

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

**AGENDA**

Monday, June 21, 2021  
7:00 p.m.

Location

Council Chamber  
5111 Benito Street  
Montclair, CA 91763

Webinar Link

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

Dial #

1-669-900-6833

Meeting ID

952-3987-2725



Mayor Javier "John" Dutrey  
Mayor Pro Tem Bill Ruh  
Council Members Tenice Johnson,  
Council Member Corysa Martinez  
Council Member Benjamin "Ben" Lopez

City Manager Edward C. Starr  
City Attorney Diane E. Robbins  
City Clerk Andrea M. Phillips



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

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

Monday, June 21, 2021  
7:00 p.m.

*Remote Participation Information:*

Zoom Link: <https://zoom.us/j/95239872725>  
Dial Number: 1-(669)-900-6833  
Meeting ID: 952-3987-2725

*If you want to make a public comment or speak on an agenda item, including public hearing and closed session items, please complete a Speaker Card in the Council Chambers or at <https://www.cityofmontclair.org/public-comment/>. The Mayor/Chair (or the meeting's Presiding Officer) will call on those who submitted requests to speak at the appropriate times during the meeting. Those who did not submit a request to speak who are present at the meeting location may raise their hand during Public Comment to request to speak. Those participating remotely may request speak using the "raise hand" function in Zoom or may dial \*9 if on the phone, and then \*6 to un-mute when called on to speak. Written comments (200-word limit per agenda item, and 200-word limit for all non-agenda items combined) and requests to speak can also be emailed to [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) at least one hour before the meeting begins.*

*Audio recordings of Council meetings are available on the City's website at <https://www.cityofmontclair.org/departments/public-meetings/> and can be accessed by the end of the next business day following the meeting.*

## **AGENDA**

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

**II. INVOCATION**

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

**III. PLEDGE OF ALLEGIANCE**

**IV. ROLL CALL**

**V. PRESENTATIONS**

- A. Chamber of Commerce Presentation of Police Officer of the Year and Annual Achievement Awards

**VI. PUBLIC COMMENT**

*During Public Comment, you may comment on any subject that **does not** appear on this agenda. Each speaker has up to five minutes. The meeting's presiding officer may provide more or less time to accommodate speakers with special needs or a large number of speakers waiting in line. (Government Code Section 54954.3).*

*If you did not submit a Speaker Card and would like to speak on an item on the **Consent Calendar**, please raise your hand during Public Comment to announce the agenda item you would like to provide comments on. The presiding officer will pull the item from the Consent Calendar and will then call on you to speak at the time of the 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, July 19, 2021, at 7:00 p.m. in the City Council Chambers and Continuing Review and Consideration of Resolution No. 21-3311 Approving Tentative Tract Map No. 20384 to Create 20 Industrial Condominiums at 10680 Silicon Avenue within the “M-1” Limited Manufacturing Zone to Said Public Hearing [CC] 5

**VIII. CONSENT CALENDAR**

- A. Approval of Minutes
  - 1. Regular Joint Meeting — June 7, 2021 [CC/SA/MHC/MHA/MCF] 127
- B. Administrative Reports
  - 1. Consider Receiving and Filing of Treasurer’s Report [CC] 12
  - 2. Consider Approval of Warrant Register & Payroll Documentation [CC] 13
  - 3. Consider Receiving and Filing of Treasurer’s Report [SA] 14
  - 4. Consider Approval of Warrant Register [SA] 15
  - 5. Consider Receiving and Filing of Treasurer’s Report [MHC] 16
  - 6. Consider Approval of Warrant Register [MHC] 17
  - 7. Consider Receiving and Filing of Treasurer’s Report [MHA] 18
  - 8. Consider Approval of Warrant Register [MHA] 19
  - 9. Consider Receiving and Filing a Status Report on Emergency Contracting Procedures for the Pacific Electric Trail Bridge Replacement Project and Determining There is a Need to Continue the Action [CC] 20
  - 10. Consider Authorizing a \$651,000 Transfer from the Park Development Fund in the Amounts of \$569,077.58 to the 2014 Lease Revenue Bond Fund to Cover the Purchase of Park Properties and \$81,922.42 to the Infrastructure Fund to Cover Unanticipated Current Project Costs and to Provide Funding for Future Infrastructure Improvements [CC] 22
  - 11. Consider Authorizing the Use of \$5,500 in State Asset Forfeiture Funds to Host the 2021 National Night Out Event [CC] 23
  - 12. Consider Concluding the Memorandum of Understanding with Inland Empire Utilities Agency (IEUA) for Participation in the Development of the Chino Basin Program [CC]  
Consider Authorizing the City Manager to Provide Formal Notification of the Action to the IEUA Board of Directors and General Manager [CC] 14
  - 13. Consider Approval of the Payment for a One-Year Subscription Renewal of Zengine Application Software for the Montclair to College Program Through Wizehive, Inc. in the Amount of \$7,350 [MCF] 28
- C. Agreements
  - 1. Consider Approval of Agreement No. 21-22 with Consolidated Fire Agencies of San Bernardino County (CONFIRE) for Continued Dispatch and Communication Services [CC] 29

2. Consider Approval of Agreement No. 21-27 with Catering Systems, Inc. to Provide Meals for the City’s Senior Citizen Nutrition Program [CC] 46
3. Consider Approval of Agreement No. 21-28 with Nutrition Ink to Provide Nutrition Education Services for the City’s Senior Citizen Nutrition Program [CC] 68
4. Consider Approval of Agreement No. 21-29, a Memorandum of Understanding with the Montclair Firefighters’ Association for the Period of July 1, 2021 to June 30, 2026 [CC]  
Consider Approving the Transfer of the Appropriate Additional Compensation from the Personnel Adjustment Reserve Fund to the General Operating Fund [CC] 75
5. Consider Approval of Agreement No. 21-33 with All City Management Services, Inc. for School Crossing Guard Services [CC] 78
6. Consider Approval of Agreement No. 20-34 with LAE Associates, Inc. for Program Management Assistance for the Highway Safety Improvement Program (HSIP) for the Ramona Avenue/Howard Street Roundabout Project [CC] 86
7. Consider Approval of Agreement 21-35 Amending Agreement No. 20-79 with EPT Design for Design Services for the Reeder Ranch Park Project [CC] 100
8. Consider Amending the 2019-2024 Capital Improvement Program Adding the Reeder Ranch Master Plan [CC]  
Consider Authorizing an \$8,500 Appropriation of Community Development Block Grant (CDBG) Funds for Design of the Reeder Ranch Master Plan [CC]  
Consider Approval of Agreement No. 21-36 with EPT Design for Design Services for the Reeder Ranch Master Plan [CC] 107

D. Resolutions — None

**IX. PULLED CONSENT CALENDAR ITEMS**

**X. COUNCIL/MHC WORKSHOP**

A. Fiscal Year 2021-22 Preliminary Budget Review [CC/MHC]

*(The City Council/MHC Board may consider continuing this item to an adjourned meeting on Monday, June 28, 2021, at 6:00 p.m.)*

**XI. COMMUNICATIONS**

A. Department Reports — None

B. City Attorney

1. Request to Meet in Closed Session Pursuant to GC §54957.6 Regarding Conference with City’s Designated Labor Negotiator Edward C. Starr [CC]

Agency: City of Montclair

Employee Assocs.: Management, Montclair City Confidential Employees Association, Montclair General Employees Association, Montclair Fire Fighters Association, and Montclair Police Officers Association

2. Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations

*Property:* 5050 E. Arrow Hwy., Montclair (APN 1007-701-01)  
*Negotiating Parties:* City of Montclair and Village Partners Ventures LLC  
*City Negotiator:* Edward C. Starr, City Manager  
*Under Negotiation:* Recommendations Regarding Purchase Price

C. City Manager/Executive Director

D. Mayor Pro Tem/Vice Chairperson

1. Notice of Cancellation of July 6, 2021 Regular Joint Meeting [CC/SA/MHC/MHA/MCF]
2. Notice of Special Meeting of the City Council and Montclair Housing Corporation Board on June 30, 2021, at 6:00 p.m. in the City Council Chambers to consider adoption of the City and MHC Budgets and to consider appointments to the Planning and Community Activities Commissions [CC/MHC]

E. Council Members/Directors

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

1. Personnel Committee Meeting — June 7, 2021 [CC] 126

**XII. CLOSED SESSION**

**XIII. CLOSED SESSION ANNOUNCEMENTS**

**XIV. ADJOURNMENT**

*The regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board scheduled for Monday, July 6, 2021 has been cancelled due to a lack of pressing business. The next regular joint meeting will be held on Monday, July 19, 2021, at 7:00 p.m.*

*Reports, backup materials, and additional materials related to any item on this Agenda distributed to the meeting bodies after publication of the Agenda packet are available for public inspection in the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. 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](mailto:cityclerk@cityofmontclair.org) to request documents via e-mail.*

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

*I, Andrea M. Myrick, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at <https://www.cityofmontclair.org/departments/public-meetings/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, June 17, 2021.*



# CITY COUNCIL AGENDA REPORT

**DATE:** JUNE 21, 2021 **FILE I.D.:** LDU325/350/600  
**SECTION:** PUBLIC HEARINGS **DEPT.:** COMMUNITY DEV.  
**ITEM NO.:** A **PREPARER:** Y. NEMETH  
**SUBJECT:** CONSIDER SETTING A PUBLIC HEARING FOR MONDAY, JULY 19, 2021, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS AND CONTINUING REVIEW AND CONSIDERATION OF RESOLUTION NO. 21-3311 APPROVING TENTATIVE TRACT MAP NO. 20384 TO CREATE 20 INDUSTRIAL CONDOMINIUMS AT 10680 SILICON AVENUE WITHIN THE "M-1" LIMITED MANUFACTURING ZONE TO SAID PUBLIC HEARING

**REASON FOR CONSIDERATION:** Pursuant to the City of Montclair Municipal Code Section 11.86, all subdivisions of land associated with development projects are subject to final review and approval by the City Council. The public hearing for this item was originally set for June 7, 2021. However, due to an unresolved matter regarding an existing easement with an adjacent property owner, staff requested the City Council continue the public hearing to its next regularly scheduled meeting. The matter is not yet resolved, so staff is again requesting the Council continue item a second time to the July 19, 2021 regular meeting date. Because this item was advertised as a public hearing, the City Council is requested to open the public hearing to receive any public testimony then consider the request for continuance.

**BACKGROUND:** On April 26, 2021, the Planning Commission, by a 5-0 vote, approved a Conditional Use Permit and Precise Plan of Design under Case No. 2020-25 for a 20-unit industrial condominium development at the subject 3.18-acre site located at the end of Silicon Avenue, south of Holt Boulevard. The project is to be known as the *The Orange Grove Business Park* and will be developed by Baldwin Park Homes, LLC. The General Plan land use designation of the site is Business Park and the zoning is M-1 Limited Manufacturing.

The Planning Commission also recommended City Council of approval of Tentative Tract Map (TTM) No. 20384 to create the proposed condominiums. TTM No. 20384 would allow for the consolidation of the two existing parcels (Lots 3 and 4 of Parcel Map 5991) into a new unified parcel of 3.18-acres in size, as indicated below:

Tentative Tract Map No. 20238		
Existing - Two Parcels		Proposed - Single Parcel
Parcel Map No. 5991		Tentative Tract Map No. 20384
Lot 3 - 72,310 SF	Lot 4 - 66,200 SF	138,510 SF approx. (3.18-acres)

The 20 condominium units would be located within a new 58,836 square foot, building proposed for the site (Exhibit B). Covenant, Conditions, and Restrictions (CC&Rs), including an on-site property management company will ensure daily maintenance, proper assignment of parking spaces, guest management, proper uses of the units, and security of the site. In addition to the new building, other site improvements include 108 on-site parking spaces, trash enclosures, a master sign program, drought tolerant landscaping, and new perimeter walls and fencing.

Staff finds the proposed tentative tract map to be consistent with the applicable minimum development standards regarding minimum property size and dimensions for new parcels within the M-1 zoning district in which the site is located. Below is the summary of applicable lot size and dimension requirements for the project:

<b>TTM 20384 – Zoning Compliance with M-1 Development Standards</b>			
<i>Development Standard</i>	<i>Minimum Lot Size</i>	<i>Minimum Lot Width</i>	<i>Minimum Lot Depth</i>
Required	10,000 SF	75 feet	100 feet
Provided	138,510 SF	211 feet*	551 feet

Staff further notes the tract map is consistent with the City of Montclair’s General Plan and Zoning Ordinance requirements for parcels in the M-1 zone. As designed, the plans have been reviewed and conditionally approved by the City’s Public Works Department, Building Division, the Police and Fire Departments, the County of San Bernardino’s Environmental Division and Flood Control on behalf of the U.S. Army Corps of Engineer, IEUA, and Burrtec for onsite circulation, ingress, egress, easement access, parking lot configurations, drainage, and all life safety needs for the public’s general welfare have been addressed.

Copies of the tentative tract map are available to view on the City’s website at: <https://www.cityofmontclair.org/nph-city-council-june-21-2021-700-pm/>.

**Findings for Tentative Tract Map No. 20384**

- A. The proposed subdivision and the provisions for its design and improvements are consistent with the adopted General Plan and the Montclair Municipal Code. The Tentative Tract Map proposal meets minimum lot size and dimension standards of the “M-1” zoning district and provides for ample area on which to develop the proposed industrial condominium project and to accommodate future land uses compatible with the underlying zoning district. Moreover, the Tentative Tract Map is consistent with the overall goal of the General Plan to promote good planning practices and orderly development within the City.
- B. The subject site is physically suitable for the proposed development. At 3.18 acres in area (138,510-square feet) the site is of a size and configuration that has sufficient width and depth to allow for orderly development. The project site is also located adjacent to a fully improved street that connects to an arterial roadway at Holt Boulevard which will provide direct and safe access to the project site. In addition, the site is designed to allow for appropriate internal pedestrian and vehicular circulation around the proposed improvements.
- C. The subdivision design and improvements proposed are not likely to cause substantial environmental damage nor substantially injure fish or wildlife or their habitat. The site is vacant and surrounded by industrial urban development and streets, does not contain any bodies of water and is not linked to any wildlife corridors. The vacant site is mostly paved over, does not have any trees, and does not contain any evidence of known habitats of significance including rare or endangered species of plant, animal, or insect life.

- D. The subdivision design and type of improvements proposed in the Tentative Tract Map are not likely to cause serious public health problems because all development and public improvements will be constructed per the requirements of all applicable standards and codes including the zoning and building codes.
- E. The subdivision design and type of improvements proposed in the Tentative Tract Map will not conflict with any onsite public or private easements for access or use. The project was designed around an existing underground storm drain pipe easement owned by the Inland Empire Utilities Agency (IEUA) and the applicant has worked with IEUA to respond and resolve any issues regarding the easement during on-site construction and thereafter. Moreover, the project has been designed to ensure that existing sewer manholes are not impacted and that City access is preserved.
- F. The discharge of wastewater into the existing sanitary sewer system from the development proposed in the Tentative Tract Map will not cause a violation of existing requirements prescribed by the Regional Water Quality Control Board. The entire project will be required to connect to the City's sanitary sewer system pursuant to California Plumbing Code and Municipal Code requirements. Sewer mains exist in Silicon Avenue and within the project site, all of which are immediately adjacent to the subject site.

### **Environmental Review**

The proposed project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 of State of CEQA Guidelines, in that Class 32 covers infill projects in significantly developed areas. The proposed development of a 20-unit industrial condominium is consistent with the applicable policies of the General Plan, M-1 (Limited Manufacturing) zone, is less than five acres in area, has utilities present in the area to serve the development, and would not result in any significant effects related to traffic, noise, air quality, or water quality.

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

Approval of Tentative Tract Map No. 20384 in conjunction with the development of the site would result in positive, long-term economic benefits for the City. The new project improvements would enhance property values in the area and offer new business opportunities not present on the site and that contribute to additional tax revenue to the City. Finally, the cost to advertise in the *Inland Valley Daily Bulletin* for the proposed map is reimbursable by the applicant.

**RECOMMENDATION:** Staff recommends the City Council set a public hearing for Monday, July 19, 2021 at 7:00 p.m., and continue review and consideration of Resolution No. 21-3311 approving Tentative Tract Map No. 20384 to create 20 industrial condominium units at 10680 Silicon Avenue within the "M-1" Limited Manufacturing Zone to said public hearing.



**RESOLUTION NO. 21-3311**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING TENTATIVE TRACT MAP NO. 20384 UNDER CASE NO. 2020-25 FOR A PROPOSED 20-UNIT INDUSTRIAL CONDOMINIUM DEVELOPMENT ON A COMBINED 3.18 GROSS ACRE LOT LOCATED AT 10680 SILICON AVENUE, (APN NOS. 1012-031-09-0000 & 1012-031-10-0000)**

**WHEREAS**, Baldwin Park Homes, LLC, property owner, filed an application on October 7, 2020, for a Conditional Use Permit (CUP), Precise Plan of Design (PPD), and Tentative Tract Map (TTM) 20384 under Case No. 2020-25 (Application), to construct a 20-unit industrial condominium development, including associated site improvements and master sign program on the subject site; and

**WHEREAS**, the name of the project is *The Orange Grove Business Park*; and

**WHEREAS**, the subject site currently consists of two adjoining parcels (Parcels 3 and 4 of Parcel Map No. 5991), located at the southern end of Silicon Avenue, south of Holt Boulevard, and bounded by the Brooks Basin (Chino Basin Water Conservation District) on the east, the Union Pacific Railroad right-of-way on the south, the San Antonio Creek Channel located on the west, and existing industrial development to the north; and

**WHEREAS**, Tentative Tract Map (TTM) No. 20384 would result in combining the two existing lots, Parcels 3 and 4 of Parcel Map No. 5991, into a single parcel totaling 138,510-square feet (3.18-acres) for development; and

**WHEREAS**, Tentative Tract Map (TTM) No. 20384 would allow the formation of 20 condominium units to be located within a new 58,836 square foot building proposed for the site; and

**WHEREAS**, Covenant, Conditions, and Restrictions (CC&Rs), including an on-site property management company will ensure daily maintenance, proper assignment of parking spaces, guest management, proper uses of the units, and security of the site, is a requirement of the project; and

**WHEREAS**, the site is encumbered with an existing 28-foot wide easement for pipeline and incidental purposes owned by the Inland Empire Utilities Agency (IEUA) (Recorded April 19, 2004 per Instrument No. 20040267776 of official records), which developer considered in the design of the site and construction improvements; and

**WHEREAS**, the subject site is within the "M-1" (Limited Manufacturing) zone and is currently vacant; and

**WHEREAS**, on March 15, 2021, the City Council's Real Estate subcommittee previewed project proposal; and

**WHEREAS**, on April 16, 2021, the City gave public notice of the Planning Commission's public hearing by advertisement in a newspaper of general circulation, and posted the public notice at City Hall, and mailed to all property owners within 300 feet of the project boundaries; and

**WHEREAS**, on April 26, 2021, the Planning Commission conducted a public hearing and approved the PPD and CUP as it pertains to the overall site plan, floor plan, elevations, conceptual colors and materials, conceptual landscape/irrigation plan, and master sign program associated with the 20-unit tilt up industrial condominium development; pursuant to the development standards contained in Chapters 11.32 and 11.88 of the Montclair Municipal Code; and

**WHEREAS**, by a 5-0 vote, the Planning Commission approved the CUP and PPD, and recommended City Council approval of the Tentative Tract Map (TTM) No. 20384, pursuant to Planning Commission Resolution No. 21-1946; and

**WHEREAS**, on May 27, 2021, the City gave public notice of the City Council's public hearing by advertisement in a newspaper of general circulation, and posted the public notice at City Hall, and mailed to all property owners within 300 feet of the site; and

**WHEREAS**, the City Council conducted a duly noticed public hearing on June 7, 2021, at which time all interested parties were provided an opportunity to give testimony for or against the proposal; and

**WHEREAS**, the City Council finds the requested entitlements to be consistent with the adopted General Plan and the Montclair Municipal Code and following good planning principles; and

**WHEREAS**, the City Council finds that the proposed tract map to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the State CEQA Guidelines, in that Class 32 covers infill projects in significantly developed areas. Further, the proposed development of which the map is a part is consistent with the applicable policies of the General Plan and the M-1 (Limited Manufacturing) zone, is less than five acres in area, has utilities present in the area to serve the development, and would not result in any significant effects related to traffic, noise, air quality, or water quality; and would have no significant effect on the environment.

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

**SECTION 1.** Based upon the facts and information contained in the application, together with all written and oral reports included for the environmental assessment for the application, the City Council finds that the proposed project is exempt from further environmental review pursuant to State CEQA Guidelines, Section 15332.

**SECTION 2.** Based on the entire record before the City Council, all written and oral evidence presented to the City Council, and the findings set forth in this Resolution, the City Council approves Tentative Tract Map No. 20384, subject to the conditions of approval set forth in the attached Exhibit "A" and as depicted in the submitted map Exhibit "B."

**Tentative Tract Map Findings**

- A. The proposed subdivision and the provisions for its design and improvements are consistent with the adopted General Plan and the Montclair Municipal Code. The Tentative Tract Map proposal meets minimum lot size and dimension standards of the "M-1" zoning district and provides for ample area on which to develop the proposed industrial condominium project and to accommodate future land uses compatible with the underlying zoning district. Moreover, the Tentative Tract Map is consistent with the overall goal of the General Plan to promote good planning practices and orderly development within the City.
- B. The subject site is physically suitable for the proposed development. At 3.18 acres in area (138,510-square feet) the site is of a size and configuration that has sufficient width and depth to allow for orderly development. The project site is also located adjacent to a fully improved street that connects to an arterial roadway at Holt Boulevard which will provide direct and safe access to the project site. In addition, the site is designed to allow for appropriate internal pedestrian and vehicular circulation around the proposed improvements.
- C. The subdivision design and improvements proposed are not likely to cause substantial environmental damage nor substantially injure fish or wildlife or their habitat. The site is vacant and surrounded by industrial urban development and streets; does not contain any bodies of water and is not linked to any wildlife corridors. The vacant site is mostly paved over, does not have any trees, and does not contain any evidence of known habitats of significance including rare or endangered species of plant, animal, or insect life.
- D. The subdivision design and type of improvements proposed in the Tentative Tract Map are not likely to cause serious public health problems because all development and public improvements will be constructed per the requirements of all applicable standards and codes including the zoning and building codes.
- E. The subdivision design and type of improvements proposed in the Tentative Tract Map will not conflict with any onsite public or private easements for access or use. The project was designed around an existing underground storm drain pipe easement owned by the Inland Empire Utilities Agency (IEUA) and the applicant has

worked with IEUA to respond and resolve any issues regarding the easement during on-site construction and thereafter. Moreover, the project has been designed to ensure that existing sewer manholes are not impacted and that City access is preserved.

- F. The discharge of wastewater into the existing sanitary sewer system from the development proposed in the Tentative Tract Map will not cause a violation of existing requirements prescribed by the Regional Water Quality Control Board. The entire project will be required to connect to the City's sanitary sewer system pursuant to California Plumbing Code and Municipal Code requirements. Sewer mains exist in Silicon Avenue and within the project site, all of which are immediately adjacent to the subject site.

**APPROVED AND ADOPTED** this XX day of XX, 2021.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 21-3311 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2021, and that it was adopted by the following vote, to-wit:

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

\_\_\_\_\_  
Andrea M. Myrick  
City Clerk

EXHIBIT A  
**Resolution No. 21-3311**  
**CONDITIONS OF APPROVAL**

1. This approval is for Tentative Tract Map No. 20384, to merge Parcels 3 and 4 of Parcel Map No. 5991 (Assessor Parcel Nos. 1012-031-09-0000 and 1012-031-10-0000) into a single lot and to allow the formation of 20 industrial condominium units within a new 58,836 square-foot building and off and on-site improvements associated with Case No. 2020-25.
2. The above entitlement shall be subject to all conditions of approval contained in Planning Commission Resolution No. 21-1946 (Case No. 2020-25).
3. Any modification, intensification, or expansion of the use beyond that which is specifically approved by the aforementioned entitlements and that is not reflected in the map, plans, and drawings approved with this action by the City Council shall require review and approval by the City Council.
4. In the event that exhibits and written conditions are inconsistent, the written conditions shall prevail.
5. The applicant/owner shall be required to pay any applicable fees as shown below; within five (5) days of approval by the City Council:
  - a. A check in the amount of **\$50**, payable to "Clerk of the Board of Supervisors," to cover the filing fee for the Notice of Exemption (NOE) as required by the California Environmental Quality Act (CEQA).
  - b. A check in the amount of **\$1,273.16**, payable to "City of Montclair," to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law for City Council review on June 7, 2021.
6. In establishing and conducting the subject use, the applicant shall at all times comply with any and all laws, ordinances and regulations of the City of Montclair, the County of San Bernardino and the State of California. Approval of this TTM shall not waive compliance with any such requirements.
7. Notice to Applicant/Owner/Subdivider: The conditions of approval for this project include certain fees, dedication requirements, reservation requirements, and/or other exactions more specifically described in the conditions of approval herein. The subdivider/applicant is hereby notified that the 90-day protest period to challenge such items has begun as of the date of the project approval. For purposes of this notice, "project approval" shall mean the date that the City Council approves the application for the Tentative Tract Map referenced in Condition No. 1. All impact fees shall be due and payable at the time stated in the adopted ordinance, resolution or policy adopting and imposing such fees, or at the time building permits are issued. If the applicant fails to file a protest regarding any of the fees, dedications, reservations, or other exaction requirements as specified in Government Code §66020, the subdivider/applicant shall be legally barred from later challenges.
8. The applicant/owner/subdivider shall reimburse the City for the legal costs associated with the preparation/review of any agreements and covenants required by these conditions prior to the time of their initiation.
9. The applicant/owner shall ensure that a copy of this Resolution is reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the Project.
10. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the permitted use and development of said property as set forth by this permit together with all conditions that are a part thereof. These specific requirements must be recorded with all title conveyance documents at the time of escrow closing.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	FIN520
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	J. KULBECK
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending May 31, 2021.

**BACKGROUND:** Included in the City Council's agenda packet is a copy of the Treasurer's Report for the period ending May 31, 2021.

**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 May 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	FIN540
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	L. LEW/V. FLORES
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of the Warrant Register and Payroll Documentation.

**BACKGROUND:** Mayor Pro Tem Ruh has examined the Warrant Register dated June 21, 2021, and the Payroll Documentation dated May 23, 2021, and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated June 21, 2021, totals \$590,118.94; and the Payroll Documentation dated May 23, 2021 totals \$629,988.76 gross, with \$418,573.19 net being the total cash disbursement.

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	FIN510
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	SA
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The City Council acting as Successor to the Redevelopment Agency Board of Directors (Successor Agency Board) is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending May 31, 2021, pursuant to state law.

**BACKGROUND:** Included in the Successor Agency Board's agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending May 31, 2021.

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

**RECOMMENDATION:** Staff recommends the Successor Agency Board receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending May 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	FIN530
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	SA
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**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 May 31, 2021, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 05.01.21-05.31.21 in the amounts of \$7,779.34 for the Combined Operating Fund and \$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 Chair Ruh 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 May 31, 2021.





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	FIN525
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHC
<b>ITEM NO.:</b>	5	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending May 31, 2021, pursuant to state law.

**BACKGROUND:** Included in the Montclair Housing Corporation Board agenda packet is a copy of the Treasurer's Report for the period ending May 31, 2021.

**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 May 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	FIN545
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHC
<b>ITEM NO.:</b>	6	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending May 31, 2021, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Warrant Register dated 05.01.21-05.31.21 in the amount of \$37,781.83 for the Montclair Housing Corporation and finds it to be in order.

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

**RECOMMENDATION:** Vice Chair Ruh recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending May 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	FIN525
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHA
<b>ITEM NO.:</b>	7	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The Montclair Housing Authority Commission is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending May 31, 2021, pursuant to state law.

**BACKGROUND:** Included in the Montclair Housing Authority Commission's agenda packet is a copy of the Treasurer's Report for the period ending May 31, 2021.

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

**RECOMMENDATION:** Staff recommends the Montclair Housing Authority Commission receive and file the Treasurer's Report for the month ending May 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	FIN545
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHA
<b>ITEM NO.:</b>	8	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The Montclair Housing Authority Commission is requested to consider receiving and filing the Warrant Register for the month ending May 31, 2021, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Warrant Register dated 05.01.21-05.31.21 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 Chair Ruh recommends the Montclair Housing Authority Commission approve the Warrant Register for the period ending May 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	TRN110A
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	9	<b>PREPARER:</b>	N. CASTILLO

**SUBJECT:** CONSIDER RECEIVING AND FILING A STATUS REPORT ON EMERGENCY CONTRACTING PROCEDURES FOR THE PACIFIC ELECTRIC TRAIL BRIDGE REPLACEMENT PROJECT AND DETERMINING THERE IS A NEED TO CONTINUE THE ACTION

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**REASON FOR CONSIDERATION:** By City Council action on April 19, 2021, Resolution No. 21-3307 was adopted declaring a need for emergency contracting procedures for the PE Trail Bridge Replacement project. Under Public Contract Code Section 22050, the governing body shall review the emergency action at its next regularly scheduled meeting and every regularly scheduled meeting thereafter until the action is terminated, to determine, by a fourth-fifths majority vote, that there is a need to continue the action.

**BACKGROUND:** The City of Montclair in coordination with San Bernardino County Transportation Authority (SBCTA) built a multi-purpose trail linking cities from Claremont to Rialto along the famous Pacific Electric Railway Line. This 21 mile class I trail is a vital component of our Active transportation and Healthy Montclair programs. The trail provides recreational and alternative transportation opportunities for cyclists, pedestrians, runners, and equestrians. Linking our residents and commuting public to schools, jobs and our regional transportation hub. The 20-acre Montclair Transcenter is the largest facility of its kind between Union Station in Los Angeles and the San Bernardino station, and conveniently connects the region's fixed route commuter rail, bus service, and rideshare programs in one centrally located area. The PE trail is a vital connection to this important transportation hub.

On March 21, 2021, the PE Trail Bridge was damaged due to a fire and closed to active transportation traffic. The closure of the bridge disrupts the regional connections of the PE Trail. A structural engineer who investigated the magnitude and extent of the damage, declared the PE Trail bridge a total loss and a replacement was recommended. To mitigate the risks that left the existing bridge vulnerable to fire, the replacement will be a prefabricated steel truss bridge. A steel truss bridge provides the best combination of long term value and affordability, while also recognizing the need for a speedy replacement of this vital piece of infrastructure. The use of a prefabricated bridge saves valuable time since its design has been preapproved by a state licensed structural engineer. Compared to a wooden structure, the construction of the steel truss bridge is completed at an accelerated pace, since it is delivered assembled and dropped into place

The City of Montclair is a healthier and more equitable City due to safer and more connected roadways through the provision of active transportation options. SBCTA recognizes the value and importance of the PE trail. To that end, SBCTA has shown good faith and leadership by graciously offering to cover a percent of the cost, up to \$100,000, to replace the bridge through their TDA Grant Program. The City would cash flow the project and seek reimbursement from SBCTA at a future date.

Currently PE Trail commuters are being detoured from the regional trail to Arrow Highway. To reduce the impact of the bridge closure, City staff will work diligently through the use of the emergency contracting procedures to hire various consultants and contractors to complete the bridge replacement. Agreements will be executed in the near future. Any necessary environmental permits and studies will be processed to clear the project through the California Environmental Quality Act (CEQA) and U.S. Army Corps permitting process. A structural Engineer consultant will be brought on to assist in determining what provisions and modifications must be made in order for the existing bridge substructure and foundations to accept the new bridge. In order to replace the bridge a contractor will need to be procured to remove the old fire damaged bridge. The same contractor will be utilized to put in placed the new prefabricated bridge after necessary modifications are made to the existing Bridge foundation.

**FISCAL IMPACT:** The City's Cost to replace the PE Trail Bridge is estimated at \$500,000 and will be funded from the General Fund Reserve. The City is hopeful that SBCTA will be able to allocate \$100,000 from TDA Grant Program to offset the costs associated with the bridge replacement.

**RECOMMENDATION:** Staff recommends that the City Council receive and file a status report on emergency contracting procedures for the PE Trail Bridge Replacement Project and determine there is a need to continue the action.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	FIN230/235
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	10	<b>PREPARER:</b>	J. KULBECK
<b>SUBJECT:</b>	CONSIDER AUTHORIZING A \$651,000 TRANSFER FROM THE PARK DEVELOPMENT FUND IN THE AMOUNTS OF \$569,077.58 TO THE 2014 LEASE REVENUE BOND FUND TO COVER THE PURCHASE OF PARK PROPERTIES AND \$81,922.42 TO THE INFRASTRUCTURE FUND TO COVER UNANTICIPATED CURRENT PROJECT COSTS AND TO PROVIDE FUNDING FOR FUTURE INFRASTRUCTURE IMPROVEMENTS		

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**REASON FOR CONSIDERATION:** The City Council's approval is required to authorize a transfer of funds designated for park development to reimburse monies used from the 2014 Lease Revenue Bond Fund to acquire park properties. Recognizing this, and that the 2014 Lease Revenue Bond fund is overdrawn, approval for reimbursement is needed. The City Council is also requested to authorize the transfer of additional funds from the Park Development Fund to the Infrastructure Fund to cover the costs of current project overruns and to fund future infrastructure improvements.

**BACKGROUND:** In 2014, the 2005 Lease Revenue Bonds were refinanced to achieve a lower interest rate and to secure additional funding for several infrastructure projects throughout the City. An additional \$22 million in funding was achieved and several projects—including major street rehabilitations, the Central Avenue Rehabilitation, and City Hall Renovation Projects—were completed.

As often happens with large infrastructure projects, unforeseen costs arose as construction progressed. The Central Avenue Rehabilitation and the City Hall Renovation projects both encountered additional costs that were not included in the original estimates. These additional costs caused the 2014 Lease Revenue Bond Fund to be overdrawn in the amount of \$569,077.58. To correct this, funding of these additional costs has to come from another source.

In 2016, the City purchased two properties on Kingsley Street for park development at a cost of \$651,000 using 2014 Lease Revenue Bond monies. Normally, funding for park acquisitions comes from the Park Development Fund. To recognize that parks are funded through the Park Development Fund, it is recommended that the amount of \$651,000 be reimbursed to the 2014 Lease Revenue Bond Fund and charged to the Park Development Fund. The Park Development Fund currently has a balance of \$1,800,207. Since the 2014 Lease Revenue Bond projects have been completed and the excess costs were \$569,077.58, this amount would be reimbursed to that Fund, which would bring that fund to a zero balance. The remaining \$81,922.42 would be contributed to the Infrastructure Fund and used for future infrastructure projects.

**FISCAL IMPACT:** Approval would result in a transfer of \$651,000 from the Park Development Fund, with \$569,077.58 to the 2014 Lease Revenue Bond Fund and \$81,922.42 to the Infrastructure Fund. There is no fiscal impact to the General Fund.

**RECOMMENDATION:** Staff recommends the City Council authorize a \$651,000 transfer from the Park Development Fund in the amounts of \$569,077.58 to the 2014 Lease Revenue Bond Fund to cover the purchase of park properties and \$81,922.42 to the Infrastructure Fund to cover unanticipated current project costs and to provide funding for future infrastructure improvements.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	PDT362
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	11	<b>PREPARER:</b>	M. BUTLER
<b>SUBJECT:</b>	CONSIDER AUTHORIZING THE USE OF \$5,500 IN STATE ASSET FORFEITURE FUNDS TO HOST THE 2021 NATIONAL NIGHT OUT EVENT		

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**REASON FOR CONSIDERATION:** The Police Department, through its Community Relations Division, is coordinating and hosting the 2021 National Night Out community event. The City Council is requested to consider authorizing the use of State Asset Forfeiture funds to purchase goods and services that are essential to its success.

**BACKGROUND:** The Police Department is dedicated to ensuring the safety of the Montclair community and is committed to engaging residents in dialogue about law enforcement-related responsibilities, concerns, and crime prevention. To that end, the Department, through its Community Relations Division, will coordinate and host this year's National Night Out event in Alma Hofman Park on Tuesday, August 3. National Night Out is an annual community-building campaign designed to promote police-community partnerships that enhance neighborhood camaraderie and build safer communities.

To encourage community involvement, this year's event will include a photo booth, face painting, and a movie in the park, all at no cost to attendees. Popcorn, cookies, nuts, and shaved ice will be available for sale. Montclair Police and Fire Department personnel will be on hand to speak to the public and provide our youth and the "young at heart" the opportunity to see and handle some of the tools of the trade. Child ID/fingerprint kits and a host of educational and promotional materials that help guide, support, motivate, and encourage residents to take an active role in securing a safer community will be available. In addition, a portion of the funding would be used to purchase one additional movie license in support of the City's Movie in the Park summer series leading up to National Night Out, which is also a perfect opportunity for outreach and interaction with the communities we serve as well as to promote National Night Out.

The San Bernardino County Asset Forfeiture Panel is currently processing the Department's request to expend Drug and Gang Prevention funds on National Night Out 2021 and one movie-in-the-park event.

**FISCAL IMPACT:** Pursuant to Health and Safety Code Section 11489, 15 percent of funds distributed through State Asset Forfeiture shall be deposited in a special fund to be "used for the sole purpose of funding programs designed to combat drug abuse and divert gang activity, and shall wherever possible involve educators, parents, community-based organizations and local businesses, and uniformed law enforcement officers." The City has established Fund 1146 for this purpose.

If authorized by the City Council, and pending approval from the Panel, funding for the purchase of goods and services for National Night Out and the additional movie license for the City's Movie in the Park summer series would result in an expenditure of \$5,500 from said fund.

**RECOMMENDATION:** Staff recommends the City Council authorize the use of \$5,500 in State Asset Forfeiture funds to host the 2021 National Night Out event.





# CITY COUNCIL AGENDA REPORT

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**DATE:** JUNE 21, 2021                      **FILE I.D.:** SEW075  
**SECTION:** CONSENT - ADMIN. REPORTS                      **DEPT.:** CITY MGR.  
**ITEM NO.:** 12    **PREPARER:** M. FUENTES  
**SUBJECT:** CONSIDER CONCLUDING THE MEMORANDUM OF UNDERSTANDING WITH INLAND EMPIRE UTILITIES AGENCY (IEUA) FOR PARTICIPATION IN THE DEVELOPMENT OF THE CHINO BASIN PROGRAM

CONSIDER AUTHORIZING THE CITY MANAGER TO PROVIDE FORMAL NOTIFICATION OF THE ACTION TO THE IEUA BOARD OF DIRECTORS AND GENERAL MANAGER

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**REASON FOR CONSIDERATION:** At the May 17, 2021 meeting of the City Council, Mayor Dutrey requested an update regarding the Memorandum of Understanding between the City of Montclair and Inland Empire Utilities Agency (IEUA) for the participation in the development of the Chino Basin Program, a copy of which is attached to this report.

**BACKGROUND:** IEUA applied for Proposition 1 funding for the Chino Basin Program (CBP) to address critical water quality and supply needs for the region in the first-of-its-kind program developed to help the region move beyond traditional water management practices to a program geared towards water optimization.

The California Water Commission approved conditional funding of \$207 million for the CBP through the Proposition 1 Water Storage Investment Program in 2018. The conditional funding amount was later increased to \$212 million.

The CBP anticipates the construction of an advanced water treatment facility (AWT) and distribution system that will treat and store up to 15,000 acre-feet per year of recycled water for 25 years in the Chino Basin Water Bank, creating a new local water supply. The CBP also anticipates providing much-needed infrastructure within the Chino Basin for added groundwater treatment and interconnections to provide added flexibility. During dry or critically dry years, CBP's partnership with an existing State Water Project Contractor would allow for the exchange of up to 50,000 acre-feet per year from the Chino Basin resulting in ecosystem benefits north of the Delta. The proposed total cost of the CBP is estimated to be \$650 million in capital costs, with \$18 million in annual operations and maintenance, for a total project cost of \$1.1 billion over the next 30 years.

The development of a Memorandum of Understanding (MOU) was presented to the working group as a means for IEUA and various Chino Basin retail water agencies and stakeholders with water use interests in the Chino Basin to work towards addressing the various sustainability objectives of the Chino Basin Optimum Basin Management Program (OBMP) and CBP. This included recycled water compliance, groundwater quality, storage and recovery programs, and land subsidence mitigation.

On February 19, 2019, the City Council adopted Resolution No. 19-3227 authorizing support for the MOU for participation in the development of the CBP and approving Agreement No. 19-17 authorizing the City's participation in the MOU.

In April 2019, the City of Montclair and thirteen other agencies entered into an MOU with IEUA regarding the CBP. The intent of the MOU was *“to work collaboratively, in good faith, to identify issues of common concern, and goals and solutions which are of common benefit to the Parties, and which may ultimately be implemented through the CBP.”* The MOU committed the retail water agencies and stakeholders to develop a CBP Agreement for potential execution by summer of 2019 in advance of institutional agreements with the State in 2020. To date, no agreements have been prepared or executed for the retail water agencies and stakeholders to sign.

City staff has participated in numerous CBP workgroup meetings and multiple additional meetings with and between retail water agencies and stakeholder representatives and IEUA. During these CBP workgroup meetings, numerous questions and concerns were brought up by retail water agencies and stakeholders regarding the short- and long-term benefits of the CBP. In general, these questions and concerns fall into one of three categories: water resource policy, project economics, and the risk associated with entering into long-term contractual commitments as envisioned by the CBP.

These questions and concerns were brought to the attention of IEUA in multiple forums, including numerous joint letters addressed to IEUA in partnership with the Cities of Chino, Chino Hills, Ontario, Upland, and Cucamonga Valley Water District. IEUA has evaluated these questions and concerns and has presented alternative approaches in an attempt to address the concerns that many retail water agencies and stakeholders have.

On May 18, 2021, the City of Ontario City Council elected to conclude its MOU with IEUA regarding the CBP. On June 9, 2021, the Monte Vista Water District Board also elected to conclude its MOU with IEUA. It should be noted that other retail water agencies and stakeholders are considering similar actions regarding the CBP MOU.

Given that the City of Ontario and Monte Vista Water District both elected to conclude their involvement in the MOU with IEUA and the fact that several other retail water agencies and stakeholders are contemplating taking similar action, staff is recommending that the City Council conclude the MOU with IEUA.

**FISCAL IMPACT:** There would be no direct fiscal impact to the City related to the conclusion of the Memorandum of Understanding with IEUA for the Chino Basin Program.

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

1. Conclude the Memorandum of Understanding with the Inland Empire Utilities Agency for participation in the development of the Chino Basin Program.
2. Authorize the City Manager to provide formal notification of the action to the IEUA Board of Directors and General Manager.

Chino Basin Program  
Memorandum of Understanding

This Memorandum of Understanding ("MOU") is entered into effective February 19, 2019, between various Chino Basin stakeholders ("Stakeholders") and the Inland Empire Utilities Agency ("IEUA") (collectively, the "Parties").

WHEREAS, Parties have developed and approved various planning documents that have identified the need for investment in infrastructure within the Chino Basin. These investments would help address various sustainability objectives of the Chino Basin Optimum Basin Management Program (OBMP), such as, recycled water compliance, groundwater quality, storage and recovery programs, and subsidence mitigation. The Parties are currently in the process of updating the OBMP.

WHEREAS, IEUA received a conditional funding approval of \$207 million through the California Proposition 1 Water Storage Investment Program.

WHEREAS, IEUA has established the Chino Basin Program ("CBP") Workgroup to help provide local input in the development of a regional program that best meets the current and future needs of the individual Stakeholders and the Chino Basin as a whole.

WHEREAS, formal funding approval of the CBP requires development of a refined project, including operations, finance, environmental permitting and all associated institutional agreements. A formal CBP Agreement amongst the Parties is essential for successful agreements with State Water Project Contractors and administering agencies.

WHEREAS, this MOU formally initiates the collaborative process with the Parties.

NOW, THEREFORE, the Parties hereby make the following mutual commitments:

1. Work together in good faith to cooperatively plan and evaluate a strategy for the successful development of the CBP and receipt of the \$207 million funding.
2. Collaborate to refine the CBP components, including, but not limited to, water supply sources, infrastructure requirements operations, performance obligations, program costs and Basin impacts to achieve maximum benefit for the Chino Basin and the individual Stakeholders.
3. Develop a CBP Agreement.
4. Support securing additional grants and other funding sources for the CBP.
5. All Parties will work together in good faith to ensure that the CBP Agreement is negotiated and ready for potential execution by Summer 2019, recognizing the urgency of completing the institutional agreements by 2020.


Created: 01.30.2019

Chino Basin Program Memorandum of Understanding  
Page 2 of 2

This MOU may be signed in identical counterparts, each of which shall be deemed to be an original and shall constitute one MOU.

Executed this \_\_\_\_\_ 19th \_\_\_\_\_ day of February 2019 by:

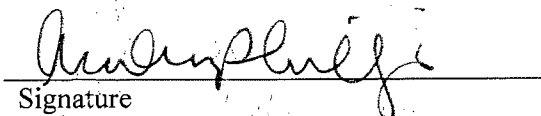
**City of Montclair**

 \_\_\_\_\_  
Signature Date 2-19-19

Name: Javier John Dutrey

Title: Mayor

**Attest:**

 \_\_\_\_\_  
Signature

Name: Andrea M. Phillips

Title: City Clerk

Created: 01.30.2019



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	MCF175
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MCF
<b>ITEM NO.:</b>	13	<b>PREPARER:</b>	A. COLUNGA
<b>SUBJECT:</b>	CONSIDER APPROVAL OF THE PAYMENT FOR A ONE-YEAR SUBSCRIPTION RENEWAL OF ZENGINE APPLICATION SOFTWARE FOR THE MONTCLAIR TO COLLEGE PROGRAM THROUGH WIZEHIVE, INC. IN THE AMOUNT OF \$7,350		

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**REASON FOR CONSIDERATION:** The Montclair Community Foundation (MCF) Board of Directors is requested to consider approval of the purchase of a one-year subscription renewal of Zengine application software for the Montclair to College (MTC) program through Wizehive, Inc.

**BACKGROUND:** 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 wellbeing of the community.

MTC, formerly called Online to College, is a MCF program. Every student that enrolls annually at Montclair High School and meets minimum requirements is offered a two-year scholarship to Chaffey College. The MCF Board approved an agreement for a subscription to the Zengine software through Wizehive, Inc. to provide a cloud application software for Montclair to College applicants at its meeting on June 18, 2018. This online application system has allowed for streamlined communication with students and their families about their status in the program, requirements that are outstanding, and their eligibility to receive the scholarship at the end of their senior year at Montclair High School.

After three successful years of using the service, the Montclair Community Foundation would like to renew the service for another year. At the initiation of the agreement, staff solicited three bids for cloud application service. Based on proposals and meetings with three companies, Human Services Department staff along with the IT Manager recommended utilizing the Wizehive software.

**FISCAL IMPACT:** Should the Montclair Community Foundation Board approve the payment for a one-year subscription renewal, MCF will pay Wizehive, Inc, \$7,350 for the software license agreement through grants and donations received for Montclair to College. The term of the subscription renewal is July 1, 2021 to June 30, 2022.

**RECOMMENDATION:** Staff recommends the Montclair Community Foundation Board approve the payment of a one-year subscription renewal of Zengine application software for the Montclair to College Program through Wizehive, Inc. in the amount of \$7,350.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	FRD057
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	FIRE
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	M. BUTLER
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 21-22 WITH CONSOLIDATED FIRE AGENCIES OF SAN BERNARDINO COUNTY (CONFIRE) FOR CONTINUED DISPATCH AND COMMUNICATION SERVICES		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 21-22 with Consolidated Fire Agencies of San Bernardino County (CONFIRE) for continued dispatch and communication services.

A copy of proposed Agreement No. 21-22 is attached for the City Council's review and consideration.

**BACKGROUND:** CONFIRE currently provides dispatch and communication services for the Fire Department under Agreement No. 20-43, which will end on June 30, 2021. Proposed Agreement No. 21-22 would be in effect for Fiscal Year 2021-22.

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

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

Contracting with CONFIRE continues to be the most prudent and cost effective option for dispatch and communication services.

**FISCAL IMPACT:** Approval of Agreement No. 21-22 would result in a net cost of \$216,765 for Fiscal Year 2021-22, which is included in the proposed Fiscal Year 2021-22 Budget. The cost of service for each contracting agency is based on each contracting agency's call volume for the prior calendar year, as well as costs associated with equipment replacement, technology support, and administration.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 21-22 with Consolidated Fire Agencies of San Bernardino County (CONFIRE) for continued dispatch and communication services.



DISPATCHING COST FOR SERVICES FOR FY 2021-22  
CITY OF MONTCLAIR FIRE DEPARTMENT

The Exhibit is subject to renewal yearly during the term of the Contract.

A. Operating Costs:  
The operating costs for services provided will be delivered to the Contracting Agency prior during Fiscal Year 2021/22. These costs will include the Contracting Agency's share of the Admin/Dispatch Costs (100-400), Information Services Costs (600), and Equipment Reserve (5009) as established by the Contracting Agencies share of total calls for service per the agreement between CONFIRE and the Contracting Agency.

**Agency % of 2020 Call Volume (share) 1.95%**  
**Operating Costs for 2021-22 \$206,443.00**

B. Contract Fee (5% of Operating Costs):  
Per Exhibit B (Compensation) Section B.1 of agreement. **\$10,322.00**

**Total Costs July 1, 2021 thru June 30, 2022 \$216,765.00**

C. Payments shall be made in quarterly installments of \$54, 191.25

D. Payment shall be made within thirty (30) days of the issuance of the invoice

No other costs for services are due to CONFIRE JPA pursuant to this dispatch contract except for telephone services charges under paragraph B.3 of Exhibit B in the contract.

Art Andres (Director) 4/20/2021  
CONFIRE Representative Date

\_\_\_\_\_  
City of Montclair Representative Date

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

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

**1. EXHIBITS**

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

Exhibits include:

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

**2. INDEPENDENT CONTRACTOR**

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



**3. SCOPE OF SERVICES**

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

**4. COMPENSATION**

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

**5. EFFECTIVE DATE AND TERM**

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

**6. GENERAL TERMS AND CONDITIONS**

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

**7. NOTICE**

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

To CONFIRE:

Consolidated Fire Agencies  
Attn: Art Andres, Communications Director  
1743 Miro Way  
Rialto, CA 92376

To Contracting Agency:

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

**8. HIPPA BUSINESS ASSOCIATE AGREEMENT**

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

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

**Consolidated Fire Agencies**

**City of Montclair**

Date: APRIL 20, 2021

Date: \_\_\_\_\_, 2021

By: [Signature]

By: \_\_\_\_\_

Print Name: Art Andres

Print Name: \_\_\_\_\_

Its: Director

Its: \_\_\_\_\_

**EXHIBIT A**  
**to CONTRACTING AGENCY AGREEMENT**

**SCOPE OF SERVICES**

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

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

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

**EXHIBIT B**  
**to CONTRACTING AGENCY AGREEMENT**

**COMPENSATION**

Compensation to be paid as follows:

**A. FEES FOR SERVICES:**

1. In exchange for the Services set forth in Exhibit A, paragraph 1, Contracting Agency shall pay CONFIRE a sum identified by CONFIRE through its annual budget process, which shall be limited to Contracting Agency's proportionate share of CONFIRE's projected operating costs. CONFIRE has provided written notice of this sum to Contracting Agency (**Attachment A**).
  - a. Contracting Agency's proportionate share of CONFIRE's projected operating costs shall be computed as follows:
    - (1) All incidents dispatched by CONFIRE for Contracting Agency during the preceding calendar year; divided by
    - (2) All incidents dispatched by CONFIRE during the preceding calendar year; results in
    - (3) Contracting Agency's percentage of the total number of incidents dispatched.
  - b. This formula does not include direct costs incurred for ISD radio billing pass-through (optional service) or other 'seat' or inventory-based items such as software licenses, voice and data circuit charges, cellular device charges etc. These costs, including support costs, are passed through to each agency and are not subject to the cost per call formula.
2. Invoices are issued on a quarterly basis.
3. Payment is due within thirty (30) days upon receipt of the invoice.

**B. ADDITIONAL FEES:**

1. Contracting Agency shall also pay an annual premium.
  - a. This premium shall be paid annually and shall be five percent (5%) of Contracting Agency's annual fee for services (see Paragraph A.1. above).
  - b. Dollars paid pursuant to this provision shall:
    - (1) Be collected for and held in CONFIRE's Term Benefit Reserve Fund (5011).

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

**EXHIBIT C**  
**to CONTRACTING AGENCY AGREEMENT**

**EFFECTIVE DATE AND TERM**

1. This Agreement is effective on July 1, 2021 (“Effective Date”).
2. Unless terminated or otherwise cancelled in accordance with this Agreement, the term of this Agreement shall be: (i) from the Effective Date through (ii) June 30, 2022 (the “Term”).
3. At any time during the term of this agreement the Contracting Agency may submit to CONFIRE (in accordance with CONFIRE policies and regulations) an application to become a party to the CONFIRE Joint Powers Agreement.
4. Upon admission as a member of CONFIRE, the provisions of the CONFIRE Joint Powers Agreement and any bylaws, policies, or other instruments promulgated thereunder will govern the relationship between the parties of that CONFIRE Joint Powers Agreement and this Agreement will terminate.



**EXHIBIT D**  
**to CONTRACTING AGENCY AGREEMENT**

**GENERAL TERMS AND CONDITIONS**

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

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

13. **INDEMNIFICATION.**

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

14. **INSURANCE.**

- A. Each Party shall carry \$1,000,000/\$2,000,000 (occurrence/general and product/completed operations aggregate) of commercial general liability coverage (or participate in a public agency risk pool for such amount) and each Party agrees to give the other, its directors officers, employees, or authorized volunteers insured status under its policy using ISO “occurrence” form CG 00 01 or equivalent and to provide a certificate of insurance and additional insured endorsement. Commercial general liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- B. Each Party shall carry Workers' Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- C. Each Party shall carry Automobile Liability Insurance (or participate in a public agency risk pool for such amount) with coverage at least as broad as ISO Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the equivalent with minimum limits of \$1,000,000 each accident.

**EXHIBIT E**  
**to CONTRACTING AGENCY AGREEMENT**

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

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

**RECITALS**

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

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

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

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

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

**AGREEMENT**

**1. General Terms and Conditions**

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

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

**Consolidated Fire Agencies**

**City of Montclair**

Date: APRIL 20, 2021

Date: \_\_\_\_\_, 2021

By: Art Andres

By: \_\_\_\_\_

Print Name: Art Andres

Print Name: \_\_\_\_\_

Its: Director

Its: \_\_\_\_\_

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

**General Terms and Conditions to Business Associate Agreement**

**I. DEFINITIONS.**

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

**II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.**

Business Associate agrees to:

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

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

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

**III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.**

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

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

#### IV. PERMISSIBLE REQUESTS BY COVERED ENTITY.

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

#### V. TERM AND TERMINATION.

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

- iv. Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions which applied prior to termination; and

- v. Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- d. Survival. The obligations of Business Associate under this Section shall survive the termination of this BAA.

#### VI. MISCELLANEOUS.

- a. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the Applicable Law. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

- b. Public Access and Ownership of Records. Covered Entity is a local agency subject to the Public Records Act, Government Code § 6250 et seq. ("PRA"). In the event that Business Associate receives a request for records prepared, owned, used, or retained by Covered Entity or for records prepared, owned, used, or retained by Business Associate in the course and scope of providing the services for Covered Entity described in the Agreement as amended from time to time ("PRA Request"), Business Associate shall promptly forward a copy of the PRA Request to Covered Entity for fulfillment by the Covered Entity. Business Associate understands and agrees that all records produced under the Agreement as amended from time to time are hereby the property of Covered Entity and cannot be used without Covered Entity's express written permission. Covered Entity shall have all right, title and interest in said records, including the right to secure and

- maintain the copyright, trademark and/or patent of said records in the name of the Covered Entity.
- c. Minimum Necessary. To the extent required by the HITECH Act and Regulations, Business Associate shall limit its Use, Disclosure or request of PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, respectively. Effective on the date the Secretary issues guidance on what constitutes “minimum necessary” for purposes of the Applicable Law, Business Associate shall limit its Use, Disclosure or request of PHI to only the minimum necessary as set forth in such guidance.
  - d. State Privacy Laws. Business Associate shall comply with California laws to the extent that such state privacy laws are not preempted by Applicable Law.
  - e. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
  - f. Effect on Underlying Arrangement. In the event of any conflict between this BAA and any underlying arrangement between Covered Entity and Business Associate, including the Agreements as amended from time to time, the terms of the BAA shall control with respect to Protected Health Information.
  - g. Interpretation. This BAA shall be interpreted as broadly as necessary to implement and comply with Applicable Law. The Parties agree that any ambiguity in the BAA shall be resolved in favor of a meaning that complies and is consistent with the Applicable Law.
  - h. Governing Law. This BAA shall be construed in accordance with the laws of the State of California.
  - i. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this BAA shall be deemed to be inserted herein and this BAA shall be read and enforced as though it were included therein.
  - j. Severability. In the event that any provision of this BAA shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this BAA shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this BAA.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	HSV105
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	HUMAN SVCS.
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	A. COLUNGA
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 21-27 WITH CATERING SYSTEMS, INC. TO PROVIDE MEALS FOR THE CITY'S SENIOR CITIZEN NUTRITION PROGRAM		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 21-27 with Catering Systems, Inc. to provide meals for the City's Senior Citizen Nutrition program. A copy of proposed Agreement No. 21-27 with Catering Systems, Inc. is attached for the City Council's review and consideration.

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

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

In order to maintain the current program standards, Human Services is recommending that the City subcontract with Catering Systems, Inc. for Fiscal Year 2021-22. Should the Council approve Agreement No. 21-27, Catering Systems, Inc. would continue to deliver prepared meals every weekday until June 30, 2022. The meal cost will be \$5.60 per meal, a 20-cent increase from FY 2020-21. All of these costs will be covered by the existing cost reimbursement DAAS grant.

The suggested donation for meals effective July 1, 2021 is \$3.00, as required by DAAS. The funding for the meal cost would be paid through participant donations and funding from Agreement No. 19-47 with the San Bernardino County Department of Aging and Adult Services (DAAS) that was approved by the City Council on June 3, 2019. Note that the DAAS contract has a three-year term and covers the period July 1, 2019 through June 30, 2022.

**FISCAL IMPACT:** There would be no cost to the General Fund as a result of this agreement to provide the Senior Nutrition meals. All of these costs will be 100 percent grant-funded under Agreement No. 19-47 with DAAS. The term of proposed Agreement No. 21-27 is July 1, 2021 through June 30, 2022.

**RECOMMENDATION:** Staff recommends City Council approve Agreement No. 21-27 with Catering Systems, Inc. to provide meals for the City's Senior Citizen Nutrition program.

## FOOD SERVICE AGREEMENT

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

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

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

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

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

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

### AGREEMENT

#### Section 1. Statement of Work and Schedule

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

#### Section 2. Representatives of the Parties and Service of Notice

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

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

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



- B. The representative of the Subcontractor shall be:

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

### **Section 3. Compensation to the Subcontractor**

The Contractor shall pay to the Subcontractor an amount not to exceed \$5.60 per meal for approximately 90 meals per day for complete and satisfactory performance of the terms of this Agreement. The Subcontractor shall be paid for providing services set forth in this Agreement. Payment shall be made on a monthly basis.

### **Section 4. Time of Performance**

The term of this Agreement shall commence on July 1, 2021 and terminate on June 30, 2022, provided that said term is subject to the provisions of Section 14, "Indemnity, Liability, and Insurance Requirements," and Section 18, "Termination," and the availability of funds through the County.

There are up to 252 serving days during Fiscal Year 2021-2022 not including the following holidays and special occasions:

Independence Day - July 5, 2021  
Labor Day - September 6, 2021  
Veterans Day - November 11, 2021  
Thanksgiving Day - November 25, 2021 - November 26, 2021  
Christmas Eve - December 24, 2021  
New Year's Eve and New Year's Day - December 31, 2021  
Martin Luther King Jr. Day - January 17, 2022  
Presidents' Day - February 21, 2022  
Memorial Day - May 30, 2022

### **Section 5. Notices, Demands, and Communications**

- A. Formal notices, demands, and communications to be given hereunder by either party shall be made in writing and may be affected by personal delivery or by registered or certified mail, return receipt requested, and shall be deemed effective as the date of mailing.

- B. Such notices, demands, or communications shall be addressed as set forth below:

1. For the Contractor:

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

2. For the Subcontractor:

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

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

**Section 6. Audit Records and Bonding**

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

- J. The Subcontractor shall permit periodic monitoring of contracted activities by Contractor, Centralized Dietary Services, County, State, or Federal personnel.

**Section 7. Amendments to Agreement**

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

**Section 8. Permit and Licenses**

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

**Section 9. Conflict of Interest**

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

**Section 10. Independent Contractor Status of the Subcontractor**

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

Subcontractor have been, are, or shall be employees of the Contractor or County by virtue of this Agreement, and the Subcontractor shall so inform each employee organization and each employee who is hired or retained under this Agreement.

### **Section 11. Assignment or Transfer of Interest**

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

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

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

### **Section 13. Discrimination Prohibited**

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

### **Section 14. Indemnity, Liability, and Insurance Requirements**

- A. The Subcontractor agrees to defend, indemnify, and hold harmless the Contractor and the County, their officers, employees, and assigns, against any and all claims arising from acts, omissions, or negligence of the Subcontractor, its officers, or employees in the performance of this Agreement. The Subcontractor shall defend any suit against the Contractor and County alleging personal injury, sickness, or disease arising out of meals served at the project sites (or home delivered) provided food is served one hour after delivery (or eaten immediately after home delivery). This indemnification provision shall apply regardless of the existence or degree of fault of the indemnified parties. Subcontractor's indemnification obligation applies to the Contractor's an County's active as well as passive negligence, but does not apply to the Contractor or County's sole negligence or willful misconduct.
- B. The Contractor shall promptly notify the Subcontractor in writing of any claims against the Contractor or Subcontractor and, in the event of a suit being filed, the Contractor shall promptly forward to the Subcontractor all papers in

connection therewith. The Contractor shall not incur any expenses or make any settlement without the Subcontractor's consent. However, if Subcontractor refuses or neglects to defend any such suit, the Contractor may defend, adjust, or settle any such claim, and the cost of such defense, adjustment, or settlement, including reasonable attorney's fees, shall be charged to the Subcontractor. The Subcontractor shall promptly notify the Contractor in writing of any claims against the Contractor or Subcontractor.

C. The Subcontractor shall furnish proof in the form of a hand-signed certificate of insurance that it carries insurance in the minimum amounts listed below prior to commencement of performance under this Agreement. Such coverage shall be maintained currently effective until receipt of final payment under the terms of this Agreement.

1. Comprehensive General \$1,000,000 combined Single Liability  
[including (CSL) minimum Product Liability]

2. Professional Liability \$1,000,000 per occurrence

D. Comprehensive Auto Liability (owned and non-owned)

1. Bodily Injury \$ 100,000 each person  
\$ 300,000 each accident  
\$ 300,000 aggregate products

2. Property Damage \$ 50,000 each accident  
\$ 250,000 aggregate operations  
\$ 250,000 aggregate protection  
\$ 250,000 aggregate products  
\$ 250,000 aggregate contractual

E. Worker's Compensation. The statutory limit shall be in accordance with Sections 3700 and 3800 of the Labor Code of the State of California.

F. Additional Insured. The City of Montclair and County of San Bernardino shall be named as additional insured on all policies or certificates.

G. Cancellation Notice. A 30-day Notice of Cancellation shall be mailed to the Contractor and County, 686 East Mill Street, San Bernardino, California 92415.

H. In the event any new or additional meal locations are started, the insurance carrier shall name all new or additional sites as insured under the policy.

I. Failure on the part of the Subcontractor to procure or maintain required insurance shall constitute a material breach of Agreement and Contractor may immediately terminate or suspend this Agreement.

## Section 15. Compliance with Statutes and Regulations

A. In the performance of this Agreement, the Subcontractor shall obey all laws of the United States, the State of California, and all County and local ordinances, regulations, policies, codes, and provisions .

- B. The Subcontractor shall conform to the nutrition requirements under Title III-C of the Older Americans Act of 1965, as amended, including providing the minimum Title III-C requirement per person of one third of the Recommended Daily Dietary Allowance (RDA).
- C. The Subcontractor shall comply with the California Uniform Retail Food Facilities Law (CURFFL), the Hazard Analysis (HACCP) requirements and San Bernardino County Department of Aging and Adult Services Policy and Procedures for Senior Nutrition Sites.

**Section 16. Federal, State and Local Taxes**

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

**Section 17. Termination**

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

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

**Section 18. Negotiation of Disputes**

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

**Section 19. Prior Approval of Subcontracts**

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

**Section 20. Fair Labor Standards Compliance**

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

**Section 21. Citizenship Laws**

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

**Section 22. Subcontractor Staffing Requirements**

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

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

**Or**

The Subcontractor shall hire a qualified Food Service Manager who possesses a Bachelor of Science degree in Food and Nutrition with emphasis on food service management or restaurant management from an accredited college or university, plus two (2) years' professional experience as a food service supervisor; no less than six (6) years of experience in the food service industry at a supervising level can be substituted for the four-year degree requirements. The Subcontractor must submit to the Contractor the registration identification number and expiration date of Registered Dietitian along with complete verifiable résumés of the Registered Dietitian or Food Service Manager for County's approval.

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

### **Section 23. Date of Execution**

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

### **Section 24. Complete Agreement**

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



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

**Subcontractor:**

**CATERING SYSTEMS, INC.**

**Contractor:**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
**Rosanna Rojas, President**

\_\_\_\_\_  
**Javier John Dutrey  
Mayor**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Rosanna Rojas, Secretary**

\_\_\_\_\_  
**Date**

**ATTEST:**

\_\_\_\_\_  
**Andrea Myrick  
City Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Diane E. Robbins  
City Attorney**

## ADDENDUM

### OTHER REQUIREMENTS (Contractor's Option)

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

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

## ATTACHMENT 1

### FOOD SERVICE SPECIFICATIONS BETWEEN THE CITY OF MONTCLAIR AND CATERING SYSTEMS INC.

#### STATEMENT OF WORK AND SCHEDULE

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

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

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

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

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

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

A. Number of Meals

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

	<i>Total Maximum Annual Meals</i>	<i>Catered Cost of Meal</i>
Monday through Friday	90	\$5.60
Saturday	N/A	
Sunday	N/A	
Box lunches	N/A	
Breakfast	N/A	
Frozen meals	N/A	
Other food items	N/A	
<b>Total Max Annual Meals</b>	<b>22,680</b>	<b>\$127,008</b>

B. Delivery

1. The meals shall be delivered as follows:

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

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

meals are transported under appropriate packing, heating and cooling temperature requirements.

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

C. Delivery Service Specifications

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

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

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

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

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

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

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

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

D. Meal Standards

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

E. Menu Requirements

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

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

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

F. Meal Pattern Specifications

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

**Title III – Meal Pattern:**

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



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

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

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

Regulations, Title 22, Division 1.8, Chapter 4, Article 5, Section 7638.5.

#### Computerized Nutrient Analysis Requirements:

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

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

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

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

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

#### G. Supplies Specification Procedures

The Subcontractor shall provide disposable table service based upon the supplies specification included. These supplies shall be ordered and delivered weekly

at each site. A minimum of one week's supply on hand at all times. The Contractor shall supply order forms and monitor supply usage.

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

#### **EVALUATION OF SUBCONTRACTOR**

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

#### **RECEIPTS AND INVOICES PROCEDURES**

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

#### **DEDUCTION PROCEDURE**

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	HSV105
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	HUMAN SVCS.
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	A. COLUNGA
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 21-28 WITH NUTRITION INK TO PROVIDE NUTRITION EDUCATION SERVICES FOR THE CITY'S SENIOR CITIZEN NUTRITION PROGRAM		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 21-28 with Nutrition Ink to provide nutrition education services for the City's Senior Citizen Nutrition Program.

A copy of Agreement No. 21-28 with Nutrition Ink is attached for the City Council's review and consideration.

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

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

**FISCAL IMPACT:** There will be no cost to the General Fund as a result of this agreement to provide nutrition education services. The cost of nutrition education services, \$2,900, will be grant funded under Agreement No. 19-47 with DAAS. The term of agreement 21-28 will be from July 1, 2020 - June 30, 2021.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 21-28 with Nutrition Ink to provide nutrition education services for the City's Senior Citizen Nutrition Program.

## NUTRITION INK AGREEMENT

**I. OBJECTIVE:**

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

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

**PROGRAM DESCRIPTION:**

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

**2. TERMS OF AGREEMENT:**

This is to certify that the City of Montclair’s Senior Nutrition Program has engaged the services of *NUTRITION INK* (Sub-Contractor) for its nutrition consultation to one (1) site, Montclair Senior Center. This service is effective July 1, 2021 through June 30, 2022.

**3. RESPONSIBILITIES OF SUB-CONTRACTOR:**

- A. At a minimum, quarterly monitor site for safe food handling and sanitation practices of facilities.
- B. Provide input, review, and approve the Nutrition Education Plan for staff and participants prior to presentation.
- C. Develop, or review and approve the cycle menus unless provided and signed by RD of approved caterer.
- D. Provide technical support and assistance as needed.
- E. Plans, organizes and conducts Nutrition Education a minimum of four (4) times per year for food service staff (paid and volunteers) and participants in congregate meal programs. Nutrition Education for congregate sites is defined as demonstrations, presentations, lectures or small group discussions, all of which may be augmented with printed materials. Training sessions shall be evaluated by those receiving the training.
- F. Nutrition Education shall be based on the particular need of congregate meal participants. An annual Needs Assessment shall be performed by the ENP Provider to make this determination.
- G. Since the Staff Training/Nutrition Education Plan and annual Needs Assessment must be submitted by the City of Montclair to DAAS by July 16, 2021, Sub-Contractor shall be required to support that timeline accordingly.
- H. Nutrition Education sessions must be reported monthly to DAAS using the Nutrition Education Monthly Service Unit Report.

Nutrition Education Units of Service:

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

4. RESPONSIBILITIES OF AGENCY/CONTRACTOR

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

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

6. The Sub-Contractor shall provide the following:

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

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

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

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

10. HIPAA Law:

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

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

Costs:

Nutrition Education and materials plus yearly plan .....	\$900
Site Monitoring quarterly.....	\$900
Staff Training quarterly.....	\$900
Mileage.....	\$200
Total.....	\$2900

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

**NUTRITION INK**

\_\_\_\_\_  
 Jessica Lopez, MBA, RDN  
 Jessica@nutritionink.com  
 Vice President of Operations

Date: \_\_\_\_\_

**CONTRACTOR:**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
 Javier John Dutrey, Mayor

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
 Andrea Myrick, City Clerk

Date: \_\_\_\_\_



# ATTACHMENT A

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

*NOTE: RETAIN IN EMPLOYEE/ VOLUNTEER FILE*

NAME \_\_\_\_\_

POSITION \_\_\_\_\_

FACILITY \_\_\_\_\_

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

### PERSONS WHO ARE REQUIRED TO REPORT ABUSE

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

### PERSONS WHO ARE THE SUBJECT OF THE REPORT

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

### REPORTING RESPONSIBILITIES AND TIME FRAMES

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

Reporting shall be completed as follows:

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

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

#### **PENALTY FOR FAILURE TO REPORT ABUSE**

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

#### **CONFIDENTIALITY OF REPORTER AND OF ABUSE REPORTS**

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

#### **DEFINITIONS OF ABUSE**

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

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

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

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

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

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

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

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

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

SIGNATURE

DATE



# CITY COUNCIL AGENDA REPORT

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**DATE:** JUNE 21, 2021                      **FILE I.D.:** MFF500  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** ADMIN. SVCS.  
**ITEM NO.:** 4    **PREPARER:** J. HAMILTON  
**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 21-29, A MEMORANDUM OF UNDERSTANDING WITH THE MONTCLAIR FIREFIGHTERS' ASSOCIATION FOR THE PERIOD OF JULY 1, 2021 TO JUNE 30, 2026  
  
CONSIDER APPROVING THE TRANSFER OF THE APPROPRIATE ADDITIONAL COMPENSATION FROM THE PERSONNEL ADJUSTMENT RESERVE FUND TO THE GENERAL OPERATING FUND

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 21-29, a Memorandum of Understanding (MOU) with the Montclair Firefighters' Association (MFFA) for the period of July 1, 2021 to June 30, 2026; and approving the transfer of the appropriate additional compensation from the Personnel Adjustment Reserve Fund to the General Operating Fund.

**BACKGROUND:** Typically, on an annual basis, the City of Montclair negotiates the terms and conditions of employment with the various labor associations, which include MFFA. Once an agreement is reached with the representative labor association, the City and the respective labor association will memorialize the terms in a signature agreement, which is presented to the Personnel Committee for approval of pay and benefit increases. The MOU between the City and MFFA is then updated and presented to City Council for approval.

The MFFA MOU represents a culmination of efforts between the City Manager and MFFA membership employees over the previous several years to produce a long-term agreement to address recruitment and retention efforts in the Montclair Fire Department. After amicable and good faith bargaining, the City and MFFA have concluded negotiations and reached a comprehensive agreement on May 13, 2021 for the period of July 1, 2021 through June 30, 2026, with the Personnel Committee approving the following terms and conditions of employment on May 17, 2021.

The following is a summary of the agreement reached:

- Article 5 (Unit Description): The classification of Firefighter is now replaced with the classification of Firefighter (Paramedic) since every firefighter hired is paramedic certified. Additionally, effective July 1, 2020, the City approved MFFA's petition to have the Fire Captain classification transferred from the Management Unit to MFFA and, therefore, the classification of Fire Captain is added to the classifications covered by this MOU.
- Article 7 (Section 7.01, Wages): This change relates to the following salary increases of all classifications represented by MFFA effective July 1, 2021:
  - Effective first full pay period of July 2021: 5% pay increase;

- Effective first full pay period of January 2022: 4% pay increase;
  - Effective first full pay period of July 2022: 4% pay increase;
  - Effective first full pay period of January 2023: 4% pay increase;
  - Effective first full pay period of July 2023: 4% pay increase;
  - Effective first full pay period of July 2024: 3% pay increase; and
  - Effective first full pay period of July 2025: 2% pay increase.
- Article 7 (Section 7.05, Acting Pay): The change of language in this provision clarifies the classifications which may authorize personnel to work in an acting capacity.
  - Article 7 (Section 7.10, Paramedic Pay) [Deleted]: This provision is deleted and the previous Paramedic Pay allotment has been added into the base salary of the newly created Firefighter (Paramedic) classification.
  - Article 7 (Section 7.10, Longevity Conduct Pay) [Added]: This change adds a Special Additional Pay for a Fire Captain, Fire Engineer, or Firefighter (Paramedic) who remains with the City by providing an increase of 2.5 percent on the anniversary of each of the employee's quinquennial periods (e.g., 5-, 10-, 15-, 20-, and 25-year anniversaries), which is known as Longevity Pay. The benefit caps out at 25-years. However, for an employee to be eligible for Longevity Pay, his/her employment must be continuous, full-time service *and* his/her performance must meet and/or exceed expectations as outlined in Article 26 of the MFFA MOU. Longevity Pay consideration may also be delayed if an employee receives a certain level of discipline.
  - Article 7 (Section 7.11, Repayment of Wages and Expenses Owed): The change of language in this provision clarifies the procedure by which the parties shall follow when an MFFA member-employee must repay wages or expenses owed.
  - Article 7 (Section 7.12, Return of City Property): The change of language in this provision clarifies the procedure by which the parties shall follow when an MFFA member-employee is required to return City property.
  - Article 7 (Section 7.13, Compensation/Ineligibility for Additional Pay When on Administrative Leave, Leave of Absence Without Pay or a Non-Work-Related Medical Leave in Excess of 30 Days) [Added]: This provision provides that MFFA member-employees will cease earning or receiving additional forms of specified City compensation in the event the MFFA member-employee is on a leave of absence without pay, a non-work-related medical leave in excess of 30 days, or placed on paid administrative leave.
  - Article 12 (Section 12.01, Holiday Leave): This provision removes outdated language.
  - Article 12 (Section 12.03, Holiday Pay Option): This provision provides clarification as to when the time period shall be defined each year for the holiday pay option.

- Article 14 (Section 14.01): The changes in this provision provide for the addition of a holiday sick leave cap up to a maximum of 1,407.75 hours, provides clarification as to when the time period shall be defined each year for the sick leave redemption program, and provides some additional changes to clarify the intent of the Section.
- Article 29 (Layoff Procedure): The changes in this provision provides some clarifying language concerning the procedures the parties shall follow in the event layoffs are necessary.
- Article 45: This change describes the term of this new MOU to be from July 1, 2021 to June 30, 2026.

**FISCAL IMPACT:** The fiscal impact associated with ratifying proposed Agreement No. 21-29 due to additional compensation will be funded from the Personnel Adjustment Reserve of the General Fund as these increases were not included in the draft Fiscal Year 2021-2022 Budget. Therefore, City Council is requested to approve the transfer from the Personnel Adjustment Reserve to the General Operating Fund to fund the additional compensation.

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

1. Approve Agreement No. 21-29, a Memorandum of Understanding with the Montclair Firefighters' Association (MFFA) for the period of July 1, 2021 to June 30, 2026; and
2. Authorize the transfer of the appropriate additional compensation from the Personnel Adjustment Reserve Fund to the General Operating Fund.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	PDT205
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	5	<b>PREPARER:</b>	B. VENTURA
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 21-33 WITH ALL CITY MANAGEMENT SERVICES, INC. FOR SCHOOL CROSSING GUARD SERVICES		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 21-33 with All City Management Services, Inc. for school crossing guard services for Fiscal Year 2021-22.

A copy of proposed Agreement No. 21-33 is attached for the City Council's review and consideration.

**BACKGROUND:** All City Management Services, Inc. has provided school crossing guard services for the City since November 1998 and has notified Police Department staff that its hourly rate for crossing guard services will increase for Fiscal Year 2021-22. The adjustment would increase the current hourly rate by \$1.80, resulting in an hourly billing rate of \$24.91. The wage increase is a direct result of Senate Bill 3, which provides for an annual \$1 increase from January 1, 2021, through January 1, 2023, at which time the hourly minimum wage will have reached \$15 per hour.

All City Management Services, Inc. has indicated that, in order to maintain its workforce, it must maintain a buffer between the state-mandated minimum wage and its own wage rates. The company must also provide wages that would allow it to effectively compete against other part-time employers for recruitment and retention of crossing guards.

**FISCAL IMPACT:** With the rate increase, All City Management Services, Inc. has calculated the estimated annual program cost to be \$188,319.60. Included in the Police Department's preliminary Fiscal Year 2021-22 Budget is an allocation of \$175,000 to provide crossing guard services for the 2021-22 school year. Staff intends to address any shortfalls in this account at midyear.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 21-33 with All City Management Services, Inc. for school crossing guard services.



## AGREEMENT FOR CROSSING GUARD SERVICES

This AGREEMENT FOR CROSSING GUARD SERVICES (the "Agreement") is dated June 21, 2021 and is between the CITY OF MONTCLAIR (hereinafter called the "City"), and ALL CITY MANAGEMENT SERVICES, INC., a California corporation (hereinafter called the "Contractor").

### WITNESSETH

The parties hereto have mutually covenanted and agreed as follows:

1. This Agreement is for a period of time which commences on or around July 1, 2021 and ends on June 30, 2022, and for such a term thereafter as the parties may agree upon.
2. The Contractor is an independent contractor and the guards to be furnished by it shall at all times be its employees and not those of the City.
3. The City's representative in dealing with the Contractor shall be the City Manager or such a person as the City Manager may designate.
4. If, at any time during the contract period, the City questions the meaning of any item of this Agreement, the City may contact the Contractor for interpretation of that item.
5. The City shall have the right to determine the hours and locations when and where the guards shall be furnished by the Contractor. The Contractor shall notify the City in writing of any changes which may need to occur in hours of work or locations. The City further has the power to add to, delete from or revise the work schedule/locations at any time.
6. The Contractor shall provide supervisory personnel to see that guard activities are taking place at the required places and times, and in accordance with all items of this Agreement.
7. The Contractor shall maintain adequate reserve personnel to be able to furnish alternate guards in the event that any person fails to report for work at the assigned time and location.
8. The Contractor shall provide personnel properly trained as herein specified for the performance of duties of Crossing Guards. In the performance of their duties the Contractor and employees of the Contractor shall conduct themselves in accordance with the conditions of this Agreement and laws and codes of the State of California and the City of Montclair.
9. The Contractor shall train, schedule, provide and supervise personnel in accordance with the contract and the rules and regulations of the City of Montclair. Crossing Guards shall perform their duties as trained and within the City's rules for such guards.



10. Persons provided by the Contractor as Crossing Guards shall be trained in the laws and codes of the State of California and the City of Montclair pertaining to general pedestrian safety and school crossing areas.
11. Crossing Guard Services shall be provided by the Contractor at the designated locations and at the designated hours on all days on which the designated schools in the City of Montclair are in session.
12. The Contractor shall provide all Crossing Guards with apparel by which they are readily visible and easily recognized as Crossing Guards. Such apparel shall be uniform for all persons performing the duties of Crossing Guards and shall be worn at all times while performing said duties. This apparel must be appropriate for weather conditions. The Contractor shall also provide all Crossing Guards with hand-held Stop signs and any other safety equipment which may be necessary. Apparel and equipment shall be pre-approved by the City Manager or the designee.
13. **(a) Types of Required Coverages**

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

- (1) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 00 001, with minimum limits of at least \$1,000,000 per occurrence for bodily injury, personal injury and property damage, and \$3,000,000 aggregate total bodily injury, personal injury and property damage. Commercial General Liability Insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (2) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1), including owned, non-owned, and hired autos, or the exact equivalent, with minimum limits of \$1,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) **Workers Compensation:** Workers Compensation Insurance, as required by the State of California and Employers Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.

**(b) Endorsements**

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

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

**Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Contract. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of contractor
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Contract

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

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

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

(c) **Notice of Cancellation**

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

(d) **Waiver of Subrogation**

Required insurance coverages shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all rights of subrogation against the indemnified parties and Policies shall contain or be endorsed to contain such a provision.

(e) **Evidence of Insurance**

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

(f) **Deductible or Self-Insured Retention**

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

**(g) Contractual Liability**

The coverage provided shall apply to the obligations assumed by the Contractor under the indemnity provisions of this contract.

**(h) Failure to Maintain Coverage**

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

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

**(i) Acceptability of Insurers**

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

**(j) Claims Made Policies**

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Contractor's Contract with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least three (3) years from termination or expiration of this Contract.

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

**(k) Insurance for Subcontractors**

Contractor shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Contract/Agreement, including adding the City as an Additional Insured to the Subcontractor's policies.

14. Contractor agrees to indemnify the City, its officers, employees, and agents against, and will hold and save each of them harmless from, nay and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of the negligent acts or intentional tortious acts, errors, or omissions of Contractor, its agents, employees, subcontractors, or invitee, or otherwise arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part to Contractor's performance of this Agreement.
- a) Contractor will defend any action or actions filed in connection with any said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses including attorney's fees incurred in connection herewith. The Contractor's obligation to defend the City, its officers, employees and agents is not contingent upon there being an acknowledgment or determination of the merit of any claims, penalties, obligations, errors, omissions and/or costs.
  - b) Contractor will promptly pay any judgement rendered against the City, its officers, agents, or employees for any such claims, damages, penalties, obligations or liabilities to the extent that the judgment arises from the negligent acts or intentional tortuous acts, errors, or omissions of Contractor, its agents, employees, subcontractors, or invitees, or otherwise from the Contractor's performance of the Agreement.
  - c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against the Contractor for such damages or other claims arising out of or in connection with Contractor's performance of this Agreement, Contractor agrees to pay City, its officers, agents or employees, any and all costs and expenses incurred by City, its officers, agents, or employees in such action or proceeding, including, but not limited to, reasonable attorney's fees.
  - d) All obligation under this provision are to be paid by Contractor as they are incurred by City.
  - e) The provisions of this indemnity provision as contained at Paragraph 14 are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the City provided that this Paragraph 14 will not be interpreted to require Contractor to indemnify City if and to the extent that a court determines that the negligent acts or intentional tortious acts, errors, or omissions of the City, its agents, employees or representatives caused or contributed to the underlying action or claim. Contractor acknowledges that City would not enter into this Agreement in the absence of the commitment of Contractor to indemnify and protect as set forth herein.
15. Either party shall have the right to cancel this Agreement by giving thirty (30) days written notice to the other.
16. The Contractor shall not have the right to assign this Contract to any other person or firm except with the consent of the City.
17. The City agrees to pay Contractor the sum of Twenty-four Dollars and Ninety-one Cents

(\$24.91) per hour for each hour of crossing guard services provided pursuant to this Agreement.

18. In the event that this Agreement is extended beyond June 30, 2022, the compensation for services shall be established by mutual consent of the parties. Said payment shall be made upon written statement to the City by the Contractor and approval of the appropriate City representative.
19. This Agreement shall be governed by and construed in accordance with the law of the State of California. Any litigation concerning this Agreement shall take place in the superior or federal district court with jurisdiction over the City of Montclair.
20. In the event any legal proceeding is instated to enforce any term of provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover Attorney's fees and costs from the opposing party in an amount determined by the court to be reasonable.
21. Independent Contractor
  - (a) Contractor is and at all times shall remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control and shall not be construed to be employees of City for any purpose, including eligibility under Public Employees Retirement Law. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. Contractor shall be solely responsible and hold the City harmless for all matters relating to the payment of Contractor's employees, including compliance with Social Security withholdings and all other regulations governing such matters.
  - (b) No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.
22. Effect of Partial Invalidity

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

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

**CITY**

**CONTRACTOR**

**City of Montclair**

**All City Management Services, Inc.**

By \_\_\_\_\_  
Javier John Dutrey, Mayor

By \_\_\_\_\_  
Baron Farwell, General Manager

Date \_\_\_\_\_

Date \_\_\_\_\_

ATTEST:

By \_\_\_\_\_  
Andrea M. Myrick, City Clerk

Date \_\_\_\_\_



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	STA850
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	6	<b>PREPARER:</b>	S.STANTON
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 20-34 WITH LAE ASSOCIATES, INC. FOR PROGRAM MANAGEMENT ASSISTANCE FOR THE HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP) FOR THE RAMONA AVENUE/HOWARD STREET ROUNDABOUT PROJECT		

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**REASON FOR CONSIDERATION:** Program management assistance is required for the use of federal funds associated with the Ramona Avenue/Howard Street Roundabout Project. The services require a professional services agreement. Agreements with the City require City Council approval.

**BACKGROUND:** On March 26, 2021, the City was notified by the California Department of Transportation that our application was successful and we had been awarded \$771,000 from the Highway Safety Improvement Program (HSIP) for construction of the Ramona Avenue/Howard Street Roundabout Project. The funding is designated for design and construction.

Under Local Assistance guidelines, the City is required to comply with extensive documentation throughout the duration of the project. As with prior HSIP projects, staff consults a professional services contract for the assistance of contract administration for the project.

LAE Associates, Inc., has prior experience with the City having assisted with the 2016 HSIP Central Avenue/San Bernardino Street Traffic Signal Improvement Project. LAE Associates, Inc., is known to have the staffing and experience to successfully satisfy the requirements of the HSIP program.

**FISCAL IMPACT:** LAE Associates, Inc., has submitted a proposal to the City for the required services in the amount of \$12,950. Contingency funds will be used for this contract.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 21-34 with LAE Associates, Inc., for Program Management Assistance for the Highway Safety Improvement Program (HSIP) for the Ramona Avenue/Howard Street Roundabout Project.

**CITY OF MONTCLAIR**

**AGREEMENT FOR CONSULTANT SERVICES**

**PROGRAM MANAGEMENT ASSISTANCE FOR THE HIGHWAY SAFETY  
IMPROVEMENT PROGRAM (HSIP) FOR THE RAMONA AVENUE/HOWARD  
STREET ROUNDABOUT PROJECT**

THIS AGREEMENT is made and effective as of June 21, 2021, between the City of Montclair, a municipal corporation ("City") and LAE Associates, 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 May 15, 2021, and shall remain and continue in effect for a period of 36 months until tasks described herein are completed, but in no event later than May 15, 2024, unless sooner terminated pursuant to the provisions of this Agreement, or extended by mutual consent.

2. **SERVICES**

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

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

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

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed



\$12,950 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

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

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

## 6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

## 7. DEFAULT OF CONSULTANT

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

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

#### 8. OWNERSHIP OF DOCUMENTS

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

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

#### 9. INDEMNIFICATION

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

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

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

## 10. INSURANCE

(a) 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: Steve Stanton  
Engineering Division Manager  
City of Montclair  
5111 Benito  
Montclair, CA 91763

To Consultant: Fred Alamolhoda, President  
LAE Associates, Inc.  
650 N. Rose Drive, #182  
Placentia, CA 92870

17. ASSIGNMENT

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

Consultant's responsible employee may use assistants, under his direct supervision, to perform some of the services under this Agreement. Consultant shall provide City fourteen (14) days' notice prior to the departure of the responsible employee from Consultant's employ. Should he leave Consultant's employ, the City shall have the option to immediately terminate this Agreement, within three (3) days of

the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF REQUEST FOR PROPOSALS

Consultant is bound by the contents of the proposal submitted by the Consultant, Exhibit "A" hereto and incorporated herein by this reference.

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY



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

25. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

**CITY OF MONTCLAIR**

**CONSULTANT**

By: \_\_\_\_\_  
Javier John Dutrey, Mayor

By: \_\_\_\_\_  
Fred Alamolhoda, President

Attest:

By: \_\_\_\_\_  
Andrea M. Myrick, City Clerk

By: \_\_\_\_\_  
(Title)

Approved as to Form:

By: \_\_\_\_\_  
Diane E. Robbins, City Attorney

**EXHIBIT A**  
**SCOPE OF SERVICES**



**PROJECT CONSTRUCTION PROGRAM  
MANAGEMENT**

Construction Staff Assistance  
Capital Project Planning • Transportation Funding Assistance  
Construction Cost Estimate Services

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May 18, 2021

Mr. Steve Stanton  
Project Manager  
Public Works Department  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

**SUBJECT: PROPOSAL TO PROVIDE PROGRAM MANAGEMENT ASSISTANCE  
FOR THE HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP) FOR  
THE CITY OF MONTCLAIR**

Dear Mr. Stanton:

It is my pleasure to submit this proposal to provide Program Management Assistance for the City of Montclair's (City) HSIP State Funded Projects. The City will receive \$771,100 of the State HSIP Funds for the intersection of Ramona Avenue and Howard Street. To implement the program, the City shall comply with the requirements of the Local Assistance Procedures Manual/Local Assistance Program Guidelines (LAPM/LAPG) for state funded projects administered by CT.

LAE Associates, Inc. (LAE) staff has a substantial amount of experience in administering and processing federally and state funded projects through CT, providing quality control, and project/construction administration services for cities and counties. LAE has completed similar services for the following Cities: Arcadia, Azusa, Chino, Diamond Bar, El Monte, Long Beach, Montclair, San Dimas, San Jacinto, Seal Beach, Signal Hill as well as San Bernardino County Transportation Authority (SBCTA).

The City's proposed project is to construct a roundabout, refuge islands, high visibility crosswalks, ADA compliant curb ramps, and addition/upgrade of lighting. LAE's project approach, and detail scope of services are outlined as follows:

- Review City's HSIP Funding Application and other related documents.
- Prepare the required exhibits to obtain State Project and Identification numbers.
- Prepare the request for HSIP Funding Allocation and the Finance Letter for the City Project Manager's review, signature, and submission to CT.
- Assist the City to obtain a new "State Funds Master Agreement" between the City and CT, if the City does not have one on file with CT.
- Assist the City and prepare the first draft of the City Council Resolution for the City Project Manager's review to execute the Program Supplement Agreement (PSA) with CT

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630 N. Rose Drive, #182, Placentia, CA 92870  
(714) 993-2840

May 18, 2021  
Mr. Steve Stanton  
Proposal  
Page 2 of 2

- Prepare a Request for Proposal (RFP) for Professional Engineering Services in accordance with the requirements of LAPM, and project scope as outlined in the funding application approved by CT.
- Coordinate that the City obtains the required California Environmental Quality Act (CEQA) clearances and right-of-way certifications, and the project design complies with the requirements of Americans with Disabilities Act prior to advertising the project for bids.
- Prepare CT design reimbursement invoices to be submitted to CT. Follow up to ensure timely processing of the invoices.

We will work closely with you, your staff, CT, and others involved in the project to obtain CT approval and allocate state funds. LAE's fee to provide these services will be \$12,950.

Classifications	Hourly Rate	Hours	Ext. Amt.
Programming Coordinator	\$140	80	\$11,200
Principal-In-Charge	\$175	10	\$1,750
Total			\$12,950

Provide assistance during project advertisement, bidding, award, and project close out.

Again, thank you for providing LAE the opportunity to submit this proposal. Should you have any questions, please contact me at (909) 595-3760 or e-mail me at [Freda@LAEassociates.com](mailto:Freda@LAEassociates.com).

Sincerely,

Fred Alamolhoda, P.E.  
President

**EXHIBIT B**  
**HOURLY RATES**

Classifications	Hourly Rate	Hours	Ext. Amt.
Programming Coordinator	\$140	80	\$11,200
Principal-In-Charge	\$175	10	\$1,750
Total			\$12,950



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	PRK025/525
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	7	<b>PREPARER:</b>	S.STANTON
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT 21-35 AMENDING AGREEMENT NO. 20-79 WITH EPT DESIGN FOR DESIGN SERVICES FOR THE REEDER RANCH PARK PROJECT		

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**REASON FOR CONSIDERATION:** Architectural design services are required for the development of plans and specifications to construct a new park. The City Council previously awarded a design contract to EPT Designs for these services and later approved Agreement No. 20-79. During the course of design, additional services are required beyond the original contract. Amendments to the contract require City Council approval.

**BACKGROUND:** On September 8, 2020, the City Council awarded an architectural design services contract to EPT Designs to prepare plans and specifications for construction of the Reeder Ranch Park located on Holt Boulevard.

During the design phase, ongoing progress meetings are held with the architect and various staff members. As a result of several discussions, staff has directed the architect to render additional services, ultimately modifying the original scope of work. Additional design services include the performance of a soils analysis and the addition of a standalone storage building and additional shade structures.

**FISCAL IMPACT:** Funding for this project is provided through the Statewide Park Development and Community Revitalization Program. The total design appropriation with EPT Designs was \$371,695. The contract amendment with EPT Designs is for an additional \$34,900, bringing the new contract total to \$406,865.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 21-35 amending agreement No. 20-79 with EPT Designs for additional design services for the Reeder Ranch Park Project.

AMENDMENT NO. 1 TO AGREEMENT NO. 20-79

WITH

EPT DESIGN

FOR

**ENGINEERING CONSULTING SERVICES  
DESIGN SERVICES FOR REEDER RANCH PARK**

This is the first amendment to Agreement No. 20-79 by and between the City of Montclair, California, a municipal corporation, ("City") and EPT Design a California corporation ("Consultant") dated this 21st day of June, 2021. It is hereby agreed to amend Agreement No. 20-79 dated September 9, 2020, as follows:

1. TERM

This contract amendment shall commence on June 21, 2021, and terminate on June 20, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

No changes

3. PERFORMANCE

No changes

4. CITY MANAGEMENT

City's City Manager shall represent the City in all matters pertaining to the coordination and administration of this consulting contract, including the review and approval of all products submitted by Consultant, but not including the authority to enlarge the Scope of Services 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 Scope of Services to be performed or change Consultant's compensation, subject to Section 5 hereof.

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in a new 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 \$406,865 for the total term of the agreement, including an additional payment of \$34,900 for additional services.

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

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

Sections 6. through 23.

No changes

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

CITY OF MONTCLAIR, CALIFORNIA

CONSULTANT: EPT DESIGN

By: \_\_\_\_\_  
Javier John Dutrey, Mayor

By: \_\_\_\_\_  
Name/Title:

Attest: \_\_\_\_\_  
Andrea M. Myrick, City Clerk

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name/Title:

Approved as to form:

Date: \_\_\_\_\_

\_\_\_\_\_  
Diane E. Robbins, City Attorney

# EPTDESIGN

19 April 2021

Prepared For:  
Steve Stanton  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

## PROPOSAL FOR ADDITIONAL ARCHITECTURAL AND STRUCTURAL SERVICES: REEDER RANCH PARK - ANNEX, SITE ENGINEERING

Dear Steve:

Thank you for considering this request for additional services to cover the expansion of scope beyond the original 2500 sq. ft. recreation building. This request includes fees from Goodale Architecture for architectural, structural, and MEP services for the annex building and the breezeway canopies that join the recreation building. These services will occur in parallel to the project's schedule and completion of recreation building and site design.

An as-needed fee is included by Goodale Architecture's structural engineer subconsultant for the engineering of the exterior wood deck, stage platform, and northern trellis canopy. The final design and material selection will determine if structural engineering for these elements will be required.

### Additional fees requested

EPTDESIGN	N/A
Goodale Architecture	
Annex Building and Canopy	\$21,000
<b>Total Fee Requested:</b>	<b>\$21,000</b>

### Additional As-Needed fee requested

Goodale Architecture - Structural Subconsultant	
Wood Deck, Stage	\$6,400
Trellis/Canopy	\$4,000
<b>Total As-Needed Fee Requested:</b>	<b>\$10,400</b>

All terms and conditions of the original agreement shall be included as part of this change order except as noted herein. Please provide authorization below.

AUTHORIZATION TO PROCEED:

BY:

Date:

\_\_\_\_\_  
(Client's Authorized Approval Signature)

### Attachments:

Appendix A - "Additional Service Proposal 1" from Goodale Architecture to EPTDESIGN dated 03/18/2021

LAGUNA BEACH  
PASADENA  
EPTDESIGN.COM



EPT Design  
844 E. Green Street  
Pasadena, California 91101

**Attn:**  
Devon Santy

March 18, 2021



**Subject:** Reeder Ranch Park / Annex Building & Canopies  
ADDITIONAL SERVICES PROPOSAL 1 + AS-NEEDED SERVICES

Dear Devon,

This follows our discussion of expansion of scope beyond original proposal for the 2500 sq. ft. Recreation Building.

We propose to provide services for these facilities parallel to our work plan for the Recreation Building - adding to the scope of our current consultant agreement with EPT. We presume that the stage platform decking and trellis/canopy elements will be designed/coordinated by EPT with B&J.

**Annex Building and Canopy**

Architectural:	\$ 13,000
Structural:	\$ 5,500
Mechanical:	\$ 1,500
Electrical:	\$ 1,000
<u>TOTAL</u>	<u>\$21,000</u>

**TOTAL PROPOSED ADDITIONAL FEE: \$ 21,000**

**As-Needed:**

<b>Wood Deck/Stage Platform</b>	
Structural:	\$ 6,400
<u>TOTAL</u>	<u>\$ 6,400</u>

**As-Needed:**

<b>Northerly Trellises/Canopy</b>	
Structural:	\$ 4,000
<u>TOTAL</u>	<u>\$ 4,000</u>

**TOTAL PROPOSED AS-NEEDED FEE: \$ 10,400**

We propose to bill, (separate from main agreement), on a monthly basis against this total amount, per percentage of work completed.

If you find this acceptable, please sign below and return a copy.

Thank you and regards,

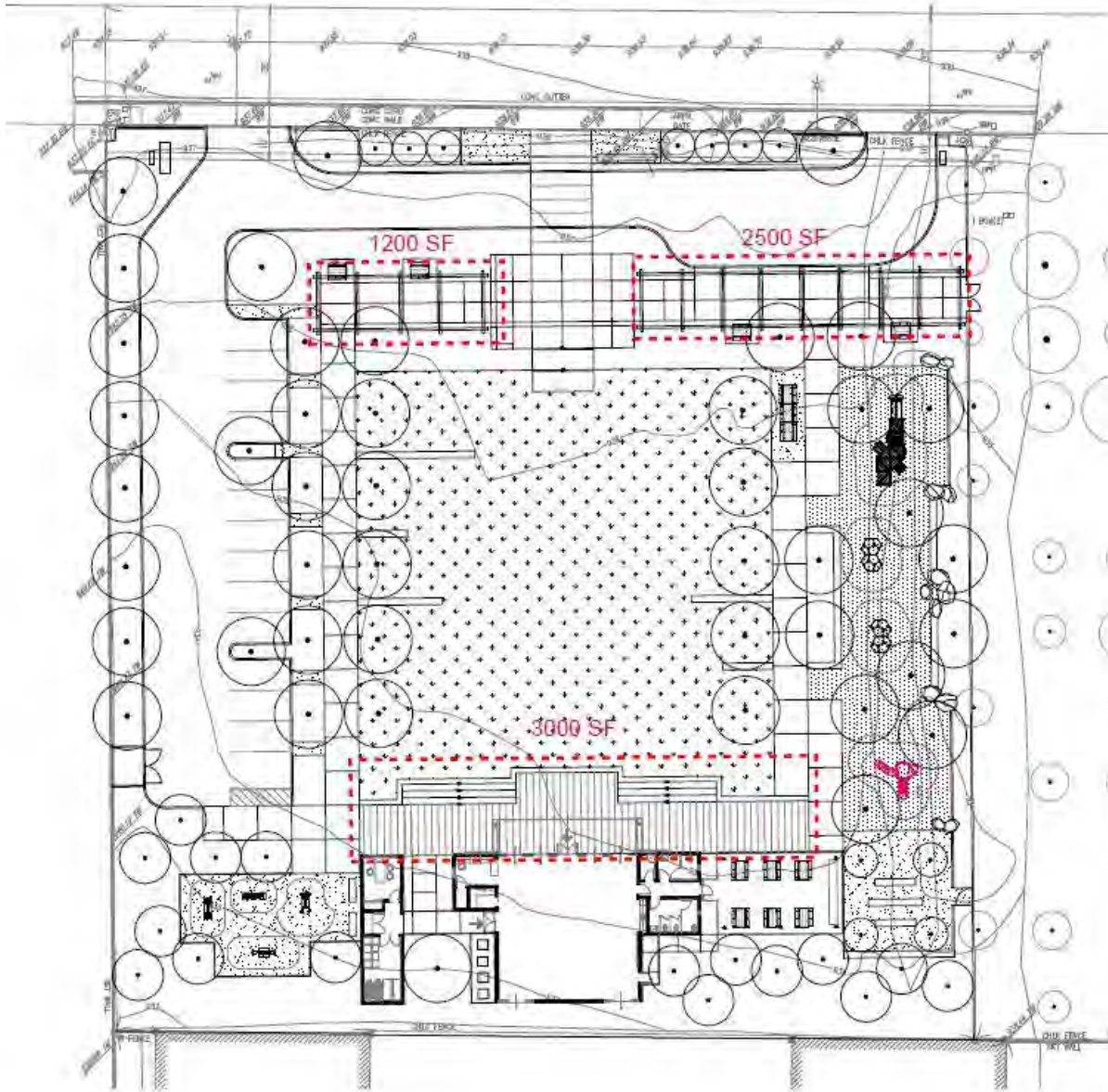
  
David Goodale AIA

.....  
EPT Design

773 S WARENGO AVE #2  
PASADENA CA 91106

ARCHITECT AIA LEED AP  
DAVID@GOODALEARCH.COM

626 379-8758  
WWW.GOODALEARCH.COM



# EPTDESIGN

15 December 2020

Prepared For:  
Steve Stanton  
Engineering Division Manager  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

## **PROPOSAL FOR ADDITIONAL SUBCONSULTANT SERVICES: REEDER RANCH PARK - GEOTECHNICAL PERCOLATION TESTING**

Dear Mr. Stanton:

We spoke with Chris Allen from Earth Systems on Thursday 12/10/2020 regarding the percolation tests they will perform to help inform the stormwater management strategy for the new park. Chris made us aware that Earth Systems received notification from you that the city requires Double Ring Infiltrometer tests for the percolation rate. This requirement conflicts with the test method originally included in the project proposal for this purpose.

Performing the required Double Ring Infiltrometer percolation test adds cost to the site exploration and report geotechnical report generation. Earth Systems has provided EPTDESIGN with the change order request provided at the end of this document as Appendix A.

This work is in addition to any previous contractual work, and will be billed on a lump-sum basis.

### **Total Fee Requested: \$3,500**

EPTDESIGN will not request an upcharge for this added cost for site exploration by the Geotechnical Engineer.

All terms and conditions of the original agreement shall be included as part of this change order except as noted herein. Please provide authorization below.

### AUTHORIZATION TO PROCEED:

BY:

Date:

---

(Client's Authorized Approval Signature)

### Attachments:

Appendix A - "Change Order to Proposal PAS-02-06-008" from Earth Systems to EPTDESIGN dated 12/11/2020

LAGUNA BEACH  
PASADENA  
EPTDESIGN.COM



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	JUNE 21, 2021	<b>FILE I.D.:</b>	PUB400/FIN285
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	8	<b>PREPARER:</b>	S. STANTON

**SUBJECT:** CONSIDER AMENDING THE 2019–2024 CAPITAL IMPROVEMENT PROGRAM ADDING THE REEDER RANCH MASTER PLAN

CONSIDER AUTHORIZING AN \$8,500 APPROPRIATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR DESIGN OF THE REEDER RANCH MASTER PLAN

CONSIDER APPROVAL OF AGREEMENT NO. 21-36 WITH EPT DESIGN FOR DESIGN SERVICES FOR THE REEDER RANCH MASTER PLAN

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**REASON FOR CONSIDERATION:** Architectural design services are required for the development of the Reeder Ranch Master Plan.

**BACKGROUND:** In, 2014, the City received Community Development Block Grant (CDBG) funds for the preservation of the Reeder Ranch property. The preservation projects included foundation stabilization on the house, electrical improvements, minor wood repair and a new roof. The projects were completed over multiple phases with the last being completed in 2020.

In more recent years, the City has been granted additional CDBG funds towards the property that includes pathways and, accessibility accommodations that meet today's Americans with Disability (ADA) requirements, structural barn repairs and painting of the house.

On September 8, 2020, City Council authorized Agreement No. 20-79, awarding a design services contract with EPT Design for preparation of plans and specifications for the Reeder Ranch Park Project. With EPT Design having already conducted survey and, preparing site plans for the park project, staff recommends that EPT Design prepare a Master Plan for the additional CDBG projects at the Reeder Ranch property. With the preliminary work that EPT staff has already completed, plans for pathways and ADA accessibility could be completed cooperatively.

It is staff's intention to have both, the Reeder Ranch Park and the Reeder Ranch CDBG projects constructed during the same time.

**FISCAL IMPACT:** Funding for this project is provided through Community Development Block Grant (CDBG) Funds. The design services agreement with EPT Design, is for a not to exceed amount of \$8,500.

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

1. Amend the 2019–2024 Capital Improvement Program adding the Reeder Ranch Master Plan;
2. Authorize a \$8,500 Appropriation of Community Development Block Grant (CDBG) Funds for Design of the Reeder Ranch Master Plan; and
3. Approve Agreement No. 21-36 with EPT Design for design services for the Reeder Ranch Master Plan.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

DESIGN SERVICES FOR REEDER RANCH MASTER PLAN

THIS AGREEMENT is made and effective as of June 21 2021, between the City of Montclair, a municipal corporation ("City") and EPT Design 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 June 21, 2021 and shall remain and continue in effect for a period of 12 months until tasks described herein are completed, but in no event later than June 20, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

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

3. PERFORMANCE

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

4. CITY MANAGEMENT

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

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. **This amount shall not exceed**

**\$8,500** for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

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

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

## 6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

## 7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating

Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

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

## 8. OWNERSHIP OF DOCUMENTS

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

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

## 9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Contractor shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and

from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Contractor herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Contractor, including its subcontractors, employees, agents, and other persons or entities performing work for Contractor.

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

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



any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Contractor further agrees to pay or cause to be paid to the Indemnified Parties’ benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Contractor or of Contractor’s officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Contractor further agrees to waive all rights of subrogation against the Indemnified Parties.

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

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

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

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

10. INSURANCE

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

(a) Types of Required Coverages

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

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$3,000,000 per occurrence, and \$5,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$5,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$3,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

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

- (1) Commercial General Liability

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

including materials, parts or equipment furnished in connection with such work or operations. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of contractor
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Agreement

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

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

(2) Auto Liability

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

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

(3) Workers' Compensation

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

Required insurance coverages shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such

a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

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

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

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

In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an

extension of time for completion of the Work because of production lost during suspension.

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

(k) Insurance for Subcontractors

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

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

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

(c) Consultant shall comply with all applicable federal, state and local Conflict of Interest laws, including the Political Reform Act (California Government Code, Section 81000, *et. seq.*) and California Government Code, Section 1090, *et. seq.* Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement. Further, Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to the City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by the Consultant. The Consultant’s covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

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

To City:	City Engineer City of Montclair 5111 Benito Montclair, CA 91763
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To Consultant:	EPT Design 844 East Green Street, Suite 201 Pasadena, CA 91101
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17. ASSIGNMENT AND SUBCONTRACTING

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF REQUEST FOR PROPOSALS

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



22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

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

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

CITY OF MONTCLAIR

CONSULTANT / EPT DESIGN

By: \_\_\_\_\_  
Javier John Dutrey, Mayor

By: \_\_\_\_\_  
Name/Title:

Attest:

By: \_\_\_\_\_  
Andrea M. Myrick, City Clerk

By: \_\_\_\_\_  
Name/Title:

Approved as to Form:

By: \_\_\_\_\_  
Diane E. Robbins, City Attorney

**EXHIBIT A**

**EPTDESIGN**

09 April 2021

**PROPOSAL FOR LANDSCAPE ARCHITECTURAL SERVICES  
City of Montclair  
Reeder Ranch Master Plan**

**I. SCOPE**

**A. Project Phases**

- a. Master Plan Document

**B. Project Area**

**EPTDESIGN** shall provide Landscape Architectural services for the Reeder Ranch House property creating a Master Plan to establish a framework for immediate, short-term (1-5 years) and long-term projects (6-10 years). The master plan will assess existing conditions and provide an outline of programming, design and construction that can be implemented as funds become available. The area of scope is outlined in the map below and will include all exterior areas surrounding the existing house, barn and orchard.



**II. PROCESS**

**EPTDESIGN** assumes the following number of meetings, and document submittals per phase.

**A. Master Plan Phase (2 meeting, 1 site visit)**

- a. Kick Off Meeting with City Staff
- b. Site Visit to document existing conditions
- c. Progress Review Meeting with City Staff

LAGUNA BEACH  
PASADENA  
EPTDESIGN.COM

Proposal for Landscape Architectural Services  
Reeder Ranch Master Plan  
08 April 2021  
Page 2 of 4

- d. Master Plan Document Submittal

**III. DELIVERABLES**

**EPTDESIGN** will provide the following deliverables as part of the Master Plan phase.

- a. We will approach the improvements to the Reeder Ranch property in three tiers. Each tier will address specific improvements as they relate to cost and scope. All three tiers will include narratives and diagrams to provide necessary information that can be used by the city to create rough order of magnitude for budgeting purposes.

Immediate Improvements: Address deferred maintenance, accessibility and required safety and security improvements that can be addressed by available CBD funding.

Short-Term Improvements: Propose modifications to topography, new hardscape, lighting, upgrades to the irrigation system, new planting and as well as special event programming as determined by the City of Montclair.

Long-Term Improvements: Identify upgrades and work that addresses the long-term programming goals as determined by the City of Montclair. This phase of improvements may include but not be limited to; house access and upgrades, barn upgrades (or replacement), exhibition of farm equipment and tools.

- b. Provide a written design narrative of the outdoor areas for each of the three tiers described above. All narratives will assess existing conditions and describe the proposed improvements.
- c. Provide a concept diagrams in support of the written narratives. The graphics will be used to define existing conditions, site programming, proposed areas of improvement, site circulation, and any additional notes required.

**IV. ASSUMPTIONS**

The following items are assumed by **EPTDESIGN** under this contract, modifications to these assumptions may require additional services.

- A. The following items will be provided by the city upon commencement of project:
  - Site Survey
  - Building Plans
  - CBD Grant Requirements and Funding Amount
- B. Additional meetings not outlined in this fee proposal will be billed as an additional service on an hourly basis.
- C. Changes to description of work as outlined in the Process and Deliverable may require an additional service request.
- D. Any additional services such as structural assessment report, house survey and accessibility assessment, soil testing, tree report shall be provided by others at owners expense and are not included as a part of this proposal.

**V. DESIGN FEE**

- A. General

**EPTDESIGN** will provide the following phases on a fixed fee basis as noted below.

**EPTDESIGN**

---

Proposal for Landscape Architectural Services  
 Reeder Ranch Master Plan  
 08 April 2021  
 Page 3 of 4

a. Master Plan Phase	\$8,000
Reimbursable Expenses	\$500

B. Reimbursable Expenses

**EPTDESIGN** defines reimbursable expenses as additional compensation for basic services including actual expenditures made by **EPTDESIGN** in the development of the project. These expenses shall include, but not be limited to: printing, plotting and reproduction; overnight delivery and messenger services; and travel expenses.

C. Additional Services

**EPTDESIGN** will provide to the Client such additional services as requested in writing by Client. For additional services, compensation shall be on an hourly basis or negotiated lump-sum basis.

Hourly Rates

Principal	\$ 210.00
Senior Associate	\$ 160.00
Associate	\$ 135.00
Project Manager	\$ 110.00
Project Captain	\$ 90.00
Designer	\$ 80.00
Administrative	\$ 65.00

Rates are effective through 31 December 2021 and are subject to escalation each year thereafter.

D. Expenses

All expenses incurred during performance of the Services are included in compensation delineated above unless otherwise authorized by the Client in writing.

**VI. CERTIFICATE ON LIABILITY INSURANCE**

- A. Errors and omissions \$ 1,000,000 per claim  
 \$ 2,000,000 annual aggregate
- B. General liability \$ 1,000,000 each occurrence  
 \$ 2,000,000 aggregate
- C. Automobile \$ 1,000,000
- D. Worker's compensation \$ 1,000,000

**VII. CONSULTANT EXPENSES**

- A. Any consultant hired by **EPTDESIGN** to perform services in behalf of the Client shall be invoiced at cost plus fifteen percent (15%) unless noted otherwise.

**VIII. BILLING PROCEDURES**

**EPTDESIGN**

Proposal for Landscape Architectural Services  
Reeder Ranch Master Plan  
08 April 2021  
Page 4 of 4

- A. Unless noted otherwise, invoicing will be on a monthly basis for the portion of the work completed or total hours expended.
- B. All invoices are due and payable upon receipt.

**IX. SUSPENSION OF WORK**

- A. **EPTDESIGN** may suspend and withhold all work on a project if payment is not received in full on a monthly basis for any, or all invoices presented. Such suspension of work shall relieve **EPTDESIGN** of any obligation under this agreement until all outstanding payments have been made.

**X. TERMINATION**

- A. This agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
- B. In the event of termination, **EPTDESIGN** shall be paid compensation of the Basic Services and Additional Services performed up to termination date, including reimbursable expenses.

**XI. ARBITRATION**

- A. Should an irresolvable controversy or claim arise during the course of this contract, the controversy shall be resolved by arbitration in Los Angeles or San Bernadino County in accordance with the construction industry rules of the American Arbitration Association unless the parties mutually agree to do otherwise. The prevailing party is entitled to recover reasonable attorney's fees and costs associated with this procedure.

**XII. SUCCESSORS AND ASSIGNS**

- A. **EPTDESIGN** and the client agree to obtain written approval of the other party before assigning or transferring interest in this agreement to third parties and each binds himself, his partners, successors, and assigns legal representatives to this agreement.

AUTHORIZATION TO PROCEED:

BY: \_\_\_\_\_ Date: \_\_\_\_\_

(Client's Authorized Approval Signature)

**EPTDESIGN**

---

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
JUNE 7, 2021, AT 6:12 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

---

**I. CALL TO ORDER**

Mayor Pro Tem Ruh called the meeting to order at 6:12 p.m.

**II. ROLL CALL**

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

Also Present: Senior Management Analyst Fuentes

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of May 17, 2021.**

Moved by Council Member Johnson, seconded by Mayor Pro Tem Ruh, and carried unanimously to approve the minutes of the Personnel Committee meeting of May 17, 2021.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

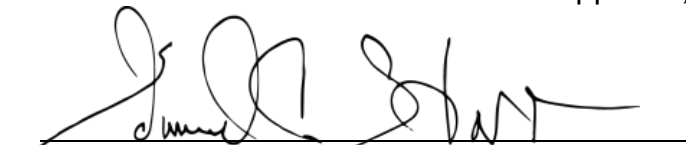
At 6:13 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:59 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Ruh stated that no announcements would be made at this time.

**VI. ADJOURNMENT**

At 6:59 p.m., Mayor Pro Tem Ruh adjourned the Personnel Committee.

Submitted for Personnel Committee approval,

  
\_\_\_\_\_  
Edward C. Starr  
City Manager

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, JUNE 7, 2021 AT 7:03 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

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I. CALL TO ORDER

Mayor/Chair Dutrey called the meeting to order at 7:03 p.m.

II. INVOCATION

The invocation was given by **Reverend Maggie Burbank, Monte Vista Unitarian Universalist Congregation.**

III. PLEDGE OF ALLEGIANCE

Council Member/Director Lopez led meeting participants in the Pledge.

IV. ROLL CALL

Present: Mayor/Chair Dutrey; Mayor Pro Tem/Vice Chair Ruh; Council Members/Directors Johnson, Martinez, and Lopez

City Manager/Executive Director Starr; Director of Human Services Richter; Executive Director of Public Safety/Police Chief Avels; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS

A. **Proclamation Declaring June 2021 as Pride Month in the City of Montclair**

Mayor Dutrey presented a proclamation declaring June 2021 as Pride Month in the City of Montclair to **Reverend Maggie Burbank, Monte Vista Unitarian Universalist Congregation.**

VI. PUBLIC COMMENT

A. **Ash Tandoc**, student and President of the **Lavender Coalition** at **Chaffey College**, stated they were invited to accept the proclamation this evening but could not in good conscience do so after learning about the troubling statements made by Council Member Lopez in the past about the LGBTQ+ community and his lobbying actions against AB 1266. They urged Council Member Lopez to rescind his statements otherwise the proclamation would be recognized only as a performative action with no meaning behind it.

B. **Mr. Thuan Nguyen**, resident, stated while he is thankful for the City's decision to issue the proclamation, he struggles to accept it due to a lack of public apology from Council Member Lopez to the LGBTQ+ community. He noted without an apology from or resignation of Council Member Lopez, the proclamation is a shallow and symbolic gesture with no action behind it. He further encouraged Mayor Dutrey and Council Member Ruh to rescind their prior endorsements of Council Member Lopez during his election campaign.

C. City Clerk Myrick read a comment submitted by **Priya V.** who introduced themselves as a queer-identifying student who does not condone Council Member Lopez's public anti-LGBTQ+ statements and his advocacy against AB 1266, a bill which affirmed equal opportunity protections for transgender students. They demanded an apology for Mr. Lopez's history of anti-LGBTQ+ rhetoric and called for his immediate resignation from the City Council.

D. **Micah Cooper, Associated Students of Merritt College (ASMC)** President, spoke in support of the **Lavender Coalition** and echoed prior speakers' sentiments against Council Member Lopez.



- E. **Mr. Jordan Rinker**, resident, stated he was displeased to see the Council Chambers lit up in rainbow colors, which prompted him to attend tonight's meeting to speak against the City's proclamation for Pride Month and the proliferation of public recognition and support of the LGBTQ+ community. While insisting he treats all people with respect as individuals, he indicated he does not accept or recognize homosexuality as normal and knows many residents who feel the same way as him. He stated he does not think the City should promote alternative lifestyles and force acceptance onto people.
- F. **Mr. Bruce Culp**, resident, welcomed City Manager Starr back and congratulated City Clerk Myrick on her recent nuptials. He noted his excitement to tour the new **Omnitrans** electric bus that was parked outside the Council Chambers prior to tonight's meeting and noted he hopes to see a bus stop added around City Hall or **Alma Hofman Park**, where he feels one is sorely needed. He spoke in full support of the City's Pride Month proclamation and recognized the struggles, of the LGBTQ+ community, noting he has met so many wonderful people who are part of that community since moving to Montclair and has so much love for them.

Council Member Ruh left the meeting.

#### VII. PUBLIC HEARINGS

- A. **Consider Adoption of Resolution No. 21-3311 Approving Tentative Tract Map No. 20384 to Create 20 Industrial Condominiums at 10680 Silicon Avenue within the "M-1" Limited Manufacturing Zone**

City Manager Starr advised staff is requesting this item be continued to the next regular meeting on June 21, 2021.

Mayor Dutrey declared it the time and place for a public hearing related to Resolution No. 21-3311 and invited members of the audience to provide comments. There being no members of the audience requesting to speak, Mayor Dutrey closed the public hearing.

Moved by Council Member Johnson, seconded by Council Member Lopez, and carried 4-0 by the following vote, the City Council continued this item to a public hearing on Monday, June 21, 2021, at 7:00 p.m. in the City Council Chambers:

AYES:	Lopez, Martinez, Johnson, Dutrey
NOES:	None
ABSTAIN:	None
ABSENT:	Ruh

#### VIII. CONSENT CALENDAR

Council Member Ruh returned to the meeting.

Council Member Johnson requested to pull Item D-1 for a question.

Council Member Lopez requested Items C-1, C-4, and C-5 be pulled for a question related to the proposed contracted services.

City Manager Starr requested Item C-5 be continued to a future meeting.

Moved by Mayor Pro Tem/Vice Chair Ruh, seconded by Council Member/Director Lopez, and carried unanimously 5-0, the City Council approved the remainder of the Consent Calendar as presented:

##### A. Approval of Minutes

###### 1. Regular Joint Meeting — May 17, 2021

The City Council, Successor Agency Board of Directors, Montclair Housing Corporation Board of Directors, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors approved the minutes of the May 17, 2021 regular joint meeting.

**B. Administrative Reports**

**1. Receiving and Filing a Status Report on Emergency Contracting Procedures for the Pacific Electric Trail Bridge Replacement Project and Determining There is a Need to Continue the Action**

The City Council received and filed a status report on emergency contracting procedures for the Pacific Electric Trail Bridge Replacement Project and determined there is a need to continue the action.

**2. Approval of City Warrant Register and Payroll Documentation**

The City Council approved the City Warrant Register dated June 7, 2021, totaling \$2,048,586.25; and the Payroll Documentation dated May 9, 2021, amounting to \$608,823.43 gross, with \$420,035.17 net being the total cash disbursement.

**3. Authorizing A \$1,150 Appropriation from the Prop 30/AB 109 Fund to Purchase Two Updated Trackers and Pay the Annual Usage Fee for Two Electronic Stakeout Tracker Systems**

The City Council authorized a \$1,150 appropriation from the Prop 30/AB 109 Fund to purchase two updated trackers and pay the annual usage fee for two Electronic Stakeout Tracker Systems.

**4. Authorizing a \$985 Appropriation from the Prop 30/AB 109 Fund to Pay the Annual Usage Fee for the Police Department's Two LiveView GPS Tracking Units**

The City Council authorized a \$985 appropriation from the Prop 30/AB 109 Fund to pay the annual usage fee for the Police Department's two LiveView GPS tracking units.

**C. Agreements**

**2. Approval of *Agreement No. 21-30* with the San Bernardino County Fire Protection District Authorizing the Receipt of \$14,576.57 from the FY2019 State Homeland Security Grant Program**

**Authorizing a \$14,576.57 Appropriation from the Public Safety Grant Fund to Purchase One Hurst E-Draulic Cutter Tool, Spreader Stability Plate Kit, and Chain Set With Lock/Hook from L.N. Curtis**

The City Council took the following actions:

- (a) Approved *Agreement No. 21-30* with the San Bernardino County Fire Protection District authorizing the receipt of \$14,576.57 from the FY2019 State Homeland Security Grant Program.
- (b) Authorized a \$14,576.57 appropriation from the Public Safety Grant Fund to purchase one Hurst E-Draulic cutter tool, spreader stability plate kit, and chain set with lock/hook from L.N. Curtis.

**3. Approval of *Agreement No. 21-31* with Ontario-Montclair School District for Utilization of the Family Resource Center for Case Management Services and to Support Operating Costs of the Facility**

The City Council approved *Agreement No. 21-31* with Ontario-Montclair School District for utilization of the Family Resource Center for case management services and to support operating costs of the facility.

## IX. PULLED CONSENT CALENDAR ITEMS

### C. Agreements

#### 1. Approval of Agreement No. 21-26 with AppleOne Employment Services to Provide Staffing Services for the Montclair After-School Program

Council Member Lopez asked what kind of background checks the individuals assigned to work for the City via contract are subject to by these private companies, especially with regard to the hiring service being used for staff who work with children.

City Manager Starr advised for cleaning services the City is obligated to go with the lowest bid, and that contracted agencies utilize their own hiring processes that the City is not involved with. He noted liability for the actions of employees providing services to or on behalf of the City are shared with the contracted agency; however, the City has verified that the proposed agencies have solid reputations for the quality of their work and employees.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Lopez, and carried unanimously 5-0, the City Council approved Agreement No. 21-26 with AppleOne Employment Services to provide staffing services for the Montclair After-School Program.

#### 4. Approval of Agreement No. 21-32 with ServiceMaster 360 Premier Cleaning to Provide Custodial Services at the Family Resource Center

See relevant discussion on Item C-1.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Lopez, and carried unanimously 5-0, the City Council approved Agreement No. 21-32 with ServiceMaster 360 Premier Cleaning to provide custodial services at the Family Resource Center.

#### 5. Approval of Agreement No. 21-33 Amending Agreement No. 18-23 with All City Management Services, Inc. for School Crossing Guard Services

Moved by Mayor Pro Tem Ruh, seconded by Council Member Lopez, and carried unanimously 5-0, the City Council continued this item to a future meeting.

### D. Resolutions

#### 1. Adoption of Resolution No. 21-3312 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges

Council Member Johnson pointed out the "senior" category on Exhibit A to Resolution No. 21-3312 and asked if there are programs available to assist seniors with their utility bills.

City Manager Starr advised qualifying seniors do receive a discount to their trash and sewer bills; however, he noted many prefer to defer their trash and sewer payments through this process and pay them off when they are added to their tax bill through the lien process. He noted if the property is sold, any outstanding liens since those paid by the prior property tax bill are paid at the time of sale.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Lopez, and carried unanimously 5-0, the City Council City Council adopted Resolution No. 21-3312 authorizing placement of liens on certain properties for delinquent sewer and trash charges.

**X. COMMUNICATIONS**

**A. Department Reports**

**1. Police Department — Firework Enforcement Update**

Executive Director of Public Safety/Police Chief Avels provided a review of the City's past and current firework reporting patterns and response efforts, which currently including providing notices in the following manners:

- Providing notices to all residents with their trash and sewer bills by mail two to three months prior to the month of July.
- Mounting large banners on City facilities.
- Posting magnetic signs on all City vehicles.
- Developing an extensive social media campaign to educate the public.
- Designing a notice to display on the **Montclair Place** digital freeway sign.
- Creating yard signs to post in prominent areas around the City and to provide to interested residents for placing in their yards.
- Sending targeted formal warning letters to residences suspected of firework activity.

He further advised there will be increased deployment of police and code enforcement officers on July 4th, and the Police Department is working to improve future enforcement by developing an internal investigative system and implementing an online citizen firework reporting system, which may be available before the holiday.

**B. City Attorney**

City Attorney Robbins requested the City Council meet in closed session for conference with legal counsel regarding the following matters:

**1. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation**

*Montclair v. Southern California Edison*

**3. Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with City's Designated Labor Negotiator Edward C. Starr**

*Agency: City of Montclair*

*Employee Management, Montclair City Confidential*

*Organizations: Employees' Assoc., Montclair General Employees' Assoc., Montclair Fire Fighters' Assoc., and Montclair Police Officers' Assoc.*

City Attorney Robbins stated she is pulling the following closed session item from the agenda, and that the City Council will not discuss it in closed session this evening:

**2. Closed Session Pursuant to Government Code Section 54956.9(d)(4) Regarding Potential Litigation**

*1 Potential Case*

**C. City Manager/Executive Director**

City Manager/Executive Director Starr thanked Director of Human Services Richter and Senior Management Analyst Fuentes for taking on the roles of Acting City Manager and Acting Deputy City Manager, respectively, for doing an excellent job while he continues to recover from surgery.

**D. Mayor/Chair**

1. Mayor/Chair Dutrey made the following comments:
  - (a) Tonight's meeting will be adjourned in memory of **San Bernardino County Sheriff's Sergeant Dominic Vaca**.
  - (b) He is looking forward to movies in the park and **National Night Out** this year.
  - (c) He will not be in attendance at the next City Council meeting.
  - (d) He advised the City Council will hold its preliminary budget review workshop as a special meeting on Monday, June 28, at 6:00 p.m.
  - (e) He expressed his appreciation for those who showed up before the meeting to tour the new **Omnitrans** bus.

**E. City Council/Successor Agency Board/MHC Board/MHA Board/MCF Board**

1. Mayor Pro Tem/Vice Chair Ruh made the following comments:
  - (a) He commended **Omnitrans** for its move toward an electric fleet noting an increase in electric vehicles is increasing demand for electric charging stations.
  - (b) He noted there was a *Los Angeles Times* article on May 30th about **U.S. Representative Norma Torres'** life growing up in the "killing fields" during the Guatemalan genocide.
  - (c) He thanked all involved with the Volunteer of the Year Award event, including the Community Activities Commissioners and staff, noting the City greatly appreciates its volunteers.
  - (d) He encouraged everyone to watch this year's Memorial Day presentation video that is available on the City's website.
  - (e) He announced the grand opening of **Inland Physicians Medical Group's** new office at 9525 Monte Vista Avenue, noting he, along with Mayor Dutrey and Council Members Ruh and Johnson, attended the ribbon cutting event.
  - (f) He thanked Chief Avels for his presentation, noting fireworks are a threat to public safety.
  - (g) He advised most vaccine centers are offering walk-ins for COVID-19 inoculations and encouraged everyone to get vaccinated if they still need to.
  - (h) He stated the **Gold Line** remains a top priority for the City of Montclair, noting it is essential for moving people through this region.
  - (i) He noted yesterday marks the 75-year anniversary of D-Day, the allied forces' invasion of Normandy during World War II on June 6, 1944, and encouraged everyone to make an effort to visit the D-Day exhibit at the **World War II Museum**.
2. Council Member/Director Lopez made the following comments:
  - (a) He noted he also attended the volunteer awards ceremony and event along with Mayor Dutrey and Mayor Pro Tem Ruh and congratulated **Tammy Schmidt** for being named 2020 Volunteer of the Year along with all of the wonderful volunteers who were recognized at the event.
  - (b) He advised the **West Valley Mosquito and Vector Control District** has identified several cases of green pools throughout the community and urged everyone to clean

their pools and dump standing water in anticipation of the upcoming summer mosquito season.

- (c) He stated his appreciation to **San Bernardino County Transportation Authority** staff for addressing signage and congestion issues related to the I-10 construction work.
  - (d) He provided several freeway and road closure notices from **SBCTA** noting road work will continue on Monte Vista Avenue for three years, on Central Avenue for 18 months, and on Benson Avenue for two years including upcoming weeknight underpass closures.
  - (e) He thanked staff for addressing the littering issue at **Alma Hofman Park** by adding more trash cans.
  - (f) He urged residents to report any suspicious activity or crimes they witness to the Police Department, especially in relation to the ongoing illegal fireworks activity.
  - (g) He thanked Code Enforcement staff for addressing a graffiti issue and providing assistance to a homeless individual at his requests.
  - (h) He thanked Director of Human Services Richter for being so responsive to him while serving as Acting City Manager.
- 3. Council Member/Director Johnson stated she is looking forward to the end of the pandemic and is excited for all of the City events that will be happening this summer.
  - 4. Council Member/Director Martinez stated comments about LGBTQ+ individuals made by **Mr. Rinker** earlier this evening show just how much the LGBTQ+ community is “othered” and how much the proclamation is needed. She thanked those who spoke in support of the LGBTQ+ community and of the City’s LGBTQ+ residents.

#### **F. Committee Meeting Minutes**

##### **1. Minutes of Real Estate Committee Meeting of March 15, 2021**

The City Council received and filed the minutes of the Real Estate Committee meeting of March 15, 2021, for informational purposes.

##### **2. Minutes of Public Works Committee Meeting of March 18, 2021**

The City Council received and filed the minutes of the Public Works Committee meeting of March 18, 2021, for informational purposes.

##### **3. Minutes of Personnel Committee Meeting of May 17, 2021**

The City Council received and filed the minutes of the Personnel Committee meeting of May 17, 2021, for informational purposes.

#### **XI. CLOSED SESSION**

At 8:18 p.m., the City Council went into closed session to discuss labor negotiations and pending litigation.

#### **XII. CLOSED SESSION ANNOUNCEMENTS**

At 8:35 p.m., the City Council returned from closed session. Mayor Dutrey announced the City Council met in closed session to discuss labor negotiations and pending litigation; information was received and direction given to staff; and no further announcements would be made at this time.

**XIII. ADJOURNMENT**

At 8:37 p.m., Mayor/Chair Dutrey adjourned the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board in memory of **San Bernardino County Sheriff's Sergeant Dominic Vaca**.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/Montclair Housing Authority Commission/Montclair Community Foundation Board approval,

---

Andrea Myrick  
City Clerk

PENDING APPROVAL

**CITY OF MONTCLAIR**  
**TREASURER'S REPORT**  
**FOR THE MONTH ENDING**  
**MAY 31, 2021**



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STATEMENT OF CASH AND INVESTMENT ACCOUNTS

**GRAPH**

CASH AND INVESTMENTS BY TYPE

**CITY OF MONTCLAIR  
STATEMENTS OF COMPLIANCE WITH THE INVESTMENT POLICY  
AND INVESTMENT STRATEGY**

**MAY 31, 2021**

COMPLIANCE STATEMENT

The City has the following amount invested in various financial instruments. This conforms with the investment policy approved by the City Council.

Total Investments

\$ 32,759,265

During the current month the City was in compliance with the internal control procedures set forth in the Investment Policy.

INVESTMENT STRATEGY FOR THE UPCOMING MONTH

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund and other investments authorized in the Investment Policy. The City has sufficient monies available to meet expenditures during the next six month period.

**CITY OF MONTCLAIR**  
**STATEMENT OF CASH AND INVESTMENTS BY FUND**  
**AS OF MAY 31, 2021**

<u>Fund</u>	<u>Beginning Balance</u>	<u>Receipts</u>	<u>Disbursements</u>	<u>Interfund Transfers</u>	<u>Ending Balance</u>	
General Fund	\$ (1,542,643.70)	\$ 4,384,611.33	\$ 1,887,578.65	\$ 15,175.79	\$ 969,564.77	(1)
Gas Tax Fund	(243,381.11)	-	67,902.79	-	(311,283.90)	(2)
Road Maintenance - Section 2032	1,515,161.16	60,052.46	-	-	1,575,213.62	
Measure I Fund	3,273,842.85	154,734.19	-	-	3,428,577.04	
Traffic Safety	84,473.86	22,913.46	-	-	107,387.32	
Disability Access Fund - Bus. License	35,676.40	781.20	178.40	-	36,279.20	
Park Maintenance	84,317.62	5,924.80	2,379.60	-	87,862.82	
Park Development	1,800,207.06	-	-	-	1,800,207.06	
CDBG	(75,543.77)	34,041.46	10,101.51	-	(51,603.82)	(2)
May Bdgt Revise Cares Act Dist	-	-	-	-	-	
SB2 Planning Grant	-	-	-	-	-	
Air Quality Improvement Trust	185,967.12	-	-	18,169.21	204,136.33	
SB Cty Cares Act Relief Fund	-	-	-	-	-	
SB Cty Cares Act Infrastructure	(850,061.91)	-	80.73	-	(850,142.64)	(2)
Senior Nutrition Program	(109,728.97)	49,444.75	18,235.83	-	(78,520.05)	(2)
Forfeiture Fund - State	117,862.86	-	-	-	117,862.86	
Proposition 30/SB 109	123,213.53	-	17.25	-	123,196.28	
SB 509 Public Safety	285,559.50	29,579.00	13,755.02	-	301,383.48	
Forfeiture Fund-Federal/DOJ	402,480.52	-	-	-	402,480.52	
Asset Seizure Fund	6,775.07	0.02	-	-	6,775.09	
Section 11489 Subfund	45,103.92	-	-	-	45,103.92	
Fed Asset Forfeiture-Treasury	92,344.82	-	-	-	92,344.82	
School District Grant Fund	-	-	-	-	-	
State Supplemental Law Enforce	447,813.52	-	100,000.00	-	347,813.52	
PC 1202.5 Crime Prevention	2,081.56	16.36	-	-	2,097.92	
Recycling Grant Fund	70,841.00	-	-	-	70,841.00	
Homeless Emergency Aid Program	(21,638.26)	-	24,571.31	-	(46,209.57)	(2)
Bureau of Justice Assistance	(36,863.89)	36,863.89	-	-	-	
Statewide Park Dev Grant	-	-	-	-	-	
Homeless Housing Assist Preven	-	-	-	-	-	
Expanded Learning Program Fund	230,557.44	252,707.78	75,963.44	-	407,301.78	
OTS Grant	8,540.54	-	-	-	8,540.54	
FIRST 5 Fund	1,290.78	-	-	-	1,290.78	
Safety Dept. Grants	285,077.21	-	2,719.61	-	282,357.60	
OSMD Immunization Grant	(801.61)	-	907.99	-	(1,709.60)	(2)
Kaiser Permanente Grant	5,089.08	-	-	-	5,089.08	
Resource Center Grant - OMSD	22,034.80	-	1,940.62	-	20,094.18	
Title IIIB Sr Support Services	(4,841.17)	15,442.50	4,235.94	-	6,365.39	(2)
Healthy Community Strategic Plan	18,027.78	-	-	-	18,027.78	
ExLP Supplemental Grant	83,892.76	23,969.36	-	-	107,862.12	
E.M.S. - Paramedic Fund	(27,811.15)	2,550.55	4,974.08	-	(30,234.68)	(3)
Economic Development	5,418,387.62	820,679.49	44,617.84	-	6,194,449.27	
City Contributions/Donations Fund	500.00	-	-	-	500.00	
Sewer Operating Fund	1,751,801.59	440,899.43	340,433.49	-	1,852,267.53	
Sewer Replacement Fund	2,107,340.14	-	-	-	2,107,340.14	
CFD 2011-1 (Paseos)	212,627.96	-	2,737.25	-	209,890.71	
CFD 2011-2 (Arrow Station)	123,310.14	-	-	-	123,310.14	
Inland Empire Utility Agency	3,182,174.78	-	434,651.85	-	2,747,522.93	
Sewer Expansion Fee Fund	592,697.37	3,013.68	-	-	595,711.05	
Developer Impact Fees - Local	1,145,568.90	-	-	-	1,145,568.90	
Developer Impact Fees - Regional	175,769.27	-	-	-	175,769.27	
Burrtec Pavement Impact Fees	231,952.09	-	-	-	231,952.09	
PUC Reimbursement Fund-MVGS	1,689,981.14	-	-	-	1,689,981.14	
Utility Underground In-Lieu	340,516.52	-	-	-	340,516.52	
General Plan Update Fee	85,514.12	1,308.33	-	-	86,822.45	
Housing Fund	555,326.51	-	-	-	555,326.51	
Public Education/Govt. PEG Fee Fund	32,178.37	8,312.36	-	-	40,490.73	
Infrastructure Fund	(2,346,839.56)	-	173,048.37	-	(2,519,887.93)	(4)
COVID-19	(250,600.48)	-	2,973.33	-	(253,573.81)	
Successor Agency Bonds-Taxable	4,789,190.64	-	-	-	4,789,190.64	
Successor Agency Bonds-Tax Exempt	8,264,350.75	-	24,390.00	-	8,239,960.75	
2014 Lease Revenue Bond Proceeds	(559,843.58)	-	-	-	(559,843.58)	
2014 Lease Revenue Bond Debt Svc	(238,427.29)	181,805.16	-	-	(56,622.13)	(5)
Contingency Fund	233,836.96	-	-	-	233,836.96	(1)
Assigned General Fund Reserves	9,478,306.57	-	-	(33,345.00)	9,444,961.57	(1)
<b>TOTALS</b>	<u>\$ 43,330,537.75</u>	<u>\$ 6,529,651.56</u>	<u>\$ 3,238,394.90</u>	<u>\$ -</u>	<u>\$ 46,621,794.41</u>	

Negative Cash Notes follow this presentation.

### Notes on Negative Cash Balances

- (1) The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this negative, the City is not utilizing restricted resources.
- (2) These are reimbursable grant funds that utilize general pool monies initially to cover expenditures pending reimbursement from the granting agencies. Therefore, it is not uncommon for these to be negative until that reimbursement is received.
- (3) This fund has operational deficits annually. At the end of the fiscal year it is restored by a General Fund Transfer.
- (4) The Infrastructure Fund receives transfers from other funds to accomplish infrastructure projects. Those transfers are usually recorded when the projects nears completion or prior to mid-year budget preparation. Any negative in that fund will be eliminated at those times. Transfers from these funds (C.D.B.G., Gas Tax, Measure I, etc.) may go negative on cash pending collections of these revenues. In this way we can determine if obligations for projects are exceeding current resources.
- (5) This debt service operation utilizes transaction and use taxes which are part of the sales tax and Successor Agency property taxes. These have been sufficient in prior fiscal years to cover the necessary debt service; however, they are not completely received until fiscal year-end. Once debt service is covered the excess will be transferred to the General Fund.

**CITY OF MONTCLAIR  
STATEMENT OF CASH AND INVESTMENT ACCOUNTS  
AS OF MAY 31, 2021**

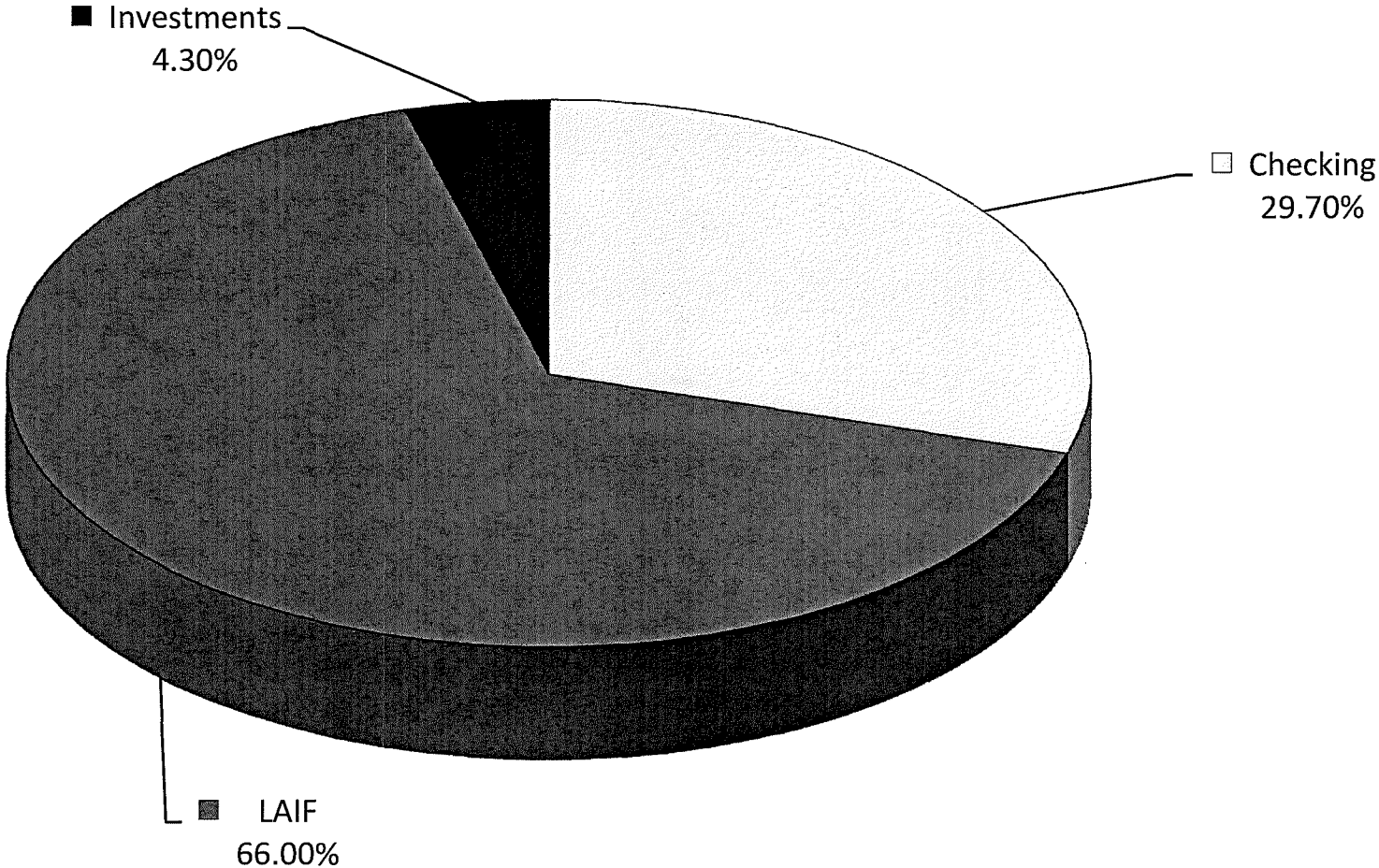
	<u>Par Value</u>	<u>Purchase Date</u>	<u>Maturity Date</u>	<u>Coupon Interest Rate</u>	<u>Current Market Value</u>	<u>Balance at Cost</u>	<u>Totals</u>
CHECKING ACCOUNT							
Checking Account							\$ 13,855,695.79
Asset Seizure Account							\$ 6,834.09
CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES							
Local Agency Investment Fund (LAIF)				0.300%	30,798,324.18	30,759,264.53	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 32,798,324.18</u>		\$ 32,759,264.53
U.S. AGENCY SECURITIES							
					<u>\$ -</u>		<u>\$ -</u>
TOTAL							<u>\$ 46,621,794.41</u>

Current market values obtained from US Bank.

**CITY OF MONTCLAIR  
CASH AND INVESTMENTS BY TYPE**

**May 31, 2021**

**Total Cash & Investments \$46,621,795**



**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
TREASURER'S REPORT**

**FOR THE MONTH ENDING**

**May 31, 2021**

**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
STATEMENT OF CASH BY FUND  
May 31, 2021**

**COMBINED OPERATING FUND**

Operating	<u>35,610.07</u>	\$ 35,610.07
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**LRPRP Fund**

Operating	<u>0.00</u>	\$ 0.00
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**RORF**

	648,686.96	
RORF Area I	0.00	
RORF Area II	0.00	
RORF Area III	0.00	
RORF Area IV	0.00	
RORF Area V	0.00	
RORF Area VI	0.00	\$ 648,686.96

**TOTAL CASH**

**\$ 684,297.03**



**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
STATEMENT OF CASH  
May 31, 2021**

**Checking Account**

US Bank

**684,297.03**

**TOTAL CASH**

**684,297.03**

**NOTE:**

In accordance with State law, the Successor Agency receives the monies necessary to cover its obligations for the upcoming six month period. The monies are received in January and June of each year.

The Successor Agency has sufficient funds available to meet expenditures during the upcoming six-month period.

**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
WARRANT REGISTER**

**FOR THE MONTH ENDING**

**May 31, 2021**

City of Montclair  
 Final Warrant Register  
 Council Date 06/21/2021  
 Regular Warrants  
 Checking Account: Successor to the RDA

	Warrants	US Bank transfers	<b>Area Totals</b>
SRDA Combined Operating Fund	0.00	7,779.34	<b>7,779.34</b>
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	<b>0.00</b>
	0.00	7,779.34	
<b>May 2021 Total</b>			<b>7,779.34</b>

Note: Reimburse City for 5/13, 5/27 payrolls

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**Vice Chair Ruh**

# Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 05/03/2021 To 05/28/2021

Printed on 06/02/2021 at 3:44 PM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
05/27/2021	\$3,617.07	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY  
Debit Account Type DDA  
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT  
Credit Account Type DDA  
Template Name .  
Memo Reimburse City for 05/27/21 Payroll  
Initiate Date 05/27/2021  
Initiate Time 11:11AM CDT  
Initiated By JKULBECK  
Completed Date 05/27/2021  
Completed Time 11:11AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
05/13/2021	\$4,162.27	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY  
Debit Account Type DDA  
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT  
Credit Account Type DDA  
Template Name .  
Memo Reimburse City for 05/13/21 Payroll  
Initiate Date 05/13/2021  
Initiate Time 10:11AM CDT  
Initiated By JKULBECK  
Completed Date 05/13/2021  
Completed Time 10:11AM CDT

---

Total Number of Book Transfers: 2  
Total Amount of Book Transfers: \$7,779.34

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--- End of Report ---

**CITY OF MONTCLAIR  
HOUSING CORPORATION  
TREASURER'S REPORT  
FOR THE MONTH ENDING**

**May 31, 2021**

**TABLE OF CONTENTS**

**SCHEDULE 1 - STATEMENT OF CASH AND INVESTMENTS**

**CASH AND INVESTMENTS GRAPH**

Schedule 1

CITY OF MONTCLAIR  
HOUSING CORPORATION  
STATEMENT OF CASH AND INVESTMENTS  
May 31, 2021

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
<b>Checking Account</b>			
US Bank			457,638.22
<b>Investments</b>			
LAIF	0.30%	1,714,252.58	<u>1,710,367.79</u>
<b>TOTAL CASH &amp; INVESTMENTS</b>			<u><u>2,168,006.01</u></u>

**NOTE:**

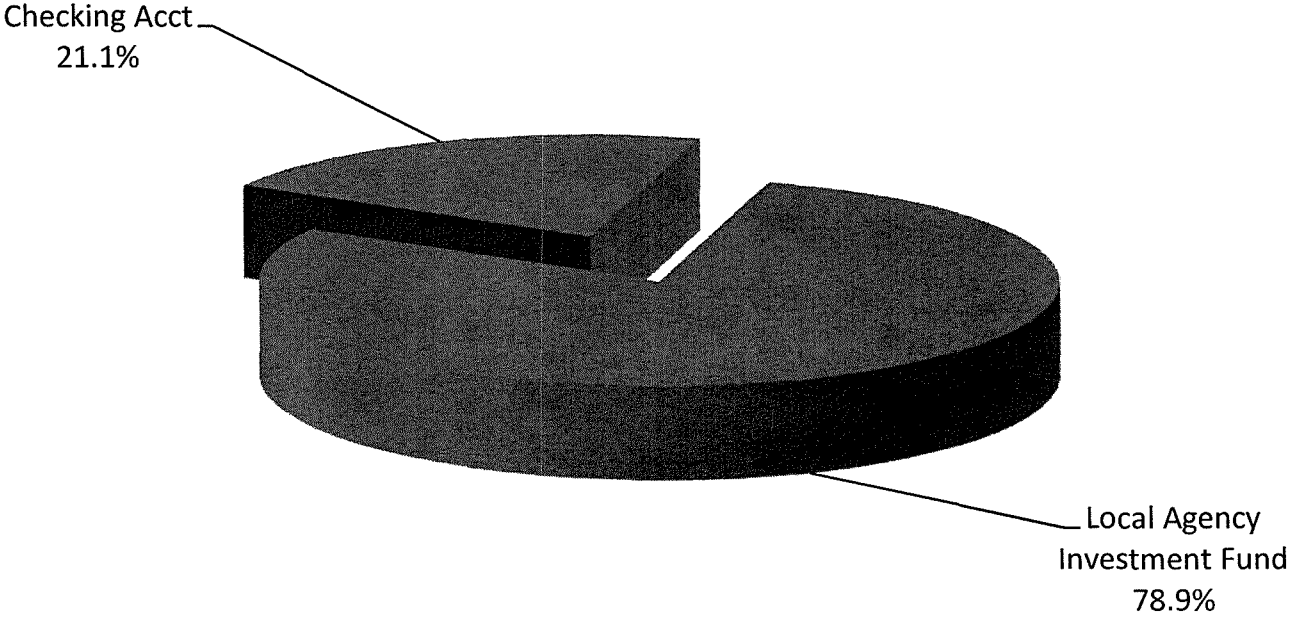
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

The Corporation has sufficient funds available to meet expenditures during the upcoming six-month period.

The Corporation is in compliance with the internal control procedures set forth in its Investment Policy.

**CITY OF MONTCLAIR  
HOUSING CORPORATION  
CASH AND INVESTMENTS GRAPH  
May 31, 2021**

**Total Cash & Investments - \$2,168,006**





**CITY OF MONTCLAIR  
HOUSING CORPORATION  
WARRANT REGISTER  
FOR THE MONTH ENDING  
May 31, 2021**

City of Montclair  
Final Warrant Register  
Council Date 06/21/2021  
Regular Warrants  
Checking Account: MHC

<u>Warrants</u>	<u>ACH Transfers</u>	<u>Voided Checks</u>	<u>US Bank transfers</u>	<u>Totals</u>
24,958.67	0.00	0.00	12,823.16	<b>37,781.83</b>

**May 2021 Total** 37,781.83

US Bank transfers:  
Reimburse City for 05/13 payroll  
Reimburse City for 05/27 payroll

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**Vice Chair Ruh**

# Accounts Payable

## Checks by Date - Summary by Check Number

User: cramirez  
Printed: 6/2/2021 5:45 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5195	land012	Landscape Maintenance Unlimited	05/13/2021	5,171.00
5196	mont002	City of Montclair	05/13/2021	1,932.80
5197	Hugo001	Hugo Jaramillo	05/27/2021	13,292.88
5198	Mont074	Monte Vista Water District	05/27/2021	3,351.33
5199	Sout018	Southern California Edison Co	05/27/2021	595.74
5200	Sout021	Southern California Gas Co	05/27/2021	614.92
Report Total (6 checks):				24,958.67

# Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 05/03/2021 To 05/28/2021

Printed on 06/02/2021 at 3:43 PM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
05/27/2021	\$6,340.52	153499275821	153499275805	Completed

**Debit Account Name** MONTCLAIR HOUSING CORPORATION  
**Debit Account Type** DDA  
**Credit Account Name** CITY OF MONTCLAIR GENERAL ACCOUNT  
**Credit Account Type** DDA  
**Template Name** .  
**Memo** Reimburse City for 05/27/21 Payroll  
**Initiate Date** 05/27/2021  
**Initiate Time** 11:11AM CDT  
**Initiated By** JKULBECK  
**Completed Date** 05/27/2021  
**Completed Time** 11:11AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
05/13/2021	\$6,482.64	153499275821	153499275805	Completed

**Debit Account Name** MONTCLAIR HOUSING CORPORATION  
**Debit Account Type** DDA  
**Credit Account Name** CITY OF MONTCLAIR GENERAL ACCOUNT  
**Credit Account Type** DDA  
**Template Name** .  
**Memo** Reimburse City for 05/13/21 Payroll  
**Initiate Date** 05/13/2021  
**Initiate Time** 10:11AM CDT  
**Initiated By** JKULBECK  
**Completed Date** 05/13/2021  
**Completed Time** 10:11AM CDT

---

**Total Number of Book Transfers:** 2  
**Total Amount of Book Transfers:** \$12,823.16

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--- End of Report ---

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
TREASURER'S REPORT  
FOR THE MONTH ENDING  
May 31, 2021**

**Schedule 1**

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
STATEMENT OF CASH  
May 31, 2021**

	<u>Amount</u>
<b>Checking Account</b>	
US Bank	4,471.16
<b>TOTAL CASH</b>	<b>\$ <u>4,471.16</u></b>

**NOTE:**

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund. The MHA has sufficient monies available to meet expenditures during the next six month period.

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
WARRANT REGISTER  
FOR THE MONTH ENDING  
May 31, 2021**

City of Montclair  
Final Warrant Register  
Council Date 06/21/2021  
Regular Warrants  
Checking Account: MHA

<u>Warrants</u>	<u>Voided Checks</u>	<u>US Bank transfers - out.</u>	<u>Totals</u>
0.00	0.00	0.00	0.00
<b>May 2021 Total</b>			<b><u>0.00</u></b>

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Vice Chair Ruh