provider Responsibilities.

- a) Coordinate with Agency to establish schedule for deployment within the DORS implementation schedule tab.
- b) Register Agency within Provider’s network and load Agency provided images into Agency’s implementation of DORS.
- c) Provide Agency with administrator password and credentials for the Services.
- d) Provide Agency with sample operational directives, deployment strategies and sample press release.
- e) Provide Agency with suggestions for the successful deployment of the Services.
- f) Provide Agency with instructions on the easy setup of a kiosk for Agency’s headquarters lobby, etc.

Completion Criteria.

This task is considered complete after Provider has delivered listed materials.

3.3. Configuration.

Agency Responsibilities.

- a) Coordinate with Provider for web training session on administering the program, using the dynamic creation tools, “Triple Lock” login features, user account including deploying the “Secure side filing feature”.
- b) Using the administrator account, login in and configure the code tables, crime types, user account, and dynamic content for Agency.
- c) Test the optional interface with the RMS application.
- d) Review resulting files with Provider, document any problems, and collaborate with Provider on a plan for corrective action(s).
- e) Provide necessary files for RMS integration.

Provider Responsibilities

- a) Coordinate with Agency for web training session on administering the program, using the dynamic creation tools, “Triple Lock” login features, user account including deploying the “Secure side filing feature”.
- b) Configure export routine for the optional RMS Interface with information provided.
- c) Review resulting files with Agency, document any problems, and collaborate with Agency on a plan for corrective action(s).

Completion Criteria

This task is considered complete when the DORS is accessible on Provider’s web server and reports can be filed and interfaced into the RMS (optional).

3.4. Support and Maintenance. Provider will provide Support and Maintenance Services in accordance with the terms and conditions set forth in Section 3 of the Agreement.

4. TERM AND TERMINATION.

This Order shall commence upon the Order Effective Date and shall continue for an initial term of twenty-four (24) months (“Initial Term”), whereupon this Order shall automatically renew for additional twelve (12) month periods (“Renewal Term”) unless either Party provides written notice to the other Party, at least forty five (45) days prior to the expiration of the Renewal Term.

5. FEES AND PRICE ADJUSTMENTS.

The Fees for the Services shall be subject to the terms set forth in Section 4 of the Agreement.

5.1. The Agency Fee is _____ (\$____)

5.1.1. For the avoidance of doubt, no Agency Fee will be paid with respect to the following:

- 5.1.1.1.** When an Affiliate of Provider has paid an Agency Fee to acquire a Report for an Authorized Requestor and such Affiliate later resells that Report from its inventory of previously purchased Reports to another Authorized Requestor; or

- 5.1.1.2. When one or more components of a Report (e.g., VIN number) is provided to an Authorized Requestor or an Affiliate of Provider by Provider rather than the entirety of the Report being provided; or
- 5.1.1.3. When a Report is acquired by an Affiliate of Provider from a source other than the eCommerce portal set forth on the applicable Order; or
- 5.1.1.4. When a fee is not charged to an Authorized Requestor for the Report.

Nothing in this Order shall require Provider or its Affiliate to pay an Agency Fee to the Agency when an Authorized Requestor provides a Report and/or specific data extracted from the Report to a third party after the Authorized Requestor has purchased such Report from the Affiliate’s inventory of previously purchased reports. Agency acknowledges that all reports requested by Agency Requestors shall be provided free of charge.

5.2. Monthly Service Fees. Agency shall pay a monthly license Fee for the Services which includes Support and Maintenance Services. Fees for the Services for the Initial Term shall be One Thousand Eighty Five Dollars and 00/100 (\$1085) per month. All fees shall be invoiced monthly by Provider beginning on the Order Effective Date. Notwithstanding the above, in the event the Agency decides to pay the monthly license fee for the Services on an annual basis, the Agency shall pay Thirteen Thousand Twenty Dollars and 00/100 (\$13,020) for the Initial Term (“Annual Fee”). The Annual Fee shall be invoiced by Provider according to the Agreement and due on the annual anniversary of the Order Effective Date.

IN WITNESS WHEREOF, the Parties have caused this Order to be executed by their respective authorized representatives as of the Effective Date.

AGENCY: City of Montclair – Police Department

PROVIDER: LexisNexis Coplogic Solutions Inc.

Signature: _____

Signature: _____

Printed Name: Javier John Dutrey

Printed Name: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

ATTEST

Signature: _____

Printed Name: Andrea M. Phillips

Title: City Clerk

APPROVED AS TO FORM

Signature: _____

Printed Name: Diane E. Robbins

Title: City Attorney



CITY COUNCIL AGENDA REPORT

DATE:	MAY 4, 2020	FILE I.D.:	EMR100/HSP080
SECTION:	CONSENT - AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	9	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-35 WITH THE SAN BERNARDINO COUNTY DEPARTMENT OF PUBLIC HEALTH PREPAREDNESS AND RESPONSE PROGRAM FOR USE OF THE MONTCLAIR CIVIC CENTER		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 20-35 with the San Bernardino County Department of Public Health Preparedness and Response Program for use of the Montclair Civic Center.

A copy of proposed Agreement No. 20-35 is attached for City Council review and consideration.

BACKGROUND: The San Bernardino County Department of Public Health Preparedness and Response Program (SBCDPH-PRP) works to prepare for emergencies caused by bioterrorism, infectious diseases, and other public health threats through the development and exercise of comprehensive public health emergency preparedness and response plans.

The goal of SBCDPH-PRP is to provide a coordinated response along with emergency responders and partner health agencies to meet the public health needs of SBC residents in the event of such disaster. During an event, the Department of Public Health will conduct disease surveillance and provide emergency health information, health precautions, health education, and links to additional public health resources.

This Agreement constitutes a Memorandum of Understanding between the SBCDPH-PRP and the City of Montclair allowing the SBCDPH-PRP to prepare, respond, and provide care and prophylaxis treatment in the event of bioterrorism or a public health emergency, such as the COVID-19 pandemic, at the Montclair Civic Center.

The term of this agreement begins May 4, 2020, and continues until terminated with ninety days advance written notice.

FISCAL IMPACT: There will be no direct cost to the General Fund as a result of the City Council's approval of this Agreement.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 20-35 with the San Bernardino County Department of Public Health Preparedness and Response Program for use of the Montclair Civic Center.



Public Health
Preparedness and Response Program

MEMORANDUM OF UNDERSTANDING (MOU)

FOR USE OF A SITE/FACILITY

BETWEEN

**San Bernardino County Department of Public Health
Preparedness and Response Program (SBC DPH PRP)**

AND

**City of Montclair Civic Center
(SITE/FACILITY PROVIDER)
Warehouse, Point of Dispensing (POD) or
Government-Authorized Alternate Care Site (GAACS)**

AND

City of Montclair

AGREEMENT NO. 20-35

This **MEMORANDUM OF UNDERSTANDING (MOU)** is entered into by and between San Bernardino County Department of Public Health Preparedness and Response Program (SBC DPH PRP) and City of Montclair Civic Center, hereinafter referred to as the Site/Facility Provider, and City of Montclair, hereinafter referred to as the City/Town as appropriate.

RECITALS

WHEREAS, the SBC DPH PRP enters into this Agreement along with the City/Town and Site/Facility to prepare, respond, and provide care and prophylaxis treatment in the event of a bioterrorism or other public health emergencies, such as pandemic influenza, in the County, and;

WHEREAS, the SBC DPH PRP will require the Site/Facility to receive, store, stage, and distribute medications and other resources (e.g., antibiotics, antidotes, medical supplies, certain controlled substances, equipment, specialized cargo containers, & portable refrigeration units) received from the State of California in the event that the Strategic National Stockpile (SNS) or the Cities Readiness Initiative (CRI) pharmaceutical caches are requested to address possible large-scale bioterrorism events, or other public health emergencies, such as pandemic influenza; and

WHEREAS, the SBC DPH PRP will require Points of Dispensing (POD) sites to provide mass prophylaxis in the event of a bioterrorism event or public health emergency within the County; and will require Government-Authorized Alternate Care Sites (GA ACS) to evaluate/treat individuals by providing health care services and/or to prepare the transport of patients to health care facilities; and

WHEREAS, the Site/Facility Provider has the capability to provide a POD and/or a GA ACS and the resources that may be used or designated as a warehouse facility for use in receiving, storing, staging, and distributing medication, and has the resources for hosting a mass prophylaxis POD and/or a GA ACS for a bioterrorism, or other public health emergencies, such as pandemic influenza; and

WHEREAS, the City/Town has the personnel and expertise to respond, staff, and support a POD and/or GA ACS in conjunction with the SBC DPH PRP, utilizing the Incident Command System and link with the municipality's EOC, including security and other related services in the event of activation;

NOW, THEREFORE, based on the foregoing recitals, which the parties agree to be true and correct, it is mutually agreed as follows:

I. PURPOSE:

The purpose of this MOU is to define the distribution of duties between the SBC DPH PRP, the City/Town and the Site/Facility Provider, in responding to and preparing for public health related activities in a possible large-scale bioterrorism, or other public health emergencies such as pandemic influenza.

II. AREAS OF AGREEMENT AND COOPERATION:

Now, therefore, it is agreed as follows:

The SBC DPH PRP, Site/Facility Provider, and City/Town agree to cooperate in the following areas of endeavor following an incident of large-scale bioterrorism or other public health emergencies.

A. SBC DPH PRP agrees to:

1. Implement and comply with any emergency activations under this agreement pursuant to the California Emergency Services Act, California Government Code, Chapter 7, Division 1, Title 2, §§ 8550 et.seq. Any emergency activation of a POD or GA ACS under this agreement shall be preceded by a local emergency proclamation, pursuant to Government Code § 8630, and/or a County health emergency proclamation, pursuant to Health & Safety Code § 101080, by a duly authorized San Bernardino County Government official. This local emergency proclamation shall be countywide or for a defined geographical area.
2. Provide 24-hour or more advance notice to the Site/Facility Provider of the POD/GA ACS needed for activation. However, there should be no expectation of adherence to this provision, as it is understood by the parties that rapid response may require immediate attention.
3. Provide mass prophylaxis to first responders within 24 hours of the POD/GA ACS activation in accordance with the SNS Guide.
4. Designate a SBC DPH Liaison Officer to provide operational support to the City/Town POD Management. The Liaison Officer will be the link between the City/Town and the SBC DPH Department Operations Center (DOC).
5. Provide the Field Operations Guide (FOG) to be utilized for POD operational procedures and management. The FOG will include POD organizational charts, job action sheets, and staff training.
6. Utilize Site/Facility's equipment and supplies, such as office and janitorial equipment, in a manner which is dependent upon the event. If the event requires medications and resources to be dispensed to every person in the County, it is estimated that the utilization of the Site/Facility will require at least ten (10) days.

B. Site/Facility agrees to:

1. Grant use of a site/facility for a POD/GA ACS as referenced above. Utilization will be for the purposes of SBC DPH and its designated staff, California Department of Public Health (CDPH), Centers for Disease Control and Prevention (CDC), County, State, and Federal disaster agencies, employees, contractors, and other authorized volunteers during a public health emergency; and grant space, or other enclosed facility as needed for administrative POD management.



2. Allow the SBC DPH PRP use of office, janitorial, and other equipment and supplies as needed, to implement and activate a POD/GA ACS. The SBC DPH PRP will make every reasonable effort to use equipment and supplies from other sources first.
3. Coordinate with SBC DPH PRP, City/Town, and local municipality emergency response for security and support services.
4. Designate three (3) points of contact, at each Site/Facility, including an alternate backup for each contact: (See Appendix A)
 - Administrative – (Primary point of contact). This person will have authority to allow access to facility and all the related resources.
 - Janitorial – This person will have access to equipment and other site resources, and allow facility access.
 - Security - This person will have facility access, including all site resources, and will work with County and local law enforcement in developing and executing security plans.
5. Participate in SBC DPH PRP disaster drills/exercises and complete the POD training series to increase understanding of roles and responsibilities during a public health emergency.

C. City/Town agrees to:

1. Provide emergency and law personnel for the purpose of security and support for the provision of services. Provide personnel and expertise in conjunction with SBC DPH PRP to respond to a public health emergency. Utilize the DPH approved staff list to support a POD and/or GA ACS. This list will be linked with the City/Town Emergency Operation Center (EOC) in the event of activation.
2. Coordinate with SBC DPH PRP to determine the number of POD/GA ACS sites required in the event of a public health emergency. The number of sites will be based on the population served within a given area of a city/town and/or unincorporated area.
3. Participate in SBC DPH PRP disaster drills/exercises and complete the entire POD training series to increase understanding of roles and responsibilities during a public health emergency.

Comment: The California Emergency Services Act provides for broad immunity against liability for person acting within the scope of the Act. Further “extraordinary powers” are made available to government officials to take necessary actions to mitigate substantial threats to public safety.

III. GENERAL PROVISIONS

A. Mutual Indemnity and Insurance

1. Each party hereto (hereafter, “Indemnifying Party”) shall indemnify, defend and hold harmless the other party, its officers, agents, employees, and volunteers against any loss, cost, damage, expense, claim, suit, demand, or liability of any kind or character, including



but not limited to reasonable attorney fees, arising from or relating to any negligent or wrongful act or omission of the Indemnifying Party, its officers, agents, or employees, which occurs in the performance of, or otherwise in connection with, this MOU, but only in proportion to and to the extent such loss, cost, damage, expense, claim, suit, demand, or liability of any kind or character, including reasonable attorney fees, is caused by or results from the negligent or wrongful act or omission of the Indemnifying Party, its officers, agents, or employees.

2. Site/Facility Provider shall procure and maintain, at its sole cost and expense, a comprehensive general liability policy, as well as such policies of professional and other insurance with limits necessary to (i) satisfy requirements of law or (ii) as may be necessary to insure it and its employees and agents against any claim for damages occasioned in connection with performance of this MOU.
3. SBC DPH's indemnity of City/Town and Site/Facility Provider is subject to State or Federal law, other provisions of this MOU or any rule, law or regulation giving SBC DPH, its officers, employees, agents, and authorized volunteers immunity when responding to such disasters, events, or acts.
4. The SBC DPH and City/Town are self-insured.

B. Appendices

All appendices referenced in this MOU and attached hereto are incorporated by this reference as if set forth fully herein.

C. Term and Termination

This Agreement shall become effective upon the execution by authorized individuals of both organizations. Either party may terminate this Agreement at any time by giving ninety (90) days advance written notice to the other party.

D. Modification

This MOU, or any of its specific provisions, may be amended in writing when signed by all currently authorized representatives of the parties.

E. Notices

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

To the City/Town:

N/A



To the Site/Facility Provider:

City of Montclair
Attn: Director of Human Services
5111 Benito Street
Montclair, CA 91763
Tel. 909-625-9453

To the SBC DPH:

San Bernardino County Department of Public Health
Attn: Preparedness and Response Program
247 S. Boyd St.
San Bernardino, CA 92415-0059
Tel. 909-252-4406

AUTHORITY

The persons executing this MOU on behalf of their respective entities hereby represent and warrant that they have the power, right and legal capacity and appropriate authority to enter into this MOU on behalf of the entity for which they sign and to bind the entity to its obligations hereunder.

IV. SIGNATURES

Executed as of the day and year last signed below:

CITY/TOWN PROVIDER – CITY OF MONTCLAIR

Site/Facility Address: 5111 Benito Street, Montclair, CA 91763

Authorized Signer (Print): Javier John Dutrey Title: Mayor

Signature: _____ Date signed: _____

Authorized Signer (Print): **ATTEST:** Andrea Phillips Title: City Clerk

Signature: _____ Date signed: _____

SAN BERNARDINO COUNTY DEPARTMENT OF PUBLIC HEALTH

Director of Public Health (Print Name): Trudy Raymundo

Signature: _____ Date signed: _____

Preparedness and Response Program Manager and/or Coordinator:
(Print Name): _____

Signature: _____ Date signed: _____



Appendix A

SITE/FACILITY PROVIDER CONTACTS

Administrative (Primary)

Name: Marcia Richter

Title: Director of Human Services

Phone: 909-625-9453

Administrative (Backup)

Name: Alyssa Colunga

Title: Administrative Analyst

Phone: 909-625-9459

Janitorial (Primary)

Name: Xavier Mendez

Title: Public Works Superintendent

Phone: 909-721-1755

Janitorial (Backup)

Name: Jim Diaz

Title: Asst. PW Superintendent

Phone: 909-721-1755

Security (Primary)

Name: Montclair Police Department

Title: Dispatch

Phone: 909-621-4771

Security (Backup)

Name: Montclair Police Department

Title: Dispatch

Phone: 909-621-4771





CITY COUNCIL AGENDA REPORT

DATE: MAY 4, 2020	FILE I.D.: PUB500
SECTION: CONSENT - RESOLUTIONS	DEPT.: PUBLIC WORKS
ITEM NO.: 1	PREPARER: N. CASTILLO
SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 20-3266 APPROVING A LIST OF PROJECTS TO BE FUNDED BY SENATE BILL 1, THE CALIFORNIA ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017	

REASON FOR CONSIDERATION: On April 28, 2017, the Governor signed The Road Repair and Accountability Act of 2017, also known as Senate Bill 1 (SB1). To establish eligibility for that new legislation, and thereby receive funding, the California Transportation Commission (CTC) requires adoption of a resolution specifying the projects on which each city intends to spend its SB1 funding allocation. The City Council is requested to consider adopting Resolution No. 20-3266 confirming the allocation of SB1 funding in FY 2020-21 to three projects—the Holt Boulevard Street Improvement Project, the Central Bridge Design, and the Pipeline Avenue Rehabilitation Project.

BACKGROUND: The Road Repair and Accountability Act of 2017 provides funding to cities and counties for basic road maintenance, rehabilitation, and critical safety projects on the local streets and roads system through the creation of a Road Maintenance and Repair Account (RMRA). SB1 increased the per gallon fuel excise taxes, diesel fuel sales taxes, vehicle registration and taxes, and provides inflationary adjustments to fuel tax rates in future years. Upon full implementation, SB1 will generate over \$5.0 billion annually in California, with approximately \$1.5 billion going to cities and counties for local streets and roads annually.

Collected tax revenue will be deposited into a new road maintenance and rehabilitation account by the state, and some of this new RMRA funding will be apportioned by formula to eligible cities and counties. It is important to note that new RMRA allocations may not be used to supplant local agency general fund spending for street maintenance and rehabilitation efforts. Therefore, in addition to meeting new transparency and reporting requirements, local agencies will be required to sustain existing maintenance of effort (MOE) levels by continuing general fund street expenditures as specified in the legislation.

For the current fiscal year (FY 2020-21), it is estimated that the City of Montclair will receive approximately \$747,220 in RMRA funding, with monthly payments starting in October 2020.

Pursuant to Streets and Highways Code Section 2030, RMRA funds must be used for projects that include, but are not limited to the following:

- Road maintenance and rehabilitation
- Safety projects
- Railroad grade separations
- Traffic control devices
- Complete street components, including active transportation (bicycle and pedestrian) projects, transit facilities, and storm-water capture projects

RMRA funds may also be used to satisfy a match requirement in order to obtain state or federal funds for eligible projects. Also, to the extent possible, cities and counties are encouraged to include the following project elements in a cost-effective manner:

- Advanced recycling techniques that lower greenhouse gas emissions and reduce the cost of maintaining streets through material choice and construction methods.
- Transportation infrastructure that supports technologies, such as zero emission vehicle fueling or charging.
- Complete street elements that improve safety or the quality of bicycle or pedestrian facilities.

Staff has identified three projects for the use of RMRA funding:

1. The **Holt Boulevard Street Improvement Project** would repair and replace uplifted curb, gutter, and sidewalk; replace non-compliant pedestrian ramps; and resurface Holt Boulevard from Mills Avenue to Ramona Avenue
2. The **Central Bridge Design Project** will design the rehabilitation of Central Bridge between Holt Boulevard and Mission Boulevard. The SB1 funding will be utilized as match requirement to the Highway Bridge Program funding the majority of the project.
3. The **Pipeline Avenue Rehabilitation Project** will rehabilitate the road. This project will remove and replace the pavement 320' South of Phillips Boulevard North to Mission Boulevard.

All three projects have a life expectancy of twenty years and will be identified in the 2020–2025 Capital Improvement Program as projects expected to be completed by 2025.

FISCAL IMPACT: Since the City Council has not adopted the FY 2020–2025 Five-Year Capital improvement Program to date, there is no fiscal impact associated with the recommended action.

RECOMMENDATION: Staff recommends that the City Council adopt Resolution No. 20–3266 approving a list of projects to be funded by Senate Bill 1 (SB1) from the State of California Road Repair and Accountability Act of 2017.

RESOLUTION NO. 20-3266

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2020-21 TO BE FUNDED BY SB 1, THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt by resolution a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City, will receive an estimated \$747,220 in RMRA funding in Fiscal Year 2020-2021 from SB 1; and

WHEREAS, this is the fourth year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1; and

WHEREAS, the City has undergone a robust public process to ensure public input into our community's transportation priorities/the project list; and

WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the communities priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City maintain and rehabilitate two streets, one bridge throughout the City this year and countless of similar projects into the future; and

WHEREAS, the 2018 California Statewide Local Streets and Roads Needs Assessment found that the City streets and roads are in an good condition and this revenue will help us increase the overall quality of our road system and over the next decade will bring our streets and roads into a excellent condition; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND by the City Council of the City of Montclair, State of California, as follows:

1. The foregoing recitals are true and correct.
2. The following list of newly-proposed projects will be funded in part or solely with Fiscal Year 2020-2021 Road Maintenance and Rehabilitation Account revenues:

- **Project Title:** Central Bridge Design Project
- Project Description:** Design the rehabilitation and widening of existing Bridge
- Project Location:** Over UPRR tracks between Holt Boulevard and Mission Boulevard

Estimated Project Schedule: Start (07/20) - Completion (07/21) based on the component being funded with RMRA funds

Estimated Project Useful Life: 50 years

- **Project Title:** Pipeline Avenue Rehabilitation Project
- Project Description:** Rehabilitate the road, remove and replace pavement.
- Project Location:** 320' South of Phillips Boulevard North to Mission Boulevard

Estimated Project Schedule: Start (07/20) - Completion (03/21) based on the component being funded with RMRA funds

Estimated Project Useful Life: 20 years

3. The following previously-proposed and adopted project may also utilize Fiscal Year 2020-2021 Road Maintenance and Rehabilitation Account revenues in its delivery. With the relisting of this project in the adopted fiscal year resolution, the City is reaffirming to the public and the State our intent to fund this project with Road Maintenance and Rehabilitation Account revenues:

- **Project Title:** Holt Boulevard Street Improvement Project
- Project Description:** Repair and replace uplifted curb, gutter, and sidewalk; replace noncompliant pedestrian ramps; and resurface roadways.

Project Location: Holt Boulevard from Mills Avenue to Ramona Avenue

Estimated Project Schedule: Start (07/20) - Completion (11/20) based on the component being funded with RMRA funds

Estimated Project Useful Life: 20 years

APPROVED AND ADOPTED this XX day of XX, 2020.

ATTEST:

Mayor

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 20-3266 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