

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

ADA COMPLIANCE INFORMATION

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

PUBLIC COMMENT PROCEDURES

MAKING VERBAL COMMENTS

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

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

SUBMITTING WRITTEN COMMENTS

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

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



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

AGENDA

Monday, November 2, 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. Please*

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

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

- A. Consider Setting a Public Hearing for Monday, November 16, 2020, and Continuing the Review of *Resolution No. 20-3285 Approving Tentative Tract Map No. 20273 to Subdivide a 6.68-Acre Site into Six Numbered Parcels and One Lettered Lot for a Public Park and Approving Precise Plan of Design No. 2017-20 and a Parking Management Plan for a Mixed-Use Project Within the Station District of the North Montclair Downtown Specific Plan* to Said Public Hearing [CC] 5

VIII. CONSENT CALENDAR

- A. Approval of Minutes
 - 1. Regular Joint Meeting — October 5, 2020 [CC/SA/MHC/MHA/MCF]
- B. Administrative Reports
 - 1. Consider Receiving and Filing of Treasurer’s Report [CC] 6
 - 2. Consider Approval of Warrant Registers & Payroll Documentations [CC] 7
 - 3. Consider Receiving and Filing of Treasurer’s Report [SA] 8
 - 4. Consider Approval of Warrant Register [SA] 9
 - 5. Consider Receiving and Filing of Treasurer’s Report [MHC] 10
 - 6. Consider Approval of Warrant Register [MHC] 11
 - 7. Consider Receiving and Filing of Treasurer’s Report [MHA] 12
 - 8. Consider Approval of Warrant Register [MHA] 13
 - 9. Consider Lifting the Temporary Suspension of Parking Restrictions on Scheduled Street Sweeping Days and Resume Parking Enforcement [CC] 14
 - 10. Consider Authorizing the Receipt of \$6,501.60 from the Fiscal Year 2020 Patrick Leahy Bulletproof Vest Partnership Program to Assist with the Cost of Ballistic Vests [CC] 16
 - 11. Consider Authorizing the Receipt of \$90,909 from the Fiscal Year 2019 Assistance to Firefighters Grant to Purchase Source Capture Exhaust Extraction Systems for Both Fire Stations [CC]
 - Consider Authorizing a \$25,547 Appropriation from the Contingency Fund to Pay the 10 Percent Required Match and Cover the Remaining Balance of the Exhaust Extraction Systems [CC] 17
 - 12. Consider Authorizing Staff to Advertise for Bid Proposals for Construction of the Electric Vehicle Charging Stations Project [CC] 41
 - 13. Consider Approving the Purchase of Whole Turkeys and Other Assorted Food Items for the Montclair Holiday Food and Toy Basket Program [MCF] 42
- C. Agreements
 - 1. Consider Approval of Amendment No. 1 to Agreement No. 20-22 with the State of California Natural Resources Agency Department of Parks and Recreation to Extend the Grant Performance Period for the Statewide Park Development and Community Revitalization Program Grant to Develop Reeder Ranch Park [CC]
 - Consider Authorizing the City Manager to Execute Amendment No. 1 to Agreement No. 20-22 and All Subsequent Grant-Related Documents [CC] 43

- 2. Consider Approval of Agreement No. 20-86 with Graffiti Tracker Inc. for Continued Use of Its Database to Track and Analyze Graffiti [CC]
Consider Authorizing a \$3,330 Appropriation from the Prop 30/AB 109 Fund to Pay the Costs Associated with Agreement No. 20-86 [CC] 55
- 3. Consider Approval of Agreement No. 20-87 with Twinning, Inc. and Agreement No. 20-88 with Ninyo & Moore for On-Call Geotechnical Engineering, Materials Testing, and Inspection Services for City Capital Improvement Projects [CC] 64
- 4. Consider Approval of Agreement No. 20-89 with San Bernardino County for Ada Avenue and Howard Street Rehabilitation Project [CC] 93
- 5. Consider Approval of Agreement No. 20-90 with San Bernardino County Transportation Authority for the West Valley Connector Project [CC] 105

D. Resolutions — None

IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

A. Department Reports — None

B. City Attorney

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

Montclair v. Green Lotus / Secret Garden

C. City Manager/Executive Director

- 1. COVID-19 Update

D. Mayor/Chairperson

E. Council Members/Directors

F. Committee Meeting Minutes — None

XI. CLOSED SESSION

XII. CLOSED SESSION ANNOUNCEMENTS

XIII. ADJOURNMENT

The next regularly 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, November 16, 2020, at 7:00 p.m.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the Acting Bodies after publication of the Agenda packet are available for public inspection in 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 <http://www.cityofmontclair.org/agendas> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, October 29, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	LDU350/LDU375/ENV075
SECTION:	PUBLIC HEARINGS	DEPT.:	COMMUNITY DEV.
ITEM NO.:	A	PREPARER:	M. DIAZ
SUBJECT:	CONSIDER SETTING A PUBLIC HEARING FOR MONDAY, NOVEMBER 16, 2020, AND CONTINUING THE REVIEW OF RESOLUTION NO. 20-3285 APPROVING TENTATIVE TRACT MAP NO. 20273 TO SUBDIVIDE A 6.68-ACRE SITE INTO SIX NUMBERED PARCELS AND ONE LETTERED LOT FOR A PUBLIC PARK AND APPROVING PRECISE PLAN OF DESIGN NO. 2017-20 AND A PARKING MANAGEMENT PLAN FOR A MIXED-USE PROJECT WITHIN THE STATION DISTRICT OF THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN TO SAID PUBLIC HEARING		

REASON FOR CONSIDERATION: On Monday, October 5, 2020, a public hearing for *The Village at Montclair* project was conducted at which time the project was presented to the City Council and public comment was received. During the hearing, the Applicant/Developer presented modifications to Condition No. 20 of proposed Resolution No. 20-3285 regarding Flex Units for City Council consideration. Since the proposed changes were significant and offered late in the day, the City Council did not have sufficient time to evaluate and make an informed decision on the matter. To provide more time to study the issue further, the item was continued to the City Council's regularly scheduled meeting date on November 2, 2020.

Since the October 5, 2020, City Council meeting, staff has participated in ongoing discussions with the applicant/developer to find a mutually acceptable resolution regarding Flex Units within the project. Staff believes the discussions are moving forward but requires additional time to work on a solution, which balances the concerns of the applicant with the City's requirement to ensure that a mixed-use development is achieved as envisioned by the North Montclair Downtown Specific Plan (NMDSP). Staff is requesting that the City Council continue the public hearing for this item to its next regularly scheduled meeting on November 16, 2020, to enable staff to complete the discussion and make an appropriate recommendation.

FISCAL IMPACT: There would be no fiscal impact for the City Council to continue the matter to its next regularly scheduled meeting date.

RECOMMENDATION: Staff recommends the City Council set a public hearing for Monday, November 16, 2020, and continue the review of Resolution No. 20-3285 Approving Tentative Tract Map No. 20273 to subdivide a 6.68-acre site into six numbered lots and one lettered lot for a public park and approving Precise Plan of Design No. 2017-20 and a Parking Management Plan for a mixed-use project within the Station District of the North Montclair Downtown Specific Plan to said public hearing



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	FIN520
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	1	PREPARER:	J. KULBECK
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending September 30, 2020, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending September 30, 2020.

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

RECOMMENDATION: Staff recommends the City Council receive and file the Treasurer's Report for the month ending September 30, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	2	PREPARER:	L. LEW/V. FLORES
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTERS AND PAYROLL DOCUMENTATIONS		

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

BACKGROUND: Mayor Pro Tem Raft has examined the Warrant Registers dated October 19, 2020, and November 2, 2020; and the Payroll Documentations dated September 13, 2020, and September 27, 2020; and recommends their approval.

FISCAL IMPACT: The Warrant Register dated October 19, 2020 totals \$821,133.42, and the Warrant Register dated November 2, 2020 totals \$1,325,787.95. The Payroll Documentation dated September 13, 2020 totals \$624,216.51 gross, with \$430,750.15 net being the total cash disbursement; and the Payroll Documentation dated September 27, 2020 totals \$626,727.75 gross, with \$416,890.88 net being the total cash disbursement.

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



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	FIN510
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	3	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending September 30, 2020, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending September 30, 2020.

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

RECOMMENDATION: Staff recommends the City Council acting as Successor to the Redevelopment Agency Board of Directors receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending September 30, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	FIN530
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	4	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending September 30, 2020, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Successor to the Redevelopment Agency Warrant Register dated 09.01.20–09.30.20 in the amounts of \$2,148,956.79 for the Combined Operating Fund; \$0.00 for the Redevelopment Obligation Retirement Funds and finds it to be in order.

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

RECOMMENDATION: Vice Chairperson Raft recommends the City Council as Successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending September 30, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	5	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending September 30, 2020, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending September 30, 2020.

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

RECOMMENDATION: Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending September 30, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	6	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending September 30, 2020, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Warrant Register dated 09.01.20-09.30.20 in the amount of \$41,488.00 for the Montclair Housing Corporation and finds it to be in order.

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

RECOMMENDATION: Vice Chairperson Raft recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending September 30, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	7	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The Montclair Housing Authority Board of Directors is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending September 30, 2020, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending September 30, 2020.

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

RECOMMENDATION: Staff recommends the Montclair Housing Authority Board of Directors receive and file the Treasurer's Report for the month ending September 30, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	8	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The Montclair Housing Authority Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending September 30, 2020, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Warrant Register dated 09.01.20-09.30.20 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

RECOMMENDATION: Vice Chairperson Raft recommends the Montclair Housing Authority Board of Directors approve the Warrant Register for the period ending September 30, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	DRP510/STA675
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	POLICE
ITEM NO.:	9	PREPARER:	R. AVELS
SUBJECT:	CONSIDER LIFTING THE TEMPORARY SUSPENSION OF PARKING RESTRICTIONS ON SCHEDULED STREET SWEEPING DAYS AND RESUME PARKING ENFORCEMENT		

REASON FOR CONSIDERATION: The City Council is requested to consider lifting the temporary suspension of parking restrictions on scheduled street sweeping days and resume parking enforcement.

BACKGROUND: On March 16, 2020, the City Council adopted Resolution No. 20-3263 declaring a local public health emergency existed in the City of Montclair in relation to the COVID-19 pandemic. A component of that resolution was the temporary suspension of restrictions related to on-street parking on scheduled street sweeping days. The suspension of those parking restrictions was largely due to the stay-at-home order issued by California Governor Gavin Newsom, which restricted much of the public's activity except for authorized essential workers and a citizen's need to obtain vital supplies. Although on-street parking restrictions were suspended, Public Works continued providing residents with street sweeping service. However, it has been difficult to sweep the streets in many areas of the City that are heavily parked with vehicles. These areas have accumulated trash and vegetation debris, which has been difficult to clean without the requirement of parking restrictions during scheduled street sweeping times. Not only is there a concern of the public's health with the accumulation of trash and vegetation debris in the street, it is likely to become more problematic as the fall season approaches. More vegetation will continue to collect on the streets and then likely be washed into the storm drains with the potential for backups and street flooding during periods of rainfall.

At the October 5, 2020 City Council Meeting, staff was requested to complete a report for consideration of lifting the temporary suspension of parking restrictions on scheduled street sweeping days and resume parking enforcement. In addition to the report, staff was also directed to begin notifying the public via the City's social media of the potential to resume parking enforcement on scheduled street sweeping days pending the decision of the City Council at its November 2, 2020 regular meeting.

In considering the potential decision to lift the temporary suspension of the on-street parking restrictions, staff surveyed the surrounding cities and several other San Bernardino County cities. The survey revealed one community never implemented any suspensions of parking restrictions, a few cities temporarily slowed down with parking enforcement, while others implemented similar suspensions as the City of Montclair. With the exception of the City of Pomona that has decided to continue suspension of certain on-street parking restrictions through January 31, 2021, all other cities have already lifted any suspensions and resumed regular parking enforcement.

With the results of the survey revealing an overwhelming majority of cities resuming regular parking enforcement and the concerns related to the accumulated debris within the city streets, staff proposes to lift the temporary suspension of parking restrictions

on scheduled street sweeping days. Parking enforcement would commence gradually starting Monday, November 9, 2020, per the following schedule:

1. During a two-week warning period from Monday, November 9, 2020, through Sunday, November 22, 2020, the Police Department would issue **warning citations** for violations of on-street parking restrictions related to scheduled street sweeping days.

During this period, information regarding the recommencement of parking restrictions and enforcement would continue to be posted on the City's social media and website to inform the public.

2. Beginning Monday, November 23, 2020, the Police Department would begin issuing official citations for failure to comply with parking restrictions on scheduled street sweeping days.

FISCAL IMPACT: Resuming parking enforcement practices would have a direct net positive fiscal impact on the City's revenues.

RECOMMENDATION: Staff recommends the City Council lift the temporary suspension of parking restrictions on scheduled street sweeping days and resume parking enforcement.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	PDT362
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	POLICE
ITEM NO.:	10	PREPARER:	M. BUTLER
SUBJECT:	CONSIDER AUTHORIZING THE RECEIPT OF \$6,501.60 FROM THE FISCAL YEAR 2020 PATRICK LEAHY BULLETPROOF VEST PARTNERSHIP PROGRAM TO ASSIST WITH THE COST OF BALLISTIC VESTS		

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the receipt of \$6,501.60 from the Fiscal Year 2020 Patrick Leahy Bulletproof Vest Partnership (BVP) Program to assist with the cost of ballistic vests.

BACKGROUND: The BVP Program is administered by the Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA) and is designed to assist state, local, and tribal jurisdictions with the purchasing of body armor for sworn law enforcement officers. It was created by the Bulletproof Vest Partnership Grant Act of 1998. The BVP Program reimburses up to 50 percent of the total cost of body armor vests that comply with the most current National Institute of Justice (NIJ) ballistic body armor standards.

Each year, staff applies for the BVP Program to assist with the cost of ballistic vests. In October 2020, the Department was awarded \$6,501.60, which would cover half the cost of 14 vests. The Department has a “mandatory wear policy” for all Officers, and each ballistic vest has a five-year replacement cycle. The Department is committed to maximizing officer safety through the use of body armor in combination with prescribed safety procedures. BVP federal funds would be used to replace five-year-old vests and to issue vests to newly hired Officers.

FISCAL IMPACT: If approved by the City Council, the Department would receive \$6,501.60 toward the cost of ballistic vests from the BVP Program. The Fiscal Year 2020–21 Budget includes the purchase of ballistic body armor. BVP federal funds would be used to reimburse the City up to 50 percent per vest, which are available for two years from the time of the award announcement.

RECOMMENDATION: Staff recommends the City Council authorize the receipt of \$6,501.60 from the Fiscal Year 2020 Bulletproof Vest Partnership Program to assist with the cost of ballistic vests.



CITY COUNCIL AGENDA REPORT

DATE: NOVEMBER 2, 2020 **FILE I.D.:** EQS215/FRD220/GRT115
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** FIRE
ITEM NO.: 11 **PREPARER:** M.BUTLER
SUBJECT: CONSIDER AUTHORIZING THE RECEIPT OF \$90,909 FROM THE FISCAL YEAR 2019 ASSISTANCE TO FIREFIGHTERS GRANT TO PURCHASE SOURCE CAPTURE EXHAUST EXTRACTION SYSTEMS FOR BOTH FIRE STATIONS

CONSIDER AUTHORIZING A \$25,547 APPROPRIATION FROM THE CONTINGENCY FUND TO PAY THE 10 PERCENT REQUIRED MATCH AND COVER THE REMAINING BALANCE OF THE EXHAUST EXTRACTION SYSTEMS

REASON FOR CONSIDERATION: The City Council is requested to authorize the receipt of \$90,909 from the Fiscal Year 2019 Assistance to Firefighters Grant to purchase source capture exhaust extraction systems for both fire stations, and authorize a \$25,547 appropriation from the Contingency Fund to pay the 10 percent required match and cover the remaining balance of the exhaust extraction systems.

BACKGROUND: The Fire Department has been awarded a Fiscal Year 2019 Assistance to Firefighters Grant (AFG) in the amount of \$90,909 from the Department of Homeland Security, Federal Emergency Management Agency (FEMA). The purpose of the AFG program is to protect the health and safety of the public and firefighting personnel against fire and fire-related hazards. FEMA has determined the Department's submitted project for source capture exhaust extraction systems (SCES) for Fire Stations 151 and 152 to be consistent with this program and worthy of award.

Vehicle exhaust removal systems are essential to create a healthy and safe work environment for firefighters to perform their duties to the community by reducing the risks of harmful vehicle exhaust emissions inside the firehouse. The International Agency for Research on Cancer (IARC), which is a part of the World Health Organization (WHO), has classified diesel engine exhaust as a carcinogen. It has been linked to serious illnesses, such as emphysema, cancer, heart attack, stroke, and even death. Made up of various gases and fine particles, diesel exhaust can be inhaled and deposited in the lungs. Part of a firefighter's daily routine includes running apparatus and other vehicles in the fire stations for routine service and checks to keep them ready for immediate service. Diesel exhaust can migrate from the apparatus bays to other areas of the fire stations contaminating the air with dangerous toxins, exposing both personnel and visitors to this health hazard.

The existing vehicle exhaust removal systems at both stations, which were installed in 2008, pull fumes and gases through a filtration system then circulate the air back into the apparatus bays. The Department would utilize AFG funds to procure and install two source capture exhaust extraction systems, one for each station, that would remove the exhaust emissions and ventilate them to the outside, reducing the risk of exposure to harmful gases more effectively than scrubbing the air and releasing it back into the station. With new SCES it is anticipated and hoped that the long-term effects of exposure to vehicle exhaust fumes would be reduced. Without these new systems, our personnel and visitors to the station will continue to be exposed to a known carcinogen and will be at risk of developing a serious illness. The initial cost of the new systems could

prevent future costs incurred by medical expenditures for employees suffering the effects of prolonged exhaust exposure while on the job.

Bid quotations for the purchase of source capture exhaust extraction systems were received from the following vendors:

<u>Vendor</u>	<u>Bid Amount</u>
Air Exchange	\$116,456
APS Purification Systems	\$140,169
Christian Brothers Mechanical Services	\$208,319

Air Exchange is the selected vendor for the purchase of the new exhaust extraction systems for several reasons. It has been in business for over 30 years and is conveniently located in Ontario. Air Exchange offers diesel exhaust capture systems built by Plymovent—the largest and most experienced company in the industry providing systems to over 2,000 fire stations in Southern California and Southern Nevada. With surrounding departments using the Plymovent system, having compatible systems during mutual aid incidents would be beneficial. Plymovent offers a full five-year all-inclusive warranty on all systems and a 10-year warranty on all tracks and straight rails. Plymovent is also the only company in the industry that has third-party testing verification substantiating that Plymovent systems capture virtually 100 percent of vehicle exhaust emissions, both particulates and gases, at idle and high RPM. It is an ISO-9001 Certified Supplier and UL Certified Manufacturer. APS Purification Systems also offers the Plymovent system but at a higher cost than Air Exchange, and Christian Brothers Mechanical Services only offers the Nederman system, which is the highest bid. Air Exchange possesses the ability to perform successfully under the terms and conditions of the proposed procurement.

The Plymovent system would be mounted on the truck deck ceiling and consists of a straight rail system, a sliding balancer track system, and an extraction hose with a Magnetic Grabber that allows for quick and easy operation. The Grabber, which is designed to connect to any fire vehicle tailpipe, guards against exhaust fume leaks and captures exhaust emissions that are ventilated to the exterior of the building. The system would cover the entire length of the bay accommodating drive-through and back-in configurations and has a radial exhaust fan and an engine sensor control box that detects exhaust, making everything within the system automatic. Having a system in place that can virtually eliminate hazardous exhaust emissions would reduce the risk of adverse health effects to firefighters and protect all personnel and visitors from this health hazard.

This project requires an Environmental and Historic Preservation (EHP) compliance review by FEMA's Office of Environmental and Historic Preservation. FEMA is required to consider the effects of its actions on the environment and historic properties to ensure that all activities and programs funded by the agency, including grant-funded projects, comply with Federal EHP regulations, laws, and Executive Orders as applicable. The Department submitted the required EHP screening form and has been approved for EHP compliance.

FISCAL IMPACT: The total cost of the two source capture exhaust extraction systems would be \$116,456. The Department has been approved for \$60,000 for Fire Station 151 and \$40,000 for Fire Station 152; however, as a condition of the Assistance to Firefighters Grant, the Department is required to contribute non-Federal funds equal to or greater than 10 percent of the Federal funds awarded, or \$9,090.91. If approved by the City Council, the purchase of SCES would be reimbursed from the AFG Program in the amount of \$90,909 and would result in an appropriation from the Contingency Fund in the amount of \$25,547.

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

1. Authorize the receipt of \$90,909 from the Fiscal Year 2019 Assistance to Firefighters Grant to purchase source capture exhaust extraction systems for both fire stations.
2. Authorize a \$25,547 appropriation from the Contingency Fund to pay the 10 percent required match and cover the remaining balance of the exhaust extraction systems.

Award Letter

U.S. Department of Homeland Security
Washington, D.C. 20472

Marci Butler
MONTCLAIR, CITY OF
5111 BENITO STREET HUMAN SERVICES DEPT
MONTCLAIR, CA 91763



EMW-2019-FG-07929

Dear Marci Butler,

Congratulations on behalf of the Department of Homeland Security. Your application submitted for the Fiscal Year (FY) 2019 Assistance to Firefighters Grant (AFG) Grant funding opportunity has been approved in the amount of \$90,909.09 in Federal funding. As a condition of this grant, you are required to contribute non-Federal funds equal to or greater than 10.0% of the Federal funds awarded, or \$9,090.91 for a total approved budget of \$100,000.00. Please see the FY 2019 AFG Notice of Funding Opportunity for information on how to meet this cost share requirement.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the FEMA Grants Outcomes (FEMA GO) system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Summary Award Memo - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- 2019 AFG Notice of Funding Opportunity (NOFO) - incorporated by reference

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Sincerely,

A handwritten signature in blue ink, which appears to read "Bridget Bean". The signature is fluid and cursive.

Bridget Bean
Assistant Administrator
Grant Programs Directorate

Summary Award Memo

Program: Fiscal Year 2019 Assistance to Firefighters Grant

Recipient: MONTCLAIR, CITY OF

DUNS number: 084976919

Award number: EMW-2019-FG-07929

Summary description of award

The purpose of the Assistance to Firefighters Grant program is to protect the health and safety of the public and firefighting personnel against fire and fire-related hazards. After careful consideration, FEMA has determined that the recipient's project or projects submitted as part of the recipient's application and detailed in the project narrative as well as the request details section of the application - including budget information - was consistent with the Assistance to Firefighters Grant Program's purpose and was worthy of award.

Except as otherwise approved as noted in this award, the information you provided in your application for FY2019 Assistance to Firefighters Grants funding is incorporated into the terms and conditions of this award. This includes any documents submitted as part of the application.

Amount awarded

The amount of the award is detailed in the attached Obligating Document for Award.

The following are the budgeted estimates for object classes for this award (including Federal share plus your cost share, if applicable):

Object Class	Total
Personnel	\$0.00
Fringe benefits	\$0.00
Travel	\$0.00
Equipment	\$100,000.00
Supplies	\$0.00
Contractual	\$0.00
Construction	\$0.00
Other	\$0.00
Indirect charges	\$0.00
Federal	\$90,909.09
Non-federal	\$9,090.91
Total	\$100,000.00
Program Income	\$0.00

Approved scope of work

After review of your application, FEMA has approved the below scope of work. Justifications are provided for any differences between the scope of work in the original application and the approved scope of work under this award. You must submit scope or budget revision requests for FEMA's prior approval, via an amendment request, as appropriate per 2 C.F.R. § 200.308 and the FY2019 AFG NOFO.

Approved request details:

Modify facilities

Source Capture Exhaust System(s)

DESCRIPTION

The source capture exhaust systems are magnetic vehicle exhaust removal systems. Each system would be mounted on the ceiling and consists of a straight rail system, a sliding balancer track system, and an extraction hose with a Magnetic Grabber that allows for quick and easy operation. The system would capture exhaust emissions and ventilate them to the exterior of the building. It also has a radial exhaust fan and an engine sensor control box that detects exhaust, making everything within the system automatic. The cost includes materials, ductwork, installation hardware, freight, taxes, and installation labor.

QUANTITY	UNIT PRICE	TOTAL
1	\$60,000.00	\$60,000.00

BUDGET CLASS

Equipment

CHANGE FROM APPLICATION

Cost 1 **Price** from **\$70,000.00** to **\$60,000.00**

JUSTIFICATION

This reduction is because the cost you requested for SCES exceeds the average price range calculated from market research and prior awards for the same item.

Source Capture Exhaust System(s)

DESCRIPTION

The source capture exhaust systems are magnetic vehicle exhaust removal systems. Each system would be mounted on the ceiling and consists of a straight rail system, a sliding balancer track system, and an extraction hose with a Magnetic Grabber that allows for quick and easy operation. The system would capture exhaust emissions and ventilate them to the exterior of the building. It also has a radial exhaust fan and an engine sensor control box that detects exhaust, making everything within the system automatic. The cost includes materials, ductwork, installation hardware, freight, taxes, and installation labor.

QUANTITY	UNIT PRICE	TOTAL
1	\$40,000.00	\$40,000.00

BUDGET CLASS

Equipment

CHANGE FROM APPLICATION

Cost 1 **Price** from **\$60,000.00** to **\$40,000.00**

JUSTIFICATION

This reduction is because the cost you requested for SCES exceeds the average price range calculated from market research and prior awards for the same item.

Agreement Articles

Program: Fiscal Year 2019 Assistance to Firefighters Grant

Recipient: MONTCLAIR, CITY OF

DUNS number: 084976919

Award number: EMW-2019-FG-07929

Table of contents

Article 1	Assurances, Administrative Requirements, Cost Principles, Representations and Certifications
Article 2	DHS Specific Acknowledgements and Assurances
Article 3	Acknowledgement of Federal Funding from DHS
Article 4	Activities Conducted Abroad
Article 5	Age Discrimination Act of 1975
Article 6	Americans with Disabilities Act of 1990
Article 7	Best Practices for Collection and Use of Personally Identifiable Information (PII)
Article 8	Civil Rights Act of 1964 – Title VI
Article 9	Civil Rights Act of 1968
Article 10	Copyright
Article 11	Debarment and Suspension
Article 12	Drug-Free Workplace Regulations
Article 13	Duplication of Benefits
Article 14	Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX
Article 15	Energy Policy and Conservation Act
Article 16	False Claims Act and Program Fraud Civil Remedies
Article 17	Federal Debt Status
Article 18	Federal Leadership on Reducing Text Messaging while Driving
Article 19	Fly America Act of 1974
Article 20	Hotel and Motel Fire Safety Act of 1990
Article 21	Limited English Proficiency (Civil Rights Act of 1964, Title VI)
Article 22	Lobbying Prohibitions
Article 23	National Environmental Policy Act
Article 24	Nondiscrimination in Matters Pertaining to Faith-Based Organizations

Article	Non-supplanting Requirement
25	
Article	Notice of Funding Opportunity Requirements
26	
Article	Patents and Intellectual Property Rights
27	
Article	Procurement of Recovered Materials
28	
Article	Rehabilitation Act of 1973
29	
Article	Reporting of Matters Related to Recipient Integrity and Performance
30	
Article	Reporting Subawards and Executive Compensation
31	
Article	SAFECOM
32	
Article	Terrorist Financing
33	
Article	Trafficking Victims Protection Act of 2000 (TVPA)
34	
Article	Universal Identifier and System of Award Management (SAM)
35	
Article	USA Patriot Act of 2001
36	
Article	Use of DHS Seal, Logo and Flags
37	
Article	Whistleblower Protection Act
38	
Article	Acceptance of Post Award Changes
39	
Article	Prior Approval for Modification of Approved Budget
40	
Article	Disposition of Equipment Acquired Under the Federal Award
41	
Article	Environmental Planning and Historic Preservation
42	

Article 1 Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions. DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

Article 2 DHS Specific Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. 1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS. 2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance. 3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. 4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance. 5. Recipients of federal financial assistance from DHS must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award or, for State Administering Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. Recipients are required to provide this information once every two (2) years, not every time an award is made. After the initial submission for the first award under which this term applies, recipients are only required to submit updates every two years, not every time a grant is awarded. Recipients should submit the completed tool, including supporting materials to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>. 6. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

<p>Article 3</p>	<p>Acknowledgement of Federal Funding from DHS Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.</p>
<p>Article 4</p>	<p>Activities Conducted Abroad Recipients 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.</p>
<p>Article 5</p>	<p>Age Discrimination Act of 1975 Recipients must comply with the requirements of the Age Discrimination Act of 1975, Pub. L. No. 94-135 (1975) (codified as amended at Title 42, U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.</p>
<p>Article 6</p>	<p>Americans with Disabilities Act of 1990 Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.</p>
<p>Article 7</p>	<p>Best Practices for Collection and Use of Personally Identifiable Information (PII) Recipients who collect PII are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. 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. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.</p>
<p>Article 8</p>	<p>Civil Rights Act of 1964 – Title VI Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.</p>

Article 9 Civil Rights Act of 1968

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. § 3601 et seq.), as implemented by the U.S. 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. Part 100, Subpart D.)

Article 10 Copyright

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

Article 11 Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Article 12 Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).

Article 13 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 statutes, 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 statutes, regulations, or the federal financial assistance award terms and conditions.

Article 14	<p>Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX</p> <p>Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.</p>
Article 15	<p>Energy Policy and Conservation Act</p> <p>Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94- 163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.</p>
Article 16	<p>False Claims Act and Program Fraud Civil Remedies</p> <p>Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§ 3729-3733, which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)</p>
Article 17	<p>Federal Debt Status</p> <p>All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)</p>
Article 18	<p>Federal Leadership on Reducing Text Messaging while Driving</p> <p>Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.</p>
Article 19	<p>Fly America Act of 1974</p> <p>Recipients 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 Comptroller General Decision B-138942.</p>
Article 20	<p>Hotel and Motel Fire Safety Act of 1990</p> <p>In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a, recipients 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, (codified as amended at 15 U.S.C. § 2225.)</p>

Article 21 Limited English Proficiency (Civil Rights Act of 1964, Title VI)
Recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which 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. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

Article 22 Lobbying Prohibitions
Recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt 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 any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article 23 National Environmental Policy Act
Recipients must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq.) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article 24 Nondiscrimination in Matters Pertaining to Faith-Based Organizations
It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

Article 25 Non-supplanting Requirement
Recipients receiving 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.

Article 26 Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

Article 27 Patents and Intellectual Property Rights

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal 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.

Article 28 Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Article 29 Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (1973), (codified as amended at 29 U.S.C. § 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article 30 Reporting of Matters Related to Recipient Integrity and Performance

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements 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 award terms and conditions.

Article 31 Reporting Subawards and Executive Compensation

Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

Article 32	SAFECOM	Recipients receiving federal financial assistance 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.
Article 33	Terrorist Financing	Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.
Article 34	Trafficking Victims Protection Act of 2000 (TVPA)	Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. § 7104. The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated here by reference.
Article 35	Universal Identifier and System of Award Management (SAM)	Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.
Article 36	USA Patriot Act of 2001	Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, which amends 18 U.S.C. §§ 175–175c.
Article 37	Use of DHS Seal, Logo and Flags	Recipients must obtain permission from their DHS FAO 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.
Article 38	Whistleblower Protection Act	Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.

Article 39 Acceptance of Post Award Changes

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, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK-GMD@dhs.gov if you have any questions.

Article 40 Prior Approval for Modification of Approved Budget

Before making any change to the DHS/FEMA approved budget for this award, you must request prior written approval from DHS/FEMA where required by 2 C.F.R. § 200.308. DHS/FEMA is also utilizing its discretion to impose an additional restriction under 2 C.F.R. § 200.308(e) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the Federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/FEMA last approved. You must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article 41 Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its subrecipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. § 200.313.

Article 42 Environmental Planning and Historic Preservation

DHS/FEMA funded activities that may require an EHP review are subject to FEMA's Environmental Planning and Historic Preservation (EHP) review process. This review does not address all Federal, state, and local requirements. Acceptance of Federal funding requires recipient to comply with all Federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize Federal funding. DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP Review process, as mandated by the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and, any other applicable laws and Executive Orders. To access the FEMA's Environmental and Historic Preservation (EHP) screening form and instructions go to the DHS/FEMA website at: <https://www.fema.gov/media-library/assets/documents/90195>. In order to initiate EHP review of your project(s), you must complete all relevant sections of this form and submit it to the Grant Programs Directorate (GPD) along with all other pertinent project information. Failure to provide requisite information could result in delays in the release of grant funds. If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered, applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

Obligating document

1. Agreement No. EMW-2019-FG-07929	2. Amendment No. N/A	3. Recipient No. 956005731	4. Type of Action AWARD	5. Control No. WX02929N2020T		
6. Recipient Name and Address MONTCLAIR, CITY OF 5111 BENITO ST MONTCLAIR, CA 91763		7. Issuing FEMA Office and Address Grant Programs Directorate 500 C Street, S.W. Washington DC, 20528-7000 1-866-927-5646		8. Payment Office and Address FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20742		
9. Name of Recipient Project Officer Marci Butler		9a. Phone No. 909-4483600	10. Name of FEMA Project Coordinator Assistance to Firefighters Grant Program		10a. Phone No. 1-866-274-0960	
11. Effective Date of This Action 07/20/2020	12. Method of Payment OTHER - FEMA GO	13. Assistance Arrangement COST SHARING		14. Performance Period 07/27/2020 to 07/26/2021 Budget Period 07/27/2020 to 07/26/2021		
15. Description of Action a. (Indicate funding data for awards or financial changes)						
Program Name Abbreviation	Assistance Listings No.	Accounting Data(ACCS Code)	Prior Total Award	Amount Awarded This Action + or (-)	Current Total Award	Cumulative Non-Federal Commitment
AFG	97.044	2020-F9-GB01 - P431-xxxx-4101-D	\$0.00	\$90,909.09	\$90,909.09	\$9,090.91
Totals			\$0.00	\$90,909.09	\$90,909.09	\$9,090.91
b. To describe changes other than funding data or financial changes, attach schedule and check here: N/A						
16. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address) This field is not applicable for digitally signed grant agreements						

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title) Marci Butler	DATE 08/05/2020
18. FEMA SIGNATORY OFFICAL (Name and Title) Bridget Bean, Assistant Administrator Grant Programs Directorate	DATE 07/20/2020



October 16, 2020

To: Clayton Thompson, Program Analyst, GPD
From: John Sarles, Environmental Specialist, GPD/EHP
Subject: EHP Clearance for 2019-FG-07929 (38863) Montclair CA Source Capture

Documentation for the following project was submitted to the Grant Programs Directorate (GPD) for Environmental and Historic Preservation (EHP) review.

Project Description: Replace source capture exhaust extraction systems
Name of Grant Recipient: City of Montclair
Location: FS151 8901 Monte Vista Ave &
FS152 10825 Monte Vista Ave, Montclair CA
Pgm, Grant #, Case ID: AFG 2019-FG-07929 (38863)

The materials submitted were reviewed according to the National Environmental Policy Act (NEPA) of 1969, the National Historic Preservation Act (NHPA) and other EHP laws, regulations, and Executive Orders.

After review of the documentation provided, the environmental review is now completed in accordance with DHS Instruction 023-01-001-01 and FEMA Instruction 108-1-1. Please inform the grantee that as a result of this determination their project has been approved for EHP compliance. The grantee must be informed that any change to the approved scope of work will require re-evaluation for compliance with NEPA and other laws and Executive Orders. The grantee must be informed of the special and standard conditions listed below. Failure to fulfill all project conditions may jeopardize funding.

Special Conditions: None.

Standard Conditions:

- Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.
- If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

This is official documentation and must be retained as part of the project record. A copy of

this letter will be added to the grant file that includes this project.

If you have further questions please contact GPDEHPinfo@dhs.gov.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	STA816
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	12	PREPARER:	S. STANTON
SUBJECT:	CONSIDER AUTHORIZING STAFF TO ADVERTISE FOR BID PROPOSALS FOR CONSTRUCTION OF THE ELECTRIC VEHICLE CHARGING STATIONS PROJECT		

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing staff to advertise for bid proposals for construction of the Electric Vehicle (EV) Charging Stations Project. Approval of plans, specifications, and authorization to advertise for bid proposals is subject to City Council Approval.

BACKGROUND: At its December 2, 2019 meeting, the City Council adopted the FY 2019–2024 Capital Improvement Program that included the Installation of the EV Charging Stations Project. The project will include the construction of electric vehicle charging stations at City Hall, the Police Department, and the City Yard.

The charging stations at City Hall and the Police Department will be available for public use, while the charging station at the City Yard will only be available for City and employee vehicles.

FISCAL IMPACT: The estimated project cost of \$60,000, including the cost to advertise the project for bids, would be entirely funded by the AB 2766/Mobile Source Air Pollution Reduction Review Committee (MSRC) Partnership Program of the South Coast Air Quality Management District, and would have no impact on the City’s General Fund.

RECOMMENDATION: Staff recommends the City Council authorize staff to advertise for bid proposals for construction of the Electric Vehicle Charging Stations Project.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	MCF100
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	HUMAN SVCS./MCF
ITEM NO.:	13	PREPARER:	R. WALKER
SUBJECT:	CONSIDER APPROVING THE PURCHASE OF WHOLE TURKEYS AND OTHER ASSORTED FOOD ITEMS FOR THE MONTCLAIR HOLIDAY FOOD AND TOY BASKET PROGRAM		

REASON FOR CONSIDERATION: The Montclair Community Foundation (MCF) Board of Directors is requested to consider approving the use of funds donated to MCF to purchase turkeys and other assorted food items for the Montclair Holiday Food and Toy Basket Program.

BACKGROUND: The Montclair City Council also serves in its capacity as the MCF Board of Directors. The vision of MCF is to work collectively and collaboratively to strengthen services and enhance the quality of life for residents by promoting health, wellness, and economic stability for all including the most vulnerable in our community. The mission of MCF is to guarantee a quality community for all by working together as diverse, committed individuals and organizations to make an impact that improves the overall well-being of the community.

For 34 years, the City has coordinated the Holiday Food and Toy Basket Program to serve the less fortunate in Montclair by providing low income families with a basket of food to prepare a holiday meal and by gifting toys to children in need. Since 2015, MCF has partnered with the City to provide whole turkeys and assorted food items that are given to each of the qualified food basket recipients. Funded entirely through the generous food, toy, and monetary donations to MCF from businesses, organizations and individuals throughout the community, the Holiday Food and Toy Basket Program was able to supply over 600 disadvantaged Montclair children, their family members, and senior citizens with a holiday meal last year.

To ensure the less fortunate in our community receive the provisions they need during the holiday season, staff recommends the purchase of whole turkeys and assorted food items to provide each Holiday Food and Toy Basket Program recipient with ingredients for a complete holiday meal, which will be paid for with donations to MCF.

Staff recommends using \$6,100 of funds donated to MCF to purchase whole turkeys and assorted food items for the Holiday Food & Toy Basket Program.

FISCAL IMPACT: Should the MCF Board approve the purchase of turkeys and other food items, the City will make the purchase for the Holiday Food and Toy Basket Program and MCF will reimburse the City through donated funds.

RECOMMENDATION: Staff recommends the Montclair Community Foundation Board approve the purchase whole turkeys and other assorted food items for the Holiday Food and Toy Basket Program.



CITY COUNCIL AGENDA REPORT

DATE: NOVEMBER 2, 2020

FILE I.D.: GRT225

SECTION: CONSENT - AGREEMENTS

DEPT.: HUMAN SVCS.

ITEM NO.: 1

PREPARER: A. COLUNGA

SUBJECT: CONSIDER APPROVAL OF AMENDMENT NO. 1 TO AGREEMENT NO. 20-22 WITH THE STATE OF CALIFORNIA NATURAL RESOURCES AGENCY DEPARTMENT OF PARKS AND RECREATION TO EXTEND THE GRANT PERFORMANCE PERIOD FOR THE STATEWIDE PARK DEVELOPMENT AND COMMUNITY REVITALIZATION PROGRAM GRANT TO DEVELOP REEDER RANCH PARK

CONSIDER AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 1 TO AGREEMENT NO. 20-22 AND ALL SUBSEQUENT GRANT-RELATED DOCUMENTS

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Amendment No. 1 to Agreement No. 20-22 with the State of California Natural Resources Agency Department of Parks and Recreation to extend the grant performance period for the Statewide Park Development and Community Revitalization Program Grant to develop Reeder Ranch Park. In addition, the City Council is requested to authorize the City Manager to execute Amendment No. 1 to Agreement No. 20-22 and all subsequent grant related documents.

BACKGROUND: The City Council approved Agreement No. 20-22 on April 6, 2020 to accept \$5,137,000 to develop Reeder Ranch Park through a grant received from the California Department of Parks and Recreation for the Statewide Park Development and Community Revitalization Program (SPP) grant. This SPP grant was released to create new parks and new recreation opportunities in critically underserved communities across California and is funded by proposition 68, approved by state voters in the June 2018 election.

City staff developed a park plan application for Reeder Ranch Park with the community through six community outreach events and a community survey. The park will also provide a location for educational teaching opportunities due to its proximity to the George C. and Hazel H. Reeder Citrus Ranch Farmhouse located next door. The Reeder Ranch is historically and culturally significant to the area and the last remaining citrus ranch in the City.

Increasing the City's park acreage will have multiple long-term benefits including encouraging physical activity, reducing chronic diseases, improving mental health, fostering community connections, and supporting community resilience to climate change and pollution according to the California Healthy Places index.

Proposed Amendment No. 1 to Agreement No. 20-22 requests the City Council to approve an extension of the grant performance period from an end date of June 30, 2022 to a new end date of June 30, 2024 as a result of COVID-19 delays.

The SPP grant activities will largely remain the same; however, the proposed future end date of the grant performance period is considered with the grand opening date of the future Reeder Ranch Park. The SPP grant activities may include but are not limited to the following:

- Final design plan
- CEQA for the construction scope
- Construction documents
- Bid for construction
- Construction of Reeder Ranch Park
- Reeder Ranch Park Grand Opening on or before April 30, 2024
- Thirty years of operation and maintenance for public use through June 30, 2048

FISCAL IMPACT: Should the City Council approve proposed Amendment No. 1 to Agreement No. 20-22, the California Department of Parks and Recreation would extend the grant performance period to June 30, 2024 and there will be no adverse fiscal impact to the City's general fund.

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

1. Approve Amendment No. 1 to Agreement No. 20-22 with the State of California Natural Resources Agency Department of Parks and Recreation to extend the grant performance period for the Statewide Park Development and Community Revitalization Program Grant to develop Reeder Ranch Park.
2. Authorize the City Manager to execute Amendment No. 1 to Agreement No. 20-22 and all subsequent grant-related documents.

**State of California – Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION**

AMENDMENT TO CONTRACT

Contract No. C9801006 Amendment No. 1

THIS AMENDMENT is hereby made and agreed upon by the State of California, acting through the Director of the Department of Parks and Recreation and by the City of Montclair

The State and, City of Montclair in mutual consideration of the promises made herein and in the contract in which this is an amendment, do promise as follows:

GRANT PERFORMANCE PERIOD is from July 01, 2018 through June 30, 2024

CONTRACT PERFORMANCE PERIOD is from July 01, 2018 through June 30, 2048

PROJECT TITLE Reeder Ranch Park Development APPLICATION NUMBER SW-36-005

The GRANTEE agrees to the terms and conditions of this contract, hereinafter referred to as AGREEMENT, and the State of California, acting through its Director of Parks and Recreation, pursuant to the State of California, agrees to fund the total State grant amount indicated below. The GRANTEE agrees to complete the GRANT SCOPE as defined in the GRANT SCOPE /Cost Estimate Form of the APPLICATION filed with the State of California referenced by the application number indicated above.

Total State grant amount not to exceed \$5,137,000

The General and Special Provisions attached are made a part of and incorporated into this Contract Amendment.

In all other respects, the contract of which this is an amendment, and the terms and conditions if relevant thereto, shall remain in full force and effect. In witness whereof the parties hereto have executed this amendment as of the date entered below.

Applicant: City of Montclair

By _____

Title City Manager
Applicant's Authorized Representative as shown in Resolution

Date _____

STATE DEPARTMENT OF PARKS AND RECREATION

By _____

Date _____

**State of California – Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION**

**CERTIFICATION OF FUNDING
(FOR STATE USE ONLY)**

CONTRACT NO C9801006	AMENDMENT NO 1	FISCAL SUPPLIER I.D. 0000029820	PROJECT NO SW-36-005		
AMOUNT ENCUMBERED BY THIS DOCUMENT \$0	FUND Drought, Water, Cln Air, Cstl Protc, Outdoor Fund				
PRIOR AMOUNT ENCUMBERED BY THIS CONTRACT \$5,137,000	ITEM 3790-101-6088	CHAPTER 29	STATUTE 18	FISCAL YEAR 2020/21	
TOTAL AMOUNT ENCUMBERED TO DATE \$5,137,000	Reporting Structured 37900091	Account/Alt Account 5432000-5432000000	ACTIVITY CODE 69800	PROJECT/WORK PHASE 37900000SW36005	
T.B.A. NO	I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.				
B.R. NO	SIGNATURE OF ACCOUNTING OFFICER			DATE	

I. RECITALS

This CONTRACT is entered into between the California Department of Parks and Recreation (hereinafter referred to as “GRANTOR,” “DEPARTMENT” or “STATE”) and City of Montclair (hereinafter referred to as “GRANTEE”).

The DEPARTMENT hereby grants to GRANTEE a sum (also referred to as “GRANT MONIES”) not to exceed \$5,137,000, subject to the terms and conditions of this CONTRACT and the 2018/19 California State Budget, Chapter 29, statutes of 2018, Item number – 3790-101-6088 (appropriation chapter and budget item number hereinafter referred to as “2018 Parks Bond Act, Statewide Park Development and Community Revitalization GRANT”). These funds shall be used for completion of the GRANT SCOPE(S).

The Grant Performance Period is from July 01, 2018 to June 30, 2024 .

II. GENERAL PROVISIONS

A. Definitions

As used in this CONTRACT, the following words shall have the following meanings:

1. The term “ACT” means the California Drought, Water, Parks Climate, Coastal Protection, and Outdoor Access for All Act of 2018, as referred to in section I of this CONTRACT.
2. The term “APPLICATION” means the individual project APPLICATION packet for a project pursuant to the enabling legislation and/or grant program process guide requirements.
3. The term “DEPARTMENT” or “STATE” means the California Department of Parks and Recreation.
4. The term “DEVELOPMENT” means capital improvements to real property by means of, but not limited to, construction, expansion, and/or renovation, of permanent or fixed features of the property.
5. The term “GRANTEE” means the party described as the GRANTEE in Section I of this CONTRACT.
6. The term “GRANT SCOPE” means the items listed in the GRANT SCOPE/Cost Estimate Form found in each of the APPLICATIONS submitted pursuant to this grant.
7. The term “GUIDE” means (1) the document identified as the “Grant Administration Guide for California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 Competitive Grant Programs Capital

Improvement Projects” and (2) The Application Guide that established the competitive procedures and policies for the selection of projects.

B. Project Execution

1. Subject to the availability of GRANT MONIES, the STATE hereby grants to the GRANTEE a sum of money not to exceed the amount stated in Section I of this CONTRACT, in consideration of, and on condition that, the sum be expended in carrying out the purposes as set forth in the scope described in the enabling legislation and referenced in the APPLICATION, Section I of this CONTRACT, and under the terms and conditions set forth in this CONTRACT.

The GRANTEE shall assume any obligation to furnish any additional funds that may be necessary to complete the GRANT SCOPE(S).

The GRANTEE agrees to submit any change or alteration from the original GRANT SCOPE(S) in writing to the STATE for prior approval. This applies to any and all changes that occur after STATE has approved the APPLICATION. Changes in the GRANT SCOPE(S) must be approved in writing by the STATE.

2. The GRANTEE shall complete the GRANT SCOPE(S) in accordance with the time of the Performance Period set forth in Section I of this CONTRACT, and under the terms and conditions of this CONTRACT.

To maintain the integrity of the competitive grant program, the GRANTEE agrees that any other project changes or alterations which deviate from the intent of the project selection criteria provided by the GRANTEE in the original competitive APPLICATION must be submitted in writing to the STATE for prior approval.

3. The GRANTEE shall comply with the California Environmental Quality Act (Public Resources Code, Section 21000, et seq., Title 14, California Code of Regulations, Section 15000 et seq.).
4. The GRANTEE shall comply with all applicable current laws and regulations affecting DEVELOPMENT projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities, including but not limited to the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and the California Unruh Act (California Civil Code §51 et seq.).

C. Project Guide

1. GRANTEE agrees to abide by the GUIDES.
2. GRANTEE acknowledges that STATE may make reasonable changes to its procedures as set forth in the GUIDE. If STATE makes any changes to its procedures and guidelines, STATE agrees to notify GRANTEE within a reasonable time.

D. Project Administration

1. If GRANT MONIES are advanced for DEVELOPMENT projects, the advanced funds shall be placed in an interest bearing account until expended. Interest earned on the advanced funds shall be used on the project as approved by the STATE. If grant monies are advanced and not expended, the unused portion of the grant and any interest earned shall be returned to the STATE within 60 days after project completion or end of the Grant Performance Period, whichever is earlier.
2. The GRANTEE shall submit written project status reports within 30 calendar days after the STATE has made such a request. In any event, the GRANTEE shall provide the STATE a report showing total final project expenditures within 60 days of project completion or the end of the grant performance period, whichever is earlier. The Grant Performance Period is identified in Section I of this CONTRACT.
3. The GRANTEE shall make property or facilities acquired and/or developed pursuant to this contract available for inspection upon request by the STATE.

E. Project Termination

1. Project Termination refers to the non-completion of a GRANT SCOPE. Any grant funds that have not been expended by the GRANTEE shall revert to the STATE.
2. The GRANTEE may unilaterally rescind this CONTRACT at any time prior to the commencement of the project. The commencement of the project means the date of the letter notifying GRANTEE of the award or when the funds are appropriated, whichever is later. After project commencement, this CONTRACT may be rescinded, modified or amended only by mutual agreement in writing between the GRANTEE and the STATE, unless the provisions of this CONTRACT provide that mutual agreement is not required.
3. Failure by the GRANTEE to comply with the terms of the (a) GUIDE, (b) any legislation applicable to the ACT, (c) this CONTRACT as well as any other grant contracts, specified or general, that GRANTEE has entered into with STATE, may be cause for suspension of all obligations of the STATE unless the STATE determines that such failure was due to no fault of the GRANTEE. In such case, STATE may reimburse GRANTEE for eligible costs properly incurred in performance of this CONTRACT despite non-performance of the GRANTEE. To qualify for such reimbursement, GRANTEE agrees to mitigate its losses to the best of its ability.
4. Any breach of any term, provision, obligation or requirement of this CONTRACT by the GRANTEE shall be a default of this CONTRACT. In the case of any default by GRANTEE, STATE shall be entitled to all remedies available under law and equity, including but not limited to: a) Specific Performance; b) Return of all GRANT MONIES; c) Payment to the STATE of the fair market value of the project property or the actual sales price, whichever is higher; and d) Payment to the STATE of the costs of enforcement of this CONTRACT, including but not limited to court and arbitration costs, fees, expenses of litigation, and reasonable attorney fees.

5. The GRANTEE and the STATE agree that if the GRANT SCOPE includes DEVELOPMENT, final payment may not be made until the work described in the GRANT SCOPE is complete and the GRANT PROJECT is open to the public.

F. Budget Contingency Clause

If funding for any fiscal year is reduced or deleted by the budget act for purposes of this program, the STATE shall have the option to either cancel this contract with no liability occurring to the STATE, or offer a CONTRACT amendment to GRANTEE to reflect the reduced grant amount. This Paragraph shall not require the mutual agreement as addressed in Paragraph E, provision 2, of this CONTRACT.

G. Hold Harmless

1. The GRANTEE shall waive all claims and recourse against the STATE including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this CONTRACT except claims arising from the concurrent or sole negligence of the STATE, its officers, agents, and employees.
2. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the ACQUISITION, DEVELOPMENT, construction, operation or maintenance of the property described as the project which claims, demands or causes of action arise under California Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of the STATE, its officers, agents, or employees.
3. The GRANTEE agrees that in the event the STATE is named as codefendant under the provisions of California Government Code Section 895 et seq., the GRANTEE shall notify the STATE of such fact and shall represent the STATE in the legal action unless the STATE undertakes to represent itself as codefendant in such legal action in which event the GRANTEE agrees to pay the STATE's litigation costs, expenses, and reasonable attorney fees.
4. The GRANTEE and the STATE agree that in the event of judgment entered against the STATE and the GRANTEE because of the concurrent negligence of the STATE and the GRANTEE, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.
5. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the GRANTEE has certified. The GRANTEE acknowledges that it is solely responsible for compliance with items to which it has certified.

H. Financial Records

1. The GRANTEE shall maintain satisfactory financial accounts, documents, including loan documents, and all other records for the project and to make them available to the STATE for auditing at reasonable times. The GRANTEE also agrees to retain such financial accounts, documents and records for five years following project termination or issuance of final payment, whichever is later.
2. The GRANTEE shall keep such records as the STATE shall prescribe, including records which fully disclose (a) the disposition of the proceeds of STATE funding assistance, (b) the total cost of the project in connection with such assistance that is given or used, (c) the amount and nature of that portion of the project cost supplied by other sources, and (d) any other such records that will facilitate an effective audit.
3. The GRANTEE agrees that the STATE shall have the right to inspect and make copies of any books, records or reports pertaining to this contract or matters related thereto during regular office hours. The GRANTEE shall maintain and make available for inspection by the STATE accurate records of all of its costs, disbursements and receipts with respect to its activities under this CONTRACT. Such accounts, documents, and records shall be retained by the GRANTEE for at least five years following project termination or issuance of final payment, whichever is later.
4. The GRANTEE shall use a generally accepted accounting system.

I. Use of Facilities

1. The GRANTEE agrees that the GRANTEE shall operate and maintain the property acquired or developed with the GRANT MONIES, for the duration of the Contract Performance Period.
2. The GRANTEE agrees that, during the Contract Performance Period, the GRANTEE shall use the property acquired or developed with GRANT MONIES under this contract only for the purposes of this grant and no other use, sale, or other disposition or change of the use of the property to one not consistent with its purpose shall be permitted except as authorized by the STATE and the property shall be replaced with property of equivalent value and usefulness as determined by the STATE.
3. The property acquired or developed may be transferred to another entity if the successor entity assumes the obligations imposed under this CONTRACT and with the approval of STATE.
4. Any real Property (including any portion of it or any interest in it) may not be used as security for any debt or mitigation, without the written approval of the STATE provided that such approval shall not be unreasonably withheld as long as the

purposes for which the Grant was awarded are maintained. Any such permission that is granted does not make the STATE a guarantor or a surety for any debt or mitigation, nor does it waive the STATE'S rights to enforce performance under the Grant CONTRACT.

5. All real property, or rights thereto, acquired with GRANT MONIES shall be subject to an appropriate form of restrictive title, rights, or covenants approved by the STATE. If the project property is taken by use of eminent domain, GRANTEE shall reimburse STATE an amount at least equal to the amount of GRANT MONIES received from STATE or the pro-rated full market value of the real property, including improvements, at the time of sale, whichever is higher.
6. If eminent domain proceedings are initiated against GRANTEE, GRANTEE shall notify STATE within 10 days of receiving the complaint.

J. Nondiscrimination

1. The GRANTEE shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, sexual orientation, or disability in the use of any property or facility developed pursuant to this contract.
2. The GRANTEE shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.
3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this project contract or under provisions of the enabling legislation and/or grant program.

K. Severability

If any provision of this CONTRACT or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the CONTRACT which can be given effect without the invalid provision or application, and to this end the provisions of this CONTRACT are severable.

L. Liability

1. STATE assumes no responsibility for assuring the safety or standards of construction, site improvements or programs related to the GRANT SCOPE. The STATE'S rights under this CONTRACT to review, inspect and approve the GRANT SCOPE and any final plans of implementation shall not give rise to any warranty or representation that the GRANT SCOPE and any plans or improvements are free from hazards or defects.
2. GRANTEE will secure adequate liability insurance, performance bond, and/or other security necessary to protect the GRANTEE'S and STATE'S interest

against poor workmanship, fraud, or other potential loss associated with completion of the grant project.

M. Assignability

Without the written consent of the STATE, the GRANTEE’S interest in and responsibilities under this CONTRACT shall not be assignable by the GRANTEE either in whole or in part.

N. Use of Grant Monies

GRANTEE shall not use any grant funds (including any portion thereof) for the purpose of making any leverage loan, pledge, promissory note or similar financial device or transaction, without: 1) the prior written approval of the STATE; and 2) any financial or legal interests created by any such leverage loan, pledge, promissory note or similar financial device or transaction in the project property shall be completely subordinated to this CONTRACT through a Subordination Agreement provided and approved by the STATE, signed by all parties involved in the transaction, and recorded in the County Records against the fee title of the project property.

O. Section Headings

The headings and captions of the various sections of this CONTRACT have been inserted only for the purpose of convenience and are not a part of this CONTRACT and shall not be deemed in any manner to modify, explain, or restrict any of the provisions of this CONTRACT.

P. Waiver

Any failure by a party to enforce its rights under this CONTRACT, in the event of a breach, shall *not* be construed as a waiver of said rights; and the waiver of any breach under this CONTRACT shall *not* be construed as a waiver of any subsequent breach.

City of Montclair
GRANTEE

By: _____
Signature of Authorized Representative

Title: _____

Date: _____

STATE OF CALIFORNIA

DEPARTMENT OF PARKS AND RECREATION

By: _____
Signature of Authorized Representative

Title: _____

Date: _____



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	GRF050
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	2	PREPARER:	M. BUTLER

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 20-86 WITH GRAFFITI TRACKER INC. FOR CONTINUED USE OF ITS DATABASE TO TRACK AND ANALYZE GRAFFITI

CONSIDER AUTHORIZING A \$3,300 APPROPRIATION FROM THE PROP 30/AB 109 FUND TO PAY THE COSTS ASSOCIATED WITH AGREEMENT NO. 20-86

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 20-86 with Graffiti Tracker Inc. for continued use of its database to track and analyze graffiti, and to authorize a \$3,300 appropriation from the Prop 30/AB 109 Fund to pay the costs associated with the agreement.

A copy of proposed Agreement No. 20-86 is attached for the City Council's review and consideration.

BACKGROUND: Graffiti has long been one of the most common urban problems threatening the vitality and beauty of cities across the country, and continues to be a major concern for the City of Montclair.

Graffiti Tracker Inc. specializes in providing City personnel with the tools needed to reduce graffiti vandalism. The company assisted the City in implementing a graffiti protocol that continues to provide a graffiti database, analyses, and tracking to further reduce the occurrence of graffiti vandalism. Graffiti Tracker utilizes cameras equipped with Global Positioning System technology. Photographs of graffiti are taken by the City's graffiti abatement crews and are sent to Graffiti Tracker where they are analyzed and categorized for reference. The result of the analysis is then stored in a web-based Graffiti Tracker system. City personnel are permitted unlimited searches of the organized database to determine patterns of graffiti incidents, such as most active vandals and/or gangs, rising tension between rival gangs, and frequently hit areas or "hot spots." Since the program is web-based, there is no need for software installation or restrictions on the number of system users.

FISCAL IMPACT: If authorized by the City Council, funding for Agreement No. 20-86 would result in an appropriation and expenditure from the Prop 30/AB 109 Fund (1141) in the amount of \$3,300.

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

1. Approve Agreement No. 20-86 with Graffiti Tracker Inc. for continued use of its database to track and analyze graffiti.
2. Authorize a \$3,300 appropriation from the Prop 30/AB 109 Fund to pay the costs associated with Agreement No. 20-86.

PROFESSIONAL SERVICES AGREEMENT

(City of Montclair and Graffiti Tracker Inc.)

THIS PROFESSIONAL SERVICES AGREEMENT is made as of January 1, 2021 by and between the City of Montclair, (“Agency”), and Graffiti Tracker Inc. (“Contractor”).

RECITALS

1. Agency has determined that it requires professional services from a Contractor to provide graffiti analysis and tracking services for the Agency.
2. Agency desires to retain Contractor, as an independent contractor to provide such services on an as needed basis.
3. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. Contractor’s Services.

- a. **Scope and Level of Services.** The nature, scope, and level of the specific services to be performed by Contractor are as set forth in Exhibit A, attached to this Agreement and incorporated herein as though set forth in full. Agency is retaining Contractor pursuant to this Agreement on a non-exclusive basis and reserves the right to retain other professionals to perform similar service if Agency determines such services are needed.
 - b. **Time of Performance.** The services shall be performed in a timely manner and on a regular basis in accordance with the written instruction of the Contract Administrator. Time is of the essence in the performance of this Agreement.
2. **Standard of Care.** As a material inducement to Agency to enter into this Agreement, Contractor hereby represents and warrants that it has the professional expertise and experience necessary to undertake the services to be provided herein.
 3. **Compliance with Law.** All services rendered hereunder by Contractor shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of Agency and any federal, state or local governmental agency having jurisdiction in effect at the time service is rendered.

4. **Term of Agreement.** This Agreement is effective on the date set forth in the initial paragraph of this Agreement and shall remain in effect for a period of 12 months, unless earlier terminated pursuant to Section 14.
5. **Compensation.** Agency agrees to compensate Contractor for its services according to the fee and payment schedule set forth in Exhibit B, attached hereto and incorporated herein as though set forth in full. In no event shall the total compensation and costs payable to Contractor under this Agreement exceed the sum of \$3,300.00 unless specifically approved by the City Council. Agency agrees that services may not begin until first payment is received.
6. **Ownership of Work Product.** All reports, documents or other written material developed by Consultant in the performance of this Agreement shall be and remain the property of Agency without restriction or limitation upon its use or dissemination by Agency.
7. **Representatives.**
 - a. **Project Manager.** The Project Manager for the services required under this Agreement is hereby designated as Timothy M. Kephart who shall be the representative of Contractor authorized to act in its behalf with respect to the services specified herein. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Project Manager were a substantial inducement for Agency to enter into this Agreement. Therefore, the foregoing Project Manager shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. Contractor may not change the foregoing Project Manager without the express written approval of Agency.
 - b. **Contract Administrator.** The Contract Administrator and Agency's representative shall be the Chief of Police, or in his/her absence, an individual designated in writing by the Contract Administrator. It shall be Contractor's responsibility to assure that the Contract Administrator is kept informed of the progress of the performance of the services, and Contractor shall refer any decisions that must be made by Agency to the Contract Administrator. Unless otherwise specified herein, any approval of Agency required hereunder shall mean the approval of the Contract Administrator.
8. **Standard of Performance.** Contractor shall perform all work to the highest professional standards and in a manner reasonably satisfactory to Agency. Contractor hereby covenants that it shall follow the highest professional standards in performing all services required hereunder.

- 9. Status as Independent Contractor.** Contractor is, and shall at all times remain as to Agency, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of Agency or otherwise act on behalf of Agency as an agent. Neither Agency nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner, employees of Agency. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Agreement, and to indemnify and hold Agency harmless from any and all taxes, assessments, penalties, and interest asserted against Agency by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor further agrees to indemnify and hold Agency harmless from any failure of Contractor to comply with applicable workers' compensation laws. Agency shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to Agency from Contractor as a result of Contractor's failure to promptly pay to Agency any reimbursement or indemnification arising under this section.
- 10. Confidentiality.** Agency agrees not to use any intellectual property or information related to the Graffiti Tracker system for purposes of development or competition of another Graffiti Tracker system. Upon request, all Agency data shall be returned to Agency upon the termination of this Agreement. Contractor's covenant under this section shall survive the termination of this Agreement.
- 11. Conflict of Interest.** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Contractor under this Agreement, or which would conflict in any manner with the performance of its services hereunder.
- 12. Indemnification.** Contractor agrees to indemnify, hold harmless and defend Agency, and their respective officers, employees, volunteers, and agents serving as independent contractors in the role of Agency or Agency officials, (collectively, "Indemnities"), from any claim, demand, damage, liability, loss, cost or expense, for any damage whatsoever, including but not limited to death or injury to any person and injury to any property, resulting from willful misconduct, negligent acts, errors or omissions of Contractor or any of its officers, employees, or agents.
- a. Agency does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by Agency, or the deposit with Agency, of any insurance policy or certificate required pursuant to this Agreement.
 - b. This hold harmless, indemnification and defense provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. Contractor agrees that Contractor's covenant under this section shall survive the termination of this Agreement.

13. Cooperation. In the event any claim or action is brought against Agency relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation that Agency might require.

14. Termination.

- a. Agency shall have the right to terminate the services of Contractor at any time for any reason on sixty (60) calendar days written notice to Contractor. In the event this Agreement is terminated by Agency, Contractor shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect, and Contractor shall have no other claim against Agency by reason of such termination, including any claim for compensation.
- b. Contractor shall have the right to terminate this Agreement at any time for any reason on sixty (60) calendar days written notice to Agency, and Contractor shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect.

15. Notices. Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's regular business hours or by facsimile before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

Agency:

City of Montclair
4870 Arrow Highway
Montclair, CA 91763

Contractor:

Graffiti Tracker Inc.
2916 S 132nd St #311
Omaha, NE 68144

16. Nondiscrimination and Equal Employment Opportunity. In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.

Contractor will take affirmative action to ensure that employees are treated without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

- 17. Assignability; Subcontracting.** Contractor shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Contractor's obligations hereunder, without the prior written consent of Agency, and any attempt by Contractor to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be void and of no effect.
- 18. Compliance with Laws/Licenses.** Contractor shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments. Contractor shall obtain and maintain all necessary professional licenses for providing the services outlined in this Agreement.
- 19. Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Agency of any payment to Contractor constitute or be construed as a waiver by Agency of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by Agency shall in no way impair or prejudice any right or remedy available to Agency with regard to such breach or default.
- 20. Attorney's Fees.** In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be San Bernardino County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted this Agreement or who drafted that portion of the Agreement.
- 21. Exhibits; Precedence.** All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provision of any Exhibit or document incorporated herein by reference, the provisions of this Agreement shall prevail.
- 22. Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Agency and Contractor. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

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

“Agency”

City of Montclair

By: _____
Javier John Dutrey, Mayor

ATTEST:

By: _____
Andrea Phillips, City Clerk

“Contractor”

Graffiti Tracker Inc.

By: _____
Timothy M. Kephart, Pres.

EXHIBIT A

SCOPE OF SERVICES

Contractor shall perform the following services for the City of Montclair:

Responsibilities

1. Train designated personnel on how to use GPS cameras.
2. Establish graffiti tracking protocols.
3. Train personnel on how to upload graffiti data to the Graffiti Analysis Intelligence Tracking System (GAITS).
4. Provide access to GAITS to all designated personnel twenty-four hours a day, seven days a week until contract ends.
5. On a daily basis, graffiti data will be uploaded to the GAITS system from the City of Montclair's staff. Graffiti Tracker Inc. will be responsible for analyzing all of that data and making the results of that analysis available to the GAITS system.
6. Provide training to all designated personnel (Agency staff/law enforcement/District Attorney's Office) on how to utilize the GAITS system.

This contract constitutes a lease for access to the Graffiti Analysis Intelligence Tracking System (GAITS). Permission from the Contract Administrator will be required for anyone to have access to this system. Upon permission being granted for access to the system, a username and password will be given to those individuals and they will be granted an "Operator" level access to the GAITS system. This lease will be in effect for the duration of the contract.

EXHIBIT B

SCHEDULE OF FEES

Contractor will not be required to work on the following ten holidays:

1. January 1 (New Year's Day)
2. The third Monday in January (Dr. Martin Luther King Jr. Day)
3. The third Monday in February (President's Day)
4. March 31st (Cesar Chavez Day)
5. The last Monday in May (Memorial Day)
6. July 4 (Independence Day)
7. The first Monday in September (Labor Day)
8. November 11 (Veteran's Day)
9. The fourth Thursday in November (Thanksgiving Day)
10. December 25 (Christmas Day)

The total contract amount for the twelve-month time period commencing January 1, 2021 and ending December 31, 2021 will be an amount not to exceed \$3,300.00 based on the average number of incidents analyzed not to exceed 300 per month.

Effective upon the signing of this contract, an invoice for the full amount will be submitted by the Contractor to the Contract Administrator. Payment should be processed and received no later than 30 calendar days from the date invoice was submitted

It is recommended that each graffiti abatement crew be equipped with one (1) camera. Services will commence once equipment has been purchased and first invoice paid.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	STA670LL
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	3	PREPARER:	S. STANTON

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 20-87 WITH TWINING, INC. AND AGREEMENT NO. 20-88 WITH NINYO & MOORE FOR ON-CALL GEOTECHNICAL ENGINEERING, MATERIALS TESTING, AND INSPECTION SERVICES FOR CITY CAPITAL IMPROVEMENT PROJECTS

REASON FOR CONSIDERATION: Most City projects require some type of testing of materials or special inspection services which City staff is not able to provide. The City Council is requested to consider approval of Agreement No. 20-87 with Twining, Inc. and Agreement No. 20-88 with Ninyo & Moore to provide geotechnical testing and inspection services on an “on-call” basis. Any awards of contracts and agreements with the City require City Council approval.

BACKGROUND: Capital improvement projects often require special geotechnical inspections that include soils compaction, concrete testing, and/or certain specialized construction-inspection services, which City staff does not have the ability to perform. Furthermore, construction schedules often demand last minute inspections and having an on-call service contract increases staff’s ability to retain inspection services as needed, in a timely manner.

The City has had on-call service agreements with multiple firms including Twining, Inc. for the previous three years, and has always found them to be responsive and able to provide quality inspection reports. Continuing to retain multiple firms including Twining, Inc. and Ninyo & Moore will eliminate the need to solicit and rank proposals from new potential service providers. Therefore, staff recommends retaining Twining, Inc. for an additional three years via Agreement No. 20-87 and including Ninyo & Moore by entering into a multi-year professional services agreement, Agreement No. 20-88.

FISCAL IMPACT: The proposed agreements are written for an amount not to exceed \$30,000 and will cover a three-year period, terminating on November 2, 2023. Purchase orders will be written based on quotations received for individual City projects, and will be charged to those City projects. The sum of these purchase orders will not exceed \$30,000, except as provided for in the agreement. The agreements authorize the City Manager to increase the contract amount by no more than 15 percent.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 20-87 with Twining, Inc. and Agreement No. 20-88 with Ninyo & Moore for on-call geotechnical engineering, materials testing, and inspection services for City Capital Improvement Projects.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

ON CALL GEOTECHNICAL, TESTING, AND INSPECTION SERVICES

THIS AGREEMENT is made and effective as of November 3, 2020, between the City of Montclair, a municipal corporation ("City") and Twining, Inc., a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on November 3, 2020, and shall remain and continue in effect for a period of 36 months until tasks described herein are completed, but in no event later than November 3, 2023, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform inspections, special inspections, and materials as requested by City. The performance of testing and inspection shall also include the preparation of all necessary maps, plans, reports, and documents as determined necessary by City. Consultant shall complete the tasks according to the schedule of performance established for each individual project.

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

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

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed \$30,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed fifteen percent (15%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Said invoices shall specify each project for which services were provided, and 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 calendar month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 6(c).

7. DEFAULT OF CONSULTANT

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

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

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

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

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

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

10. INSURANCE

(a) Consultant shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to City nor shall Consultant allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. Consultant shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-: VI:

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	1,000,000
Commercial general liability at least as broad as ISO CG 0001 (general aggregate)	2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	1,000,000
Professional Liability (per claim and aggregate)	1,000,000
Worker's compensation	Statutory

(b) All insurance required by this section shall apply on a primary basis. Consultant agrees that it will not cancel or reduce said insurance coverage. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(c) Auto liability insurance shall cover owned, nonowned and hired autos. If Consultant owns no vehicles, auto liability coverage may be provided by means of a nonowned and hired auto endorsement to the general liability policy.

(d) At all times during the term of this Agreement, Consultant shall maintain on file with City a certificate of insurance, in a form acceptable to City showing that the aforesaid policies are in effect in the required amounts. The general liability and automobile policies shall contain or be endorsed to contain a provision including the Indemnified Parties as additional insureds. Consultant shall promptly file with City such certificate or certificates and endorsements if applicable. Coverage for the additional insureds shall apply to the fullest extent permitted by law. Additional Insured Endorsements shall not:

- (1) Exclude "Contractual Liability"
- (2) Restrict coverage to the "Sole" liability of Consultant
- (3) Exclude "Third-Party-Over Actions"
- (4) Contain any other exclusion contrary to the Contract

(e) No policy required by this section shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the Indemnified Parties.

(f) All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

(g) In accordance with the provisions of California Labor Code, Section 3700, every employer shall secure the payment of compensation to his employees. Consultant shall, prior to commencing work, sign and file with City a certification as follows:

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

(h) General Insurance Requirements: All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured and all subcontractors waive the right of subrogation against City and City's elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by City; and (3) they cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City by certified mail. Consultant shall furnish City with copies of all such policies. Consultant may effect for its own account insurance not required under this Agreement.

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

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

16. NOTICES

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

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

To Consultant: Linas Vikus
Twining, Inc.
111 Main Street, Unit A
Riverside, CA 92501

17. ASSIGNMENT

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. NOT USED

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY:

CONSULTANT:

CITY OF MONTCLAIR, CALIFORNIA

TWINING, INC.

Javier "John" Dutrey
Mayor

Signature

ATTEST:

Name & Title

Andrea M. Phillips
City Clerk

Signature

Name & Title

APPROVED AS TO FORM:

Diane E. Robbins
City Attorney



Schedule of Fees 2020 - 2021

NOTE: Rates will be adjusted annually each July 1st to reflect increased costs.

Personnel Rates: Per Hour Unless Otherwise Noted

Task Code	Engineering and Consulting Personnel	Rate
10026	Senior Principal Advisor/Consultant	\$ 310.00
10001	Principal Engineer/Geologist	\$ 210.00
10017	Metallurgical Engineer	\$ 320.00
70000	Registered Geotechnical Engineer	\$ 200.00
10010	Technical Advisor	\$ 200.00
10011	Material Scientist, Welding/NDT Consultant	\$ 210.00
70003	Registered Geologist/Certified Engineering Geologist	\$ 195.00
10003	Senior Engineer/Geologist	\$ 180.00
10009	Registered Civil Engineer	\$ 175.00
60003	Roofing/Waterproofing Consultant	\$ 200.00
10013	Project Engineer/Manager	\$ 170.00
30000	Quality Control Manager	\$ 160.00
10005	Senior Staff Engineer/Geologist	\$ 155.00
10007	Staff Engineer/Geologist	\$ 150.00
10015	Quality Control Administrator	\$ 140.00
10019	Metallurgical Technician	\$ 115.00
90001	CADD Operator/Draftsperson	\$ 102.00
70107	Field Supervisor	\$ 135.00
91030	Safety Supervisor	\$ 135.00
20000	Laboratory Manager	\$ 120.00
98000	Laboratory Technician	\$ 95.00
90005	Expert Witness Testimony	\$ 550.00
91010	Qualified SWPPP Developer	\$ 155.00
91000	Qualified SWPPP Practitioner	\$ 140.00
30001	Vibration Engineer	\$ 180.00

NOTE: Hourly rate multiplier for participating in legal procedures is 1.75 times.

Task Code	Field Inspection Personnel	Rate
10101	Concrete/Reinforced Steel Inspector	\$ 118.00
10103	Prestressed/Post Tensioned Inspector	\$ 118.00
10105	Concrete ICC Inspector	\$ 118.00
10109	Drilled-In-Anchor Inspector	\$ 118.00
10111	Gunite/Shotcrete Inspector	\$ 118.00
10113	Masonry Inspector	\$ 118.00
10201	Structural Steel/Welding Inspector	\$ 118.00
10203	AWS Certified Welding Inspector	\$ 118.00
10207	Fireproofing Inspector	\$ 118.00
10501	Lead Inspector	\$ 121.00
10115	Firestop Special Inspector - IFC Premier	\$ 135.00
10117	Firestop Special Inspector - IQP	\$ 180.00
70109	L.A. Deputy Grading Inspector	\$ 125.00
75001	Asphalt Field and Plant Inspector/Technician	\$ 118.00
70103	Pile Driving Inspector	\$ 118.00
70101	Soils Technician	\$ 118.00
10107	Concrete Quality Control (ACI/Caltrans Technician)	\$ 118.00
10122	Wood Framing Inspector	\$ 118.00
60001	Roofing/Waterproofing Inspector	\$ 125.00
10515	Mechanical Inspector	\$ 150.00
10519	Electrical Inspector	\$ 150.00
10521	Plumbing Inspector	\$ 150.00
10523	Building Inspector	\$ 150.00
30002	Vibration Monitoring Technician	\$ 118.00
50003	Field Engineering Technician	\$ 123.00

NOTE: Hourly rate multiplier for participating in legal procedures is 1.75 times.

Task Code	Shop Inspection Personnel	Rate
10301	Structural Steel Fabrication Inspector	\$ 118.00
10309	Batch Plant Quality Control Technician/Inspector	\$ 118.00
10325	Glue-Laminated Fabrication Inspector	Quotation
10328	Pre-Cast Concrete/Pipe Fabrication Inspector	\$ 118.00

Task Code	Nondestructive Testing Personnel	Rate
10401	NDE Ultrasonic Testing Technician	\$ 123.00
10403	NDE Magnetic Particle Testing Technician	\$ 123.00
10405	NDE Dye Penetrant Testing Technician	\$ 123.00
10305	Combination NDE Technician/Welding Inspector	\$ 123.00
10409	Radiographic Testing (crew of 2)	\$ 325.00
10202	NDE Engineer	\$ 190.00

Task Code	Equipment Usage (Daily Unless Otherwise Noted)	Rate
95318	Skidmore	\$ 40.00
95309	Torque Wrench, Small	\$ 15.00
95312	Torque Wrench, Large	\$ 25.00
95315	Torque Multiplier	\$ 40.00
95321	Air Meter	\$ 20.00
95324	Brass Mold	\$ 20.00
95343	Nuclear Gauge (Per Hour)	\$ 10.00
95333	Pull Test Equipment	\$ 60.00
95348	Concrete/Asphalt Coring Equipment	\$ 600.00
95327	Pachometer	\$ 55.00
95336	Floor Flatness (Dipstick)	\$ 50.00
95330	Schmidt Hammer	\$ 30.00
95341	Vapor Emission Test Kits	\$ 30.00
95342	Relative Humidity Probe	\$ 60.00
95339	UPV (Ultrasonic Pulse Velocity) Meter	\$ 350.00
95351	Fireproofing Adhesion/Cohesion (Per Test)	\$ 35.00
95300	A Scan Ultrasonic Equipment and Consumables	\$ 75.00
95303	Magnetic Particle Equipment and Consumables	\$ 40.00
95306	Liquid Penetrant Consumables	\$ 35.00
95307	Phased Array Ultrasonic Equipment (Per Hour)	\$ 60.00
95347	Ground Penetrating Radar	\$ 300.00
95345	Impact Echo	\$ 350.00
95362	Ultrasonic Tomography	\$ 450.00
95349	Inertial Profiler (Per Hour)	Quotation
95357	Project Dedicated Vehicle	\$ 110.00
95364	Roller Compacted Concrete Vibrating Hammer/Tamping Plate	\$ 70.00
95367	Half-cell Potential Equipment Set	\$ 350.00
95368	Concrete Electrical Resistivity Meter	\$ 160.00
95369	Field Hardness (Steel)	\$ 100.00
95370	Coating Thickness Gauge	\$ 100.00
95373	Wood Curing Box (Per Box)	\$ 500.00
95371	Temperature Control Curing Box (Per Month)	\$ 450.00
95372	Temperature Matching Curing Box (Per Month)	\$ 520.00

Task Code	Specimen Pick-Up	Rate
20102	Standard Sample: Concrete Cylinders (Each)	\$ 25.00
20101	Standard Sample: Mortar/Grout Cubes and Cores, Fireproofing, Rebar, and Epoxy Prisms (Each)	\$ 25.00
20103/	Oversize Sample: Masonry Prisms, Shotcrete Panels,	\$ 60.00
20104	Flexural Beams (Each)	
20107	Technician for Specimen Pick-Up Not Listed Above (Per Hour, 2-Hour Minimum)	\$ 95.00
20109	Technician for Specimen Pick-Up Before 5:00 a.m. or After 5:00 p.m. Monday thru Friday, or All Day Saturday (Per Hour, 2-Hour Minimum Plus Mileage)	\$ 120.00

Task Code	Jobsite Trailer, Mobile or On-site Laboratory	Rate
95360	Mobile laboratory for rapid strength concrete (per shift not exceeding 12 hours) All others by quotation	\$ 500.00

Task Code	Concrete Tests (Field Made Specimens)	Rate
20201	6" x 12" Cylinder: Compression Strength (ASTM C39)	\$ 38.00
20202	4" x 8" Cylinder: Compression Strength (ASTM C39)	\$ 33.00
20203	Density of Structural Lightweight Concrete Equilibrium or Oven Dry Method (ASTM C567)	\$ 80.00
20205	Core Compression including Trimming (ASTM C42)	\$ 65.00
20207	6" x 6" x 18" Flexural Beams Not Exceeding Referenced Size (ASTM C78, C293 or CTM 523)	\$ 90.00
20209	Splitting Tensile Strength (ASTM C496)	\$ 90.00
20211	Modulus of Elasticity Test (ASTM C469)	\$ 260.00
80003	Rapid Chloride Permeability Test: Cylinders or Cores (ASTM C1202)	\$ 500.00
80006	Density, Absorption, and Voids in Hardened Concrete (ASTM C642)	\$ 500.00



Task Code	Concrete Tests (Field Made Specimens), Continued	Rate
40005	Flexural Toughness (ASTM C1609, Formerly ASTM C1018)	\$ 800.00
40006	Double Punch Strength of Fiber Reinforced Concrete	\$ 500.00
40009	Coefficient of Thermal Expansion of Concrete (CRD 39, AASHTO T336)	\$ 550.00

Task Code	Concrete Specimen Preparation	Rate
20151	Sawing of Specimens (Each)	\$ 35.00
20157	Coring of Specimens in Lab (Each)	\$ 35.00
20159	Grinding of Concrete Below 6000 psi Strength (Each)	\$ 50.00
20160	Grinding of Concrete 6000 psi Strength and Above (Each)	\$ 75.00

Task Code	Laboratory Trial Batch: Concrete, Cement and Mortar	Rate
30217	Compression Test Cylinders Made and Tested in Laboratory (ASTM C192, C35)	\$ 55.00
30219	6" x 6" x 18" Flexural Beams Made and Tested in Laboratory (ASTM C192, C78)	\$ 95.00
30223	Splitting Tensile Strength Cylinders Made and Tested in Laboratory (ASTM C192, C496)	\$ 110.00
30225	Modulus of Elasticity Test Cylinders Made and Tested in Laboratory (ASTM C192, C469)	\$ 275.00
30227	Density of Structural Lightweight Concrete Made in the Laboratory, Equilibrium or Oven Dry Method (ASTM C567)	\$ 100.00
30201	Laboratory Trial Batch (ASTM C192)	\$ 500.00
30203	Laboratory Trial Batch: Packaged Dry Concrete Including Verification of Slump, Air Content, Plastic Unit Weight, Six Cylinders for Compressive Strength (ASTM C387 and C192)	\$ 950.00
30205	Drying Shrinkage Up to 28 Days: Three 3" x 3" or 4" x 4" Bars, Five Readings up to 28 Dry Days (ASTM C157)	\$ 490.00
30230	Additional Reading, Per Set of Three Bars	\$ 45.00
30231	Storage over Ninety (90) Days, Per Set of Three Bars, Per Month	\$ 30.00
30207	Setting Time Up to 7 Hours (ASTM C403)	\$ 150.00
30209	Bleeding (ASTM C232)	\$ 150.00
30229	Concrete Restrained Expansion (ASTM C878)	\$ 550.00
30211	Mix, Make and Test Mortar or Grout Specimens for Compressive Strength: Set of 6 (ASTM C878)	\$ 500.00
20263	Non-Shrink Grout: Height Change after Final Set (ASTM C1090)	\$ 500.00
20265	Non-Shrink Grout: Height Change at Early Age (ASTM C827)	\$ 800.00
30232	Cracking Resistance, Set of Three Rings, Laboratory Trial Batching, Test Until Cracking or up to 28 Days (ASTM 1581)	\$ 5,000.00
30233	Evaluation of Pre-Packaged Masonry Mortars (ASTM C270)	\$ 1,100.00
30234	Creep (ASTM C512) (One Age of Loading, 12 Months Duration of Testing)	\$ 8,000.00

Task Code	Chemical Analysis and Petrographic Examination of Concrete	Rate
80123	Chemical Analysis for Acid Soluble Chlorides (ASTM C1152) (includes sample prep)	\$ 250.00
80193	Chloride Diffusion Coefficient of Cementitious Mixtures by Bulk Diffusion (ASTM C1556)	\$ 2,500.00
80129	Petrographic Examination of Hardened Concrete (ASTM 856) (Comprehensive)	\$ 2,100.00

Task Code	Physical and Chemical Analysis of Cement	Rate
80195	Physical Testing and Chemical Analysis of Portland Cement per Standard Requirements (ASTM C150)	\$ 1,200.00
80100	Chemical Analysis of Portland Cement per Standard Requirements (ASTM C150)	\$ 650.00
80103	Physical Testing of Portland Cement per Standard Requirements (ASTM C150)	\$ 650.00
80194	Physical Testing of Type K Cement, Mortar Expansion (ASTM C806)	\$ 650.00
80106	Partial Analysis or Specific Physical Tests	Quotation
80110	Sulfates Resistance of Hydraulic Cement (ASTM C1012), 6 months	\$ 2,500.00
80111	Sulfates Resistance of Hydraulic Cement (ASTM C1012), 12 months	\$ 2,700.00

Task Code	Physical and Chemical Analysis of Fly Ash	Rate
80140	Chemical Analysis of Fly Ash per Standard Requirements (ASTM C618)	\$ 650.00
80143	Physical Testing of Fly Ash per Standard Requirements (ASTM C618)	\$ 650.00
80146	Partial Analysis or Specific Physical Tests	Quotation
80147	Chemical Analysis and Physical Testing of Fly Ash per Standard Requirements (ASTM C1618)	\$ 1,200.00

Task Code	Physical Testing of Chemical Admixtures for Concrete	Rate
80196	Qualification of Admixture per ASTM C494	Quotation

Task Code	Soils and Aggregate Tests	Rate
30503	Abrasion: LA Rattler (ASTM C131)	\$ 200.00
30505	Abrasion: LA Rattler (ASTM C535)	\$ 210.00
70301	Atterberg Limits/Plasticity Index (ASTM D4318, CTM 204)	\$ 160.00
70303	California Bearing Ratio Excluding Maximum Density (ASTM D1883): Soil	\$ 550.00
70304	California Bearing Ratio Excluding Maximum Density (ASTM D1883): Cement-Treated Soil	\$ 650.00
70344	Cement-Treated Soil/Base Mix Design: includes three trial cement contents with three unconfined compressive strength specimens per cement content	\$ 3,500.00
70305	Chloride and Sulfate Content (CTM 417, CTM 422)	\$ 175.00
30403	Clay Lumps and Friable Particles (ASTM C142)	\$ 200.00
30321	Cleaness Value: 1" x #4 (CTM 227)	\$ 175.00
30322	Cleaness Value: 1.5" x .75" (CTM 227)	\$ 275.00
70393	Collapse Potential/Index (ASTM D5333)	\$ 225.00
70396	Compressive Strength of Molded Soil-Cement Cylinders (ASTM D1633)	\$ 105.00
70309	Consolidation Test: Full Cycle (ASTM 2435, CTM 219)	\$ 195.00
70311	Consolidation Test: Time Rate per Load Increment (ASTM D2435, CTM 219)	\$ 45.00
70313	Corrosivity Series: Sulfate, Cl, pH, Resistivity (CTM 643, 417, and 422)	\$ 245.00
70315	Crushed/Fractured Particles (ASTM D5821, CTM 205)	\$ 175.00
70317	Direct Shear Test: Remolded and/or Residual (ASTM D3080)	\$ 245.00
70319	Direct Shear Test: Undisturbed - Slow [CD] (ASTM D3080)	\$ 225.00
70321	Direct Shear Test: Undisturbed - Fast [CU] (ASTM D3080)	\$ 195.00
70378	Durability Index: Per Method - A,B,C, or D (ASTM D3744, CTM 229)	\$ 210.00
70325	Expansion Index (ASTM D4829, UBC 18-2)	\$ 170.00
75004	Fine Aggregate Angularity (ASTM C1252, CTM 234, AASHTO T304)	\$ 190.00
30507	Flat and Elongated Particle (ASTM D4791)	\$ 240.00
30508	Flat or Elongated Particle (ASTM D4791)	\$ 210.00
70331	Maximum Density: Methods A/B/C (ASTM D1557, D698, CTM 216)	\$ 190.00
70333	Maximum Density: Check Point (ASTM D1557, D698)	\$ 65.00
70335	Maximum Density: AASHTO C [Modified] (AASHTO T-180)	\$ 195.00
70336	Maximum Index Density: Vibratory Table (ASTM D4253)	\$ 345.00
70337	Moisture Content (ASTM D2216, CTM 226)	\$ 25.00
70339	Moisture and Density: Ring Sample (ASTM D2937)	\$ 30.00
70341	Moisture and Density: Shelby Tube Sample (ASTM D2937)	\$ 40.00
70340	Moisture-Density Relations of Soil-Cement Mixtures Premixed in the Field (ASTM D558)	\$ 275.00
70342	Moisture-Density Relations of Soil-Cement Mixtures Mixed in the Lab (ASTM D558)	\$ 350.00
30401	Organic Impurities (ASTM C40, CTM 213)	\$ 90.00
70343	Permeability (ASTM D5084)	Quotation
80001	Potential Reactivity: Chemical Method (ASTM C289 - Discontinued Method)	\$ 525.00
70394	Potential Reactivity: Mortar Bar Expansion Method, 14-Day Exposure (ASTM C1260)	\$ 825.00
70391	Potential Reactivity: Mortar Bar Expansion Method, 28-Day Exposure (ASTM C1260)	\$ 875.00
70398	Potential Reactivity: Concrete Bar Expansion Method (ASTM C1293), 12 month	\$ 2,700.00
70399	Potential Reactivity: Concrete Bar Expansion Method (ASTM C1293), 24 month	\$ 2,900.00



Task Code	Soils and Aggregate Tests, Continued	Rate
70397	Potential Reactivity of Aggregate Combination, non-standard method; 14-Day Exposure, Mortar (after ASTM C1567)	\$ 950.00
70392	Potential Reactivity of Aggregate Combination, non-standard method; 28-Day Exposure, Mortar (after ASTM C1567)	\$ 1,000.00
70345	R-Value: Soil (ASTM 2844, CTM 301)	\$ 440.00
70347	R-Value: Aggregate Base (ASTM D2844, CTM 301)	\$ 490.00
70349	Sand Equivalent (ASTM D2419, CTM 217)	\$ 125.00
70351	Sieve #200 Wash Only (ASTM D1140, CTM 202)	\$ 90.00
70353	Sieve with Hydrometer: 3/4" Gravel to Clay (ASTM D422, D7928, CTM 203)	\$ 250.00
70355	Sieve with Hydrometer: Sand to Clay (ASTM D422, D7928, CTM 203)	\$ 240.00
70357	Sieve Analysis Including Wash (ASTM C136, CTM 202)	\$ 150.00
70359	Sieve Analysis Without Wash (ASTM C136, CTM 202)	\$ 120.00
70360	Sieve Analysis: Split Sieve (ASTM C136, CTM 202)	\$ 240.00
70361	Sieve Analysis Without Wash: With Cobbles (ASTM C136, CTM 202)	\$ 235.00
70363	Soundness: Sodium or Magnesium Sulfate, 5 Cycles (ASTM C88)	\$ 450.00
70365	Specific Gravity and Absorption: Coarse (ASTM C127, CTM 206)	\$ 100.00
70367	Specific Gravity and Absorption: Fine (ASTM C128, CTM 207)	\$ 165.00
70369	Swell/Settlement Potential: One Dimensional (ASTM D4546)	\$ 150.00
70371	Triaxial	Quotation
70373	Unconfined Compression (ASTM D2166, CTM 221)	\$ 190.00
30317	Unit Weight Per Cubic Foot (ASTM C29, CTM 212)	\$ 125.00
30319	Voids in Aggregate with Known Specific Gravity (ASTM C29, CTM 212)	\$ 125.00
30411	Lightweight Particle: Coarse (ASTM C123)	\$ 410.00
30412	Lightweight Particle: Fine (ASTM C123)	\$ 410.00

Task Code	Asphalt Concrete Tests	Rate
75031	HMA Mixing and Preparation	\$ 125.00
75032	HMA Mixing and Preparation with Aggregate Treatment	\$ 175.00
75033	Bulk Specific Gravity of Compacted Sample or Core: SSD (ASTM D2726, CTM 308C)	\$ 55.00
75036	Bulk Specific Gravity of Compacted Sample or Core: Paraffin Coated (ASTM D1188 and CTM 308A)	\$ 80.00
75040	Emulsion Residue, Evaporation (ASTM D244)	\$ 160.00
75024	Extraction: % Bitumen (ASTM D6307, CTM 382)	\$ 160.00
75027	Extraction: % Bitumen and Gradation (ASTM D5444, D6307, CTM 202, 382)	\$ 215.00
75028	Extraction: % Bitumen, Correction Factor (ASTM D6307, CTM 382)	\$ 350.00
75030	Chemical Extraction: % Bitumen and Sieve Analysis (ASTM D2172 Method A or B, ASTM D5444)	\$ 245.00
75042	Lab Tested Maximum Density: Hveem, 3 briquettes (ASTM D1561, D1188, CTM 304, 308)	\$ 215.00
75057	Hveem Stabilometer Test, Premixed, 3 briquettes (ASTM D1560, D1561, CTM 304, 366)	\$ 215.00
75048	Lab Tested Maximum Density: Marshall, 3 briquettes (ASTM D6926, D2726)	\$ 210.00
75049	Lab Tested Maximum Density: Marshall 6" Specimen, 3 briquettes (ASTM D5581, D2726)	\$ 215.00
75050	Lab Tested Maximum Density: Superpave Gyrotory Compacted Briquette, SSD, 1 briquette (ASTM D6925, D2726)	\$ 80.00
75052	Lab Tested Maximum Density: Superpave Gyrotory Compacted Briquette, Paraffin, 1 briquette (ASTM D1188, D6925)	\$ 90.00
75051	Maximum Theoretical Specific Gravity [RICE] (ASTM D2041, CTM 309)	\$ 160.00
75066	Marshall Stability and Flow, Cored Sample, each (ASTM D6927)	\$ 80.00
75069	Marshall Stability and Flow, Premixed, 3 briquettes (ASTM D6926, D6927)	\$ 230.00
75106	Marshall Stability and Flow, Gyrotory Compacted Specimen Pre-Mixed, 3 briquettes (ASTM D5581, D6925)	\$ 230.00
75107	Marshall Stability and Flow 6" Specimen, Premixed, 3 briquettes (ASTM D5581)	\$ 230.00
75063	Moisture Content (CTM 370)	\$ 85.00

Task Code	Asphalt Concrete Tests, Continued	Rate
75005	Wet Track Abrasion Test (ASTM D3910)	\$ 165.00
75093	Hveem Mix Design (Excluding Aggregate Quality Tests)	\$ 3,400.00
75096	Hveem Mix Design, with RAP (Excluding Aggregate Quality Tests, RAP Qualification)	\$ 3,800.00
75099	Hveem Mix Design, with Lime (Excluding Aggregate Quality Tests)	\$ 3,800.00
75094	Hveem Mix Design Caltrans Untreated Mix (Including Aggregate Quality Tests)	\$ 4,650.00
75095	Hveem Mix Design Caltrans Lime Treated Mix (Including Aggregate Quality Tests)	\$ 4,650.00
75084	Marshall Mix Design (Excluding Aggregate Quality Tests)	\$ 3,400.00
75087	Marshall Mix Design with RAP (Excluding Aggregate Quality Tests)	\$ 3,800.00
75090	Marshall Mix Design with Lime (Excluding Aggregate Quality Tests)	\$ 3,800.00
75083	Open Grade Asphalt Concrete Mix Design (ASTM D7064, CTM 368)	\$ 1,700.00
75109	Superpave Mix Design (Excluding Aggregate Quality Tests)	\$ 4,900.00
75113	Superpave Mix Design, with RAP (Excluding Aggregate Quality Tests)	\$ 6,500.00
75075	Effect of Moisture on Asphalt Paving Mixtures, Pre-Mixed (ASTM D4867, AASHTO T283)	\$ 1,000.00
75111	Hamburg Wheel Track Test, 20,000 passes, 4 briquettes (AASHTO T324)	\$ 1,100.00
75039	Raveling Test of Cold Mixed Emulsified Asphalt (ASTM D7196)	\$ 200.00
75067	Marshall Stability, wet set, 3 replicates (AASHTO T245)	\$ 350.00
75068	Marshall Stability, dry set, 3 replicates (AASHTO T245)	\$ 300.00
75070	Cold Recycled Asphalt Mix Design: 2 gradings each, 3 emulsion content (Caltrans LP-8)	\$ 10,500.00
75114	Superpave Mix Design, with Rubber (Excluding Aggregate Quality Tests)	\$ 6,600.00
75115	Superpave Mix Design, with Additives (Excluding Aggregate Quality Tests)	\$ 5,790.00

Task Code	Brick Masonry Tests, ASTM C67	Rate
20301	Modulus of Rupture: Flexural	\$ 90.00
20303	Compression Strength	\$ 55.00
20305	Absorption: 5 Hour or 24 Hour	\$ 60.00
20307	Absorption (Boil): 1, 2 or 5 Hours	\$ 90.00
20309	Initial Rate of Absorption	\$ 50.00
20311	Efflorescence	\$ 70.00
20313	Cores: Compression	\$ 65.00
20315	Shear Test on Brick Cores: 2 Faces	\$ 90.00

Task Code	Concrete Block, ASTM C140	Rate
20321	Compression	\$ 85.00
20323	Absorption/Moisture Content/Oven Dry Density	\$ 85.00
20327	Linear Shrinkage (ASTM C426)	\$ 225.00
20335	Web and Face Shell Measurements	\$ 45.00
20329	Tension Test	\$ 155.00
20331	Core Compression	\$ 65.00
20333	Shear Test of Masonry Cores: 2 Faces	\$ 90.00
20339	Efflorescence Tests	\$ 70.00

Task Code	Masonry Prisms, ASTM C1314	Rate
20341	Compression Test: Composite Masonry Prisms Up To 8" x 16"	\$ 190.00
20343	Compression Test: Composite Masonry Prisms Larger Than 8" x 16"	\$ 250.00
20346	Prism Cord Modulus of Elasticity	\$ 540.00
20347	Prism Cord Modulus of Elasticity with Transverse Strain (for double-wythe specimen)	\$ 665.00

Task Code	Mortar and Grout	Rate
20351	Compression: 2" x 4" Mortar Cylinders (ASTM C780)	\$ 55.00
20353	Compression: 3" x 3" x 6" Grout Prisms, Includes Trimming (ASTM C1019)	\$ 40.00
20355	Compression: 2" Cubes (ASTM C109)	\$ 55.00
20357	Compression: Cores (ASTM C42)	\$ 65.00



Task Code	Masonry Specimen Preparation	Rate
20155	Cutting of Cubes or Prisms	\$ 65.00

Task Code	Fireproofing Tests	Rate
20401	Oven Dry Density (ASTM E605)	\$ 70.00

Task Code	Guniting and Shotcrete Tests	Rate
20361	Core Compression Including Trimming (ASTM C42)	\$ 65.00
20365	Compression: Cubes (Includes Saw Cutting)	\$ 85.00

Task Code	Concrete Roof Fill: Gypsum, Vermiculite, Perlite, Lightweight Insulating Concrete, Etc.	Rate
20371	Compression Test (ASTM C495 and C472)	\$ 55.00
20373	Air Dry Density (ASTM C472)	\$ 40.00
20379	Oven Dry Density (ASTM C495)	\$ 65.00

Task Code	Reinforcing Steel, ASTM A615, A706	Rate
20501	Tensile Test: # 11 or Smaller	\$ 60.00
20503	Bend Test: # 11 or Smaller	\$ 55.00
20504	Bend Test #14 or #18	\$ 350.00
20505	Tensile Test: # 14	\$ 240.00
20507	Tensile Test: # 18	\$ 340.00

Task Code	Reinforcing Steel - Welded or Coupled Specimens	Rate
20521	Tensile Test: Welded/Coupled #11 and Smaller	\$ 70.00
20523	Tensile Test: Welded/Coupled #14	\$ 250.00
20525	Tensile Test: Welded/Coupled #18	\$ 375.00
20529	Weld: Macroetch	\$ 75.00
20531	Slippage Test - Caltrans (CTM 670)	\$ 200.00
20532	Tensile Test: Welded Hoops #11 and Smaller	\$ 145.00

Task Code	Metal and Steel Testing	Rate
20601	Tensile Strength: Up to 100K Pounds (Each)	\$ 65.00
20603	Tensile Strength: Up to 200K Pounds (Each)	\$ 75.00
20605	Tensile Strength: Up to 300K Pounds (Each)	\$ 90.00
20607	Tensile Strength: Up to 400K Pounds (Each)	\$ 140.00
20609	Tensile Strength: 400K to 600K Pounds (Each)	\$ 350.00
20611	Tensile Strength: Stress-Strain Percent Offset	\$ 175.00
20545	Weld: Macroetch	\$ 75.00
20547	Weld: Fracture	\$ 40.00
20615	Bend Test	\$ 55.00
20617	Flattening Test	\$ 70.00
20619	Hardness Test (ASTM E18)	\$ 80.00
20630	Bolt: Axial Tensile Test (Up to 7/8" diameter)	\$ 50.00
20631	Bolt: Wedge Tensile Test (Up to 7/8" diameter)	\$ 65.00
20632	Bolt: Axial Tensile Test (Greater than 7/8" up to 1" diameter)	\$ 70.00
20633	Bolt: Wedge Tensile Test (Greater than 7/8" up to 1" diameter)	\$ 90.00
20634	Bolt: Axial Tensile Test (Greater than 1" diameter)	Quotation
20635	Bolt: Wedge Tensile Test (Greater than 1" diameter)	Quotation
20636	Bolt: Proof Load Test (Up to 7/8")	\$ 75.00
20637	Bolt: Proof Load Test (Greater than 7/8" up to 1" diameter)	\$ 95.00
20638	Bolt: Proof Load Test (Greater than 1")	Quotation
20639	Nut: Proof Load Test (Up to 7/8")	\$ 55.00
20640	Nut: Proof Load Test (Greater than 7/8" up to 1" diameter)	\$ 75.00
20641	Nut: Proof Load Test (Greater than 1")	Quotation

Task Code	Chemical Testing of Metal and Steel	Rate
80170	Steel Chemical Analysis	\$ 160.00
80173	Weight of Galvanized Coating (ASTM A90)	\$ 75.00
80176	Epoxy Coating Thickness	\$ 80.00

Task Code	Machining and Preparation of Tensile and Bend Sample: Carbon Steel	Rate
20751	Machinist: Initial Preparation from Mock-up, Etc. (Per Hour)	\$ 95.00

20753	Sawcut to Overall Width (Per 0.5" Thickness or Fraction Thereof)	\$ 50.00
20755	Machine to Test Configuration: Milled Specimens	\$ 55.00
20757	Machine to Test Configuration: Turned Specimens (Per 0.5" Thickness or Fraction Thereof)	\$ 70.00
20759	Prepare Subsize Specimens (Per 0.5" Thickness or Fraction Thereof)	\$ 135.00
20759	Prepare Subsize Specimens (Per 0.5" Thickness or Fraction Thereof)	\$ 85.00

Task Code	Charpy Impact	Rate
20621	Charpy Impact Ambient Temperature	\$ 90.00
20623	Charpy Impact Reduced Temperature	\$ 110.00

Task Code	Machining of Charpy Samples: Carbon Steel	Rate
20780	Cutting and Milling (Per 0.5" or Fraction Thereof)	\$ 80.00
20783	Final Machining to Sample Configuration	\$ 90.00

Task Code	Prestressing Wires and Tendons, (ASTM A416)	Rate
20701	Stress-Strain Analysis: Wire or Strands (Including Chart and Percent Offset)	\$ 180.00
20703	Tensile Test Only	\$ 135.00
20705	Tendons	

Task Code	Polymer Matrix Composite Materials (Fiberwrap)	Rate
20706	Tensile Strength - Set of 5 Specimens/batch/direction (ASTM D3039)	\$ 1,350.00
20707	Tensile Strength - Additional Specimens (ASTM D3039)	\$ 250.00
20708	Heating Chamber Time - Per 24 hr period	\$ 95.00

Task Code	Calibration Services and Universal Machine Usage	Rate
20801	Calibration/Verification Services	Quotation
20803	Universal Test Machine Usage (Per Hour)	\$ 350.00

Ceramic Tile Testing Division **Rate**

The Ceramic Tile Institute of America (CTIOA) and Twining worked together to advance and develop technology designed to enhance the quality of materials and workmanship in the ceramic tile industry. A separate schedule of fees for these services is available upon request.

Cyclic and Fatigue Testing Programs on Special Products/Parts	Quotation
Engineering and Technical supports/Design of Prototypes and Special Test Set-Up	Quotation
Fastener/Coupling Full Testing Program Per New Regulations: Tension, Tension/Bend, Shear, Double Shear, 8 Compressions	Quotation
Fiberglass/Composite Materials Field Testing Program (ASTM D1143 D1242, D2584, D4065, D4476, D4923, D7901, D7921, and D732)	Quotation
Field Testing of Structures and Structural Elements	Quotation
In-Place Shear Testing	Quotation
Materials and/or Product Evaluation Per Specifications	Quotation
Structural Dynamic Testing and Durability Analysis	Quotation



General Conditions

NOTE: Field inspection work conditions are established by contract with Operating Engineers, Local 12.

NOTE: A minimum of 24 hours notice is required for testing and inspection services.

NOTE: For projects subject to a Project Labor Agreement (PLA), if terms/conditions of the PLA are more restrictive those terms/conditions will apply.

NOTE: Rates will be adjusted annually each July 1st to reflect increased costs.

Administrative Fees

All administrative costs including report distribution and Twining ConstructionHive system are billed at the following percentage of the monthly invoice total: 4%

Note that hard copies of reports will be sent only to governing jurisdictions that mandate them. All other parties will receive reports electronically. The administrative fee above will receive reports electronically. The administrative fee above will be increased by 1% if additional hard copies of reports are requested.

Minimum Charges (Inspection and Technician Personnel Only - Other Personnel Charged on Portal to Portal Basis)

2-Hour Minimum: Inspector arrives at jobsite, no work to perform.

4-Hour Minimum: 1 to 4 hours of inspection

8-Hour Minimum: Over 4 to 8 hours of inspection

Regular Time

The first 8 hours worked Monday through Friday between 5:00 a.m. and 5:00 p.m.

Time and One-Half (All Types of Inspection)

All shifts will be billed based on the time and date of their start. Any increment past 8 hours through 12 hours worked Monday through Friday and the first 12 hours on Saturday.

Time and one-half will also be charged for the first four hours before 5:00 a.m. and after 5:00 p.m.

Double Time (All Types of Inspection)

All shifts will be billed based on the time and date of their start. After the first 12 hours worked Monday through Saturday, all day Sunday, holidays, and the first Saturday following the first Friday in June and December. After the first four hours worked before 5:00 a.m. and after 5:00 p.m. Holidays are New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving, the day after Thanksgiving and Christmas Day.

Meal Period

When personnel are required by their duties to work more than five consecutive hours without a one-half hour uninterrupted meal period, one half hour at double time rate will be charged in addition to any applicable overtime for actual hours worked.

Shift Differential (Applies to Regularly Scheduled Shifts Only)

A \$1.00 per hour shift differential premium will be charged for all inspection hours that fall outside of the 5:00 a.m. to 5:00 p.m. time period. Twining will require 48-hour notice along with the General Contractors approved shift letter prior to beginning a shift that will include hours falling outside this time period. Should this notice not be provided, all work performed on that shift will be billed at the applicable overtime or double time rate.

If three shifts per day are required, the first shift will be billed at the standard rate. The second shift shall be billed in accordance with the previous paragraph.

The third shift shall be billed at 8 hours for the first 6 1/2 hours worked and appropriate overtime or double time for all hours thereafter.

Travel Time and Mileage

For projects outside a 50-mile radius from the nearest Twining facility, \$0.70 per excess mile to and from the project will be charged for inspectors and technicians.

Other than small tools, whenever project related equipment is required to be transported to and from the project site, time and mileage for inspectors and field technicians will be billed on a portal to portal basis. For all projects, \$0.70 per mile rate and applicable travel time will be charged portal to portal for engineers, consultants, supervisors, and laboratory technicians from the laboratory to the project site and return.

For work locations located 100 miles or more from Twining, travel time will be charged at the relevant rate for inspectors and technicians in addition to a subsistence allowance.

Weekend Sample Pick-Ups

In order to be in strict conformance with testing standards, it may be required that weekend pick-ups be performed (e.g. concrete specimens cast on Friday must be picked up on weekend in order to be in conformance with ASTM C31 requiring specimens to be moved to their final curing location within 48 hours of casting.) Applicable charges for weekend work will apply when this is required. Should these charges not be authorized, Twining will not be liable for any negative consequences.

Reimbursable Expenses

Parking, air fare, car rental, food and lodging, etc. will be charged at cost plus 20% per processed invoice, unless provided by client.

Project Specific Documents

Costs presented assume that client will provide project specific documents (plans, specifications, submittals, RFIs, etc.) for all inspection personnel. Should project specific documents be provided electronically through a "for fee" service, the client will be responsible for providing access and paying any fees for the service.

Project Site Facilities

Prices quoted assume that initial curing facilities for test samples that comply with relevant test standards and project requirements are provided by others. In addition, prices quoted assume that work/desk space for inspection staff are provided by others. Additional costs will apply should Twining be required to provide such facilities.

Subsistence

Subsistence on remote jobs will be charged per quotation.

Laboratory Testing Hours

Please note that laboratory testing will be billed on an hourly basis for non-standard tests. If testing is required to be performed on Saturdays, Sundays, holidays, or before 5:30 a.m. or after 4:00 p.m. on weekdays, an additional hourly charge with a minimum of one hour will be applied for the laboratory technician. 1.5 x regular test rate will be charged for rush testing.

Charges for Subcontracted Services

Material sent to outside laboratory for testing:	Cost plus 20%
Material sent to outside fabricator or machine shop:	Cost plus 20%
Glu-Lam beam inspection:	Cost plus 20%
Other subcontractors:	Cost plus 20%
Project exclusive equipment purchase:	Cost plus 20%



General Conditions, continued

Limit of Liability

Client agrees to limit Twining's aggregate liability to all entities for alleged or actual errors and omissions in the performance of its professional services under this agreement to \$50,000.00 or the fees actually paid to Twining, whichever amount is greater. Higher limits may be available by quotation.

Certified Payroll

Certified payroll will be provided, upon request, at an additional charge of \$150.00/month. Fee applies to every month that certified payroll must be submitted regardless of whether or not services were provided for any given month.

Final Reports Required by Jurisdiction

If a final report or affidavit is required, we must first review all inspection and testing reports and clear up any unresolved issues on these reports. These issues will typically require approval by the engineer or architect of record. This process can take several weeks or just a day, depending on the number and complexity of the issues. Cost for final reports will be billed hourly.

Terms of Payment

Fees charged are for professional and technical services and are due upon presentation. If not paid within 30 days from date of invoice, they are considered past due and the maximum legal finance charge will be added to the unpaid balance.

A 3% fee will be applied for payments processed by credit card.

All invoice errors or necessary corrections shall be brought to the attention of Twining within 15 days of receipt of invoice. Thereafter, customer acknowledges invoices are correct and valid. Twining reserves the right to terminate its services to a customer without notice if all invoices are not current. Upon such termination of services, the entire amount accrued for all services performed shall immediately become due and payable. Customer waives any and all claims against Twining, its subsidiaries, affiliates, servants and agents for termination of work on account of these terms.

In the event of any litigation arising from or related to any agreement to provide services whether verbal or written, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorney's fees and all other related expenses in such litigation. Additionally, in the event of a non-adjudicative settlement of litigation between the parties or a resolution of dispute by arbitration, that same process shall determine the prevailing party.

Hold Specimens

All held specimens submitted by the client are charged at the same applicable test rate whether tested or not.

Specimen Disposal

Specimens will be discarded after testing unless Twining has been notified prior to testing that the customer wishes to retrieve the specimens or storage arrangements are made.

Oversize Specimens

An extra charge will be made when test specimens require more than one person to handle because of size or weight.

Elevated Work Platforms

In the event an elevated work platform is required to safely complete our inspections, the client must provide safe access, including a trained and certified operator, to Twining inspection and testing personnel.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

ON CALL GEOTECHNICAL, TESTING, AND INSPECTION SERVICES

THIS AGREEMENT is made and effective as of November 3, 2020, between the City of Montclair, a municipal corporation ("City") and Ninyo & Moore, Inc., a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on November 3, 2020, and shall remain and continue in effect for a period of 36 months until tasks described herein are completed, but in no event later than November 3, 2023, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform inspections, special inspections, and materials as requested by City. The performance of testing and inspection shall also include the preparation of all necessary maps, plans, reports, and documents as determined necessary by City. Consultant shall complete the tasks according to the schedule of performance established for each individual project.

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

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

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed \$30,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed fifteen percent (15%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Said invoices shall specify each project for which services were provided, and 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 calendar month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 6(c).

7. DEFAULT OF CONSULTANT

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

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

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

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

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

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

10. INSURANCE

(a) Consultant shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to City nor shall Consultant allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. Consultant shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-: VI:

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	1,000,000
Commercial general liability at least as broad as ISO CG 0001 (general aggregate)	2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	1,000,000
Professional Liability (per claim and aggregate)	1,000,000
Worker's compensation	Statutory

(b) All insurance required by this section shall apply on a primary basis. Consultant agrees that it will not cancel or reduce said insurance coverage. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(c) Auto liability insurance shall cover owned, nonowned and hired autos. If Consultant owns no vehicles, auto liability coverage may be provided by means of a nonowned and hired auto endorsement to the general liability policy.

(d) At all times during the term of this Agreement, Consultant shall maintain on file with City a certificate of insurance, in a form acceptable to City showing that the aforesaid policies are in effect in the required amounts. The general liability and automobile policies shall contain or be endorsed to contain a provision including the Indemnified Parties as additional insureds. Consultant shall promptly file with City such certificate or certificates and endorsements if applicable. Coverage for the additional insureds shall apply to the fullest extent permitted by law. Additional Insured Endorsements shall not:

- (1) Exclude "Contractual Liability"
- (2) Restrict coverage to the "Sole" liability of Consultant
- (3) Exclude "Third-Party-Over Actions"
- (4) Contain any other exclusion contrary to the Contract

(e) No policy required by this section shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the Indemnified Parties.

(f) All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

(g) In accordance with the provisions of California Labor Code, Section 3700, every employer shall secure the payment of compensation to his employees. Consultant shall, prior to commencing work, sign and file with City a certification as follows:

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

(h) General Insurance Requirements: All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured and all subcontractors waive the right of subrogation against City and City's elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by City; and (3) they cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City by certified mail. Consultant shall furnish City with copies of all such policies. Consultant may effect for its own account insurance not required under this Agreement.

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

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

16. NOTICES

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

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

To Consultant: Kurt Yoshii
Ninyo & Moore, Inc.
475 Goddard, Suite 200
Irvine, CA 92618

17. ASSIGNMENT

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. NOT USED

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY:

CITY OF MONTCLAIR, CALIFORNIA

CONSULTANT:

NINYO & MOORE, INC.

Javier "John" Dutrey
Mayor

Signature

ATTEST:

Name & Title

Andrea M. Phillips
City Clerk

Signature

Name & Title

APPROVED AS TO FORM:

Diane E. Robbins
City Attorney

Schedule of Fees

Hourly Charges for Personnel

Professional Staff

Principal Engineer/Geologist/Environmental Scientist/Certified Industrial Hygienist	\$ 195
Senior Engineer/Geologist/Environmental Scientist	\$ 190
Senior Project Engineer/Geologist/Environmental Scientist	\$ 185
Project Engineer/Geologist/Environmental Scientist	\$ 175
Senior Staff Engineer/Geologist/Environmental Scientist	\$ 150
Staff Engineer/Geologist/Environmental Scientist	\$ 145
GIS Analyst	\$ 125
Technical Illustrator/CAD Operator	\$ 103

Field Staff

Certified Asbestos/Lead Technician	\$ 185
Field Operations Manager	\$ 125
Nondestructive Examination Technician (UT, MT, LP)	\$ 119
Supervisory Technician	\$ 115
Special Inspector (Concrete, Masonry, Structural Steel, Welding, and Fireproofing)	\$ 109
Senior Technician	\$ 108
Technician	\$ 103

Administrative Staff

Information Specialist	\$ 85
Geotechnical/Environmental/Laboratory Assistant	\$ 80
Data Processor	\$ 75

Other Charges

Concrete Coring Equipment (includes technician)	\$ 190/hr
Anchor Load Test Equipment (includes technician)	\$ 190/hr
GPR Equipment	\$ 180/hr
Inclinometer	\$ 100/hr
Hand Auger Equipment	\$ 80/hr
Rebar Locator (Pachometer)	\$ 25/hr
Vapor Emission Kit	\$ 65/kit
Nuclear Density Gauge	\$ 12/hr
X-Ray Fluorescence	\$ 70/hr
PID/FID	\$ 25/hr
Air Sampling Pump	\$ 10/hr
Field Vehicle	\$ 15/hr
Expert Witness Testimony	\$ 450/hr
Direct Expenses	Cost plus 15 %
Special equipment charges will be provided upon request.	

Notes

For field and laboratory technicians and special inspectors, overtime rates at 1.5 times the regular rates will be charged for work performed in excess of 8 hours in one day Monday through Friday and all day on Saturday. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day, all day Sunday and on holidays.

Field technician and special inspection hours are charged at a 4-hour minimum, and 8-hour minimum for hours exceeding 4 hours.

Invoices are payable upon receipt. A service charge of 1.5 percent per month may be charged on accounts not paid within 30 days.

Our rates will be adjusted in conjunction with the increase in the Prevailing Wage Determination during the life of the project, as applicable.

The terms and conditions are included in Ninyo & Moore's Work Authorization and Agreement form.

Schedule of Fees for Laboratory Testing

SOILS

Atterberg Limits, D 4318, CT 204	\$ 170
California Bearing Ratio (CBR), D 1883	\$ 550
Chloride and Sulfate Content, CT 417 & CT 422	\$ 175
Consolidation, D 2435, CT 219	\$ 300
Consolidation, Hydro-Collapse only, D 2435	\$ 150
Consolidation – Time Rate, D 2435, CT 219	\$ 200
Direct Shear – Remolded, D 3080	\$ 350
Direct Shear – Undisturbed, D 3080	\$ 300
Durability Index, CT 229	\$ 175
Expansion Index, D 4829, IBC 18-3	\$ 190
Expansion Potential (Method A), D 4546	\$ 170
Geofabric Tensile and Elongation Test, D 4632	\$ 200
Hydraulic Conductivity, D 5084	\$ 350
Hydrometer Analysis, D 422, CT 203	\$ 220
Moisture, Ash, & Organic Matter of Peat/Organic Soils	\$ 120
Moisture Only, D 2216, CT 226	\$ 35
Moisture and Density, D 2937	\$ 45
Permeability, CH, D 2434, CT 220	\$ 300
pH and Resistivity, CT 643	\$ 175
Proctor Density D1557, D 698, CT 216, AASHTO T-180	\$ 220
Proctor Density with Rock Correction D 1557	\$ 340
R-value, D 2844, CT 301	\$ 375
Sand Equivalent, D 2419, CT 217	\$ 125
Sieve Analysis, D 422, CT 202	\$ 145
Sieve Analysis, 200 Wash, D 1140, CT 202	\$ 100
Specific Gravity, D 854	\$ 125
Thermal Resistivity (ASTM 5334, IEEE 442)	\$ 925
Triaxial Shear, C.D., D 4767, T 297	\$ 550
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt	\$ 450
Triaxial Shear, C.U., w/o pore pressure, D 4767, T 2297 per pt	\$ 350
Triaxial Shear, U.U., D 2850	\$ 250
Unconfined Compression, D 2166, T 208	\$ 180

MASONRY

Brick Absorption, 24-hour submersion, 5-hr boiling, 7-day, C 67	\$ 70
Brick Compression Test, C 67	\$ 55
Brick Efflorescence, C 67	\$ 55
Brick Modulus of Rupture, C 67	\$ 50
Brick Moisture as received, C 67	\$ 45
Brick Saturation Coefficient, C 67	\$ 60
Concrete Block Compression Test, 8x8x16, C 140	\$ 70
Concrete Block Conformance Package, C 90	\$ 500
Concrete Block Linear Shrinkage, C 426	\$ 200
Concrete Block Unit Weight and Absorption, C 140	\$ 70
Cores, Compression or Shear Bond, CA Code	\$ 70
Masonry Grout, 3x3x6 prism compression, C 39	\$ 45
Masonry Mortar, 2x4 cylinder compression, C 109	\$ 35
Masonry Prism, half size, compression, C 1019	\$ 120
Masonry Prism, Full size, compression, C 1019	\$ 200

REINFORCING AND STRUCTURAL STEEL

Chemical Analysis, A 36, A 615	\$ 135
Fireproofing Density Test, UBC 7-6	\$ 90
Hardness Test, Rockwell, A 370	\$ 80
High Strength Bolt, Nut & Washer Conformance, per assembly, A 325	\$ 150
Mechanically Spliced Reinforcing Tensile Test, ACI	\$ 175
Pre-Stress Strand (7 wire), A 416	\$ 170
Reinforcing Tensile or Bend up to No. 11, A 615 & A 706	\$ 75
Structural Steel Tensile Test: Up to 200,000 lbs., A 370	\$ 90
Welded Reinforcing Tensile Test: Up to No. 11 bars, ACI	\$ 80

CONCRETE

Compression Tests, 6x12 Cylinder, C 39	\$ 35
Concrete Mix Design Review, Job Spec	\$ 300
Concrete Mix Design, per Trial Batch, 6 cylinder, ACI	\$ 850
Concrete Cores, Compression (excludes sampling), C 42	\$ 120
Drying Shrinkage, C 157	\$ 400
Flexural Test, C 78	\$ 85
Flexural Test, C 293	\$ 85
Flexural Test, CT 523	\$ 95
Gunite/Shotcrete, Panels, 3 cut cores per panel and test, ACI	\$ 275
Lightweight Concrete Fill, Compression, C 495	\$ 80
Petrographic Analysis, C 856	\$ 2,000
Restrained Expansion of Shrinkage Compensation	\$ 450
Splitting Tensile Strength, C 496	\$ 100
3x6 Grout, (CLSM), C 39	\$ 55
2x2x2 Non-Shrink Grout, C 109	\$ 55

ASPHALT

Air Voids, T 269	\$ 85
Asphalt Mix Design, Caltrans (incl. Aggregate Quality)	\$ 4,500
Asphalt Mix Design Review, Job Spec	\$ 180
Dust Proportioning, CT LP-4	\$ 85
Extraction, % Asphalt, including Gradation, D 2172, CT 382	\$ 250
Extraction, % Asphalt without Gradation, D 2172, CT 382	\$ 150
Film Stripping, CT 302	\$ 120
Hveem Stability and Unit Weight D 1560, T 246, CT 366	\$ 225
Marshall Stability, Flow and Unit Weight, T 245	\$ 240
Maximum Theoretical Unit Weight, D 2041, CT 309	\$ 150
Moisture Content, CT 370	\$ 95
Moisture Susceptibility and Tensile Stress Ratio, T 238, CT 371	\$ 1,000
Slurry Wet Track Abrasion, D 3910	\$ 150
Superpave, Asphalt Mix Verification (incl. Aggregate Quality)	\$ 4,900
Superpave, Gyration Unit Wt., T 312	\$ 100
Superpave, Hamburg Wheel, 20,000 passes, T 324	\$ 1,000
Unit Weight sample or core, D 2726, CT 308	\$ 100
Voids in Mineral Aggregate, (VMA) CT LP-2	\$ 90
Voids filled with Asphalt, (VFA) CT LP-3	\$ 90
Wax Density, D 1188	\$ 140

AGGREGATES

Clay Lumps and Friable Particles, C 142	\$ 180
Cleaness Value, CT 227	\$ 180
Crushed Particles, CT 205	\$ 175
Durability, Coarse or Fine, CT 229	\$ 205
Fine Aggregate Angularity, ASTM C 1252, T 304, CT 234	\$ 180
Flat and Elongated Particle, D 4791	\$ 220
Lightweight Particles, C 123	\$ 180
Los Angeles Abrasion, C 131 or C 535	\$ 200
Material Finer than No. 200 Sieve by Washing, C 117	\$ 90
Organic Impurities, C 40	\$ 90
Potential Alkali Reactivity, Mortar Bar Method, Coarse, C 1260	\$ 1,250
Potential Alkali Reactivity, Mortar Bar Method, Fine, C 1260	\$ 950
Potential Reactivity of Aggregate (Chemical Method), C 289	\$ 475
Sand Equivalent, T 176, CT 217	\$ 125
Sieve Analysis, Coarse Aggregate, T 27, C 136	\$ 120
Sieve Analysis, Fine Aggregate (including wash), T 27, C 136	\$ 145
Sodium Sulfate Soundness, C 88	\$ 450
Specific Gravity and Absorption, Coarse, C 127, CT 206	\$ 115
Specific Gravity and Absorption, Fine, C 128, CT 207	\$ 175

ROOFING

Roofing Tile Absorption, (set of 5), C 67	\$ 250
Roofing Tile Strength Test, (set of 5), C 67	\$ 250

Special preparation of standard test specimens will be charged at the technician's hourly rate.
Ninyo & Moore is accredited to perform the AASHTO equivalent of many ASTM test procedures.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	STA666B
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	4	PREPARER:	N. CASTILLO
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-89 WITH SAN BERNARDINO COUNTY FOR THE ADA AVENUE AND HOWARD STREET REHABILITATION PROJECT		

REASON FOR CONSIDERATION: The City and San Bernardino County have agreed to enter into a cooperative agreement for joint participation in a pavement rehabilitation project on Ada Avenue and Howard Street. Agreements with the City require City Council approval.

A copy of proposed Agreement No. 20-89 with San Bernardino County is attached for the City Council's review and consideration.

BACKGROUND: The Ada Avenue and Howard Street Rehabilitation Project is a joint project between the City of Montclair and the County of San Bernardino. Cooperative agreements allow the City to get the added value in the economy of scales of larger projects. The project cost is estimated to be \$5,805,000. 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 they would be if the portion of work within the city limits were bid as a stand-alone project. The rehabilitation project will repair damaged street pavement. The project will grind and mill the existing pavement and replace with an overlay of 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. The City's share of the project cost is currently estimated to be \$235,000.

FISCAL IMPACT: The project will be funded with Senate Bill 1 Road Maintenance and Rehabilitation Account funds.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 20-89 with San Bernardino County for the Ada Avenue and Howard Street Rehabilitation Project.

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

**Contract Number**

SAP Number

Public Works

Department Contract Representative	Sundaramoorthy (Sri) Srirajan, P.E., Engineering Manager - Transportation Planning Division
Telephone Number	(909) 387-8166
Project	Montclair/Chino Area ADA Ramps and Overlay Project
Contractor	City of Montclair
Contractor Representative	Noel Castillo, P.E., Director of Public Works
Telephone Number	(909) 625-9444
Contract Term	10/27/2020 – 12/31/2025
Original Contract Amount	\$235,000
Amendment Amount	
Total Contract Amount	\$235,000
Cost Center	6650002000 20H15061/34H15066

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 an pavement rehabilitation and an Americans with Disabilities Act (ADA) curb ramp and other related improvements in the Montclair and Chino areas, see Exhibit "A" for list of proposed roads and ramps (which is attached hereto and incorporated herein by this reference and hereinafter referred to as PROJECT); and

WHEREAS, pavement rehabilitation on certain roads may require that the existing sewer manholes be adjusted to the new level of the pavement during construction;

WHEREAS, CITY will pay 100% of the actual cost for adjusting the manholes; 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 \$5,805,000; and

WHEREAS, COUNTY's share of PROJECT cost is estimated to be \$5,570,000 and the CITY's share of PROJECT cost is estimated to be \$235,000, as more particularly set forth in Exhibit "B", which is attached hereto and incorporated herein by this reference; 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, California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 et seq.), construction, construction engineering, and inspection of the PROJECT.
- 1.2 At its own cost, design and perform all right-of-way acquisition related work 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, CEQA compliance, construction, construction engineering, inspection and COUNTY overhead costs. COUNTY's share of PROJECT costs is estimated to be \$5,570,000 and shall not exceed \$6,962,500 (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 2.4, an invoice for the remainder of the CITY's share of the actual PROJECT costs, up to the amount set forth in Section 2.5 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 2.4, 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 At its own cost and not included in this PROJECT cost, perform all right-of-way acquisition related work inside the CITY's 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).
- 2.3 Provide a no-cost permit to the COUNTY for its work in the CITY's right-of-way.
- 2.4 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.
- 2.5 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, CEQA compliance, construction, construction engineering, inspection and COUNTY overhead costs. CITY shall pay all costs incurred by COUNTY associated with the adjustments to the CITY's manholes, regardless of the estimated cost or estimated number of manholes identified, even if they are higher than the estimated cost. CITY's share of PROJECT costs is currently estimated to be \$235,000 and shall not exceed \$293,750 (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 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 \$5,805,000 (which is the sum of \$5,570,000 from COUNTY and \$235,000 from CITY) 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 2.5, 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 agency 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 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 delivered by fax or email 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 occurred 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, 2025 (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.)

By ► _____
(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

FOR COUNTY USE ONLY

<p>Approved as to Legal Form</p> <p>► _____ Suzanne Bryant, County Counsel</p> <p>Date _____</p>	<p>Reviewed for Contract Compliance</p> <p>► _____ Andy Silao, P.E.</p> <p>Date _____</p>	<p>Reviewed/Approved by Department</p> <p>► _____ Brendon Biggs, Assistant Director</p> <p>Date _____</p>
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EXHIBIT A

**ROAD AND ADA CURB RAMP LIST FOR COUNTY/CITY PAVEMENT
REHABILITATION IN THE MONTCLAIR AREA**

Road Name	Road Limits	County Length	City Length	Total Length	Scope of work
Shared Roads					
ADA AVENUE	MISSION BLVD N/STATE ST	0.13	0.14	0.27	Mill and Overlay
HOWARD STREET	.25M E, RAMONA AVE E/MONTE VISTA AVE	0.12	0.13	0.25	Mill and Overlay
NINTH AVENUE	PIPE LINE AVE E/0003M E, COLLEGE AVE	0.05	0.05	0.10	Mill and Overlay
County Only Roads					
YORBA AVENUE	PHILADELPHIA AVE N/.12M S, FRANCIS AV	0.30	0.00	0.30	Slurry II
KADOTA AVENUE	LOMBARDY AVE N/END	0.04	0.00	0.04	Slurry II
APPLEGATE STREET	GALA LN E/VERNON AVE	0.09	0.00	0.09	Slurry II
AVALON COURT	HUMBOLT AVE E .04M	0.04	0.00	0.04	Slurry II
BEL AIR AVENUE	HOWARD AVE N .13M	0.13	0.00	0.13	Slurry II
BENSON AVENUE	.18M N, HOWARD ST N/STATE ST	0.17	0.00	0.17	Mill and Overlay
BISCAYNE STREET	MELROSE AVE E/PIPE LINE AVE	0.10	0.00	0.10	Slurry II
BOLTON AVENUE	GREENWOOD N/CLAIR	0.15	0.00	0.15	Slurry II
BOYER STREET	ROSWELL AVE E/PIPE LINE AVE	0.26	0.00	0.26	Slurry II
CANNERY ROW	PHILLIPS BLVD N .07M	0.07	0.00	0.07	Slurry II
CARLTON STREET	.03M W, GALA LN E/VERNON AVE	0.13	0.00	0.13	Slurry II
CARLTON STREET	VERNON AVE E .06M	0.06	0.00	0.06	Slurry II
CHAPARRAL DRIVE	FARNDON AVE E .05M	0.05	0.00	0.05	Slurry II
CHICO AVENUE	GRAND AVE N/9TH AVE	0.24	0.00	0.24	Slurry II
CHRISTINA ROAD	ROSWELL AVE E .13M	0.13	0.00	0.13	Slurry II
CLAIR STREET	BOLTON E/GREENWOOD	0.15	0.00	0.15	Slurry II
CLAIR STREET	COLUMBINE ST E/VERNON AVE	0.10	0.00	0.10	Slurry II
COLLEGE AVENUE	MAPLE AVE N .03M	0.03	0.00	0.03	Slurry II
COLLEGE AVENUE	GRAND N .13M	0.13	0.00	0.13	Slurry II
COLUMBINE STREET	.03M S, CLAIR ST N/CLAIR ST	0.03	0.00	0.03	Slurry II
COMPTON COURT	.08M W, SILICON AVE E/SILICON AVE	0.08	0.00	0.08	Slurry II
COMPTON STREET	ROSWELL AVE E/DEL MAR AVE	0.19	0.00	0.19	Slurry II

COVECREST COURT	PIPE LINE AVE E .08M	0.08	0.00	0.08	Slurry II
COZZENS AVENUE	.12M S,PAMELA DR N/RIVERSIDE DR	0.37	0.00	0.37	Slurry II
DEL MAR AVENUE	PIPE LINE AVE W&N/.07M N,COMPTON ST	0.15	0.00	0.15	Slurry II
DEL MAR AVENUE	BOYER ST N .07M	0.07	0.00	0.07	Slurry II
DORSET AVENUE	MONTE VERDE AVE N .06M	0.06	0.00	0.06	Slurry II
DORSET AVENUE	GRAND N .13M	0.13	0.00	0.13	Slurry II
ESSEX AVENUE	GRAND AVE N .13M	0.13	0.00	0.13	Slurry II
ESTRELLA DRIVE	ROSWELL AVE E/.06M E,FARNDON AVE	0.14	0.00	0.14	Slurry II
ETON COURT	GRAND AVE N .03M	0.03	0.00	0.03	Slurry II
FAIRCOVE COURT	PIPE LINE AVE E .08M	0.08	0.00	0.08	Slurry II
FARNDON AVENUE	ESTRELLA DR NW/ROSWELL AVE	0.22	0.00	0.22	Slurry II
FARNDON AVENUE	WAKEFIELD AVE N/PHILADELPHIA AVE	0.22	0.00	0.22	Slurry II
FARNDON AVENUE	COMPTON ST N .08M	0.08	0.00	0.08	Slurry II
FARNDON AVENUE	.08M N,COMPTON ST N/.04M N,LEXINGTON	0.12	0.00	0.12	Slurry II
FARNDON AVENUE	BOYER ST N .07M	0.07	0.00	0.07	Slurry II
GALA LANE	APPLEGATE ST N/CARLTON ST	0.07	0.00	0.07	Slurry II
GREENWOOD WAY	PHILLIPS BLVD NLY/HOWARD ST	0.48	0.00	0.48	Slurry II
GROVE STREET	ADA AVE E/CENTRAL AVE	0.06	0.00	0.06	Slurry II
HILLCREST DRIVE	.14MS,RIVERSIDE DR N/.01MS,RIVERSIDE	0.13	0.00	0.13	Slurry II
HOWARD STREET	CENTRAL AVE E/ BENSON AVE	0.50	0.00	0.50	Mill and Overlay
HUMBOLDT AVENUE	PHILADELPHIA AVE N .12M	0.12	0.00	0.12	Slurry II
JENNY LANE	EAST END AVE E .10M	0.10	0.00	0.10	Slurry II
KADOTA AVENUE	0003M S, LOCUST ST N0006M	0.06	0.00	0.06	Slurry II
KADOTA AVENUE	GRAND AVE N/MISSION BLVD	0.51	0.00	0.51	Slurry II
KIMBERLY AVENUE	PHILLIPS BLVD N/0004M N,MONTE VERDE	0.09	0.00	0.09	Slurry II
LA BRIDA AVENUE	END N/LA REATA DR	0.10	0.00	0.10	Slurry II
LA REATA DRIVE	MC KINLEY AVE E/0006M E,LA BRIDA AVE	0.14	0.00	0.14	Slurry II
LA REATA DRIVE	FARNDON AVE E 0005M	0.05	0.00	0.05	Slurry II
LEXINGTON STREET	ROSWELL AVE E/FARNDON AVE	0.09	0.00	0.09	Slurry II
LEXINGTON STREET	SILICON AVE E/CHI CITY LIMITS	0.04	0.00	0.04	Slurry II
LOCUST STREET	END E/ROSWELL AVE	0.11	0.00	0.11	Slurry II
LOCUST STREET	KADOTA AVE E/PIPE LINE AVE	0.12	0.00	0.12	Slurry II

LOMBARDY AVENUE	FARNDON AVE E/KADOTA AVE	0.06	0.00	0.06	Slurry II
MAITLAND STREET	CENTRAL AVE E 0012M	0.12	0.00	0.12	Slurry II
MAPLE STREET	END E/PIPE LINE AVE	0.05	0.00	0.05	Slurry II
MAPLE STREET	PIPE LINE AVE E/NORTON AVE	0.25	0.00	0.25	Slurry II
MAXON PLACE	ROSWELL LOOP N/ROSWELL	0.23	0.00	0.23	Slurry II
MELROSE AVENUE	END N/BISCAYNE ST	0.03	0.00	0.03	Slurry II
MIRA MESA AVENUE	.11M W,PIPE LINE AVE E/PIPE LINE AVE	0.11	0.00	0.11	Slurry II
MONTE VERDE AVENUE	WESLEY AVE E/DORSET AVE	0.06	0.00	0.06	Slurry II
MONTE VERDE AVENUE	NORTON AVE E/KIMBERLY AVE	0.16	0.00	0.16	Slurry II
MONTE VISTA AVENUE	FRANCIS AVE N/PHILLIPS BLVD	0.42	0.00	0.42	Mill and Overlay
MUSTANG ROAD	PIPE LINE AVE E/SILICON AVE	0.08	0.00	0.08	Slurry II
MUSTANG ROAD	RAMONA AVE E/END	0.13	0.00	0.13	Slurry II
NINTH AVENUE	0004M W,CHICO AVE(LA COL)E/PIPE LINE	0.36	0.00	0.36	Slurry II
NORTON AVENUE	PHILLIPS BLVD N/GRAND	0.15	0.00	0.15	Slurry II
OLIVE STREET	FARNDON E&S/WAKEFIELD	0.18	0.00	0.18	Slurry II
PAMELA DRIVE	0004M W,COZZENS E/0012M E,ROSWELL	0.24	0.00	0.24	Slurry II
PHILLIPS COURT	.18M W,PHILLIPS BLVD E/PHILLIPS BLVD	0.18	0.00	0.18	Slurry II
PILGRIMS WAY	END E/ROSWELL AVE	0.13	0.00	0.13	Slurry II
PLACENTIA ROAD	EAST END AVE E/END	0.13	0.00	0.13	Slurry II
RAMONA PLACE	CARRIAGE AVE E/GREENWOOD WAY	0.06	0.00	0.06	Slurry II
RAMONA PLACE	GREENWOOD WAY E 0004M	0.04	0.00	0.04	Slurry II
RAMONA PLACE	END E&N/GRAND	0.14	0.00	0.14	Slurry II
ROSWELL COURT	ROSWELL AVE E/END	0.08	0.00	0.08	Slurry II
SAN FELIPE AVENUE	END N/PHILLIPS BLVD	0.14	0.00	0.14	Slurry II
SAN FELIPE AVENUE	MONTE VERDE N/GRAND	0.09	0.00	0.09	Slurry II
SAN PASQUAL AVENUE	MONTE VERDE N/GRAND	0.08	0.00	0.08	Slurry II
SERENITY TRAIL	CHINO AVE NLY/HILLVIEW DR	0.41	0.00	0.41	Slurry II
SILICON AVENUE	PHILADELPHIA AVE N/MUSTANG RD	0.25	0.00	0.25	Slurry II
SILICON AVENUE	MUSTANG RD N/LEXINGTON ST	0.09	0.00	0.09	Slurry II
SURREY AVENUE	GREENWOOD WAY N/CLAIR ST	0.14	0.00	0.14	Slurry II
TAFT AVENUE	EAST END AVE E/END	0.13	0.00	0.13	Slurry II
TELEPHONE AVENUE	FRANCIS AVE N/PHILLIP BLVD	0.47	0.00	0.47	Slurry II
TUDOR AVENUE	GREENWOOD N/CLAIR	0.14	0.00	0.14	Slurry II

VERNON AVENUE	PHILLIPS N/STATE	0.82	0.00	0.82	Mill and Overlay
WAKEFIELD AVENUE	ROSWELL AVE E/PIPE LINE	0.25	0.00	0.25	Slurry II
WESLEY AVENUE	PHILLIPS BLVD N/0013M N,GRAND AVE	0.29	0.00	0.29	Slurry II
WHITTIER COURT	HUMBOLT AVE E .04M	0.04	0.00	0.04	Slurry II
YORBA AVENUE	FRANCIS AVE N/PHILLIPS BLVD	0.43	0.00	0.43	Slurry II
CENTRAL PLACE	CENTRAL AVE NLY/STATE ST	0.16	0.00	0.16	Overlay
MC KINLEY AVENUE	CHINO AVE N/RIVERSIDE	0.53	0.00	0.53	Overlay
MC KINLEY AVENUE	RIVERSIDE DR N/0020M	0.20	0.00	0.20	Overlay
	Total	15.74	0.32	16.06	

ADA CURB RAMP LIST

Ramp Location	Cross Street	Corner
ADA AVENUE	STATE STREET	SW
CLIFFWOOD DRIVE	ADA AVENUE	NW
CLIFFWOOD DRIVE	ADA AVENUE	SW
COLLEGE AVENUE	HOWARD STREET	SE
COLLEGE AVENUE	HOWARD STREET	SW
STAGECOACH AVENUE	HOWARD STREET	NE
STAGECOACH AVENUE	HOWARD STREET	NW

EXHIBIT B

DESCRIPTION	AMOUNT	COUNTY OF SAN BERNARDINO SHARE	CITY OF MONTCLAIR SHARE
Construction (including contingencies)	\$4,845,000	\$4,655,000	\$190,000
All Other Costs such as design, survey, CEQA compliance, construction, construction engineering, inspection and County overhead	\$960,000	\$915,000	\$45,000
TOTAL	\$5,805,000	\$5,570,000	\$235,000



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 2, 2020	FILE I.D.:	STA817
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	5	PREPARER:	N. CASTILLO
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-90 WITH SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY FOR THE WEST VALLEY CONNECTOR PROJECT		

REASON FOR CONSIDERATION: The City and San Bernardino County Transportation Authority (SBCTA) desire to enter into an agreement for joint participation in the West Valley Connector Project. The proposed agreement identifies the specific roles and responsibilities for both parties to ensure the Project is completed in a timely and cost-effective manner. In general, SBCTA will take the lead and be responsible for managing the project including seeking funding, final design, right-of-way acquisition and construction. The City of Montclair will continue to provide input into the project design, and will provide, at no cost to SBCTA, plan check services and permit issuance related to the project.

A copy of proposed Agreement No. 20-90 with SBCTA is attached for the City Council's review and consideration.

BACKGROUND: In October 2010, Omnitrans developed a system of ten planned bus rapid transit (BRT) corridors, identified as the sbX System Corridors, detailed in their System-wide Transit Corridor Plan for the San Bernardino Valley. The Green Line (E Street Corridor) in San Bernardino and Loma Linda was the first of the ten corridors implemented in 2014. The West Valley Connector Project (WVC) is the second out of ten planned bus rapid transit (BRT) corridors identified by Omnitrans in their 2010 System-Wide Transit Corridor Plan for the San Bernardino Valley. WVC is a 35-mile-long BRT project that travels from Pomona to Fontana through the cities of Montclair, Ontario, and Rancho Cucamonga. It will decrease travel times and improve the existing public transit system within the West Valley of San Bernardino County. The Project is proposed to be constructed in two phases:

Phase I: Pomona Regional Transit Center to Victoria Gardens in Rancho Cucamonga via Milliken Avenue.

Phase II: Ontario International Airport to Kaiser Permanente Medical Center in Fontana via Haven Avenue and Foothill Boulevard.

The phasing approach was approved by the SBCTA Board on May 3, 2017 to be included in the environmental document. Phase I is scheduled to start operation in early 2024. Construction of Phase II/Haven Alignment is scheduled to occur after completion of Phase I, when funding is available.

The joint environmental Impact Report and Environmental Assessment (EIR/EA) were approved by SBCTA and the Federal Transit Administration (FTA) in May of 2020. These environmental documents analyzed the impacts of two build alternatives including:

Alternative A: Rapid line with no dedicated bus-only lanes, would include the full 35-mile-long BRT corridor (Phase I and II) with 60 side-running station platforms at 33 stations locations/major intersections; and

Alternative B: Full BRT similar to Alternative A, with the exception that a 3.5-mile-long dedicated bus-only lane would be constructed between Benson Avenue and Vine Avenue and between Euclid Avenue and Vineyard Avenue in Ontario and include 5 center-running station platforms and 50 side-running stations platforms at 33 stations locations/major intersections.

In the City of Montclair, side running stations would be constructed along Holt Boulevard at Ramona Avenue and Central Avenue. A new operation and maintenance (O&M) facility for light maintenance activities would be constructed at 1333 S. Bon View Avenue in the City of Ontario, as currently proposed. With the environmental clearances complete, WVC can begin final design, right-of-way acquisitions, and advanced utility relocation.

The West Valley Connector BRT is a premium transit service and one of its features is the enhanced bus service along Holt and Foothill Boulevards, Omnitrans's most highly utilized routes. The BRT would generally operate from 6:00 a.m. to 8:00 p.m. with peak headways for 4 hours and off-peak headways for 10 hours per day for a total span of service of 14 hours per day, Monday through Friday. Service frequency is 10-minute peak headways and 15- minute off-peak headways.

FISCAL IMPACT: There would be no fiscal impact to the City's General Fund as a result of the City Council's approval of Agreement No. 20-90. The project is funded through the Los Angeles County Metropolitan Transportation, Omnitrans, SBCTA, State, and Federal sources.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 20-90 with San Bernardino County Transportation Authority for the West Valley Connector Project.

COOPERATIVE AGREEMENT NO. 20-1002421

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF MONTCLAIR

FOR

THE DESIGN, RIGHT-OF-WAY AND CONSTRUCTION PHASES FOR THE WEST VALLEY CONNECTOR BUS RAPID TRANSIT IMPROVEMENT PROJECT-PHASE 1 IN THE CITY OF MONTCLAIR

THIS COOPERATIVE AGREEMENT (“Agreement”) is made and entered into by and between the San Bernardino County Transportation Authority (“SBCTA”) and the City of Montclair (“CITY”). SBCTA and CITY may be referred to herein as a “Party” and collectively as “Parties”.

WHEREAS, SBCTA proposes Phase I construction of the West Valley Connector Project (“PROJECT”), a bus rapid transit (“BRT”) project that would decrease travel times and improve the existing public transit system within the corridor; and

WHEREAS, the Phase I improvements consist of a 19 mile-long Milliken alignment, from the eastern boundary limit in Pomona to Victoria Gardens in Rancho Cucamonga. Within the planned PROJECT limit, approximately 3.5 miles dedicated BRT lanes will be implemented along Holt Blvd. in the City of Ontario. In addition, Transit Signal Priority (TSP) and other transportation systems management improvements would also be included; and

WHEREAS, The Project area within the City of Montclair is located along Holt Boulevard; and

WHEREAS, the Project includes bus station locations along Holt Boulevard at Ramona Avenue and Central Avenue; and

WHEREAS, the Parties wish to enter into this Agreement to delineate roles and responsibilities; and

WHEREAS, SBCTA will continue as the lead agency for Environmental, Design, Right-of-Way (ROW), and Construction of the PROJECT; and

WHEREAS, SBCTA certified the environmental impact report under the California Environmental Quality Act and obtained Environmental Clearance from the Federal Transit Administration (FTA) and will be obtaining revalidation of the Environmental Clearance, if required, during final design; and

WHEREAS, SBCTA is responsible for obtaining Environmental Certification and providing the required permits and final Plans, Specifications and Estimate (PS&E); and

WHEREAS, Final Design, ROW and Construction will start after SBCTA's receipt of Environmental approval by FTA; and

WHEREAS, Local, State and/or Federal funds are anticipated to be used to fund the PROJECT; and

WHEREAS, SBCTA had previously procured the services of Parsons Transportation Group (CONSULTANT) for Preliminary Engineering, Environmental Clearances and Technical Reports, Final Design, Construction Bidding and Award Support and Design Support during Construction for the PROJECT.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises herein, the Parties agree as follows:

I. SBCTA RESPONSIBILITIES

SBCTA agrees:

- A. To be the sponsor and funding agency managing and administering the PROJECT.
- B. To design, perform ROW acquisition services, advertise, award, and administer the construction for the PROJECT, adhering to the CITY standards and requirements for work within the jurisdictional boundaries of the CITY, at no cost to the CITY.
- C. SBCTA and its consultants shall apply for, and CITY shall issue at no cost to SBCTA or its consultants, encroachment permits authorizing entry of SBCTA and its consultants onto CITY right of way to perform investigative activities, including surveying and geotechnical borings, required by the PROJECT.
- D. To coordinate with CITY on a proposed TSP system during the design, construction/installation, testing and start-up of the TSP system. SBCTA shall be responsible for the relocation of existing CITY traffic control equipment that must be relocated as a result of the PROJECT and all costs associated therewith. If additional equipment is needed to implement TSP system on existing CITY traffic signals, SBCTA shall purchase and install all TSP equipment necessary to develop a TSP system. SBCTA will coordinate with CITY to design and implement a TSP system compatible with the CITY's existing equipment and traffic operations to the satisfaction of the CITY. SBCTA shall be responsible for the installation and testing of the TSP system during the Construction Phase, which includes testing, start-up, and commissioning. CITY shall provide SBCTA and its contractor access to the traffic signal equipment via a separate encroachment permit during the Construction Phase for the purpose of TSP implementation. SBCTA will ensure that contractor meets all requirements of the encroachment permit. Maintenance and reporting will be detailed in a separate Operations and Maintenance (O&M) agreement between Omnitrans and CITY, which must be executed prior

to installation of TSP. The CITY will cooperate with the mutual goal of executing the maintenance agreement prior to award of the contract for construction of the project. CITY will not implement TSP until substantial completion and final acceptance by the CITY.

- E. To prepare a Transportation Management Plan (TMP) and submit to CITY for review and acceptance, in regards to construction-related impacts to CITY. The TMP will address construction-related impacts to existing CITY street traffic, and will include normal traffic handling requirements during PROJECT construction, including staging, driveway closures, lane closures, re-striping, detours, and signalization, and will specify requirements for communicating with the public and local agencies during construction.
- F. To coordinate development and construction of the PROJECT with CITY and hold regular technical, traffic management, public relations, and various other project meetings to brief CITY on the status of the PROJECT; to solicit input from CITY staff and to provide a forum to resolve PROJECT and local agency issues.
- G. In coordination with CITY's public outreach staff, to implement a Public Awareness Campaign (PAC) during design and construction of the PROJECT, that advises CITY, local CITY businesses, residents, elected officials, motorists, and media of construction status, and lane closures, if applicable.
- H. To identify all necessary ROW acquisition and provide the CITY a list of properties that are required for the PROJECT prior to sending offers to property owners.
- I. To implement a Quality Management Plan in all phases of the PROJECT.

II. CITY RESPONSIBILITIES

CITY agrees:

- A. To collaborate and cooperate with SBCTA staff, consultants, employees, agents, and contractors during design and construction of PROJECT, including CITY staff participation in the PROJECT's partnering program.
- B. To designate a responsible staff member that will be CITY's representative in attending the PROJECT meetings and receiving day-to-day communications for coordination with various CITY Departments and PROJECT team.
- C. To make available to SBCTA all necessary CITY regulations, policies, procedures, manuals, standard plans and specifications and other standards required for the design and construction of the PROJECT.
- D. To agree on the specific engineering standards to be used/referenced as required for design and construction of the PROJECT (Greenbook, Caltrans, CITY Standards, etc.) during the early design phase.

- E. To agree on version or year of publication for standards and manuals to be used during design of the PROJECT. CITY shall agree that no design changes shall be made after completion of 65% Design Submittal, even revisions of referenced standards and manuals that may be issued during the course of the PROJECT, unless such update relates to safety and any other advancements or improvements mandated by federal, state or local government outside of CITY's control.
- F. To contribute in-kind services to the PROJECT provided at CITY's own costs, including but not limited to, all plan reviews, processing construction permits, and construction inspections.
- G. To provide project management support, including but not limited to, plan and specifications review and approval, which includes aesthetics review, public and business outreach and construction inspection. Construction inspection includes the inspection deemed necessary by the CITY and is above and beyond the inspection services provided by SBCTA.
- H. To issue no-fee permits to SBCTA or its consultants, including construction, encroachment and other necessary permits necessary to complete the PROJECT.
- I. To issue no-fee temporary construction easements for CITY-owned parcels.
- J. To complete review and provide comments on PROJECT submittals to SBCTA within 30 calendar days after the submittal is received by the CITY and as to not cause delay to the PROJECT schedule. If comments are not provided by the 30th calendar day, SBCTA will deem the submittals approved by CITY and shall notify CITY of its intention to move forward with PROJECT execution. The CITY agrees the submittals may be in the form of plans, specifications, estimates, reports, studies, environmental documents or other PROJECT-related submittals requiring CITY review and comment.
- K. To coordinate with SBCTA on a proposed TSP system during the design, construction/installation, testing and start-up of the TSP system. SBCTA shall be responsible for the relocation of existing CITY traffic control equipment that must be relocated as a result of the PROJECT and all costs associated therewith. If additional equipment is needed to implement TSP system on existing CITY traffic signals, SBCTA shall purchase and install all TSP equipment necessary to develop a TSP system. SBCTA will coordinate with CITY to design and implement a TSP system compatible with the CITY's existing equipment and traffic operations to the satisfaction of the CITY. SBCTA shall be responsible for the installation and testing of the TSP system during the Construction Phase, which includes testing, start-up, and commissioning. CITY shall provide SBCTA and its contractor access to the traffic signal equipment via a separate encroachment permit during the Construction Phase for the purpose of TSP implementation. SBCTA shall ensure that its contractor meets all requirements of the encroachment permit. Maintenance and reporting will be detailed in a separate Operations and Maintenance (O&M) agreement between Omnitrans and CITY, which must be executed prior to installation of TSP. The CITY will cooperate with the mutual goal of executing the maintenance agreement prior to award of the contract for construction of the project. CITY will not implement TSP until substantial completion and final acceptance by the CITY.

- L. To work with SBCTA on review and acceptance of TMP for work within the jurisdictional boundaries of the CITY.
- M. CITY shall cause each public utility to rearrange or relocate its public utility facilities that may be determined by SBCTA and CITY to conflict with the PROJECT. CITY hereby agrees to exercise and invoke its rights under any applicable state franchise laws or under any applicable franchise agreements that it has with utilities, to effectuate such rearrangement or relocation at the expense of the affected utility, as necessary to allow completion of the PROJECT. CITY shall cooperate with SBCTA and provide all appropriate and necessary support to achieve this result. In the event the public utility fails to make the rearrangement or relocation or fails to agree to make the rearrangement or relocation in a timely manner, CITY shall, to the full extent allowed by law, assign its rights under any applicable franchise or other agreements to SBCTA to permit SBCTA to rearrange or relocate in a timely manner. CITY shall cooperate with SBCTA, provide assistance to SBCTA as needed, and shall join with SBCTA as a party in the prosecution or defense of CITY and SBCTA's rights under the laws of the State of California to cause such rearrangements or relocations. Wherever reasonably feasible, any relocation of a public utility shall be made to an area covered by a state franchise or local franchise. SBCTA shall indemnify and hold harmless the CITY and reimburse all CITY costs, including attorney's fees, related to invoking and exercising the CITY's rights under this paragraph.
- N. To cooperate with SBCTA for the relocation, protection, and construction of CITY-owned utilities CITY will not be responsible for cost of CITY-owned utility relocation that are impacted by the PROJECT.
- O. To enter in a separate O&M agreement with Omnitrans. The O&M agreement will establish the responsibilities of each party relating to the operation and maintenance of facilities within the limits of the PROJECT, including the maintenance and operation of the TSP.
- P. Upon completion and CITY's final acceptance of the facilities constructed within the boundaries of the CITY, CITY shall be responsible for entering into maintenance agreements for all facilities and shall release SBCTA from any obligations thereof.
- Q. To support SBCTA property acquisition activities for acquisitions in the City of Montclair deemed necessary for the PROJECT in accordance with SBCTA's Real Estate Acquisition and Management Plan developed for the PROJECT.
- R. To accept title to properties acquired for the PROJECT and assets determined by SBCTA that would typically fall under the CITY's jurisdiction including, but not limited to, roadway widening, sidewalk improvements and storm drain system, no later than sixty (60) days after SBCTA requests the CITY to accept such acquired right-of-way and assets.

Use and control of PROJECT properties

- i. In General - Omnitrans shall have the right to exercise satisfactory continuing control over the PROJECT Property (defined as all assets funded by West Valley Connector PROJECT funding, including those assets that go under the

- ownership of the CITY upon completion of the PROJECT) in accordance with FTA requirements and grant conditions.
- ii. Period of Control – Omnitrans’ right to exercise control over the PROJECT Property shall continue as long as the PROJECT Property is needed, in the judgment of Omnitrans, for the appropriate PROJECT purposes for the duration of the useful life of that property, as required by the FTA, and shall include any time period necessary to dispose of the PROJECT Property under FTA requirements and procedures.
 - iii. Use - CITY agrees to use the PROJECT Property for appropriate PROJECT purposes to support public transportation activities. The CITY agrees to notify Omnitrans prior to withdrawal of any PROJECT Property from PROJECT use or when any PROJECT Property is used in a manner substantially different from the representation the CITY agrees to under this Agreement or any other agreement the CITY enters into related to the PROJECT.
 - iv. Maintenance - CITY agrees to maintain its PROJECT Property in good operating order, in compliance with any applicable Federal laws and regulations, and in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.
 - v. Records - CITY agrees to keep satisfactory records pertaining to the use of the PROJECT Property and submit to Omnitrans upon request such information as may be required by the FTA to assure compliance with FTA’s Master Agreement.
 - vi. Incidental Use - Any incidental use of PROJECT Property will not exceed that permitted under applicable Federal laws or regulations in accordance with applicable Federal directives. Any incidental use must be approved by Omnitrans.
 - vii. Transfer or Lease of Property - CITY shall not transfer any obligation pertaining to the PROJECT Property that would affect Omnitrans’, on behalf of the FTA, continuing interest in the PROJECT Property. Any transfer or lease must be approved by Omnitrans.

III. MUTUAL RESPONSIBILITIES AND AGREEMENT

The Parties agree:

- A. To abide by all applicable Federal, State and Local laws, regulations, policies, procedures and standards pertaining to the PROJECT.
- B. Neither SBCTA nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless SBCTA, its officers, directors, employees and agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY or its officers, directors,

employees, agents, volunteers and contractors under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

- C. Neither CITY nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by SBCTA under or in connection with any work, authority or jurisdiction delegated to SBCTA under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, SBCTA shall fully defend, indemnify and save harmless CITY, its officers, directors, employees and agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SBCTA or its officers, directors, employees, agents, volunteers and contractors under or in connection with any work, authority or jurisdiction delegated to SBCTA under this Agreement.
- D. This Agreement will terminate upon completion of PROJECT Close Out as determined by SBCTA, unless otherwise extended by agreement, except that the indemnification provisions shall remain in effect until terminated or modified, in writing, by mutual agreement.
- E. Should any claims arising out of this PROJECT 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.
- F. Notwithstanding any other provision herein, to the extent consistent with the terms and obligations hereof, any Party may terminate this Agreement at any time, with or without cause, by giving thirty (30) calendar days written notice to all the other Parties.
- G. All signatories hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by executing this Agreement, the Parties hereto are formally bound to this Agreement.
- H. Except on subjects preempted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California. All Parties agree to follow all local, state, county and federal laws and ordinances with respect to performance under this Agreement.
- I. The Parties agree that each Party and any authorized representative, designated in writing to the Parties, and upon reasonable notice, shall have the right during normal business hours to examine all Parties' financial books and records with respect to this Agreement. The Parties agree to retain their books and records for a period of five (5) years from the later of a) the date on which this Agreement terminates, or b) the date on which such book or record was created.
- J. If any clause or provision of this Agreement is fully and finally determined by a court of competent jurisdiction to be illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the Parties that the illegal, invalid or unenforceable clause or provision shall be deemed severed from this Agreement and the remainder of this Agreement shall not be affected but shall remain in full force and effect.

- K. This Agreement cannot be amended or modified in any way except in writing, signed by all Parties hereto.
- L. Neither this Agreement, nor any of the Parties’ rights, obligations, duties, or authority hereunder, may be assigned in whole or in part by either Party without the prior written consent of the other Party in its sole, and absolute, discretion. Any such attempt of assignment shall be deemed void and of no force and effect.
- M. No waiver of any default shall constitute a waiver of any other default 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.
- N. In the event of litigation arising from this Agreement, each Party to this 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 B and C of this Section, and paragraph M of Section II.
- O. This Agreement may be signed in counterparts, each of which shall constitute an original.
- P. CITY and SBCTA represent that they have sufficient insurance coverage for purposes of Professional Liability, General Liability, Automobile Liability and Workers’ Compensation, and warrant that through their respective insurance programs they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.
- Q. The Recitals are incorporated into and made a part of this Agreement.
- R. Any notice required, authorized or permitted to be given hereunder or any other communications between the Parties provided for under the terms of this Agreement shall be in writing, unless otherwise provided for herein, and shall be served personally or by reputable courier or by facsimile addressed to the relevant party at the address/fax number stated below:

If to SBCTA: Victor Lopez, P.E.
 Chief of Transit and Rail Programs
 1170 West Third Street, Second Floor
 San Bernardino, CA 92410-1715
 Telephone: (909) 884-8276

If to CITY: Noel Castillo, P.E.
 Director of Public Works / City Engineer
 Montclair City Hall
 5111 Benito Street
 Montclair, CA 91763
 Telephone: (909) 625-9441

-----SIGNATURES ON FOLLOWING PAGE-----

IN WITNESS THEREOF, this Agreement has been executed by the Parties hereto and is effective on the date signed by SBCTA.

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

CITY OF MONTCLAIR

By: _____
Raymond W. Wolfe
Executive Director

By: _____
Edward Starr
City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Julianna K. Tillquist
SBCTA General Counsel

By: _____
City Attorney