

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

**AGENDA**

Monday, November 15, 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. Myrick



**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, November 15, 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 — None**

**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 — None**

**VIII. CONSENT CALENDAR**

**A. Approval of Minutes**

1. Regular Joint Meeting — November 1, 2021 [CC/SA/MHC/MHA/MCF] 166

<b>B. Administrative Reports</b>	
1. Consider Receiving and Filing of Treasurer’s Report [CC]	5
2. Consider Approval of Warrant Registers & Payroll Documentation [CC]	6
3. Consider Receiving and Filing of Treasurer’s Report [SA]	7
4. Consider Approval of Warrant Register [SA]	8
5. Consider Receiving and Filing of Treasurer’s Report [MHC]	9
6. Consider Approval of Warrant Register [MHC]	10
7. Consider Receiving and Filing of Treasurer’s Report [MHA]	11
8. Consider Approval of Warrant Register [MHA]	12
9. Consider 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]	13
10. Consider Approval of Tentative Parcel Map No. 20375 Generally Located on the East Side of Monte Vista Avenue South of Palo Verde Street [CC] Consider Authorizing Staff to Record Parcel Map No. 20375 with the Office of the San Bernardino County Recorder [CC]	15
11. Consider Authorizing the City to Opt-In to the National Opioid Settlements and Permitting the City Manager to Sign Formal and Binding Documents on Behalf of the City Related to Participation in the Settlements [CC]	18
<b>C. Agreements</b>	
1. Consider Approval of Amendment No. 1 to Agreement No. 21-27 with Catering Systems, Inc. to Provide Meals for the City’s Senior Citizen Nutrition Program [CC]	20
2. Consider Approval of Agreement No. 21-66 with Greyhound Lines, Inc. for Shared Use of a Single Bus Bay for Daily Commercial Bus Passenger Service and Ground Space for an Employee-Operated Ticket Vending and Customer Service Kiosk at the Montclair Transcenter [CC]	23
3. Consider Approval of Agreement No. 21-72 Amending Agreement No. 13-41 with Mariposa Landscapes, Inc. for Landscape Maintenance Services [CC]	40
4. Consider Approval of Agreement No. 21-73 with Lexipol, LLC for Continued Maintenance of the Police Department Policy and Procedures Manual, Law Enforcement Daily Training Bulletins (DTB), and DTB Management Services [CC]	46
5. Consider Approval of Agreement No. 21-74 with Lexipol, LLC for Implementation and Management of the Fire Department Policy and Procedures Manual and Fire Service Daily Training Bulletins [CC]	57
6. Consider Approval of Agreement No. 21-75 with the San Bernardino County Office of Homeless Services for Access to the Homeless Management Information System [CC] Consider Authorizing the City Manager to Sign Agreement No. 21-75 [CC]	69

7. Consider Approval of Agreement No. 21-76 with Marlow Innovations Inc. dba AFR Engine for Facial Recognition Software Platform Access [CC]  
Consider Authorizing a \$5,000 Appropriation from the Prop 30/AB 109 Fund to Pay the Costs Associated with Agreement No. 21-76 [CC] 78
8. Consider Approval of Agreement No. 21-77 with Yao Engineering, Inc. for Electrical Engineering and Design Services for a New Main Switchboard and Standby Generator at the Civic Center [CC]  
Consider Authorizing the City Manager to Amend the Scope of Services as Necessary for a Contingency Amount Not to Exceed \$5,000 [CC]  
Consider Authorizing a \$36,390 Appropriation from 2021A Lease Revenue Bond Proceeds to Pay for Costs Associated with Agreement No. 21-77 [CC] 83
9. Consider Approval of Agreement No. 21-78 with GovernmentJobs.com, Inc. dba NEOGOV for Hosting and Support Services for Recruitment, Selection, Onboarding, Performance, and Tracking Software [CC]  
Consider Authorizing a \$38,666 Transfer from the General Fund Technology Reserve Fund to the General Operating Fund for Costs Associated with Agreement No. 21-78 [CC] 110

D. Resolutions

1. Consider Adoption of Resolution No. 21-3326 Making Factual Findings in Compliance with AB 361 and Establishing Procedures for the Continuation of Public Meeting Teleconferencing During Public Health Emergencies, Including the COVID-19 Public Health Emergency, for the Period of November 15, 2021 through December 15, 2021 [CC] 156
2. Consider Adoption of Resolution No. 21-3327 Adopting Chapter 10 of the Caltrans Local Assistance Procedures Manual as the City's Policy for the Procurement of Architectural and Engineering Services for State- and Federally-Funded Transportation Projects [CC] 162

**IX. PULLED CONSENT CALENDAR ITEMS**

**X. COMMUNICATIONS**

A. Department Reports

1. Human Services Department — Upcoming Holiday Programs
2. Police Department — Flock ALPR Cameras

B. City Attorney

1. Request to Meet in Closed Session Pursuant to Government Code §54956.9(d)(1) Regarding Pending Litigation [CC]  
*Sully-Miller Construction v. City of Montclair*
2. Request to Meet in Closed Session Pursuant to Government Code §54956.9(d)(2) Regarding Initiation of Litigation [CC]  
*1 Potential Case*

- C. City Manager/Executive Director
  - D. Mayor/Chairperson
    - 1. Cancellation of Monday, December 6, 2021 Regular Joint Meeting [CC/SA/MHC/MHA/MCF]
  - E. Council Members/Directors
  - F. Committee Meeting Minutes *(for informational purposes only)*
    - 1. Personnel Committee Meeting — November 1, 2021 [CC] 165
- XI. CLOSED SESSION**
- XII. CLOSED SESSION ANNOUNCEMENTS**
- XIII. 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, December 6, 2021 has been cancelled due to a lack of quorum. The next regular joint meeting will be held on Monday, December 20, 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 in the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. 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 Wednesday, November 10, 2021.*



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 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 October 31, 2021.

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 2021	<b>FILE I.D.:</b>	FIN540
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	1	<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 November 15, 2021, and the Payroll Documentation dated October 10 and 24, 2021, and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated November 15, 2021, totals \$62,057,905.42.

The Payroll Documentation dated October 10, 2021 totals \$715,422.92 gross, with \$495,269.68 net being the total cash disbursement.

The Payroll Documentation dated October 24, 2021 totals \$658,389.52 gross, with \$438,479.67 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>	NOVEMBER 15, 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 October 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 October 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 October 31, 2021.





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 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 October 31, 2021, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 10.01.21–10.31.21 in the amounts of \$11,540.13 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 October 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 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 October 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 October 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 October 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 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 October 31, 2021, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Warrant Register dated 10.01.21–10.31.21 in the amount of \$15,217.08 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 October 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 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 October 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 October 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 October 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 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 October 31, 2021, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Warrant Register dated 10.01.21-10.31.21 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 October 31, 2021.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 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>	M. HEREDIA
<b>SUBJECT:</b>	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 Pacific Electric (PE) Trail Bridge Replacement Project. Under Public Contract Code Section 22050, the governing body must review the emergency action at every regularly scheduled meeting after making the declaration to determine the need to continue the action by a fourth-fifths majority vote.

**BACKGROUND:** The City of Montclair, in coordination with San Bernardino County Transportation Authority (SBCTA), constructed a multi-purpose trail linking cities from Claremont to Rialto along the famous Pacific Electric Railway Line. This 21-mile 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 and links residents and the 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 County station. It conveniently connects the region's fixed-route commuter rail, bus service, and rideshare programs in one centrally located area. The Pacific Electric 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 recommended replacement. The replacement will be a prefabricated steel truss bridge to mitigate the risks that left the existing bridge vulnerable to fire. 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 a state-licensed structural engineer has preapproved its design. 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 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. On June 2, 2021, the SBCTA Board of Directors authorized the release of the TDA Article 3 Call for Projects for bicycle and pedestrian improvement projects. The City applied for the grant, and SBCTA's General Policy

Committee awarded \$227,544 for the Project. The City will cash flow the Project and seek reimbursement from SBCTA at a future date.

Currently, Pacific Electric Trail commuters are being detoured from the regional trail to Arrow Highway. To reduce the impact of the bridge closure, City staff will continue to work diligently through the use of the emergency contracting procedures to hire various consultants and contractors to complete the bridge replacement. Contech Engineered Solutions will fabricate the bridge. Biggs Cardosa Associates (BCA), a structural engineering consultant, will design the bridge deck and modify the existing bridge substructure and foundations to accept the new bridge. Additionally, Environmental permits and studies are required to clear the Project through the California Environmental Quality Act (CEQA) and U.S. Army Corps permitting process.

### ***November 15, 2021 Update***

Staff anticipates the start of advertisement for the Project on November 22, 2021, with a bid opening date of December 16, 2021. Staff will review the proposals for completeness and accuracy, and the contract will be awarded immediately to the lowest responsive and responsible bidder.

The awarded contractor should have the damaged bridge removed and disposed of before the arrival of the new bridge in mid-January.

**FISCAL IMPACT:** The estimated cost to replace the Pacific Electric Trail Bridge is \$450,000. SBCTA will contribute a total of \$327,544 in TDA Grant funding, and General Fund Reserves will cover the remaining project costs.

**RECOMMENDATION:** Staff recommends that the City Council receive and file a status report on emergency contracting procedures for the Pacific Electric 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>	NOVEMBER 15, 2021	<b>FILE I.D.:</b>	LDU225-203
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	10	<b>PREPARER:</b>	M. HEREDIA

**SUBJECT:** CONSIDER APPROVAL OF TENTATIVE PARCEL MAP NO. 20375 GENERALLY LOCATED ON THE EAST SIDE OF MONTE VISTA AVENUE SOUTH OF PALO VERDE STREET

CONSIDER AUTHORIZING STAFF TO RECORD PARCEL MAP NO. 20375 WITH THE OFFICE OF THE SAN BERNARDINO COUNTY RECORDER

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**REASON FOR CONSIDERATION:** Land subdivisions, including parcel maps and tract maps, are allowed by the Subdivision Map Act and are subject to City Council approval. The City Council is requested to consider approval of Tentative Parcel Map No. 20375, generally located on the east side of Monte Vista Avenue south of Palo Verde Street, and authorizing staff to record the approved parcel map with the Office of the San Bernardino County Recorder.

**BACKGROUND:** the Planning Commission approved Tentative Parcel Map No. 20375 on June 14, 2021. As a condition of approval, the Planning Commission required the property owner to combine all four existing parcels under a lot merger to ensure the orderly development of the project and eliminate existing landlocked parcels under Conditions 1.m and 1.n of Planning Commission Resolution No. 19-1932. The City Council's approval of Tentative Parcel Map No. 20375 would allow the senior assisted living and memory care facility, Aqua Ridge of Montclair Senior Living Community, to operate independently from the two medical buildings. The parcel merger would remove existing property lines, satisfying Conditions 1.m and 1.n of the Planning Commission's Conditions of Approval.

**FISCAL IMPACT:** Approval of Tentative Parcel Map No. 20375 is likely to create an unknown but positive fiscal impact to the City, potentially through increased property values and sales taxes.

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

1. Approve Tentative Parcel Map No. 20375 located on the east side of Monte Vista Avenue south of Palo Verde Street.
2. Authorize staff to record Parcel Map No. 20375 with the Office of the San Bernardino County Recorder.



NUMBER OF PARCEL: 1  
GROSS AREA: 3.99 ACRES

# PARCEL MAP NO. 20375

SHEET 1 OF 2 SHEETS

IN THE CITY OF MONTCLAIR  
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA  
FOR CONDOMINIUM CONVERSION PURPOSES

BEING A SUBDIVISION OF PARCEL MAP NO. 3010, AS SHOWN ON A  
MAP RECORDED IN BOOK 28, PAGES 100 AND 101 OF PARCEL MAPS,  
IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

CAL LAND ENGINEERING, JACK C. LEE, LS 8407  
DATE OF SURVEY: OCTOBER 30, 2019

### OWNERS' STATEMENT:

WE HEREBY STATE THAT WE ARE THE ONLY PARTIES HAVING ANY RECORD TITLE INTEREST IN THE  
LAND AS SHOWN ON THIS MAP AND WE CONSENT TO THE PREPARATION AND RECORDECTION OF  
THIS PARCEL MAP.

CHENGDU HOLDING (USA), LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION (OWNER)

BY: \_\_\_\_\_  
YANBO LIAO (MANAGING MEMBER)

### BENEFICIARY:

FIRST GENERAL BANK, BENEFICIARY, UNDER A DEED OF TRUST RECORDED JANUARY 6, 2020, AS  
DOCUMENT NO. 2020-4803 AND UNDER A DEED OF TRUST RECORDED MAY 21, 2020, AS  
DOCUMENT NO. 2020-170703, BOTH OF OFFICIAL RECORDS, RECORDS OF THE COUNTY OF SAN  
BERNARDINO.

PRINT NAME \_\_\_\_\_ PRINT NAME \_\_\_\_\_  
TITLE \_\_\_\_\_ TITLE \_\_\_\_\_

### NOTARY ACKNOWLEDGEMENT:

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY  
OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND  
NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }  
COUNTY OF \_\_\_\_\_ } SS

ON \_\_\_\_\_ BEFORE ME \_\_\_\_\_, NOTARY  
PUBLIC, PERSONALLY APPEARED \_\_\_\_\_ WHO  
PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE  
NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT  
HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY  
HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF  
OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT  
THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND

NAME: \_\_\_\_\_

MY PRINCIPAL PLACE OF BUSINESS IS IN \_\_\_\_\_ COUNTY.

NOTARY PUBLIC IN AND FOR  
SAID STATE

MY COMMISSION EXPIRES: \_\_\_\_\_  
MY COMMISSION NO. \_\_\_\_\_

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY  
OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND  
NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }  
COUNTY OF \_\_\_\_\_ } SS

ON \_\_\_\_\_ BEFORE ME \_\_\_\_\_, NOTARY  
PUBLIC, PERSONALLY APPEARED \_\_\_\_\_ WHO  
PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE  
NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT  
HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY  
HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF  
OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT  
THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND

NAME: \_\_\_\_\_

MY PRINCIPAL PLACE OF BUSINESS IS IN \_\_\_\_\_ COUNTY.

NOTARY PUBLIC IN AND FOR  
SAID STATE

MY COMMISSION EXPIRES: \_\_\_\_\_  
MY COMMISSION NO. \_\_\_\_\_

### SIGNATURE OMISSIONS:

THE SIGNATURE(S) OF THE PARTY(IES) NAMED HEREINAFTER AS OWNER(S) OF THE INTEREST SET  
FORTH, HAVE BEEN OMITTED UNDER PROVISIONS OF THE SUBDIVISION MAP ACT SECTION  
66436(a)3A(i-viii), AS THEIR INTEREST IS SUCH THAT IT CAN NOT RIPEN INTO A FEE TITLE AND SAID  
SIGNATURES ARE NOT REQUIRED BY THE LOCAL AGENCY.

CITY OF MONTCLAIR, HOLDER OF AN EASEMENT FOR PUBLIC UTILITY PURPOSES, PER DEED RECORDED  
AUGUST 13, 1975, IN BOOK 8741, PAGE 728 OF OFFICIAL RECORDS, RECORDS OF SAN BERNARDINO  
COUNTY.

SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, HOLDER FOR AN EASEMENT AND RIGHT OF  
WAY FOR POLE LINES, CONDUITS AND INCIDENTAL PURPOSES, BY DEED RECORDED MARCH 14, 1977,  
IN BOOK 9133, PAGE 1329 AND BY DEED RECORDED MARCH 14, 1977, IN BOOK 9133, PAGE 1321,  
BOTH OF OFFICIAL RECORDS, RECORDS OF SAN BERNARDINO COUNTY.

GENERAL TELEPHONE COMPANY OF CALIFORNIA, A CORPORATION, HOLDER FOR AN EASEMENT AND  
RIGHT OF WAY FOR PUBLIC UTILITY PURPOSES, BY DEED RECORDED JUNE 13, 1977, IN BOOK 9197,  
PAGE 1107 OF OFFICIAL RECORDS, RECORDS OF SAN BERNARDINO COUNTY.

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, HOLDER FOR AN EASEMENT FOR PUBLIC  
UTILITY PURPOSES, BY DEED RECORDED DECEMBER 19, 2019, AS DOCUMENT NO. 2019-0469257, OF  
OFFICIAL RECORDS, RECORDS OF SAN BERNARDINO COUNTY.

CITY OF MONTCLAIR, HOLDER FOR AN EASEMENT FOR SIDEWALK PURPOSES, BY DEED RECORDED MAY  
21, 2020, AS DOCUMENT NO. 2020-0170744, OF OFFICIAL RECORDS, RECORDS OF SAN BERNARDINO  
COUNTY.

CITY OF MONTCLAIR, HOLDER FOR AN EASEMENT FOR STREET LIGHT PURPOSES, BY DEED RECORDED  
JUNE 26, 2020, AS DOCUMENT NO. 2020-212519, OF OFFICIAL RECORDS, RECORDS OF SAN  
BERNARDINO COUNTY.

MONTIC VISTA WATER DISTRICT, A PUBLIC AGENCY COUNTY WATER DISTRICT, HOLDER FOR AN  
EASEMENT FOR INGRESS AND EGRESS, PIPE LINES AND PUBLIC UTILITY PURPOSES, BY DEED  
RECORDED JUNE 26, 2020, AS DOCUMENT NO. 2020-213847 AND BY DEED RECORDED JULY 8, 2020,  
AS DOCUMENT NO. 2020-0228034, BOTH OF OFFICIAL RECORDS, RECORDS OF SAN BERNARDINO  
COUNTY.

SOUTHERN CALIFORNIA EDISON, A CORPORATION, HOLDER FOR AN EASEMENT FOR PUBLIC UTILITY  
PURPOSES, BY DEED RECORDED JANUARY 29, 2021, AS DOCUMENT NO. 2021-0045877 AND BY DEED  
RECORDED APRIL 16, 1979, IN BOOK 9665, PAGE 1760, BOTH OF OFFICIAL RECORDS, RECORDS OF  
SAN BERNARDINO COUNTY.

CHENGDU HOLDING (USA), LLC, RESERVED ACCESS AND PARKING EASEMENT WITHIN DRIVEWAY AND  
PARKINGS BY DEED RECORDED JANUARY 6, 2020, AS DOCUMENT NO. 2020-0004571, OF OFFICIAL  
RECORDS, RECORDS OF SAN BERNARDINO COUNTY.

### SURVEYOR'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN  
CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE  
REQUEST OF YANBO LIAO ON JUNE, 2019, I HEREBY STATE THAT ALL MONUMENTS ARE OF THE CHARACTER  
AND OCCUPY THE POSITIONS INDICATED, AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE  
SURVEY TO BE RETRACED, AND THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY  
APPROVED TENTATIVE MAP.

JACK C. LEE, LS 8407

DATE: \_\_\_\_\_



### CITY ENGINEER'S STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP, AND THAT ALL THE APPLICABLE PROVISIONS OF THE  
SUBDIVISION MAP ACT AND THE CITY OF MONTCLAIR MUNICIPAL CODE HAVE BEEN COMPLIED WITH, AND THAT  
THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE APPROVED  
TENTATIVE MAP, IF REQUIRED, AND ANY APPROVED ALTERATIONS THERETO.

MONICA HEREDIA, R.C.E. 56547

DATE: \_\_\_\_\_



### CITY SURVEYOR'S STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND I AM SATISFIED THAT THIS MAP IS TECHNICALLY  
CORRECT.

REVIEWED FOR THE CITY OF MONTCLAIR BY L.D. KING, INC.

CARLA E. BERARD, P.L.S. 7224

DATE: \_\_\_\_\_



### MONTCLAIR CITY COUNCIL CERTIFICATE:

I HEREBY CERTIFY THAT THE CITY COUNCIL OF THE CITY OF MONTCLAIR BY A MOTION DULY SECONDED AND  
PASSED, APPROVED THIS MAP ON THE \_\_\_\_\_, 20\_\_\_\_.

ANDREA PHILLIPS  
CITY CLERK  
CITY OF MONTCLAIR

DATE: \_\_\_\_\_

### MONTCLAIR PLANNING COMMISSION CERTIFICATE:

I HEREBY CERTIFY THAT THE SUBDIVISION SHOWN ON THIS MAP IS IN SUBSTANTIAL CONFORMANCE WITH THE  
TENTATIVE PARCEL MAP APPROVED AT A MEETING OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR,  
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA HELD ON THE \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 20\_\_\_\_.

MICHAEL DIAZ  
SECRETARY OF THE CITY OF MONTCLAIR  
PLANNING COMMISSION

DATE: \_\_\_\_\_

### BOARD OF SUPERVISORS' CERTIFICATE:

I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$ \_\_\_\_\_ HAS BEEN EXECUTED AND FILED WITH  
THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, CONDITIONED UPON  
THE PAYMENT OF ALL TAXES, (STATE, COUNTY, MUNICIPAL, AND LOCAL) AND ALL SPECIAL ASSESSMENTS,  
COLLECTED AS TAXES, WHICH AT THE TIME OF FILING OF THIS MAP WITH THE COUNTY OF SAN BERNARDINO  
ASSESSOR-RECORDER-COUNTY CLERK RECORDER ARE A LIEN AGAINST SAID PROPERTY BUT NOT YET PAYABLE  
AND THE OWNER HAS FILED WITH ME A CERTIFICATE BY THE PROPER OFFICER GIVING HIS ESTIMATE OF THE  
AMOUNT OF SAID TAXES AND SPECIAL ASSESSMENTS, AND SAID BOND IS HEREBY ACCEPTED.

LYNNA MONELL  
CLERK OF THE BOARD OF SUPERVISORS  
COUNTY OF SAN BERNARDINO

DATE \_\_\_\_\_ BY \_\_\_\_\_ DEPUTY

### AUDITOR'S CERTIFICATE:

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE, AS OF THIS DATE, THERE ARE NO  
LIENS AGAINST THE REAL PROPERTY SHOWN UPON THE ANNEXED MAP FOR UNPAID STATE, COUNTY,  
MUNICIPAL, LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL  
ASSESSMENTS NOT YET PAYABLE, ESTIMATED TO BE  
\$ \_\_\_\_\_.

DATE \_\_\_\_\_ ENSEN MASON, AUDITOR-CONTROLLER/TREASURER/TAX COLLECTOR  
COUNTY OF SAN BERNARDINO, CALIFORNIA

BY \_\_\_\_\_ DEPUTY

### SAN BERNARDINO COUNTY RECORDER'S CERTIFICATE:

THIS MAP HAS BEEN FILED UNDER DOCUMENT NUMBER \_\_\_\_\_  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ AT \_\_\_\_\_ M. IN BOOK \_\_\_\_\_  
OF \_\_\_\_\_ AT PAGE \_\_\_\_\_ AT THE REQUEST OF \_\_\_\_\_  
IN THE AMOUNT OF \_\_\_\_\_.

BOB DUTTON, ASSESSOR-RECORDER/CLERK  
COUNTY OF SAN BERNARDINO, CALIFORNIA

DEPUTY RECORDER

NUMBER OF PARCEL: 1  
GROSS AREA: 3.99 ACRES

# PARCEL MAP NO. 20375

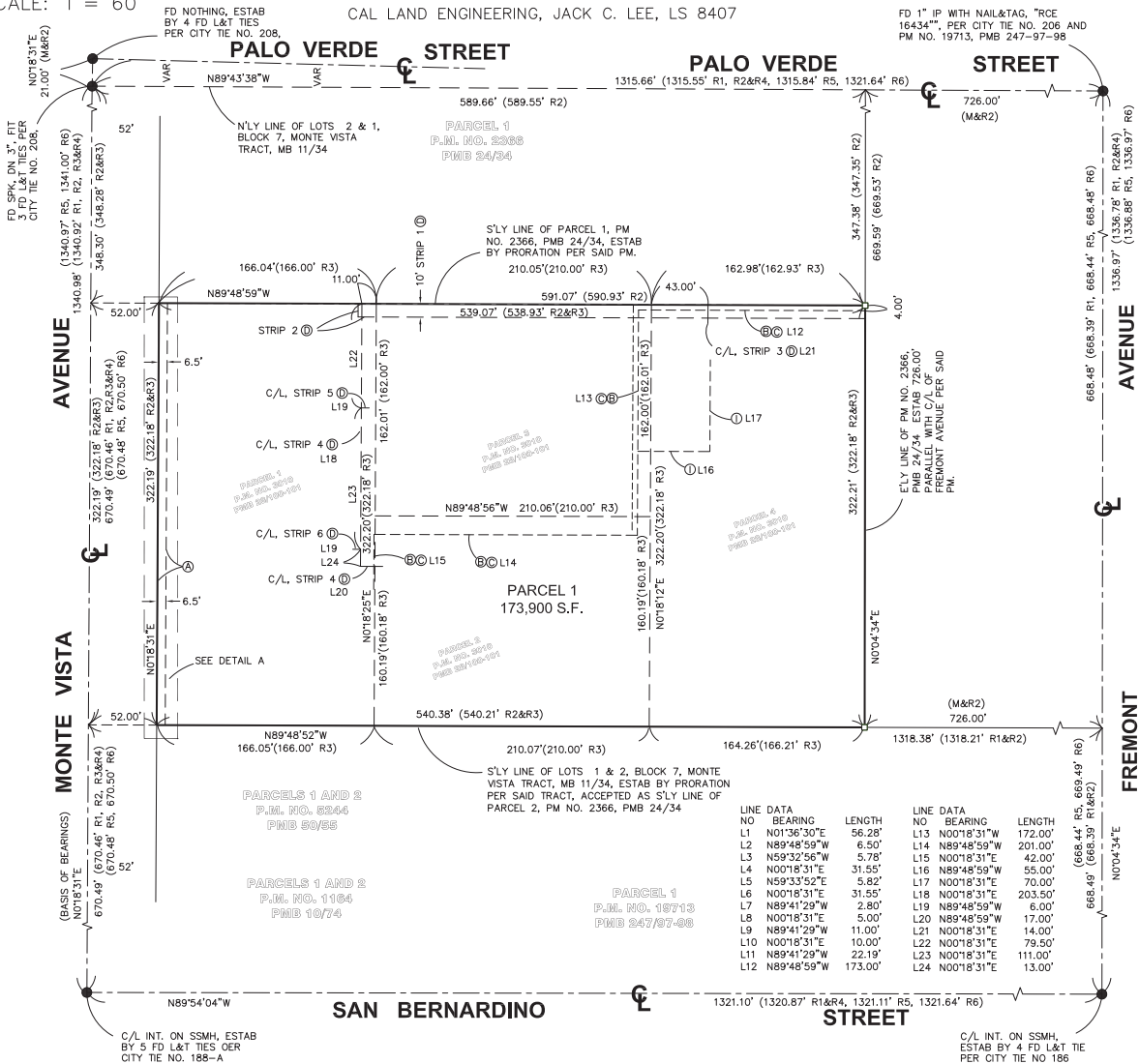
SHEET 2 OF 2 SHEETS

IN THE CITY OF MONTCLAIR  
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA  
FOR CONDOMINIUM CONVERSION PURPOSES

BEING A SUBDIVISION OF PARCEL MAP NO. 3010, AS SHOWN ON A  
MAP RECORDED IN BOOK 28, PAGES 100 AND 101 OF PARCEL MAPS,  
IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

CAL LAND ENGINEERING, JACK C. LEE, LS 8407

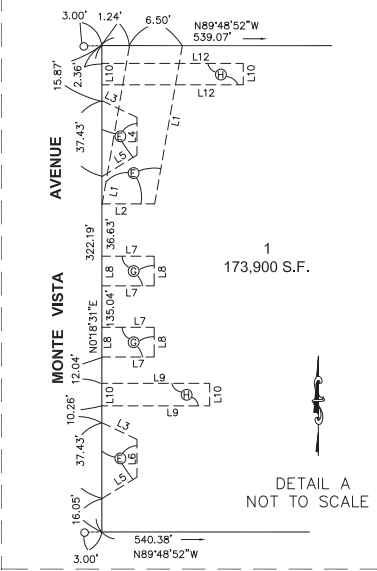
SCALE: 1" = 60'



**RECORD DATA NOTES:**  
 R1 RECORD DATA PER PM NO. 1164, PMB 10/74  
 R2 RECORD DATA PER PM NO. 2366, PMB 24/34  
 R3 RECORD DATA PER PM NO. 3010, PMB 28/100-101  
 R4 RECORD DATA PER PM NO. 5244, PMB 50/55  
 R5 RECORD DATA PER PM NO. 19713, PMB 247/97-98  
 R6 RECORD DATA PER MONTE VISTA TRACT, MB 11/34

**EASEMENT NOTE:**  
 (A) 6.5' WIDE EASEMENT TO CITY OF MONTCLAIR, FOR PUBLIC UTILITY PURPOSES, PER DEED RECORDED AUGUST 13, 1975, IN BOOK 8741, PAGE 728 OF OFFICIAL RECORDS.  
 (B) C/L OF THE 8' WIDE EASEMENT TO SOUTHERN CALIFORNIA EDISON COMPANY FOR POLE LINES, CONDUITS AND INCIDENTAL PURPOSES, BY DEED RECORDED MARCH 14, 1977, IN BOOK 9133, PAGE 1320 AND BY DEED RECORDED MARCH 14, 1977, IN BOOK 9133, PAGE 1321, BOTH OF OFFICIAL RECORDS.  
 (C) EASEMENT TO GENERAL TELEPHONE COMPANY OF CALIFORNIA, FOR PUBLIC UTILITY PURPOSES, BY DEED RECORDED JUNE 13, 1977, IN BOOK 9197, PAGE 1107 OF OFFICIAL RECORDS.  
 (D) EASEMENT TO SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY FOR PUBLIC UTILITY PURPOSES, BY DEED RECORDED DECEMBER 19, 2019, AS DOCUMENT NO. 2019-0469257, OF OFFICIAL RECORDS.  
 (E) EASEMENT TO CITY OF MONTCLAIR FOR SIDEWALK PURPOSES, BY DEED RECORDED MAY 21, 2020, AS DOCUMENT NO. 2020-0170744, OF OFFICIAL RECORDS.  
 (F) EASEMENT TO CITY OF MONTCLAIR FOR STREET LIGHT PURPOSES, BY DEED RECORDED JUNE 26, 2020, AS DOCUMENT NO. 2020-212519, OF OFFICIAL RECORDS.  
 (G) EASEMENT TO MONTCLAIR WATER DISTRICT FOR INGRESS AND EGRESS, PIPE LINES AND PUBLIC UTILITY PURPOSES, BY DEED RECORDED JUNE 26, 2020, AS DOCUMENT NO. 2020-213847 AND BY DEED RECORDED JULY 8, 2020, AS DOCUMENT NO. 2020-0228034, BOTH OF OFFICIAL RECORDS.  
 (H) C/L OF THE 8' WIDE EASEMENT TO SOUTHERN CALIFORNIA EDISON COMPANY FOR POLE LINES, CONDUITS AND INCIDENTAL PURPOSES, BY DEED RECORDED APRIL 16, 1979, IN BOOK 9665, PAGE 1760, OF OFFICIAL RECORDS.

**SURVEYOR'S NOTES:**  
 ● FD MONUMENT AS NOTED  
 ○ SET L&T, TAGGED "LS 8407" AT 3.00' O/S FROM CORNER ON THE PROLONGATION OF THE SIDE LOT LINE  
 □ SET L&T, TAGGED "LS 8407" ON TOP OF WALL  
 ESTAB ESTABLISHED  
 C/L CENTERLINE  
 INT INTERSECTION  
 REC. RECORDED  
 SSMH SANITARY SEWER MANHOLE  
 M MEASURED DISTANCE  
 & AND  
 VAR VARIES





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 2021	<b>FILE I.D.:</b>	LIT200
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	CITY MGR.
<b>ITEM NO.:</b>	11	<b>PREPARER:</b>	E. STARR
<b>SUBJECT:</b>	CONSIDER AUTHORIZING THE CITY TO OPT-IN TO THE NATIONAL OPIOID SETTLEMENTS AND PERMITTING THE CITY MANAGER TO SIGN FORMAL AND BINDING DOCUMENTS ON BEHALF OF THE CITY RELATED TO PARTICIPATION IN THE SETTLEMENTS		

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**REASON FOR CONSIDERATION:** The State of California has elected to participate in the two national settlements related to the opioid crisis. Settlements that would resolve all opioid litigation brought by states and local political subdivisions have been reached against the three largest pharmaceutical distributors of opioids and one manufacturer. Each subdivision in the state may participate and potentially receive a distribution of funds from the settlements.

The City Council is requested to consider authorizing the City to opt-in to the national opioid settlements and permit the City Manager to sign all related documents.

**BACKGROUND:** After years of negotiations, two proposed nationwide settlement agreements have been reached that would resolve all opioid litigation brought by states and their respective subdivisions against the three largest pharmaceutical distributors, McKesson, Cardinal Health, and AmerisourceBergen; and one manufacturer, Janssen Pharmaceuticals, Inc., and its parent company Johnson & Johnson.

The proposed settlements required the pharmaceutical distributors to pay up to \$21 billion over 18 years and Janssen to pay up to \$5 billion over nine years, for a total of \$26 billion. Of the settlement amount, \$22.7 billion is reserved for state and subdivision participants to remedy and lessen the impacts of the opioid crisis.

Each of the proposed settlements has two key participations steps:

1. Each state must first decide whether to participate in the Settlements. California has joined both settlements.
2. Subdivisions within each state must then decide whether to participate in the settlements. Generally, if more subdivisions participate, a more significant share of settlement funds will flow to that state and its subdivisions. City staff is recommending Montclair's participation in the settlements.

If the City Council approves the City's participation in the opioid settlements, City staff will register at the national settlement website (<https://nationalopioidsettlement.com/>) to determine the City's eligibility and obtain the required forms. Each subdivision must use a unique Subdivision Identification Number assigned through the National Opioids Settlement administrator to register.

The State Attorneys General will develop a formula for the distribution of funds to the participating states. The formula considers population and the severity of harm caused by the opioid epidemic in each participating state. Each state then allocates funds from the settlements to subdivisions based either on an allocation agreement between the respective state and its subdivisions, applicable state allocation legislation, or default provisions contained in the settlements. California is proposing a state-subdivision allocation agreement, which will be available on the national settlement website and at <https://oag.ca.gov/opioids>.

While all subdivisions in a state may participate in the settlements, not all subdivisions will be eligible to receive direct payments if the disbursement is considered too small to add a meaningful abatement response.

While insufficient to abate the opioid epidemic fully, the amounts paid under the settlements will allow the state and its subdivisions to commence meaningful change to curb opioid addiction, overdose, and death. The prompt distribution of settlement funds would enable governments to address the epidemic in their respective states and communities as soon as practicable. Further, failure by subdivisions to participate could result in failure to finalize the settlements and return each case in the class action to their home states for separate litigation. Approximate half of the abatement funds are in the form of “incentive payments” to states with higher subdivision participation.

The deadline for participants to opt-in and maximize settlement benefits is January 2, 2022.

Additional actions by the City Council may be required based on the final determination by the California State Attorney General. These may include entering into a Participation Agreement, executing a Release, and adopting a Resolution.

The City Attorney will continue to monitor requirements related to participation in the opioid settlements.

**FISCAL IMPACT:** There would be no direct fiscal impact to the General Fund should the City Council authorize the City to opt-in to the opioid settlements; however, failure to participate will result in the City receiving no funding from the settlements.

Participation in the settlements may result in an undetermined distribution of funds to the City to abate the opioid crisis and provide relief to individuals impacted by the crisis.

**RECOMMENDATION:** Staff recommends the City Council authorize the City to opt-in to the National Opioid Settlements and permit the City Manager to sign formal and binding documents on behalf of the City related to participation in the settlements.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 2021	<b>FILE I.D.:</b>	HSV105
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	HUMAN SVCS.
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	A. COLUNGA
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AMENDMENT NO. 1 TO 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 Amendment No. 1 to Agreement No. 21-27 with Catering Systems, Inc. to provide meals for the City's Senior Citizen Nutrition Program.

**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 amending the current subcontract with Catering Systems, Inc. for nutrition program meals to increase the meal cost from \$5.60 per meal to \$5.75 per meal effective November 15, 2021. This increase is recommended as the result of menu changes driven by the County's Department of Public Health detailed nutrition analysis. All of these costs will be covered by the existing cost reimbursement grants.

**FISCAL IMPACT:** There will be no cost to the General Fund as a result of this amended agreement to provide the Senior Nutrition meals. All costs of this program are funded by the DAAS grant.

**RECOMMENDATION:** Staff recommends City Council approve Amendment No. 1 to Agreement No. 21-27 with Catering Systems, Inc. to provide meals for the City's Senior Citizen Nutrition Program.

**AMENDMENT  
TO  
FOOD SERVICE AGREEMENT**

This **AMENDMENT**, 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;

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

**WHEREAS**, the Contractor and Subcontractor agree to amend the existing Food Service Agreement No. 21-27.

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

**AMENDMENT**

**"Section 3. Compensation to the Subcontractor" is hereby amended to read as follows:**

**Section 3. Compensation to the Subcontractor**

From July 1, 2021 through November 14, 2021 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. As the result of menu changes driven by the County's Department of Public Health, effective November 15, 2021, the Contractor shall pay to the Subcontractor an amount not to exceed \$5.75 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.

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

This Agreement, Amendment, 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. All other terms and conditions shall remain unchanged.

**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**



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 2021	<b>FILE I.D.:</b>	TRN257
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	CITY MGR.
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	E. STARR
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 21-66 WITH GREYHOUND LINES, INC. FOR SHARED USE OF A SINGLE BUS BAY FOR DAILY COMMERCIAL BUS PASSENGER SERVICE AND GROUND SPACE FOR AN EMPLOYEE-OPERATED TICKET VENDING AND CUSTOMER SERVICE KIOSK AT THE MONTCLAIR TRANSCENTER		

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**REASON FOR CONSIDERATION:** The City of Montclair, the California Department of Transportation (Caltrans), and the San Bernardino County Transportation Authority (SBCTA) own and operate the Montclair Transcenter. The City functions as a landlord for Transcenter operations. Greyhound Lines, Inc. has requested to locate its commercial bus passenger service at the Transcenter. The City Council approves agreements related to operational services at the Transcenter.

At its November 1, 2021 meeting, the City Council continued consideration of proposed Agreement No. 21-66 to November 15, 2021 to allow time for staff to continue negotiations with Greyhound and amend the contract related to adjustments in daily commercial passenger service.

**BACKGROUND:** In February 2021, Greyhound Lines, Inc. initiated discussions with the City, Caltrans, and Omnitrans regarding shared use of a single bus bay at the Transcenter for daily commercial bus passenger services and ground space for an employee-operated ticket vending and customer service kiosk. Caltrans and SBCTA requested that the City serve as the lead agency, develop the license agreement, and oversee the project as operational site manager.

License Agreement No. 21-66 outlines Greyhound's use of the Transcenter to operate daily commercial bus passenger service. Exhibits A, B, and C to Agreement No. 21-66 illustrate the areas to be used by Greyhound and provide images and dimensions of the ticket vending and customer service kiosk. Exhibit D provides the schedule of Greyhound's daily commercial bus passenger services. Greyhound passengers will have access to and from the Transcenter's common areas, including benches, restrooms, covered canopy areas, and parking.

License Agreement No. 21-66 provides for Greyhound's use of the Transcenter to operate daily commercial bus passenger service — the schedule of daily commercial bus passenger service is attached to License Agreement No. 21-66 as **Exhibit D**. Greyhound's passengers will have access to and from the Transcenter's common areas including benches, restrooms, covered canopy areas, and parking.

Key provisions of Agreement No. 21-66 include the following:

1. **Term.** The license term is five years (February 1, 2022, to January 31, 2027).
2. **Option to Extend.** The license term may be extended for up to two additional terms of five years each.



3. **Rent.** Rent for the Term of the Initial License shall be \$1,800 monthly, payable in advance to the City before the first day of each calendar month.

The monthly rent is based upon the proposed eleven trips conducted out of the Transcenter on a daily basis, including drop offs and pick ups (the "Daily Trip Rate"), as indicated in Exhibit D.

4. **Rent Adjustment.** Rent for each month of the term of each extension option shall be increased by the greater of (i) ten percent, or (ii) the cumulative Annual Average of the *Consumer Price Index for the Riverside-San Bernardino-Ontario Area* for the five-year Term preceding each five-year option exercised.

Any increase in the Daily Trip Rate requires City approval, in consultation with Omnitrans, and shall result in a ten percent increase in the monthly rent for each additional daily trip added to the Daily Trip Rate. There shall be no reduction to the month rent for any decrease to the Daily Trip Rate.

5. **Facilities Improvement Contribution.** Greyhound agrees to make a one-time contribution of \$25,000 toward the purchase and installation of a self-cleaning restroom facility for use by the public using the Transcenter's common areas.
6. **Use of Premises.** Greyhound will use the Transcenter solely for business operations and related activities and must provide to the City and Omnitrans a monthly schedule of daily commercial bus services for coordination of use of the shared bus bay.
7. **Utilities.** Greyhound shall provide and pay for all utility services related to its operations at the Transcenter.
8. **Assignment and Subletting.** Greyhound cannot assign or sublease any part of the premises; however, Greyhound may transfer the license to an entity that acquires ninety percent or more of its assets.
9. **Alterations, Improvements, and Additions.** Greyhound cannot install signage or make any alterations, improvements, or additions in, on, or about the Premises, including installation of an employee-operated ticket vending/customer service kiosk without the City's consent and appropriate permits. Greyhound must remove signage, alterations, improvements, personal property, or additions made to the premises within thirty days of the license's expiration. Any personal property, trade fixtures, signs, ticket vending kiosks, alterations, improvements, or additions not removed by Greyhound become the property of the City, and the City may assess Greyhound a reasonable removal, repair, and disposal fee.
10. **Taxes.** Greyhound shall pay all taxes, if any, assessed against and levied upon its trade fixtures and other personal property located at the Transcenter.
11. **Insurance.** At its sole cost and expense, Greyhound shall maintain comprehensive general liability insurance including contractual liability as respects the license, providing a combined single limit of liability of not less than \$3 million per occurrence on the Premises. Greyhound shall annually provide the City with a certificate of insurance evidencing coverage and naming the City, Caltrans, and

SBCTA as additional insured. Greyhound may self-insure its insurance liabilities and provide a certificate evidencing such coverage.

12. **Indemnity.** Each party agrees to defend, indemnify, and hold the other party harmless from any claims, demands, costs, and expenses, including reasonable attorney's fees arising from indemnifying a party's wrongful act or negligence on the premises.
13. **Public Purpose.** The Transcenter is a public property providing transit services to the public, subject to mandates outside the control or authority of the City and Greyhound that may affect physical or operational features of the Transcenter. Therefore, the parties to this agreement cannot and shall not be held liable for legislative mandates that affect the public purpose of the Transcenter. The City shall, if practicable or if not prohibited by legal limitations or prohibitions, provide Greyhound with advance notice of no less than ninety days of the date of any taking that affects the premises and operations of Greyhound. At its sole discretion, the City shall terminate the license as of the date the premises is no longer available to Greyhound for its business purposes. The City, Caltrans, and SBCTA shall have no liability whatsoever for removal of, or loss or damage to, trade fixtures or personal property of Greyhound, nor for any loss of business, revenue, or profitable gains or earnings. Greyhound may relocate to a tenantable location at the Transcenter, if available.
14. **Defaults.** The following constitute default by Greyhound:
  - a. Failure to make any payment of rent that continues for twenty days after receiving notice of the late payment.
  - b. Failure to observe or perform any of the covenants, conditions, or provisions of the license, where the failure continues for thirty days after receiving notice. If more than thirty days are required to cure the default, the City shall not deem Greyhound in default provided Greyhound commences such a cure within thirty days and diligently completes the cure.
  - c. Greyhound's filing of a petition to be adjudged as bankrupt or the judicial declaration of Greyhound as bankrupt.
  - d. Appointment of a trustee or receiver to take possession of substantially all of Greyhound's assets at the premises, or of Greyhound's interest in the license, if possession is not restored within thirty days.
  - e. Attachment, execution, or other judicial seizure of substantially all of Greyhound's assets located at the premises or of Greyhound's interest in the license if possession is not discharged within thirty days.
15. **Remedies upon Default.** In the event of default by Greyhound, the City may, after giving notice, remove Greyhound's property, take and hold possession of the premises, expel Greyhound, and pursue remedies available under California law.
16. **Holding Over.** If Greyhound remains in possession of the Premises after the expiration of the license, Greyhound shall occupy the premises as a tenant on a month-to-month basis, subject to all license conditions.

17. **Environmental Matters.** Greyhound shall comply with all environmental laws and bear liability for remediating, removing, or abating any environmental or hazardous materials or conditions Greyhound may bring to the premises.

18. **Miscellaneous.**

- a. *Signs.* Before erecting or posting any sign, Greyhound must submit a sign program to the City for approval by the Community Development Department and receive the necessary permits and approvals.
- b. *Ticket Vending/Customer Service Kiosk.* Prior to erecting or installing any ticket vending and customer service kiosks, Greyhound shall submit a site plan for approval by the Community Development Department and receive the necessary permits and approvals.
- c. *Attorney's Fees.* If any party named in License Agreement No. 21-66 brings an action to enforce terms of License Agreement No. 21-66, the prevailing party shall be entitled to reasonable attorney's fees.

**FISCAL IMPACT:** Greyhound will pay the City \$1,800 in monthly rent (\$21,600 annually, or \$108,000 over the full five-year term), payable in advance of each calendar month of the initial term of the License Agreement.

Upon notice by Greyhound of its intent to exercise each of two five-year extension options, rent for each extension option's term shall automatically increase subject to the terms of the lease agreement. Funds will be deposited in the City's General Fund and used for Transcenter maintenance.

1. For the first five-year extension option, monthly rent shall increase to not less than \$1,980 monthly, \$23,760 annually, or \$118,800 over the first optional five-year term.
2. For the second five-year extension option, monthly rent shall increase to not less than \$2,178 monthly, \$26,136 annually, or \$130,680 over the second optional five-year term.

As a condition of approval of License Agreement No. 21-66, Greyhound agrees to make a one-time contribution of \$25,000 toward the City's acquisition and installation of a self-cleaning restroom facility for use and enjoyment by Greyhound and its customers, commuters, and the general public.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 21-66 with Greyhound Lines, Inc. for shared use of a single bus bay for daily commercial bus passenger service and ground space for an employee-operated ticket vending and customer service kiosk at the Montclair Transcenter.

**LICENSE AGREEMENT**

**LANDLORD:**

City of Montclair  
P.O. Box 2308  
5111 Benito Street  
Montclair, CA 91763-2808

**TENANT:**

Greyhound Lines, Inc.  
a Delaware corporation  
350 N. St. Paul Street  
Dallas, Texas 75266-0362  
Attn.: Legal Department  
Copy to: Real Estate Department

1. **DATE.** This License Agreement ("License") is made to be effective as of February 1, 2022.
2. **PREMISES.** The City of Montclair, a California Municipal Corporation (the "Landlord"), together with the California Department of Transportation and San Bernardino County Transportation Authority (the "Parties"), own the real property commonly known as the Montclair Transcenter (the "Transcenter"), and the Landlord, on behalf of the Parties, operates and maintains the Transcenter as a multimodal transit hub. Greyhound Lines, Inc., a Delaware Corporation (the "Tenant"), wishes to use a single bus bay and ground space for an employee-operated ticket vending/customer service kiosk (together, the "Premises"), the latter provided by Tenant, from which Tenant will operate daily commercial bus passenger services. Tenant also desires for its agents, operators, invitees and customers to have access to benches, restrooms, covered canopy areas, and parking facilities (the "Common Areas") located at the Transcenter. Landlord and Tenant hereby enter into a License Agreement permitting Tenant to use Premises and Common Areas for the term of the License Agreement (the "License") at the monthly license fee rate (the "Rent") provided for under Section 4 of this Agreement, and upon all the terms, covenants, conditions, and considerations set forth herein:

Premises is comprised of shared use of a single bus parking bay and approximately twenty-four (24) square feet of ground space for an employee-operated ticket vending/customer service kiosk provided, maintained and operated by Tenant in the City of Montclair, County of San Bernardino, State of California, on real property commonly known as the Montclair Transcenter, located at 5091 Richton Street, Montclair, CA 91763, and as more particularly described/illustrated in the site plan attached hereto as Exhibit "A", and incorporated herein for all purposes. Dimensions of the ticket vending/customer service kiosk are attached as Exhibit "B". A photo image of a standard ticket vending/customer service kiosk used by Tenant is attached as Exhibit "C". A weekly schedule of Tenant's proposed bus service operating schedule is attached as Exhibit "D".

Tenant, its employees, operators, invitees, and customers, shall have continuous and uninterrupted right of access to and from the Common Areas, and Tenant-regulated access to Tenant-operated ticket vending/customer service kiosk and bus bay on Premises to board and de-board to and from Tenant-provided commercial bus transport vehicles.

3. **TERM.** The term of this License shall be five (5) years (the "Initial Term"), commencing on February 1, 2022 (the "Commencement Date"), and extending through January 31, 2027 (the "Expiration Date"), unless sooner terminated or extended pursuant to the following provisions:

(a) **Option to Extend.** Upon expiration of the Initial Term, Tenant shall have the option to extend the term of this License for up to two additional Terms of five years each (the "Extension Option"), provided Tenant gives Landlord no less than thirty (30) days prior written notice of intent to exercise each of the Extension Options.

(b) **Terms Remain Same During Extension Option.** All provisions of this License shall remain the same during the Term of each Extension Option, excluding the Rent, which shall be adjusted as provided for in Section 4 herein.

4. **RENT AND FACILITIES SUPPORT.** Tenant hereby agrees to the following terms for monthly rent and one-time facilities improvement contribution:

(a) **Monthly Rent.** Throughout the Initial Term of this License, Tenant shall pay to Landlord, for use of the Premises, rent (the "Rent") in equal monthly installments of \$1,800.00, payable in advance, on or before the first day of each calendar month of the Term. Monthly Rent shall be based upon the number of trips conducted out of the Transcenter on a daily basis, including drop offs and pick ups (the "Daily Trip Rate"), as provided for in Exhibit D, attached hereto, not to exceed four (4) daily trips during the a.m. hours and seven (7) daily trips during the p.m. hours, for a total of 11 daily trips. Any increase in the Daily Trip Rate shall require the approval of Landlord, in consultation with Omnitrans, and shall result in a ten percent (10%) increase to the monthly Rent for each additional daily trip added to the Daily Trip Rate; provided, however, there shall be no reduction to the Monthly Rent for any decrease to the Daily Trip Rate. Except as provided for in Section 15 herein, Rent for any period of less than one month shall be paid at the monthly rate set forth in this Subsection. Rent shall be payable to Landlord at its address set forth below, or to such other address as Landlord may designate by notice as provided herein:

CITY OF MONTCLAIR  
ATTN: FINANCE DIRECTOR  
PO BOX 2308  
5111 BENITO STREET  
MONTCLAIR, CA 91763-2808

(b) **Rent Adjustment.** Upon notice by Tenant of intent to exercise the Extension Option, and each of them, as provided for in Section 3 herein, Rent for each month of the Term of each Extension Option shall automatically be increased by the greater of ten (10) percent, or the cumulative *Annual Average* of the *Consumer Price Index for the Riverside-San Bernardino-Ontario Area* for the five-year Term preceding each five-year option exercised.

- (i) For the first five-year extension option, monthly rent shall increase to no less than \$1,980, effective February 1, 2027.
- (ii) For the second five-year extension option, monthly rent shall increase to no less than \$2,178, effective February 1, 2032.

Failure by Landlord to automatically adjust the monthly Rent during each Extension Option pursuant to this subsection shall not prohibit Landlord from retroactively and prospectively implementing a Rent adjustment as provided for herein.

(c) **Facilities Improvement Contribution.** As a condition of approval of this License, Tenant agrees to make a one-time contribution of \$25,000 toward Landlord's acquisition and installation of a self-cleaning restroom facility (the "Restroom") for use and enjoyment by Tenant and Landlord's agents, representatives, operators, invitees, customers, and the public. Landlord shall be fully responsible for purchase, acquisition, installation, and ongoing maintenance and repair of the Restroom. Restroom shall be installed in the Common Areas of the Transcenter and shall be accessible to Tenant's agents, representatives, operators, invitees, and customers. To comply with this Subsection, Tenant shall deposit with Landlord, not more than thirty (30) days following the

Commencement Date, at the address provided for in Section 4(a) herein, a check in the sum of \$25,000 made out to the "CITY OF MONTCLAIR".

5. **USE OF PREMISES.** Tenant shall use the Premises for the conduct of Tenant's business operations and any other activities reasonably related thereto and for any other lawful purposes including, but not limited to, (i) picking up and dropping off customers, (ii) selling tickets to customers, and (iii) providing customer support. Tenant recognizes, accepts and agrees that the Transcenter is a multimodal transit center used for, but not limited to, commuter rail, commuter light rail, ride sharing, ride hailing, taxi, electric scooter and bike transit, and other public and private bus/transit passenger services (together, the "Transit Services"), and that Tenant's License to use Premises shall not deny, prevent, interfere with, or otherwise abrogate Landlord's use of the Transcenter for any and all Transit Services. For use of Premises, Tenant agrees to provide, and shall provide, Landlord and Omnitrans with a monthly schedule of Tenant's daily bus services at the Transcenter for coordination of use of the shared bus bay as provided for in Section 2 herein. The monthly bus schedule for each succeeding month shall be provided no later than the 15th day of the preceding month; provided, however, if the daily schedule of Tenant's bus services is not subject to monthly, quarterly, or semi-annual adjustment, Tenant shall provide a quarterly, semi-annual or annual bus schedule, but no less than annually, as determined appropriate by Landlord, no later than the 15th day of the month that precedes the month in which the schedule is first effective.

6. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF TITLE.** Landlord hereby represents, warrants, and covenants to Tenant the following as of the Commencement Date:

(a) **Authority of Landlord.** Landlord has full right, power, and authority to grant the License conveyed herein and to execute and perform all of the terms, provisions, covenants, and agreements provided in this License.

(b) **Premises Complies with Legal Requirements.** To the best of Landlord's knowledge, the Premises complies with all applicable zoning requirements, ordinances, regulations, and all applicable laws affecting the Premises or Tenant's use of the Premises or Common Areas appurtenant to the Premises including, but not limited to, the Americans with Disabilities Act or other laws affecting handicapped access, and any environmental impact or traffic studies related thereto.

(c) **Premises Free of Hazardous Defects.** To the best of Landlord's knowledge, the Premises does not contain any asbestos or Hazardous Materials (as defined in Section 22 herein) and Landlord is not in violation of any federal, state, or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the Premises including, but not limited to, soil and ground water condition, and that no previous occupant of the Premises has used, generated, manufactured, stored or disposed of any Hazardous Materials on, under or about the Premises.

(d) **Enjoyment Subject to Disruption by Gold Line Extension.** Tenant's use of Premises may be subject to termination, interruption or relocation due to the planned extension of the Los Angeles Metropolitan Transportation Authority (Metro) "L" Line (formerly the Gold Line) light rail service to the Transcenter and the construction of a platform to service the "L" Line and its agents, operators, invitees, and customers. If Tenant elects to relocate to a tenantable location at the Transcenter pursuant to the requirements of this Subsection, Rent provisions as provided for in Section 15 herein, as applicable, shall apply.

7. **QUIET ENJOYMENT.** Except as otherwise provided for in this Section and Sections 6(d) and 16 herein, Landlord covenants and agrees that so long as Tenant observes and performs all of the agreements and covenants required of it hereunder, and otherwise is in full compliance with federal, state, and local laws and ordinances including, in association with Tenant's business operations at the Premises, those related to the maintenance of peace and order and the prohibition of illegal activities either by the Tenant or Tenant's employees, agents or clientele, Tenant shall peaceably and quietly have, hold, and enjoy the Premises for the Term without any encumbrance, interference, or hindrance by Landlord, and any failure to do so shall be cause and grounds for

revocation of this License. If Tenant's continued use of the Premises is restricted, limited or denied through rezoning, environmental impact edict, or other action or determination of any public or quasi-public agency or governmental authority, including Landlord or Parties, this License, at the option of Tenant, shall terminate as of the effective date of such action and the rent applying to the unexpired portion of the Term will abate and Tenant shall have no other recourse of action or complaint either by appeal, arbitration, or through courts of competent jurisdiction.

8. **UTILITIES.** Except as otherwise provided for in this Section, Landlord shall pay for all regular utility service charges related to operation of the Premises. Tenant shall pay for all utility services related to Tenant's operation of an employee-operated ticket vending/customer service kiosk.

9. **ASSIGNMENT AND SUBLETTING.** Tenant shall have no right to, and shall not assign or attempt to assign, this License or sublease, or attempt to sublease, all or a part of the Premises for any lawful purpose to any person or entity at any time or from time to time; provided, however, Tenant may assign this License to an entity that acquires all or substantially all ("substantially" defined as 90% or more) the assets of Tenant. Except as defined above, if Tenant assigns this License or subleases all or a part of Premises for any purpose, Tenant shall be in breach of this License and the penalty shall be revocation of this License and no other action or penalty shall be imposed except that Tenant, as assignor/sub lessor, shall be fully liable and responsible for any legal and other costs so declared by the assignee/sub lessee and any legal and other costs so declared by the Landlord related to termination of the sublease.

10. **ALTERATIONS, IMPROVEMENTS, AND ADDITIONS.** Tenant shall not, without Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed, and subject to appropriate permits and/or certificate of occupancy issued by Landlord, install signage, or make any alterations, improvements, or additions in, on, or about the Premises which Tenant may deem necessary or desirable, including installation and operation of an employee-operated ticket vending/customer service kiosk. Tenant shall remove such alterations, improvements, or additions made by it in, on, or about the Premises upon the Expiration Date of the License or any Extension Option. Tenant's personal property and its trade fixtures, including all signs, ticket vending/customer service kiosks, machinery, equipment, and furnishings, shall remain the property of Tenant and shall be removed by Tenant. Any personal property, trade fixtures, signs, ticket vending/customer service kiosks, alterations, improvements, or additions not removed by Tenant within thirty (30) days after the Expiration Date of the License or any Extension Option shall automatically become the property of Landlord and Tenant shall be subject to a reasonable removal, repair, and disposal fee. Tenant shall repair any material damage to the Premises caused by Tenant's or Landlord's removal of Tenant's personal property, trade fixtures, ticket vending/customer service kiosks, alterations, improvements, or additions. Alterations, improvements or additions to the Premises, as may be required solely by reason of the nature of Tenant's business, shall be at the sole cost of Tenant and such alterations, improvements or additions may include, but not be limited to, installation of signage; acquisition, installation, maintenance, and provision for an employee-operated ticket vending/customer service kiosk; and any other related improvements, utilities, and equipment designed, constructed and/or provided by Tenant in support of such alterations, improvements or additions. Landlord shall, at its sole expense or as otherwise provided for in mutual agreement between the Parties, make any alterations, improvements, or additions to the Premises (structural or non-structural) that may be required on account of any existing or future laws of any governmental agency or authority.

11. **REPAIRS AND MAINTENANCE.** Tenant shall, at all times, maintain the employee-operated ticket vending/customer service kiosk and other appurtenances installed by Tenant on the Premises in a neat and orderly state. Landlord shall, in compliance with mutual agreements between the Parties, maintain the Premises and Common Areas and make all necessary repairs thereto, including structural repairs that may include, but not be limited to, the bus shelter(s) and surface parking lot(s) located within the Transcenter. Upon the Expiration Date of the License or any Extension Option, Tenant shall remove all personal property and its trade fixtures including all signs, machinery, equipment, employee-operated ticket vending/customer service kiosk, and furnishings and

surrender the Premises in as good order, repair, and condition as the same were at commencement of the Term of this License; reasonable wear and tear excepted.

12. **TAXES.** Tenant shall pay any and all taxes, if any, assessed against and levied upon Tenant's trade fixtures, and all other personal property of Tenant contained on the Premises or in connection with Tenant's use or occupancy of the Premises.

13. **INSURANCE.** The Parties shall maintain throughout the Term, at their sole cost and expense, self-insured retention (SIR) funds and/or liability policies against loss, injury, damage to the Transcenter, any perils included within the classifications of fire, vandalism, explosion, malicious mischief, and special extended perils ("all risk"), and any risk covered under Extended Coverage Endorsement. Tenant shall maintain, at its sole cost and expense, a comprehensive general liability policy including coverage of contractual liability as respects this License, providing a combined single limit of liability of not less than \$3,000,000 per occurrence on Premises. Tenant shall annually furnish to Landlord a certificate of insurance evidencing the aforesaid coverage naming each of the Parties as additional insured. Notwithstanding any provision herein to the contrary, Tenant may satisfy its insurance obligations hereunder by self-insuring any or all of its insurance liabilities and Tenant shall annually furnish to Landlord certificates evidencing such coverage.

14. **INDEMNITY.** Except as otherwise agreed herein, each party agrees to defend, indemnify, and save the other party harmless from any and all claims, demands, costs, and expenses of every kind whatsoever, including reasonable attorney's fees for the defense thereof, arising from the indemnifying party's wrongful act or negligence in, on, or about the Premises. In case of any action or proceeding brought against either party by reason of any such claim, upon notice from such party, the indemnifying party covenants to defend such action or proceeding by counsel reasonably satisfactory to the other party, unless such action or proceeding alleges the joining or concurring wrongful act or negligence of both parties, in which case both parties shall share equally in the defense of such action or proceedings.

15. **DAMAGE OR DESTRUCTION.** If the Premises is damaged or destroyed in whole or in part by fire or other casualty, Parties shall either:

- (i) Repair and restore the Premises to a good tenantable condition;
- (ii) Tenant may elect to terminate the License; or
- (iii) Landlord may offer to temporarily relocate Tenant to a tenantable location at the Transcenter from which to operate its business pursuant to the provisions of Section 5 herein until such time the Premises is restored to a tenantable condition.

All Rent shall wholly abate in case the entire Premises is not tenantable and there is interference with the operation of the business of Tenant. In the event Landlord relocates Tenant to a tenantable location at the Transcenter, Rent shall be paid upon relocation and without pro rata adjustment. Parties shall commence and complete all work required to be done under this Section 15 with reasonable promptness and diligence. Tenant shall be liable to the Parties for damage to the Premises caused by fire or other risks, whether embraced or not within the Parties' SIR or insurance coverage, if the same is due to the negligent act or omission of Tenant. If the Parties do not commence the repair or restoration within fifteen (15) days after the damage or destruction occurs, if repair or restoration will require more than ninety (90) days to complete, or if Landlord is unable to relocate Tenant to a tenantable location at the Transcenter within thirty (30) days Tenant may, at Tenant's option, terminate this License by giving Landlord notice of Tenant's election to do so at any time prior to the commencement of the repair, restoration, or relocation which, in that event, this License shall terminate as of the date of such damage or destruction.



16. **PUBLIC PURPOSE.** Transcenter is a public property used by transit agencies, both public and private, for the delivery of a public good — providing transit services to the public (the "Public Purpose"). As such, the Transcenter is subject to legislative mandates and the acts, decisions, and omissions of local, regional, state, and federal agencies and actors that may affect the purpose, operations, design, control, ownership, site plan, and/or other physical or operational features of the Transcenter that lay outside the control or authority of the Parties. Furthermore, the Landlord separately and the Parties together, derive no profit from operation and maintenance of the Transcenter and subsidize its Public Purpose; therefore, the Parties cannot and shall not be held liable for legislative mandates and any acts, decisions or omissions that affect the Public Purpose, operations, design, control, ownership, site plan, and/or other physical or operational features of the Transcenter. If legislative mandates and/or the acts, decisions, or omissions of local, regional, state, and federal agencies and actors affect the Public Purpose, operations, design, control, ownership, site plan, and/or other physical or operational features of the Transcenter and the Premises, or a substantial portion thereof, is to be taken by easement, vacation, or dedication of land or sold or repurposed for whatever reason including a different public purpose (the "Taking"), Landlord shall, if practicable or if not prohibited by real property negotiations or other legal limitations or prohibitions, provide Tenant with advance notice of no less than ninety (90) days of the date such Taking is legally completed and this License, at Landlord's discretion, shall terminate as of the date the Premises is no longer available, or substantially available, to Tenant for the business purposes set forth in Section 5 herein. Thereafter, but not more than thirty (30) days, Tenant shall remove all trade fixtures and personal/removable property from the Premises and the Parties shall have no liability for removal of, or loss or damage to, trade fixtures or personal property of Tenant, nor for Tenant's loss of business, revenue or profitable gains or earnings. As provided in Section 5 herein, Tenant may, if available, accept relocation to a tenantable location at the Transcenter from which to operate its business. If any other taking or repurpose of the Transcenter that includes the Premises adversely and substantially affects Tenant's use, access, or rights of ingress or egress of or to the Premises then Tenant may elect to terminate this License as of the date the Premises is no longer available, or substantially available, to Tenant for the business purposes set forth in Section 5 herein, and Tenant shall remove all of Tenant's personal/removable property, trade fixtures, ticket vending/customer service kiosks, alterations, improvements, or additions from the Premises, and the Parties shall have no liability to Tenant for loss of, or damage to, Tenant's personal/removable property, trade fixtures, ticket vending/customer service kiosks, alterations or improvements made to the Premises by Tenant, nor for loss of business, revenue, profitable gains or earnings, this License, or any other consequential or special damages such as Tenant's relocation or moving expenses, and Tenant shall have no recourse of action or claim against the Parties. Tenant's decision to terminate or relocate to a tenantable location at the Transcenter shall be made in writing within thirty (30) days after Landlord has given Tenant written notice of the Taking or repurpose of the Premises; or in the absence of such notice, within fifteen (15) days after the Premises is no longer available, or substantially available, to Tenant for the business purposes set forth in Section 5 herein. If Tenant does not terminate this License in accordance with this Section, but instead accepts relocation to a tenantable location at the Transcenter from which to operate its business pursuant to the provisions of Section 5 herein, this License shall remain in full force and effect. In the event Tenant fails to remove Tenant's personal/removable property, trade fixtures, ticket vending/customer service kiosks, alterations, improvements, or additions to the Premises Tenant shall not be entitled to, and Parties shall not be obligated to pay to Tenant, the salvage value/adjusted cost basis for Tenant's personal property, trade fixtures, ticket vending/customer service kiosk, alterations, improvements, or additions to the Premises not returned to Tenant.

17. **DEFAULTS; REMEDIES.**

(a) **Default by Tenant.** The occurrence of any of the following events constitutes a material default of this License by Tenant:

(i) The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, as and when due, where the failure continues for a period of twenty (20) days after Tenant receives notice thereof from Landlord.

(ii) The failure by Tenant to observe or perform any of the covenants, conditions, or provisions of this License to be observed or performed by Tenant, other than those described in Subsection (a)(i) above of this Section, where the failure continues for a period of thirty (30) days after Tenant receives notice thereof from Landlord; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within the thirty- (30-) day period and thereafter diligently completes the cure.

(iii) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by Tenant of a petition to have Tenant adjudged as bankrupt; or the judicial declaration of Tenant as bankrupt.

(iv) The appointment of a trustee or receiver to take possession of substantially all Tenant's assets located at the Premises or of Tenant's interest in this License if possession is not restored to Tenant within thirty (30) days.

(v) The attachment, execution, or other judicial seizure of substantially all Tenant's assets located at the Premises or of Tenant's interest in this License, if the seizure is not discharged within thirty (30) days.

(b) **Remedies upon Tenant's Default.** In the event of any such material default by Tenant, Landlord may, after giving notice as provided above, remove Tenant's property and take and hold possession of the Premises and expel Tenant and pursue those remedies available to Landlord under the laws of the State of California.

(c) **Default by Landlord.** Landlord shall not be in default unless Landlord fails to perform any covenants, terms, provisions, agreements or obligations required of it within a reasonable time, but in no event later than thirty (30) days after notice by Tenant to Landlord; provided that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for performance, then Landlord shall not be in default if Landlord commences performance within the thirty- (30-) day period and thereafter diligently completes performance.

(d) **Remedies upon Landlord's Default.** If Landlord defaults in the performance of any of the obligations or conditions required to be performed by Landlord under this License, Tenant may, after giving notice as provided above, elect to terminate this License upon giving 30 days' notice to Landlord of its intention to do so. In that event, this License shall terminate upon the date specified in the notice, unless Landlord has meanwhile cured the default to the satisfaction of Tenant. In the event that any representations and warranties set forth in this License (including but not limited to those set forth in Section 6 herein) shall cease to be the case, and if Landlord shall have failed to commence to cure within sixty (60) days after notice from Tenant and thereafter diligently completes the cure of the same, then, except as specifically provided elsewhere in this License, Tenant shall have the right to terminate this License upon notice to Landlord.

18. **HOLDING OVER.** If Tenant remains in possession of the Premises after the expiration or termination of this License, and without the execution of a new License, Tenant shall be deemed to be occupying the Premises as a tenant from month-to-month, subject to all of the conditions, provisions, and obligations of this License.

19. **NOTICES.** All acceptances, approvals, consents, notices, demands or other communications required or permitted to be given or sent by either party to the other, unless otherwise provided, shall be deemed to have been fully given when made in writing and delivered in person or deposited in the United States mail, certified and postage prepaid, addressed to the name and address set forth below. The address and person for written communication may be changed upon written notice to the other party.

To the Landlord: CITY OF MONTCLAIR  
ATTN: CITY MANAGER  
PO BOX 2308

5111 BENITO STREET  
MONTCLAIR, CA 91763-2808

To the Tenant:

GREYHOUND LINES, INC.  
ATTN: LEGAL DEPARTMENT  
350 N. ST. PAUL STREET  
DALLAS, TX 75266-0362

Copy to – Greyhound Lines, Inc. Real Estate Department  
(same address)

20. **WAIVER OF SUBROGATION.** Landlord and Tenant, and all parties claiming under or through them, hereby mutually release and discharge each other, any other tenants or occupants of the Premises, and the officers, employees, agents, representatives, customers and business visitors of Landlord or Tenant or such other tenants or occupants, from all claims, losses, and liabilities arising from, or caused by, any hazard covered by insurance on or in connection with the Premises, even if caused by the fault or negligence of a released party. This release shall apply only to the extent that such claim, loss, or liability is covered by insurance.

21. **ENVIRONMENTAL MATTERS.** Tenant will comply with all environmental laws during the term of the License, but shall bear no liability whatsoever and shall not assume any conditions or responsibilities for any existing environmental materials or Hazardous Materials on the Premises; it is provided, however, that Tenant shall bear liability for, and shall be solely responsible for remediating, removing, or abating any environmental materials and/or Hazardous Materials or conditions Tenant may bring on to Premises by act, performance, omission, or fault, whether intentional or unintentional. Landlord agrees to indemnify, defend, and hold Tenant harmless from and against any and all loss, damage, liability and expense (including reasonable attorneys' fees) that Tenant may incur as a result of any claim, demand or action related to environmental conditions, Hazardous Materials or any other environmental laws and regulations not directly resulting from Tenant's activities on the Premises, and Tenant agrees to indemnify, defend, and hold Parties harmless from and against any and all loss, damage, liability and expense (including reasonable attorneys' fees) that Parties may incur as a result of any claim, demand or action related to environmental conditions and/or Hazardous Materials or conditions introduced to the Premises by act, performance, omission, or fault of Tenant, whether intentional or unintentional.

22. **HAZARDOUS MATERIALS.** The term "Hazardous Materials" as used herein shall include, but not be limited to, the following: asbestos, flammable explosives, dangerous substances, pollutants, contaminants, hazardous wastes, toxic substances, and any other chemical, material, or related substance exposure to which is prohibited or regulated by any governmental agency or authority having jurisdiction over the Premises; any substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, by Superfund Amendments and Reauthorization Act 42 U.S.C. §6901, *et seq.*; the Hazardous Materials Transportation Act, 42 U.S.C. §6901, *et seq.*; Clean Air Act, 42 U.S.C. §7901, *et seq.*; Toxic Substances Control Act, 15 U.S.C. §2601, *et seq.*; Clean Water Act, 33 U.S.C. §1251, *et seq.*; the laws, regulations or rulings of the state in which the Premises is located or any local ordinance affecting the Premises; or the regulations adopted in publication promulgated pursuant to any of such laws and ordinances.

23. **MISCELLANEOUS.**

(a) **Signs.** Prior to erecting or posting any sign, Tenant shall submit to the Montclair Community Development Department a sign program, and no sign shall be erected or posted on the Premises or any structure on the Premises or Transcenter by Tenant without first having received the necessary approval and permits from the Landlord. Notwithstanding any other provision of this License, Tenant shall be solely responsible for the design, acquisition, purchase, installation, electrification, and ongoing utility requirements for any sign(s) erected or posted

on the Premises or Transcenter. All repair work necessary for utility installation to sidewalks, plaza, pavement, landscaping, existing structures, etc., shall be done under a permit issued by the City's Public Works Department and performed to the satisfaction of the City Engineer.

(b) **Ticket Vending/Customer Service Kiosk.** Prior to erecting or installing any ticket vending/customer service kiosk Tenant shall submit to Landlord a site plan, and no kiosk or any structure shall be erected or installed on the Premises or Transcenter by Tenant without first having received the necessary approval and permits from the Landlord. Notwithstanding any other provision of this License, Tenant shall be solely responsible for the design, acquisition, purchase, installation, electrification, and ongoing utility requirements for any ticket vending/customer service kiosk erected or installed on the Premises or Transcenter. All repair work necessary for utility installation to sidewalks, plaza, pavement, landscaping, existing structures, etc., shall be done under a permit issued by the City of Montclair Public Works Department and performed to the satisfaction of the City Engineer.

(c) **Severability; Choice of Law.** The invalidity or unenforceability of any provision of this License, as determined by a court of competent jurisdiction, shall in no way affect the validity of the remainder of this License or any other provision hereof. **THE LAWS OF THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO, AND CITY OF MONTCLAIR SHALL GOVERN THIS LICENSE.**

(d) **Entire Agreement.** This License and any addenda and exhibits attached hereto or to be attached hereto, set forth all of the covenants, promises, agreements, and conditions between Landlord and Tenant concerning the Premises and this License, and there are no covenants, promises, agreements or conditions, either oral or written, between them. This License may not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

(e) **Attorney's Fees.** If either party named herein brings an action to enforce the terms of this License or to declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to reasonable attorney's fees to be paid by the losing party as fixed by the court.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument to be effective as of the day and year first above written.

**Landlord:**

**CITY OF MONTCLAIR**  
A Municipal Corporation

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

**Tenant:**

**GREYHOUND LINES, INC.**  
a Delaware corporation

By: \_\_\_\_\_  
Name: David S. Leach, President and CEO

**ATTEST:**

By: \_\_\_\_\_  
Name: Andrea Myrick, City Clerk

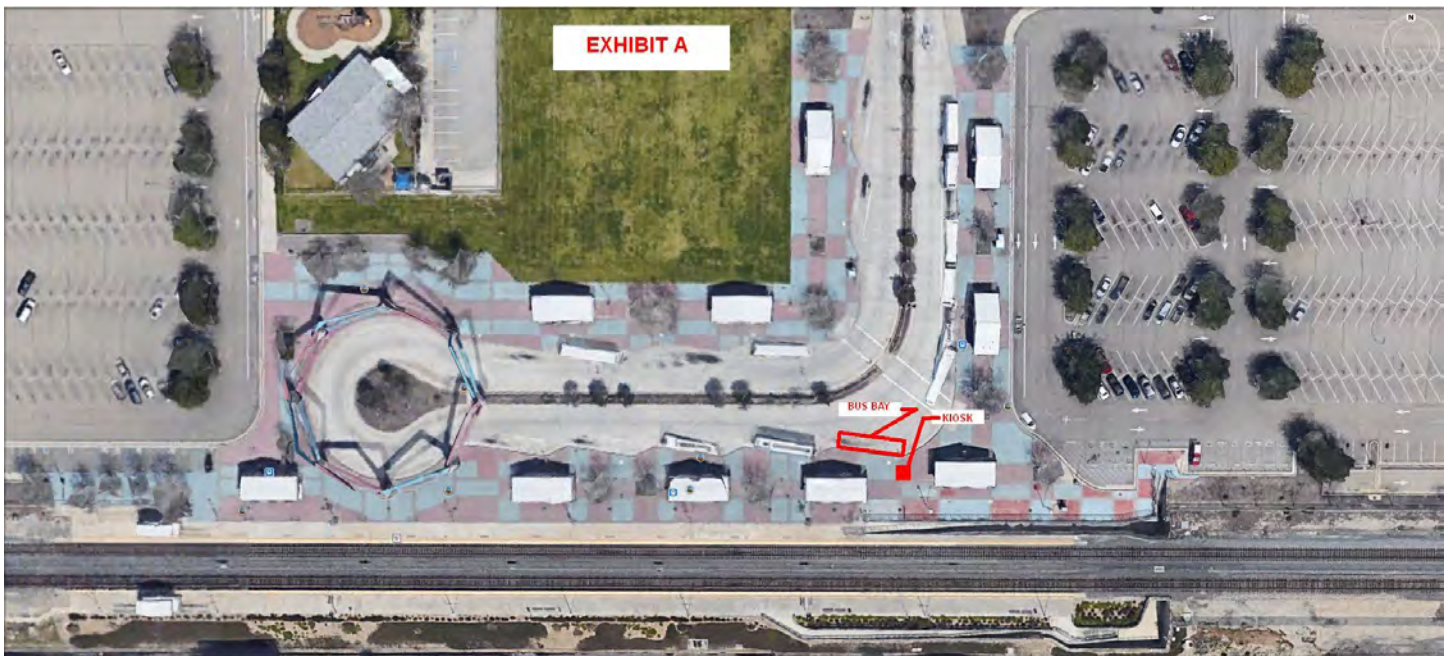
**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: Diane Robbins, City Attorney

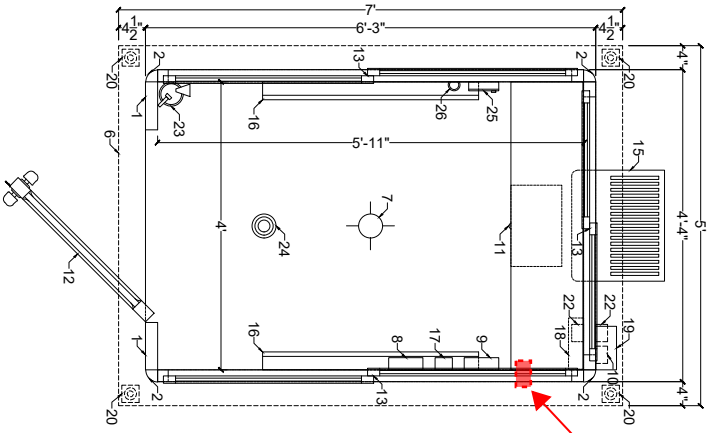
EXHIBIT "A"  
PREMISES  
SITE PLAN  
OR LEGAL DESCRIPTION

Montclair Transcenter  
5091 Richton Street, Montclair, CA 91763

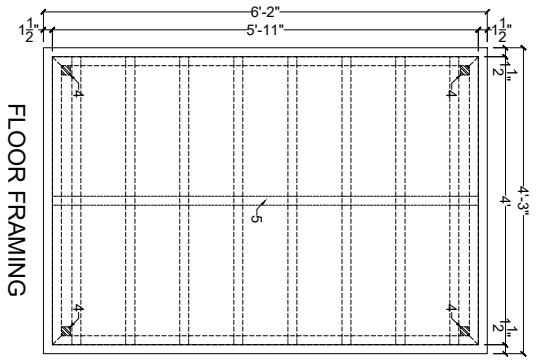
Greyhound Bus Bay Assignment (Illustrative)  
Ticket Kiosk Assignment (Illustrative)



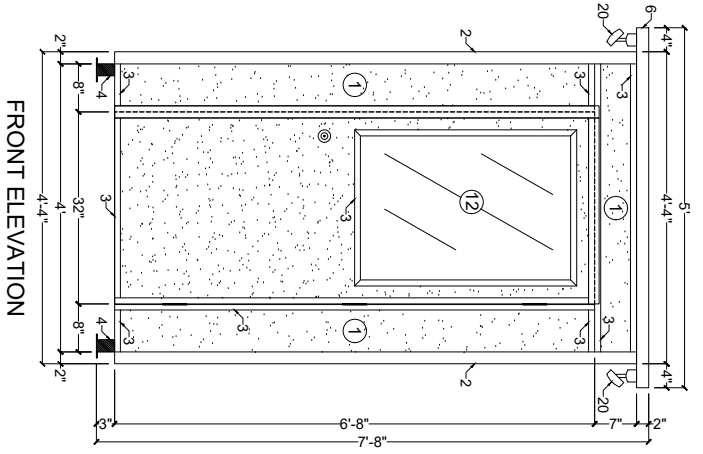
# EXHIBIT B 4' X 6' STANDARD BOOTH



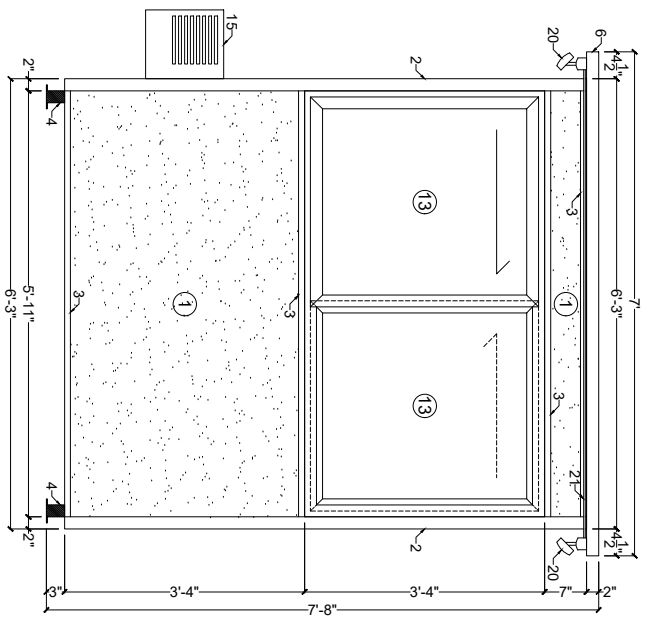
FLOOR PLAN



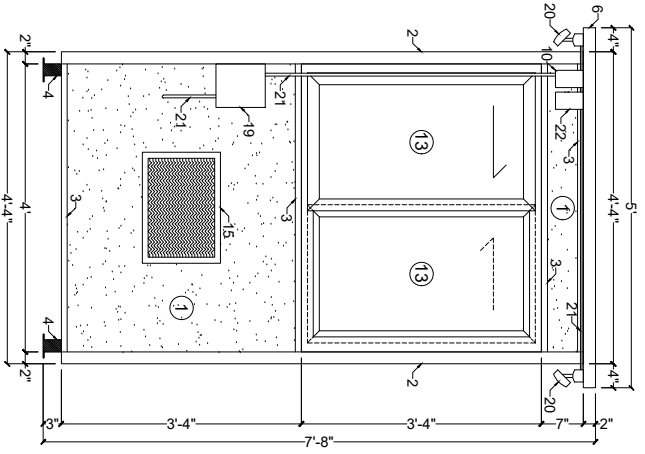
FLOOR FRAMING



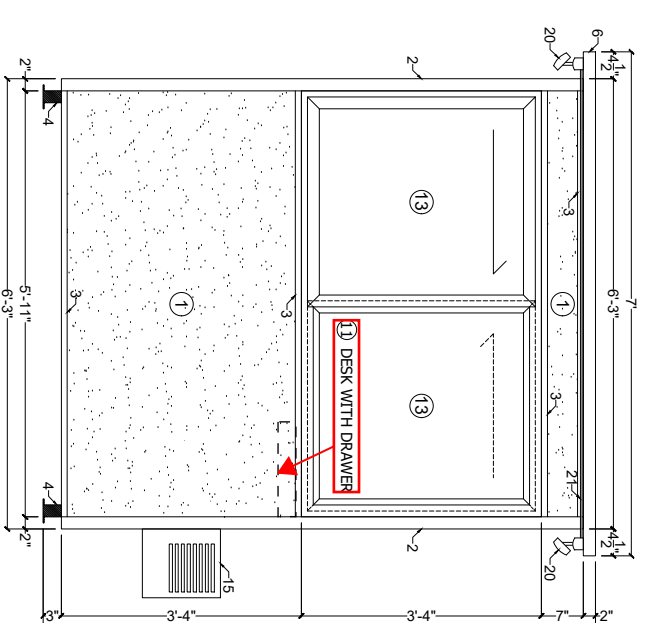
FRONT ELEVATION



LEFT ELEVATION



REAR ELEVATION



RIGHT ELEVATION

NOTES :

- ① SANDWICH PANEL: ALUMINUM FRAME WITH 2" DOUBLE LAYER PFGI PANELS AND R-10 XPS FOAM INSULATION
- ② CORNER COLUMN
- ③ C - CHANNEL
- ④ LEGS
- ⑤ BASE FRAME: WELDED 1.5" SQUARE STEEL TUBING COVERED WITH DIAMOND FLOOR PLATE
- ⑥ ROOF WITH OVERHANG (SPECIFIED ON DRAWING)
- ⑦ INTERIOR LIGHTING
- ⑧ LIGHT SWITCH
- ⑨ QUAD OUTLET
- ⑩ EXTERIOR ELECTRICAL JUNCTION BOX
- ⑪ DESK WITH DRAWER
- ⑫ 32" SWING DOOR WITH GLASS
- ⑬ SLIDING WINDOW
- ⑭ ~~FIXED WINDOW~~
- ⑮ WALL MOUNTED A/C (OPTIONAL)
- ⑯ ELECTRIC BASEBOARD HEATER (OPTIONAL)
- ⑰ THERMOSTAT
- ⑱ CIRCUIT BREAKER PANEL RATED 125 AMP (OPTIONAL)
- ⑲ EXTERIOR ELECTRICAL DISCONNECT SWITCH (OPTIONAL)
- ⑳ EXTERIOR LIGHTING (OPTIONAL)
- ㉑ CONDUIT
- ㉒ ETHERNET PORT &/OR PHONE LINE (OPTIONAL)
- ㉓ FIRE EXTINGUISHER
- ㉔ SMOKE DETECTOR
- ㉕ FIRST AID KIT
- ㉖ WALL MOUNTED FLASHLIGHT

This structure has been analyzed and determined to be able to withstand the following loads:  
 Design Wind Load: 110 mph  
 Ground Snow Load: 40 psf

The foundation and anchorage was not included in the analysis. The structure was analyzed assuming it has been properly anchored to a foundation. It is the responsibility of the customer to design the foundation and booth anchorage per their specific site and jurisdictional requirements.



THIS PRINT & DESIGN IS THE PROPERTY OF GUARDIAN BOOTH LLC. IT MUST NOT BE REPRODUCED IN ANY MANNER, AND SHALL BE USED ONLY AS A MEANS OF REFERENCE TO WORK DESIGNED AND FURNISHED BY GUARDIAN BOOTH LLC. GUARDIAN BOOTH RESERVES THE RIGHT TO MAKE CHANGES TO DESIGN FOR ENGINEERING PURPOSES, WITHOUT NOTICE.

ORIGINAL DATE:	08/01/2019	REVISION NO.:	1 - ORIGINAL
CUSTOMER NAME:	STANDARD BOOTH		
SCALE:	3/4" = 1'		
PAGE:	1 of 1		
DRAWN BY:	HEATHER WILLIAMS		

# EXHIBIT "C"



4x6 Guardian Booth on Forklift



Inside with Heating and A/C units at United Nations







# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 2021	<b>FILE I.D.:</b>	STA701/500
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	M. PARADIS
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 21-72 AMENDING AGREEMENT NO. 13-41 WITH MARIPOSA LANDSCAPES, INC. FOR LANDSCAPE MAINTENANCE SERVICES		

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**REASON FOR CONSIDERATION:** The term of Agreement No. 13-41 with Mariposa Landscapes, Inc. for landscape maintenance services, which was last amended by Agreement No. 20-55, expired on June 30, 2021.

The City Council is requested to consider approval of Agreement No. 21-72, reinstating and extending the contract with Mariposa to expire June 30, 2022. Modifications to existing agreements require City Council approval.

**BACKGROUND:** At its June 5, 2017 meeting, the City Council approved Agreement No. 17-30, amending Agreement No. 13-41 with Mariposa for landscape maintenance services. Agreement No. 17-30 is a three-year extension agreement that includes a clause allowing for a maximum three percent monetary increase commensurate with the current CPI for Fiscal Years 2018-19 and 2019-20.

For FY 2018-19, the City Council approved Agreement No. 18-30, allowing for a three percent rate increase.

For FY 2019-20, Mariposa requested a 2.7 percent increase. In addition to the 2.7 percent rate increase, the City asked to remove certain work items outlined in Agreement No. 19-38 due to the Central Avenue Median Island Rehabilitation Project.

For FY 2020-21, the City Council approved Agreement No. 20-55 with no increases. Due to the financial impact of COVID-19, from December 2020 through October 2021, Mariposa agreed to modify the existing contract and reduce the monthly expense from \$24,079.30 to \$12,500. For

FY 2021-22, Mariposa is requesting a six-and-a-half percent (6.5%) rate increase for landscape maintenance.

For FY 2022-23, the City will issue a Request for Proposals and enter into a new contract for landscape maintenance services.

**FISCAL IMPACT:** The cost to provide landscape maintenance services under Agreement No. 13-41, as further amended by Agreement No. 21-72, would be \$29,099.31 per month for the next eight months. Funds for this purpose are included in the FY 2021-22 Public Works Department budget.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 21-72 amending Agreement No. 13-41 with Mariposa Landscapes, Inc. for landscape maintenance services.

**AGREEMENT NO. 21-72**

**AMENDING AGREEMENT NO. 13-41**

**WITH**

**MARIPOSA LANDSCAPES, INC.**

**FOR**

**MEDIAN ISLAND, PARK, AND PARKWAY MAINTENANCE**

This Agreement is made effective July 1, 2021, by and between the CITY OF MONTCLAIR, a municipal corporation hereinafter designated as "City," and MARIPOSA LANDSCAPES, INC., hereinafter designated as "Contractor," and collectively designated as the "Parties."

**RECITALS**

WHEREAS, Parties have previously entered into Agreement No. 13-41 on July 1, 2013, for landscape maintenance services for a period of one year ("the Agreement"); and

WHEREAS, Parties have amended the Agreement by entering into Agreement No. 14-55 on July 1, 2014, Agreement No. 17-30 on July 1, 2017, Agreement No. 18-30 on July 1, 2018, Agreement No. 19-38 on July 1, 2019, and Agreement No. 20-55 on July 1, 2020; and

WHEREAS, the Parties desire to further amend the Agreement to extend the term of the Agreement through June 30, 2022, to provide for a 6.5% increase to Contractor effective November 1, 2021, and to update the indemnification provisions in the Agreement;

**AGREEMENT**

**NOW, THEREFORE, IT IS AGREED** by and between City and Contractor to further amend Agreement No. 13-41 as follows:

**Replace Section II with the following:**

SECTION II

The term of the Agreement is extended an additional year, and shall terminate June 30, 2022, subject to the right of either party to cancel without cause by giving a minimum of thirty (30) days' written notice to the other of such cancellation.

**Replace Section III with the following:**

SECTION III

All of the work and services to be performed pursuant to this Agreement shall be performed in a good and workmanlike manner for the total monthly sum of \$15,744 for the months of July, August, September, and October, 2021; effective November 1, 2021, and continuing until the Agreement terminates on June 30, 2022, the monthly sum paid to Contractor shall be \$29,099.31. Contractor shall pay prevailing wages in accordance with the laws of the State of California.

Payment of additional services requested, in writing, by City and not included in the scope of services set forth in the Agreement, shall be performed by the Contractor at the rate of \$40.47 per hour. This hourly rate shall include labor, equipment, overhead, and profit. Any and all work done under this Section shall be with prior written approval from the City. If prior written approval is not obtained by the City, no payment will be approved. Charges for additional services shall be invoiced on a monthly basis and shall be paid by the City within a reasonable time after said invoices are received by the City.

**Replace Section IV with the following:**

## SECTION IV

## INDEMNIFICATION

a) Defense, Indemnity and Hold Harmless. Contractor shall defend, indemnify and hold harmless the City, its present and former officers, directors, employees, agents, volunteers, mayor, staff, boards, committee 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 or other actions, omissions or conduct 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 Consultant is legally liable, including but not limited to Contractor's officers, agents, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, including all negligent acts or omissions, or intentional misconduct or other actions, omissions to act or conduct 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 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. 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. 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 for the Indemnified Parties' benefit for any and all damage, fines or penalties, or loss or theft to the property of the City arising out of or related in any way to the negligent acts or omissions, or intentional misconduct or other Contractor conduct or activities and/or conduct or activities of Contractor's officers, agents, 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.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Contractor shall not be responsible for indemnification for claims or losses caused solely by the 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.

**Modify Section XIV as follows:**

Delete existing paragraph "SS" and replace with the following:

SS. Central Avenue Landscaping (28 islands) located from Phillips Boulevard north to and including City Limit North of Richton Street.

Except as modified above, all other terms and provisions of Agreement No. 13-41, as amended by Agreement Nos. 14-55, 17-30, 18-30, 19-38, and 20-55, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth below their signatures.

CITY OF MONTCLAIR, CALIFORNIA

MARIPOSA LANDSCAPES, INC.

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

By: \_\_\_\_\_  
Terry Noriega, President

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

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

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

By: \_\_\_\_\_  
Name, Title:

Approved  
as to Form:

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

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 2021	<b>FILE I.D.:</b>	PDT175
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	M. BUTLER

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 21-73 WITH LEXIPOL, LLC FOR CONTINUED MAINTENANCE OF THE POLICE DEPARTMENT POLICY AND PROCEDURES MANUAL, LAW ENFORCEMENT DAILY TRAINING BULLETINS (DTB), AND DTB MANAGEMENT SERVICES

---

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 21-73 with Lexipol, LLC for continued maintenance of the Police Department's Policy and Procedures Manual and Law Enforcement Daily Training Bulletins (DTBs).

A copy of proposed Agreement No. 21-73 is attached for the City Council's review and consideration.

**BACKGROUND:** The Police Department has utilized Lexipol, LLC for continued maintenance of the Police Department's Policy and Procedures Manual for over 10 years and would like to renew its agreement. Lexipol provides fully developed, state-specific policies researched and written by subject-matter experts and vetted by attorneys. These policies are based on nationwide standards and best practices while also incorporating state and federal laws and regulations where appropriate. Lexipol's legal and content development teams follow a rigorous multi-step process to evaluate thousands of legislative changes annually and ensure changes are made to the Police Department's Policy and Procedures Manual commensurate with the changes. This service is utilized in the continual updating of the Department's over-750-page Policy and Procedures Manual. Command Staff monitors updates to the Manual recommended by Lexipol, analyzes the updates for applicability, customizes the updates if necessary, and issues the new updated Manual through Lexipol's Knowledge Management System (KMS)—a web-based delivery platform and mobile app. The KMS pushes updates to members of the Police Department online. Members must log in, review updates to the Manual, and electronically accept the updates by the assigned deadline.

Beginning in January 2020, Lexipol, LLC started providing an additional training program through Daily Training Bulletins (DTB). The DTB program is designed by the team of public safety lawyers and policy experts employed by Lexipol, LLC to continually monitor national and California-specific policy changes. The DTBs are utilized as a daily training exercise by employees of the Police Department to reinforce the understanding of policies and procedures, help minimize risk, and increase the effectiveness of service to the community. DTBs are designed to help personnel learn and apply policy and procedure content through two-minute online training exercises, which are scenario-based and tie Department policies to real-world applications. These training exercises can be completed via desktop or laptop computers, smartphones, tablets, or other mobile devices such as the Mobile Data Computers installed in the Police vehicles. Upon completion of the DTBs, a report shows completion by the agency member and the topic instructed. Command Staff has found DTBs to be an effective tool to assist with the proper application of policies and would like to continue this service.

Lexipol, LLC has also been providing DTB management services. This service customizes the DTB scenarios based on the changes made by Command Staff during the policy update process. This service analyzes DTB master content compared to Montclair Police Department's customized policies, adapts monthly DTB packages to fit the parameters of the Department's policy content, issues the monthly DTB training packages, and customizes the DTB completion reports as well as agency-specific year-end data analysis. Without the DTB management service, these procedures would have to be completed by a member of Command Staff, who has found this service to be a vital component of the DTB program and would like to continue the service.

**FISCAL IMPACT:** The subscription services included in Agreement No. 21-73 with Lexipol, LLC are for the 2022 calendar year and would cost \$12,859. Included in the Police Department's Fiscal Year 2021-22 Budget in Special Contract Services is \$4,700 for policy and procedural manual updates and \$8,188 for Daily Training Bulletins and management services from the SB 509 Fund (1143-4421-52450-400-00000).

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 21-73 with Lexipol, LLC for continued maintenance of the Police Department Policy and Procedures Manual, Law Enforcement Daily Training Bulletins, and DTB management services.





AGREEMENT FOR USE OF SUBSCRIPTION MATERIAL

Agency's Name: Montclair Police Department  
Agency's Address: 4870 Arrow Hwy POB 2308  
Montclair, California 91763

Attention: Chief Robert Avels

Lexipol's Address: 2611 Internet Boulevard, Suite 100  
Frisco, Texas 75034

Prepared By: Theresa Maza  
Program Start Date: January 1, 2022  
(to be completed by Lexipol upon receipt of signed Agreement)

This Subscription Agreement (the "Agreement") is entered into by and between Lexipol, LLC, a Delaware limited liability company ("Lexipol"), and the Agency identified above.

This Agreement consists of: (a) this **Cover Sheet**; (b) **Exhibit A** (Subscriptions Being Purchased and Subscription Fees); (c) **Exhibit B** (Terms and Conditions Specific to this Agreement); and (d) Lexipol's General Terms and Conditions, available at: <https://www.lexipol.com/terms-and-conditions/>.

In the event of any inconsistency or conflict between Lexipol's General Terms and Conditions and those contained in **Exhibit B**, the terms and conditions contained in **Exhibit B** shall control.

Each person signing below represents and warrants that they have full and complete authority to bind the party on whose behalf they are signing to all terms and conditions contained in this Agreement.

Montclair Police Department

Signature: \_\_\_\_\_

Print Name: Javier John Dutrey

Title: Mayor, City of Montclair

Date Signed: November 15, 2021

**Exhibit A**

**SUBSCRIPTIONS BEING PURCHASED AND SUBSCRIPTION FEES**

Agency is purchasing the following:

<b>QTY</b>	<b>DESCRIPTION</b>	<b>UNIT PRICE</b>	<b>DISC</b>	<b>DISC AMT</b>	<b>EXTENDED</b>
1	Annual Law Enforcement Policy Manual & Daily Training Bulletins (Start: 1/1/2022 End: 12/31/2022)	USD 9,959.00			USD 9,959.00
1	Annual Law Enforcement Daily Training Bulletin Management (Start: 1/1/2022 End: 12/31/2022)	USD 2,900.00			USD 2,900.00
	<b>Subscription Line Items Total</b>				<b>USD 12,859.00</b>
				<b>TOTAL:</b>	USD 12,859.00

\*Law Enforcement pricing is based on 54 Law Enforcement Sworn Officers.

\*The above subscription services, and when applicable, implementation services, shall be invoiced by Lexipol upon the execution of this Agreement.

## Exhibit B

### Terms and Conditions Specific to this Agreement

The following terms and conditions apply to all Subscription Services purchased by Agency. Capitalized terms used but not defined herein shall have the meaning set forth in Lexipol's General Terms and Conditions, available at: <https://www.lexipol.com/terms-and-conditions/>. In the event of any inconsistency or conflict between Lexipol's General Terms and Conditions and those contained herein, the Terms and Conditions contained in this Exhibit B shall control.

1. **Term**. This Agreement becomes effective and enforceable upon signature by Agency's authorized representative, with a Program Start Date as specified on the cover sheet of this Agreement. This Agreement shall remain in effect for a minimum one (1) year period commencing on the Program Start Date unless a different time period is specified on Exhibit A (the "Initial Term"); provided, however, that the Term will be automatically extended for successive one-year periods thereafter (each a "Renewal Term") unless one party provides written notice of non-renewal to the other party at least thirty (30) days prior to expiration of the Initial Term or the then-current Renewal Term, as the case may be. The Initial Term and all subsequent Renewal Terms shall collectively comprise the "Term" of this Agreement. Notwithstanding the foregoing, this Agreement remains subject to termination as provided in Lexipol's General Terms and Conditions, available at: <https://www.lexipol.com/terms-and-conditions/>.
2. **Subscription Fee/Invoicing**. Lexipol will invoice Agency for purchased Subscription Services at the commencement of the Initial Term and thirty (30) days prior to the beginning of each Renewal Term. Agency will pay the invoiced amount to Lexipol within thirty (30) days of the invoice date. All invoices will be sent to Agency at the address for Agency specified on the first page of this Agreement to which these Terms and Conditions are attached. All payments will be made to Lexipol at the address for Lexipol specified on the invoice. Lexipol reserves the right to increase pricing for each Renewal Term.
3. **Product-Specific Terms: Ownership: Right to Use**. This Section pertains to specific products and services offered by Lexipol and its affiliates. If Agency has selected a particular product or service referenced below, the applicable Section(s) and associated supplemental terms will apply. If Agency has not selected a particular product or service referenced below, the subsection referencing such product or service shall not apply.
  - 3.1 **Policy Subscriptions and Materials**. This Section applies when Agency has subscribed to or otherwise receives access to Lexipol's Policy Subscription Materials, as defined below.
    - i **Generally**. Agency acknowledges and agrees that all policy-based Subscription Services, including but not limited to all policy manuals, supplemental policy publications, daily training bulletins, and all other materials provided by Lexipol to Agency from time to time during the term of this Agreement (such materials collectively, the "Subscription Materials") are proprietary products of Lexipol, protected under U.S. copyright, trademark, patent, and other applicable law, and that Lexipol reserves all rights not expressly granted in this Agreement. Subject to the terms, conditions and limitations in this Agreement, Lexipol hereby grants Agency the right to prepare derivative works of the Subscription Materials (each, a "Derivative Work," as defined in Section 1 of the General Terms and Conditions); provided, however, that Agency acknowledges and agrees that Lexipol will be the sole owner of all right, title and interest in and to all Derivative Works, including all copyrights and other intellectual property and proprietary rights therein or pertaining thereto, and Agency hereby assigns and transfers to Lexipol all right, title and interest in and to all Derivative Works, including all copyrights and other intellectual property and proprietary rights therein or pertaining thereto. Agency will not remove any copyright notice or other proprietary notice of Lexipol appearing on Subscription Materials or Derivative Works and shall include such notices at the appropriate place on each copy thereof.
    - ii **Right to Use: Limitations on Use**. Subject to the terms, conditions, and limitations in this Agreement, Lexipol hereby grants to Agency a perpetual, personal, fully paid-up, right to use the Subscription Materials and any Derivative Works in each case, solely for the Agency's internal purposes. Agency shall not use, copy, republish, lend, distribute, post on servers, transmit, redistribute, or display, in whole or in part, by any means or medium, whether electronic or mechanical, or by any information storage and retrieval system, any Subscription Materials or any Derivative Work other than as expressly authorized by the immediately preceding sentence. Without limiting the generality of the foregoing, Agency will not import, upload, or otherwise make available any Subscription Materials or any Derivative Work into or onto any third party, document, knowledge, or other content management system or service without Lexipol's prior written consent. The foregoing does not prohibit Agency from providing Subscription Materials or Derivative Works pursuant to an order from a court or other

## Exhibit B

governmental agency or other legal process, Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request, nor does it prohibit Agency from displaying the adopted/approved final policy document on a publicly accessible website for official agency purposes, so long as Agency includes the appropriate copyright and other proprietary notices on such final policy document as required by Section 3.1(i) above.

iii **Policy Adoption.** Agency hereby acknowledges and agrees that all policies and Daily Training Bulletins (DTBs) included in the Subscription Materials provided by Lexipol have been individually reviewed, customized, and adopted by Agency for use by Agency in accordance with this Agreement. Agency further acknowledges and agrees that neither Lexipol nor any of its agents, employees, or representatives shall be considered “policy makers” in any legal or other sense, and that the chief executive of Agency will, for all purposes, be considered the “policy maker” with regard to each and every such policy and DTB.

**3.2 Learning Management System.** This Section applies when Agency subscribes to Lexipol’s Learning Management System (“LMS”). The LMS is a proprietary product of Lexipol, protected under U.S. copyright, trademark, patent, and other applicable law. Lexipol and its licensors retain all rights, title, and interest in and to the LMS (including, without limitation, all intellectual property rights), including all copies, modifications, extensions, and Derivative Works thereof. Agency’s right to use the LMS is limited to the rights expressly granted in this Agreement. All rights not expressly granted to Agency are reserved and retained by Lexipol and its licensors. As between Agency and Lexipol, (a) all Agency Data, defined as data owned by Agency prior to the Program Start Date of this Agreement or data not otherwise subject to the definition of “Derivative Work” in Lexipol’s General Terms and Conditions, is Agency’s property, and (b) Agency retains all rights, title, and interest in and to Agency Data, including all copies, modifications, extensions, and derivative works thereof. Lexipol retains no right or interest in any Agency Data and shall return or destroy Agency Data following termination of this Agreement. Agency’s purchase of LMS Subscription Services is also subject to the LMS Master Service Agreement located at: <https://www.lexipol.com/lms-master-service-agreement>.

**3.3 Grant Services.** This Section applies when Agency subscribes to Lexipol’s Grant Writing, Consulting, and/or GrantFinder services, offered by Praetorian Digital. If Agency selects Grant Writing services, Agency takes full responsibility for submitting information reasonably required by Praetorian Digital in a timely manner. All Agency materials must be received 5 days prior to the grant application close date, and Agency is responsible for all submissions of final grant applications by grant deadlines. Failure to submit requested materials to write grant applications on time will result in rollover of project services and fees to next grant application cycle. Requests for cancellation of Grant Writing services will result in a 50% fee of the total value of the service. Invoices for Grant Writing services will be sent as soon as work begins for the applicable target grant. Complete payment must be received no later than thirty (30) days after receipt of invoice. In the event Agency has not made timely payment on an invoice, Lexipol/Praetorian Digital reserves the right to suspend all Grant services until payment is received in full and may terminate Agency’s access to GrantFinder, if applicable. Invoices over thirty (30) days past due shall be charged a twenty-five dollar (\$25) late fee. Agency’s purchase of the Grant services is also subject to the GrantFinder Master Subscription Agreement located at <http://www.lexipol.com/GTGF-Master-ServiceAgreement>.

**3.4 Cordico Wellness Applications.** This Section applies when Agency subscribes to Lexipol’s Wellness Applications, offered by Cordico®, including but not limited to CordicoShield, CordicoFire, and all other Cordico products and services (collectively, the “Wellness Services”). The Wellness Services are proprietary products of Lexipol, protected under U.S. copyright, trademark, patent, and other applicable law. Lexipol and its licensors retain all rights, title, and interest in and to the Wellness Services (including, without limitation, all intellectual property rights), including all copies, updates, modifications, and versions thereof. Agency’s right to access and use the Wellness Services is limited to the rights expressly granted in this Agreement. All rights not expressly granted to Agency are reserved and retained by Lexipol and its licensors. As between Agency and Lexipol, (a) all Agency Data collected through the Wellness Services remains Agency’s property, and (b) Agency retains all rights, title, and interest in and to Agency Data, including all copies, modifications, extensions, and derivative works thereof. Lexipol retains no right or interest in any Agency Data and shall return or destroy Agency Data following termination of this Agreement. In addition, upon termination of this Agreement for any reason, Agency shall lose access to all Wellness Services. Agency’s purchase of Wellness Services is also subject to Cordico’s Terms and Conditions located at <https://www.cordico.com/terms-and-conditions/> and the Terms and Conditions set forth within each Wellness Application.

## Exhibit B

**3.5 Generally: Injunctive Relief.** Except as expressly provided herein, nothing in this Agreement shall be construed as conferring any rights or license to Lexipol's trade secrets, intellectual property, Confidential Information, Subscription Materials, Wellness Services, or the software underlying such products and services, whether by estoppel, implication or otherwise. Agency may not decompile, disassemble, reverse engineer or otherwise attempt to discover any source code contained in any software-based Subscription Services. Notwithstanding any other term or condition herein, Agency grants all rights and permissions in or relating to Agency Data as are necessary or useful to Lexipol to enforce this Agreement, exercise Lexipol's rights, and perform Lexipol's obligations hereunder. Agency acknowledges that a breach or threatened breach of any portion of this Section 3 may cause irreparable harm and shall entitle Lexipol to injunctive relief in addition to any other available remedy.

- 4. Warranty Disclaimer.** ALL SUBSCRIPTION SERVICES AND SUBSCRIPTION MATERIALS ARE PROVIDED "AS IS" AND LEXIPOL HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. LEXIPOL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.
- 5. Disclaimer of Liability.** Agency acknowledges and agrees that Lexipol, its officers, agents, managers, and employees will have no liability to Agency or any other person or entity arising from or related to the Subscription Services or the Subscription Materials, or any act or omission by Agency or its personnel pursuant to, or in reliance on, any of the Subscription Materials.
- 6. Limitation of Liability.** Lexipol's cumulative liability to Agency and any other person or entity for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement, the Subscription Services, or the use of any Subscription Materials shall not exceed the subscription fees actually paid to Lexipol by Agency for the Purchased Subscription Services under this Agreement during the twelve-month period immediately prior to the assertion of such claim, demand, or action. In no event shall Lexipol be liable for any indirect, incidental, consequential, special, or exemplary damages or lost profits, even if Lexipol has been advised of the possibility of such damages. The limitations set forth in this Section shall apply whether Agency's claim is based on breach of contract, tort, strict liability, product liability or any other theory or cause of action.
- 7. Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Texas, without giving effect to any choice of law doctrine that would cause the law of any other jurisdiction to apply.
- 8. Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties hereto and hereby expressly supersedes all prior written and oral agreements and understandings with respect to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by any party hereto that is not embodied in this Agreement. Terms and conditions set forth in any purchase order, or any other form or document of Agency, which are inconsistent with, or in addition to, the terms and conditions set forth in this Agreement, are hereby objected to and rejected in their entirety, regardless of when received, without further action or notification by Lexipol, and shall not be considered binding on Lexipol unless specifically agreed to in writing by it.
- 9. Additional Terms and Conditions.** Except as set forth above, this Agreement remains subject to Lexipol's General Terms and Conditions, available at: <https://www.lexipol.com/terms-and-conditions/>.



# SOLUTIONS PROPOSAL



**PREPARED FOR:**

Montclair Police Department  
Chief Robert Avels  
ravels@cityofmontclair.org  
(909) 448-3602

**PREPARED BY:**

Theresa Maza  
tmaza@lexipol.com  
949-313-6583

2611 Internet Blvd, Ste 100  
Frisco, Texas 75034  
(844) 312-9500  
www.lexipol.com

## Executive Summary

Public safety agencies and local government organizations today face challenges of keeping personnel safe and healthy, reducing risk and maintaining a positive reputation. Add to that the dynamically changing legislative landscape and evolving best practices, and even the most progressive, forward-thinking departments can struggle to keep up.

Lexipol's solutions are designed to save you time and money while protecting your personnel and your community. Our team consists of professionals with expertise in public safety law, policy, training, mental health and grants. We continually monitor changes and trends in legislation, case law and best practices and use this knowledge to create policies, training, wellness resources and funding services that minimize risk and help you effectively serve your community.

### **THE LEXIPOL ADVANTAGE**

Lexipol was founded by public safety experts who saw a need for a better, safer way to run a public safety agency. Since the company launch in 2003, Lexipol has grown to form an entire risk management solution for public safety and local government. Today, we serve more than 8,100 agencies and municipalities and 2 million public safety and government professionals with a range of informational and technological solutions to meet the challenges facing these dynamic industries. In addition to providing policy management, online training, wellness resources, and grant assistance, we provide 24/7 industry news and analysis through the digital communities Police1, FireRescue1, Corrections1, EMS1 and Gov1.

Our customers choose Lexipol to make an investment in the safety and security of their personnel, their agencies and their communities. We help agencies address issues that create substantial risk, including:

- Inconsistent and outdated policies
- Lack of technology to easily update and issue policies and training electronically
- Unchecked mental health needs of staff
- Difficulty keeping up with new and changing legislation and practices
- Inability to produce policy acknowledgment and training documentation
- Unfamiliarity of city legal resources with the intricacies of public safety law
- The need to secure grant funding for critical equipment, infrastructure and personnel

Lexipol is backed by the expertise of 320 employees with more than 2,075 years of combined experience in constitutional law, civil rights, ADA and discrimination, mental health, psychology, labor negotiations, Internal Affairs, use of force, hazmat, instructional design, federal and state grants and a whole lot more. That means no more trying to figure out policy, develop training or wellness content or secure funding on your own. You can draw on the experience of our dedicated team members who have researched, taught and lived these issues.

We look forward to working with Montclair Police Department to address your unique challenges.

## Scope of Services

### Policy Manual

Constitutionally sound, up-to-date policies are the foundation for consistent, safe public safety operations and are key to reducing risk and enhancing personnel and community safety. Lexipol's comprehensive policy manual covers all aspects of your agency's operations.

- More than 155 policies researched and written by public safety attorneys and subject matter experts
- Policies based on State and federal laws and regulations as well as nationwide best practices
- Content customized to reflect your agency's terminology and structure

### Daily Training Bulletins (DTBs)

Even the best policy manual lacks effectiveness if it's not backed by training. Lexipol's Daily Training Bulletins are designed to help your personnel learn and apply your agency's policy content through 2-minute training exercises.

- Scenario-based training ties policy to real-world applications
- Understanding and retention of policy content is improved via a singular focus on one distinct aspect of the policy
- Each Daily Training Bulletin concludes with a question that confirms the user understood the training objective
- Daily Training Bulletins can be completed via computers or from smartphones, tablets or other mobile devices
- Reports show completion of Daily Training Bulletins by agency member and topic

### Policy Updates

Lexipol's legal and content development teams continuously review state and federal laws and regulations, court decisions and evolving best practices. When needed, we create new and updated policies and provide them to your agency, making it simple and efficient to keep your policy content up to date.

- Updates delivered to you through Lexipol's web-based content delivery platform
- Changes presented in side-by-side comparison against existing policy so you can easily identify modifications/improvements
- Your agency can accept, reject or customize each update

### Web-Based Delivery Platform and Mobile App (Knowledge Management System)

Lexipol's online content delivery platform, called KMS, provides secure storage and easy access to all your policy and training content, and our KMS mobile app facilitates staff use of policies and training completion.

- Ability to edit and customize content to reflect your agency's mission and philosophy
- Efficient distribution of policies, updates and training to staff
- Archival and easy retrieval of all versions of your agency's policy manual
- Mobile app provides in-the-field access to policy and training materials

### Reports

Lexipol's Knowledge Management System provides intuitive reporting capabilities and easy-to-read reports that enhance command staff meetings and strategic planning.

- Track and report when your personnel have acknowledged policies and policy updates
- Produce reports showing completion of Daily Training Bulletins
- Sort reports by agency member, topic and other subgroups (e.g., shift, assignment)
- Reduce the time your supervisors spend verifying policy acknowledgement and training completion

### Daily Training Bulletin Management

For public safety agencies, training is an essential component to limit liability and enhance personnel safety. But customizing and issuing training bulletins can take away from other operational demands. Lexipol's Daily Training Bulletin Management Service does it for you, helping you maximize the value and applicability of the Daily Training Bulletins for your agency and deliver timely training.

- Analysis of how Daily Training Bulletin master content compares to agency-modified policies
- Adaptation of monthly Daily Training Bulletin packages to fit the parameters of your agency's policy content
- Monthly issuance of Daily Training Bulletin packages
- Customized Daily Training Bulletin completion reports, as well as agency-specific year-end data analysis



# Proposal

Prepared By: Theresa Maza  
 Phone: 949-313-6583  
 Email: tmaza@lexipol.com

Quote #: Q-17373  
 Date: 10/21/2021  
 Valid Through: 1/31/2022

## Overview

Lexipol empowers first responders and public servants to best meet the needs of their residents safely and responsibly. We are the experts in policy, training and wellness support, committed to improving the quality of life for all community members. Our solutions include state-specific policies, online learning, behavioral health resources, funding assistance, and industry news and information offered through the websites Police1, FireRescue1, EMS1 and Corrections1. Lexipol serves more than 2 million public safety and government professionals in over 8,000 agencies and municipalities. The services proposed below are designed to meet your agency's specific goals and needs.

QTY	DESCRIPTION	UNIT PRICE	DISC	DISC AMT	EXTENDED
1	Annual Law Enforcement Policy Manual & Daily Training Bulletins (Start: 1/1/2022 End: 12/31/2022)	USD 9,959.00			USD 9,959.00
1	Annual Law Enforcement Daily Training Bulletin Management (Start: 1/1/2022 End: 12/31/2022)	USD 2,900.00		USD 0.00	USD 2,900.00
	<b>Subscription Line Items Total</b>				<b>USD 12,859.00</b>
					<b>USD 12,859.00</b>
				<b>Discount:</b>	
				<b>TOTAL:</b>	USD 12,859.00

\*Law Enforcement Policy pricing is based on 54 Law Enforcement Sworn Officers.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 2021	<b>FILE I.D.:</b>	PDT175
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	FIRE
<b>ITEM NO.:</b>	5	<b>PREPARER:</b>	M. BUTLER
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 21-74 WITH LEXIPOL, LLC FOR IMPLEMENTATION AND MANAGEMENT OF THE FIRE DEPARTMENT POLICY AND PROCEDURES MANUAL AND FIRE SERVICE DAILY TRAINING BULLETINS		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 21-74 with Lexipol, LLC for implementation and management of the Fire Department Policy and Procedures Manual and fire service Daily Training Bulletins (DTB).

A copy of proposed Agreement No. 21-74 is attached for the City Council's review and consideration.

**BACKGROUND:** Lexipol was founded in 2003 by public safety experts to provide public safety agencies with policy management, online training, wellness resources, and grant assistance aimed at keeping personnel safe and healthy and reducing risk. Since then, Lexipol has grown to serve more than 8,100 agencies and municipalities and 2 million public safety and governmental professionals.

Fire personnel periodically update the Fire Department's current Policy and Procedures Manual, but the Department does not have an effective delivery platform to ensure that updates are viewed and accepted by Fire personnel. The Police Department has utilized Lexipol, LLC for continued management of the Police Department's Policy and Procedures Manual for over 10 years. Now, Fire Department staff would like to use Lexipol, LLC to implement and manage a Policy and Procedures Manual for the Fire Department.

Lexipol would provide fully developed, constitutionally sound, state-specific fire service policies researched and written by subject-matter experts and public safety attorneys. These policies would be based on the latest standards and nationwide best practices while also incorporating state and federal laws and regulations where appropriate. These policies would be updated by Lexipol's legal and content development teams that continuously review state and federal laws and regulations, court decisions, and evolving best practices. Lexipol would also provide fire procedures based on national best practices augmenting safe, effective, and consistent emergency responses and operations, including tactical and administrative procedures. Fire Department staff would monitor updates to the Policy and Procedures Manual recommended by Lexipol, analyze the updates for applicability, customize the updates if necessary, and issue the new updated Manual through Lexipol's Knowledge Management System (KMS)—a web-based delivery platform and mobile app. The KMS would provide secure storage, easy access to all policies, and push updates to members of the Fire Department online, in which members would log in, review updates to the Policy Manual, and electronically accept the updates by the assigned deadline.

Staff is also requesting that Lexipol, LLC provide a training program through Daily Training Bulletins (DTB). The DTB program would be designed by a team of public safety attorneys and policy experts employed by Lexipol, LLC to continually monitor national and California-specific policy changes. DTBs would be used as a daily training exercise by employees of the Fire Department to reinforce their understanding of policies and procedures, help minimize risk, and increase the effectiveness of service to the community. DTBs help personnel learn and apply policy and procedure content through two-minute online training exercises, which are scenario-based and tie Department policy to real-world applications. The training exercises can be completed via desktop or laptop computers or from smartphones, tablets, or other mobile devices such as the Mobile Data Computers installed in the Fire vehicles. Online training would make it easy to track and report training hours, keep personnel up-to-date on new laws and best practices, enhance safety, and assist with applying proper policy. Upon completing the training bulletins, a report would show completion by the agency member and the topic instructed.

Lexipol would also provide a supplemental publication service, which electronically links Department-specific procedural or supplemental content to the Policy and Procedures Manual. This feature would give Fire Department staff the ability to access standard operating procedures, guidelines, training guides, or secondary policy manuals all in one place on Lexipol's online content delivery platform, KMS.

**FISCAL IMPACT:** The subscription services included in Agreement No. 21-74 with Lexipol, LLC are for the 2022 calendar year and would cost \$7,481.70. This price includes a \$1,320.30 discount because the City already has an annual subscription account with Lexipol for the Police Department. Funds for these services were not previously budgeted for the Fire Department; therefore, if authorized by the City Council, staff recommends increasing the Special Contract Services Account No. 1143-4531-52450-400-0000 by \$7,482.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 21-74 with Lexipol, LLC for implementation and management of the Fire Department's Policy and Procedures Manual and fire service Daily Training Bulletins.



AGREEMENT FOR USE OF SUBSCRIPTION MATERIAL

Agency's Name: Montclair Fire Department  
Agency's Address: 8901 Monte Vista Ave POB 2308  
Montclair, California 91763

Attention: Chief Robert Avels

Lexipol's Address: 2611 Internet Boulevard, Suite 100  
Frisco, Texas 75034

Prepared By: Jeffrey Hopper

Program Start Date: \_\_\_\_\_  
(to be completed by Lexipol upon receipt of signed Agreement)

This Subscription Agreement (the "Agreement") is entered into by and between Lexipol, LLC, a Delaware limited liability company ("**Lexipol**"), and the Agency identified above.

This Agreement consists of: (a) this **Cover Sheet**; (b) **Exhibit A** (Subscriptions Being Purchased and Subscription Fees); (c) **Exhibit B** (Terms and Conditions Specific to this Agreement); and (d) Lexipol's General Terms and Conditions, available at: <https://www.lexipol.com/terms-and-conditions/>.

In the event of any inconsistency or conflict between Lexipol's General Terms and Conditions and those contained in **Exhibit B**, the terms and conditions contained in **Exhibit B** shall control.

Each person signing below represents and warrants that they have full and complete authority to bind the party on whose behalf they are signing to all terms and conditions contained in this Agreement.

Montclair Fire Department

Signature: \_\_\_\_\_

Print Name: Javier John Dutrey

Title: Mayor, City of Montclair

Date Signed: November 15, 2021

**Exhibit A**

**SUBSCRIPTIONS BEING PURCHASED AND SUBSCRIPTION FEES**

**Agency is purchasing the following:**

<b>QTY</b>	<b>DESCRIPTION</b>	<b>UNIT PRICE</b>	<b>DISC</b>	<b>DISC AMT</b>	<b>EXTENDED</b>
1	Annual Fire Policy Manual & Daily Training Bulletins w/Supplemental Publication Service w/Fire Operations Procedures (1/1/2022-12/31/2022)	USD 8,802.00	15%	USD 1,320.30	USD 7,481.70
	<b>Subscription Line Items Total</b>			<b>USD 1,320.30</b>	<b>USD 7,481.70</b>
				<b>USD 1,320.30</b>	<b>USD 7,481.70</b>
				<b>Discount:</b>	USD 1,320.30
				<b>TOTAL:</b>	USD 7,481.70

\*Fire pricing is based on 21 Fire Authorized Staff.

\*The above subscription services, and when applicable, implementation services, shall be invoiced by Lexipol upon the execution of this Agreement.

**Discount Notes**

15% Annual Subscription Discount - PD is a Subscriber

## Exhibit B

### Terms and Conditions Specific to this Agreement

The following terms and conditions apply to all Subscription Services purchased by Agency. Capitalized terms used but not defined herein shall have the meaning set forth in Lexipol's General Terms and Conditions, available at: <https://www.lexipol.com/terms-and-conditions/>. In the event of any inconsistency or conflict between Lexipol's General Terms and Conditions and those contained herein, the Terms and Conditions contained in this Exhibit B shall control.

1. **Term**. This Agreement becomes effective and enforceable upon signature by Agency's authorized representative, with a Program Start Date as specified on the cover sheet of this Agreement. This Agreement shall remain in effect for a minimum one (1) year period commencing on the Program Start Date unless a different time period is specified on Exhibit A (the "Initial Term"); provided, however, that the Term will be automatically extended for successive one-year periods thereafter (each a "Renewal Term") unless one party provides written notice of non-renewal to the other party at least thirty (30) days prior to expiration of the Initial Term or the then-current Renewal Term, as the case may be. The Initial Term and all subsequent Renewal Terms shall collectively comprise the "Term" of this Agreement. Notwithstanding the foregoing, this Agreement remains subject to termination as provided in Lexipol's General Terms and Conditions, available at: <https://www.lexipol.com/terms-and-conditions/>.
2. **Subscription Fee/Invoicing**. Lexipol will invoice Agency for purchased Subscription Services at the commencement of the Initial Term and thirty (30) days prior to the beginning of each Renewal Term. Agency will pay the invoiced amount to Lexipol within thirty (30) days of the invoice date. All invoices will be sent to Agency at the address for Agency specified on the first page of this Agreement to which these Terms and Conditions are attached. All payments will be made to Lexipol at the address for Lexipol specified on the invoice. Lexipol reserves the right to increase pricing for each Renewal Term.
3. **Product-Specific Terms; Ownership; Right to Use**. This Section pertains to specific products and services offered by Lexipol and its affiliates. If Agency has selected a particular product or service referenced below, the applicable Section(s) and associated supplemental terms will apply. If Agency has not selected a particular product or service referenced below, the subsection referencing such product or service shall not apply.
  - 3.1 **Policy Subscriptions and Materials**. This Section applies when Agency has subscribed to or otherwise receives access to Lexipol's Policy Subscription Materials, as defined below.
    - i **Generally**. Agency acknowledges and agrees that all policy-based Subscription Services, including but not limited to all policy manuals, supplemental policy publications, daily training bulletins, and all other materials provided by Lexipol to Agency from time to time during the term of this Agreement (such materials collectively, the "Subscription Materials") are proprietary products of Lexipol, protected under U.S. copyright, trademark, patent, and other applicable law, and that Lexipol reserves all rights not expressly granted in this Agreement. Subject to the terms, conditions and limitations in this Agreement, Lexipol hereby grants Agency the right to prepare derivative works of the Subscription Materials (each, a "Derivative Work," as defined in Section 1 of the General Terms and Conditions); provided, however, that Agency acknowledges and agrees that Lexipol will be the sole owner of all right, title and interest in and to all Derivative Works, including all copyrights and other intellectual property and proprietary rights therein or pertaining thereto, and Agency hereby assigns and transfers to Lexipol all right, title and interest in and to all Derivative Works, including all copyrights and other intellectual property and proprietary rights therein or pertaining thereto. Agency will not remove any copyright notice or other proprietary notice of Lexipol appearing on Subscription Materials or Derivative Works and shall include such notices at the appropriate place on each copy thereof.
    - ii **Right to Use; Limitations on Use**. Subject to the terms, conditions, and limitations in this Agreement, Lexipol hereby grants to Agency a perpetual, personal, fully paid-up, right to use the Subscription Materials and any Derivative Works in each case, solely for the Agency's internal purposes. Agency shall not use, copy, republish, lend, distribute, post on servers, transmit, redistribute, or display, in whole or in part, by any means or medium, whether electronic or mechanical, or by any information storage and retrieval system, any Subscription Materials or any Derivative Work other than as expressly authorized by the immediately preceding sentence. Without limiting the generality of the foregoing, Agency will not import, upload, or otherwise make available any Subscription Materials or any Derivative Work into or onto any third party, document, knowledge, or other content management system or service without Lexipol's prior written consent. The foregoing does not prohibit Agency from providing Subscription Materials or Derivative Works pursuant to an order from a court or other

## Exhibit B

governmental agency or other legal process, Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request, nor does it prohibit Agency from displaying the adopted/approved final policy document on a publicly accessible website for official agency purposes, so long as Agency includes the appropriate copyright and other proprietary notices on such final policy document as required by Section 3.1(i) above.

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**3.2 Learning Management System.** This Section applies when Agency subscribes to Lexipol’s Learning Management System (“LMS”). The LMS is a proprietary product of Lexipol, protected under U.S. copyright, trademark, patent, and other applicable law. Lexipol and its licensors retain all rights, title, and interest in and to the LMS (including, without limitation, all intellectual property rights), including all copies, modifications, extensions, and Derivative Works thereof. Agency’s right to use the LMS is limited to the rights expressly granted in this Agreement. All rights not expressly granted to Agency are reserved and retained by Lexipol and its licensors. As between Agency and Lexipol, (a) all Agency Data, defined as data owned by Agency prior to the Program Start Date of this Agreement or data not otherwise subject to the definition of “Derivative Work” in Lexipol’s General Terms and Conditions, is Agency’s property, and (b) Agency retains all rights, title, and interest in and to Agency Data, including all copies, modifications, extensions, and derivative works thereof. Lexipol retains no right or interest in any Agency Data and shall return or destroy Agency Data following termination of this Agreement. Agency’s purchase of LMS Subscription Services is also subject to the LMS Master Service Agreement located at: <https://www.lexipol.com/lms-master-service-agreement>.

**3.3 Grant Services.** This Section applies when Agency subscribes to Lexipol’s Grant Writing, Consulting, and/or GrantFinder services, offered by Praetorian Digital. If Agency selects Grant Writing services, Agency takes full responsibility for submitting information reasonably required by Praetorian Digital in a timely manner. All Agency materials must be received 5 days prior to the grant application close date, and Agency is responsible for all submissions of final grant applications by grant deadlines. Failure to submit requested materials to write grant applications on time will result in rollover of project services and fees to next grant application cycle. Requests for cancellation of Grant Writing services will result in a 50% fee of the total value of the service. Invoices for Grant Writing services will be sent as soon as work begins for the applicable target grant. Complete payment must be received no later than thirty (30) days after receipt of invoice. In the event Agency has not made timely payment on an invoice, Lexipol/Praetorian Digital reserves the right to suspend all Grant services until payment is received in full and may terminate Agency’s access to GrantFinder, if applicable. Invoices over thirty (30) days past due shall be charged a twenty-five dollar (\$25) late fee. Agency’s purchase of the Grant services is also subject to the GrantFinder Master Subscription Agreement located at <http://www.lexipol.com/GTGF-Master-ServiceAgreement>.

**3.4 Cordico Wellness Applications.** This Section applies when Agency subscribes to Lexipol’s Wellness Applications, offered by Cordico®, including but not limited to CordicoShield, CordicoFire, and all other Cordico products and services (collectively, the “Wellness Services”). The Wellness Services are proprietary products of Lexipol, protected under U.S. copyright, trademark, patent, and other applicable law. Lexipol and its licensors retain all rights, title, and interest in and to the Wellness Services (including, without limitation, all intellectual property rights), including all copies, updates, modifications, and versions thereof. Agency’s right to access and use the Wellness Services is limited to the rights expressly granted in this Agreement. All rights not expressly granted to Agency are reserved and retained by Lexipol and its licensors. As between Agency and Lexipol, (a) all Agency Data collected through the Wellness Services remains Agency’s property, and (b) Agency retains all rights, title, and interest in and to Agency Data, including all copies, modifications, extensions, and derivative works thereof. Lexipol retains no right or interest in any Agency Data and shall return or destroy Agency Data following termination of this Agreement. In addition, upon termination of this Agreement for any reason, Agency shall lose access to all Wellness Services. Agency’s purchase of Wellness Services is also subject to Cordico’s Terms and Conditions located at <https://www.cordico.com/terms-and-conditions/> and the Terms and Conditions set forth within each Wellness Application.

## Exhibit B

**3.5 Generally; Injunctive Relief.** Except as expressly provided herein, nothing in this Agreement shall be construed as conferring any rights or license to Lexipol's trade secrets, intellectual property, Confidential Information, Subscription Materials, Wellness Services, or the software underlying such products and services, whether by estoppel, implication or otherwise. Agency may not decompile, disassemble, reverse engineer or otherwise attempt to discover any source code contained in any software-based Subscription Services. Notwithstanding any other term or condition herein, Agency grants all rights and permissions in or relating to Agency Data as are necessary or useful to Lexipol to enforce this Agreement, exercise Lexipol's rights, and perform Lexipol's obligations hereunder. Agency acknowledges that a breach or threatened breach of any portion of this Section 3 may cause irreparable harm and shall entitle Lexipol to injunctive relief in addition to any other available remedy.

4. **Warranty Disclaimer.** ALL SUBSCRIPTION SERVICES AND SUBSCRIPTION MATERIALS ARE PROVIDED "AS IS" AND LEXIPOL HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. LEXIPOL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.
5. **Disclaimer of Liability.** Agency acknowledges and agrees that Lexipol, its officers, agents, managers, and employees will have no liability to Agency or any other person or entity arising from or related to the Subscription Services or the Subscription Materials, or any act or omission by Agency or its personnel pursuant to, or in reliance on, any of the Subscription Materials.
6. **Limitation of Liability.** Lexipol's cumulative liability to Agency and any other person or entity for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement, the Subscription Services, or the use of any Subscription Materials shall not exceed the subscription fees actually paid to Lexipol by Agency for the Purchased Subscription Services under this Agreement during the twelve-month period immediately prior to the assertion of such claim, demand, or action. In no event shall Lexipol be liable for any indirect, incidental, consequential, special, or exemplary damages or lost profits, even if Lexipol has been advised of the possibility of such damages. The limitations set forth in this Section shall apply whether Agency's claim is based on breach of contract, tort, strict liability, product liability or any other theory or cause of action.
7. **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Texas, without giving effect to any choice of law doctrine that would cause the law of any other jurisdiction to apply.
8. **Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties hereto and hereby expressly supersedes all prior written and oral agreements and understandings with respect to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by any party hereto that is not embodied in this Agreement. Terms and conditions set forth in any purchase order, or any other form or document of Agency, which are inconsistent with, or in addition to, the terms and conditions set forth in this Agreement, are hereby objected to and rejected in their entirety, regardless of when received, without further action or notification by Lexipol, and shall not be considered binding on Lexipol unless specifically agreed to in writing by it.
9. **Additional Terms and Conditions.** Except as set forth above, this Agreement remains subject to Lexipol's General Terms and Conditions, available at: <https://www.lexipol.com/terms-and-conditions/>.





# SOLUTIONS PROPOSAL



**PREPARED FOR:**

Montclair Fire Department  
Chief Robert Avels  
ravels@cityofmontclair.org  
(909) 447-3540

**PREPARED BY:**

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## Executive Summary

Public safety agencies and local government organizations today face challenges of keeping personnel safe and healthy, reducing risk and maintaining a positive reputation. Add to that the dynamically changing legislative landscape and evolving best practices, and even the most progressive, forward-thinking departments can struggle to keep up.

Lexipol's solutions are designed to save you time and money while protecting your personnel and your community. Our team consists of professionals with expertise in public safety law, policy, training, mental health and grants. We continually monitor changes and trends in legislation, case law and best practices and use this knowledge to create policies, training, wellness resources and funding services that minimize risk and help you effectively serve your community.

### **THE LEXIPOL ADVANTAGE**

Lexipol was founded by public safety experts who saw a need for a better, safer way to run a public safety agency. Since the company launch in 2003, Lexipol has grown to form an entire risk management solution for public safety and local government. Today, we serve more than 8,100 agencies and municipalities and 2 million public safety and government professionals with a range of informational and technological solutions to meet the challenges facing these dynamic industries. In addition to providing policy management, online training, wellness resources, and grant assistance, we provide 24/7 industry news and analysis through the digital communities Police1, FireRescue1, Corrections1, EMS1 and Gov1.

Our customers choose Lexipol to make an investment in the safety and security of their personnel, their agencies and their communities. We help agencies address issues that create substantial risk, including:

- Inconsistent and outdated policies
- Lack of technology to easily update and issue policies and training electronically
- Unchecked mental health needs of staff
- Difficulty keeping up with new and changing legislation and practices
- Inability to produce policy acknowledgment and training documentation
- Unfamiliarity of city legal resources with the intricacies of public safety law
- The need to secure grant funding for critical equipment, infrastructure and personnel

Lexipol is backed by the expertise of 320 employees with more than 2,075 years of combined experience in constitutional law, civil rights, ADA and discrimination, mental health, psychology, labor negotiations, Internal Affairs, use of force, hazmat, instructional design, federal and state grants and a whole lot more. That means no more trying to figure out policy, develop training or wellness content or secure funding on your own. You can draw on the experience of our dedicated team members who have researched, taught and lived these issues.

We look forward to working with Montclair Fire Department to address your unique challenges.

## Scope of Services

### Policy Manual

Constitutionally sound, up-to-date policies are the foundation for consistent, safe public safety operations and are key to reducing risk and enhancing personnel and community safety. Lexipol's comprehensive policy manual covers all aspects of your agency's operations.

- More than 155 policies researched and written by public safety attorneys and subject matter experts
- Policies based on State and federal laws and regulations as well as nationwide best practices
- Content customized to reflect your agency's terminology and structure

### Daily Training Bulletins (DTBs)

Even the best policy manual lacks effectiveness if it's not backed by training. Lexipol's Daily Training Bulletins are designed to help your personnel learn and apply your agency's policy content through 2-minute training exercises.

- Scenario-based training ties policy to real-world applications
- Understanding and retention of policy content is improved via a singular focus on one distinct aspect of the policy
- Each Daily Training Bulletin concludes with a question that confirms the user understood the training objective
- Daily Training Bulletins can be completed via computers or from smartphones, tablets or other mobile devices
- Reports show completion of Daily Training Bulletins by agency member and topic

### Policy Updates

Lexipol's legal and content development teams continuously review state and federal laws and regulations, court decisions and evolving best practices. When needed, we create new and updated policies and provide them to your agency, making it simple and efficient to keep your policy content up to date.

- Updates delivered to you through Lexipol's web-based content delivery platform
- Changes presented in side-by-side comparison against existing policy so you can easily identify modifications/improvements
- Your agency can accept, reject or customize each update

### Web-Based Delivery Platform and Mobile App (Knowledge Management System)

Lexipol's online content delivery platform, called KMS, provides secure storage and easy access to all your policy and training content, and our KMS mobile app facilitates staff use of policies and training completion.

- Ability to edit and customize content to reflect your agency's mission and philosophy
- Efficient distribution of policies, updates and training to staff
- Archival and easy retrieval of all versions of your agency's policy manual
- Mobile app provides in-the-field access to policy and training materials

### Reports

Lexipol's Knowledge Management System provides intuitive reporting capabilities and easy-to-read reports that enhance command staff meetings and strategic planning.

- Track and report when your personnel have acknowledged policies and policy updates
- Produce reports showing completion of Daily Training Bulletins
- Sort reports by agency member, topic and other subgroups (e.g., shift, assignment)
- Reduce the time your supervisors spend verifying policy acknowledgement and training completion

### Supplemental Publication Service

Lexipol's Supplemental Publication Service (SPS) streamlines the storage of your agency's content, giving you one place to access procedures, guidelines, general orders, training guides or secondary policy manuals.

- Electronically links department-specific procedural or supplemental content to your policy manual
- Provides electronic issuance and tracking for your agency's procedural or supplemental content
- Allows you to create Daily Training Bulletins against your procedural content
- Designed for standard operating guidelines, procedures, general orders or field guides

### Fire Procedures

Clear and accessible procedures are imperative to ensure safe, effective and consistent emergency response and personnel interactions. Lexipol's fire procedures, based on national best practices, give you critical operational and administrative procedures as well as a template to build on.

- More than 35 best practice procedures designed to support safe and effective operations
- Tactical procedures address the operations most often cited as contributing to firefighter injury or death as well as the most common call types
- Administrative procedures address the areas of highest legal liability as well as best practices for organizational success
- Scenario-based training reinforces live training
- Mobile-friendly decision trees and checklists prevent essential steps from being missed

# Proposal

Prepared By: Jeffrey Hopper  
 Phone: (816) 788-6644  
 Email: jhopper@lexipol.com

Quote #: Q-26413-2  
 Date: 10/21/2021  
 Valid Through: 1/19/2022

## Overview

Lexipol empowers first responders and public servants to best meet the needs of their residents safely and responsibly. We are the experts in policy, training and wellness support, committed to improving the quality of life for all community members. Our solutions include state-specific policies, online learning, behavioral health resources, funding assistance, and industry news and information offered through the websites Police1, FireRescue1, EMS1 and Corrections1. Lexipol serves more than 2 million public safety and government professionals in over 8,000 agencies and municipalities. The services proposed below are designed to meet your agency's specific goals and needs.

QTY	DESCRIPTION	UNIT PRICE	DISC	DISC AMT	EXTENDED
1	Annual Fire Policy Manual & Daily Training Bulletins w/Supplemental Publication Service w/Fire Operations Procedures (12 Months)	USD 8,802.00	15%	USD 1,320.30	USD 7,481.70
	<b>Subscription Line Items Total</b>			<b>USD 1,320.30</b>	<b>USD 7,481.70</b>
				<b>USD 1,320.30</b>	<b>USD 7,481.70</b>
				<b>Discount:</b>	USD 1,320.30
				<b>TOTAL:</b>	USD 7,481.70

\*Fire Policy pricing is based on 21 Fire Authorized Staff.

### Discount Notes

15% Annual Subscription Discount - PD is a Subscriber



# CITY COUNCIL AGENDA REPORT

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**DATE:** NOVEMBER 15, 2021                      **FILE I.D.:** HSV046  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** HUMAN SVCS./COMMUNITY DEV.  
**ITEM NO.:** 6    **PREPARER:** A. COLUNGA / R. HARGETT  
**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 21-75 WITH THE SAN BERNARDINO COUNTY OFFICE OF HOMELESS SERVICES FOR ACCESS TO THE HOMELESS MANAGEMENT INFORMATION SYSTEM

CONSIDER AUTHORIZING THE CITY MANAGER TO SIGN AGREEMENT NO. 21-75

---

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 21-75 with the San Bernardino County Office of Homeless Services (SBC OHS) for access to the Homeless Management Information System and authorize the City Manager to sign Agreement No. 21-75.

**BACKGROUND:** On May 6, 2019, the City Council approved Agreement No. 19-31 with the San Bernardino County Office of Homeless Services to accept an award for the Homeless Emergency Aid Program (HEAP). The HEAP grant requires the City, as a homeless service provider, to utilize the Homeless Management Information System (HMIS). Agreement No. 19-31 has expired and a new MOU will need to be signed to remain in compliance with remaining homeless grants the City has with the County.

The HMIS is a coordinated data collection system that enables service, shelter and housing providers in different locations across San Bernardino County to collect and share information about the homeless individuals and families seeking services. Through the HMIS, homeless services providers capture information about the services that are provided throughout the County including emergency, transitional, and permanent housing bed usage, employment, veteran's status, referrals to health and human service providers, legal aid or other relevant supportive service agencies.

The term of Agreement No. 21-75 is November 15, 2021, through October 31, 2026.

**FISCAL IMPACT:** Should the City Council approve proposed Agreement No. 21-75, no impact to the general fund is expected.

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

1. Approve Agreement No. 21-75 with the San Bernardino County Office of Homeless Services for access to the Homeless Management Information System; and
2. Authorize the City Manager to sign Agreement No. 21-75.

**MEMORANDUM OF UNDERSTANDING**

**Between**

**San Bernardino County**

**Acting By and Through**

**San Bernardino County Community Revitalization Group**

**Office of Homeless Services**

**And**

**City of Montclair**

**For Homeless Management Information System**

**Date of Execution through October 31, 2026**

**WHEREAS**, the San Bernardino County (County) Community Revitalization Group (CRG) Office of Homeless Services (OHS) is responsible for coordinating countywide efforts to end and prevent homelessness in San Bernardino County; and,

**WHEREAS**, the United States Congress, in accepting Conference Report 106-988m indicated that “local jurisdictions should be collecting an array of data on homelessness in order to prevent duplicate counting of homeless persons and to analyze their patterns of use of assistance, including how they enter and exit the homeless assistance system and the effectiveness of the systems”; and,

**WHEREAS**, OHS has been allocated funds by the United States Department of Housing and Urban Development (HUD) to provide data collection services regarding the individuals experiencing homelessness in the San Bernardino County; and,

**WHEREAS**, OHS is responsible for administering and maintaining the HUD mandated county-wide Homeless Management Information System (HMIS), a web-enabled database used by homeless services providers to capture information about the San Bernardino County persons they serve; and

**WHEREAS**, OHS is responsible for ensuring that all homeless services providers within the San Bernardino County; adhere to HUD and local policy and procedures regarding the utilization of the HUD mandated HMIS; and,

**WHEREAS**, OHS is the system host and provides the personnel and administrative support to operate HMIS, and has the responsibility to establish, support and manage HMIS in a manner that will meet HUD’s standards for minimum data quality, privacy, security and other requirements for agencies participating in HMIS; and,

**WHEREAS, City of Montclair**, hereafter referred to as “Agency,” has been awarded, allocated funds, or seeks to provide homeless program services within the San Bernardino County;

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County, acting by and through OHS, and Agency agree to the following terms and conditions:

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## **I. BACKGROUND**

In September of 2007, the San Bernardino County Board of Supervisors (Board) approved the formation of the San Bernardino County Homeless Partnership (Partnership) to provide leadership in creating a stronger countywide network of service delivery to homeless individuals, homeless families, and those at risk of becoming homeless through facilitating better communication, planning coordination, and cooperation among all entities that provide services to the county's homeless.

In addition, the Board created the OHS, originally under Human Services, Department of Behavioral Health, and the Community Develop and Housing Agency now administered by the Community Revitalization Group, to provide administrative support for the newly formed Partnership.

To address the multidimensional problem of homelessness locally and nationally, HUD, through a Congressional directive, required all Continuum of Cares (CoC) to implement an expanded HMIS to address the problem more effectively. An HMIS is a computerized data collection system used by homeless services providers to capture information about the persons they serve. This data collection system tracks collaborative agencies' services that are provided throughout each CoC to homeless individuals and families. Services tracked include emergency, transitional, and permanent housing bed usage, employment, veteran's status, referrals to health and human service providers, legal aid or other relevant supportive service agencies.

In February 2013, OHS accepted a grant agreement from HUD to administer and maintain the HMIS for the San Bernardino County.

This MOU between OHS and the Agency delineates the roles and responsibilities of OHS and the Agency regarding HMIS participation to capture information about the San Bernardino County persons they serve.

## **II. OHS RESPONSIBILITIES**

OHS shall:

- A. Ensure compliance with all applicable federal and state laws and regulations regarding the protection of client privacy and confidentiality of client information.
- B. Provide the Agency with a matrix clearly outlining the HUD required data elements that must be included in the data file to be migrated to the OHS HMIS system; (if applicable).
- C. Provide User ID and Passwords to Users before being granted access to HMIS.
- D. Provide monthly User's, Agency Administration and Report Training; and other trainings deemed necessary.
- E. Conduct regular on-site monitoring visits to ensure compliance with HUD and HMIS Policies and Procedures.
- F. Provide ongoing data and technical support through monthly trainings, one-on-one trainings as well as Webinars via Go-To-Meetings.
- G. Create monthly reports as needed and submit them as an e-mail attachment for review.
- H. Provide utilization reports to participating agencies on a regular basis to include data quality and tracking.

## **III. AGENCY RESPONSIBILITIES**

Agency shall:

- A. Ensure compliance with all applicable federal and state laws regarding protection of client privacy and confidentiality regulations, and the HMIS Policies and Procedures pertaining to client confidentiality, user conduct, security and the ongoing functionality and stability of services used to support the HMIS.
- B. Attend monthly User's, Agency Administration and Reports Trainings as provided by OHS.

- C. Ensure compliance with all the HUD required data elements.
- D. Ensure compliance with HUD Technical Standards specified in the HMIS Policies and Procedures.
- E. Keep Interagency data sharing agreements and Client Consent/Information release forms for all individual client data that is shared to non-custodial agencies where the internal policies of the Agency allows data sharing.
- F. Ensure compliance and full participation with local CoC CA-609 Coordinated Assessment System written procedures.

**IV. MUTUAL RESPONSIBILITIES**

- A. OHS and the Agency agree they will establish mutually satisfactory methods for the exchange of such information as may be necessary in order that each party may perform its duties and functions under this agreement; and appropriate procedures to ensure all information is safeguarded from improper disclosure in accordance with applicable State and Federal laws and regulations.
- B. OHS and the Agency agree they will establish mutually satisfactory methods for problem resolution.

**V. REQUIRED DATA COLLECTION ELEMENTS**

It is the responsibility of the Agency to collect data based on the HUD 2022 HMIS Data Standards, Version 1.1, October 2021, unless the Agency has Read Only Access.

<b>UNIVERSAL DATA ELEMENTS</b>	<b>PROGRAM SPECIFIC DATA ELEMENTS</b>
3.01 Name	4.02 Income and Sources
3.02 Social Security Number	4.03 Non-Cash Benefits
3.03 Date of Birth	4.04 Health Insurance
3.04 Race	4.05 Physical Disability
3.05 Ethnicity	4.06 Developmental Disability
3.06 Gender	4.07 Chronic Health Condition
3.07 Veteran Status	4.08 HIV/AIDS
3.08 Disabling Condition	4.09 Mental Health Disorder
3.10 Project Start Date	4.10 Substance Use Disorder
3.11 Project Exit Date	4.11 Domestic Violence
3.12 Destination	4.12 Current Living Situation
3.15 Relationship to Head of Household	4.13 Date of Engagement (Street Outreach)
3.16 Client Location	4.14 Bed-night Date
3.20 Housing Move-In Date (RRH PSH PH)	4.19 Coordinated Entry Assessment
3.917 Prior Living Situation	4.20 Coordinated Entry Event
3. 917A Prior Living Situation	
3.917B Prior Living Situation	

<b>HHS-RHY Only Required Elements</b>	<b>VA Required Elements</b>
R1 Referral Source	V1 Veteran's Information
R2 RHY – BCP Status	V2 Services Provided – SSVF
R3 Sexual Orientation	V3 Financial Assistance – SSVF
R4 Last Grade Completed	V4 Percent of AMI (SSVF Eligibility)
R5 School Status	V5 Last Permanent Address
R6 Employment Status	V6 VAMC Station Number
R7 General Health Status	V7 HP Targeting Criteria
R8 Dental Health Status	V8 HUD-VASH Voucher Tracking
R9 Mental Health Status	V9 HUD-VASH Exit Information
R10 Pregnancy Status	
R11 Formerly a Ward of Child Welfare/Foster Care Agency	
R12 Formerly a Ward of Juvenile Justice System	
R13 Family Critical Issues	
R14 RHY Service Connections	
R15 Commercial Sexual Exploitation/Sex Trafficking	
R16 Labor Exploitation/Trafficking	
R17 Project Completion Status	
R18 Counseling	
R19 Safe and Appropriate Exit	
R20 Aftercare Plans	

**VI. USAGE OF DATA**

**A. Data Use by OHS**

For the purposes of system administration, user support, and program compliance, OHS will use the data contained within HMIS for analytical purposes only and will not disseminate client-level data. OHS will release aggregate data contained within HMIS for research and reporting purposes only.

**B. Data Use by Agency**

As the guardians entrusted with client personal data, HMIS Users have a moral and a legal obligation to ensure that the data they collect is being gathered, accessed and used appropriately. It is also the responsibility of each user to ensure that client data is only used for the ends for which it was collected, ends that have been made explicit to clients and are consistent with the mission of the Agency and the HMIS to assist families and individuals to resolve their housing crisis. Proper user training, adherence to HMIS Policies and procedures, and a clear understanding of client confidentiality are vital to achieving these goals. Any individual or participating Agency misusing or attempting to misuse HMIS will be denied access to the system.

**VII. CONFIDENTIALITY AND INFORMED CONSENT**

The Agency agrees to abide by and uphold all privacy protection standards established by HMIS as well as their respective agency's privacy procedures. The Agency will also uphold relevant and applicable Federal and California State confidentiality regulations and laws that protect client records, and the Agency will only release confidential client records with written consent by the client, or the client's guardian, unless otherwise provided for in the regulations or laws.

**VIII. POSTINGS – Privacy and Mandatory collection notices must be posted at AGENCY**

The participating Agency must post Privacy and mandatory Collection notices at each intake desk or comparable location. The Privacy and Mandatory Collection notices must be made available in writing at the client's request. If the Agency maintains a website, a link to the privacy notice must be on the homepage of the Agency's website.

**IX. RIGHTS**

HMIS data from agencies resides in one central database. Data sharing is currently limited to the data within the CoC. The CoC reserves the right at a later date to expand data sharing to include collaborative wide data.

**X. COPYRIGHT**

The HMIS is protected by copyright and is not to be copied, except as permitted by law or by contract with owner of the copyright. The Agency's users' storage of materials copyrighted by others on the systems or displaying the materials through web pages must comply with copyright laws and guidelines.

**XI. RIGHT TO MONITOR**

- A. OHS staff or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Inspector General, shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of the Agency in the delivery of services provided under this MOU. Full cooperation shall be given by the Agency in any auditing or monitoring conducted.
- B. The Agency shall cooperate with OHS in the implementation, monitoring and evaluation of this MOU and comply with any and all reporting requirements established by this MOU.
- C. The Agency shall provide all reasonable facilities and assistance for the safety and convenience of OHS's representative in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work of the Agency.

**XII. TERM**

This MOU is effective upon Date of Execution through October 31, 2026, unless terminated earlier in accordance with the provisions of Section XIII of this MOU.

**XIII. EARLY TERMINATION**

This MOU may be terminated without cause upon thirty (30) days written notice by either party. The CRG Deputy Executive Officer, or his/her appointed designee, has the authority to terminate this MOU on behalf of CRG. The Agency Director, or his/her appointed designee, has the authority to terminate this MOU on behalf of the Agency.

**XIV. GENERAL PROVISIONS**

- A. No waiver of any of the provisions of the MOU shall be effective unless it is made in writing which refers to provisions so waived and which is executed by the Parties. No course of dealing and no

delay or failure of a Party in exercising any right under the MOU shall affect any other or future exercise of that right or any exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.

- B. Any alterations, variations, modifications, or waivers of provisions of the MOU, unless specifically allowed in the MOU, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of both parties as an amendment to this MOU. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
- C. Indemnification. Agency agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this MOU from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. Agency's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

**XV. CONCLUSION**

- A. This MOU, consisting of seven (7) pages, is the full and complete document describing services to be rendered by CRG and Agency for the HUD Homeless Assistance grants.
- B. The signatures of the Parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective entities to the terms and conditions set forth in this document.



City of Montclair

SAN BERNARDINO COUNTY  
COMMUNITY REVITALIZATION GROUP  
OFFICE OF HOMELESS SERVICES

\_\_\_\_\_  
Signature  
  
Name: Edward C. Starr  
Title: City Manager  
Address: 5111 Benito Street  
Montclair CA 91763

\_\_\_\_\_  
Signature  
  
Name: Tom Hernandez  
Title: Chief of Homeless Services  
Address: 215 North D Street, Suite 301  
San Bernardino, CA 92415-0043

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

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 2021	<b>FILE I.D.:</b>	PTD175
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	7	<b>PREPARER:</b>	M. ZERR

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 21-76 WITH MARLOW INNOVATIONS INC. DBA AFR ENGINE FOR FACIAL RECOGNITION SOFTWARE PLATFORM ACCESS

CONSIDER AUTHORIZING A \$5,000 APPROPRIATION FROM THE PROP 30/AB 109 FUND TO PAY THE COSTS ASSOCIATED WITH AGREEMENT NO. 21-76

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**REASON FOR CONSIDERATION:** To help assist with criminal investigations, the City Council is requested to consider approval of Agreement No. 21-76 with Marlow Innovations Inc. doing business as AFR Engine for facial recognition software platform access, and to authorize a \$5,000 appropriation from the Prop 30/AB 109 Fund to pay the costs associated with said agreement.

A copy of proposed Agreement No. 21-76 is attached for the City Council's review and consideration.

**BACKGROUND:** The Police Department utilizes many technologies to assist with investigating crimes and apprehending suspects. One of these technologies involves the use of facial recognition software. Facial recognition software compares images of unknown to known subjects. Photos of known subjects are captured during the booking process of arrestees and maintained by the police agency conducting the arrest booking. To maximize the number of images for comparison, police agencies using the same software share booking photos, creating a more extensive database of known subjects. The most significant contributors are from county detention facilities such as the San Bernardino County Sheriff's Department, which processes most bookings in the County.

Facial recognition is a proven technology that has been used with great success for many years. Facial recognition software has become a widespread investigative tool that has led to the identification and apprehension of many criminal suspects who would have gone unidentified. To utilize facial recognition software, the Department has relied upon the generosity of allied police agencies to assist with running the images of unknown suspects from Montclair crimes through their software. Having to rely on the assistance of other agencies limits the Department's requests to more severe, violent crimes, leaving many less serious crimes unsolved. Relying on allied agencies is inefficient and delays investigations. For example, during a recent armed robbery captured on video surveillance, the Department provided still images of the suspect to an allied agency to conduct facial recognition comparisons. Ten days later, the Department was advised of a successful match identifying the suspect, who was in the custody of LAPD for allegedly committing a murder that took place seven days after the armed robbery in Montclair. Having immediate internal access to facial recognition software would eliminate the delay of identifying suspects in crimes that take place in Montclair and would allow for the quicker apprehension of these suspects, possibly preventing additional crimes.

In order to maximize the effectiveness of facial recognition, police agencies must have the ability to share booking images to assist with the identification of suspects, which requires each agency to contribute to the shared database. Staff contacted several local police agencies to determine what software is most commonly used in the region for facial recognition software and found two companies—AFR Engine and Dataworks Plus. Vigilant Solutions, the Police Department’s current Automated License Plate Reader vendor, offers a facial recognition platform. However, other Southern California police agencies do not use the Vigilant Solutions platform, so the facial recognition data could not be shared with nearby agencies, eliminating any potential effectiveness.

DataWorks Plus’s facial recognition platform is custom-built for each purchasing agency at a quoted price of \$100,000. Its software is not internet-based, which precludes officers from utilizing the software in the field. DataWorks Plus’s main clients are county sheriffs’ departments, including San Bernardino, Riverside, and Los Angeles. Access to these counties’ booking photos would be a tremendous asset; however, Dataworks Plus does not contract with any city police agencies, which reduces its overall effectiveness.

AFR Engine provided a quote of \$5,000 for a year of access to its facial recognition software with unlimited use and no limitations on the number of users. The AFR Engine software is internet-based, allowing officers in the field to use the software to get immediate matches on uploaded images. It would also enable officers to immediately identify suspects from surveillance videos and use the software to identify suspects attempting to conceal their identities. AFR Engine offered a free trial to allow for hands-on evaluation of the software. In the first hour of the trial, 15 images of unknown suspects were uploaded onto the facial recognition platform, which produced eight immediate subject matches, providing detectives new leads to solve these previously unsolved cases. A small number of officers selected to assist with the evaluation had successful outcomes identifying suspects and commented on the ease of use. The quick ability to identify suspects has been very beneficial.

One feature of AFR Engine’s platform that is unique is the automated follow-up of unsolved cases. This feature allows the software to search previously uploaded photos of unidentified individuals against newly uploaded photos, which would assist with cold case investigations.

AFR Engine is the only provider used by city police agencies in the local allied agency areas. The Fontana Police Department, a user of AFR Engine, has been granted access to all of the San Bernardino County Sherriff’s Office booking images. In addition, the Riverside Police Department is obtaining the same agreement with the Riverside County Sherriff’s Office. Thus, the Department would have access to both AFR Engine’s clients and two of the largest DataWorks Plus clients in the region through data sharing.

**FISCAL IMPACT:** AFR Engine provided a quote of \$5,000 for a year of access for an unlimited number of users based on the Police Department’s size. If authorized by the City Council, funding for Agreement No. 21-76 would result in an appropriation of \$5,000 from the Prop 30/AB 109 Fund (1141).

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

1. Approve Agreement No. 21-76 with Marlow Innovations Inc. dba AFR Engine for facial recognition software platform access.
2. Authorize a \$5,000 appropriation from the Prop 30/AB 109 Fund to pay the costs associated with Agreement No. 21-76.





AFR ENGINE – SOFTWARE SERVICE PROGRAM  
STATE AND LOCAL LAW ENFORCEMENT AGENCY AGREEMENT

This Agreement is made and entered into effective November 15, 2021 (the “**Effective Date**”) between Marlow Innovations Inc., a California corporation D.B.A. AFR Engine (“**AFR Engine**”) and the Montclair Police Department, an Originating Agency Identifier (ORI) credentialed law enforcement agency (“**Agency**”).

- A. AFR Engine stores and disseminates to law enforcement agencies arrest booking photos and associated booking data; and
- B. Agency desires to obtain access to AFR Engine’s Software Service with available booking photo data via AFR Engine’s server;

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree as follows:

1. AFR Engine grants Agency a non-exclusive, non-transferable right and license to access the AFR Engine Software Service for use in accordance with the terms of this agreement. AFR Engine reserves the right to terminate this agreement for any breach of said Agreement by Agency.
2. Agency agrees to limit access to the AFR Engine Software Service to only authorized employees of Agency’s department with “Need to know” access to booking photos and associated data.
3. Agency agrees that its use of the AFR Engine Software Service will be limited to official law enforcement purposes only.
4. Agency understands that the AFR Engine Software Service does not make identifications of suspects. It provides investigative leads of people who have similar facial features as the photos uploaded by Users. Users **SHALL NOT** take any enforcement action based solely on leads provided by AFR Engine. Probable cause must be established in accordance with local, state, and federal law.
5. Agency shall be responsible for assigning login credentials for Agency’s users. Agency users must keep their login information confidential and prevent any unauthorized access to the system using their login credentials.
6. AFR Engine makes no guarantee of the accuracy of the booking photos or associated data. Any investigative leads provided by the AFR Engine Software Service should be independently verified by Agency’s users.
7. AFR Engine and its employees will not be held liable for Agency’s use of the data provided by the AFR Engine Software Service and will not be held liable for any breach of this agreement by Agency.



8. Agency has the option to provide copies of their own historical booking photos and associated data to the AFR Engine Software Service. Agency has the option to share the photos and data with other law enforcement agencies using the AFR Engine Software Service. Agency Administrators retain control as to which law enforcement agencies they want to grant access to said data. Agency retains the rights to their provided data and may request it be removed from the AFR Engine Software Service at any time.
9. Agency may terminate this Agreement for any reason upon thirty (30) days prior written notice. Upon termination or expiration of this Agreement, all licensed rights granted in this Agreement will immediately cease to exist and Agency must promptly discontinue all use of the AFR Engine Software Service.
10. Upon Termination of this Agreement at Agency's request or by Agency's breach of this Agreement, Agency shall not be entitled to a refund of the annual subscription fee, or any portion thereof. If AFR Engine is unable to continue providing it's service to Agency, a pro-rated refund will be provided based on the remaining months of service left in this Agreement.



AFR Engine does hereby grant a license of the AFR Engine Software Service to the

Montclair Police Department

The term of this license shall begin on the execution of this agreement and will expire in (1) one year from that date.

The license fee for this term shall be **\$5,000.00** and is due within 30 days of the date of execution of this agreement.

The Parties may extend this Agreement upon expiration of this term. Any extension shall be in writing, signed by the Parties, within 30 days prior to the expiration of the existing Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by persons duly authorized as of the date and year first written above.

Company: Marlow Innovations Inc., D.B.A. AFR Engine

Authorized Agent: Brian Marlow

Title: Chief Executive Officer

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

Signature: \_\_\_\_\_

Agency: City of Montclair

Authorized Agent: Javier John Dutrey

Title: Mayor

Date: November 15, 2021

Signature: \_\_\_\_\_

[signature page – AFR Software Service  
State and Local Law Enforcement Agency Agreement]



# CITY COUNCIL AGENDA REPORT

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**DATE:** NOVEMBER 15, 2021                      **FILE I.D.:** CVC700  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** PUBLIC WORKS  
**ITEM NO.:** 8    **PREPARER:** M. PARADIS

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 21-77 WITH YAO ENGINEERING, INC. FOR ELECTRICAL ENGINEERING AND DESIGN SERVICES FOR A NEW MAIN SWITCHBOARD AND STANDBY GENERATOR AT THE CIVIC CENTER

CONSIDER AUTHORIZING THE CITY MANAGER TO AMEND THE SCOPE OF SERVICES AS NECESSARY FOR A CONTINGENCY AMOUNT NOT TO EXCEED \$5,000

CONSIDER AUTHORIZING A \$36,390 APPROPRIATION FROM 2021A LEASE REVENUE BOND PROCEEDS TO PAY FOR COSTS ASSOCIATED WITH AGREEMENT NO. 21-77

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**REASON FOR CONSIDERATION:** The Civic Center lacks an adequate backup generator to keep essential services going during a power outage. Electrical engineering services are needed to design a new switchboard and standby generator at the Civic Center. The City Council is requested to consider approving a contract with Yao Engineering, Inc. to provide these services.

**BACKGROUND:** The Police Department submitted a grant application to Cal OES for \$300,000 to purchase generators to power the Civic Center in the event of an emergency. Generators would allow City Hall and the recreation building located at the Civic Center to continue operating during a Public Safety Power Shutdown (PSPS). Additionally, the American Red Cross uses the recreation building as an emergency shelter during disasters. The building has a pantry with large commercial refrigerators and freezers that provide storage for perishable food items and could store perishable medications, which would be jeopardized during a PSPS without a generator to keep them running.

The City also provides food commodities to the needy in the community with monthly food distributions. Since the start of the COVID-19 pandemic, food distribution demand has almost doubled. The Senior Center, part of the Civic Center, is an official cooling center for west-end San Bernardino County residents, providing senior citizens and impoverished community members a place to escape the heat. This project would support the buildings at the Civic Center and preserve food storage for its seniors, residents, and even employees during a power emergency.

An electrical engineer must design the new switchboard and standby generator. Staff completed job walks with three electrical engineering firms and requested proposals from them. Two firms submitted proposals and staff found the response from Yao Engineering to be the most responsive and timely.

The scope of services to be provided by Yao Engineering include preparation of plans and specifications for the following:

- Removal of an existing 1000 amp main switchboard
- Replacement of the main switchboard with a new 1200 amp main switchboard to be located in the Community Center storage rooms

- Adding a permanent generator and fuel tank to the Recreation Center parking lot
- Routing conduits for the genset feeder under the basketball court

**FISCAL IMPACT:** The cost for electrical engineering services was not included in the annual budget and is not an eligible cost for the grant. A \$36,390 appropriation from 2021A Lease Revenue Bond Funds is requested to cover design costs.

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

1. Approve Agreement No. 21-77 with Yao Engineering, Inc., for \$36,390 for electrical engineering and design services for a new main switchboard and standby generator at the Civic Center.
2. Authorize the City Manager to amend the Scope of Services as necessary for a contingency amount not to exceed \$5,000.
3. Authorize a \$36,390 appropriation from 2021A Lease Revenue Bond proceeds to pay for costs associated with Agreement No. 21-77.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

DESIGN SERVICES FOR ELECTRICAL IMPROVEMENTS AT THE CIVIC CENTER

THIS AGREEMENT is made and effective as of November 15, 2021, between the City of Montclair, a municipal corporation ("City") and Yao Engineering, Inc. ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on November 15, 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 November 15, 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 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

\$36,390.00 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

(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) 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:	Monica Heredia, P.E. City Engineer City of Montclair 5111 Benito Montclair, CA 91763
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To Consultant: Felix Yao, P.E.  
Yao Engineering, Inc.  
60 N. Daisy Ave, Unit 2C  
Pasadena, CA 91107

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. 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.

22. DISCRIMINATION

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

23. EFFECT OF PARTIAL INVALIDITY

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

24. 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.

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.

26. 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.

27. 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.

28. 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.

29. 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**

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

By: \_\_\_\_\_  
Felix Yao, Principal

Attest:

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

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

Approved as to Form: By:

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

**EXHIBIT A**



September 17, 2021

City of Montclair

RFP: Design of New Main Switchboard and Standby Generator

**Yao Engineering, Inc.** is pleased to submit our proposal to provide Electrical and Structural Engineering Services for the City of Montclair's Design of New Main Switchboard and Standby Generator Request for Proposal (RFP).

Within our proposal, you will find that the Yao Engineering Team is made up of experienced engineers and designers, who have performed many similar projects across various municipal clients.

What makes our team uniquely qualified to perform this project is that each of our key team members has successfully performed projects with similar scope, scale, and complexity.

If you have questions or need additional information, please feel free to contact Felix Yao. We look forward to working with the City of Montclair to deliver this project smoothly and efficiently.

Very Truly Yours,  
Yao Engineering, Inc.

A handwritten signature in black ink, appearing to read "Felix Yao", is positioned above a horizontal line.

Felix Yao, P.E.  
Principal  
[fyao@yaoengineering.com](mailto:fyao@yaoengineering.com)  
o. (626) 788-3004  
c. (407) 493-4941

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## SECTION 3 – TECHNICAL PROPOSAL

### 3.1 Technical Proposal

Our proposed work plan is to meet the City of Montclair’s verbally described scope of work and schedule as shown within this proposal, while staying within the proposed price proposal. In order to accomplish these goals, Yao Engineering will stay in close contact with the City for information requests, scheduling site visits, and progress updates.

#### 3.1.1 Scope of Work:

Engineer shall develop plans and specifications to remove the existing 1000A Main Switchboard and replace with a new 1200A Main Switchboard (MSB) located in an adjacent building. Due to the increased ampacity of the new MSB, the following items will need to be included in the Scope of Work:

- The proposed location of the new MSB will need to be modified to meet NEC requirements. The minimum modifications will require the dividing wall between the old bathrooms to be removed in order to provide a second means of egress.
- Coordination with SCE to obtain approval of the new SCE transformer, route of the primary and secondary conduits, and the new meter location (within the new MSB).

In addition to the new MSB, the City would like to add a permanent standby generator with sound attenuation weatherproof enclosure and sub-base fuel tank (genset) in a nearby parking lot, approximately 100 feet away. The conduits for the genset feeder will be routed to avoid damaging the existing basketball court and try to avoid damaging the existing two (2) trees. The drawings will show a contingency that if the contractor cannot avoid damaging the trees, that it will be their responsibility to relocate and replant the trees at another location determined by the City.

#### 3.1.2 Assumptions:

- A. City does not have as-built drawings in AutoCAD, the 1980 drawings will be drafted in AutoCAD.
- B. City will not require a new survey to be performed, drafting the existing as-built will be sufficient.
- C. City will provide Engineer with SCE Planner’s contact information.
- D. Engineer will coordinate with SCE as soon as the Notice To Proceed has been received and the estimated time to receive approval from SCE is only an estimate. If SCE requires more time, then the schedule would have to shift based on their response time.
- E. City will expedite their review with 2 weeks being the maximum time to meet the schedule.
- F. Scope does not include any instrumentation and controls.
- G. Existing circuits from Main Switchboard can be spliced onto from new Main Switchboard and will not require new conduits and wires to each individual load.

#### 3.1.3 Exclusions:

- A. Engineer will only be including what is expressly described within this proposal. If additional services are required, these can be added as a change order. Specific exclusions include:
  - a. Power System Study, including arc flash study and labels
  - b. Engineering Services During Bidding and Construction
  - c. Landscape Architecture
  - d. Other Engineering Disciplines (e.g. Instrumentation, Structural, Civil, Mechanical, etc.)
  - e. Survey

### 3.1.4 Proposed Design Schedule:

Description	Proposed Start Date	Proposed End Date
Notice to Proceed (NTP)	11/15/2021	
Coordinate with Power Utility	11/15/2021	12/13/2021
90% Deliverable (Plans, Specs, and Construction Estimate)	11/15/2021	12/10/2021
90% Deliverable Review Period by City*	12/13/2021	1/7/2022
100% Deliverable (Plans, Specs, and Construction Estimate)	1/10/2022	1/25/2022
Project Management	11/15/2021	1/25/2022

\* City review of Deliverable: 4 weeks.

### 3.1.5 Project Manager:

Felix Yao will be the Project Manager on this project and is a professional electrical engineer with 18 years of experience in consulting engineering and management. Felix will be the single-point of contact between the City and Yao Engineering. Felix Yao will relay all communication from the City to the design team. He has designed electrical systems for water and wastewater facilities, industrial facilities, architectural facilities, commercial facilities, and federal facilities. He has provided technical leadership, quality control, and construction services.

Felix Yao has power system experience which includes transmission systems with voltages up to 115kV and distribution systems with voltages up to 69kV; prime, standby, and emergency generators; switchgear; switchboards; motor control centers; panelboards, variable frequency drives; uninterruptible power supplies; lighting; lighting control; fire alarm; telecommunications; security and access control; lightning protection; and paging and area warning systems.

### 3.1.6 Project Team:

Team Member	Role and Expertise
Felix Yao, PE 18 years	Project Manager, Engineer of Record, QA/QC
Mac Kopec, 10 years	Junior Electrical Engineer, design engineer
Juan Isidoro, 30 years	CAD Designer, 2-D and 3-D drafting
One support staff	Office and Administration tasks



## **SECTION 4 – STATEMENT OF QUALIFICATIONS AND EXPERIENCE AND PRICE PROPOSAL**

### **4.1 Reference Projects**

<b>Summary of Work</b>	<b>Reference</b>
Pico Rivera Water Plant No.3 – Electrical Upgrades. The entire electrical system is being upgraded, including combining the 3 existing SCE services into 1 and providing camlock connections for a portable generator.	Adrian Rodriguez City of Pico Rivera Water Supervisor (562) 801-4462
California Water Services (CWS) Salinas Generator. The existing automatic transfer switch and permanent generator were replaced with new.	Kam Insixingmay, PE California Water Services Senior Electrical Engineer (408) 367-8280
LADWP South Haiwee Water Treatment Plant – Electrical Upgrades. The entire electrical system was upgraded, starting from the incoming service. The design included an automatic transfer switch and a permanent generator.	Jaime Fidello, PE LADWP WETS Electrical (213) 367-4950

### **4.2 Resumes and Price Proposal**

Mr. Yao is an electrical engineer with 18 years of experience in consulting engineering and management. He has designed electrical systems for water and wastewater facilities, industrial facilities, architectural facilities, commercial facilities, and federal facilities. He has provided technical leadership, quality control, and design and construction services.

Mr. Yao has power system experience which includes distribution systems with voltages up to 115kV; prime, standby, and emergency generators; switchgear; switchboards; motor control centers; variable frequency drives; uninterruptible power supplies; lighting; lighting control; fire alarm; telecommunications; security and access control; lightning protection; and paging and area warning systems.

Mr. Yao has SCADA systems experience which includes both ring and star topology system architectures, programmable logic controllers (PLC), remote I/O (RIO), and human machine interfaces (HMI). He has experience with major PLC manufacturers such as Allen-Bradley, Square D (Schneider Electric), and Siemens.

### **MUNICIPAL/INDUSTRIAL FACILITIES**

**City of Pico Rivera Water Plant No.3 Electrical Upgrades – Pico Rivera, CA.** Mr. Yao served as the senior electrical and instrumentation engineer for the design of the replacement of the existing electrical system. The design includes a 480V switchboard, MCC, reduced voltage soft-starters, grounding, lighting, and a control panel that communicates via telemetry.

**City of Manteca Duplex Pump Station – Manteca, CA.** Mr. Yao served as the senior electrical and instrumentation engineer for the design of a duplex pump station. The design includes a 240V control panel, grounding, and telemetry.

**Santa Anita Racetrack Duplex Pump Stations – Arcadia, CA.** Mr. Yao served as the senior electrical and instrumentation engineer for the design of four duplex pump stations. The design includes a master control panel and four individual 240V control panel and grounding that communicate via telemetry to a master control panel.

**Colorado River Pumping Plants Sump Rehabilitation, The Metropolitan Water District of Southern California (MWD), Los Angeles, California.** Mr. Yao is serving as the QA/QC electrical engineer to support the contractor in preparing submittals and RFIs. Additional responsibilities include designing electrical system and the control panel for the temporary bypass pumping systems at each of the five pumping plants.

**Elsinore Valley Municipal Water District Skymeadows – Corona, CA** Mr. Yao served as the senior electrical and instrumentation engineer for the design of a booster pump station upgrade whose electrical systems were being replaced in their entirety. The design includes 480V switchboard, MCC, grounding, portable Tier 4 generator, and new controls section within the MCC.

**Cal Water Electrical Equipment Replacement – Dominguez, Bear Gulch, Salinas, Marysville, Livermore, Commerce, and Visalia, CA** Mr. Yao served as the senior electrical and instrumentation engineer for the design of several pump stations whose electrical and controls systems were being replaced in their entirety. The design includes either 480V or 240V distribution systems, lighting, grounding, control panels communicating via telemetry, and standby generator.

**Town of Buckeye Industrial Park Lift Station – Buckeye, AZ** Mr. Yao served as the senior electrical and instrumentation engineer for the design of a lift station whose electrical system was being replaced in its entirety. The design includes 480V switchboard, MCC, standby generator, ATS, load bank, VFDs, active harmonic filter, lighting, grounding, traveling bridge crane, control panel, RTU, and telemetry.

**Felix Yao, P.E.**

**Principal**

### **Registration**

Professional Engineer:  
Illinois, 2008  
Florida, 2009  
Alabama, 2011  
Georgia, 2011  
California, 2014  
Nevada, 2016  
Washington, 2016  
NCEES Record #45739

### **Education**

B.S. – Electrical Engineering,  
Kettering University, 2003



**City of Scottsdale Thomas Groundwater Treatment Facility – Scottsdale, AZ** Mr. Yao served as the senior electrical and instrumentation QA/QC engineer for the design of a water treatment facility whose electrical system was being upgraded. The design includes 12.47kV switches, 12.47kV ATS, 480V switchboard, MCC, VFDs, active harmonic filter, lighting, grounding, traveling bridge crane, main control panel, local control panels, and numerous Emerson PLCs.

**City of Scottsdale Shea Water Treatment Plant – Scottsdale, AZ** Mr. Yao served as the senior electrical and instrumentation engineer for the design of a water treatment facility chemical feed systems whose electrical system was being replaced. The design includes 480V switchboard, MCC, VFDs, lighting, grounding, and local control panels communicating on the existing star network.

**City of Scottsdale NWVRF Grit Upgrades – Scottsdale, AZ** Mr. Yao served as the senior electrical and instrumentation engineer for the design of the grit system upgrades at a water reclamation facility. The design includes 480V MCC, VFDs, lighting, grounding, and vendor control panels communicating with SCADA.

**Geneva Wastewater Treatment Facility Improvements, City of Geneva, Geneva, Illinois.** Mr. Yao served as the electrical engineer for the electrical design and support during construction of various improvements to the Geneva wastewater treatment facility. The design includes a 480V power distribution system, lighting, and grounding. A detailed sequence of construction was especially crucial as the plant required minimal downtime.

**South Haiwee Reservoir Water Treatment Facility, Los Angeles Department of Water and Power (LADWP), Los Angeles, California.** Mr. Yao served as project engineer for the electrical and instrumentation design of a water treatment facility. The design includes a 240V power distribution system, lighting, grounding, multiple control panels, control strategies, short circuit analysis, coordination study, arc flash analysis, and arc flash labels.

**Bay Delta Habitat & Conservation & Conveyance Program, The Metropolitan Water District of Southern California (MWD), Los Angeles, California.** Mr. Yao served as electrical engineer during the conceptual phase of the Bay Delta project. The conceptual design includes 115kV substation, 15kV switchgear, 480V switchgear and motor control centers (MCCs), 15kV variable frequency drives (VFDs), and emergency standby generators.

**Arc Flash Studies – Manhattan, Calneva, San Pedro, Coldwater Canyon, and Astoria Pumping Stations, Los Angeles Department of Water and Power (LADWP), Los Angeles, California.** Mr. Yao served as project manager for the arc flash studies at each of the pumping stations. The arc flash studies included data collection and verification of existing electrical equipment, creation of the electrical system within ETAP, generating the arc flash study, short circuit study, and coordination study, creating the arc flash labels, and providing arc flash training to the LADWP operations and engineering staff.

**Owens Lake Ph.7A and Ph.9/10, Los Angeles Department of Water and Power (LADWP), Los Angeles, California.** Mr. Yao served as project engineer during construction for Phases 7a and 9/10. The construction includes 4.8kV power distribution, 480V power distribution, grounding, remote telemetry, and a fully automated SCADA system.

**Owens Lake Warehouses, Los Angeles Department of Water and Power (LADWP), Los Angeles, California.** Mr. Yao served as the electrical engineer for the electrical design and support during construction of three warehouses. The design includes a 480V power distribution system, lighting, lighting control, and grounding.

**East Naples/Solana Road Booster Pump Station, City of Naples, Florida.** Mr. Yao served as project construction engineer whose responsibilities include overseeing construction of 2 booster pump stations. The construction includes a 480V power distribution system, 480V standby generator, interior and exterior lighting, lightning protection, fire alarm, security, and a fully automated SCADA system.

Education

B.S. – Electrical Engineering,  
CA State University,  
Long Beach, 2012

Mr. Kopec is an electrical engineer with 8 years of experience in consulting engineering for water, wastewater, and substation facilities. He has designed power systems which include voltages up to 24.9kV, switchgear, switchboards, motor control centers, VFD's, lighting, standby generators, power system analysis, short circuit analysis, coordination, arc flash studies, and ring & star topology systems. He has been responsible for the preparation of plans and technical specifications.

**MUNICIPAL/INDUSTRIAL FACILITIES**

**Manhattan Pumping Station, Los Angeles Department of Water and Power (LADWP), Los Angeles, California.** Mr. Kopec was responsible for short circuit analysis, coordination and arc flash studies for various LADWP sites. The studies included data collection, calculations, report generation, label printing and training. The power systems voltages included 34,500-volt, 4800-volt, 2400-volt, 480-volt, and 240-volt.

**Calneva Pumping Station, Los Angeles Department of Water and Power (LADWP), Los Angeles, California.** Mr. Kopec was responsible for short circuit analysis, coordination and arc flash studies for various LADWP sites. The studies included data collection, calculations, report generation, label printing and training. The power systems voltages included 34,500-volt, 4800-volt, 2400-volt, 480-volt, and 240-volt.

**Coldwater Canyon Pumping Station, Los Angeles Department of Water and Power (LADWP), Los Angeles, California.** Mr. Kopec was responsible for short circuit analysis, coordination and arc flash studies for various LADWP sites. The studies included data collection, calculations, report generation, label printing and training. The power systems voltages included 34,500-volt, 4800-volt, 2400-volt, 480-volt, and 240-volt.

**Astoria Pumping Station, Los Angeles Department of Water and Power (LADWP), Los Angeles, California.** Mr. Kopec was responsible for short circuit analysis, coordination and arc flash studies for various LADWP sites. The studies included data collection, calculations, report generation, label printing and training. The power systems voltages included 34,500-volt, 4800-volt, 2400-volt, 480-volt, and 240-volt.

**San Pedro Harbor Yard and Pumping Station, Los Angeles Department of Water and Power (LADWP), Los Angeles, California.** Mr. Kopec was responsible for short circuit analysis, coordination and arc flash studies for various LADWP sites. The studies included data collection, calculations, report generation, label printing and training. The power systems voltages included 34,500-volt, 4800-volt, 2400-volt, 480-volt, and 240-volt.

**Cal Water Electrical Equipment Replacement – Dominguez, Bear Gulch, Salinas, Marysville, Livermore, Commerce, and Visalia, CA** Mr. Kopec served as the junior electrical and instrumentation engineer for the design of several pump stations whose electrical and controls systems were being replaced in their entirety. The design includes either 480V or 240V distribution systems, lighting, grounding, control panels communicating via telemetry, and standby generator.

**South Haiwee Reservoir Water Treatment Facility, Los Angeles Department of Water and Power (LADWP), Los Angeles, California.** Mr. Kopec served as the junior engineer for the electrical and instrumentation design of a water treatment facility. The design includes a 240V power distribution system, lighting, grounding, multiple control panels, control strategies, short circuit analysis, coordination study, arc flash analysis, and arc flash labels.

**A2 Lift Station, Elsinore Valley Municipal Water District, California.** Mr. Kopec was responsible for conducting an arc flash and coordination studies on a 12,470-480-volt new



system. The arc flash and coordination studies included the use of SKM, reviewing submittals, reviewing as-built drawings, calculations, and creating a report with arc flash stickers.

**Palo Verde Generating Station, Arizona Public Service Electric Company, Arizona.** Mr. Kopec was responsible for conducting arc flash and coordination studies on 13800-480/277-volt and 240-volt systems. The arc flash and coordination studies included the use of SKM, reviewing submittals, reviewing as-built drawings, calculations, and creating a report.

**PS 12 Bon Air and PS 13 Greenbrae Pump Stations, Ross Valley Sanitary District, California.** Mr. Kopec was responsible for conducting coordination studies on 480-volt and 240-volt systems with standby generators. The coordination studies included the use of SKM, reviewing submittals, reviewing as-built drawings, calculations, and creating a report.

**Shea Water Systems Improvements, Epcor Water, Fountain Hills, Arizona.** Mr. Kopec was responsible for designing the electrical, instrumentation systems and specifications for the chemical storage area. The design includes replacing the existing 120-volt power distribution system with a new 120-volt system and modifications to the 480-volt distribution system.

**Skymeadows Booster Pump Station, Elsinore Valley Municipal Water District (EVMWD), Lake Elsinore, California.** Mr. Kopec was responsible for designing the removal of an existing 100 horsepower and replacing it with a new 350 horsepower pump. The design includes modification to the 480-volt power distribution motor control center, control and instrumentation.

**Owens Lake Ph.7A and Ph.9/10, Los Angeles Department of Water and Power (LADWP), Los Angeles, California.** Mr. Kopec was responsible for Phases 7a and 9/10 design and construction support services. The design included 4.8kV power distribution, 480V power distribution, grounding, remote telemetry, and a fully automated SCADA system.

**Truckee Meadows Water Reclamation Facility RAS Pump Improvements, Reno, Nevada.** Mr. Kopec was responsible for the specifications and design for upgrades to the treatment plant RAS Pumps. Design involved replacing 5-30 horsepower pumps with 6-125 horsepower pumps while reusing existing conduit and VFD enclosures. The design included 480-volt power distribution, equipment layout, one-lines, conduit and wiring sizing.

**Shoal Creek Pump Station, KC Water Services, Kansas City, Kansas.** Mr. Kopec was responsible for the specifications and design for a new pump station. Specifications involved the selection of transformers, VFD's, switchboard, and panelboards. The design included 480-volt power distribution, conduit routing, equipment layout, one-line, VFD schematics, panel schedules, lighting, and conduit and wiring sizing.

**Village Creek WRF Peak Flow Management Project, Fort Worth, Texas.** Mr. Kopec was responsible for the specifications and design work in the expansion of the High Rate Clarification System including the High Rate Clarification Pump Station. The design included 480-volt power distribution, conduit routing, equipment layout, one-lines, panel schedules, and conduit and wiring sizing.

**Johnson County Wastewater, Wastewater Treatment Plant Repairs and Upgrade, Mission, Kansas.** Mr. Kopec was responsible for the specifications and design for upgrades to the electrical systems for this water treatment plant. Specifications involved the selection of transformers, low voltage cable, motor control center, and panelboards. The design included 480-volt power distribution, conduit duct bank routing, equipment layout, one-lines, motor control schematics, panel schedules, lighting, and conduit and wiring sizing.

**Yao Engineering  
City of Montclair  
Design of New Main Switchboard and Generator  
Fee Estimate**

Step X: Item Description	Labor Rate (\$/hr):		\$125		\$105		\$85		\$75		Subtotal	Consultant	Total Step Item Cost	
	Principal Engineer	Junior Engineer	CAD Designer	Administrative Assistant	hours	cost	hours	cost	hours	cost				hours
<b>Step 1: Site Visits</b>														
Site Visit to Confirm As-builts	4.00	\$500		\$0		\$0		\$0		\$0	4.00	\$500	\$500	
		\$0		\$0		\$0		\$0		\$0	0.00	\$0	\$0	
<b>Step Subtotal</b>	<b>4.00</b>	<b>\$500</b>	<b>0.00</b>	<b>\$0</b>	<b>0.00</b>	<b>\$0</b>	<b>0.00</b>	<b>\$0</b>	<b>0.00</b>	<b>\$0</b>	<b>4.00</b>	<b>\$500</b>	<b>\$500</b>	
<b>Step 2: Draft As-builts</b>														
Draft As-builts in AutoCAD		\$0		\$0	40.00	\$3,400		\$0		\$0	40.00	\$3,400	\$3,400	
		\$0		\$0		\$0		\$0		\$0	0.00	\$0	\$0	
<b>Step Subtotal</b>	<b>0.00</b>	<b>\$0</b>	<b>0.00</b>	<b>\$0</b>	<b>40.00</b>	<b>\$3,400</b>	<b>0.00</b>	<b>\$0</b>	<b>0.00</b>	<b>\$0</b>	<b>40.00</b>	<b>\$3,400</b>	<b>\$3,400</b>	
<b>Step 3: 90% Design</b>														
Cover Sheet		\$0	1.00	\$105	2.00	\$170		\$0		\$0	3.00	\$275	\$275	
Legend		\$0	1.00	\$105	2.00	\$170		\$0		\$0	3.00	\$275	\$275	
Overall Site Plan	2.00	\$250	8.00	\$840	8.00	\$680		\$0		\$0	18.00	\$1,770	\$1,770	
Demolition Single-line and Photos	2.00	\$250	8.00	\$840	8.00	\$680		\$0		\$0	18.00	\$1,770	\$1,770	
Proposed Single-line, Load Table, and Elevations	2.00	\$250	8.00	\$840	8.00	\$680		\$0		\$0	18.00	\$1,770	\$1,770	
Demolition Enlarged Electrical Room Plan and Photos	2.00	\$250	8.00	\$840	8.00	\$680		\$0		\$0	18.00	\$1,770	\$1,770	
Proposed Enlarged Electrical Room Plan	2.00	\$250	8.00	\$840	8.00	\$680		\$0		\$0	18.00	\$1,770	\$1,770	
Conduit Schedule	2.00	\$250	8.00	\$840	8.00	\$680		\$0		\$0	18.00	\$1,770	\$1,770	
Details		\$0	1.00	\$105	2.00	\$170		\$0		\$0	3.00	\$275	\$275	
Div.16 Specifications	8.00	\$1,000		\$0		\$0	2.00	\$150		\$0	10.00	\$1,150	\$1,150	
Opinion of Probable Construction Cost	8.00	\$1,000		\$0		\$0		\$0		\$0	8.00	\$1,000	\$1,000	
		\$0		\$0		\$0		\$0		\$0	0.00	\$0	\$0	
<b>Step Subtotal</b>	<b>28.00</b>	<b>\$3,500</b>	<b>51.00</b>	<b>\$5,355</b>	<b>54.00</b>	<b>\$4,590</b>	<b>2.00</b>	<b>\$150</b>	<b>135.00</b>	<b>\$13,595</b>	<b>135.00</b>	<b>\$13,595</b>	<b>\$13,595</b>	
<b>Step 4: Final Design</b>														
Cover Sheet		\$0	1.00	\$105	2.00	\$170		\$0		\$0	3.00	\$275	\$275	
Legend		\$0	1.00	\$105	2.00	\$170		\$0		\$0	3.00	\$275	\$275	
Overall Site Plan	2.00	\$250	8.00	\$840	8.00	\$680		\$0		\$0	18.00	\$1,770	\$1,770	
Demolition Single-line and Photos	2.00	\$250	8.00	\$840	8.00	\$680		\$0		\$0	18.00	\$1,770	\$1,770	
Proposed Single-line, Load Table, and Elevations	2.00	\$250	8.00	\$840	8.00	\$680		\$0		\$0	18.00	\$1,770	\$1,770	
Demolition Enlarged Electrical Room Plan and Photos	2.00	\$250	8.00	\$840	8.00	\$680		\$0		\$0	18.00	\$1,770	\$1,770	
Proposed Enlarged Electrical Room Plan	2.00	\$250	8.00	\$840	8.00	\$680		\$0		\$0	18.00	\$1,770	\$1,770	
Conduit Schedule	2.00	\$250	8.00	\$840	8.00	\$680		\$0		\$0	18.00	\$1,770	\$1,770	
Details		\$0	1.00	\$105	2.00	\$170		\$0		\$0	3.00	\$275	\$275	
Div.16 Specifications	8.00	\$1,000		\$0		\$0	2.00	\$150		\$0	10.00	\$1,150	\$1,150	
Opinion of Probable Construction Cost	8.00	\$1,000		\$0		\$0		\$0		\$0	8.00	\$1,000	\$1,000	
		\$0		\$0		\$0		\$0		\$0	0.00	\$0	\$0	
<b>Step Subtotal</b>	<b>28.00</b>	<b>\$3,500</b>	<b>51.00</b>	<b>\$5,355</b>	<b>54.00</b>	<b>\$4,590</b>	<b>2.00</b>	<b>\$150</b>	<b>135.00</b>	<b>\$13,595</b>	<b>135.00</b>	<b>\$13,595</b>	<b>\$13,595</b>	
<b>Step 5: Project Management</b>														
Coordination with City and SCE	40.00	\$5,000		\$0		\$0		\$0		\$0	40.00	\$5,000	\$5,000	
Invoicing		\$0		\$0		\$0	4.00	\$300		\$0	4.00	\$300	\$300	
		\$0		\$0		\$0		\$0		\$0	0.00	\$0	\$0	
<b>Step Subtotal</b>	<b>40.00</b>	<b>\$5,000</b>	<b>0.00</b>	<b>\$0</b>	<b>0.00</b>	<b>\$0</b>	<b>4.00</b>	<b>\$300</b>	<b>44.00</b>	<b>\$5,300</b>	<b>44.00</b>	<b>\$5,300</b>	<b>\$5,300</b>	
<b>Total</b>	<b>100.00</b>	<b>\$12,500</b>	<b>102.00</b>	<b>\$10,710</b>	<b>148.00</b>	<b>\$12,580</b>	<b>8.00</b>	<b>\$600</b>	<b>358.00</b>	<b>\$36,390</b>	<b>358.00</b>	<b>\$36,390</b>	<b>\$36,390</b>	
												<b>Proposed Total Cost =</b>		<b>\$36,390</b>



# CITY COUNCIL AGENDA REPORT

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**DATE:** NOVEMBER 15, 2021      **FILE I.D.:** PER530  
**SECTION:** CONSENT - AGREEMENTS      **DEPT.:** ADMIN. SVCS.  
**ITEM NO.:** 9      **PREPARER:** J. HAMILTON

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 21-78 WITH GOVERNMENTJOBS.COM, INC. DBA NEOGOV FOR HOSTING AND SUPPORT SERVICES FOR RECRUITMENT, SELECTION, ONBOARDING, PERFORMANCE, AND TRACKING SOFTWARE

CONSIDER AUTHORIZING A \$38,666 TRANSFER FROM THE GENERAL FUND TECHNOLOGY RESERVE FUND TO THE GENERAL OPERATING FUND FOR COSTS ASSOCIATED WITH AGREEMENT NO. 21-78

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**REASON FOR CONSIDERATION:** The cumbersome manual human resource processes the City employs are no longer the norm for public agencies and are not adequate for the legal demands placed on public sector hiring practices with which the City must strictly comply. The City Council is requested to consider approval of Agreement No. 21-78 with GovernmentJobs.com, Inc. doing business as NEOGOV for hosting and support services for recruitment, selection, onboarding, performance, and tracking software; and authorizing the transfer of \$38,666 from the General Fund Technology Reserve Fund to the General Operating Fund. Agreement No. 21-78 with NEOGOV would bring the City's hiring processes up to modern expectations and standards.

A copy of proposed Agreement No. 21-78 with NEOGOV is attached for City Council review and consideration.

**BACKGROUND:** NEOGOV was established in 2000 with the vision to provide government agencies with the most comprehensive and user-friendly human resources software to increase effectiveness and efficiency. NEOGOV currently services over 6,000 agencies nationwide at all levels of government. As a result, it has processed approximately 37 million job seekers, over 125 million applications, been involved with over 2.5 million hires, onboarded more than 60,000 employees through the hiring process, and completed over 250,000 performance evaluations. NEOGOV offers an integrated workforce platform to support the entire lifecycle of an employee, from recruitment and development to management.

The City has contracted with NEOGOV on an annual basis to use its GovernmentJobs.com public sector job advertisement platform, which has proven to be the most effective means for the City's recruitment efforts. However, under the current arrangement with NEOGOV, an interested applicant must reach out to the City directly to pursue the job further. Under proposed Agreement No. 21-78, the City could post job opportunities on the NEOGOV web-based job portal where job applicants can complete the entire application process online. After applying, they would be processed in the system through the selection and intake procedures and, following their hire, tracked to ensure performance reviews are timely submitted. The use of this software will improve the efficiency of the hiring process and reduce the need to hire additional part-time personnel to screen applicants, prepare correspondence, set up examinations and interview panels, set up and monitor the hiring process, track the entire intake process, and ensure that each employee's performance is documented. The City intends to subscribe to NEOGOV's Insight, Onboard, and Perform service to accomplish this.

NEOGOV's *Recruit Module* includes GovernmentJobs.com, Insight, and Onboard, which accelerates the time to hire new employees by centralizing the process of attracting applicants, screening them, and obtaining a qualified hire that is productive on day one, all while ensuring compliance with existing laws. Starting with GovernmentJobs.com, the process provides a 100 percent virtual and paperless recruitment process by providing an online career portal, which is mobile device-friendly. This increased accessibility allows a candidate to apply on any device from the safety of their own home and meets the ADA/508 compliance requirements.

Further, GovernmentJobs.com provides the City access to 39 million applicant profiles to ensure it can find the most qualified candidates. These candidates also tend to possess government experience or aspire to start a public sector career, which translates into faster hires by leveraging the appropriate talent pools. GovernmentJobs.com's existing online presence results in its listing as a top-ranking Google search result for public sector job searches. GovernmentJobs.com is 177 percent more likely to deliver a qualified public sector hire than Indeed.com and 67 percent more likely than LinkedIn.

**Insight.** Using NEOGOV's Insight software platform, applicants create a profile and use that profile to apply for a job. Insight provides the ability for a City to create a configurable, mobile-friendly and ADA-compliant application page to improve the applicant's experience. Each of the City's job classifications would be listed on the City's profile page, making it easy for any prospective or existing employee to find their job classification's description, salary range, and an explanation of the benefits available to the person holding that position.

As candidates apply, Insight pre-screens them using auto-scoring to highlight the best candidates. By showing weighted scores and rankings based on screening protocols, tests, and interviews, Insight helps the City narrow candidates down and find the best fit. Insight's easy-to-navigate reports and dashboards optimize the hiring process by offering data visualization and analysis. With Insight, the City will get more than 90 standard reports, advanced ad-hoc reporting, adverse impact statistics, and dashboards that help the City make informed hiring decisions.

Once candidates have applied, Insight provides and maintains transparency and streamlines communication for both the applicant and the City with an online self-service portal. With this self-service portal, applicants can check the status of their application and self-schedule exams, interviews, and performance tests. NEOGOV's Diversity Health feature enables the City's recruitment process to implement equitable hiring practices. Diversity Health measures the diversity of the applicant pool so the City can take immediate action to ensure the City is evaluating a well-rounded pool of applicants.

**Onboard.** The Onboard service provides a more accelerated onboarding process than what is currently in place. It enables the assignment of tasks to multiple employees and the ability to track the completion of those tasks. Onboard will ensure day-one readiness for new employees by allowing them to complete paperwork before their first day, understand the City's organizational values and mission, reinforce job duties, provide an overview of the organizational structure of the City, assign mentors, provide pre-employment training, and schedule check-ins. The Onboard module allows for the configuration of the self-service portal by providing the new hire with interactive social collaboration, the ability to ask questions and get answers, training courses, and videos.



**Perform.** The Perform module allows the City to track employee performance and provide constructive feedback to build a more capable workforce. NEOGOV's performance management software automates annual, probationary, and other types of employee personnel evaluations. This feature gives the City's department heads and human resources staff the ability to identify skill gaps and areas of improvement for each employee. Perform tools ensure managers are frequently meeting with employees to set goals, measure progress, and provide coaching with the ability to schedule check-ins by a department or an individual. Perform permits a supervisor to use journal entries to document employee achievements and areas of concern, implement performance improvement plans, and electronically document every step of the process. Perform also provides reports and dashboards; analyzes individual employee, team, or departmental data to identify skill gaps across the institution; and optimizes employee development based on common themes.

The City negotiated with NEOGOV to reduce the cost of a two-year contract from about \$53,000 to \$38,666, which enabled the City to agree to a more robust software package. The software suite's anticipated benefits to the City eliminate the need to hire a part-time worker to assist with functions automated by NEOGOV and provide the Employment & Personnel Coordinator the ability to focus on more complex tasks. Additionally, performance evaluations are more likely to be completed on time by including the Perform module, and employees can monitor their performance progress throughout their employment.

**FISCAL IMPACT:** The City Council is required to approve a transfer of \$38,666 from the General Fund Technology Reserve Fund to the General Operating Fund to fund the cost of Agreement No. 21-78, as these costs were not included in the City's Fiscal Year 2021-22 Budget.

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

1. Approve Agreement No. 21-78 with GovernmentJobs.com, Inc. dba NEOGOV for hosting and support services for recruitment, selection, onboarding, performance, and tracking software; and
2. Authorize a transfer of \$38,666 from the General Fund Technology Reserve Fund to the General Operating Fund for costs associated with Agreement No. 21-78.

## NEOGOV SERVICES AGREEMENT

V020121

You agree that by placing an order through a NEOGOV standard ordering document (the "Order" or "Ordering Document") you agree to follow and be bound by the terms and conditions set forth herein. "Governmentjobs.com", "NEOGOV", "we", and "our" means Governmentjobs.com, Inc.(dba "NEOGOV") and, where applicable, its affiliates; "Customer", "you", "your" means the Governmentjobs.com client, customer, or subscriber identified in the Ordering Document.

If you are placing such an Order on behalf of a legal entity, you represent that you have the authority to bind such entity to the terms and conditions of the Ordering Document and these terms and, in such event, "you" and "your" as used in these agreement terms shall refer to such entity. "Agreement" shall be used to collectively refer to this NEOGOV Services Agreement (the "Services Agreement"), documents incorporated herein including the applicable Ordering Document and Schedule(s), and Special Conditions (if any).

1. **Provision of Services.** Subject to the terms of this Agreement NEOGOV hereby agrees to provide Customer with access to its SaaS Applications and Professional Services (each defined below) included or ordered by Customer in the applicable Ordering Document (collectively referred to as the "Services"). Customer hereby acknowledges and agrees that NEOGOV's provision and performance of, and Customer's access to, the Services is dependent and conditioned upon Customer's full performance of its duties, obligations and responsibilities hereunder. This Agreement entered into as of the date of your signature on an applicable Ordering Document or use of the Services commences (the "Effective Date"). The Agreement supersedes any prior and contemporaneous discussions, agreements or representations and warranties.
2. **SaaS Subscription.**
  - a) **Subscription Grant.** "SaaS Applications" means each proprietary NEOGOV web-based software-as-a-service application that may be set forth on an Order and subsequently made available by NEOGOV to Customer, and associated components as described in the Service Specifications made available to Customer by NEOGOV. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, NEOGOV hereby grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable right to (a) access and use, and to permit Authorized Users to access and use, the SaaS Applications specified in the Order solely for Customer's internal, non-commercial purposes; (b) generate, print, and download Customer Data as may result from any access to or use of the SaaS Applications; and (c) train Authorized Users in uses of the SaaS Applications permitted hereunder (these rights shall collectively be referred to as the "SaaS Subscription"). "Authorized Users" means (i) Customer employees, agents, contractors, consultants who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Services Agreement and (ii) for whom access to the Services has been purchased hereunder. You may not access the SaaS Applications if you are a direct competitor of NEOGOV or its affiliates. In addition, you may not access the SaaS Applications for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes.
  - b) **Delivery and Subscription Term.** NEOGOV delivers each SaaS Application by providing Customer with online access. When you access NEOGOV SaaS Applications, you are accepting it for use in accordance with this Agreement. Unless otherwise specified in an applicable Ordering Document, SaaS Subscriptions shall commence on the Effective Date and remain in effect for twelve (12) consecutive months, unless terminated earlier in accordance with this Agreement (the "Initial Term"). Thereafter, SaaS Subscriptions may be renewed by mutual written agreement between the parties for successive terms (each a "Renewal Term" and together with the Initial Term, collectively, the "Term"). NEOGOV shall provide Customer access to the SaaS Applications within a reasonable time following the Effective Date unless otherwise agreed.
  - c) **Content and Program Documentation.** Should Customer purchase access to SaaS Applications containing audio-visual content ("Licensed Content"), NEOGOV grants to Customer a non-exclusive, non-transferable, and non-sublicensable license, during the applicable Term, for Authorized Users to access and view the Licensed Content within the SaaS Application. Customer shall not permit the Licensed Content to be, or appear to be, reproduced, performed, displayed, or distributed on, as part of or in connection with any website or other online area other than the SaaS Application. Customer shall not edit, alter, modify, combine with other content, or create any derivative works of the Licensed Content. "Program Documentation" shall mean all user guides, training, and implementation material, and Service descriptions provided by NEOGOV to Customer in connection with the Services. NEOGOV hereby grants to Customer a non-exclusive, non-

# NEOGOV

sublicensable, non-transferable license to use, print, and distribute internally via non-public platforms, the Program Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.

3. **Professional Services.** "Professional Services" shall mean consulting, training services purchased by Customer in an applicable Ordering Document or NEOGOV Scope of Work (SOW) relating to assistance, training, deployment, usage, customizations, accessory data processing, and best practices of and concerning the SaaS Applications. NEOGOV shall provide the Professional Services purchased in the applicable Order Form or SOW, as the case may be. Professional Services may be ordered by Customer pursuant to a SOW and Service Specifications describing the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Order Forms or SOWs must be signed by both parties before NEOGOV shall commence work. If the parties do not execute a separate Statement of Work, the Services shall be provided as stated on the Order Form and this Agreement and documents incorporated herein shall control.
4. **Payment Terms.** Unless otherwise stated in an Ordering Document, Customer shall pay all Subscription fees ("Subscription Fees") and Professional Service fees ("Professional Service Fees", collectively the "Fees") within thirty (30) days of Customer's receipt of NEOGOV's invoice. Fees shall be invoiced annually in advance and in a single invoice for each Term. Invoices shall be delivered to the stated "Bill To" party on the Ordering Document. Unless explicitly provided otherwise, once placed the Ordering Document is non-cancellable and sums paid nonrefundable. Subscription Fees are based upon the Customer's employee count. Customer shall not exceed the employee amount its Subscription Fees are based off of unless applicable supplemental Subscription Fees are paid. The Term for the Services is a continuous and non-divisible commitment for the full duration regardless of any invoice schedule. The purchase of any Service is separate from any other order for any other Service. Customer may purchase certain Services independently of other Services. Your obligation to pay for any Service is not contingent on performance of any other Service or delivery of any other Service. If Customer issues a purchase order, then it shall be for the full amount set forth in the applicable NEOGOV invoice or Ordering Document. Failure to provide NEOGOV with a corresponding purchase order shall not relieve Customer of its payment obligations. Except as otherwise specifically stated in the Ordering Document, NEOGOV may change the charges for the Services with effect from the start of each Renewal Term by giving Customer at least thirty (30) day notice prior to commencement of a Renewal Term. Customer will pay all taxes, duties and levies imposed by all federal, state, and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, except those taxes imposed or based on NEOGOV's net income or those exempt by applicable state law. Customer shall provide NEOGOV with a certificate or other evidence of such exemption with ten (10) days of NEOGOV's request therefor.
5. **Term and Termination.**
  - a) **Term.** Unless otherwise specified in an applicable Ordering Document, this Agreement shall commence on the Effective Date. This Agreement shall remain in effect until all SaaS Subscriptions have expired and/or both parties have achieved full performance of Professional Services or other services detailed in a SOW, unless it is terminated earlier in accordance with this Agreement.
  - b) **Termination for Cause; Effect of Termination.** Either Party may terminate this Agreement immediately if the other is in material breach of this Agreement and such breach is not cured within thirty (30) days following non-breaching party's written specification of the breach. NEOGOV may suspend the Services or terminate this Agreement immediately in the event the Services or Customer's use of the Services provided hereunder become illegal or contrary to any applicable law, rule, regulation, or public policy. Upon expiration or any termination of this Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOGOV intellectual property. Additionally, Customer shall be obligated to pay, as of the effective date of such expiration or termination, all amounts due and unpaid to NEOGOV under this Agreement. Unless otherwise specified, after expiration or termination of this Agreement NEOGOV may remove Customer Data from NEOGOV Services and without Customer consent or notice.
6. **Service Specifications.** "Service Specifications" means the Service Descriptions (attached hereto as Exhibit A), Security Statement (attached hereto as Exhibit B), and Program Documentation.
7. **Maintenance; Modifications; Support Services.**
  - a) **Maintenance, Updates, Upgrades.** NEOGOV maintains NEOGOV's hardware and software infrastructure for the Services and is responsible for maintaining the NEOGOV server operation and NEOGOV database security. NEOGOV may in its sole discretion, periodically modify, Update, and Upgrade the features, components, and functionality of the Services during the Term. "Update" means any update, bug fix, patch or

correction of the Services or underlying NEOGOV software that NEOGOV makes generally available to its customers of the same module, excluding Upgrades. Updates are automatic and available upon Customer's next login to the Services following an Update at no additional cost to Customer. "Upgrade" means any update of the Services or underlying NEOGOV software such as platform updates, and major product enhancements and/or new features that NEOGOV makes commercially available. NEOGOV shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost. NEOGOV shall have no liability for, or any obligations to, investments in, or modifications to Customer's hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services.

- b) Training Materials; Support. Primary training of NEOGOV Services is conducted by self-review of online materials. NEOGOV's pre-built, online training consists of a series of tutorials to introduce the standard features and functions (the "Training Materials"). The Training Materials may be used as reference material by Customer Personnel conducting day-to-day activities.
  - c) Implementation. For Services requiring implementation, NEOGOV implementation supplements the Training Materials and is conducted off-site unless otherwise agreed in the Ordering Document. NEOGOV personnel will provide consultation on best practices for setting up the Services, answer Customer questions during the implementation period, and ensure Authorized User Admins grasp the system.
  - d) Support. Phone support for the Services is available to Customer Monday through Friday, excluding NEOGOV holidays. Online support for the Services is available 24 hours a day, seven days a week. The length of time for a resolution of any problem is dependent on the type of case.
  - e) Limitations. Unless otherwise specified in the Ordering Document, this Agreement does not obligate NEOGOV to render any maintenance or support services that are not expressly provided herein, including, but not limited to data uploads, manual data entry, migration services, data conversion, refinement, purification, reformatting, SQL dump, or process consultation.
8. NEOGOV Intellectual Property. NEOGOV shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by NEOGOV including all Services, products, systems, software (including any source code or object code) or Service Specifications related thereto, Updates or Upgrades, trademarks, service marks, logos and other distinctive brand features of NEOGOV and all proprietary rights embodied therein (collectively, the "NEOGO Intellectual Property"). This Agreement does not convey or transfer title or ownership of the NEOGO Intellectual Property to Customer or any of its users. All rights not expressly granted herein are reserved by NEOGOV. Other than recommendation use or as required by law, all use of NEOGOV Trademarks must be pre-approved by NEOGOV prior to use. Trademarks shall include any word, name, symbol, color, designation or device, or any combination thereof that functions as a source identifier, including any trademark, trade dress, service mark, trade name, logo, design mark, or domain name, whether or not registered.
9. Data Processing and Privacy.
- a) Customer & Platform Data. "Customer Data" shall mean all data that is owned or developed by Customer, whether provided to NEOGOV by Customer or provided by a third party to NEOGOV in connection with NEOGOV's provision of Services to Customer, including Personnel or Job Seeker Profile Data collected, loaded into, or located in Customer data files maintained by NEOGOV. NEOGOV intellectual property, including but not limited to the Services and all derivative works thereof, NEOGOV Confidential Information, and Platform Data do not fall within the meaning of the term "Customer Data". Customer exclusively own all right, title, and interest in and to all Customer Data. Customer grants NEOGOV a license to host, use, process, display, create non-personal derivative works of, and transmit Customer Data to provide the Services. "Platform Data" shall mean any data reflecting the access or use of the Services by or on behalf of Customer or any user, including statistical or other analysis and performance information related to the provision and operation of the Services including any end user visit, session, impression, clickthrough or click stream data, as well as log, device, transaction data. or other analysis, information, or data based on or derived from any of the foregoing. NEOGOV shall exclusively own all right, title and interest in and to all Platform Data. NEOGOV grants to Customer a limited, non-perpetual, non-exclusive, non-transferable, and non-sublicensable license during the Term to use and access, and to permit Authorized Users to use and access, Platform Data of which NEOGOV makes available through the SaaS Applications solely for Customer's internal purposes. Customer acknowledges NEOGOV may compile Platform based on Customer Data input into the Services. Customer agrees that NEOGOV may (i) make Platform Data publicly available in compliance with applicable law, and (ii) use Platform Data to the extent and in the manner permitted under applicable law.

- b) Privacy Policy; Data Processing Agreement. NEOGOV shall process all data in accord with the NEOGOV Privacy Policy attached hereto as Exhibit C. The defined terms in the Privacy Policy shall have the same meaning in this Agreement unless otherwise specified herein. To the extent Customer uses the Services to target and collect personal information from users located in the European Union, European Economic Area, or Switzerland (the "EU"), or has Authorized Users accessing the Services from the EU, the NEOGOV Data Processing Addendum ("DPA"), Customer shall contact NEOGOV and enter into the DPA.
  - c) Data Responsibilities. Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Data. NEOGOV will have no responsibility or liability for the accuracy of the Customer Data prior to receipt of such data into the Services. Customer shall be solely responsible for and shall comply with all applicable laws and regulations relating to (i) the accuracy and completeness of all information input, submitted, or uploaded to the Services, (ii) the privacy of users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom Customer Data relates; and (iii) the collection, use, modification, alteration, extraction, retention, copying, external storage, disclosure, transfer, disposal, and other processing of any Customer Data. NEOGOV is not responsible for lost data caused by the action or inaction of Customer or Authorized Users. Unless vital to provide the Services or otherwise mutually agreed in writing, Customer shall not maintain any financial, health, payment card, or similarly sensitive data that imposes specific data security or data protection obligations within the Services.
  - d) Breach Notice. In the event of a data or security breach, as defined by applicable law, by anyone other than your employee, contractor, or agent, upon discovery of such breach, NEOGOV will initiate remedial actions and notify Customer of the breach as required by and in compliance with applicable law. NEOGOV's notification of, or response to, a data breach under this Section will not be construed as an acknowledgement by NEOGOV of any fault or liability with respect to the breach. In the event of a security breach, as defined by applicable law, by your Personnel, Authorized, or unauthorized user, contractor or agent, you shall have sole responsibility for initiating remedial actions and you shall notify NEOGOV of the breach and steps you will take to remedy the breach as soon as possible. Customer is solely responsible for complying with data breach notification laws applicable to the Customer and fulfilling any third-party notification obligations related to any data breach(es).
10. Subcontractors; Third Party Products. NEOGOV may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor"). "Third-Party Products" means any products, content, services, information, websites, or other materials that are owned by third parties and are incorporated into or accessible through the Services. The Services may permit access to Third-Party Products. For purposes of this Services Agreement, such Third-Party Products are subject to their own terms and conditions presented to you for acceptance by website link or otherwise. If you do not agree to abide by the applicable terms for any such Third-Party Products, then you should not install, access, or use such Third-Party Products. NEOGOV cannot guarantee the continued availability of such Third-Party Products and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Third-Party Product ceases to make the third-party application available for interoperation with the corresponding NEOGOV Service in a manner acceptable to NEOGOV.
11. Nondisclosure. Through exercise of each party's rights under this Agreement, each party may be exposed to the other party's technical, financial, business, marketing, planning, and other information and data in written, oral, electronic, magnetic, photographic, and/or other forms, including, but not limited to (a) oral and written communications of one party with the officers and staff of the other party which are marked or identified as confidential or secret or similarly marked or identified, (b) other communications which a reasonable person would recognize from the surrounding facts and circumstances to be confidential or secret, and (c) trade secrets (collectively, "Confidential Information"). In recognition of the other party's need to protect its legitimate business interests, each party hereby covenants and agrees that it shall regard and treat each item of information or data constituting Confidential Information of the other party as strictly confidential and wholly owned by such other party and that it will not, (x) without the express prior written consent of the other party, (y) except as permitted or authorized herein or, (z) except as required by law including the Public Records Act of the Customer's State, redistribute, market, publish, disclose, or divulge to any other person, firm or entity, or use or modify for use, directly or indirectly in any way for any person or entity: (i) any of the other party's Confidential Information during the Term and for a period of three (3) years thereafter or, if later, from the last date Services (including any warranty work) are performed by the disclosing party hereunder; and (ii) any of the other party's trade secrets at any time during which such information shall constitute a trade secret under applicable law. In association with NEOGOV's concern for the protection of trade secrets, Confidential Information, and fair market competition, Customer acknowledges

all photos, "screen captures", videos, or related media of NEOGOV products, pages, and related documentation shall be approved by NEOGOV prior to any publicly accessible disclosure of such media.

## 12. Representations, Warranties, and Disclaimers.

- a) **Service Performance Warranty.** NEOGOV warrants that it provides the Services using a commercially reasonable level of care and skill. THE FOREGOING WARRANTY DOES NOT APPLY, AND NEOGOV STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.
- b) **No Other Warranty.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY SECTION, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.
- c) **Disclaimer of Actions Caused by and/or Under the Control of Third Parties.** NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOGOV SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.
- d) **Services Do Not Constitute Advice or Credit Reporting.** NEOGOV does not provide its customers with legal advice regarding compliance, data privacy, or other relevant applicable laws in the jurisdictions in which you use the Services. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES PROVIDED HEREUNDER ARE NOT INTENDED TO BE AND WILL NOT BE RELIED UPON BY YOU AS EITHER LEGAL, FINANCIAL, INSURANCE, OR TAX ADVICE. TO THE EXTENT YOU REQUIRE ANY SUCH ADVICE, YOU REPRESENT THAT YOU WILL SEEK SUCH ADVICE FROM QUALIFIED LEGAL, FINANCIAL, INSURANCE, ACCOUNTING, OR OTHER PROFESSIONALS. YOU SHOULD REVIEW APPLICABLE LAW IN ALL JURISDICTIONS WHERE YOU OPERATE AND HAVE EMPLOYEES AND CONSULT EXPERIENCED COUNSEL FOR LEGAL ADVICE. YOU ACKNOWLEDGE THAT NEOGOV IS NOT A "CONSUMER REPORTING AGENCY" AS THAT TERM IS DEFINED IN THE FAIR CREDIT REPORTING ACT AS AMENDED.
- e) **Configurable Services.** The Services can be used in ways that do not comply with applicable laws and it is Customer's sole responsibility to monitor the use of the Services to ensure that such use complies with and is in accordance with applicable law. In no event shall NEOGOV be responsible or liable for Customer failure to comply with applicable law in connection with your use of the Services. NEOGOV is not responsible for any harm caused by users who were not authorized to have access to the Services but who were able to gain access because usernames, passwords, or accounts were not terminated on a timely basis by Customer. Customer acknowledges that NEOGOV exercises no control over specific human resource practices implemented using the Service or Customer's decisions as to employment, promotion, termination, or compensation of any personnel or Authorized User of the Services. Customer further agrees and acknowledges that NEOGOV does not have a direct relationship with Customer employees and that Customer is responsible for all contact, questions, Customer Data updates and collection, with Customer employees.

## 13. Customer Compliance.

Customer shall be responsible for ensuring that Customer's use of the Services and the performance of Customer's other obligations hereunder comply with all applicable rules, regulations, laws, codes, and ordinances. Customer is responsible for Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services equipment and facilities required to access the Services. All users of the Services are obligated to abide by the Terms of Use attached hereto as Exhibit D. Customer shall be responsible for procuring all licenses of third-party software necessary for Customer's use of the Services. Customer is responsible and liable for all uses of the Services, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement.

## 14. Indemnification.

- a) **Indemnity.** Subject to subsections (b) through (d) of this Section, if a third party makes a claim against Customer that any NEOGOV intellectual property furnished by NEOGOV and used by Customer infringes a third party's intellectual property rights, NEOGOV will defend the Customer against the claim and indemnify the Customer from the damages and liabilities awarded by the court to the third-party claiming infringement or the settlement agreed to by NEOGOV, if Customer does the following:
  - i) Notifies NEOGOV promptly in writing, not later than thirty (30) days after Customer receives notice of the claim (or sooner if required by applicable law);
  - ii) Gives NEOGOV sole control of the defense and any settlement negotiations; and
  - iii) Gives NEOGOV the information, authority, and assistance NEOGOV needs to defend against or settle the claim.
- b) **Alternative Resolution.** If NEOGOV believes or it is determined that any of the Services may have violated a third party's intellectual property rights, NEOGOV may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use. If these alternatives are not commercially reasonable, NEOGOV may end the subscription or license for the Services and refund a pro-rata portion of any fees covering the whole months that would have remained, absent such early termination, following the effective date of such early termination.
- c) **No Duty to Indemnify.** NEOGOV will not indemnify Customer if Customer alters the Service or Service Specifications, or uses it outside the scope of use or if Customer uses a version of the Service or Service Specifications which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Services or Service Specifications which was provided to Customer, or if the Customer continues to use the infringing material after the subscription expires. NEOGOV will not indemnify the Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by NEOGOV. NEOGOV will not indemnify Customer for any portion of an infringement claim that is based upon the combination of Service or Service Specifications with any products or services not provided by NEOGOV. NEOGOV will not indemnify Customer for infringement caused by Customer's actions against any third party if the Services as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third-party intellectual property rights.
- d) **Exclusive Remedy.** This Section provides the exclusive remedy for any intellectual property infringement claims or damages against NEOGOV.

## 15. Limitations of Liability.

- a) **EXCLUSION OF DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, OR LOSS OF REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- b) **CAP ON MONETARY LIABILITY.** WITHOUT LIMITATION OF THE PREVIOUS SECTION, EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF NEOGOV INTELLECTUAL PROPERTY RIGHTS, THE TOTAL LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY UNDER THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOGOV FROM

CUSTOMER DURING THE RELEVANT YEAR OF THIS AGREEMENT DURING WHICH THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT AND HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

## 16. E-Signatures.

- a) E-Signature Provisioning & Consent. NEOGOV E-Forms and other electronically signed services (“E-Signatures”) are provided by NEOGOV for two counterparties (generally a government employer (the “sending party”) subscribing to NEOGOV Services and Personnel or Job Seekers) to electronically sign documents. If you use E-Signatures offered by NEOGOV, you agree to the statements set forth in this Section. Whenever you sign a document using E-Signatures you affirmatively consent to using electronic signatures via the E-Signatures and consent to conducting electronic business transactions. You also confirm that you are able to access the E-Signatures and the document you are signing electronically. When using E-Signatures for a document, your consent applies only to the matter(s) covered by that particular document.
- b) Right to Opt-Out of E-Signatures. You are not required to use E-Signatures or accept electronic documents provided thereby. Personnel and Job Seekers can choose to not use E-Signatures and may sign the document manually instead by notifying the sending party they are choosing to do so and by obtaining a non-electronic copy of the document. NEOGOV assumes no responsibility for providing non-electronic documents. In the event a non-sending party elects to sign the document manually, do not use E-Signatures to sign the document.
- c) Electronic Download. If you have signed a document electronically using E-Signatures and transmitted it back to the sending party, NEOGOV provides the opportunity to download and print a paper copy of the document at no charge. If you later withdrawn your consent to using E-Signatures, please notify the sending party and stop using E-Signatures. Note that the decision to stop using E-Signatures after you have already used it does not change the legality of the documents you have previously signed using an electronic signature.
- d) E-Signature Validity. PLEASE NOTE THAT NEOGOV’S STATEMENTS CONTAINED HEREIN OR ELSEWHERE CONCERNING THE VALIDITY OF ELECTRONIC DOCUMENTS AND/OR THE SIGNATURE LINES OF DOCUMENTS THAT ARE ELECTRONICALLY SIGNED ARE FOR INFORMATIONAL PURPOSES ONLY; THEY SHOULD NOT BE CONSTRUED AS LEGAL ADVICE. UNDER FEDERAL AND STATE LAWS GOVERNING ELECTRONIC SIGNATURES, ELECTRONIC SIGNATURES ON CERTAIN TYPES OF AGREEMENTS ARE NOT ENFORCEABLE. NEOGOV HEREBY DISCLAIMS ANY RESPONSIBILITY FOR ENSURING THAT DOCUMENTS ELECTRONICALLY SIGNED THROUGH E-SIGNATURE’S ARE VALID OR ENFORCEABLE UNDER THE LAWS OF THE UNITED STATES OF AMERICA, ANY PARTICULAR STATE, OR ANY OTHER LEGAL JURISDICTION. YOU SHOULD CONSULT WITH LEGAL COUNSEL CONCERNING THE VALIDITY OR ENFORCEABILITY OF ANY DOCUMENT YOU MAY SIGN ELECTRONICALLY USING NEOGOV’S E-SIGNATURE’S.

17. Text Message Communications. NEOGOV may offer Job Seekers and Personnel the opportunity to receive text messages regarding job application or hiring process reminders, applicant status updates, or other human resource related notices. Since these text message services depend on the functionality of third-party providers, there may be technical delays on the part of those providers. NEOGOV may make commercially reasonable efforts to provide alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. NEOGOV shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert. NEOGOV cannot vouch for the technical capabilities of any third parties to receive such text messages. NEOGOV MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED AS TO: (i) THE AVAILABILITY OF TELECOMMUNICATION SERVICES; (ii) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES; AND (iii)



# NEOGOV

ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS, OR SETTINGS CONNECTED WITH THE SERVICES.

18. Cooperative Agreement. As permitted by law, it is understood and agreed by Customer and NEOGOV that any (i) federal, state, local, tribal, or other municipal government (including all administrative agencies, departments, and offices thereof); (ii) any business enterprise in which a federal, state, local, tribal or other municipal entity has a full, majority, or other controlling interest; and/or (iii) any public school (including without limitation K-12 schools, colleges, universities, and vocational schools) (collectively referred to as the "New Entity") may purchase the Services specified herein in accordance with the terms and conditions of this Agreement. It is also understood and agreed that each New Entity will establish its own contract with NEOGOV, be invoiced therefrom and make its own payments to NEOGOV in accordance with the terms of the contract established between the New Entity and NEOGOV. With respect to any purchases by a New Entity pursuant to this Section, Customer: (i) shall not be construed as a dealer, re-marketer, representative, partner or agent of any type of NEOGOV, or such New Entity; (ii) shall not be obligated, liable or responsible for any order made by New Entities or any employee thereof under the agreement or for any payment required to be made with respect to such order; and (iii) shall not be obliged, liable or responsible for any failure by any New Entity to comply with procedures or requirements of applicable law or to obtain the due authorization and approval necessary to purchase under the agreement. Termination of this Agreement shall in no way limit NEOGOV from soliciting, entering into, or continuing a contractual relationship with any New Entity.
19. Publicity. Each party hereto may advertise, disclose, and publish its relationship with the other party under this Agreement.
20. Force Majeure. NEOGOV shall not be liable for any damages, costs, expenses or other consequences incurred by Customer or by any other person or entity as a result of delay in or inability to deliver any Services due to circumstances or events beyond NEOGOV's reasonable control, including, without limitation: (a) acts of God; (b) changes in or in the interpretation of any law, rule, regulation or ordinance; (c) strikes, lockouts or other labor problems; (d) transportation delays; (e) unavailability of supplies or materials; (f) fire or explosion; (g) riot, military action or usurped power; or (h) actions or failures to act on the part of a governmental authority.
21. Independent Contractor; Third Party Agreements. The relationship of the parties shall be deemed to be that of an independent contractor and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto or constitute either party the employee or agent of the other. Customer acknowledges that nothing in this Agreement gives Customer the right to bind or commit NEOGOV to any agreements with any third parties. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not.
22. Entire Agreement; Amendment. This Services Agreement and documents incorporated herein, the applicable Ordering Document, and Special Conditions (if any) constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral and written statements of any kind whatsoever made by the parties with respect to such subject matter. "Special Conditions" means individually negotiated variations, amendments and/or additions to this Service Agreement of which are either drafted, or incorporated by reference, into the Ordering Document. Any Customer proposal for additional or different terms, or Customer attempt to vary in any degree any of the terms of this Agreement is hereby objected to and rejected but such proposal shall not operate as a rejection of this Service Agreement and Ordering Document unless such variances are in the terms of the description, quantity, or price but shall be deemed a material alteration thereof, and this Service Agreement and the applicable Ordering Document shall be deemed accepted by the Customer without said additional or different terms. It is expressly agreed that the terms of this Agreement and any NEOGOV Ordering Document shall supersede the terms in any non-NEOGOV purchase order or other ordering document. Notwithstanding the foregoing, any conflict of terms shall be resolved by giving priority in accordance with the following order: 1) Special Conditions (if any), 2) NEOGOV Ordering Document, 3) the NEOGOV Services Agreement and incorporated documents, 4) Customer terms and conditions (if any). This Agreement supersedes the terms and conditions of any clickthrough agreement associated with the Services. This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the party to be bound.
23. General. This Agreement shall be governed by and construed in accordance with the laws of Customer's State, without giving effect to conflict of law rules. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect. Provisions that survive termination or expiration are those relating to limitation of liability, payment, and others which by their nature are intended to survive. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given

# NEOGOV

either when personally delivered, one (1) business day following delivery by recognized overnight courier or electronic mail, or three (3) business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address set forth in the Ordering Document and (ii) NEOGOV at 300 Continental Blvd., Suite 565, El Segundo, CA 90245. The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission, by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature. Each party represents and warrants to the other party that (i) it has full power and authority under all relevant laws and regulations and is duly authorized to enter into this Agreement, and (ii) to its knowledge, the execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it. Customer may not assign this Agreement without the express written approval of NEOGOV and any attempt at assignment in violation of this Section shall be null and void. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.



# Order Form

NEOGOV

Governmentjobs.com, Inc. (dba "NEOGOV")  
300 Continental Blvd, Suite 565  
El Segundo, CA 90245  
United States  
billing@neogov.com

Customer:

Montclair, City of (CA)  
5111 Benito Street  
Montclair, CA 91763  
USA

Quote Valid From: 10/13/2021  
Quote Valid To: 11/30/2021

Quote Number: Q-03204  
Payment Terms: Annual Net 30

Employee Count: 195  
Order Summary

Year 1

Service Description	Start Date	End Date	Term Price
Insight Subscription			\$2,807.60
Onboard Subscription			\$2,456.80
Perform Subscription			\$4,211.60
<b>Year 1 TOTAL:</b>			\$9,476.00

Year 2

Service Description	Start Date	End Date	Term Price
Insight Subscription			\$7,019.00
Onboard Subscription			\$6,142.00
Perform Subscription			\$10,529.00
<b>Year 2 TOTAL:</b>			\$23,690.00

Year 1

Service Description	Start Date	End Date	Term Price
Insight Training			\$1,000.00

<b>Service Description</b>	<b>Start Date</b>	<b>End Date</b>	<b>Term Price</b>
Insight Setup			\$1,000.00
Onboard Training			\$1,000.00
Onboard Setup			\$500.00
Perform Training			\$1,000.00
Perform Setup			\$1,000.00
<b>Year 1 TOTAL:</b>			<b>\$5,500.00</b>

**ORDER TOTAL:** **\$38,666.00**

**A. Terms and Conditions**

1. Agreement. This Ordering Document and the Services purchased herein are subject to the terms and conditions of the NEOGOV Services Agreement attached hereto. Unless otherwise stated, all capitalized terms used but not defined in this Order Form shall have the meanings given to them in the NEOGOV Services Agreement.
2. Effectiveness & Modification. Neither Customer nor NEOGOV will be bound by this Ordering Document until it has been signed by its authorized representative (the "Effective Date"). Unless otherwise stated in this Ordering Document, all SaaS Subscriptions shall commence on the Effective Date. This Ordering Document may not be modified or amended except through a written instrument signed by the parties.
3. Summary of Fees. Listed above is a summary of Fees under this Order. Once placed, your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement.
4. Order of Precedence. This Ordering Document shall take precedence in the event of direct conflict with the Services Agreement, applicable Schedules, and Service Specifications.

**B. Special Conditions (if any).**

IN WITNESS WHEREOF, the parties have caused this Order to be executed by their respective duly authorized officers as of the date set forth below, and agree to the NEOGOV Services Agreement attached hereto.

**"Montclair, City of  
(CA)"**

**NEOGO**

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Print Name:** Javier John Dutrey, Mayor

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

**Date:** November 15, 2021

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

**Attest:** \_\_\_\_\_

**Print Name:** Andrea Myrick, City Clerk

## Exhibit A–Service Descriptions

Customer may use only those Services purchased or subscribed to as listed within the NEOGOV Ordering Document. NEOGOV Service descriptions for Services not purchased or subscribed to by Customer are provided for reference only and are subject to change.

### Insight Enterprise (IN).

Insight Enterprise is designed to address five major areas of human resource activities including recruitment, selection, applicant tracking, reporting and analysis, and HR automation. As described below, Insight Enterprise enables agencies to post class specifications online, post job announcements on Customer websites, accept online applications, conduct applicant tracking including EEO and other statistical analysis, create email/hardcopy applicant notices, complete item analysis, create/route/approve requisitions and hire actions online, and certify eligible lists electronically. A subscription to Insight Enterprise (IN) will include the following:

#### Recruitment:

- Online job application
- Configurable Career site
- Online job interest cards
- Recruitment and examination planning

#### Applicant Tracking:

- Email and hardcopy notifications
- EEO Data collection and reports
- Track applicants by step/hurdle
- Schedule written, oral, and other exams
- Candidate self-service portal for scheduling and application status

#### Career Pages:

- NEOGOV will provide the URLs for the Career Pages, which the Customer will use to advertise on their website. Customer will need to change the IP addresses of its promotional, transfer and ordinary job posting website links (Links provided by NEOGOV)

#### Reporting and Analysis:

- Standard system reports
- Ad hoc reporting tool

#### Selection:

- Configurable supplemental questions
- Define unique automatic scoring plans
- Test analysis and pass-point setting
- Score, rank, and refer applicants

#### Insight Training:

- NEOGOV will create a Customer-specific training environment for Insight Enterprise, which is used by Customer during training and afterwards to train in prior to moving into production.
- Customer will have full access to the demo/training environment setup for Insight Enterprise.
- NEOGOV training is available online (web-based, pre-built, content) unless otherwise proposed as included in the Ordering Document.
- NEOGOV's pre-built, online training consists of a series of web courses as well as a series of hands-on exercise designed to introduce the standard features and functions and may be used as reference material by the staff following training to conduct day-to-day activities. The pre-built, online training includes exercises that are designed to be flexible enough to allow Customer led training sessions internally to introduce user-specific requirements and processes for staff to learn the system as closely as possible to the customer's actual recruitment processes after go-live.

### Insight Candidate Text Add-On

Send messages through the Insight platform to candidates who agree to receive text notifications on their mobile device. Provide them with updates on the status of their applications, interview times, next steps in the application process, and application results.

### Insight Canvassing Add-On

The canvassing feature automates the distribution and collection of canvassing forms. It allows organizations to email notify candidates to complete a canvassing form for a specific job opportunity. Candidates access the form within their jobseeker account. Employers can access the submitted forms from each candidate and set access restrictions. The history of dates the form is sent and received is maintained within the system.

### Position Management (PM).

Position Management is designed to track, monitor, and implement approval workflows relating to Position status and Position requests. Tracked fields of budgeted positions include job title, department, job classification, position types, FTE, custom fields, and more. In addition, PM allows for an audit trail of position requests and permits a seamless integration into the NEOGOV HRIS to transmit Position data and track filled or vacant positions.

### GovernmentJobs.com Job Posting Subscription (GJ).

Agency can advertise their job openings on the governmentjobs.com employment website. This secondary NEOGOV job board consistently attracts more than 300,000 visitors per week, greatly expanding the audience of job postings. Applicants can search for jobs based on geographical location and/or keyword, helping them find jobs at agencies within which they are not specifically searching. Applicants can apply and monitor their application directly from governmentjobs.com, making the application process seamless and simple. All job postings are shared to GovernmentJobs.com automatically from the agency's primary career page when this subscription is enabled.

### Perform (PE).

Perform is designed to address the major areas of human resource activities centered around employee performance management. As described below, Perform includes built-in workflow for business processes, configurable tasks, performance evaluations and reports. A subscription to Perform will include the following:

- Configurable Performance Evaluations
- Ability to build Library of Goals, Competencies, and Writing Assistants
- Shareable Competency Content
- Development Plans
- Configurable Process Workflows
- Scored and Non-scored Rating Scales Log of Performance Observations throughout the year
- Configurable Email Notifications
- Automatic Evaluation Creation
- Ability to perform actions in bulk for Employees & Evaluations

- Peer Reviews & Multi-rater capability

## **E-Forms (EF).**

E-Forms is designed to provide customers the means to complete all employee paperwork online. Features include automated approval and signature routing, electronic personnel files, conversion of PDF files to online forms, E-signature, and automated notifications.

## **Onboard (ON).**

Onboard is designed to facilitate the onboarding process for new hires. As described below, NEOGOV maintains standard forms as part of the annual subscription. Agencies shall maintain any custom forms created by Customer. A subscription to Onboard (ON) will include the following functionality:

- Electronic Employee File of Onboard forms
- Federal I9 and W4 forms
- Checklists of tasks to create specific Onboard process by position, department, division or class spec
- Configurable new hire portal
- Ability to promote, rehire and offboard employees (task assignment based on new position)
- Global form bank
- Configurable Email Notifications
- Automation of Onboard process
- Build your own Onboarding forms. Onboard (ON) includes Federal I9 and Federal W4 forms which are updated as new versions are released. Additional forms or form maintenance is available from NEOGOV at the following cost:
  - Background forms \$295 per form
  - Dynamic Forms \$40 per form
  - Updates to existing forms \$200 an hour

## **Learn (LE).**

Learn is designed to provide a seamless experience for organizations to train and develop employees. LE addresses the critical need of organizations to ensure completion of required trainings. By tracking both in-person and online training in one central place, organizations can improve employee performance and safety and reduce risk and liability claims. A subscription to Learn (LE) will including the following:

- Create, schedule, enroll learners in, and track completion of online and in-person, classroom trainings
- Ability to upload SCORM course content files
- Certificates after course completion
- Learner transcripts & class rosters
- Course catalog with configurable categories for learners to browse
- Centralized dashboard that displays all required and elective trainings (online and in-person) that employees are enrolled in
- Off-the-shelf online courses
- NEOGOV will work with Customer staff to understand the existing processes, as well as other workforce business practices, where applicable.

## **Core HR (CHR)**

Core HR is designed to be a combination of Human Resource data and IT resource to maintain detail and history around their human resource capital. This includes organization structural design, employee records, benefit plans and administration, attendance/leave plans, and more. A subscription to CoreHR includes, but is not limited to the following:

- Organizational management
- Benefits administration and online open enrollment
- Attendance/Leave management
- Employee and manager self-service
- Reporting and analytics
- PA's and workflow
- Union contracts
- FMLA tracking

## **Payroll (PR)**

Payroll is designed to further enhance the CoreHR technology with the ability to process payroll directly in the HRIS. This feature-rich module handles all your payroll processing needs and complexities unique to your agency. A subscription to PR includes, but is not limited to the following:

- Premiums and shift differentials
- FLSA true up
- Retro pay calculation
- Job/fund costing
- General ledger integration including cost allocations
- W2, 1095, garnishment, tax, and year-end processing

## **Time and Attendance (TA)**

Time and Attendance is designed to assist in the tracking of employees work time. This module complements payroll by capturing time and calculating items such as various overtime rules, shift differentials, and job/cost tracking. A subscription to TA includes, but is not limited to the following:

- Unlimited work rule/shifts
- Holiday calendars
- Online timesheets
- Scheduling
- Approvals

## **Exhibit B - Security Statement**

Date: December 1, 2020

This Security Statement applies to the web Services offered by Governmentjobs.com, Inc., including the websites “Governmentjobs.com”, “NEOGOV”, or “NEOED”, the subdomains and subdirectories of each, but excluding services that explicitly state they are subject to different terms and conditions. Where we have control of your data, we take our responsibility to implement security controls seriously. We implement physical, technical, and administrative safeguards to prevent unauthorized access, maintain accuracy, integrity, security, and facilitate correct use of personal information. The following is a brief overview of the security we have in place to protect your data.

### **Physical Security**

Our information systems and technical infrastructure are SOC 1 and SOC 2 accredited. Physical controls at the data centers include 24x7 monitoring, biometric access and mantraps, cameras, visitor logs, entry requirements, and dedicated cages.

### **Compliance**

Governmentjobs.com is SOC2 Type 2 certified, PCI-DSS self-certified, and NIST 800.53 Low certified. NEOGOV is also in the process of obtaining FedRAMP certification.

### **Access Control**

Access to our technology resources is only permitted through secure connectivity (e.g., VPN). Our production password policy requires complexity, expiration, and lockout. We grant access on a need to know basis and revoke access after employee termination.

### **Security Policies**

We maintain and regularly review and update our information security policies. Employees must acknowledge policies and undergo additional job specific security and/or privacy law training for key job functions.

### **Personnel**

We conduct background screening at the time of hire (to the extent permitted or facilitated by applicable laws and countries) and rescreening. We also distribute our relevant information security policies to all personnel and require personnel to sign non-disclosure agreements. Only authorized employees with a reasonable need related to their job duties have access to personal information. Employees who violate our policies are subject to disciplinary action, up to and including termination.

### **Security Personnel**

We have an Information Security Team responsible for security compliance, education, and incident response.

### **Vulnerability Management and Penetration Tests**

We conduct periodic scans and remediation of security vulnerabilities on servers, network equipment, and applications. All networks, including test and production environments, are regularly scanned. Critical patches are applied to servers on a priority basis and as appropriate for all other patches. We also conduct regular internal and external penetration tests and remediate according to severity for any results found.

### **Encryption**

We encrypt data in transit and at rest.

### **Information Security Incident Management**

We maintain security incident response policies and procedures covering the initial response, investigation, customer notification (no less than as required by applicable law or contractually required), public communication, and remediation. These policies are reviewed regularly.

### **Breach Notification**

Despite best efforts, no method of transmission over the Internet and no method of electronic storage is perfectly secure. We cannot guarantee absolute security. Our breach notification procedures are consistent with our obligations under applicable country level, state and federal laws and regulations, as well as any industry rules or contractual commitments. We may seek to notify you by e-mail.

### **Information Security Aspects of Business Continuity Management**

Our databases are backed up on a rotating basis of full and incremental backups and verified regularly. Backups are encrypted and tested regularly to ensure availability.

### **Third Parties**

We maintain contractual data security and privacy obligations with our partners that send or receive personal information.

### **Your Responsibilities**

Keeping your data secure also requires that you maintain the security of your account by using sufficiently complicated passwords and storing them safely. You should also ensure that you have sufficient security on your own systems.



## Exhibit C - PRIVACY POLICY

Effective Date: February 19, 2020

### Contents

- Introduction
- About this Policy
- Information We Collect About You
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- Information We Disclose
- Your Data Rights
- Retention and Removal
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- Data Security and Integrity
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### Introduction

Governmentjobs.com, Inc. (DBA “NEOGOV”; “NEOED” and referred to herein as “we”, or “us”) is committed providing transparency regarding use of your information. We collect personal information by lawful and fair means with your knowledge and where appropriate, your consent. We consider information privacy throughout our product lifecycle - from inception, to production, and ongoing support.

The principal purpose of this Privacy Policy (the “Policy”) is to describe how we collect, use, protect, and disclose personal information online and offline but excluding services that state that they are offered under a different privacy policy.

## About This Policy

By using any part of the Services you agree that your information will be processed as described in this Policy and you have read and agree to be bound by this Policy. Please note, this Privacy Policy does not apply to information collected by our partners, sites that link to or are accessible from our Services, and employers that utilize our Services (our “Customers”) that have their own privacy policies you may be subject to.

This Privacy Policy is incorporated into the Governmentjobs.com Terms of Use. Definitions not explicitly defined herein shall retain the meaning as prescribed in the Terms of Use. Any dispute related to privacy is subject to the Terms of Use and this Policy, including limitations on liability. If you disagree with this Policy or NEOGOV’s Terms of Use, please do not use our Services.

## Information We Collect About You

We require certain personal information in order to provide you Services, automatically collect information during your usage, and collect other information about you from other sources. The information we collect depends on the context – who “you” are in a given interaction and how you are using our services. In this Section we set out general categories of personal information and data we may collect and process.

### Information Provided By You

We collect information from you directly when you visit our Services from either your computer, mobile phone, or other device. For example, certain information we collect is necessary to provide the Services to you or our Customers, such as the information collected with you create an account, submit a job application, or information used to interact with you regarding support or inquiries about our Services. We also collect information from you to register for text message or email communications, or when communicate through the Services. The categories of information we collect include the following:

**Inquiry and Contact Data.** We process information contained in or relating to any inquiry and contact information you submit to us regarding the Services, support, in response to a survey, or interaction with our sales team, including: name; email; phone number; address and related contact data. If you are a Customer or one of our partners, we collect Contact Data of primary users or designated contacts to administer the relationship or for other specified purposes.

**Account Data.** We may process your account data which may include your account credentials, email address, and account activity or other security related information.

**Job Application and Profile Data.** We may process personal information within the job applications you send to employers who use our Services, as well as information processed on our Services throughout the relationship you

maintain with that employer. Typical personal information found in a job application or within a user profile may include name, address, e-mail, telephone number, resume, driver's license, work experience and performance data, education history, age, gender, race, information related to your health or financial information, marital status, military or veteran status, your signature, or and any other supplemental information added at your discretion or requested by an employer.

**Transaction and Billing Data.** We allow payment processing companies to process information relating to transactions, including purchases of Services, that you enter on the Services or payment processor website, or to facilitate processing of payroll and tax services. If you make an online payment to us through a payment processing company, we require you to provide your billing details, a name, address, email address and financial information corresponding to your selected method of payment (e.g. a credit card number and expiration date or a bank account number).

**Voice Data.** With your permission we collect voice recordings when you interact with our support teams to diagnose issues, our product teams to improve our services, our implementation teams during implementation of our Services, and our sales teams while providing demos of our Services.

**Biometric Data.** We collect fingerprints to identify who you are when you punch in and out on our timeclocks, for example, when you place or your finger or hand on the timeclock's scanner. If our Customer uses biometric scanning on a timeclock, we may create data using a mathematical algorithm based off your fingerprint and store that Biometric Data. For more information regarding our use of Biometric data, please see our [Biometric Data Notice](#).

**Publication Data.** We may process information that you post for publication on our website or through our Services (e.g., feedback comments, information you provide to our support teams, videos, photographs, images).

**Contests and Survey Data.** When you complete any forms, respond to a survey or questionnaire, or participate in a contest, we collect the personal data you provide.

**Resume Data.** We collect information to evaluate you for a job opening with us, including your name, employment and education history, and references.

You may voluntarily submit other information to us through our Services that we do not request, and, in such instances, you are solely responsible for such information.

#### **Information Collected Automatically**

With the help of our Service Providers, we also automatically collect information about you and your device and how you interact with our Services. Categories of information collected automatically include the following:

**Usage Data.** We may process data about your use of our Services. This information may include webpages visited, what you click on, features you use, how often and when you use features, e-mails you view, and the Services you purchase.

Location Data. We collect data about your device's location by tracking the IP address, and data that indicates a country, state, city or postal code. Where a Customer utilizes our time clocks, we collect precise location data (latitude/longitude) of the timeclock you use to punch in and out of your work shifts.

Device Data. We may process information about your device or how you access our Services. Device Data may include Internet protocol (IP) address, browser type, device type, software and hardware attributes, your operating system, system and performance information, cookie date/time stamp, and search terms entered on the site.

Tracking Data. We use tracking services that employ logs, cookies, pixel tags, and embedded scripts to collect user statistics and usage about visitors of our Services and receipt of communications.

Log Data. Our servers maintain log files that document events that occur during interaction with our Services and servers. Logs include information about the nature of each access, IP address, ISP, files viewed, content changes in certain cases, operating systems, device type and timestamps.

Cookie Data. We use cookies to improve your online experience and tailor content to you. For more information on Cookies see the "Cookies" section below.

Pixel Tags. We use pixel tags (aka "web beacons") in combination with cookies that are embedded in our emails and webpages. Pixel tags send information about your use to our servers.

Embedded Scripts. We use embedded scripts to collect information about how you interact with our Services.

#### **Information From Other Sources**

We also receive information about you from other sources. For example, we receive information about the status of background checks you participate in, updates from payment processors regarding your purchases, receipts and analytics for text communications you send and receive, and information you provide to, or automatically collected by, our hosting providers.

Categories of information collected from other sources include the following:

Partners. We collect and use information collected by integrators and from partners for joint product and marketing opportunities. This information may include Account, Transaction, Billing, Profile, and Tracking Data. Integrations may include payment processing companies, background check and online assessment providers, communication providers, performance or analytics providers, or HR related services employers choose to integrate with our Services.

Public sources. We collect information from publicly accessible websites and government sources.

Data brokers. We purchase additional contact data to supplement and correct the Contact Data we collect.

#### **Our Use of Your Information**

We collect and process information in order to fulfill our contractual responsibility to deliver the Services, fulfill your requests, pursue our legitimate interests and our business and commercial purposes. Your information will only be collected and used for purposes stated herein, where you provide additional consent, or as required by law or regulation - including national security or law enforcement requirements. Our purposes for using your information, including over the past year, consist of the following:

- to process and manage our Services including to facilitate your use of such Services, maintain your user preferences, to help others find your profile and make your profile viewable by potential employers, transfer your job applications to potential employers (NEOGOV's Customers), post for publication on the Services, and facilitate HR processes
- to communicate with you and send you information as part of the Services regarding your requests for information, contests you entered into, newsletters and surveys, technical notices, security alerts, support and administrative messages, significant updates to the Services or policies, as well as relevant notifications regarding your account or job application, job suggestions, or the status of your background check or assessment (to learn how to manage these communications, see "Your Data Rights" below)
- allow our Customers, their personnel, and job applicants to communicate with one another
- marketing our products and features (for as long as you do not opt-out), measure the performance of email messaging and promotional campaigns, learn how to improve email deliverability and open rates, and improve our business activities
- to provide support, troubleshoot and diagnose problems with our Services or servers, fix bugs, ensure the security of our Services, maintain back-ups of our databases, optimize the Services for particular devices and browsers, and ensure the Services are accessible
- make improvements, enhancements, or modifications to the Services through data analysis and research of usage trends, feedback sessions, and analysis of enhancements contained in or relating to any communication you send us

- make payments through the Services, bill you for use of our Services (if applicable), send notices regarding status of payments, forward payroll and tax information to partners to facilitate processing, and to ensure the Services you pay for those you have access to
- track your preferences and behavior to identify and understand trends in the various interactions with our services and internal system administration, determine country of origin, identify clickstreams that led you to our Services, and make personalized recommendations of relevant job opportunities, features, and other content
- ensure you can use our Services in conjunction with other services and facilitate your use of integrations
- to verify your identity or confirm your location
- to conduct research on social, economic and public sector hiring trends
- fulfill other business activities at your direction
- to respond to legal requests or prevent fraud, enforce our legal agreements where applicable, prevent potentially illegal activities, and screen for and prevent undesirable or abusive activity

We also use your information with your consent, including the following:

- make personalized recommendations of content and features
- to help others find your profile and make your profile viewable by potential employers and transfer your job applications to employers
- communicate with you and send you information as part of the Services regarding your requests for information, contests you entered into, newsletters and surveys, significant updates to the Services or policies, as well as relevant notifications regarding your account or job application, or the status of your background check or assessment. Please note, you cannot opt-out of receiving service messages from us, including security and legal notices.

We use your data to derive data that does not identify you in order to provide Customers with useful and relevant insights, build features, improve our Services and to develop de-identified data services. For instance, we combine information about you from your use of the Services with other information to make inferences about your job opportunities or Customer HR processes. We may produce the insights with the help of independent sources and processors. This Privacy Policy does not apply to non-personal information or instances where we aggregate or de-identify personal information.

### Information We Disclose

We share information with other parties for the purposes stated herein or as required by law. The following categories are the entities we've shared information with, including over the past year.

#### Employers

We disclose information to employers that utilize our services. For instance, when a job seeker makes their profile information searchable within our Services or responds to a job posting, we will share information with employers in order to facilitate the job search and hiring process. If your current or former employer uses one of our Services, information you input into the Services is accessible by that employer's end users - subject to the security and access controls set up by the employer.

Please note: Job applications and other information submitted to employers are generally controlled and managed by the employer. In those instances NEOGOV is processing that information on behalf of the employer - our Customer. Our legal obligations as a processor are set out in our Customer contracts and policies. If you apply to a job, make your profile viewable to employers, provide information to show interest in a job, or reply to a message from an employer using our Services, you consent to disclosing your information to that employer for their personnel to complete recruitment and hiring processes, contact you for current or future job opportunities, and respond to your support, product, and transaction inquiries. This Policy does not describe the processing of your information by our Customers, and we encourage you to visit the applicable Customer's privacy policy for information about their privacy practices. Any questions you may have relating to the information processing by our Customers and your rights related to that processing should be directed to the agency you applied to or your employer that utilizes NEOGOV services.

#### Affiliates

We disclose information to our affiliates with our Customer's consent in order to facilitate any Service transition or implementation services.

#### Service Providers

We share information with services providers hired to provide services on our behalf. For instance, we use service providers to facilitate our support services, data security, email, web hosting, credit card payments, deliver and help us track our marketing and advertising content, deliver payroll processing and disbursements, coordinate our customer conferences, and manage our sales and customer relations. We share information with analytics and advertising companies that may act as our processor and a controller in other instances. We work with other entities to perform research, under controls that are designed to protect your privacy. We publish or allow others to publish insights, presented as aggregated, de-identified, or non-personal data. Where we share information with a party that is not our service provider, such sharing is either at your direction or the direction of our Customers. For example, we share information if you or a Customer chooses to use an integration in conjunction with our Services, to the extent necessary to facilitate that use. Integrations may include payment processing companies, background check and online assessment providers, communication providers, or other independent services Customer chooses to utilize our open API with.

We may share non-personal information with affiliated partners and use machine learning techniques on tracking and metadata in order to provide Customers with useful insights from the data they collected using Services, to build or enhance features, improve Services, and improve infrastructure and security.

We do not sell information in the traditional sense; however, should an activity we undertake constitute a “sale” under the expanded definition of “sale” within the California Consumer Privacy Act, California consumers have the right to opt-out of the sale of your personal information. Please see “Your Data Rights” and “Your California Privacy Rights” for more information on how to exercise your right to opt out.

#### **Other Parties When You Give Your Consent**

We may also share personal information where you provide your consent or post your information publicly. Where required by law, additional consent is obtained before personal information is transferred to us or forwarded to other parties. For example, we share information with background check providers if a job applicant consents and we are instructed to do so by our Customers.

During your use of the Services you may have the opportunity to visit or link to other websites, including websites by third parties unaffiliated with us. We have no relationship or control over unaffiliated websites. These websites might collect personal information about you, and you should review the privacy policies of such other websites to see how they treat your personal information. Use of such websites are at your own risk.

#### **Mergers, Acquisitions, Dissolutions**

We may transfer or disclose information to another entity who acquires or may acquire any or all of our business units, whether such acquisition is by way of merger, consolidation or purchase of all or a substantial portion of our assets, or bankruptcy.



### Other Third Parties Where Required By Law

We also share personal information or data in order to: meet any applicable law, regulation, legal process or enforceable governmental request; enforce applicable policies, including investigation of potential violations; detect, prevent, or otherwise address fraud, security or technical issues; protect against harm to the rights, property or safety of our users, the public or to NEOGOV and/or as required or permitted by law; protect your vital interests or the vital interests of another natural person; and where disclosure is necessary for establishment, exercise or defense of legal claims or where there is reasonable belief that disclosure is required by law or regulations.

### Your Data Rights

You can review and enforce your personal information rights through your account, communications you receive from us, third party mechanisms, or with the assistance of our support team.

Our Services incorporate privacy controls which allow you to specify and limit how we process your information, as well as update and remove information we retain about you.

For instance, to place limits on which Customers can preview your profile, log into your account on <https://www.governmentjobs.com> and go to your account settings. Job seekers can utilize similar privacy controls on a per Customer basis in each Career Page account created.

In certain circumstances you have the right to have inaccurate personal information about you rectified. You can modify or delete personal information within your account at any time by logging in to your applicable account and following the prompts to either “update my profile” or “delete my profile.”

You can change your email preferences to control notifications you receive from us and Customers or unsubscribe from a notification by following instructions contained within the notification itself, your account settings, or using your email provider preferences.

SMS text messages will be sent to you strictly in accordance with your preferences, and only after you have explicitly opted in. If you change your mind at any time, and no longer wish to receive SMS text messages, reply to a message with the word “OPTOUT” in all capital letters. Afterwards, should you choose to begin receiving messages again, reply with the word “OPTIN” in all capital letters. Job seekers may also control their receipt of SMS text messages through their job seeker Account preferences, by contacting the Customer the text message pertains to, or by notifying support at [support@GovernmentJobs.com](mailto:support@GovernmentJobs.com).

You can restrict cookies by using your cookie manager settings.

You may have the right to confirmation as to whether or not we process your personal information and, where we do, access to the personal information. To see whether information on you is retained on our servers, please [click](#)

[here](#). Certain users are entitled to request copies of their personal information held by us. You can print a copy of your Profile information using your web browser and download your attachments at any time by logging into your account and following the download process.

For inquiries related to resetting your account, or if you believe someone else has gained access to your account or provided us your contact information, please contact support at: [support@GovernmentJobs.com](mailto:support@GovernmentJobs.com). If you have a valid data subject request, including a request to restrict or limit our use of your information, you may either contact support at [privacy@governmentjobs.com](mailto:privacy@governmentjobs.com) or fill out a Data Subject Request Form if available.

To the extent the basis for our processing of your personal information is consent, you have the right to withdraw that consent at any time by using the privacy controls in your settings, within certain contacts you receive, by deleting personal information within your Profile, or by deleting your account. If you revoke your consent by deleting your account, your Profile will be removed from our job seeker server; however, revoking your consent will not remove applications you previously submit to employers or our aggregated, de-identified, or non-personal data.

#### [Your Data Rights for Information You Submit to Our Customers](#)

Upon submission of a job application or making your information available to an employer (our Customer), your information is controlled by that employer. In this regard, we are a data processor for personal information employers' maintain in our servers, and we maintain limited rights to such data as permitted by our Customers', to process as necessary to deliver the Services or support to Customers', ensure safety and security of our Services, where necessary to protect our interests or the public interest, or as required by law.

For these reasons, we are not in a position to directly handle data requests for data controlled by Customers.

Customers may store personal information they receive from you on our servers or their own storage facilities.

Customers control the types of personal information requested from you, how it's used, who can access it, and how long they retain this personal information. Your data rights are subject to Customer internal policies and applicable law. You should contact the Customer regarding personal information they may hold about you and to exercise any data rights you may have. We will cooperate with such inquiry to the extent it is permitted under our confidentiality and privacy obligations.

#### [Retention and Removal](#)

We retain your personal information for as long as your account is considered active, to provide you or our Customers our services, meet regulatory requirements, resolve disputes, investigate security incidents, prevent fraud and abuse, protect your vital interests or the vital interests of another natural person, enforce our contractual agreements, or fulfill your request to "unsubscribe" from messages or exercise your data rights.

Our retention policies and procedures are designed to help ensure our compliance with legal obligations and allow Customers to comply with their own record retention requirements. We implement retention controls within the Services that Customers utilize to control their data retention periods. The Customer determines when the purpose of personal data about their employees has been fulfilled. The Customer has the means to permanently destroy personal data about their employees.

For personal information we determine the purposes for and means by which it is processed, such information will not be kept for longer than necessary for the purpose, when no longer relevant, or upon permissible request, and will be appropriately disposed in a manner designed to ensure it cannot be reconstructed or read.

Upon deletion of a job seeker account or any data point within the job seeker account, it will be removed from our job seeker database; however, your data may persist elsewhere, such as applications you previously submit to Customers will persist until Customer disposal. Job seekers should contact the Customer they sent the application to if they seek enforcement of eligible data rights in that application. We may retain de-identified information after your account has been closed.

#### **Cookies and Similar Tracking Technologies; "Do Not Track"**

A cookie is a file containing an identifier (a string of letters and numbers) that is sent by a web server to a web browser and is stored by the browser and device you use to access our Services. The identifier is then sent back to the server each time the browser requests a page from the server.

Cookies may be either "persistent" cookies or "session" cookies. A persistent cookie will be stored by a web browser and will remain valid until its set expiry date, unless deleted by the user before the expiry date; a session cookie, on the other hand, will expire at the end of the user session, when the web browser is closed.

We and our partners use cookies on our Services. Insofar as those cookies are not necessary for the provision of our Services, or the legitimate interests of delivering and optimizing our Services, we receive your consent to use of cookies when you first visit our Services. When your browser or device allows it, we use both session cookies and persistent cookies for the following purposes:

- Authentication to identify you when you visit our Services, as you navigate our Services, to confirm whether you are currently logged in, and determine if an occurrence affects you.
- Metrics to determine how you use the Services, what features you utilize and how often, how much time you spend on the Services and features, and other details about the hiring and HR process. This data is aggregated and anonymized.

- Personalization to store information about your preferences and personalize our Services to you, including to supply Customers with details about their hiring processes, and provide job recommendations to job seekers and Customers based on their past interest.
- Security to protect user accounts, including preventing fraudulent use of login credentials and to protect our Services generally.
- Advertising and feedback to determine whether our advertising and feedback inquiries are received, opened, if the content or campaign is effective, and to provide you more specific content about Services we or our partners offer.
- Analysis to help us analyze the use and performance of our Services, and display different versions of features or content, all of which helps us determine what parts of our Services need improvement and which ones you enjoy most (which may include marketing content).
- Google Analytics and AdSense to analyze the use of our Services and publish advertisements. Google's use of advertising cookies enables it and its partners to serve ads to your users based on their visit to your sites and/or other sites on the Internet. You may opt out of personalized advertising by visiting Ads Settings.
- You can opt out of vendor use of cookies for personalized advertising by visiting [aboutads.info](http://aboutads.info). In addition, most browsers allow you to refuse to accept or delete cookies. The methods for doing so vary from browser to browser. Please refer to your browser instructions on how to manage your cookies. Blocking all or some cookies may have a negative impact upon the usability of the Services, and there is no industry consensus as to what site operators should do with regard to these signals. Accordingly, unless and until the law is interpreted to require us to do so, we do not respond to the browser "Do Not Track" signal if enabled by the end user in their web browser. When other parties we integrate with set or read their own cookies, they may or may not respond to the DNT signal.

Other data gathering mechanisms, such as web beacons, HTML Storage Objects, and web tags, are used by us and our service providers to gather more specific information on your use. A web beacon (also called a web bug or clear GIF) is a graphic on a webpage or in an email message that is designed to monitor who is reading the page or message. Web beacons are often invisible because they are typically only 1-by-1 pixel in size. Web beacons are

often used alongside cookies to track activity. Web beacons may be used to add information to a profile about a site visited, provide an independent accounting of how many people have visited a website, gather statistics about usage, among other things. HTML Storage Objects are program code that collects information about your activity on our Services. The HTML is temporarily downloaded onto your device while you are connected to our Online Services.

### Data Security and Integrity

We implement physical, technical, and administrative safeguards designed to maintain data accuracy, integrity, and security, prevent unauthorized access, and facilitate correct use of personal information. These safeguards include limiting access to data, storing personal information on secure servers and computers, encrypting personal information at rest and in transit, periodically testing our security technology, and training our employees in information security.

In addition, we seek to maintain contractual data security, confidentiality, and privacy obligations with our partners and vendors, and our employees that have access to personal information are subject to access, use, and confidentiality policies. Only authorized employees with a reasonable need related to their job duties have access to Customer and job seeker personal information. Employees who violate our policies are subject to disciplinary action, up to and including termination.

Although we maintain the controls listed herein, transmission of data is not without risk and we complete security of your information cannot be guaranteed. Please note, you are responsible for keeping your username and password secret at all times.

In the event we believe the security of your personal information in our possession or control may be compromised, we may seek to notify you by e-mail and you consent to our use of e-mail as a means of such notification.

### Information on Children

These Services are not directed at children under the age of thirteen (13) and we do not knowingly collect personal information from children under the age of thirteen (13). If we become aware that we have inadvertently received personal information from a person under the age of thirteen (13), we will delete the information from our records. If you believe that we have collected personal information from a child under 13 without parental consent, you may report this to us at [privacy@governmentjobs.com](mailto:privacy@governmentjobs.com).

If you are a California resident under 18 years old, you have the right to remove information you have posted to our Services. Please contact us at [privacy@governmentjobs.com](mailto:privacy@governmentjobs.com) and describe what information you've posted that you now want removed. We will use reasonable efforts to remove such information in compliance with the law and our

other obligations stated herein. We do not sell the personal information of consumers we actually know are less than 16 years of age, unless we receive affirmative authorization from either the consumer who is at least 13 but not yet 16 years of age, or the parent or guardian of a consumer less than 13 years of age.

### Your California Privacy Rights

If you are a California resident, you have additional data rights including:

- Right to notice of collection

We've provided details on what information is collected about you in Section 4 "Information We Collect About You". However, to ensure compliance with CCPA, the following categories of information as defined by the CCPA have been collected over the past year.

- Direct identifiers such as your name, User ID, and email.
- Commercial information such as your transactions and purchases.
- Employment and education history information including when you submit a job application through our services or apply to a job at NEOGOV.
- Demographic data including your race, ethnicity, gender, marital status and any other demographic information requested by our Customers.
- Internet or other electronic network activity including your search history on our job board, analytics regarding your use, and device identifiers for location and security.
- Audio and electronic data including your signature and voice recordings collected with your consent while speaking to our support, sales, or product teams.
- Information inferred and derived from other categories to determine your preferences and trends.
- Right to notice of your data rights
- Right to opt out of sale ("Do Not Sell My Information")

NEOGOV allows select companies to place tracking technologies like cookies on our sites, which allow those companies to receive information about your activity on our Services. The companies may use that data to serve you more relevant ads on our sites or others. Sharing data for online advertising like this may be considered a “sale” of information. California consumers have a right to opt-out of these sales. You have control over whether these technologies work on your devices. You can disable them using browser Do Not Track features or Cookie Settings provided by us.

- Right to know the categories of personal information collected about you and the business or commercial purpose of collection, the categories of collection methods and sources, categories of entities your information is sold or disclosed for a business purpose or disclosed to third parties for a business purpose - as well as the purpose of such disclosure (provided in the preceding sections of this Privacy Policy)
- Right to access certain specific data fields stored about you and the right to delete such data
- Right to non-discrimination by us for the exercise of any of your rights. on price or our Services based on your exercise of data rights
- Right to have an authorized agent exercise your rights on your behalf. Note that we will require written proof of the agent’s permission to do so and will verify your identity directly.

To exercise these rights, you can either contact our support team at [privacy@governmentjobs.com](mailto:privacy@governmentjobs.com). If you exercise your rights through emailing our support teams, please title the email “California Privacy Rights Request”, and within the body of the email specify what right you seek to invoke. Please note, if we cannot verify your identity we may deny certain data right requests.

You can designate an authorized agent to submit requests on your behalf, but we require written proof of the agent’s permission and verify your identity directly.

California Civil Code Section 1798.83 permits our visitors who are California customers to request certain information regarding our disclosure of personal information to third parties for the third parties’ direct marketing purposes. To make such a request please send a letter to: Governmentjobs.com, Inc., 300 Continental Blvd. Suite 565, El Segundo, CA 90245 Attn: Privacy Department. Requests must include “California Privacy Rights Request” in the first line of the description and include your name, street address, city, state, and ZIP code. Please note Governmentjobs is not required to respond to requests made by means other than through the provided mail address.

## Your Nevada Privacy Rights

A sale under Nevada law is the exchange of personal information for monetary consideration. We do not currently sell personal information as defined under Nevada law. If you want to submit a request relating to our compliance with Nevada law, please contact us as at [privacy@governmentjobs.com](mailto:privacy@governmentjobs.com) and include the words “Nevada Rights” in the subject line.

## Your Rights and Control Under EU GDPR

### Data Controllers and Processors

Our Customers use our Services to post job opportunities, evaluate job applicants, manage their human resource activities, and train their workforce. In conducting these activities, the Customer maintains control over what information is collected, how it is used, how long it is retained, and who it is disclosed to. For purposes of the EU GDPR, the Customer is considered a data controller in these respects and NEOGOV is a data processor. In other instances, such as when NEOGOV uses cookies or sends you Contact about our Services, NEOGOV will determine the means and purpose of processing.

### Lawful Basis for Processing

For personal information subject to GDPR, we rely on multiple legal bases for processing, including:

- Consent (which can be revoked by utilizing privacy controls, deleting Profile or Account Data, or contacting support).
- When processing is necessary to perform a contract (e.g. delivering you the Services).
- Legitimate business interests such as developing the Services, marketing new features or products, proper administration of our website and business, ensuring safety and security.
- Where necessary to protect vital or public interests.
- As required by law.

### EU Data Subject Rights

Data subjects in Europe whose information we receive through appropriate safeguards have legal rights to determine whether we hold personal data about them, to access personal data we hold about them, and to obtain its correction, update, amendment, or deletion in appropriate circumstances. In particular, your rights may include:

- Data Access Rights
- Right to Restrict Processing



- Right of Rectification
- Right to be Forgotten
- Right to Object to Processing
- Right to Withdraw Consent; and
- Data Portability Rights

Some of these rights may be subject to exception and limitation. In any case, we will respond to your request to exercise these rights within a reasonable time but no later than within 30 days of receiving a request. To request to exercise your rights, you may contact us at [privacy@governmentjobs.com](mailto:privacy@governmentjobs.com). Some of the rights are complex, and you should read the relevant laws and guidance from the regulatory authorities for a full explanation of these rights. You may also have the right to make a GDPR complaint to the relevant Supervisory Authority. A list of Supervisory Authorities is available here: [https://edpb.europa.eu/about-edpb/board/members\\_en](https://edpb.europa.eu/about-edpb/board/members_en)

If you visited our website and you want to exercise any of the above rights please contact our support team or privacy team at the contacts listed herein. If your request is for the right to be forgotten as it relates to our use of cookies, you can achieve this by clearing the cookies in your browser settings.

#### **International Transfers**

For personal data transferred from the European Union, the United Kingdom, or Switzerland, we will provide appropriate safeguards, such as through use of standard contractual clauses.

Governmentjobs.com, Inc complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data from European Union member countries, the United Kingdom, and Switzerland transferred to the United States pursuant to Privacy Shield. Governmentjobs.com, Inc has certified that it adheres to the Privacy Shield Principles with respect to such personal data. If there is any conflict between the policies in this privacy policy and data subject rights under the Privacy Shield Principles, the Privacy Shield Principles shall govern personal data processed in reliance on Privacy Shield. To learn more about the Privacy Shield program, and to view our certification page, please visit <https://www.privacyshield.gov/>. Governmentjobs.com, Inc. will use appropriate safeguards to comply with the judgement issued by the Court of Justice of the European Union on July 16, 2020 declaring the EU-U.S. Privacy Shield Framework as invalid.

We will provide an individual opt-out choice, or opt-in for sensitive data, before we share your sensitive data with third parties other than our agents, or before we use it for a purpose other than which it was originally collected or subsequently authorized. To request to limit the use and disclosure of your personal data, please submit a written request to [privacy@governmentjobs.com](mailto:privacy@governmentjobs.com).

In certain situations, we may be required to disclose personal data in response to lawful requests by public authorities, including to meet national security or law enforcement requirements.

Where Governmentjobs.com, Inc. relies on Privacy Shield Principles for onward transfers of personal data from the EU, the United Kingdom, and Switzerland, including the onward transfer liability provisions, Governmentjobs.com, Inc. remains responsible under the Privacy Shield Principles for third-party agents processing personal data on its behalf.

Where Governmentjobs.com, Inc. receives personal data under the Privacy Shield and then transfers it to a service provider acting as agent, Governmentjobs.com, Inc. has certain liability under the Privacy Shield if both (i) the agent processes the personal data in a manner inconsistent with the Governmentjobs.com, Inc. and (ii)

Governmentjobs.com, Inc. is responsible for the event giving rise to the damage. With respect to personal data received or transferred pursuant to the Privacy Shield Framework, Governmentjobs.com, Inc. is subject to the investigatory and enforcement powers of the U.S. Federal Trade Commission.

Governmentjobs.com's accountability for personal data that it receives in the United States under the Privacy Shield and subsequently transfers to another party is described in the Privacy Shield Principles. In particular, where Governmentjobs.com transfers personal data in reliance on Privacy Shield, Governmentjobs.com, Inc. remains responsible and liable under the Privacy Shield Principles if any agents that it engages to process personal data on its behalf do so in a manner inconsistent with the Principles, unless Governmentjobs.com proves that it is not responsible for the event giving rise to the damage.

In compliance with the Privacy Shield Principles, Governmentjobs.com, Inc. commits to resolve complaints about your privacy and our collection or use of your personal data transferred in reliance on Privacy Shield to the United States pursuant to Privacy Shield. European Union and Swiss individuals with Privacy Shield inquiries or complaints should first contact Governmentjobs.com by email at [privacy@governmentjobs.com](mailto:privacy@governmentjobs.com).

Governmentjobs.com, Inc. has further committed to refer unresolved privacy complaints regarding personal data transferred in reliance on Privacy Shield Principles to an independent dispute resolution mechanism, the BBB EU PRIVACY SHIELD. If you do not receive timely acknowledgment of your complaint, or if your complaint is not satisfactorily addressed, please visit <https://bbbprograms.org/privacy-shield-complaints> for more information and to file a complaint. This service is provided free of charge to you.

Governmentjobs.com, Inc. has further committed to cooperate with the panel established by the EU data protection authorities (DPAs) and the Swiss Federal Data Protection and Information Commissioner (FDPIC) with regard to unresolved Privacy Shield complaints concerning human resources data transferred from the EU, the United Kingdom, and Switzerland in reliance on Privacy Shield and in the context of the employment relationship.

If your Privacy Shield complaint cannot be resolved through the above channels, under certain conditions, you may invoke binding arbitration for some residual claims not resolved by other redress mechanisms. See Privacy Shield Annex 1 at <https://www.privacyshield.gov/article?id=ANNEX-I-introduction>.

### Right to Revise

We reserve the right to revise our Privacy Policy to reflect changes in our online information practices or to comply with the law by publishing a new version on our website. In circumstances where we materially change the way in which we collect or use personal information, we materially change the terms of this Privacy Policy, or where personal information is no longer used consistently with a previously named purpose, we will provide notice and publish the new version on our website.

You should periodically check this page to remind yourself of the rights herein.

### Contact Details

This website is owned and operated by GovernmentJobs.com, Inc. (DBA "NEOGOV"). Our principal place of business is at 300 Continental Blvd., El Segundo, CA 90245. You can contact us by email, telephone, or regular mail using the contact information listed herein.

### Privacy Contacts

If at any time you have questions or concerns about this Privacy Policy, please feel free to e-mail us at the appropriate contact relative your jurisdiction:

**United States:**       privacy@governmentjobs.com  
                                      (310) 426-6304

**European Union:**    Data Protection Manager at [dpo@governmentjobs.com](mailto:dpo@governmentjobs.com)

Users who have a visual disability may be able to use a screen reader or other text-to-speech tool to review the contents of this Privacy Policy. If you experience any difficulties assessing the information here or you wish to obtain a copy of this Privacy Policy, please contact us using the details above.

## Exhibit D – Terms of Use

Last Updated: May 20, 2021

The following terms and conditions, together with any documents they expressly incorporate by reference are the terms (collectively, these “Terms of Use”), under which all job seekers, employers or other users (“you”) may use the NEOGOV Services including any content or functionality offered on or through websites under our control, including [www.neogov.com](http://www.neogov.com), [www.governmentjobs.com](http://www.governmentjobs.com), [www.neoed.com](http://www.neoed.com), the subdomains and subdirectories of each and any Add-On Service purchased within a website (collectively referred to as the “Services” for purposes of this Terms of Use), but excluding services that explicitly state they are subject to different terms and conditions. These Terms of Use are entered into by and between you and Governmentjobs.com, Inc. (referred to as “NEOGOV”, “we”, or “us”).

Excluding purchases of Add-On Services, if you are an employer that holds a separately negotiated commercial contract with us (our “Customer”) that explicitly supersedes or prohibits any end user license or online terms of use, the terms and conditions within such commercial contract shall control to the extent of any direct conflict.

Please read the Terms of Use carefully before you start to use the Services.

1. Provision of Services. By using the Services, executing a document that references them, or by clicking to accept or agree to the Terms of Use when this option is made available to you, you accept and agree to be bound and abide by these Terms of Use and our Privacy Policy incorporated herein by reference. If you do not want to agree to these Terms of Use or the Privacy Policy, you must not access or use the Services. Also, by agreeing to this Terms of Use you waive, to the extent permitted under applicable law, any rights or legal requirements that require an original (non-electronic) signature or the delivery or retention of non-electronic records in order for a contract to be legally binding. You represent and warrant that you are of legal age to form a binding contract with us and meet all of the foregoing eligibility requirements. If you do not meet all of these requirements, you must not access or use the Services.

We reserve the right to withdraw or amend the Services, and any service or material we provide on the Services, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Services is unavailable at any time or for any period. You are responsible for ensuring that all persons who access the Services through your account are aware of these Terms of Use and comply with them.

2. Accessing Services and Account Security. Subject to your compliance with these Terms of Use, we grant you a non-exclusive, limited, revocable, personal, non-transferable license to use the applicable Services. Unless NEOGOV has entered into a commercial agreement with an employer permitting you to use the Services for transactions on behalf of another person, you may only use the Services for transactions on your own behalf. If you use the Services on behalf of a Customer or natural person, you represent and warrant that you have obtained all required authorizations and consents.

To access the Services or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the Services that all the information you provide on the Services is correct, current, and complete. You agree that all information you provide to register with the Services or otherwise, including but not limited to through the use of any interactive features on the Services, is governed by the NEOGOV Privacy Policy <https://www.neogov.com/privacy-policy> and you consent to all actions we take with respect to your information consistent with our Privacy Policy. Terms not defined herein shall retain their meaning as set forth in the NEOGOV Privacy Policy.

If you choose, or are provided with, a user name, password, or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to the Services or portions of it using your user name, password, or other security information.

You agree to (i) notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security, investigate such breach or such potential breach, (ii) assist us using commercially reasonable efforts in maintaining confidentiality, and (iii) assist us as reasonably necessary to enforce our rights and to enable us to comply with any state or federal law requiring the provision of notice of any security breach with respect to any personally identifiable information of the affected or impacted data subjects. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. We have the right to disable any user name, password, or other identifier, whether chosen by you or provided by us, at any time if, in our opinion, you have violated any provision of these Terms of Use.

3. Intellectual Property Rights. The Services and its entire contents, features, and functionality (including but not limited to all information, software, specifications, text, displays, images, video, and audio, code that NEOGOV creates or displays to generate or display content, and the design, design marks, trademarks, service names, slogans, selection, and arrangement thereof)(the "NEOGO Content") are owned by NEOGOV and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws. These Terms of Use permit you to use the Services for your personal, non-commercial use only, and in the case of Customers, for internal business use only. You are granted a revocable, non-exclusive, non-assignable, and non-transferable license to access use the Services. Nothing in these Terms of Use shall be construed as granting to you a license to NEOGOV Content under any copyright, trademark, patent, or other intellectual property right except as expressly set forth herein.

Re-use of any of NEOGOV's Service Specifications for any purpose is strictly prohibited without our prior written permission. Please direct any requests for permission to support@GovernmentJobs.com.

You must not:

- a. Modify copies of any materials from the Services or modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Services except as expressly permitted by this Terms of Use.
- b. Use any illustrations, photographs, video or audio sequences, or any graphics separately from the accompanying text.
- c. Delete or alter any legal notices, copyright, trademark, or other proprietary rights notices from copies of materials from this site.
- d. Reverse engineer, decompile, disassemble, or otherwise attempt to discover or directly access the source code or any underlying ideas or algorithms of any portions of the Services or any underlying software or component thereof.
- e. Aggregate, copy, or duplicate in any manner any of the content or information available from any our Services, including expired job postings, unless authorized by us.
- f. Access or use for any commercial purposes any part of the Services or any services or materials available through the Services.
- g. Reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, license, transfer, sell or transmit any of the NEOGOV Content or material on our Services.
- h. Reproduce, display, publicly perform, distribute, or otherwise use the NEOGOV Content in any manner that is likely to cause confusion among consumers, that disparages or discredits NEOGOV, that dilutes the strength of NEOGOV's property, or infringes NEOGOV's intellectual property rights.
- h. Reproduce, display, publicly perform, distribute, or otherwise use the NEOGOV Content in any manner that is likely to cause confusion among consumers, that disparages or discredits NEOGOV, that dilutes the strength of NEOGOV's property, or infringes NEOGOV's intellectual property rights.

No right, title, or interest in or to the Services or any content on the Services is transferred to you, and all rights not expressly granted are reserved by us. Any use of the Services not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark, and other laws.

4. Trademarks. "NEOGO," "NEOED", "GovernmentJobs.com," "CareerNow," "Career Pages," "Touchless Forms" and certain other names or logos are our trademarks, and all related product and service names, design marks, and slogans are our trademarks or service marks, excluding the marks of our partners. You must not use such marks without our prior written permission. We also retain the rights in the designated color schemes and column names provided within the Services. The "look" and "feel" of the Services (including color combinations, button shapes, layout, design, and all other graphical elements not uploaded or implemented by Customers) are also our trademarks or copyrights.

5. Prohibited Uses. You may use the Services only for lawful purposes and in accordance with these Terms of Use. You agree not to use the Services:

- a. In any way that violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the U.S. or other countries).

- b. For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.
- c. For the unlawful use of any personally identifiable information of other users of which you may be exposed to.
- d. To transmit, or procure the sending of, any advertising or promotional material without our prior written consent, including any "junk mail", "chain letter", "spam", or any other similar solicitation.
- e. To send unsolicited mail or email, make unsolicited phone calls or send unsolicited texts, tweets or faxes promoting and/or advertising products or services to any user, or contact any users that have specifically requested not to be contacted by you.
- f. To impersonate or attempt to impersonate NEOGOV, a NEOGOV employee, another user, or any other person or entity.
- g. To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Services, or which, as determined by us, may harm NEOGOV or users of the Services or expose them to liability.
- h. Use the communication features in a manner that adversely affects the availability of its resources to other users (e.g. excessive shouting, use of all caps, or flooding continuous posting of repetitive text).
- i. Use the Services in any manner that could disable, overburden, damage, or impair the site or interfere with any other party's use of the Services, including their ability to engage in real-time activities through the Services.
- j. Use any robot, spider, or other automatic device, process, or means to access the Services for any purpose, including monitoring or copying any of the material on the Services.
- k. Use any manual process to monitor or copy any of the material on the Services or for any other unauthorized purpose without our prior written consent.
- l. Aggregate, copy or duplicate any of the NEOGOV Content or information available from any Service, including expired job ads, other than as permitted by these Terms of Use or other commercial agreement with NEOGOV.
- m. Use any device, software, or routine that interferes with the proper working of the Services.
- n. Introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.
- o. Attack the Services via a denial-of-service attack or a distributed denial-of-service attack including via means of overloading, "flooding," "mailbombing," or "crashing,".
- p. Post any incomplete, false, or inaccurate résumé information or information which is not your own accurate résumé.
- q. Respond to any employment opportunity for any reason other than to apply for the job.
- r. Access the Services in order to build, assist, or facilitate the assembly of a competitive product or service, to build a product using similar ideas, features, functions, or graphics of the System, or to copy any ideas, features, functions, or graphics of the Services.

If your use of the Services requires you to comply with industry-specific regulations applicable to such use, you will be solely responsible for such compliance, unless NEOGOV has agreed with you otherwise. You may not use the Services in a way that would subject NEOGOV to those industry-specific regulations without obtaining NEOGOV's prior written agreement. For example, you may not use the Services to collect, protect, or otherwise handle "protected health information" (as defined in 45 C.F.R. §160.103 under United States federal regulations) without entering into a separate business associate agreement with NEOGOV that permits you to do so.

Your level of access should be limited to ensure your access is no more than necessary to perform your legitimate tasks or assigned duties. If you believe you are being granted access that you should not have, you must immediately notify NEOGOV.

6. Monitoring and Enforcement; Termination. You agree that we may monitor the Services to (1) comply with any applicable laws, regulations, or other government requests, (2) operate the Services or to protect itself and its users and members, and (3) for such other purposes as it may deem reasonably necessary or appropriate from time to time. More specifically, we have the right to:

a. Remove or refuse to post any User Contributions for any or no reason in our sole discretion.

b. Take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion, including if we believe that such User Contribution violates the Terms of Use, including the Content Standards, if we believe that such information could create liability for us, damage our brand or public image, or cause us to lose users or (in whole or in part), the services of our ISPs or other suppliers, if we believe the User Contribution is abusive, disruptive, offensive, illegal, violates the rights of, or harms or threatens the safety of users or public, infringes any intellectual property right, or violates the law.

c. Disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy.

d. Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Services.

e. Terminate or suspend your access to all or part of the Services for any or no reason, including without limitation, any violation of these Terms of Use.

We have the right to cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the Services. YOU WAIVE AND HOLD HARMLESS GOVERNMENTJOBS.COM, INC. AND ITS AFFILIATES, LICENSEES, AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING, OR TAKEN AS A CONSEQUENCE OF, INVESTIGATIONS BY EITHER GOVERNMENTJOBS.COM, INC. OR LAW ENFORCEMENT AUTHORITIES.

Notwithstanding the foregoing, we are not responsible for screening, policing, editing, or monitoring postings and encourages all users to use reasonable discretion and caution in evaluating or reviewing any post. We assume no liability for any action or inaction regarding transmissions, communications, or content provided by any user or third party. We have no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

7. Content Standards. These Content Standards apply to any and all User Contributions and use of the Services. User Contributions must in their entirety comply with all applicable federal, state, local, and international laws and regulations. Without limiting the foregoing, User Contributions must not:

a. Contain any material that is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory, or otherwise objectionable.

b. Promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age.

c. Infringe any patent, trademark, trade secret, copyright, or other intellectual property or other rights of any other person.

d. Violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms of Use and our Privacy Policy.

e. Be likely to deceive any person.

f. Promote any illegal activity or advocate, promote, or assist any unlawful act.

g. Cause annoyance, inconvenience, or needless anxiety or be likely to upset, embarrass, alarm, or annoy any other person.

h. Impersonate any person or misrepresent your identity or affiliation with any person or organization.

i. Involve commercial activities or sales, such as contests, sweepstakes, and other sales promotions, barter, or advertising.

j. Give the impression that they emanate from or are endorsed by us or any other person or entity, if this is not the case.

In addition, you shall be solely responsible for the legality, accuracy and completeness of all records, data, and information provided, submitted, or uploaded by you in connection with this Terms of Use or use of the Services.

8. User Contributions. The Services may contain message boards, forums, bulletin boards, and job boards, (collectively, "Interactive Services") that allow users to post, submit, publish, display, or transmit to other users or other persons (hereinafter, "post") materials or content, including feedback (collectively, "User Contributions") on or through the Services. All User Contributions must comply with the Content Standards set out in these Terms of Use. Any User Contribution you post to the site will be considered non-confidential and non-proprietary. You represent that you have all necessary rights to make a post, and you also acknowledge that we have no control over the extent to which any idea or information may be used by any party or person once it is posted or displayed. By providing any User Contribution on the Services, you grant us and our affiliates a royalty-free, perpetual, irrevocable, transferable, non-exclusive right and license for us to adopt, publish, reproduce, disseminate, transmit, distribute, copy, use, create derivative works, and display (in whole or in part) worldwide, or act on such feedback without additional approval or consideration, in any form, media, or technology now known or later developed for the full term of any rights that may exist in such content, and you hereby waive any claim to the contrary. Notwithstanding this right and license, it is understood that by merely permitting your information, content, and materials to appear on the Services, we do not become a publisher of such information, content, and materials and is merely functioning as an intermediary to enable you to provide and display a posting. Moreover, we assume no responsibility for the deletion of or failure to store any posting and recommends that you do not post, display, or transmit any confidential or sensitive information.

We are under no obligation to edit or control User Contributions and will not be in any way responsible or liable for any User Contributions. You understand that when using the Services, you may be exposed to User Contributions of other users and acknowledge that User Contributions may be inaccurate, offensive, indecent, or objectionable. You agree to waive, and do waive, any legal or equitable right or remedy you may have against NEOGOV with respect to User Contributions. NEOGOV expressly disclaims any and all liability in connection with User Contributions. If notified by a user or content owner that User Contributions allegedly do not conform with these Terms of Use, NEOGOV may investigate the allegation and determine in NEOGOV's sole discretion whether to remove the User Contributions, which NEOGOV reserves the right to do at any time and without notice.

You understand and acknowledge that you are responsible for any User Contributions you submit or contribute, and you, not NEOGOV, have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness. We are not responsible or liable to any third party for the content or accuracy of any User Contributions posted by you or any other user of the Services.

#### 9. Online Purchases; Add-On Services.

a. You may be required to pay fees to access certain add-on features within the Services ("Add-On Service(s)"). Unless otherwise stated by NEOGOV, Add-On Services are governed by the NEOGOV Services Agreement terms most recently published prior to the purchase or renewal of an Add-On Service, as well as these Terms of Use, Service Specifications, and applicable Schedules incorporated therein (available at: <https://www.neogov.com/service-specifications>). Where the terms of this Section conflict with the NEOGOV Services Agreement, this Section shall control. Add-On Services may only be available through one or more of our Services and Add-On Services may not be available for all End Users or Customers.

b. Payment Authorization. You agree to pay to NEOGOV any fees for each Add-On Service you purchase in accordance with the pricing and payment terms presented to you for that Add-On Service. All Add-On Service fees are in U.S. dollars and are non-refundable. If NEOGOV changes the fees for all or part of the Services, including by adding fees or charges, NEOGOV will provide you notice of those changes. If you do not accept the changes, NEOGOV may discontinue providing the applicable part of the Services to you.

c. Payment Methods. By providing debit or credit card account information through or to the Services, you represent, warrant, and covenant that: (1) you are legally authorized to provide such information to us; (2) you are legally authorized to perform payments from the debit or credit card account(s); (3) the credit card information you provide is correct and you will promptly notify NEOGOV of any changes to such information; and (4) such action does not violate the terms and conditions applicable to your use of such debit or credit card account(s) or applicable law. When you authorize a payment using a debit or credit card account via the Services, you represent, warrant, and covenant that there are sufficient funds or credit available to complete a payment using the debit or credit card account. NEOGOV's authorized third-party payment processor will charge the payment method you specified at the time of purchase. You authorize NEOGOV to charge all fees as described in these Terms of Use for the Services you select



to that payment method, and you authorize our third-party payment processor to use information you provide to process payments, manage debit and credit card information and detect and prevent fraud. In lieu of purchasing Add-On Services via Debit or Credit card, NEOGOV may provide you the option to receive a bill or invoice for payment by alternate means. NEOGOV may align a billing or invoice term with one of your other active Services. Should you elect to receive a bill or invoice for Add-On Service payments, Add-On Service Fees are due net thirty (30) from receipt of NEOGOV bill or invoice.

d. Add-On Service Subscriptions. The Add-On Services may include features that allow for automatically recurring payments for periodic charges ("Add-On Subscription"). Unless otherwise agreed by NEOGOV, Add-On Subscriptions will be billed in advance on an annual recurring, periodic basis. NEOGOV may also provide pro-rated pricing terms and align Add-On Subscription invoice or billing with SaaS Subscriptions. If you decide to activate an Add-On Subscription, you authorize NEOGOV to periodically charge, on a going-forward basis and until cancellation of the recurring payments, all accrued sums on or before the payment due date for the accrued sums. The Add-On Service Subscription Term is a continuous and non-divisible commitment for the full duration of the term regardless of any invoice schedule. The Subscription will commence upon the date you activate or use the Add-On Service. The Subscription will continue unless and until you cancel your Subscription, or we terminate it. You must cancel your Add-On Subscription before it renews in order to avoid billing of the next periodic subscription fee to your account. We will bill the periodic Subscription Fee to the payment method you provide to us during registration (or to a different payment method if you change your payment information). NEOGOV may change the Subscription Fee for any subsequent Subscription period but will provide you notice of any increase before it applies. Unless otherwise stated in a commercial agreement we negotiated with a Customer, you may cancel an Add-On Subscription by contacting us at: [accounting@neogov.com](mailto:accounting@neogov.com), [customersupport@neogov.com](mailto:customersupport@neogov.com), or alternative means expressly presented to you within the Services. You may cancel auto-renewal on your Add-On Service Subscription at any time, in which case your Add-On Service Subscription will continue until the end of that billing cycle before terminating.

e. Taxes. Unless otherwise stated, you are responsible for any taxes (other than NEOGOV's income tax) or duties associated with the sale of the Services, including any related penalties or interest (collectively, "Taxes"). You will pay NEOGOV for the Services without any reduction for Taxes.

f. Purchase Order. If you issue a purchase order, then it shall be for the full amount, and NEOGOV hereby rejects any additional or conflicting terms appearing in a purchase order or any other ordering materials submitted by you, and conditions assent solely based on the terms and conditions this Terms of Use and NEOGOV Services Agreement as offered by NEOGOV. You agree that a failure to provide NEOGOV with a corresponding purchase order shall not relieve you of your obligations to provide payment to NEOGOV.

## 10. E-Signatures.

a. E-Signature Provisioning & Consent. NEOGOV E-Forms and other electronically signed services ("E-Signatures") are provided by NEOGOV for two counterparties (generally a government employer (the "sending party") subscribing to NEOGOV Services and personnel or job seekers) to electronically sign documents. If you use E-Signatures offered by NEOGOV, you agree to the statements set forth in this Section. Whenever you sign a document using E-Signatures you affirmatively consent to using electronic signatures via the E-Signatures and consent to conducting electronic business transactions. You also confirm that you are able to access the E-Signatures and the document you are signing electronically. When using E-Signatures for a document, your consent applies only to the matter(s) covered by that particular document.

b. Right to Opt-Out of E-Signatures. You are not required to use E-Signatures or accept electronic documents provided thereby. If you are a job seeker or personnel and you choose to not use E-Signatures, you may still sign the document manually by notifying the sending party that you are choosing to do so and by obtaining a non-electronic copy of the document. NEOGOV assumes no responsibility for providing you with a non-electronic version of the document. In the event you are choosing to sign the document manually, do not use E-Signatures to sign the document or to return the document to the sending party.

c. Electronic Download. If you have signed a document electronically using E-Signatures and transmitted it back to the sending party, NEOGOV provides the opportunity to download and print a paper copy of the document at no charge. If you later withdraw your consent to using E-Signatures, please notify the sending party and stop using E-Signatures. Note that the decision to stop using E-Signatures after you have already used it does not change the legality of the documents you have previously signed using an electronic signature.

d. E-Signature Validity. PLEASE NOTE THAT NEOGOV'S STATEMENTS CONTAINED HEREIN OR ELSEWHERE CONCERNING THE VALIDITY OF ELECTRONIC DOCUMENTS AND/OR THE SIGNATURE LINES OF DOCUMENTS THAT ARE ELECTRONICALLY SIGNED ARE FOR INFORMATIONAL PURPOSES ONLY; THEY

SHOULD NOT BE CONSTRUED AS LEGAL ADVICE. UNDER FEDERAL AND STATE LAWS GOVERNING ELECTRONIC SIGNATURES, ELECTRONIC SIGNATURES ON CERTAIN TYPES OF AGREEMENTS ARE NOT ENFORCEABLE. NEOGOV HEREBY DISCLAIMS ANY RESPONSIBILITY FOR ENSURING THAT DOCUMENTS ELECTRONICALLY SIGNED THROUGH E-SIGNATURE'S ARE VALID OR ENFORCEABLE UNDER THE LAWS OF THE UNITED STATES OF AMERICA, ANY PARTICULAR STATE, OR ANY OTHER LEGAL JURISDICTION. YOU SHOULD CONSULT WITH LEGAL COUNSEL CONCERNING THE VALIDITY OR ENFORCEABILITY OF ANY DOCUMENT YOU MAY SIGN ELECTRONICALLY USING NEOGOV'S E-SIGNATURE'S

11. Text Message and Email Communications. We may offer you the opportunity to receive text message and email notifications regarding notices, reminders, status updates, support, administrative message and disclosures, or other related human resource related notices from us or our Customers. Communications through these methods may be routed through a third-party service.

SMS messages will be sent to you strictly in accordance with your preferences, and only after you have explicitly opted in. If you change your mind at any time, and no longer wish to receive SMS messages, reply to a message with the word "OPTOUT" in all capital letters. Afterwards, should you choose to begin receiving messages again, reply with the word "OPTIN" in all capital letters. job seekers may also control their receipt of SMS messages through their job seeker Account preferences, by contacting the Customer whom the text message pertains to, or by notifying NEOGOV Support.

Should you allow SMS messages sent to you by NEOGOV or NEOGOV Customers, you agree to accept such text messages on your mobile phone including messages sent by automated telephone dialing system. You certify that you are the owner of the mobile phone entered or are authorized to use this mobile phone to receive SMS.

You are responsible for all mobile carrier data or text message charges resulting from your use of the Services, including from any notifications provided by the Services. The number of messages you receive will vary depending on the number of jobs you applied to, jobs you searched for, or the number Customers you allow to contact you. You may receive a text message confirming your subscription. NEOGOV reserves the right to suspend or terminate your SMS messages for any reason, with or without notifying you.

Since these text message services depend on the functionality of third-party providers, there may be technical delays on the part of those providers. NEOGOV may make commercially reasonable efforts to provide alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. NEOGOV shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert. If your mobile number changes, you are responsible for informing the Customer of that change. NEOGOV MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED AS TO: (i) THE AVAILABILITY OF TELECOMMUNICATION SERVICES FROM YOUR PROVIDER; (ii) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES; AND (iii) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS OR SETTINGS CONNECTED WITH THE SERVICES.

12. Copyright Infringement. If you believe that any User Contributions violate your copyright, please notify support as specified in this Terms of Use. It is the policy of NEOGOV to terminate the user accounts of repeat infringers.

13. Reliance on Information Posted. The information presented on or through the Services is made available solely for general information purposes. We do not warrant the accuracy, completeness, or usefulness of this information. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such materials by you or any other visitor to the Services, or by anyone who may be informed of any of its contents.

14. Changes to the Services. We may update the content on the Services from time to time, but its content is not necessarily complete or up to date. Any of the material on the Services may be out of date at any given time, and we are under no obligation to update such material.

15. Information About You and Your Visits to the Services. All information we collect on the Services is subject to our Privacy Policy (Exhibit C). By using the Services, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

16. Relay of Content. NEOGOV relays content including but not limited to resumes, cover letters, applications, messages, questionnaire answers, responses, offer letters and other materials. You acknowledge that you are asking

NEOGOV to send this content on your behalf. We process, monitor, review, store and analyze such content, for data analysis, security, quality control, enforcement of the Terms of Use, content moderation, and to improve the Services. As a result, or due to technical malfunction, in certain circumstances such content may be delayed or may not be delivered to the intended recipient. NEOGOV may notify you in such an event. By using the Services, you acknowledge that this activity is necessary for maintaining the quality and provisioning of the Services.

17. Linking to the Services and Social Media Features. You may link to our homepage, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it, but you must not establish a link in such a way as to suggest any form of association, approval, or endorsement on our part without our express written consent. We may disable all or any social media features and any links at any time without notice in our discretion.

18. Additional Terms for Third-Party Services.

a. Links and Third-Party Content on the Services. If the Services contains links to other sites and resources provided by third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. We have no control over the contents of those sites or resources and accept no responsibility for them or for any loss or damage that may arise from your use of them. We do not control these services and are not responsible for their availability, content, or any malware accessed through them. Your correspondence or any other dealings with third parties found on the Services are solely between you and such third party. Accordingly, we expressly disclaim responsibility and liability for all third-party provided materials, programs, products, and services contained on or accessed through the Services, and you agree that we shall not be responsible for any loss or damage of any sort incurred as a result of any such dealings or as the result of the presence of such third parties on the Services. If you decide to access any of the third-party websites linked to the Services, you do so entirely at your own risk and subject to the terms and conditions of use for such websites. You are advised to read all terms and conditions of any third-party service.

b. Specific Third-Party Providers.

Background Checks. Some of the Services allow users to use our third-party background check partner's services to submit an application and background check to a Customer. If you are a job seeker or personnel using the background check services, you authorize NEOGOV to obtain your background check report, including criminal and eviction history, and to share that information with Customers you submit an application to, and agree to the background check companies terms of use or related end user agreement available at the background check companies' website. If you are personnel or other Customer agent using the background check services on behalf of a Customer, you agree to use the background check reports in compliance with law and agree to the background check companies terms of use or related end user agreement available at the background check companies' website.

Stripe. Some of the Services allow you to use Stripe to make payments. Your use of Stripe is subject to the applicable Stripe Terms of Service found at <https://stripe.com/connect/legal>.

Plivo. Some of the Services allow you to send or receive text messages through Plivo, Inc. If you are personnel or other Customer agent using the text messages services on behalf of a Customer, you agree to use the text message services in compliance with law and agree to the Plivo Acceptable Use Policy available at <https://www.plivo.com/aup/>.

19. Geographic Restriction; Age Restriction. NEOGOV operates out of the state of California in the United States. The Services are hosted in data centers located within the United States. Our Services are targeted for use only by persons located in the United States. We make no claims that the Services or any of its content is accessible or appropriate outside of the United States. You must be 18 years of age or older to visit or use the Services in any manner. If under the age of 18 or the age of majority as that is defined in your jurisdiction, you must use any Services under the supervision of a parent, legal guardian, or other responsible adult.

20. Indemnification. To the extent permitted by law, You agree to defend, indemnify, and hold harmless NEOGOV, its affiliates, licensors, and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to your violation of these Terms of Use or your use of the Services, including, but not limited to, your User Contributions, any use of the Services' content, services, and products other than as expressly authorized in these Terms of Use or your use of any information obtained from the Services.

21. General. Unless otherwise stipulated, the Terms of Use, Privacy Policy, and documents incorporated herein constitute the sole and entire agreement between you and Governmentjobs.com, Inc. regarding the Services and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the Services. You may not assign any part of this Terms of Use without NEOGOV's prior written

consent. No waiver of any obligation or right of either party shall be effective unless in writing, executed by the party against whom it is being enforced. All matters relating to the Services and these Terms of Use and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction). Any legal suit, action, or proceeding arising out of, or related to, these Terms of Use or the Services shall be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in the City of Los Angeles and County of Los Angeles although we retain the right to bring any suit, action, or proceeding against you for breach of these Terms of Use in your country of residence or any other relevant country. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts. At our sole discretion, we may require you to submit any disputes arising from the use of these Terms of Use or the Services, including disputes arising from or concerning their interpretation, violation, invalidity, non-performance, or termination, to final and binding arbitration under the Rules of Arbitration of the American Arbitration Association applying California law.

22. Waiver and Severability. No waiver by NEOGOV of any term or condition set out in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of NEOGOV to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision. If any provision of these Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms of Use will continue in full force and effect.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 2021	<b>FILE I.D.:</b>	COV100/CYC125
<b>SECTION:</b>	CONSENT - RESOLUTIONS	<b>DEPT.:</b>	CITY MGR.
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	E. STARR

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 21-3326 MAKING FACTUAL FINDINGS IN COMPLIANCE WITH AB 361 AND ESTABLISHING PROCEDURES FOR THE CONTINUATION OF PUBLIC MEETING TELECONFERENCING DURING PUBLIC HEALTH EMERGENCIES, INCLUDING THE COVID-19 PUBLIC HEALTH EMERGENCY, FOR THE PERIOD OF NOVEMBER 15, 2021, THROUGH DECEMBER 15, 2021

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**REASON FOR CONSIDERATION:** The City Council adopted Resolution No. 21-3324 on October 18, 2021, allowing the City's governing bodies to hold remote meetings during a proclaimed state of emergency without certain posting and physical meeting location requirements through January 1, 2024, under AB 361. However, to preserve the City's option to exercise these procedures during the current and future states of emergency, the City Council must make certain factual findings every 30 days.

The City Council's adoption of Resolution No. 21-3326 would extend the City's remote public meeting procedures under AB 361 for an additional 30 days, expiring December 15, 2021. Because the City Council will not hold another regular meeting after this one until December 20, 2021, it is possible that meeting will be subject to the pre-pandemic Brown Act rules, including posting the agenda and allowing public participation at all Council Members' teleconferencing locations. Staff is considering placing another 30-day extension resolution on the agenda for an upcoming workshop tentatively scheduled on December 15 for a Housing Element presentation.

**BACKGROUND:** Governor Newsom's Executive Order N-29-20, which suspended and modified the Brown Act's teleconferencing requirements during the COVID-19 pandemic, expired on September 30, 2021. On September 16, 2021, Governor Newsom signed AB 361 into law as an urgency bill and, four days later, executed an order delaying the application of AB 361 until October 2, 2021.

AB 361 permits legislative bodies of state and local entities to continue to meet virtually and remotely through telephonic and internet means (i.e., via teleconference) during a proclaimed state of emergency without having to meet the quorum, posting, physical location access, and other requirements of traditional teleconference meetings under the Brown Act. Under AB 361, a legislative body may hold entirely virtual meetings (or partially virtual meetings) until the end of the current state of emergency and during any future emergency declarations through January 1, 2024. However, to do so, the legislative body must make factual findings to continue teleconferencing every 30 days.

**FISCAL IMPACT:** There is no direct fiscal impact on the General Fund related to the City Council's adoption of Resolution No. 21-3326.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 21-3326 making factual findings in compliance with AB 361 and establishing procedures for the continuation of teleconferencing during public health emergencies, including the COVID-19 public health emergency, for the period of November 15, 2021, through December 15, 2021.

RESOLUTION NO. 21-3326

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR STATING COMPLIANCE WITH THE PROVISIONS OF ASSEMBLY BILL 316 INCLUDING COMPLIANCE WITH ABBREVIATED TELECONFERENCE REQUIREMENTS FOR OPEN MEETINGS, AND MAKING FACTUAL FINDINGS REGARDING THE COVID-19 PUBLIC HEALTH EMERGENCY FOR THE PERIOD OF NOVEMBER 15, 2021, THROUGH DECEMBER 15, 2021**

**WHEREAS**, approximately eighteen months after the novel coronavirus was first detected in the United State, the Delta variant of the virus has created a second front in the nation's battle against the virus as it spreads mainly through the unvaccinated members of the U.S. population and taxes the nation's hospitals and health care workers; and

**WHEREAS**, more Americans have now died by infection from the novel coronavirus than died from the influenza during the 1918 influenza pandemic despite a century of intervening medical advancement; and

**WHEREAS**, every adult in the U.S. has been eligible for vaccines since mid-April 2021 and in that time, *more Americans have died of COVID-19 per capita* than people in Germany, Canada, Rwanda, Vietnam, or more than 130 other countries did *in the pre-vaccine era*; and

**WHEREAS**, the U.S. was *ranked first among nations* in pandemic preparedness, but has among the highest death rates from the novel coronavirus in the industrialized world; and

**WHEREAS**, the U.S. *invests more in medical care* than any other country, but the nation's hospitals have been overwhelmed throughout the course of the COVID-19 pandemic; and

**WHEREAS**, the U.S. greatly advanced development of COVID-19 vaccines at record breaking speed, , but its *vaccination rates plateaued* so quickly that it is now *38th in the world* among nation's with vaccinated populations; and

**WHEREAS**, *the COVID-19 pandemic may end up costing the U.S. an estimated \$16 trillion*; and

**WHEREAS**, in 11 of California's 58 counties, more than 70 percent of the population is at least partially vaccinated, but 14 other counties have coverage rates below 50 percent, including the Inland Empire; and

**WHEREAS**, the Inland Empire has the lowest vaccination rate in all of Southern California, with just 47.2 percent of residents of all ages in San Bernardino County fully vaccinated, and only 50.4 percent of residents in Riverside County vaccinated; and

**WHEREAS**, until recently, the Delta variant overwhelmed Inland Empire hospitals, with hospitalization rates higher than anywhere else in Southern California; and

**WHEREAS**, recognizing the continuing public health threat posed by the novel coronavirus, California Governor Gavin Newsom on September 16, 2021 signed Assembly Bill 361 (AB 361), an urgency law establishing procedures for the continuation of teleconferencing during public health emergencies, including the COVID-19 public health emergency; and

**WHEREAS**, the Montclair City Council, its standing committees, and the Montclair Planning Commission may continue to meet virtually and remotely through telephonic and internet means (i.e., via teleconference) during a proclaimed state of emergency and internet means (i.e., via teleconference) during a proclaimed state of emergency without having to meet the quorum, posting, physical location access and other requirements of traditional teleconference meetings under the Ralph M. Brown Act—Government Code (GC) sections (§§)54950-54963 (the "Brown Act") open meeting laws until the end of the current state of emergency and during any future state of emergency, up until January 1, 2024; and

**WHEREAS**, to continue meeting virtually, the Montclair City Council is required to make factual findings.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair hereby elects to use AB 361's abbreviated teleconferencing procedures where a state of emergency has been formally proclaimed, but only if at least one of the following three conditions apply, and this election shall hereby include its standing committees and the Montclair Planning Commission:

1. State or local officials have imposed or recommended measures to promote social distancing at the time the legislative body holds the meeting to adopt AB 361 [GC §54953(e)(1)(A)]; or
2. The legislative body holds a meeting for the first time for the purpose of determining by majority vote whether, as a result of proclaimed state of emergency, meeting in person would present imminent risks to the health and safety of attendees [GC §54953(e)(1)(B)], or
3. The legislative body has determined (per the previous bullet) that, as a result of the proclaimed state of emergency, meeting in person would continue to present imminent risks to the health or safety of attendees [GC §54953(e)(1)(C)].

As to condition No. 1, immediately above:

- On March 16, 2020, the City Council adopted Resolution No. 20-3263 declaring that a local public health emergency exists in the City of Montclair. The public health emergency continues until Resolution No. 20-3263 is rescinded.
- On September 21, 2020, the City Manager introduced, and the City Council adopted, the ***City Facilities Public Reopening, Health and Safety Plan. The Plan*** introduced a strong, clear and detailed guidance to ensure public health and safety in City facilities. Protocols in ***the Plan*** are based on a variety of sources including, but not limited to, the federal government's *Opening America* plan, CDC Guidelines, State of California Guidance, EEOC Guidance for the workplace, and the Aspen Institute Return to Play COVID-19 Risk Assessment Tool. A copy of ***the Plan*** had been provided to each member of the City Council.

***The Plan*** includes guidance on public services, facility operations, buildings and spaces, and community programs such as recreation activities, parks, senior and youth center operations, indoor and outdoor sports, summer concerts and outdoor movie events, holiday celebrations (including Memorial Day, Easter, and Christmas), summer camp programs, elections, and other events.

Adoption of ***the Plan*** also incorporated guidance from the California Department of Public Health (CDPH) and the Centers for Disease Control and Prevention (CDC), including public health guidelines that promote personal responsibility for social distancing and compliance with face covering mandates, education on the need to avoid large gatherings, and promotion of protocols related to personal hygiene.

***The Plan*** was developed, in part, to achieve the following objectives:

- Serve as a guidance as to when City of Montclair facilities are to be reopened to the public, and when programs and activities are to be restored or phased in.
- Establish facility reopening protocols. In its implementation ***the Plan*** may modify, suspend or replace existing department policies. It is also recognized that at the time of ***the Plan's*** release, the environment surrounding COVID-19 continues to be evolutionary in nature. As a result, established guidance in ***the Plan*** are subject to change and modification pursuant to legal, environmental, health, medical, governmental and institutional changes and requirements.
- Provide protocols to be used as a set of tools, procedures and guidance that enable the resumption of public operations amidst an ongoing public health emergency.

- Provide for implementation of measures that address functionality, flexibility, and operational safety, while concurrently adhering to traditional legal mandates related to the provision of municipal services.
- Provide for restoration of City operations in a safe and thoughtful manner, achieved through a phased and deliberate process that requires regular adjustment to reflect operational and environmental realities.
- Provide tools for the safety of employees and the public as normal business operations resumed and continue amidst the ongoing presence of the COVID-19 pandemic.
- Provide supplemental information that supports protocols and Guidance from the San Bernardino County Public Health Department, CDPH, Cal-OSHA, CDC, and other public health-related agencies.

**BE IT FURTHER RESOLVED** that pursuant to AB 361, local legislative bodies electing to use the urgency bill’s abbreviated teleconferencing procedures must make the following factual findings within 30 days after teleconferencing for the first time after the expiration of Executive Order No. N-29-20 on September 30, 2021, and every 30 days thereafter until January 1, 2024, or when Montclair City Council Resolution No. 20-3263 declaring a public health emergency is rescinded, whichever comes first:

1. The legislative body has reconsidered the circumstances of the state of emergency; and
2. Either of the following circumstances exist:
  - The state of emergency continues to directly impact the ability of the members to meet safely in person.
  - State or local officials continue to impose or recommend measures to promote social distancing.

As to condition No. 1, immediately above, this Resolution makes factual findings as follows:

- The City Council of the City of Montclair, in reconsideration of the circumstances of the public health emergency related to COVID-19, as expressed in Montclair City Council Resolution No. 20-3263, adopted March 16, 2020, declaring that a local public health emergency exists in the City of Montclair, remains in effect.

As to condition No. 2, immediately above, this Resolution makes factual findings as to the following:

- On September 21, 2020, the City Council adopted the ***City Facilities Public Reopening, Health and Safety Plan***, introducing a strong, clear and detailed guidance to ensure public health and safety in City facilities. Protocols in ***the Plan*** are based on a variety of sources including, but not limited to, the federal governments *Opening America* plan, CDC Guidelines, State of California Guidance, EEOC Guidance for the workplace, and the Aspen Institute Return to Play COVID-19 Risk Assessment Tool. Adoption of ***the Plan*** also incorporated guidance from the California Department of Public Health (CDPH) and the Centers for Disease Control and Prevention (CDC), including public health guidelines that promote personal responsibility for social distancing and compliance with face covering mandates, education on the need to avoid large gatherings, and promotion of protocols related to personal hygiene.

By adoption of this Resolution, the City Council of the City of Montclair reaffirms that it continues to impose measures in City facilities and at City-sponsored events to promote social distancing in compliance with the ***City Facilities Public Reopening, Health and Safety Plan***.



**BE IT FURTHER RESOLVED** that the City Council of the City of Montclair, its standing committees, and the Montclair Planning Commission shall further comply with each of AB 361's abbreviated teleconference requirement for open meetings, including the following:

**1. Notice and agenda:**

- The City of Montclair shall provide notice and post agendas as otherwise required under the Brown Act (setting aside traditional teleconferencing requirements), and shall indicate on the notice the means by which the public may access the meeting and offer comment.
- The agenda shall identify and include an opportunity for all persons to attend via a call-in option or internet-based service. Further, (1) the agenda is not required to be posted at all teleconferencing locations, (2) public access does not need to be assured at all teleconference locations, (3) the notices and agenda do not need to list the teleconferencing locations of the members of the City Council, and (4) a quorum of the members of the City Council do not need to participate within physical boundaries of the City of Montclair.

**2. Public comment rules:** AB 361 instituted new rules for public comments for timed and untimed public comment periods during legislative body meetings.

- **Timed general public comment period:** The Montclair City Council, its committees, and the Montclair Planning Commission provide members of the public a timed, general public comment period, and opportunity to register for public comment does not close until the set general public comment period has elapsed.
- **Untimed public comment period per agenda item:** The Montclair City Council, its committees, and the Montclair Planning Commission provide for a timed, general public comment period.
- **Timed public comment period per agenda item:** The Montclair City Council, its committees, and the Montclair Planning Commission provide for a timed public comment period per agenda item.

**3. Prohibition against requirement for public comments to be submitted in advance.** The Montclair City Council, its committees, and the Montclair Planning Commission comply with AB 361's prohibition against a local legislative body from requiring public comments to be submitted in advance of the meeting.

**4. Registration for public comment:** The Montclair City Council, its committees, and the Montclair Planning Commission comply with AB 361 by not imposing a requirement that a member of the public register for public comment before being allowed to provide public comment where a third-party platform (such as Zoom or Microsoft Teams) is employed.

**5. Disrupted broadcasting procedures:** In the event there is a broadcasting disruption of a meeting of the Montclair City Council, its committees, and the Montclair Planning Commission to the public by phone or by internet, the Montclair City Council, its committees, and the Montclair Planning Commission will take no further action on agenda items until public access is restored.

**6. Standing Committee:** Each standing committee of the Montclair City Council shall fall under the scope of AB 361.

**7. Montclair Planning Commission:** The Montclair Planning Commission shall fall under the scope of AB 361.

**BE IT FURTHER RESOLVED** that this action is exempt from review pursuant to the California Environmental Quality Act (CEQA) in accordance with State CEQA Guidelines Section 15061(b)(3), the "common sense" exemption that CEQA only applies to projects that have the potential for causing a significant effect on the environment.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of December 15, 2021, or such time as the City Council adopts a subsequent resolution in accordance with GC §54953(e)(3) to extend the time during which meetings may continue to be held remotely by teleconference in compliance with that section.

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

**ATTEST:**

\_\_\_\_\_  
Mayor

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

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 21-3326 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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 15, 2021	<b>FILE I.D.:</b>	FLP125
<b>SECTION:</b>	CONSENT - RESOLUTIONS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	M. HEREDIA

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 21-3327 ADOPTING CHAPTER 10 OF THE CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL AS THE CITY'S POLICY FOR THE PROCUREMENT OF ARCHITECTURAL AND ENGINEERING SERVICES FOR STATE- AND FEDERALLY-FUNDED TRANSPORTATION PROJECTS

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**REASON FOR CONSIDERATION:** The City of Montclair regularly applies for and receives state and federal grants for transportation projects with the California Department of Transportation (Caltrans). Under federal funding rules, the City must adopt Chapter 10, "Consultant Selection" of the Caltrans Local Assistance Procedures Manual (LAPM), and any updates thereto, as the City's procedures in the procurement of consultant services subject to Caltrans LAPM requirements.

**BACKGROUND:** The City currently complies with all applicable provisions of the Caltrans LAPM, including Chapter 10 of the LAPM, in the procurement of consultants for architectural and engineering services on state- and federally-funded projects. Compliance is based on project-specific executed Master Agreements and Program Supplement Agreements between Caltrans and the City. Caltrans is now requiring that all agencies formally adopt Chapter 10 of the LAPM. Formally adopting Chapter 10 of the LAPM averts the need for the City to develop its own policies and procedures regarding consultant selection on state- and federally-funded transportation infrastructure projects.

Furthermore, Title 23 of the Code of Federal Regulations, Section 172.5(b)(1) requires written policies and procedures for the procurement, management, and administration of engineering- and design-related consultant services for federally-funded transportation projects. Federal regulations allow sub-recipients to adopt written policies and procedures prescribed by the awarding state agency in lieu of developing their own policies and procedures. Caltrans is considered the recipient of federal funding under Federal-Aid Highway Programs and local agencies, such as the City, are considered sub-recipients. To that end, Caltrans developed Chapter 10 of the LAPM to establish uniform policies and procedures for the procurement, management, and administration of engineering and design related consultant services to ensure compliance with applicable Federal and State laws and regulations.

A copy of the current Chapter 10 of the LAPM can be reviewed on the Caltrans website <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/ch10.pdf>.

**FISCAL IMPACT:** There would be no immediate fiscal impact with the City Council's adoption of Resolution No. 21-3327. Formally adopting Chapter 10 of the Caltrans LAPM as the City's procedures for the procurement of consultant services subject to the Caltrans LAPM will not result in any additional costs to the Department of Public Works.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 21-3327 adopting Chapter 10 of the Caltrans Local Assistance Procedures Manual as the City's policy for the procurement of architectural and engineering services for state- and federally-funded transportation projects.

RESOLUTION NO. 21-3327

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ADOPTING THE CALIFORNIA DEPARTMENT OF TRANSPORTATION LOCAL ASSISTANCE PROCEDURES MANUAL CHAPTER 10 FOR CONSULTANT SELECTION**

**WHEREAS**, the City of Montclair, through the Department of Public Works, is responsible for the execution of state- and federally-funded transportation projects; and

**WHEREAS**, to comply with the federal regulations and due to limited staffing and expertise, certain services, including Architectural and Engineering (A&E), are contracted out to qualified firms; and

**WHEREAS**, federal regulations set forth standards for procuring and administering A&E contracts; and

**WHEREAS**, the provisions of the Brooks Act (40 United States Code, Section 1104) requires local agencies to award federally-funded engineering and design-related contracts, otherwise known as A&E contracts, on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 CFR 31.201-3); and

**WHEREAS**, pursuant to 23 CFR 172.5 (b), local agencies shall develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design-related consulting services, reimbursed in whole or in part with Federal-Aid Highway Program (FAHP) funding as specified in 23 U.S.C. 106(g)(4)(A); and

**WHEREAS**, the provision 23 CFR 172.5 (b)(1) requires local agencies to adopt written policies and procedures for the procurement, management, and administration of engineering and design-related consultant services under applicable federal and state laws and regulations; and

**WHEREAS**, the State of California Department of Transportation (Caltrans) has developed the Local Assistance Procedures Manual (LAPM), Chapter 10 "Consultant Selection," which sets forth policies and procedures to be utilized by local agencies in the procurement and management of A&E contracts on state- and federally-funded transportation projects to ensure compliance with applicable federal and state laws and regulations and to maintain eligibility for FAHP reimbursement; and

**WHEREAS**, the City of Montclair desires to adopt Chapter 10 of the Caltrans LAPM and the City's conflict of interest policies for compliance with federal regulations on the procurement and administration of A&E contracts.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Montclair as follows:

**Section 1.** The above recitals are true and correct findings of the City of Montclair Council.

**Section 2.** The Local Assistance Procedures Manual, Chapter 10, Consultant Selection dated or as amended in future updates, is approved and adopted.

**Section 3.** The City Manager is authorized to approve amendments to the City's adopted A&E Services Administration and Procurement Policies.

**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. 21-3327 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

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Andrea M. Myrick  
City Clerk

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
NOVEMBER 1, 2021, AT 6:25 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Mayor Pro Tem Ruh called the meeting to order at 6:25 p.m.

**II. ROLL CALL**

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

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of October 18, 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 October 18, 2021.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

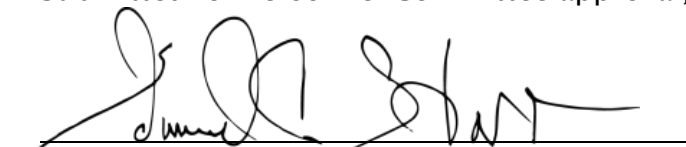
At 6:26 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 7:40 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 7:40 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, NOVEMBER 1, 2021, AT 7:00 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 7:00 p.m.

II. INVOCATION

Montclair Police Department Chaplain Joe McTarsney gave the invocation.

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; Director of Community Development Diaz; Finance Manager Kulbeck; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS — None

VI. PUBLIC COMMENT

A. **Mr. Bruce Culp**, resident, thanked **Mr. David Turch** and **Mr. Jamie Jones** from **David Turch & Associates** for their presentation at a Council workshop earlier this evening and expressed his appreciation for their assistance in securing federal funds for the City.

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

Mayor Dutrey stated there is a request from the public to provide comments on Items C-1 and C-6.

City Manager Starr requested the City Council continue Item C-1 so that staff may negotiate additional changes to the contract with **Greyhound**.

Moved by Mayor Pro Tem/Vice Chair Ruh, seconded by Council Member/Director Johnson, and carried unanimously 5-0, the City Council pulled Items C-1 and C-6 and approved the remainder of the Consent Calendar:

A. **Approval of Minutes**

1. **Regular Joint Meeting — October 18, 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 October 18, 2021 regular joint meeting.

B. **Administrative Reports**

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

The City Council approved the City Warrant Register dated November 1, 2021, totaling \$1,471,577.60; and the Payroll Documentation dated September 26, 2021, amounting to \$653,563.35 gross, with \$455,319.47 net being the total cash disbursement.

2. **Authorizing the Receipt of \$13,592.30 from the Fiscal Year 2021 Patrick Leahy Bulletproof Vest Partnership Program to Assist with the Cost of Ballistic Vests**

The City Council authorized the receipt of \$13,592.30 from the Fiscal Year 2021 Patrick Leahy Bulletproof Vest Partnership Program to assist with the cost of ballistic vests.

3. **Approving the Purchase of Whole Turkeys and Assorted Items for the Montclair Holiday Food and Toy Basket Program**

The City Council approved the purchase of whole turkeys and assorted items for the Montclair Holiday Food and Toy Basket Program.

C. **Agreements**

2. **Approval of Agreement No. 21-67 with Graffiti Tracker Inc. for Continued Use of its Database to Track and Analyze Graffiti**

**Authorizing a \$3,300 Appropriation from the Prop 30/AB 109 Fund to Pay the Costs Associated with Agreement No. 21-67**

The City Council took the following actions:

- (a) Approved *Agreement No. 21-67* with Graffiti Tracker Inc. for continued use of its database to track and analyze graffiti.
- (b) Authorized a \$3,300 appropriation from the Prop 30/AB 109 Fund to pay the costs associated with *Agreement No. 21-67*.

3. **Approval of Agreement No. 21-68 Amending Agreement No. 20-85 with Securitas Security Services USA, Inc. for Security Guard Services at the Montclair Transcenter**

The City Council approved *Agreement No. 21-68* amending *Agreement No. 20-85* with Securitas Security Services USA, Inc. for security guard services at the Montclair Transcenter.

4. **Approval of Agreement No. 21-69 with San Bernardino County for Road Improvements in the County's Jurisdiction Associated with the Central Avenue/Union Pacific Railroad Bridge Rehabilitation Project**

The City Council approved *Agreement No. 21-69* with San Bernardino County for road improvements in the county's jurisdiction associated with the Central Avenue/Union Pacific Railroad Bridge Rehabilitation Project.

5. **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**

**Authorizing City Manager Edward C. Starr to Award and Sign Agreement No. 21-70 with the Lowest Responsive, Responsible Bidder for the Pacific Electric Trail Bridge Replacement Project in an Amount Not to Exceed \$200,000, Including a Construction Contingency**

The City Council took the following actions in relation to the Pacific Electric Trail Bridge Replacement Project:

- (a) Received and filed a status report on emergency contracting procedures for the Project and determined that there is a need to continue the action.
- (b) Authorized City Manager Edward C. Starr to award and sign *Agreement No. 21-70* with the lowest responsive, responsible bidder for the Project in an amount not to exceed \$200,000, including a construction contingency.



#### D. Resolutions

1. **Adoption of Resolution No. 21-3325 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges**

The City Council adopted Resolution No. 21-3325 authorizing the placement of liens on certain properties for delinquent sewer and trash charges.

#### IX. PULLED CONSENT CALENDAR ITEMS

##### C. Agreements

1. **Approval of Agreement No. 21-66 with Greyhound Lines, Inc. for Shared Use of a Single Bus Bay for Daily Commercial Bus Passenger Service and Ground Space for an Employee-Operated Ticket Vending and Customer Service Kiosk at the Montclair Transcenter**

Mr. Culp stated he is concerned the **Greyhound** ticket kiosk will be located in an area at the station that may interfere with future **Gold Line** construction work.

Mayor Dutrey stated **Greyhound** buses would make 12 stops per day at the Transcenter with the current schedule. He disclosed that at his request, City Manager Starr would negotiate to include the provision that additional compensation would be due to the City if more **Greyhound** stops at the Transcenter are added in the future.

The City Council took no action to allow staff to continue negotiating the terms of the agreement and continued the item for future consideration by the City Council.

6. **Amending the 2019-2024 Capital Improvement Program to Add the Modular Restroom Facility at the Montclair Transcenter Project**

**Authorizing Appropriations in the Amounts of \$275,000 from 2021 Lease Revenue Bond Funds and \$25,000 from Greyhound Lease Agreement No. 21-66 Funds for Costs Related to the Modular Restroom Facility at the Montclair Transcenter Project**

**Authorizing Staff to Advertise for Bid Proposals for the Construction of the Modular Restroom Facility at the Montclair Transcenter Project**

**Authorizing City Manager Edward C. Starr to Award and Sign Agreement No. 21-71 with the Lowest Responsive, Responsible Bidder for the Modular Restroom Facility at the Montclair Transcenter Project for a Not-to-Exceed Amount of \$120,000, Including a Construction Contingency**

Mr. Culp expressed his support for constructing the platinum-level restroom facility at the Transcenter to provide more sanitary and safe restroom accommodations for the public.

Council Member Lopez stated his preference that Item C-6 be continued to the same meeting as the **Greyhound** agreement. He reasoned that the City Council should approve the deal with **Greyhound** to secure the \$25,000 contribution before allocating the funds to the Project.

City Manager Starr stated that the \$25,000 contribution would remain in the contract despite returning to negotiate additional terms. He added if the City Council does not approve the agreement at a future meeting, staff will return to the City Council for a \$25,000 allocation from the Lease Revenue Bond Fund for the project. He stressed the urgency to complete the Project as soon as possible to remedy ongoing maintenance, security, and sanitation issues at the Transcenter, adding the

City Council supported the project last year in December, and staff only recently negotiated for the \$25,000 contribution from **Greyhound**.

Council Member Lopez voiced his concerns about the timed auto-locking system in the restrooms that unlocks after ten minutes, noting some individuals may need more time to use the facility if they are elderly or disabled. He asked if anyone would monitor the restrooms.

Mayor Dutrey stated the timed system would prevent individuals from using the restroom facilities as a long-term shelter.

City Manager Starr advised a security company monitors the Transcenter, but there would not be a dedicated restroom attendant. He noted the system for the restroom door has a countdown mechanism and an override button to reset the timer if the user needs more time. He added the commodes are auto-cleaned after each use, and the facility is auto-cleaned after the restroom locks at the end of each day.

Mayor Dutrey stressed the dire need for clean, safe, and secure restrooms at the Transcenter and assured that if **Greyhound's** contribution is not secured, the City has other funding sources to cover it.

Mayor Pro Tem Ruh concurred and emphasized the need for these restrooms to benefit passengers of all commuter services operating at the Transcenter, especially in preparation for the Gold Line's arrival.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Johnson, and carried 4-1 (Lopez dissenting), the City Council took the following actions concerning the Modular Restroom Facility at the Montclair Transcenter Project:

- (a) Amended the 2019-2024 Capital Improvement Program to add the Modular Restroom Facility at the Montclair Transcenter Project.
- (b) Authorized appropriations in the amounts of \$275,000 from 2021 Lease Revenue Bond Funds and \$25,000 from Greyhound Lease Agreement No. 21-66 Funds for costs related to the Project.
- (c) Authorized staff to advertise for bid proposals for the construction of the Project.
- (d) Authorized City Manager Edward C. Starr to award and sign *Agreement No. 21-71* with the lowest responsive, responsible bidder for the Project for a not-to-exceed amount of \$120,000, including a construction contingency.

#### **X. COUNCIL WORKSHOP**

##### **A. Determination of Infrastructure Projects to be Funded by Lease Revenue Bond Issue 2021A**

Mayor Pro Tem Ruh stated he would be at a conference in San Diego for work, but he could participate via **Zoom**.

The City Council continued this presentation to an adjourned meeting on Wednesday, November 10, 2021, at 6:00 p.m.

#### **XI. COMMUNICATIONS**

- A. Department Reports** — None
- B. City Attorney** — No Comments
- C. City Manager/Executive Director** — No Comments

**D. Mayor/Chair**

Mayor/Chair Dutrey made the following comments:

1. He reported some members of the Montclair Police Department participated in the **Special Olympics** Torch Run and ran past City Hall today.
2. He commended staff for pulling off a fun and well-attended Halloween event at **Alma Hofman Park** over the weekend.
3. He congratulated Council Member Martinez on her wedding that took place over the weekend.

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

1. Council Member/Director Martinez thanked Mayor Dutrey and stated she was sad to miss the Halloween event due to last-minute wedding preparations. Still, she looks forward to many more City events as things get back to normal.
2. Council Member/Director Johnson announced a new business in Montclair, **Hasco Outlet** at 8710 Central Avenue, is having its grand opening event this Thursday at noon and invited the public to attend. She stated **The Habit Burger Grill** food truck will be serving lunch, and the event will have live music and raffles. She encouraged everyone to check out the store, which sells overstocked items from warehouses and stores like **Costco** at deep discounts.
3. Council Member/Director Lopez made the following comments:
  - (a) He boasted the fun Halloween events put on by **Montclair Little League** on Friday at **Saratoga Park** and by the City on Saturday at **Alma Hofman Park**. He commended Human Services Department staff for running a smooth event despite the unanticipatedly large turnout. He also applauded **Pastor Josh Matlock** and **Bethan Baptist Church** for a Halloween event held at the church on Sunday that garnered over 500 attendees at once from what he could see when he visited.
  - (b) He praised the Montclair Police Officers who carried the **Special Olympics** torch from Chino to Ontario this afternoon.
  - (c) He advised **Fourth District San Bernardino County Supervisor Curt Hagman** is hosting a Veteran claim event on Wednesday, November 10th at his district office in Chino from 10:00 a.m. to 2:00 p.m., where veterans can receive assistance with forms and health services.
4. Mayor Pro Tem/Vice Chair Ruh made the following comments:
  - (a) He stated the community appreciated the City's outdoor Halloween Spooktacular this year and recognized staff who helped at the event.
  - (b) He urged everyone to get inoculated against COVID-19 if they haven't yet, and to get the booster shot if eligible.
  - (c) He stated he was unable to be there to cheer on the **Special Olympics** torch runners and would regretfully also miss the grand opening of **Hasco Outlet** due to a funeral he will be attending.
  - (d) He stated that he plans to attend the funeral of Duarte Mayor **Bryan Urias** on Thursday, who recently and unexpectedly passed away at only 40 years of age.

**F. Committee Meeting Minutes**

**1. Minutes of Personnel Committee Meeting of October 18, 2021**


The City Council received and filed the minutes of the Personnel Committee meeting of October 18, 2021, for informational purposes.

**XII. ADJOURNMENT**

At 7:32 p.m., Chair Dutrey adjourned the Successor Agency Board, the Montclair Housing Corporation Board, the Montclair Housing Authority Commission, and Montclair Community Foundation Board.

At 7:32 p.m., Mayor Dutrey adjourned the City Council to Wednesday, November 10, 2021, at 6:00 p.m. for a Council Workshop to determine Bond-funded Infrastructure projects.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



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

**CITY OF MONTCLAIR**

**TREASURER'S REPORT**

**FOR THE MONTH ENDING**

**OCTOBER 31, 2021**

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**SCHEDULE 3**

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**

**OCTOBER 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 \$ 32,803,124

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 OCTOBER 31, 2021

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance
General Fund	\$ (3,182,103.98)	\$ 3,420,673.51	\$ 2,342,069.88	\$ (656,998.09)	\$ (2,760,498.44) (1)
Gas Tax Fund	(190,732.48)	432.35	60,388.82	280,751.49	30,062.54 (2)
Road Maintenance - Section 2032	1,722,874.94	25,455.10	9,927.67	(1,119,964.82)	616,437.55
Measure I Fund	3,775,062.00	86,342.44		100,000.00	3,961,404.44
Traffic Safety	123,714.47	2,326.47		(90,751.93)	35,289.01
Disability/Access Fund - Bus. License	39,388.10	648.00	366.90		39,649.20
Park Maintenance	84,487.47		3,894.43		80,593.04
Park Development	1,149,207.06				1,149,207.06
CDBG	(36,802.21)		9,938.84		(46,741.05) (2)
SBZ Planning Grant	(966.00)		1,508.00		(2,474.00) (2)
Air Quality Improvement Trust	231,144.54				231,144.54
SB City Cares Act Infrastructure	(914,897.24)				(914,897.24)
Senior Nutrition Program	(73,435.74)	494,661.39	19,444.79	457,448.62	(22,787.23) (2)
American Rescue Plan	4,794,353.00	4,147.08	18,076.75	37,067.80	(51,665.65) (2)
Forfeiture Fund - State	117,684.11				117,684.11
Proposition 30/SB 109	121,544.00				121,544.00
SB 509 Public Safety	188,945.54	40,680.00	66,319.63		161,305.91
Forfeiture Fund-Federal/DOJ	408,328.10				408,328.10
Asset Seizure Fund	0.02		(0.01)		0.03
Section 11489 Subfund	42,255.78		163.32		42,092.46
Fed Asset Forfeiture-Treasury	113,959.76				113,959.76
School District Grant Fund		61,299.55			419,984.63
State Supplemental Law Enforce	358,685.08	18.54			2,150.36
P.C. 1202.5 Crime Prevention	2,131.82				70,353.67
Recycling Grant Fund	70,375.67	(22.00)		3,379.86	(11,361.00) (2)
Homeless Emergency Aid Program	(14,740.86)		13,020.00		(1,720.86) (2)
Bureau of Justice Assistance					
Statewide Park Dev Grant			2,538.78		486.26
Homeless Housing Assist Preven	3,035.04		85,422.96		466,133.96
After School Program Fund	173,399.98	297,156.94		101,000.00	
OTS Grant					
FIRST 5 Fund	1,290.78				1,290.78
Safety Dept. Grants	263,166.90		1,312.40		261,854.50
OSMD Immunization Grant	(3,298.44)			3,224.68	(73.76) (2)
Kaiser Permanente Grant	4,619.88		283.38		4,336.50
Resource Center Grant - OMSD	40,417.90		3,736.38		36,681.52
Title IIIB Sr. Support Services	(1,996.18)	1,063.36	2,679.64		(3,612.46) (2)
Healthy Community Strategic Plan	16,935.94			(101,000.00)	16,935.94
ASES Supplemental Grant	114,453.61	28,221.04	1,764.42		41,674.85
E.M.S. - Paramedic Fund	(37,764.51)	2,685.13		35,283.54	(1,560.26)
Economic Development	5,987,743.15		59,440.77	(457,448.62)	5,470,853.76
City Contributions/Donations Fund	500.00				500.00
Sewer Operating Fund	2,445,433.62	471,842.38	342,033.19	(213,927.21)	2,361,315.60
Sewer Replacement Fund	2,113,873.08			130,736.21	2,244,611.29
CFD 2011-1 (Paseos)	132,383.35		3,428.24		128,955.11
CFD 2011-2 (Arrow Station)	90,737.61		(27,547.14)		90,737.61
Inland Empire Utility Agency	2,268,701.76				2,296,248.90
Sewer Expansion Fee Fund	605,619.78	2,752.32			608,372.10
Developer Impact Fees - Local	1,171,272.90			(158,796.44)	1,171,272.90
Developer Impact Fees - Regional	234,067.27				75,270.83
Burtec Pavement Impact Fees	251,409.56	18,440.05			269,849.61
PUC Reimbursement Fund-MVGS	1,689,861.14			(1,365,869.76)	324,111.38
Utility Underground In-Lieu	340,516.52				340,516.52
General Plan Update Fee	92,150.05	864.05			93,014.10
Housing Fund	555,708.20				555,708.20
Public Education/Govt. PEG Fee Fund	50,273.24				50,273.24
Infrastructure Fund	(2,648,080.89)	5,442.11	92,760.42	2,627,820.02	(107,579.18) (4)
COVID-19	(283,300.30)		4,287.99	257,600.75	(29,987.54)
Successor Agency Bonds-Taxable	4,793,100.88	2,918.65			4,796,019.53
Successor Agency Bonds-Tax Exempt	8,215,409.20	5,010.74			8,220,419.94
2014 Lease Revenue Bond Proceeds			4,444.00	950.26	(291,123.82)
2021 Lease Revenue Bond Proceeds		770,747.67	940,007.67		(169,260.00)
2014 Lease Revenue Bond Debt Svc	(1,591,879.45)			5,800.80	(1,279,371.88) (5)
2021 Lease Revenue Bond Debt Svc	638,976.92	232,267.08			871,244.00
Contingency Fund	233,836.96				233,836.96
Assigned General Fund Reserves	9,434,238.50	22,579.74		123,690.84	9,580,509.08
TOTALS	\$ 46,039,766.82	\$ 6,245,360.66	\$ 4,063,732.12	\$ -	\$ 48,221,395.36

Negative Cash Notes follow this presentation.



### **Notes on Negative Cash Balances**

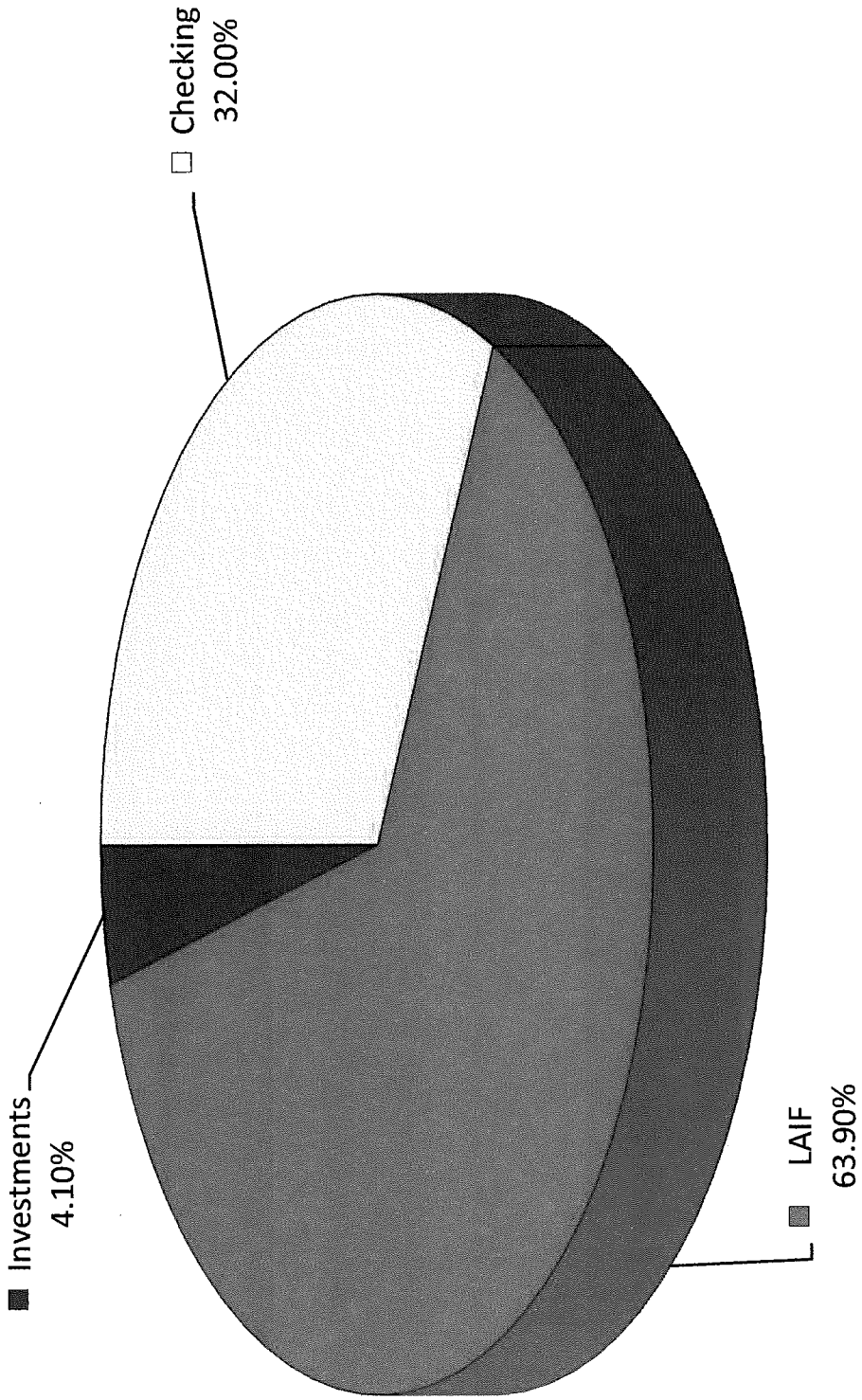
- (1) The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this 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 near 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 1, 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 OCTOBER 31, 2021**

	Par Value	Purchase Date	Maturity Date	Coupon Interest Rate	Current Market Value	Balance at Cost	Totals
<b>CHECKING ACCOUNT</b>							
Checking Account							\$ 15,415,802.68
Asset Seizure Account							\$ 2,468.68
<b>CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES</b>							
Local Agency Investment Fund (LAIF)				0.210%	30,842,239.35	30,803,124.00	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 32,842,239.35</u>		\$ 32,803,124.00
<b>U.S. AGENCY SECURITIES</b>							
					\$ -		\$ -
<b>TOTAL</b>							<u>\$ 48,221,395.36</u>

Current market values obtained from US Bank.

**CITY OF MONTCLAIR**  
**CASH AND INVESTMENTS BY TYPE**  
**October 31, 2021**  
**Total Cash & Investments \$48,221,395**



**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
TREASURER'S REPORT**

**FOR THE MONTH ENDING**

**October 31, 2021**

**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
STATEMENT OF CASH BY FUND  
October 31, 2021**

**COMBINED OPERATING FUND**

Operating	<u>17,167.72</u>	\$ 17,167.72
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**LRPRP Fund**

Operating	<u>0.00</u>	\$ 0.00
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**RORF**

	620,730.96	
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	
		\$ 620,730.96

**TOTAL CASH**

**\$ 637,898.68**

**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
STATEMENT OF CASH  
October 31, 2021**

**Checking Account**

US Bank

**637,898.68**

**TOTAL CASH**

**637,898.68**

**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**

**October 31, 2021**

City of Montclair  
 Final Warrant Register  
 Council Date 11/15/2021  
 Regular Warrants  
 Checking Account: Successor to the RDA

	Warrants	US Bank transfers	<b>Area Totals</b>
SRDA Combined Operating Fund	5,263.00	6,277.13	<b>11,540.13</b>
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	<b>0.00</b>
	5,263.00	6,277.13	
<b>October 2021 Total</b>			<b>11,540.13</b>

Note: Reimburse City for 10/14, and 10/28 payrolls

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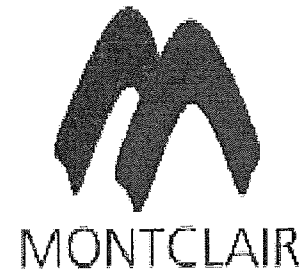
**Vice Chair Ruh**



# Accounts Payable

## Checks by Date - Summary by Check Date

User: cramirez  
Printed: 11/3/2021 9:41 AM



<u>Check No</u>	<u>Vendor No</u>	<u>Vendor Name</u>	<u>Check Date</u>	<u>Check Amount</u>
8176	Bank005	The Bank of New York Mellon	10/14/2021	3,763.00
8177	BLXGr001	BLX Group LLC	10/14/2021	1,500.00
Total for 10/14/2021:				5,263.00
Report Total (2 checks):				5,263.00

# Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 10/01/2021 To 10/29/2021

Printed on 11/03/2021 at 9:24 AM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
10/28/2021	\$2486.88	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 10/28/2021 Payroll  
Initiate Date 10/28/2021  
Initiate Time 11:04AM CDT  
Initiated By JKULBECK  
Completed Date 10/28/2021  
Completed Time 11:04AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
10/14/2021	\$3790.25	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 10/14/21 Payroll  
Initiate Date 10/14/2021  
Initiate Time 10:03AM CDT  
Initiated By JKULBECK  
Completed Date 10/14/2021  
Completed Time 10:03AM CDT

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Total Number of Book Transfers: 2  
Total Amount of Book Transfers: \$6,277.13

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--- End of Report ---

**CITY OF MONTCLAIR  
HOUSING CORPORATION  
TREASURER'S REPORT  
FOR THE MONTH ENDING**

**October 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  
October 31, 2021**

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
<b>Checking Account</b>			
US Bank			530,533.03
<b>Investments</b>			
LAIF	0.21%	1,712,948.71	<u>1,712,806.60</u>
<b>TOTAL CASH &amp; INVESTMENTS</b>			<u><u><b>2,243,339.63</b></u></u>

**NOTE:**

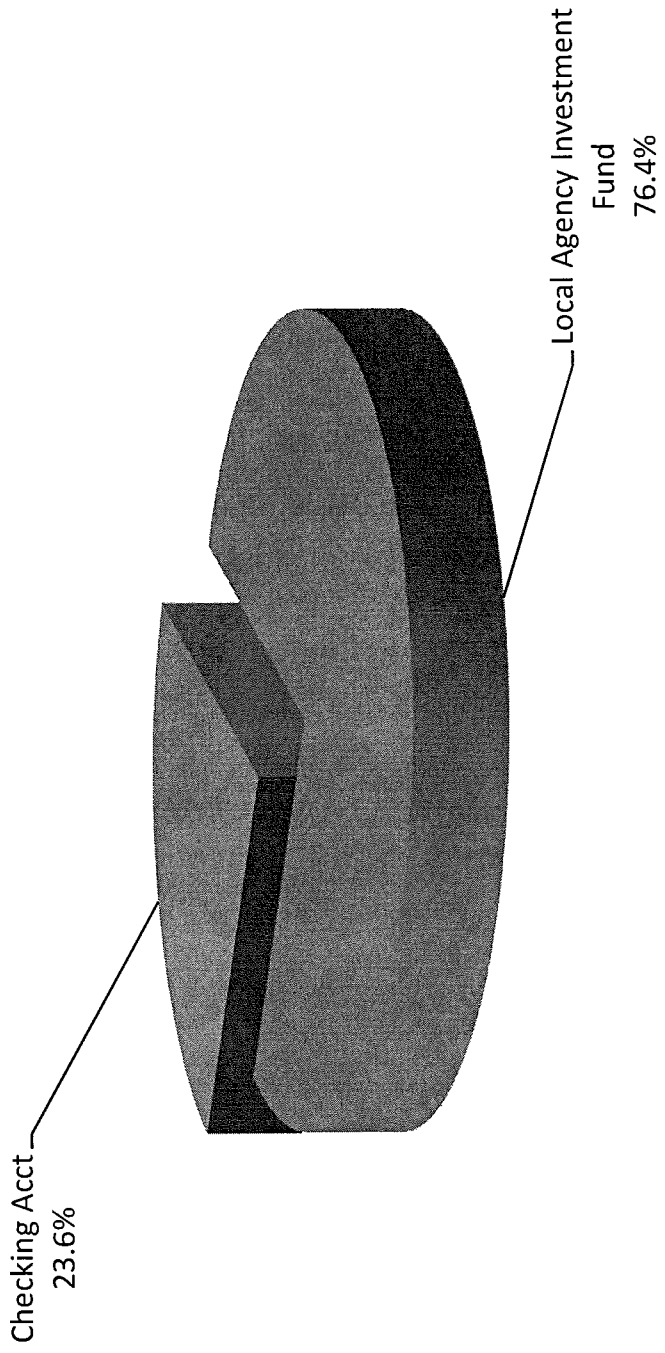
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

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  
October 31, 2021**

**Total Cash & Investments - \$2,243,340**



**CITY OF MONTCLAIR  
HOUSING CORPORATION  
WARRANT REGISTER**

**FOR THE MONTH ENDING**

**October 31, 2021**

City of Montclair  
Final Warrant Register  
Council Date 11/15/2021  
Regular Warrants  
Checking Account: MHC

<u>Warrants</u>	<u>ACH Transfers</u>	<u>Voided Checks</u>	<u>US Bank transfers</u>	<u>Totals</u>
4,506.94	0.00	0.00	10,710.14	<b>15,217.08</b>

**October 2021 Total**

**15,217.08**

US Bank transfers:

Reimburse City for 10/14 payroll

Reimburse City for 10/28 payroll

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**Vice Chair Ruh**



# Accounts Payable

## Checks by Date - Summary by Check Date

User: cramirez  
Printed: 11/3/2021 9:41 AM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5236	Hugo001	Hugo Jaramillo	10/14/2021	825.00
5237	Mont002	City of Montclair	10/14/2021	3,558.48
5238	Sout018	Southern California Edison Co	10/14/2021	123.46
Total for 10/14/2021:				4,506.94
Report Total (3 checks):				4,506.94

# Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 10/01/2021 To 10/29/2021

Printed on 11/03/2021 at 9:24 AM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
10/28/2021	\$4182.28	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 10/28/2021 Payroll  
Initiate Date 10/28/2021  
Initiate Time 11:04AM CDT  
Initiated By JKULBECK  
Completed Date 10/28/2021  
Completed Time 11:04AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
10/14/2021	\$6527.86	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 10/14/21 Payroll  
Initiate Date 10/14/2021  
Initiate Time 10:03AM CDT  
Initiated By JKULBECK  
Completed Date 10/14/2021  
Completed Time 10:03AM CDT

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Total Number of Book Transfers: 2  
Total Amount of Book Transfers: \$10,710.14

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--- End of Report ---

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
TREASURER'S REPORT  
FOR THE MONTH ENDING  
October 31, 2021**

**Schedule 1**

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
STATEMENT OF CASH  
October 31, 2021**

	<u>Amount</u>
<b>Checking Account</b>	
US Bank	6,562.16
<b>TOTAL CASH</b>	<b>\$ <u>6,562.16</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  
October 31, 2021**

City of Montclair  
Final Warrant Register  
Council Date 11/15/2021  
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	<b>0.00</b>
<b>October 2021 Total</b>			<b><u><u>0.00</u></u></b>

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**Vice Chair Ruh**