

CITY OF MONTCLAIR

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

AGENDA

MONDAY, JUNE 6, 2022
7:00 p.m.



Mayor

Javier "John" Dutrey

Mayor Pro Tem

Bill Ruh,

Council Members

Tenice Johnson

Corysa Martinez

Benjamin "Ben" Lopez

City Manager

Edward C. Starr

City Attorney

Diane E. Robbins

City Clerk

Andrea M. Myrick

Location

Council Chamber
5111 Benito Street
Montclair, CA 91763

Webinar Link

<https://zoom.us/j/93717150550>

Dial #

1-669-900-6833

Meeting ID

937-1715-0550



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

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

Monday, June 6, 2022
7:00 p.m.

Remote Participation Information:

Zoom Link: <https://zoom.us/j/93717150550>
Dial Number: 1 (669) 900-6833
Meeting ID: 937-1715-0550

*If you want to submit 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 online 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 at least one hour before the meeting begins.*

Video recordings of Council meetings are available on the City's website at <https://www.cityofmontclair.org/council-meetings/> and can be accessed by the end of the 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

VI. PUBLIC COMMENT

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

*If you did not submit a Speaker Card and would like to speak on an item on the **Consent Calendar**, please raise your hand during Public Comment to announce the agenda item you would like to provide comments on. The presiding officer will pull the item from the Consent Calendar and will then call on you to speak at the time of the item's consideration.*

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

VII. PUBLIC HEARINGS

- A. Second Reading — Consider Adoption of Ordinance No. 22-1001 Amending Sections Within Chapter 6.02; Amending Section 6.16.020; Repealing Sections 6.16.025 and 6.16.030; and Adding Chapter 6.17 to the Montclair Municipal Code Establishing a Mandatory Organic Waste Disposal Reduction Program [CC]**

- B. Consider Adoption of Resolution No. 22-3350 Granting Final Adoption of the 5006 and 5010 Mission Boulevard Industrial Warehouse Project Initial Study/Mitigated Negative Declaration (SCH#2022030195) and Mitigation Monitoring and Reporting Program, and Approving the Project Under Case No. 2022-07 [CC]

Consider Adoption of Resolution No. 22-3351 Approving a General Plan Amendment to Change the Land Use Designation of Two Parcels Totaling 2.5 Acres from “General Commercial” to “Business Park” [CC]

Consider Adoption of Resolution No. 22-3352 Approving Tentative Parcel Map No. 20393 to Merge Three Parcels Into a Single 5.13-Acre Site at 5006 and 5010 Mission Boulevard [CC]

30

VIII. CONSENT CALENDAR

- A. Approval of Minutes

- 1. Regular Joint Meeting — May 16, 2022 [CC/SA/MHC/MHA/MCF]

336

- B. Administrative Reports

- 1. Consider Approval of Warrant Register & Payroll Documentation [CC]

64

- 2. Consider Authorizing Mayor Dutrey to Sign a Letter of Support for Governor Newsom’s Proposed CARE Court Program [CC]

65

- 3. Consider Amending the 2019-2024 Capital Improvement Program to Add the Fire Station No. 2 Landscaping Project [CC]

Consider Authorizing a \$30,000 Appropriation from 2021 Lease Revenue Bond Funds for Costs Related to the Construction of the Fire Station No. 2 Landscaping Project [CC]

Consider Approving the Plans and Specifications and Authorizing Staff to Advertise for Bid Proposals for the Fire Station No. 2 Landscaping Project [CC]

102

- 4. Consider Authorizing the Purchase of Four Pepper Projectile Systems, Spare Tanks, and Projectiles, Defined as Military Equipment Under Assembly Bill 481 [CC]

Consider Authorizing a \$5,700 Appropriation from the Federal Asset Forfeiture Fund to Purchase Four Pepper Projectile Systems, Spare Tanks, and Projectiles [CC]

105

- 5. Consider Authorizing the Purchase of a Lenco BearCat G3 Tactical Armored Vehicle, Defined as Military Equipment Under Assembly Bill 481, and Required Radio Components, Installation, and Applied Graphics in the Total Amount of \$336,600 from the Public Safety Grant Fund [CC]

Consider Authorizing a \$2,110.24 Appropriation from the Federal Asset Forfeiture Fund to Purchase an Armored Oil Pan Guard for the Lenco BearCat G3 Tactical Armored Vehicle [CC]

107

- C. Agreements

- 1. Consider Approval of Agreement No. 22-20 Amending Agreement No. 05-03 with San Bernardino County Transportation Authority (SBCTA Contract No. 22-1002771) Assigning Maintenance Responsibilities to the City of Montclair for the Portion of the Pacific Electric Trail Between Monte Vista Avenue and Claremont Boulevard, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]

110

2. Consider Approval of Agreement No. 22-47 with the San Bernardino County Office of Emergency Services Authorizing the Receipt of \$16,186 from the FY 2021 Emergency Management Performance Grant/American Rescue Plan Act [CC]
Consider Authorizing Director of Public Safety/Police Chief Robert Avels to Sign Said Agreement [CC]
Consider Authorizing a \$16,186 Appropriation from the Public Safety Grant Fund for the Purchase of Equipment to Upgrade the Emergency Operations Center (EOC) [CC]
Consider Authorizing Appropriations from the Contingency Fund in the Amounts of \$16,186 as a Dollar-for-Dollar Match to Receive the Grant Funds, and \$6,056.82 to Cover the Remaining Balance of the EOC Upgrade Costs [CC] 140
 3. Consider Approval of Agreement No. 22-50 with Chaffey Joint Union High School District for Specialized Law Enforcement Services During Fiscal Year 2022-23, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 153
 4. Consider Amending the 2019-2024 Capital Improvement Program to Add the Sunset Park Improvement Project [CC]
Consider Approval of Agreement No. 22-52 with L.D. King, Inc., for Design Services for the Sunset Park Improvement Project in the Amount of \$248,990, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]
Consider Authorizing a \$50,388 Appropriation from California Department of Parks and Recreation Per Capita Grant Funds and a \$198,602 Appropriation from 2021 Lease Revenue Bond Funds for Design Services for the Sunset Park Improvement Project [CC] 158
 5. Consider Approval of Agreement No. 22-56 with CPS HR Consulting for Recruitment Test Rental Services [CC]
Consider Authorizing Human Services Director Marcia Richter to Sign Said Agreement and Related Documents [CC] 184
 6. Consider Approval of Agreement No. 22-57 with the San Bernardino County Department of Aging and Adult Services to Accept an Award to Provide the Senior Citizen Nutrition Program [CC]
Consider Authorizing Human Services Director Marcia Richter to Sign Said Agreement and Any Amendments Thereto [CC] 193
 7. Consider Approval of Agreement No. 22-58 with Ontario-Montclair School District to Support the Montclair After-School Program, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 281
 8. Consider Approval of Agreement No. 22-59 with Ontario-Montclair School District to Support the Montclair After-School Summer Expanded Learning Program, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 296
- D. Resolutions
1. Consider Adoption of Resolution No. 22-3349 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges [CC] 311

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|---|-----|
| 2. Consider Adoption of Resolution No. 22-3353 Correcting the Appropriations Limit Established for Fiscal Year 2021-22 Pursuant to Article 13-B of the California Constitution and to Section 7910 of the Government Code [CC] | 317 |
| 3. Consider Adoption of Resolution No. 22-3354 Authorizing the City Manager to Execute Agreements with the California Department of Transportation for the Sunset Park Beautification Project [CC] | 319 |
| 4. Consider Adoption of Resolution No. 22-3355 Making Factual Findings in Compliance with AB 361 for the Continuation of Public Meeting Teleconferencing During Public Health Emergencies for the Period of June 6, 2022, through July 6, 2022 [CC] | 322 |
| 5. Consider Adoption of Resolution No. 22-3356 Approving a List of Projects to be Funded in FY 2022-23 by Senate Bill 1, the California Road Repair and Accountability Act of 2017 [CC] | 326 |

IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

A. Department Reports

1. Human Services — Upcoming Events and Programs

B. City Attorney

1. Request for City Council to Meet in Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with Designated Labor Negotiator Edward C. Starr [CC]

Agency: City of Montclair
 Employee Management
 Associations: Montclair City Confidential Employees Association
 Montclair General Employees Association
 Montclair Fire Fighters Association
 Montclair Police Officers Association

C. City Manager/Executive Director

D. Mayor/Chairperson

E. Council Members/Directors

F. Committee Meeting Minutes (for informational purposes only)

- | | |
|--|-----|
| 1. Public Works Committee Meeting — March 17, 2022 | 330 |
| 2. Personnel Committee Meeting — May 16, 2022 | 335 |

XI. CLOSED SESSION

XII. CLOSED SESSION ANNOUNCEMENTS

XIII. ADJOURNMENT

The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, June 20, 2022, at 7:00 p.m.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the meeting bodies after publication of the Agenda packet are available for public inspection in the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. Please call the City Clerk's Office at (909) 625-9416 or send an e-mail to 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. 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/agendas/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, June 2, 2022.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 6, 2022	FILE I.D.:	REF020
SECTION:	PUBLIC HEARINGS	DEPT.:	FINANCE
ITEM NO.:	A	PREPARER:	J. KULBECK
SUBJECT:	SECOND READING — CONSIDER ADOPTION OF ORDINANCE NO. 22-1001 AMENDING SECTIONS WITHIN CHAPTER 6.02; AMENDING SECTION 6.16.020; REPEALING SECTIONS 6.16.025 AND 6.16.030; AND ADDING CHAPTER 6.17 TO THE MONTCLAIR MUNICIPAL CODE ESTABLISHING A MANDATORY ORGANIC WASTE DISPOSAL REDUCTION PROGRAM		

REASON FOR CONSIDERATION: In September 2016, the State Legislature set short-lived climate pollutants reduction targets for California in Senate Bill (SB) 1383 as a statewide effort to reduce emissions of greenhouse gasses (such as methane, a byproduct of organic waste) to combat climate change.

SB 1383 establishes statewide targets to reduce the amount of organic waste disposal in landfills (50 percent reduction by 2020 and 75 percent by 2025). It also set a goal to recover at least 20 percent of edible food that is thrown away by 2025 by donating it to people in need. The State defines “organic waste” as food, landscape and pruning trimmings, lumber, wood, manure, cardboard, paper products, printing and writing paper, and other plant and animal-based products. From 2016–2020, the California Department of Resources, Recycling and Recovery (CalRecycle) worked to develop regulations to achieve the goals of SB 1383. These new regulations were finalized by CalRecycle in November 2020 and took effect in January 2022. In accordance with SB 1383, all jurisdictions must adopt a mandatory organic waste disposal reduction ordinance.

The City Council adopts ordinances to make changes to the Montclair Municipal Code (MMC) and set local regulations. Adopting an ordinance requires two approved readings by the City Council, each held at separate public hearings. An ordinance may be adopted only after the second reading is held at a regular City Council meeting occurring at least five days after the introduction of the proposed ordinance. If substantial changes to the ordinance are approved, the amended ordinance must be re-introduced at a public hearing at least five days prior to conducting the second reading and adopting the ordinance.

The City Council is requested to conduct the second reading of Ordinance No. 22-1001 establishing a mandatory organic waste disposal reduction program and adopt the ordinance. A copy of the proposed ordinance is attached for City Council’s review and consideration.

BACKGROUND: In September 2016, Governor Brown signed into law SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, directing public agencies to reduce organic waste disposal by 75% and increase edible food recovery by 25 percent, by 2025. SB 1383 is the most significant waste reduction mandate to be adopted in California in the last 30 years.

SB 1383 was enacted to reduce greenhouse gas emissions by diverting organic waste from landfills as the decomposition of such materials emit methane—a climate pollutant 72 times more potent than carbon dioxide. Studies demonstrate that landfills are the

third largest producer of methane, and responsible for 21 percent of the state's anthropogenic (caused by humans) methane emissions.

In accordance with SB 1383, all jurisdictions must adopt a mandatory organic waste disposal reduction ordinance. CalRecycle provided model language for the mandatory SB 1383 ordinance, and cities were advised to adjust the language in the model ordinance based on their respective needs. A draft of the proposed ordinance was shared with the City's franchise waste hauler, Burrtec. Additionally, SB 1383 mandates that all businesses and residents, as well as multifamily housing developments, have access to recycling programs that capture food scraps, landscaping debris, and other organic waste items.

As defined by SB 1383, organic waste refers to green waste, wood waste, food waste, and fibers such as paper or cardboard. SB 1383 regulations outline specific requirements related to organic collection, edible food recovery, and compliance tracking and monitoring. SB 1383 also mandates significant action by local jurisdictions, residential and commercial organics generators, haulers, and facilities to significantly reduce organics landfill disposal.

The City will be responsible for implementing the following practices to maintain compliance with SB 1383:

- Provide organic waste collection services to all residents and businesses;
- Adopt an ordinance to inspect and enforce compliance with SB 1383;
- Establish an edible food recovery program for local food generators;
- Conduct annual education and outreach to all generators;
- Procure certain levels of recovered organic waste products such as compost, mulch, and renewable natural gas; and
- Maintain records for SB 1383 compliance for annual reporting requirements.

Adopting Ordinance No. 22-1001 will mandate organic waste generators, haulers, and other entities subject to the requirements of SB 1383 to comply with the regulatory requirements. Specific sections in this ordinance include:

- Recycling requirements for single-family generators and commercial businesses;
- Recovery requirements for commercial edible food generators and food recovery organizations;
- Service requirements for haulers;
- Waivers for generators;
- Procurement requirements for city departments, service providers, and vendors; and
- Inspections, investigations, and enforcement.

Although SB 1383 took effect on January 1, 2022, as long as jurisdictions have a plan in place to implement the requirements of SB 1383, CalRecycle will focus on compliance assistance first and dedicate enforcement efforts to serious offenders.

In addition to adoption of an organic waste recycling and food recovery ordinance, SB 1383 requires that the City have ordinances or other enforceable mechanisms in place for compliance with the CALGreen Building Standards Code ("CALGreen") and a Model Water Efficient Landscaping Ordinance ("MWELo"). The City is already compliant with the aforementioned programs through MMC Chapters 10.30 and 11.60, respectively. However, the CALGreen and MWELo provisions specific to solid waste and recycling programs are reiterated in this ordinance for clarity and ease of administration and interpretation.

Annual education and outreach to all generators is a requirement of SB 1383. This requirement will be accomplished by utilizing inserts in the City's sewer and trash billings, as well as Burrtec involvement in distributing information at the City's Country Fair Jamboree and National Night Out events. Information regarding compliance for residents and businesses will also be posted on the City's website with links to CalRecycle's web page for more in-depth information.

In addition, SB 1383 requires jurisdictions to procure a targeted amount of organic waste products in the form of compost, mulch, renewable natural gas (RNG), and/or electricity generated from biomass conversion of municipal-solid-waste-derived organic waste. Burrtec will coordinate with the City to assist in meeting our recycled organic waste procurement targets as required by SB 1383 requirements.

SB 1383 also requires the City to procure paper products that are recyclable and contain at least 30 percent of post-consumer recycled content. The City's Purchasing Manual will require an update to comply with these requirements and will be brought to City Council at a later date.

Recordkeeping and reporting to CalRecycle are additional requirements of SB 1383. The City must keep records of all aspects of this program including organic collection services, hauler program, contamination minimization, waivers, education and outreach, edible food recovery program, recycled organic waste procurement, recycled paper procurement, commercial edible food generators, and jurisdiction inspection and enforcement. Burrtec and City staff will utilize a robust database software system designed specifically for tracking efforts as they relate to solid waste services, program compliance, and organics diversion.

Beginning January 1, 2024, the City must begin enforcing SB 1383 regulations and take action against non-compliant entities. Cities are also subject to penalties if found by CalRecycle to be non-compliant.

Compliance with SB 1383 will require an amendment to the City's current franchise agreement with Burrtec, including adjustments to the current residential and commercial refuse rates. City staff is working with Burrtec to bring a resolution to City council in the near future for approval of these amendments.

FISCAL IMPACT: Adoption of Ordinance No. 22-1001 would have no discernable impact to the City's General Fund. Future franchise fee rate adjustments approved by the City must comply with Proposition 218 requirements and are pass-through costs between Burrtec and the rate payer.

RECOMMENDATION: Staff recommends the City Council adopt Ordinance No. 22-1001 amending sections within Chapter 6.02; amending Section 6.16.020; repealing Sections 6.16.025 and 6.16.030; and adding Chapter 6.17 to the Montclair Municipal Code entitled Establishing a Mandatory Organic Waste Disposal Reduction Program.

ORDINANCE NO. 22-1001

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING SECTIONS WITHIN CHAPTERS 6.02 (DEFINITIONS); REPEALING SECTIONS 6.16.025 (COMMERCIAL RECYCLING AND ORGANIC WASTE RECYCLING/DIVERSION) AND 6.16.030 (GARBAGE TO BE WRAPPED) OF THE MONTCLAIR MUNICIPAL CODE; AND ADDING CHAPTER 6.17 ESTABLISHING A MANDATORY ORGANIC WASTE DISPOSAL REDUCTION PROGRAM

WHEREAS, a city council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) solid waste generated in their jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment; and

WHEREAS, Assembly Bill 341 of 2011 places requirements on businesses and multi-family property owners that generate a specified threshold amount of solid waste to arrange for recycling services and requires the City to implement a mandatory commercial recycling program; and

WHEREAS, Assembly Bill 1826 of 2014 requires businesses and multi-family property owners that generate a specified threshold amount of solid waste, recycling, and organic waste per week to arrange for recycling services for that waste, requires cities to implement a recycling program to divert organic waste from businesses subject to the law, and requires cities to implement a mandatory commercial organics recycling program; and

WHEREAS, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires the California Department of Resources Recycling and Recovery (“CalRecycle”) to develop regulations to reduce organics in landfills as a source of methane. As adopted by CalRecycle, these SB 1383 regulations (“SB 1383 Regulations”) place requirements on multiple entities including the City of Montclair, residential households, commercial businesses and business owners, commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets; and

WHEREAS, the SB 1383 Regulations require the City to adopt and enforce an ordinance or other enforceable mechanism to implement relevant provisions of the SB 1383 Regulations, and to reduce community food insecurity by requiring commercial edible food generators to arrange to have the maximum amount of their edible food, that would otherwise be disposed, be recovered for human consumption; and

WHEREAS, this Ordinance implements the requirements of AB 341, AB 1826, and the SB 1383 Regulations; and

WHEREAS, on May 16, 2022 the City Council conducted a first reading of the proposed Ordinance in consideration of Ordinance No. 22-1001 to amend portions of Chapter 6.02, repeal Sections 6.16.025 and 6.16.030, and add Chapter 6.17; and

WHEREAS, the City Council moved to set a public hearing to consider adoption of Ordinance No. 22-1001 for Monday June 6, 2022; and

WHEREAS, a public hearing was held by the City Council on June 6, 2022, in the Council Chambers located at 5111 Benito Street, Montclair, California. A notice of time, place, and purpose of the public hearing was given in accordance with the Ralph M. Brown Act. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Montclair City Council as follows:

SECTION I. The foregoing Recitals are adopted as findings of the City Council as though set forth in full within the body of this Ordinance.

SECTION II. The Montclair Municipal Code for the City of Montclair (“Code”) shall be amended to add new and replace certain definitions to Chapter 6.02 DEFINITIONS, Section 6.02.010 as follows:

Black Container has the same meaning as in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and collection of Black Container Waste. Per the definition provided in 14 CCR Section 18982(a)(28), the Black Container may actually be black, or black with a gray lid.

Black Container Waste means Solid Waste that is collected in a Black Container that is part of a three-container Organic Waste collection service that prohibits the placement of Organic Waste in the Black Container as specified in 14 CCR Sections 18984.1(a) and (b), or as otherwise defined in 14 CCR Section 17402(a)(65).

Blue Container has the same meaning as in 14 CCR Section 18982(a)(5) and shall be used for the purpose of storage and collection of Source Separated Recyclable Materials or Source Separated Blue Container Organic Waste.

Brown Container has the same meaning as in 14 CCR Section 18982(a)(5.5) and shall be used for the purpose of storage and collection of Source Separated Food Waste.

CalRecycle means California’s Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing implementing, and enforcing SB 1383 Regulations.

California Code of Regulations or **CCR** means the State of California Code of Regulations. CCR references in Chapter 6.17 are preceded with a number that refers to the relevant title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).

City means the City of Montclair, California, within its jurisdictional boundaries.

City Enforcement Official means the City Manager or his/her authorized designee(s) who is/are partially or wholly responsible for enforcing the ordinance.

Commercial Business or **Commercial** means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily residential dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing Chapter 6.17.

Commercial Edible Food Generator includes a Tier One or a Tier Two Commercial Edible Food Generator as defined herein below of this Section 6.02.010 or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).

Compliance Review means a review of records by a City to determine compliance with Chapter 6.17.

Community Composting means any activity that Composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4); or as otherwise defined by 14 CCR Section 18982(a)(8).

Compost has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the effective date of Chapter 6.17, that “Compost” means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized facility.

Compostable Plastics or **Compostable Plastic** means plastic materials that meet the ASTM D6400 standard for Compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2 (a)(1)(C).

Container Contamination or Contaminated Container means a container, regardless of color, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

C&D means construction and demolition debris.

Designee means an entity that a city contracts with or otherwise arranges to carry out any of the City's responsibilities of Chapter 6.17 as authorized in 14 CCR Section 18981.2. A designee may be a government entity, a hauler, a private entity, or a combination of those entities.

Edible Food means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of Chapter 6.17 or as otherwise defined in 14 CCR Section 18982(a)(18), "Edible Food" is not Solid Waste if it is recovered and not discarded. Nothing in Chapter 6.17 or in 14 CCR, Division 7, Chapter 12 requires or authorizes the Recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code.

Enforcement Action means an action of the City to address non-compliance with Chapter 6.17 including but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

Excluded Waste means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its Generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including without limitation: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that, in City's or its Designee's reasonable opinion, would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose City, or its Designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

Food Distributor means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCRE Section 18982(a)(22).

Food Facility has the same meaning as in Section 113789 of the Health and Safety Code.

Food Recovery means actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

Food Recovery Organization means an entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25), including, but not limited to:

1. A food bank as defined in Section 113783 of the Health and Safety code;
2. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety code; and
3. A Food Recovery Organization is not a commercial Edible Food Generator for the purposes of Chapter 6.17 and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to Chapter 6.17.

Food Recovery Service means a person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization

or other entities for Food Recovery, or as otherwise defined in 14 CCR Section 18982 (a)(26). A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of Chapter 6.17 and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

Food Scraps means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, liquids, and grease when such materials are source Separated from other Food Scraps.

Food Service Provider means an entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).

Food-Soiled Paper is Compostable paper material that has come in contact with food or liquid, such as, but not limited to, Compostable paper plates, paper coffee cups, napkins, and pizza boxes.

Food Waste means Food scraps, and Food-Soiled Paper.

Gray Container has the same meaning as in 14 CCR Section 18982.2(a)(28) and shall be used for the purpose of storage and collection of Gray Container Waste. For the purpose of Chapter 6.17, Gray Container has the same meaning as Black Container and can be used interchangeably.

Gray Container Waste means Solid Waste that is collected in a Gray Container that is part of a three-container Organic Waste collection service that prohibits the placement of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1 (a) and (b), or as otherwise defined in 14 CCR Section 17402(a)(6.5). For the purposes of Chapter 6.17, Gray Container Waste has the same meaning as Black Container Waste and can be used interchangeably.

Green Container has the same meaning as in 14 CCR Section 18982.2(a)(29) and shall be used for the purpose of storage and collection of Source Separated Green Container Organic Waste. No preference or requirement for a "Green Container" made in Chapter 6.17 shall prevent or prohibit the use of additional containers duly authorized by the City and its Designee for purposes of Source Separated Organic Waste to the extent permitted by SB 1383, such as a "brown" container as further authorized by 14 CCR Section 18982(a)(5.5).

Grocery Store means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not separately owned within the store where the food is prepared and served, including without limitation a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR Section 18982(a)(30).

Hauler Route means the designated itinerary or sequence of stops for each segment of the City's collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

High Diversion Organic Waste Processing Facility means a facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average Mixed Waste organic content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the "Mixed waste organic collection stream" as defined in 14 CCR Section 17402(a)(11.5); or, as otherwise defined in 14 CCR Section 18982(a)(35).

Inspection means a site visit where a City reviews records, containers, and an entity's collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in Chapter 6.17, or as otherwise defined in 14 CCR Section 18982(a)(35).

Large Event means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for

an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to Chapter 6.17.

Large Venue means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of Chapter 6.17 and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purpose of Chapter 6.17 and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to Chapter 6.17.

Local Education Agency means a school district, charter school, or county office of education that is not subject to the control of City or county regulations related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

Multi-Family Residential Dwelling or **Multi-Family** means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

MWELO refers to the Model Water Efficient Landscape Ordinance (MWELO), 23 CCR, Division 2, Chapter 2.7.

Non-Compostable Paper includes but is not limited to paper that is coated in plastic material that will not breakdown in the Composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

Non-Organic Recyclables means non-putrescible and non-hazardous recyclable wastes including but not limited to bottles, cans, metals, plastics and glass, or as otherwise defined in 14 CCR Section 18982(a)(43).

Notice of Violation (NOV) means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 CCR Section 18982(a)(45).

Organic Waste means ~~food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.~~ Solid Wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

Organic Waste Generator means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

Paper Products include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

Printing and Writing Papers include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

Prohibited Container Contaminants means the following; (i) discarded materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the City's Blue Container; (ii) discarded materials placed in the Brown Container that are not identified as acceptable Source Separated Food Waste for the City's Brown Container; (iii) discarded materials placed in the Green Container that are not identified as acceptable Source Separated Green Container

Organic Waste for the City's Green Container; (iv) discarded materials placed in the Black Container that are acceptable Source Separated Recyclable materials and/or Source Separated Green Container Organic Wastes to be placed in City's Green Container and/or Blue Container; and, (v) Excluded Waste placed in any container. Nothing in Chapter 6.17 shall prevent or prohibit the use of additional containers duly authorized by the City and its Designee for purposes of Source Separated materials to the extent permitted by SB 1383, such as a "brown" container as further authorized by 14 CCR Section 18982(a)(5.5).

Recovered Organic Waste Products means products made from California, landfill-diverted recovered Organic Waste processed in a permitted or otherwise authorized facility, or as otherwise defined in 14 CCR Section 18982(a)(60).

Recovery means any activity or process described in 14 CCR Section 18983.1(b), or as otherwise defined in 14 CCR Section 18982(a)(49).

Recyclable Materials means those materials that are suitable for recycling, including but not limited to Non-Organic Recyclables, Paper Products, and Printing and Writing Papers.

Recycled-Content Paper means Paper Products and Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber, or as otherwise defined in 14 CCR Section 18982(a)(61).

Renewable Gas means gas derived from Organic Waste that has been diverted from a California landfill and processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recycle Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

Restaurant means an establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, or as otherwise defined in 14 CCR Section 18982(a)(64).

Route Review means a visual Inspection of containers along a Hauler Route for the purpose of determining Container Contamination, and may include mechanical Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

SB 1383 means Senate Bill 1383 of 2016 approved by the Governor September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

SB 1383 Regulations or **SB 1383 Regulatory** means or refers to, for the purposes of Chapter 6.17, the Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by CalRecycle and adopted in 2020 that created 14 CCR, Division 7, Chapter 12 and amended portions of regulations of 14 CCR and 27 CCR.

Self-Hauler means a commercial generator, approved by the City to haul Solid Waste, Organic Waste or recyclable material he or she has generated to another person using his or her own equipment in accordance with Section 6.17.080. Self-hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the Generator using the Generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

Single-Family means of, from, or pertaining to any residential premises with fewer than five (5) units.

Solid Waste has the same meaning defined in State Public Resources Code Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

1. Hazardous waste, as defined in the State Public Resources Code Section 40141.
2. Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114690) of Part 9 of Division 104 of the State Health and Safety Code.
3. Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the State Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in State Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the State Public Resources Code.

Source Separated means materials, including commingled recyclable materials, that have been separated or kept separate from the Solid Waste Stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the ordinance, Source Separated shall include separation of materials at the point of generation by the Generator, property owner, property owner's employee, property manager, or property manager's employee into different containers for the purpose of collection such that Source Separated materials are separated from Black Container Waste or other Solid Waste for the purposes of collection and processing.

Source Separated Blue Container Organic Waste means Source Separated Organic Waste that can be placed in a Blue Container that (i) is limited to the collections of those Organic Wastes and Non-Organic Recyclables as defined in Section 18982(a)(43), or as otherwise defined by Section 17402(a)(26.7), and (ii) excludes any Prohibited Container Contaminants.

Source Separated Green Container Organic Waste means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate collection of Organic Waste by the Generator, excluding, but not limited to: Source Separated Blue Container Organic Waste, Non-Compostable Paper, Paper Products, Printing and Writing Paper, and any other Prohibited Container Contaminants.

Source Separated Recyclable Materials means Source Separated Non-Organic Recyclables and Source Separated Blue Container Organic Waste.

State means the State of California.

Supermarket means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items, or as otherwise defined in 14 CCR Section 18982(a)(71).

Tier One Commercial Edible Food Generator means a Commercial Edible Food Generator that is one of the following:

1. Supermarket.
2. Grocery Store with a total facility size equal to or greater than 10,000 square feet.
3. Food Service Provider.
4. Food Distributor.
5. Wholesale Food Vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to Chapter 6.17.

Tier Two Commercial Edible Food Generator means a Commercial Edible Food Generator that is one of the following:

1. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
2. Hotel with an on-site Food Facility and 200 or more rooms.
3. Health facility with an on-site Food Facility and 100 or more beds.
4. Large Venue.
5. Large Event.
6. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
7. A Local Education Agency facility with an on-site Food Facility.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to Chapter 6.17.

~~**Waste materials** mean and include but is not limited to paper, cardboard, carpets, rugs, clothing, books, boots, shoes, straw, packing barrels, ashes, discarded building materials and the like, except flammable liquids such as gasoline, kerosene and similar toxic substances shall not be included.~~

Wholesale Food Vendor means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR Section 18982(a)(76).

SECTION III. The Code shall be amended to revise Section 6.16.020(A) as noted below; and to repeal existing Sections 6.16.025 and 6.16.030:

6.16.020 – Receptacle required.

- A. All garbage, rubbish and waste materials as defined in Chapter 6.02 of this title shall be deposited in a ~~single receptacle or receptacles~~ designated container as required, which may be provided by the City or its duly authorized agent. When garbage is deposited with waste material, rubbish or refuse, the receptacle shall be of a plastic or otherwise impervious material with a tight-fitting cover.

SECTION IV. Chapter 6.17 entitled, “MANDATORY ORGANIC WASTE DISPOSAL REDUCTION PROGRAM” shall be added to the code, as follows:

Chapter 6.17 – MANDATORY ORGANIC WASTE DISPOSAL REDUCTION PROGRAM

6.17.010 – Purpose and Findings.

- A. State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their cities to the maximum extent feasible before any incineration or landfill disposal; of waste, to conserve water, energy, and other natural resources, and to protect the environment.
- B. State recycling law, Assembly Bill 341 of 2011 (approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded, and replaced from time to time), places requirements on businesses and Multi-Family property owners that generate

a specified threshold amount of Solid Waste to arrange for recycling services and requires cities to implement a Mandatory Commercial Recycling program.

- C. State organics recycling law, Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste, Recycling, and Organic Waste per week to arrange for recycling services for that waste, requires cities to implement a recycling program to divert Organic Waste from businesses subject to the law, and requires cities to implement a Mandatory Commercial Organics Recycling program.
- D. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including cities, residential households, Commercial Businesses and business owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to support achievement of Statewide Organic Waste disposal reduction targets.
- E. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires cities to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations. This ordinance will also help reduce food insecurity by requiring Commercial Edible Food Generators to arrange to have the maximum amount of their Edible Food, that would otherwise be disposed, be recovered for human consumption.

6.17.020 – Requirements for Single-Family Generators.

Single-Family Organic Waste Generators shall subscribe to City's at-least three-container collection service, which includes a Blue Container, Green Container, and Black Container, and shall comply with the following requirements:

- A. Shall subscribe to City's Organic Waste collection services for all Organic Waste generated as described in Section 6.17.020(B). City or its Designee shall have the right to review the number and size of a generator's containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Single-Family generators shall adjust their service level for collection services as requested by the City or its Designee. Generators may additionally manage their Organic Waste by preventing or reducing their Organic Waste, managing Organic Waste on site, and/or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).
- B. Shall participate in the City's Organic Waste collection service(s) by placing designated materials in designated containers as described below, and shall not place Prohibited Container Contaminants in collection containers.
 - 1. Generator shall place Source Separated Green Container Organic Waste, including Food, in the Green Container; Source Separated Recyclable materials in the Blue Container; and Black Container Waste in the Black Container. Generators shall not place materials designated for the Black Container into the Green Container or Blue Container.
 - 2. Nothing in this Chapter shall prevent or prohibit the use of additional containers duly authorized by the City and its Designee for purposes of Source Separated materials to the extent permitted by SB 1383, such as a "brown" container as further authorized by 14 CCR Section 18982(a)(5.5).

6.17.030 – Requirements for Commercial Businesses.

Generators that are Commercial Businesses, including Multi-Family Residential Dwellings of five (5) and more units shall:

- A. Subscribe to City's at-least three-container collection services and comply with requirements of those services as described below in Section 6.17.030(B). City or its Designee shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Commercial Businesses shall adjust their service level for their collections services as requested by the City or its Designee.
- B. Participate in the City's Organic Waste collection service(s) by placing designated materials in designated containers as described below.
 - 1. Generator shall place Source Separated Green Container Organic Waste in the Green Container; Source Separated Brown Container Food Waste in the Brown Container; Source Separated Recyclable Materials in the Blue Container; and Black Container Waste in the Black Container. Generator shall not place materials designated for the Black Container into the Green Container, Brown Container, or Blue Container.
 - a. Nothing in this Chapter shall prevent or prohibit the use of additional containers duly authorized by the City and its Designee for purposes of Source Separated materials to the extent permitted by SB 1383, such as a "brown" container as further authorized by 14 CCR Section 18982(a)(5.5).
 - b. To comply with subsection B of this section, property owners of multifamily complexes may require its contracted landscapers to recycle the green waste materials and provide satisfactory proof that the materials are being properly recycled in a manner consistent with 14 CCR Sections 18984.1 and 18984.2 or shall haul Organic Waste to a High Diversion Organic Waste Processing Facility as specified in 14 CCR Section 18984.3.
 - 2. Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Subsections 3(a) and 3(b) below) for employees, contractors, tenants, and customers, consistent with City's Blue Container, Green Container, Brown Container, and Black Container collection service.
 - 3. Excluding Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Green Container Organic Waste, Source Separated Brown Container Food Waste, and Source Separated Recyclable Materials in all indoor and outdoor areas where disposal containers are provided for customers, for materials generated by that business. Such containers do not need to be provided in restrooms. If a Commercial Business does not generate any of the materials that would be collected in one type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:
 - a. A body or lid that conforms with the container colors provided through the collection service provided by City, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. A Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
 - b. Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant to 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.

4. Multi-Family Residential Dwellings are not required to comply with container placement requirements or labeling requirements in Subsection 3(a) or (b) pursuant to 14 CCR Section 18984.9(b).
5. To the extent practical through education, training, Inspection, and/or other measures, excluding Multi-Family Residential Dwellings, prohibit employees from placing materials in a container not designated for those materials per the City's Blue Container, Green Container, Brown Container, and Black Container collection service.
6. Excluding Multi-Family Residential Dwellings, periodically inspect Blue Containers, Green Containers, Brown Containers, and Black Containers for Prohibited Container Contamination and inform employees if containers are Contaminated and of the requirements to keep Contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).
7. Annually provide information to employees, contractors, tenants, and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Green Container Organic Waste, Source Separated Brown Container Food Waste, and Source Separated Recyclable Materials.
8. Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep Source Separated Green Container Organic Waste, Source Separated Brown Container Food Waste, and Source Separated Recyclable Materials separate from Black Container Waste (when applicable) and the location of containers and the rules governing their use at each property.
9. Provide or arrange access for City or its Designee to their properties during all Inspections conducted in accordance with Section 6.17.120 of this Chapter to confirm compliance with the requirements of this Chapter.
10. Accommodate and cooperate with City's program for Inspection of the contents of containers for Prohibited Container Contaminants, which may be implemented by City at a later date, to evaluate Generator's compliance with this Section 6.17.030(B).
11. At Commercial Business's option and subject to any approval required from the City, implement a program for Inspection of the contents of its Blue Containers, Green Containers, Brown Containers, and Black Containers for the purpose of monitoring the contents of containers to determine appropriate levels of service and to identify Prohibited Container Contaminants.
12. If a Commercial Business wants to self-haul, meet the Self-Hauler requirements in Section 6.17.080 of this Chapter.
13. Nothing in this Section prohibits a generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).
14. Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 6.17.050.

6.17.040 – Waivers for Generators.

- A. De Minimis Waivers – City may waive a Commercial Business' obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste Requirements of this Chapter if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as described in Section 6.17.040(A)(2) below. Commercial Businesses requesting a de minimis waiver shall:
 1. Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in Section 6.17.040(A)(2) below.

2. Provide documentation that either:
 - a. The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or,
 - b. The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 10 gallons per week per applicable container of the business' total waste.
 3. Notify City if circumstances change such that Commercial Business' Organic Waste exceeds the threshold required for waiver, in which case the waiver will be rescinded.
 4. De minimis waivers are valid for a period not to exceed 5 years and subject to reverification by the City at any time.
- B. Physical Space Waivers – City may waive a Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and or Organic Waste collection service requirements if the City has evidence from its own staff, hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of Section 6.17.030. A Commercial Business or property owner may request a physical space waiver through the following process:
1. Submit an application specifying the type(s) of collection services for which they are requesting a compliance waiver.
 2. Provide documentation that the premises lacks adequate space for SB 1383-mandated containers, including documentation from its hauler, licensed architect, or licensed engineer.
 3. Physical space waivers are valid for a period not to exceed 5 years and subject to reverification by the City or Designee at any time.

6.17.050 – Requirements for Commercial Edible Food Generators.

- A. Tier One Commercial Edible Food Generators must comply with the requirements of this Section commencing July 1, 2022, or other date as set by Resolution of the City Council, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.
- B. Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.
- C. Commercial Edible Food Generators shall comply with the following requirements:
 1. Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.
 2. Contract with, or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food Recovery; or, (ii) acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.
 3. Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.

4. Allow City's designated enforcement entity or designated third party enforcement entity to access the premises and review records pursuant to 14 CCR Section 18991.4.
5. Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:
 - a. A list of each Food Recovery Service or Organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
 - b. A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).
 - c. A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
 - (i) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
 - (ii) The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
 - (iii) The established frequency that food will be collected or self-hauled.
 - (iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.
6. No later than April 1st of each year commencing no later than April 1, 2023, for Tier One Commercial Edible Food Generators and April 1, 2024, for Tier Two Commercial Edible Food Generators provide an annual Food Recovery report to the City that includes the records listed in Section 6.17.050(C)(5)(c).
- D. Nothing in this Chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017, (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

6.17.060 – Requirements for Food Recovery Organizations and Services.

- A. Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.54(a)(1).
 1. The name address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.
 2. The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.
 3. The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.
 4. The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.
- B. Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):

1. The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
 2. The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.
 3. The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.
- C. Food Recovery Organizations and Food Recovery Services shall inform Generators about California and Federal Good Samaritan Food Donation Act protection in written communications, such as in their contract or agreement established under 14 CCR Section 18991.3(b).
- D. Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the city the Commercial Edible Food Generator is located in the total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two Commercial Edible Food Generators the Food Recovery Organizations or Food Recovery Services have established contracts or written agreements with pursuant to 14 CCR Section 18991.3(b) no later than April 1 beginning in 2023.
- E. In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the City or its designated entity, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the City.

6.17.070 – Requirements for Haulers and Facility Operators.

- A. Exclusive franchise hauler, providing residential, Commercial, or industrial Organic Waste collection services to Generators within the City’s boundaries shall meet the following requirements as a condition of approval of a contract, agreement, or similar contractual authorization with the City to Collect Organic Waste:
1. Provide written notice to the City starting July 1, 2022, and annually thereafter pursuant to 14 CCR 18988.1(a)(1) or as facilities change; identify the facilities to which they will transport Organic Waste including facilities for Source Separated Recyclable materials and Source Separated Green Container Organic Waste.
 2. Transport Source Separated Recyclable materials and Source Separated Green Container Organic Waste to a facility, operation, activity, or property that recovers Organic Waste as defined in 14 CCR, Division 7, Chapter 12, Article 2. Notwithstanding the foregoing, hauler shall not be required to transport any containers with Prohibited Container Contaminants to a facility, operation, activity, or property that recovers Organic Waste.
 3. Obtain approval from the City to haul Organic Waste, unless it is transporting Source Separated Organic Waste to a Community Composting site or lawfully transporting C&D in a manner that complies with 14 CCR Section 18989.1, Section 6.17.090 hereof.
 4. The authorization of the exclusive franchise hauler to collect Organic Waste shall comply with any education, equipment, signage, container labeling, container color, contamination, monitoring, and reporting requirements relating to the collection of Organic Waste contained within its franchise agreement with the City.

5. A Hauler is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of this ordinance prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
 6. Notwithstanding any of the foregoing, nothing in this Chapter shall restrict or otherwise prohibit Haulers from meeting compliance requirements by any alternative methods or procedures, provided it complies with SB 1383, the SB 1383 Regulations, and/or any other applicable law, as may be amended from time to time, or being relieved of, or delaying compliance with such requirement pursuant to SB 619.
- B. Requirements for Facility Operators and Community Composting Operations.
1. Owners of facilities, operations, and activities that recover Organic Waste, including, but not limited to, Compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the City shall respond within 60 days.
 2. Community Composting operators, upon City request, shall provide information to the City to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation. Entities contacted by the city shall respond within 60 days.

6.17.080 – Self-Hauler Requirements.

- A. Self-Haulers shall source separate all recyclable materials and Organic Waste (materials that the City otherwise requires Generators to separate for collection in the City's organics and recycling collection program) generated on-site from Solid Waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2, or shall haul Organic Waste to a High Diversion Organic Waste Processing Facility as specified in 14 CCR Section 18984.3.
- B. Self-Haulers shall haul their Source Separated Recyclable Materials to a facility that recovers those materials; and haul their Source Separated Green Container Organic Waste to a Solid Waste facility, operation, activity, or property that processes or recovers Source Separated Organic Waste. Alternatively, Self-Haulers may haul Organic Waste to a High Diversion Organic Waste Processing Facility.
- C. Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall keep a record of the amount of Organic Waste delivered to each Solid Waste facility, operation, activity, or property that processes or recovers Organic Waste; this record shall be provided to the City quarterly. The records shall include the following information:
 1. Delivery receipts and weight tickets from the entity accepting the waste.
 2. The amount of material in cubic yards or tons transported by the Generator to each entity.
 3. If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the Self-Haulers' vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.
- D. Self-Haulers that are Commercial Businesses (including Multi-Family Self-Haulers) shall provide information collected in Section 6.17.080(C) to the City if requested and within ten (10) days of such request.
- E. A residential Organic Waste Generator that self-hauls Organic Waste, to the extent permitted by this Municipal Code, is not required to record or report information in Section 6.17.080(C).

6.17.090 – Compliance with CALGreen Requirements.

- A. Persons applying for a permit from the City for new construction and building additions and alternations shall comply with the requirements of this Section and all required components of the California Green Building Standard Code, 24 CCR, Part 11, known as CALGreen, as amended, if its project is covered by the scope of CALGreen or more stringent requirements of the City. If the requirements of CALGreen are more stringent than the requirements of this Section, the CALGreen requirements shall apply.

Project applicants shall refer to City’s building code for complete CALGreen requirements.

- B. For projects covered by CALGreen or more stringent requirements of the City, the applicants must, as a condition of the City’s permit approval, comply with the following:
 - 1. Where five (5) or more Multi-Family dwelling units are constructed on a building site, provide readily accessible areas that serve occupants of all buildings on the site and are identified for the storage and collection of Blue Container and Green Container materials, consistent with the at-least three container collection program offered by the City, or comply with provision of adequate space for recycling for Multi-Family and Commercial premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the California Green Building Standards Code, 24 CCR, Part 11 as amended provided amended requirements are more stringent than the CALGreen requirements for adequate recycling space effective January 1, 2020.
 - 2. New Commercial construction or additions resulting in more than 30% of the floor area shall provide readily accessible areas identified for the storage and collection of materials, consistent with the at-least three container collection program offered by the City, or shall comply with provision of adequate space for recycling for Multi-Family and Commercial premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the California Green Building Standards Code, 24 CCR, Part 11 as amended provided amended requirements are more stringent than the CALGreen requirements for adequate recycling space effective January 1, 2020.
 - 3. Comply with CALGreen requirements and applicable law related to management of C&D, including diversion of Organic Waste in C&D from disposal. Comply with all written and published City policies, ordinances, and/or administrative guidelines regarding the collection, recycling, diversion, tracking, and/or reporting of C&D.

6.17.100 – Model Water Efficient Landscaping Ordinance Requirements (MWELo).

- A. Property owners or their building or landscape designers, including anyone requiring a building or planning permit, plan check, or landscape design review from the City, who are constructing a new (Single-Family, Multi-Family, public, institutional, or Commercial) project with a landscape area greater than 500 square feet, or rehabilitating an existing landscape with a total landscape area greater than 2,500 square feet, shall comply with Sections 492.6(a)(3)(B), (C), (D), and (G) of the MWELo, including sections related to use of Compost and mulch as delineated in this Section 6.17.100.
- B. The following Compost and mulch use requirements that are part of the MWELo are also included as requirements of this Chapter. Other requirements of the MWELo are in effect and can be found in 23 CCR, Division 2, Chapter 2.7.
- C. Property owners or their building or landscape designers that meet the threshold for MWELo compliance outlined in Section 6.17.100(A) above shall:
 - 1. Comply with Sections 492.6 (a)(3)(B), (C), (D), and (G) of the MWELo, which requires the submittal of a landscape design plan with a soil preparation, mulch, and amendments section to include the following:

- a. For landscape installations, Compost at a rate of a minimum of four cubic yards per 1,000 square feet of permeable area shall be incorporated to a depth of six (6) inches into the soil. Soils with greater than six percent (6%) organic matter in the top six (6) inches of soil are exempt from adding Compost and tilling.
 - b. For landscape installations, a minimum three- (3-) inch layer of mulch shall be applied on all exposed soil surfaces of planting areas except in turf areas, creeping or rooting groundcovers, or direct seeding applications where mulch is contraindicated. To provide habitat for beneficial insects and other wildlife up to five percent (5%) of the landscape area may be left without mulch. Designated insect habitat must be included in the landscape design plan as such.
 - c. Organic mulch materials made from recycled or post-consumer materials meeting procurement requirements under 14 CCR, Division 7, Chapter 12, Article 12, shall (i) take precedence over inorganic materials or virgin forest products unless the recycled post-consumer organic products are not locally available, and (ii) comply with 14 CCR, Division 7, Chapter 12, Article 12. Organic mulches are not required where prohibited by local fuel modification plan guidelines or other applicable local ordinance.
2. The MWELO compliance items listed in this Section are not an inclusive list of MWELO requirements; therefore, property owners or their building or landscape designers that meet the threshold for MWELO compliance outlined in Section 6.17.100(A) shall consult the full MWELO for all requirements.
- D. If, after the adoption of this Chapter, the California Department of Water Resources, or its successor agency, amends 23 CCR, Division 2, Chapter 2.7, Sections 492.6(a)(3)(B), (C), (D), and (G) of the MWELO September 15, 2015 requirements in a manner that requires jurisdictions to incorporate the requirements of an updated MWELO in a local ordinance, and the amended requirements include provisions more stringent than those required in this Section, the revised requirements of 23 CCR, Division 2, Chapter 2.7 shall be enforced.

6.17.110 – Procurement Requirements for City Departments, Direct Service Providers, and Vendors.

- A. City departments, and direct service providers to the City, as applicable, must comply with the City-adopted procurement policy for Recovered Organic Waste Product Recycled-Content Paper.
- B. All vendors providing Paper Products and Printing and Writing Paper to the City shall:
 1. If fitness and quality are equal, provide Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber instead of non-recycled products whenever recycled Paper Products and Printing and Writing Paper are Available at the same or lesser total cost than non-recycled items.
 2. Provide Paper Products and Printing and Writing Paper that meet Federal Trade Commission recyclability standards as defined in 16 CFR Section 260.12 of Code of Federal Regulations.
 3. Certify in writing, under penalty of perjury, the minimum percentage of postconsumer material in the Paper Products and Printing and Writing Paper offered or sold to the City. This certification requirement may be waived if the percentage of postconsumer material in the Paper Products, Printing and Writing Paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website.
 4. Certify in writing, on invoices or receipts provided, that the Paper Products and Printing and Writing Paper offered or sold to the City is eligible to be labeled with an unqualified recyclable label as defined in 16 CFR Section 260.12 of Code of Federal Regulations.

5. Provide records to the City's designated personnel member for purposes of Recovered Organic Waste Product procurement recordkeeping in accordance with the City's Recycled-Content Paper procurement policy(ies) of all Paper Products and Printing and Writing Paper purchases within thirty (30) days of the purchase (both recycled-content and non-recycled content, if any is purchased) made by any division or department or employee of the City. Records shall include a copy (electronic or paper) of the invoice or other documentation of purchase, written certifications as required in Sections 6.17.110(B)(3) and (B)(4) of this Chapter for recycled-content purchases, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none), and if non-recycled content Paper Products or Printing and Writing Papers are provided, include a description of why Recycled-Content Paper Products or Printing and Writing Papers were not provided.

6.17.120 – Inspections and Investigations.

- A. City representatives and/or its designated entity, including Designees are authorized to conduct Inspections and Investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from Generators, or Source Separated materials to confirm compliance with this Chapter by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow City to enter the interior of a private residential property for Inspection.
- B. Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, Self-Haulers, Food Recovery Services, and Food Recovery Organizations shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the City's personnel or its Designee during such Inspections and Investigations. Such Inspections and Investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this Chapter describe herein. Failure to provide or arrange for: (i) access to an entity's premises, or (ii) access to records for any Inspection or Investigation is a violation of this Chapter and may result in penalties described.
- C. Any records obtained by the City during its Inspections and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act set forth in Government Code Section 6250 et seq.
- D. City representatives/personnel and/or Designee are authorized to conduct any Inspections or other Investigations of Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, Self-Haulers, Food Recovery Services, and Food Recovery Organizations as reasonably necessary to further the goals of this Chapter, subject to applicable laws.
- E. City shall accept written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

6.17.130 – Enforcement.

- A. A violation of any provision of this Chapter shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by a City Enforcement Official or representative. Enforcement Actions under this Chapter include, but are not limited to, issuance of an administrative citation and assessment of a fine. In addition to the procedures in this section 6.17.130, the City may enforce this Chapter consistent with the procedures in Montclair Municipal Code Chapter 1.04.
- B. Other remedies allowed by law may be used for enforcement, including but not limited to civil action or prosecution as misdemeanor or infraction. The

City may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. The City may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of City staff and resources.

C. Responsible Entity for Enforcement.

1. Enforcement pursuant to this Chapter may be undertaken by the City Enforcement Official or his/her designee authorized and legally able to undertake such action.
 - a. The City Enforcement Official or his/her designee will interpret this Chapter; determine the applicability of waivers, if violation(s) have occurred; implement Enforcement Actions; and, determine if compliance standards are met.
 - b. The City Enforcement Official or his/her designee may issue Notices of Violation(s).

D. Process for Enforcement

1. The City Enforcement Official or his/her designee will monitor compliance with this Chapter randomly and through compliance Reviews, Route Reviews, Investigation of complaints, and an Inspection program. Section 6.17.120 establishes City's right to conduct Inspections and Investigations.
2. City may issue an official notification to notify regulated entities of its obligations under the ordinance.
3. Contamination Prevention.
 - a. For incidences of Prohibited Container Contaminants found by City or its Designee in containers, City will issue a Notice of Violation to any Generator found to have Prohibited Container Contamination in a container. Prior to issuance of a Notice of Violation, City or its Designee may provide an informal warning(s) or notice(s) of Container Contaminants via cart tag or other similar means including, but not limited to mailings, e-mail, or other electronic messages to the Generator and may include photographic evidence of the violation. Thereafter, any Notice of Violation shall be provided by the City via mail within two (2) days after City determines a violation has occurred with respect to Prohibited Container Contaminants. If the City or its Designee observes Prohibited Container Contaminants in a Generator's containers on more than two (2) occasion(s) in any calendar year starting January 1, the City may assess an administrative fine or penalty on the Generator in accordance with Section 6.17.130(E).
 - b. In addition to 6.17.130(D)(3)(a), Designee may implement through Designee's City-approved service rate structure a Contamination service charge for customers committing incidents of Prohibited Container Contaminants. Designee shall provide such customers with written notice and/or cart tags, or such other procedures required under any contract, agreement, or similar contractual authorization between the City and its Designee, prior to levying any contamination service charge. The foregoing Contamination service charges shall not be considered an administrative fine or penalty. Any disputes arising from the assessment of a Contamination service charge shall be adjudicated pursuant to the customer complaint resolution process provided under the terms of any contract, agreement, or similar contractual authorization between the City and its Designee assigned to collect Organic Waste.
4. With the exception of violations of Generator Contamination of container contents addressed under Section 6.17.130(D)(3), City shall issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.

5. Absent compliance by the respondent within the deadline set forth in the Notice of Violation, City shall commence an Enforcement Action to impose penalties, via an administrative citation and fine pursuant to the City's requirements contained in Section 6.17.130(J), Table 1, List of Violations.

Notices shall be sent to "owner" at the official address of the owner maintained by the tax collector for the City or if no such address is available, to the owner at the address of the dwelling or Commercial property or to the party responsible for paying for the collections services, depending upon available information.

- E. **Penalty Amounts for Types of Violations.** The penalty levels for City-issued Notices of Violations are as follows:
 1. For a first violation, the amount of the base penalty shall be \$100 per violation.
 2. For a second violation, the amount of the base penalty shall be \$200 per violation.
 3. For a third violation, the amount of the base penalty shall be \$500 per violation.
- F. **Compliance Deadline Extension Considerations.** The City may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with this Section 6.17.130 if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:
 1. Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;
 2. Delays in obtaining discretionary permits or other governments agency approvals; or,
 3. Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the City is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.
- G. **Appeals Process.** Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation pursuant to the appeal procedures in Montclair Municipal Code Section 1.08.010.
- H. **Education Period for Non-Compliance.** Beginning on and after January 1, 2022, City or its Designee will conduct Inspections, Route Reviews or waste evaluations, and Compliance Reviews, depending upon the type of regulated entity, to determine compliance with this Chapter, and if City or its designee determines that Organic Waste Generator, Self-Hauler, hauler Tier One Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this Chapter and a notice that compliance is required by July 1, 2022, or other date as set by resolution of the City Council, and that violations may be subject to administrative civil penalties starting on January 1, 2024.
- I. **Civil Penalties for Non-Compliance.** Beginning January 1, 2024, if the City or its designee determines that an Organic Waste Generator, Self-Hauler, hauler, Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service or other entity is not in compliance with this Chapter City and its Designee shall document that noncompliance or violation, and City shall issue a Notice of Violation, and take Enforcement Action pursuant to this Section 6.17.130, as needed.
- J. **Enforcement Table - Non-exclusive List of Violations.** Table 1 below provides a non-exclusive list of violations of this Chapter, which may subject an entity to an Enforcement Action pursuant to this Section 6.17.130.

Table 1. List of Violations

REQUIREMENT	DESCRIPTION OF VIOLATION
Commercial Business and Commercial Business Owner Responsibility Requirement Section 6.17.030	Commercial Business fails to provide or arrange for Organic Waste collection services consistent with City requirements and as outlined in this Chapter, for employees, contractors, tenants, and customers, including supplying and allowing access to adequate numbers, size, and location of containers and sufficient signage and container color.
Organic Waste Generator Requirement Sections 6.17.020 and 6.17.030	Organic Waste Generator fails to comply with requirements adopted pursuant to this Chapter for the collection and Recovery of Organic Waste.
Hauler Requirement Section 6.17.070	A hauler providing Residential, Commercial or industrial Organic Waste collection service fails to transport Organic Waste to a facility, operation, activity, or property that recovers Organic Waste, as prescribed by this Chapter.
Hauler Requirement Section 6.17.070	A hauler providing Residential, Commercial or industrial Organic Waste collection service fails to obtain applicable approval issued by the City to haul Organic Waste as prescribed by this Chapter.
Hauler Requirement Section 6.17.070	A hauler fails to keep a record of the applicable documentation of its approval by the City, as prescribed by this Chapter.
Self-Hauler Requirement Section 6.17.080	A generator who is a Self-Hauler fails to comply with the requirements of 14 CCR Section 18988.3(b).
Commercial Edible Food Generator Requirement Section 6.17.050	Tier One Commercial Edible Food Generator fails to arrange to recover the maximum amount of its Edible Food that would otherwise be disposed by establishing a contract or written agreement with a Food Recovery Organization or Food Recovery Service and comply with this Section commencing July 1, 2022, or other date as set by Resolution of the City Council.
Commercial Edible Food Generator Requirement Section 6.17.050	Tier Two Commercial Edible Food Generator fails to arrange to recover the maximum amount of its Edible Food that would otherwise be disposed by establishing a contract or written agreement with a Food Recovery Organization or Food Recovery Service and comply with this Section commencing January 1, 2024.
Commercial Edible Food Generator Requirement Section 6.17.050	Tier One or Tier Two Commercial Edible Food Generator intentionally spoils Edible Food that is capable of being recovered by a Food Recovery Organization or Food Recovery Service.
Organic Waste Generator, Commercial Business Owner, Commercial Edible Food Generator, Food Recovery Organization or Food Recovery Service Sections 6.17.030 and 6.17.050	Failure to provide or arrange for access to an entity's premises for an Inspection or investigation.
Recordkeeping Requirements for Commercial Edible Food Generator Section 6.17.050	Tier One or Tier Two Commercial Edible Food Generator fails to keep records, as prescribed by Section 6.17.050.

Recordkeeping Requirements for Food Recovery Services and Food Recovery Organizations Section 6.17.060	A Food Recovery Organization or Food Recovery Service that has established a contract or written agreement to collect or receive Edible Food directly from a Commercial Edible Food Generator pursuant to 14 CCR Section 18991.3(b) fails to keep records, as prescribed by section 6.17.060.
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6.17.140 – Coordination and Interpretation in Conjunction With Related Solid Waste Ordinances.

In interpreting this Chapter in conjunction with the City’s general Solid Waste regulations (Montclair Municipal Code Chapter 6.16), in the event of any conflict between this Chapter and Chapter 6.16 that cannot be reasonably harmonized through the application of lawful principles of statutory construction, the provision of this Chapter shall control with respect to all issues specific to the regulation of Organic and Food Waste collection, disposal, enforcement, and penalties.

SECTION V. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

SECTION VI. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after passage.

SECTION VII. Posting. The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2022.

ATTEST:

Mayor

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 22-1001 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2022, and finally passed not less than five (5) days thereafter on the XX day of XX, 2022, by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk



CITY COUNCIL AGENDA REPORT

DATE: JUNE 6, 2022 **FILE I.D.:** LDU350/LDU375/ENV075

SECTION: PUBLIC HEARINGS **DEPT.:** COMMUNITY DEV.

ITEM NO.: B **PREPARER:** S. GUTIERREZ

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 22-3350 GRANTING FINAL ADOPTION OF THE 5006 AND 5010 MISSION BOULEVARD INDUSTRIAL WAREHOUSE PROJECT INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (SCH#2022030195) AND MITIGATION MONITORING AND REPORTING PROGRAM, AND APPROVING THE PROJECT UNDER CASE NO. 2022-07

CONSIDER ADOPTION OF RESOLUTION NO. 22-3351 APPROVING A GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE DESIGNATION OF TWO PARCELS TOTALING 2.5 ACRES FROM “GENERAL COMMERCIAL” TO “BUSINESS PARK”

CONSIDER ADOPTION OF RESOLUTION NO. 22-3352 APPROVING TENTATIVE PARCEL MAP NO. 20393 TO MERGE THREE PARCELS INTO A SINGLE 5.13-ACRE SITE AT 5006 AND 5010 MISSION BOULEVARD

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Resolution Nos. 22-3350, 22-3351, and 22-3352 related to a Mitigated Negative Declaration for a General Plan Amendment and approving a Tentative Parcel Map for a proposed industrial/warehouse building on a 5.13-acre site located at 5006-5010 Mission Boulevard. Amendments to the City’s adopted General Plan Land Use Map and approval of Tentative Maps require public hearing review approval by the City Council. Notice of the public hearing before the Montclair City Council was published in the *Inland Valley Daily Bulletin* on May 27, 2022. Notice was additionally posted on the City’s official website.

BACKGROUND: Applicant New Crossings, LLC submitted concurrent applications under Planning Case No. 2022-07 requesting approval of an amendment to the General Plan, a Tentative Parcel Map (TPM), and a Precise Plan of Design (PPD) to facilitate the construction of an industrial warehouse on a 5.13-acre site on the north side of Mission Boulevard. The proposed site is currently comprised of three abutting parcels that need to be combined into a single parcel for development. The proposed industrial/warehouse building is approximately 115,300 square-foot in size and requires the demolition of an existing 8,500 square-foot building and site preparation for new development. A summary of the proposed development is further described below:

Proposed Industrial Warehouse Building Uses and Parking Requirements		
Use ¹	Square Footage	Parking Ratio: Required/Provided
Warehouse Area	107,800	1 space per 1,000 s.f. - 108/108
Mezzanine Office No. 1 (West)	2,500	1 space per 250 s.f. - 10/10
Ground Floor Office (West)	1,250	1 space per 250 s.f. - 5/5
Mezzanine Office No. 2 (East)	2,500	1 space per 250 s.f. - 10/10
Ground Floor Office (East)	1,250	1 space per 250 s.f. - 5/5
Total	115,300	138 Spaces
¹ Proposed building is designed to accommodate up to two separate users.		

On May 9, 2022, the Planning Commission, by a vote of 3-0-2 (two absent), approved the Mitigated Negative Declaration and Precise Plan of Design, and recommended City Council approval of the General Plan Amendment and Tentative Parcel Map. Hard copies of the relevant [Planning Commission staff report and set of plans](#) are included in the City Councils' agenda packet for reference.

As mentioned above, the project requires City Council approval for the following entitlements to address an inconsistency between the General Plan and Zoning land use designations and map to combine the properties into a developable site:

General Plan Amendment (GPA) — The project site currently consists of three abutting parcels two of which amount to 2.5 acres in size having a General Plan designation that differs from the corresponding zoning designation. To make the General Plan and Zoning land use designations for the site consistent, the proposed GPA is required, as the following table indicates:

General Plan Land Use Map Amendment			
APN	Current General Plan Designation	Proposed General Plan Designation	Existing Zoning (No Change)
1101-311-15*	General Commercial	Business Park ¹	MIP
1101-311-17*	General Commercial	Business Park ¹	MIP
1101-311-19	Business Park	Business Park	MIP
*Parcels for which the General Plan Amendment is requested. ¹ General Plan "Business Park" land use designation and the Zoning Map "Manufacturing Industrial Park - MIP" designation are consistent.			

Consistency between the General Plan and Zoning is essential to eliminate conflicts in implementing long-term objectives and the promotion of orderly development. Staff finds the proposed GPA to be appropriate and necessary to achieve consistency between the General Plan Land Use Map and the City's Official Zoning Map. Moreover, the proposed amendment would allow the development of the site in a manner that is compatible with the industrial uses of the area located along the northern side of Mission Boulevard. The proposed GPA would allow for the site to transition from a group of properties that are vacant or partially developed with a timeworn structure into a new development that will contribute positively to the streetscape and to the area long recognized as the industrial district of the City. The proposed GPA would not result in the displacement of any existing residential uses from the site, and is adequately separated from other residential uses on the south side of Mission Boulevard, by a fully developed roadway with medians and an approximate width of 120 feet. Exhibit A reflects the proposed GPA.

Tentative Parcel Map No. 20393 — To merge three abutting parcels into a single developable site of 5.13-acres in size. Exhibit B reflects the proposed Parcel Map.

Tentative Parcel Map No. 20393	
Assessor Parcel Number (APN)	Existing Lot Size
1101-311-15	1.59 acres
1101-311-17	0.91 acre
1101-311-19	2.63 acres
Total	5.13 acres (gross)

Approval of Tentative Parcel Map No. 20393 would allow the combination of three separate parcels under common ownership to create a single site unencumbered by property lines or lack of sufficient size to develop independently. The merger of three parcels into a single parcel would create a parcel of sufficient size and shape to allow for the orderly development of the site consisting of a new building (potential two tenants), with ample room for on-site circulation, parking, and landscaping. The proposed tentative parcel map and the provisions for its design and improvement are consistent with the General Plan in that it will promote good planning practices and orderly development within the City consistent with the features and development pattern of the immediate area around the site. Access to the site will be from Mission Boulevard, a fully developed major east-west arterial roadway and nearby intersections. The City Engineer and Fire Department have reviewed the proposed tentative parcel map and proposed development of the site, and found the proposed map to be appropriate for access and circulation.

When completed, staff believes the proposed project will be a significant improvement to the Mission Boulevard corridor consistent with others recently completed in the area.

Environmental Assessment

An Initial Study was prepared for the entire project and release for public review and comments on February 25, 2022 ending on March 16, 2022. Based on the findings of the Initial Study, staff determined that the project could have a potential significant adverse impact unless reduced to a level of less than significant by the implementation of proposed mitigation measures. Areas identified in the Initial Study as subject to potential environmental impacts include air quality, cultural resources, geology and soils, hazards and hazardous materials, and tribal cultural resources. Mitigation measures for these areas were developed and included as conditions of approval for the project. On May 9, 2022, the Planning Commission reviewed the Initial Study, Mitigation Monitoring and Reporting Program, and approved a [Mitigated Negative Declaration \(MND\)](#) for the project.

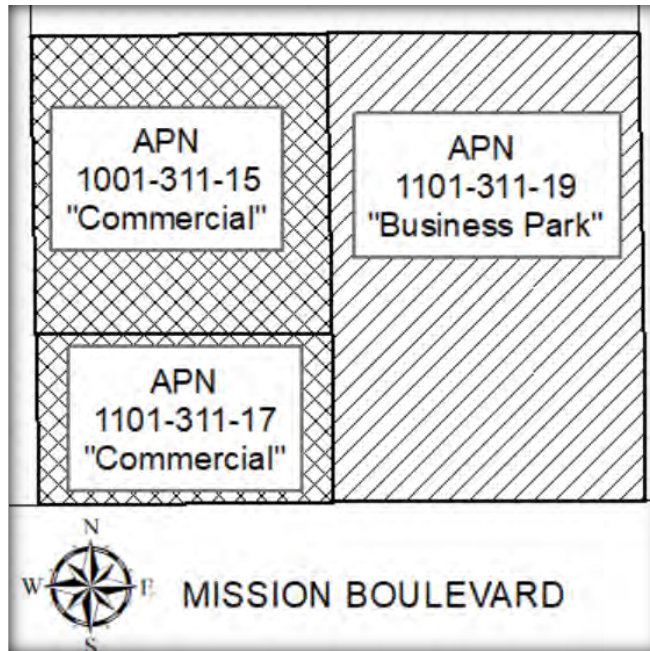
FISCAL IMPACT: There would be no direct impact on the City's General Fund resulting from the City Council's adoption of the proposed three resolutions. Approval of the project would ultimately result in positive, long-term economic benefits for the City, including enhanced property values from improvements to the property.

RECOMMENDATION: Staff recommends the City Council take the following actions in relation to the development of 5006-5010 Mission Boulevard:

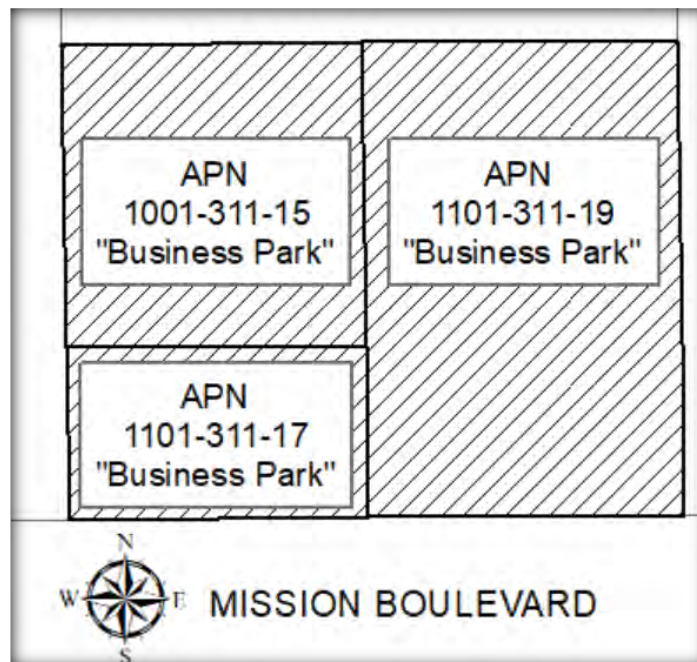
1. Adopt Resolution No. 22-3350 granting final adoption of the 5006 and 5010 Mission Boulevard Industrial Warehouse Project Initial Study/Mitigated Negative Declaration (SCH#2022030195) and Mitigation Monitoring and Reporting Program, and approving the project under Case No. 2022-07;
2. Adopt Resolution No. 22-3351 approving General Plan Amendment to change the land use designation of two parcels totaling 2.5 acres from "General Commercial" to "Business Park"; and
3. Adopt Resolution No. 22-3352 approving Tentative Parcel Map No. 20393 to merge three parcels into a single 5.13-acre site at 5006 and 5010 Mission Boulevard.

CASE 2022-07
EXHIBIT A

CURRENT GENERAL PLAN DESIGNATION
SUBJECT SITE

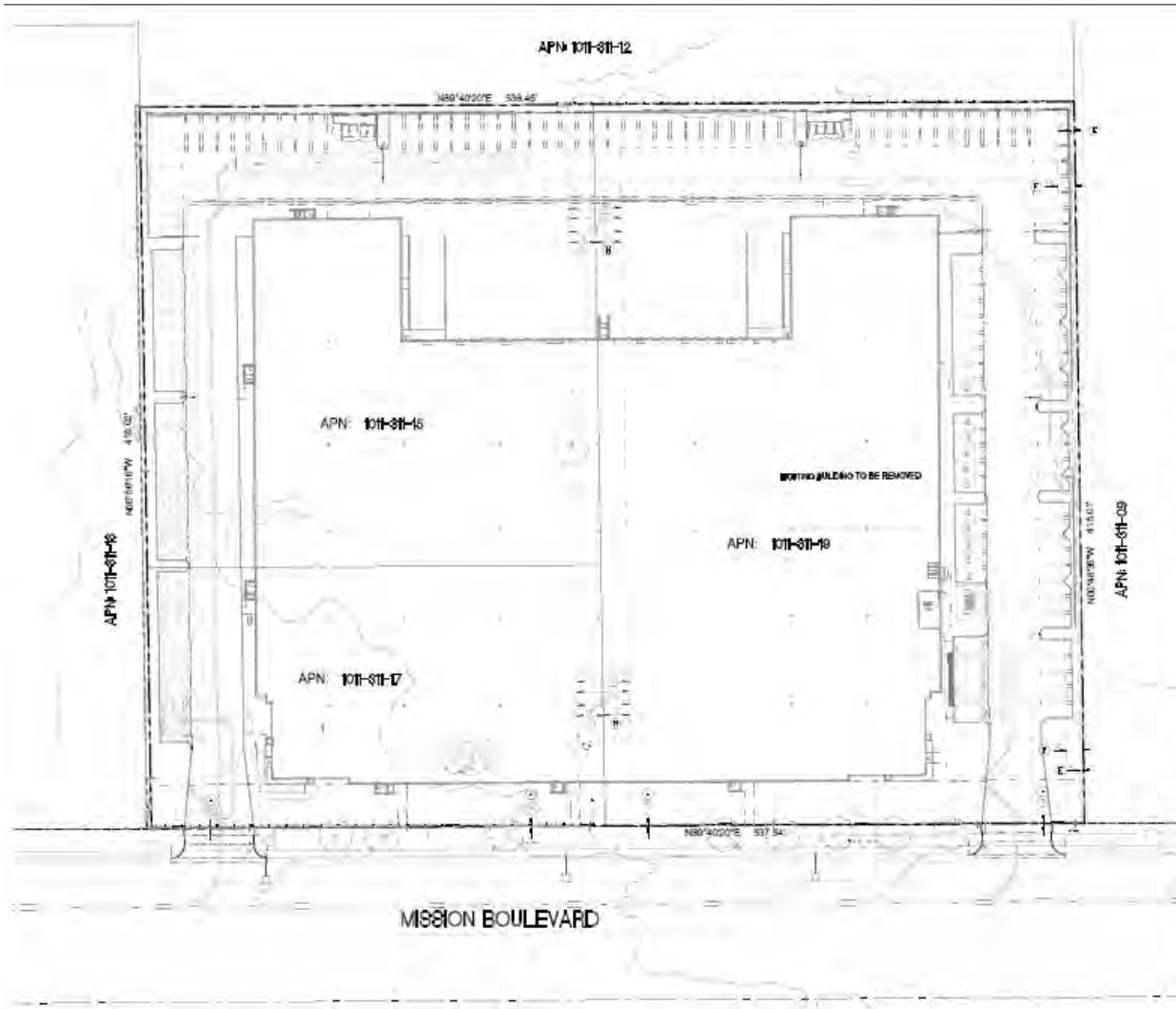


PROPOSED GENERAL PLAN DESIGNATION
SUBJECT SITE



CASE 2022-07
EXHIBIT B

PARCEL MAP NO. 20393



TENTATIVE PARCEL
MAP 20393

5.13 AC. (3023) 1 NUMBERED LOT MARCH 2022



VICINITY MAP
NTS

PARCEL NO.	TOTAL AREA (SF)
1	222,485

INCORPORATION BY REFERENCE

THESE APPROVED REFLECT THE PLANS, DRAWINGS, AND PERMITS FROM THE CITY OF MONTCLAIR. THE CITY OF MONTCLAIR HAS REVIEWED THE DEVELOPMENT AND PERMITS AND HAS DETERMINED THAT THE DEVELOPMENT AND PERMITS ARE IN COMPLIANCE WITH THE CITY OF MONTCLAIR APPLICABLE ORDINANCES AND REGULATIONS.

NOTES

ALL IMPROVEMENTS WITHIN THE PUBLIC RIGHT-OF-WAY, INCLUDING STREET LIGHTS, SHALL BE PROVIDED FOR THE PUBLIC IMPROVEMENT PLAN.

GENERAL INFORMATION

- GENERAL PLANNING USE: GENERAL COMMERCIAL BUSINESS PARK
- ZONING: MFC-20
- PERMITTED GENERAL PLAN: GENERAL COMMERCIAL BUSINESS PARK DEVELOPMENT
- ADVERTISED USE: GENERAL COMMERCIAL BUSINESS PARK DEVELOPMENT
- RECORDING: 2022-03-20
- APPROVED BY: MONTCLAIR CITY COUNCIL
- DATE: 2022-03-20
- PROJECT NO.: 20393
- PREPARED BY: MONTCLAIR PUBLIC WORKS DEPARTMENT
- DATE: 2022-03-20
- PROJECT NO.: 20393
- DATE: 2022-03-20
- PROJECT NO.: 20393
- DATE: 2022-03-20
- PROJECT NO.: 20393
- DATE: 2022-03-20

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1	E-E-E-T-T-L-E
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3	E-E-E-T-T-L-E
4	E-E-E-T-T-L-E
5	E-E-E-T-T-L-E
6	E-E-E-T-T-L-E
7	E-E-E-T-T-L-E
8	E-E-E-T-T-L-E

NO.	DESCRIPTION	DATE	BY
1	APPROVED	03/20/22	MONTCLAIR CITY COUNCIL

LEGAL DESCRIPTION
PARTS 1, 2, AND 3 OF PARCEL MAP NO. 20393, IN THE CITY OF MONTCLAIR, BY THE CHAIRMAN OF THE BOARD OF SUPERVISORS, STATE OF CALIFORNIA, AS REPRESENTED BY THE CITY OF MONTCLAIR.

OWNER/APPLICANT/DEVELOPER
MONTCLAIR LLC AND MONTCLAIR INVESTMENT, LLC
111 TEET
TEET
TEET

CIVIL ENGINEER
MADOLE & ASSOCIATES, INC.
4605 PITTBURGH AVENUE, SUITE 230
RANCHO CUCUMBERA, CA 94752
CONTACT: MARK BERSTONE
(925) 461-5522 x1130
Email: mberstone@madole.com

ARCHITECT
3AA ARCHITECTS
8011 RESEARCH DRIVE
SUITE 200
IRVINE, CA 92618
CONTACT: RODGER DEYOS
(949) 474-1777 x1122
Email: roger@3aa.com

TENTATIVE PARCEL MAP 20393
5008 AND 5010 MISSION BOULEVARD
MONTCLAIR, CA 94702
APN: 101-811-15, 101-811-17, 101-811-19



SCALE	DATE	BY
1" = 1'	03/20/22	MONTCLAIR CITY COUNCIL

RESOLUTION NO. 22-3350

**A RESOLUTION OF THE CITY OF MONTCLAIR CITY COUNCIL
GRANTING FINAL ADOPTION OF THE 5006 AND 5010 MISSION
BOULEVARD INDUSTRIAL WAREHOUSE PROJECT INITIAL STUDY/
MITIGATED NEGATIVE DECLARATION (SCH #2022030195) AND
MITIGATION MONITORING AND REPORTING PROGRAM, AND
APPROVING THE PROJECT UNDER CASE NO. 2022-07**

WHEREAS, New Crossings Development, LLC, the authorized representative of the property owner, proposes to develop an approximately 115,300 square-foot, one-story industrial warehouse facility, parking spaces, tractor-trailer loading docks, and other associated site improvements such as landscaping, sidewalks, and internal driveways, on an approximately 5.13-acre property under Case No. 2022-07 ("Project"); and

WHEREAS, pursuant to the California Environmental Quality Act (Public Resources Code, §21000 et seq.) and the State CEQA Guidelines (California Code of Regulations, title 14, §15000 et seq.) (collectively, "CEQA"), an Initial Study analyzing all potential impacts of the Project was prepared for the City's consideration as the lead agency under State CEQA Guidelines section 15063; and

WHEREAS, on the basis of the Initial Study, which indicated that all potential environmental impacts from the Project would be less than significant with the incorporation of the mitigation measures in the Mitigation Monitoring and Reporting Program ("MMRP"), City staff determined that a Mitigated Negative Declaration ("MND") should be prepared; and

WHEREAS, the Draft Initial Study/MND (SCH #2022030195) was prepared in accordance with CEQA and circulated for public review and comment between February 25, 2022, and March 16, 2022, by: (1) filing a Notice of Intent to Adopt a Mitigated Negative Declaration ("NOI") with the State Clearinghouse; (2) filing a NOI with the San Bernardino County Clerk; (3) placing a NOI in the Inland Valley Daily Bulletin newspaper, a newspaper of general circulation; (4) mailing a NOI to various interested persons, agencies, and tribes; and (5) posting a NOI on the City's website; and

WHEREAS, copies of the Draft Initial Study/MND were available during the public review period at the Community Development Department at City Hall, the Montclair Branch Library, and on the City's website; and

WHEREAS, pursuant to Public Resources Code section 21081.6 and State CEQA Guidelines section 15074(d), the MMRP has been prepared and includes mitigation measures for air quality, cultural resources, geology and soils, hazards and hazardous materials, and tribal cultural resources, and

WHEREAS, all comments from the public, as well as any responsible, trustee, and interested agencies on the Initial Study/MND were considered and responded to; and

WHEREAS, the Final Initial Study/MND consists of the responses to comments, the Initial Study/MND, and an Errata section containing minor revisions to the Initial Study/MND; and

WHEREAS, a notice of this item was advertised as a public hearing set for April 25, 2022, in the Inland Valley Daily Bulletin newspaper on April 15, 2022, and mailed to property owners within a 300-foot radius of the exterior boundaries of the Project site in accordance with State law for consideration of the Project's discretionary entitlements; and

WHEREAS, on April 25, 2022, and May 9, 2022, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the Planning Commission opened the duly noticed public hearing to consider the proposed Project; and

WHEREAS, on April 25, 2022, two late comment letters were received from two separate law firms representing labor unions representing unions regarding their respective concerns over the environmental impacts that the commenters allege would be caused by construction activities if the project was not required to utilize a local and skilled workforce; and

WHEREAS, given the extent and nature of the comments in both letters, there was insufficient time to adequately respond to the concerns during the meeting; and

WHEREAS, since the project was advertised as a public hearing, the Planning Commission opened the public hearing and took public comments from two individuals, in addition to receiving the above-referenced comment letters. After comments were received, the Commission voted to continue the item to its regularly scheduled meeting on May 9, 2022; and

WHEREAS, on May 9, 2022, commencing at 7:00 p.m. in the Council Chamber at Montclair City Hall, the Planning Commission opened the duly noticed public hearing to consider the proposed Project; and

WHEREAS, on May 9, 2022, the proposed project, Final Initial Study/MND, and all evidence were presented and all persons wishing to testify in connection with the said proposal were heard and said application was fully studied.

WHEREAS, on May 9, 2022, the Planning Commission reviewed and considered the Final Initial Study/MND, the MMRP, and all other relevant information contained in the administrative record regarding the Project, including all oral and written evidence presented to it during all meetings and hearings; and

WHEREAS, the MND reflects the independent judgment of the City and is deemed adequate for purposes of making decisions on the merits of the Project; and

WHEREAS, on May 9, 2022, the Planning Commission, by a vote of 3-0-2, approved the Precise Plan of Design for Case No. 2022-07 for site plan, floor plans, elevations, colors, materials, and conceptual landscape plan subject to conditions of approval contained in Planning Commission Resolution No. 22-1966; and

WHEREAS, on May 9, 2022, the Planning Commission, by a vote of 3-0-2, recommended City Council approval of a General Plan Amendment pursuant to Planning Commission Resolution No. 22-1964 to modify the land use designation of 2.5 acres, APNs 1101-311-15 and 1101-311-17, having the "General Commercial" land use designation to "Business Park" to allow the development of the subject site with a new industrial building; and

WHEREAS, on May 9, 2022, the Planning Commission, by a vote of 3-0-2, recommended City Council approval of Tentative Parcel Map No. 20393 pursuant to Planning Commission Resolution No. 22-1965 merging three abutting parcels, APNs 1101-311-15, 1101-311-17, and 1101-311-19, into a single developable 5.13-acre parcel; and

WHEREAS, on May 9, 2022, the Planning Commission, by a vote of 3-0-2, recommended City Council adoption of the 5006 and 5010 Mission Boulevard Industrial Warehouse Project Initial Study/Mitigated Negative Declaration (SCH #32022030195) and Mitigation Monitoring and Reporting Program and approving the project under Planning Case No. 2022-07 pursuant to Planning Commission Resolution No. 22-1967; and

WHEREAS, on May 27, 2022, the City gave public notice of the City Council's public hearing by advertisement in a newspaper of general circulation, posted the public notice at City Hall, and mailed it to all property owners within 300 feet of the project area; and

WHEREAS, on June 6, 2022, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the City Council opened and conducted a duly noticed public hearing to consider the proposed General Plan Amendment, Tentative Parcel Map, Initial Study/Mitigated Negative Declaration (SCH #2022030195), and Mitigation Monitoring and Reporting Program for the project under Case No. 2022-07; and

WHEREAS, on June 6, 2022, all persons wishing to testify in connection with the said proposal were heard and said application was fully studied; and

WHEREAS, no comments or additional information submitted to the Planning Commission, and no other circumstances have produced substantial new information requiring substantial revisions that would trigger recirculation of the MND or additional environmental review of the Project under State CEQA Guidelines section 15073.5; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

WHEREAS, the City Council has reviewed and considered the information contained in the Final Initial Study/Mitigated Negative Declaration (MND), and administrative record, including all oral and written comments received during the comment period, which is on file with the City and available for review. Based on the City Council's independent review and analysis, the City Council finds that the Final Initial Study/Mitigated Negative Declaration (MND) has been completed in compliance with CEQA.

WHEREAS, Based on the Final Initial Study/MND and the administrative record, the City Council finds that the Final Initial Study/MND contains a complete and accurate reporting of the environmental impacts associated with the Project. The City Council further finds on the basis of the whole record before it that there is no substantial evidence supporting a fair argument that the Project will have a significant effect on the environment and that the Final Initial Study/MND reflects the City's independent judgment and analysis. The City Council further determines that the MND has not been substantially revised after public notice of its availability, nor have there been new significant environmental effects identified in the Final Initial Study/MND in response to comments and thus recirculation is not required under State CEQA Guidelines, section 15073.5. Finally, the City Council finds that the Final Initial Study/MND contains a complete, objective, and accurate reporting of the environmental impacts with mitigation associated with the Project and reflects the independent judgment of the City Council; and

WHEREAS, on June 6, 2022, the City Council approved the proposed General Plan Amendment, Tentative Parcel Map, Initial Study/Mitigated Negative Declaration (SCH #2022030195), and Mitigation Monitoring and Reporting Program for the project under Case No. 2022-07; and

WHEREAS, pursuant to Public Resources Code Section 21080, subdivision (c)(2), the City Council adopts the Final Initial Study/MND prepared for the Project.

WHEREAS, pursuant to Public Resources Code Section 21081.6, the Planning Commission recommends that the City Council approve and adopt the MMRP, which was prepared for the Project and made a condition of Project approval.

WHEREAS, the Planning Commission recommends that the City Council approve the Project as described in the Final Initial Study/MND.

1. The documents or other materials which constitute the record of proceedings upon which this decision is based are located at the City's office at 5111 Benito Street, Montclair, California 91763. The custodian of these documents or other material is the City Clerk for the City of Montclair.
2. The City Council directs staff to file a Notice of Determination with the County of San Bernardino and the State Clearinghouse within five (5) working days of approval of the Project.

APPROVED AND ADOPTED this XX day of XX 2022.

ATTEST:

Mayor

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3350 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, 2022, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk

EXHIBIT A

Case No. 2022-07

Mitigation Measure Monitoring Program (MMRP)

Mitigating Monitoring and Reporting Program

5006 and 5010 Mission Boulevard Warehouse

Case No. 2022-7

APRIL 2022

Prepared for:

CITY OF MONTCLAIR

5111 Benito Street

Montclair, California 91763

Contact: Silvia Gutiérrez, Associate Planner

Prepared by:

DUDEK

3615 Main Street, Suite 103

Riverside, California 92501

Contact: Patrick Cruz, Project Manager

Printed on 30% post-consumer recycled material.

Table of Contents

SECTION	PAGE
1 Introduction	1
2 Mitigation Monitoring and Reporting Program	3
TABLES	
1 Mitigation Monitoring and Reporting Program Table.....	3

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1 Introduction

The California Environmental Quality Act (CEQA) requires that a public agency adopting a Mitigated Negative Declaration (MND) take affirmative steps to determine that approved mitigation measures are implemented after project approval. The lead or responsible agency must adopt a reporting and monitoring program for the mitigation measures incorporated into a project or included as conditions of approval. The program must be designed to ensure compliance with the MND during project implementation (California Public Resources Code, Section 21081.6(a)(1)).

This Mitigation Monitoring and Reporting Program (MMRP) will be used by the City of Montclair (City) to ensure compliance with adopted mitigation measures identified in the MND for the proposed 5006 and 5010 Mission Boulevard Warehouse project (project) when construction begins. The City, as the lead agency, will be responsible for ensuring that all mitigation measures are carried out. Implementation of the mitigation measures would reduce impacts to below a level of significance for air quality, cultural resources, geology and soils, hazards and hazardous materials, and tribal cultural resources.

The remainder of this MMRP consists of a table that identifies the mitigation measures by resource for each project component. Table 1 identifies the mitigation monitoring and reporting requirements, list of mitigation measures, party responsible for implementing mitigation measures, timing for implementation of mitigation measures, agency responsible for monitoring of implementation, and date of completion. With the MND and related documents, this MMRP will be kept on file at the following location:

City of Montclair
5111 Benito Street
Montclair, California 91763

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2 Mitigation Monitoring and Reporting Program

Table 1. Mitigation Monitoring and Reporting Program Table

Mitigation Measure	Implementation Timing	Agency Responsible for Monitoring	Date of Completion
Air Quality			
<p>MM-AQ-1: Construction Equipment Emissions Reduction. The following measures shall be incorporated into the project to reduce construction criteria air pollutant emissions of PM₁₀:</p> <p>A. The following equipment shall make use of EPA Tier 4 Interim engines during construction: concrete/industrial saws, generator sets, rubber tired dozers, and tractors/loaders/backhoes. An exemption from these requirements may be granted by the City in the event that the applicant documents that equipment with the required tier is not reasonably available and corresponding reductions in criteria air pollutant emissions are achieved from other construction equipment.¹ Before an exemption may be considered by the City, the applicant shall be required to demonstrate that two construction fleet owners/operators in the Los Angeles Region were contacted and that those owners/operators confirmed Tier 4 Interim or better equipment could not be located within the Los Angeles region. To ensure that Tier 4 construction equipment or better would be used during the Proposed project's construction, the applicant shall include this requirement in applicable bid documents, purchase orders, and contracts. Successful contractor(s) must demonstrate the ability to supply the compliant construction equipment for use prior to any ground disturbing and construction activities.</p>	During construction	City of Montclair	

¹ For example, if a Tier 4 Interim piece of equipment is not reasonably available at the time of construction and a lower tier equipment is used instead (e.g., Tier 3), another piece of equipment could be upgraded from a Tier 4 Interim to a higher tier (i.e., Tier 4 Final) or replaced with an alternative-fueled (not diesel-fueled) equipment to offset the emissions associated with using a piece of equipment that does not meet Tier 4 Interim standards.

Table 1. Mitigation Monitoring and Reporting Program Table

Mitigation Measure	Implementation Timing	Agency Responsible for Monitoring	Date of Completion
<p>B. Minimize simultaneous operation of multiple construction equipment units. During construction, vehicles in loading and unloading queues shall not idle for more than 5 minutes, and shall turn their engines off when not in use to reduce vehicle emissions.</p> <p>C. Properly tune and maintain all construction equipment in accordance with manufacturer’s specifications.</p>			
Cultural Resources			
<p>MM-CUL-1: All construction personnel and monitors who are not trained archaeologists shall be briefed regarding inadvertent discoveries prior to the start of construction activities. A basic presentation and handout or pamphlet shall be prepared in order to ensure proper identification and treatment of inadvertent discoveries. The purpose of the Workers Environmental Awareness Program (WEAP) training is to provide specific details on the kinds of archaeological materials that may be identified during construction of the project and explain the importance of and legal basis for the protection of significant archaeological resources. Each worker shall also learn the proper procedures to follow in the event that cultural resources or human remains are uncovered during ground-disturbing activities. These procedures include work curtailment or redirection, and the immediate contact of the site supervisor and archaeological monitor.</p>	Prior to construction	City of Montclair	
<p>MM-CUL-2: A qualified archaeologist shall be retained and on-call to respond and address any inadvertent discoveries identified during initial excavation in native soil. Initial excavation is defined as initial construction-related earth moving of sediments from their place of deposition. As it pertains to archaeological monitoring, this definition excludes movement of sediments after they have been initially disturbed or displaced by project-related construction. A qualified archaeological principal investigator, meeting the Secretary of the Interior’s Professional Qualification Standards, should oversee and adjust monitoring efforts as</p>	During construction	City of Montclair	

Table 1. Mitigation Monitoring and Reporting Program Table

Mitigation Measure	Implementation Timing	Agency Responsible for Monitoring	Date of Completion
<p>needed (increase, decrease, or discontinue monitoring frequency) based on the observed potential for construction activities to encounter cultural deposits or material. The archaeological monitor will be responsible for maintaining daily monitoring logs.</p> <p>In the event that potential prehistoric or historical archaeological resources (sites, features, or artifacts) are exposed during construction activities for the project, all construction work occurring within 100 feet of the find shall immediately stop and a qualified archaeologist must be notified immediately to assess the significance of the find and determine whether or not additional study is warranted. Depending upon the significance of the find, the archaeologist may simply record the find and allow work to continue. If the discovery proves significant under CEQA, additional work such as preparation of an archaeological treatment plan, testing, data recovery, or monitoring may be warranted.</p> <p>If monitoring is conducted, an archaeological monitoring report shall be prepared within 60 days following completion of ground disturbance and submitted to the City for review. This report should document compliance with approved mitigation, document the monitoring efforts, and include an appendix with daily monitoring logs. The final report shall be submitted to the South Central Coastal Information Center.</p>			
Geology and Soils			
<p>MM-GEO-1: Paleontological Construction Monitoring. If any grading activity below a depth of 10 feet below the ground surface is proposed for the project, the applicant shall retain a paleontologist to ensure the implementation of a paleontological monitoring program. The paleontologist shall meet the requirements of a qualified paleontologist, as defined by the Society of Vertebrate Paleontology (SVP 2010). The qualified</p>	<p>Prior to construction; during construction</p>	<p>City of Montclair</p>	

Table 1. Mitigation Monitoring and Reporting Program Table

Mitigation Measure	Implementation Timing	Agency Responsible for Monitoring	Date of Completion
<p>paleontologist shall attend any preconstruction meetings and manage the paleontological monitor(s) if they are not doing the monitoring. A paleontological monitor shall be on site during all excavations below the depth of 10 feet below the ground surface. The qualified paleontologist shall determine the level of monitoring required based on subsurface conditions. If Pleistocene sedimentological indicators are not observed below 10 feet or sediments are too coarse grained for fossil preservation (e.g., large cobbles and boulders), the qualified paleontologist or paleontological monitor shall spot-check excavations at five-foot intervals to determine if Pleistocene sediments are being impacted. The paleontological monitor shall be equipped with necessary tools for the collection of fossils and associated geological and paleontological data. If sedimentological indicators conducive to the preservation of microvertebrates (as defined by SVP [2010]) are encountered, test sediment samples shall be collected to determine the presence of microvertebrate fossils. The monitor shall complete daily logs detailing the day's excavation activities and pertinent geological and paleontological data. In the event that paleontological resources (e.g., fossils) are unearthed during grading, the paleontological monitor will temporarily halt and/or divert grading activity to allow recovery of paleontological resources. The area of discovery will be roped off with a 50-foot radius buffer. Once documentation and collection of the find is completed, the monitor will remove the rope and allow grading to recommence in the area of the find. Following the paleontological monitoring program, a final monitoring report shall be submitted to the City for review and approval. The report shall summarize the monitoring program and include geological observations and any paleontological resources recovered during paleontological monitoring for the project.</p>			

Table 1. Mitigation Monitoring and Reporting Program Table

Mitigation Measure	Implementation Timing	Agency Responsible for Monitoring	Date of Completion
Hazards and Hazardous Materials			
<p>MM-HAZ-1: Prior to initiating any ground disturbing activities on the project site, the project applicant shall prepare a Soil Management Plan that is submitted and approved by the San Bernardino County Fire Department, Hazardous Materials Division. The Soil Management Plan shall be prepared by a qualified expert and provide all field protocols for the appropriate identification, notification, and handling/protection of suspect materials, if encountered during earthwork activities. Upon discovery of suspect soils or groundwater, the contractor shall notify the San Bernardino County Fire Department and retain a qualified professional to collect soil samples to confirm the type and extent of contamination that may be present. If contamination is confirmed to be present, any further ground disturbing activities within areas of identified or suspected contamination shall be conducted according to a site-specific health and safety plan, prepared by a California state licensed professional.</p> <p>If contaminated soil or groundwater is encountered and constituents exceed human health risk levels, ground disturbing activities shall not recommence within the contaminated areas until remediation is complete and a “no further action” letter is obtained from the appropriate regulatory agency or direction is otherwise given by the overseeing agency that construction can commence. The project applicant shall submit the “no further action” letter or equivalent notification to the City prior to resumption of any ground disturbing activity on the relevant portion of the project site.</p>	<p>Prior to construction; during construction</p>	<p>City of Montclair</p>	
Tribal Cultural Resources			
<p>MM-TCR-1: Prior to the issuance of any grading permit for the Project, the City of Montclair (City) shall ensure that the Project Applicant retains the services of a tribal monitor(s) approved by</p>	<p>Prior to construction; during construction</p>	<p>City of Montclair</p>	

Table 1. Mitigation Monitoring and Reporting Program Table

Mitigation Measure	Implementation Timing	Agency Responsible for Monitoring	Date of Completion
<p>the Gabrieleño Band of Mission Indians Kizh Nation to provide Native American monitoring during ground-disturbing activities. This provision shall be included on the Project contractor’s plans and specifications. Ground-disturbing activities are defined by the Gabrieleño Band of Mission Indians Kizh Nation as activities that may include but are not limited to pavement removal, pot-holing or auguring, grubbing, tree removals, borings, grading, excavation, drilling, and/or trenching within the Project area. The Project site shall be made accessible to the monitor(s), provided adequate notice is given to the construction contractor and that a construction safety hazard does not occur. The monitor(s) shall possess Hazardous Waste Operations and Emergency Response (HAZWOPER) certification. In addition, the monitor(s) shall be required to provide insurance certificates, including liability insurance.</p> <p>If evidence of any tribal cultural resources is found during ground-disturbing activities, the monitor(s) shall have the capacity to halt construction in the immediate vicinity of the find to recover and/or determine the appropriate plan of recovery for the resource in consultation with a qualified archaeologist. The recovery process shall not unreasonably delay the construction process and must be carried out consistent with CEQA and local regulations.</p> <p>Construction activity shall not be contingent on the presence or availability of a monitor, and construction may proceed regardless of whether or not a monitor is present on site. The monitor shall complete daily monitoring logs that will provide descriptions of the day’s activities and general observations and whether the Native American monitor believes they observed a TCR and what action they took. The on-site monitoring shall end when the Project site grading and excavation activities are completed or prior to the completion if the monitor has indicated that the site has a low potential for tribal cultural resources.</p>			

Table 1. Mitigation Monitoring and Reporting Program Table

Mitigation Measure	Implementation Timing	Agency Responsible for Monitoring	Date of Completion
<p>MM-TCR-2: Upon discovery of any tribal cultural resources, a Native American monitor has the ability to halt construction activities in the immediate vicinity (within 50 feet) of the find until the find can be assessed. All tribal cultural resources unearthed during the Project construction activities shall be evaluated by the Native American monitor approved by the Gabrieleño Band of Mission Indians Kizh Nation and a qualified archaeologist. Construction work shall be permitted to continue on other parts of the Project site while evaluation and, if necessary, additional investigations and/or preservation measures take place (CEQA Guidelines Section 15064.5(f)). If the resources are Native American in origin, the Gabrieleño Band of Mission Indians Kizh Nation tribe shall coordinate with the landowner regarding treatment and curation of these resources. If a resource is determined by the qualified archaeologist to constitute a “historical resource” or “unique archaeological resource,” time allotment and funding sufficient to allow for implementation of avoidance measures shall be made available through coordination between the Gabrieleño Band of Mission Indians Kizh Nation and the Project applicant. The treatment plan established for the resources shall be in accordance with California Environmental Quality Act (CEQA) Guidelines Section 15064.5(f) for historical resources and Public Resources Code (PRC) Sections 21083.2(b) for unique archaeological resources. Preservation in place (i.e., avoidance) shall be the preferred manner of treatment. If preservation in place is not feasible, treatment may include implementation of archaeological data recovery excavations to remove the resource along with subsequent laboratory processing and analysis.</p>	<p>During construction</p>	<p>City of Montclair</p>	

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RESOLUTION NO. 22-3351

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR GRANTING APPROVAL OF A GENERAL PLAN AMENDMENT UNDER CASE 2022-07 TO CHANGE THE LAND USE DESIGNATION OF TWO PARCELS OF LAND TOTALING 2.5 ACRES FROM "GENERAL COMMERCIAL" TO "BUSINESS PARK" (APNs 1101-311-15 AND 1101-311-17)

WHEREAS, New Crossings Development, LLC, the authorized representative of the property owner, applied for a General Plan Amendment under Case No. 2022-07; and

WHEREAS, the applicant has submitted concurrent applications related to developing the site with a 115,300 square foot industrial building project including Tentative Parcel Map No. 20393 to merge three abutting parcels to create a single 5.13-acre site and a Precise Plan of Design (PPD); and

WHEREAS, the General Plan Amendment (GPA) applies to two parcels totaling 2.5 acres, identified as Assessor Parcel Numbers (APN) 1101-311-15 and 1101-311-17, located on the north side of Mission Boulevard approximately 250 feet east of Monte Vista Avenue; and

WHEREAS, APNs 1101-311-15 and 1101-311-17 are two of three abutting parcels under the same ownership that will be combined via Tentative Parcel Map No. 20393 to form a 5.13-acre site for a new industrial building project; and

WHEREAS, APNs 1101-311-15 and 1101-311-17 are currently designated by the General Plan as "General Commercial" which is inconsistent with the "Manufacturing Industrial Park - MIP" land use designation of the Montclair Zoning Map; and

WHEREAS, the GPA is intended to eliminate the current inconsistency between the two land use designations by changing the General Plan land use designation from "General Commercial" to "Business Park;" and

WHEREAS, the above-referenced GPA is depicted on the attached Exhibit "A," a table incorporated herein by reference; and

WHEREAS, the City prepared an Initial Study/Mitigated Negative Declaration ("MND") (SCH #2022030195) that analyzed the proposed Project's environmental impacts in compliance with the provisions of the California Environmental Quality Act ("CEQA"), which determined that proposed mitigation measures would reduce impacts to air quality, cultural resources, geology and soils, hazards and hazardous materials, and tribal cultural resources to less than significant, and was circulated for public review and comment between February 25, 2022 and March 16, 2022; and

WHEREAS, a Final Initial Study/MND was prepared and consists of the responses to comments and the Initial Study/MND; and

WHEREAS, on April 25, 2022, and May 9, 2022, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the Planning Commission opened the duly noticed public hearing to consider the proposed Project; and

WHEREAS, on April 25, 2022, two late comment letters were received from two separate law firms representing labor unions regarding their respective concerns over the environmental impacts that the commenters allege would be caused by construction activities if the project was not required to utilize a local and skilled workforce; and

WHEREAS, given the extent and nature of the comments in both letters, there was insufficient time to adequately respond to the concerns during the meeting; and

WHEREAS, since the project was advertised as a public hearing, the Planning Commission opened the public hearing and took public comments from two individuals, in addition to receiving the above-referenced comment letters. After comments were received, the Commission voted to continue the item to its regularly scheduled meeting on May 9, 2022; and

WHEREAS, on May 9, 2022, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the Planning Commission opened the duly noticed public hearing to consider the proposed Project; and

WHEREAS, on May 9, 2022, the Planning Commission conducted a duly noticed public hearing on the proposed project at which time all persons wishing to testify in connection with the project were heard and said General Plan Amendment, Tentative Parcel Map and Precise Plan of Design for the proposed 115,300 square foot industrial building was fully studied; and

WHEREAS, on May 9, 2022, the proposed project, Final Initial Study/MND, and all evidence were presented and all persons wishing to testify in connection with the said proposal were heard and said application was fully studied; and

WHEREAS, on May 9, 2022, the Planning Commission, by a vote of 3-0-2, approved the Precise Plan of Design for Case No. 2022-07 for site plan, floor plans, elevations, colors, materials, and conceptual landscape plan subject to conditions of approval contained in Planning Commission Resolution No. 22-1966; and

WHEREAS, on May 9, 2022, the Planning Commission, by a vote of 3-0-2, recommended City Council approval of a General Plan Amendment pursuant to Planning Commission Resolution No. 22-1964 to modify the land use designation of 2.5 acres identified as APNs 1101-311-15 and 1101-311-17 having the "General Commercial" land use designation to "Business Park" to allow development of the subject site with a new industrial building; and

WHEREAS, on May 9, 2022, the Planning Commission, by a vote of 3-0-2, recommended City Council approval of Tentative Parcel Map No. 20393 pursuant to Planning Commission Resolution No. 22-1965 merging three abutting parcels, APNs 1101-311-15, 1101-311-17, and 1101-311-19, into a single developable 5.13-acre parcel; and

WHEREAS, on May 9, 2022, the Planning Commission, by a vote of 3-0-2, recommended City Council adoption of the 5006 and 5010 Mission Boulevard Industrial Warehouse Project Initial Study/Mitigated Negative Declaration (SCH #32022030195) and Mitigation Monitoring and Reporting Program and approving the project under Planning Case No. 2022-07 pursuant to Planning Commission Resolution No. 22-1967; and

WHEREAS, on May 27, 2022, the City gave public notice of the City Council's public hearing by advertisement in a newspaper of general circulation, and posted the public notice at City Hall, and mailed to all property owners within 300 feet of the project area; and

WHEREAS, on June 6, 2022, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the City Council opened and conducted a duly noticed public hearing to consider the proposed General Plan Amendment, Tentative Parcel Map, Initial Study/Mitigated Negative Declaration (SCH #2022030195), and Mitigation Monitoring and Reporting Program for the project under Case No. 2022-07; and

WHEREAS, on June 6, 2022, all persons wishing to testify in connection with the said proposal were heard and said application was fully studied; and

WHEREAS, on June 6, 2022, the City Council approved the proposed General Plan Amendment, Tentative Parcel Map, Initial Study/Mitigated Negative Declaration (SCH #2022030195), and Mitigation Monitoring and Reporting Program for the project under Case No. 2022-07; and

WHEREAS, the location and custodian of the documents and any other material, which constitute the record of proceedings upon which the Planning Commission based its decision, is as follows: Director of Community Development, Community Development Department, City of Montclair, 5111 Benito Street, Montclair, California 91763, or by telephone at (909) 625-9477.

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

1. The City Council hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.
2. Based on the entire record before the City Council and all written and oral evidence presented, the City Council finds the GPA promotes the goals and objectives of the General Plan and leaves the General Plan a compatible,

integrated, and internally consistent statement of policies for the following reasons:

- A. The proposed GPA of the subject parcels integrated and compatible with the Land Use and Community Design Elements of the General Plan in that the GPA corrects a current inconsistency with the City's Zoning Map to allow for the subsequent development of a group of smaller parcels with substandard conditions into a new unified project site and which significantly improves the streetscape. The proposed GPA would allow for the site to transition from a mix of vacant, and partially developed parcels with timeworn structures to new high quality industrial development. As such, the GPA would provide the base for establishing the framework necessary to allow for the transformation of the project site into an attractive and orderly property and use within the industrial section of the City.
- B. The GPA is integrated and compatible with the Circulation Element. The GPA would be consistent with the General Plan's overall goal of providing residents and visitors of the City of Montclair a circulation network which provides safe and efficient travel within and through the community. The proposed GPA and project does not impact the physical characteristics of Mission Boulevard or nearby intersections. Access to and from Mission Boulevard to the project site is direct and efficient for both the project and pedestrians and public transit utilizing the street.
- C. The GPA is integrated and compatible with the Housing Element in that it does not impact or result in the removal or division of any existing residential uses on the site or adjacent neighborhoods. The closest residential uses are located on the south side of the 125-foot wide Mission Boulevard roadway. The GPA does not affect properties identified in the Housing Element as actual or potential future residential properties needed for additional housing units within the City towards implementing the goals of the City's allocated Regional Housing Number Allocation (RHNA) via the adopted Housing Element (2014) and upcoming update in 2022.
- D. The GPA is integrated and compatible with the Conservation Element in that it provides uses that would not disrupt the orderly conservation, development, and utilization of natural resources. The project site is partially developed with no special natural resources on site. The City's General Plan does not designate any areas of the City - including the project site -- as being within a habitat conservation plan (*City of Montclair General Plan 1999*). Furthermore, the City is not within any of the regional conservation plans designated by the state (CDFW 2014). As such, implementation of the Proposed GPA would not conflict with any applicable habitat conservation plan or natural community conservation plan.
- E. The GPA is integrated and compatible with the Open Space Element in that it provides for uses that are consistent with and promote the adopted goals and policies for preserving and managing open space within the City. No open space resources exist on the site or in the surrounding immediate area. The proposed development will include landscaping (e.g., trees and vegetation) on the site, to improve the appearance of the site facing Mission Boulevard.
- F. The GPA is integrated and compatible with the Noise Element in that it provides a pattern of land uses that minimizes the exposure of community residents to excessive noise. The Montclair General Plan requires future development to comply with the standards of the Noise Element. The proposed GPA would allow the subject site to transition from underutilized parcels with large parking fields into a well designed building that requires uses to be conducted indoors. Moreover, mitigation measures identified in the MMRP are designed to address future short-term and long-term noise impacts associated with new both short and long term operations.

G. The GPA is integrated and compatible with the Safety Element in that it provides an appropriate land use distribution and orientation that protects the community from unreasonable risks associated with seismic, geologic, flood, and wildfire hazards. Given the urbanized nature of the site and relatively gentle slope, there is no serious threat from wildland fires or geological instability. However, the General Plan recognizes the City's location within Seismic Zone 4, which is considered the most active seismic zone in the state. Further, there are no designated "Earthquake Fault Zones" in the City or the subject site as confirmed by the Alquist-Priolo Earthquake Fault Zoning Maps, geologic hazard overlays in the City of Montclair's General Plan Safety Element, and the County of San Bernardino's Land Use Plan General Plan (City of Montclair 1999 and County of San Bernardino 2010). Finally, as standard practice for all development in the City are required to comply with the Uniform Building Code standards and regulations, which include proper soil preparation and compaction requirements for construction.

3. The City Council hereby approves the amendment to the City of Montclair General Plan Land Use Map to change the land use designations of parcels identified as APNs 1101-311-15 and 1101-311-17 from "General Commercial" to "Business Park."

APPROVED AND ADOPTED this XX day of XX, 2022.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3351 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, 2022, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk

EXHIBIT A

CASE NUMBER: 2022-07

PROJECT LOCATION: 5006-5010 Mission Boulevard
APN.: 1101-311-15 and 1101-311-17
PROPERTY OWNER: New Crossings Development, LLC
authorized property owner representative

General Plan Amendment		
<i>APN</i>	<i>Current</i>	<i>Proposed</i>
1101-311-15	"General Commercial"	"Business Park"
1101-311-17	"General Commercial"	"Business Park"

RESOLUTION NO. 22-3352

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING TENTATIVE PARCEL MAP 20393, UNDER CASE 2022-07 FOR THE MERGER OF THREE LOTS LOCATED AT 5006 AND 5010 MISSION BOULEVARD WITHIN THE "MANUFACTURING INDUSTRIAL PARK - MIP" ZONE (APNs 1101-311-15, 1101-311-17, AND 1101-311-19)

WHEREAS, on February 22, 2022, New Crossings Development, LLC, the authorized representative of the property owner, filed applications for a General Plan Amendment (GPA), a Tentative Parcel Map (TPM), and a Precise Plan of Design (PPD) identified as Case No. 2022-07, to allow the development of a 115,300 square-foot industrial warehouse building and associated site improvements. (APN 1011-311-15, 1011-311-17, and 1011-311-19); and

WHEREAS, the subject site is currently composed of three abutting parcels located on the north side of Mission Boulevard approximately 250 feet east of Monte Vista Avenue, and addressed as 5006 and 5010 Mission Boulevard; and

WHEREAS, Tentative Parcel Map 20393 would merge and consolidate three abutting parcels into a single developable site of 5.13 acres in size, as depicted on Exhibit "A", a map incorporated herein by reference; and

WHEREAS, the development of the subject 5.13-acre site is contingent upon City Council approval of a General Plan Amendment and the proposed Tentative Parcel Map; and

WHEREAS, the City prepared an Initial Study/Mitigated Negative Declaration ("MND") (SCH #2022030195) that analyzed the proposed Project's environmental impacts in compliance with the provisions of the California Environmental Quality Act ("CEQA"), which determined that proposed mitigation measures would reduce impacts to air quality, cultural resources, geology and soils, hazards and hazardous materials, and tribal cultural resources to less than significant, and was circulated for public review and comment between February 25, 2022 and March 16, 2022; and

WHEREAS, the availability of the Initial Study and notice of published hearing was published on February 24, 2022. Public hearing notices were mailed to all property owners within 300 feet of the boundaries of the subject property.

WHEREAS, the minimum 20-day review and comment period for the IS/MND commenced on February 24, 2022 and concluded on March 16, 2022; and

WHEREAS, copies of the IS/MND were available during the public review period at the Community Development public counter at Montclair City Hall and the Montclair Library; and

WHEREAS, staff finds the proposed map complies with the guidelines and applicable development standards of the MIP (Manufacturing Industrial Park) zone; and

WHEREAS, on April 25, 2022, and May 9, 2022, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the Planning Commission opened the duly noticed public hearing to consider the proposed Project; and

WHEREAS, on April 25, 2022, two late comment letters were received from two separate law firms representing labor unions representing unions regarding their respective concerns over the environmental impacts that the commenters allege would be caused by construction activities if the project was not required to utilize a local and skilled workforce; and

WHEREAS, given the extent and nature of the comments in both letters, there was insufficient time to adequately respond to the concerns during the meeting; and

WHEREAS, since the project was advertised as a public hearing, the Planning Commission opened the public hearing and took public comments from two individuals, in addition to receiving the above-referenced comment letters. After comments were received, the Commission voted to continue the item to its regularly scheduled meeting on May 9, 2022; and

WHEREAS, on May 9, 2022, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the Planning Commission opened the duly noticed public hearing to consider the proposed Project; and

WHEREAS, on May 9, 2022, the proposed project, Final Initial Study/MND, and all evidence were presented and all persons wishing to testify in connection with the said proposal were heard and said application was fully studied.

WHEREAS, since the project was advertised as a public hearing, the Planning Commission opened the public hearing and took public comments from two individuals, in addition to receiving the above-referenced comment letters. After comments were received, the Commission voted to continue the item to its regularly scheduled meeting on May 9, 2022; and

WHEREAS, on May 9, 2022, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the Planning Commission opened the duly noticed public hearing to consider the proposed Project; and

WHEREAS, on May 9, 2022, the Planning Commission conducted a duly noticed public hearing on the proposed project at which time all persons wishing to testify in connection with the project were heard and said General Plan Amendment, Tentative Parcel Map and Precise Plan of Design for the proposed 115,300 square foot industrial building building was fully studied; and

WHEREAS, on May 9, 2022, the proposed project, Final Initial Study/MND, and all evidence were presented and all persons wishing to testify in connection with the said proposal were heard and said application was fully studied; and

WHEREAS, on May 9, 2022, the Planning Commission, by a vote of 3-0-2, approved the Precise Plan of Design for Case No. 2022-07 for the site plan, floor plans, elevations, colors, materials, and conceptual landscape plan subject to conditions of approval contained in Resolution No. 22-1966; and

WHEREAS, on May 9, 2022, the Planning Commission, by a vote of 3-0-2, recommended City Council approval of a General Plan Amendment pursuant to Planning Commission Resolution No. 22-1964 to modify the land use designation of 2.5 acres of land known as APNs 1101-311-15 and 1101-311-17 having the "General Commercial" land use designation to "Business Park" to allow development of the subject site with a new industrial building; and

WHEREAS, on May 9, 2022, the Planning Commission, by a vote of 3-0-2, recommended City Council approval of Tentative Parcel Map No. 20393 pursuant to Planning Commission Resolution No. 22-1965 merging three abutting parcels, APNs 1101-311-15, 1101-311-17, and 1101-311-19, into a single developable 5.13-acre parcel; and

WHEREAS, on May 9, 2022, the Planning Commission, by a vote of 3-0-2, recommended City Council adoption of the 5006 and 5010 Mission Boulevard Industrial Warehouse Project Initial Study/Mitigated Negative Declaration (SCH #32022030195) and Mitigation Monitoring and Reporting Program and approving the project under Planning Case No. 2022-07 pursuant to Planning Commission Resolution No. 22-1967; and

WHEREAS, on May 27, 2022, the City gave public notice of the City Council's public hearing by advertisement in a newspaper of general circulation, and posted the public notice at City Hall, and mailed to all property owners within 300 feet of the Amendment area; and

WHEREAS, on June 6, 2022, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the City Council opened and conducted a duly noticed public hearing to consider the proposed General Plan Amendment, Tentative Parcel Map, Initial Study/Mitigated Negative Declaration (SCH #2022030195), and Mitigation Monitoring and Reporting Program for the project under Case No. 2022-07; and

WHEREAS, on June 6, 2022, all persons wishing to testify in connection with the said proposal were heard and said application was fully studied; and

WHEREAS, on June 6, 2022, the City Council approved the proposed General Plan Amendment, Tentative Parcel Map, Initial Study/Mitigated Negative Declaration

(SCH #2022030195), and Mitigation Monitoring and Reporting Program for the project under Case No. 2022-07.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR RESOLVES AS FOLLOWS:

SECTION 1. Based upon the facts and information contained in the application, together with all written and oral reports included for the environmental assessment for the application, the Planning Commission recommends the City Council find that the proposed project is exempt from further environmental review pursuant to State CEQA Guidelines, section 15182 based on the following findings of fact:

- A. The proposed tentative parcel map to merge abutting parcels into a single developable property is designed, to the extent feasible, to provide for passive or natural heating or cooling opportunities. The proposed building on the site is generally oriented, spaced, and designed to allow for access to adequate light and air.
- B. The proposed tentative parcel map and the provisions for its design and improvement are consistent with the General Plan for the City of Montclair ("General Plan"). In the event that the City Council approves the General Plan Amendment, the Tentative Parcel Map would provide for land uses compatible with the land use classification for the subject site by the General Plan Amendment. The overall goal of the General Plan is to promote good planning practices and orderly development within the City and to recognize the potential of specific areas for special treatment.
- C. At a combined size of 5.13 acres, the subject site is physically suitable for the proposed development of the site with a 115,300 square foot industrial warehouse building and associated site improvements as shown on Tentative Parcel Map No. 20393. The size and configuration of the site has sufficient width and depth to allow for orderly site development, the provision of on-site circulation and parking, landscaping, and the proposed building. Moreover, the project site is also located adjacent to a fully improved major arterial street that will provide good and safe access to and from the site.
- D. The merger design and improvements proposed in the Tentative Parcel Map are not likely to cause substantial environmental damage nor substantially injure fish or wildlife or their habitat. An environmental assessment of the project on the subject site was conducted and revealed no significant impacts to the site or surrounding area overall. The site is surrounded by new and existing urban development and streets; does not contain any bodies of water, and is not linked to any wildlife corridors. The site does not contain any evidence of known habitats of significance including rare or endangered species of plant, animal, or insect life.
- E. The parcel map and improvements proposed with the development of the site are consistent with existing newer development in the immediate area and are not likely to cause serious public health problems because all site development and public improvements will be performed per the requirements of all applicable standards and codes including the zoning and building codes.
- F. The Tentative Parcel Map design and type of improvements proposed do not conflict with any public easements for access through or the use of the subject site because no such easements exist on the subject site.
- G. The discharge of waste into the existing sanitary sewer system from the development associated with the Tentative Parcel Map will not cause a violation of existing requirements prescribed by the Regional Water Quality Control Board. The entire project will be required to connect to a sanitary sewage system pursuant to California Plumbing Code and Municipal Code requirements. A sewer main exists in Mission Boulevard in close proximity to allow for easy connection.

SECTION 2. Pursuant to California Government Code Section 66410 *et seq.*, based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds as follows with respect to approval

of Tentative Parcel Map No. 20393, attached hereto as Exhibit "A," subject to the conditions of approval attached hereto in Exhibit "B."

SECTION 3. Based on the entire record before the City Council, all written and oral evidence presented to the City Council, The City Council finds the nature and extent of the dedications, reservations, exactions, impact fees, and other exactions are reasonably related to public needs and roughly proportional to the impacts created by the merger and improvement proposed in Tentative Parcel Map No. 20393. In addition, several conditions are necessary to assure the development maintains compliance with the City's General Plan and zoning standards.

SECTION 4. Custodian of Records. The location and custodian of the documents and any other material, which constitute the record of proceedings upon which the Planning Commission based its decision, is as follows: Director of Community Development, Community Development Department, City of Montclair, 5111 Benito Street, Montclair, California 91763, or by telephone at (909) 625-9477.

SECTION 5. Effective Date. This resolution shall become effective upon its adoption.

APPROVED AND ADOPTED this XX day of XX, 2022.

ATTEST:

Mayor

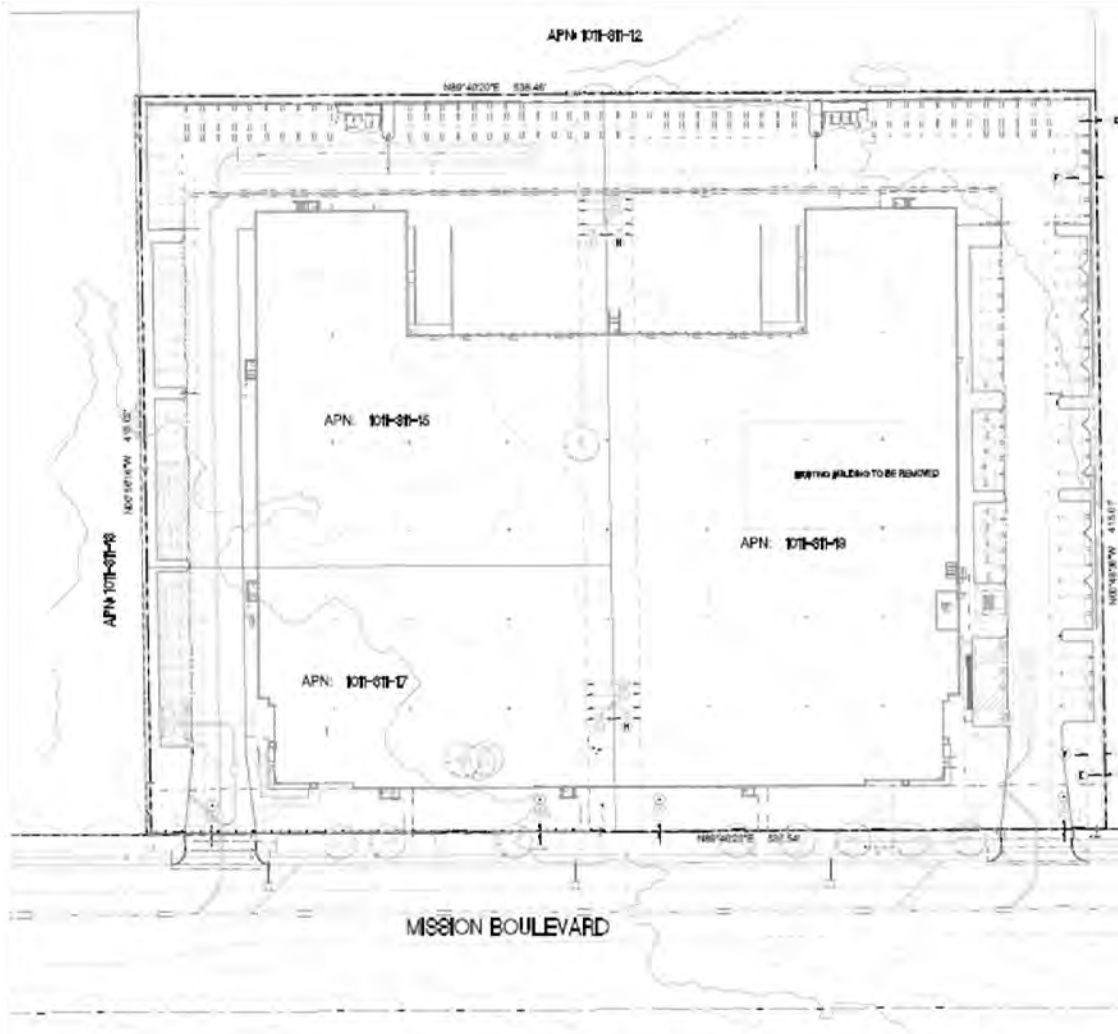
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3352 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, 2022 and that it was adopted by the following vote, to wit:

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

Andrea M. Myrick
City Clerk

Exhibit "A"
Tentative Parcel Map No. 20393



TENTATIVE PARCEL MAP 20393

5.13 AC. GROSS 1 NUMBERED LOT MARCH 2022

PROJECT LOCATION

VICINITY MAP
NTS

PARCEL NO.	TOTAL AREA (SQ FT)
1	222,465

UTILITIES

DEFINITIONS

INCORPORATION BY REFERENCE

NOTE

GENERAL INFORMATION

1. GENERAL PLAT/LAND USE
2. ZONING ORDINANCE
3. GENERAL COMMERCIAL SUBDIVISION PLAN
4. GENERAL COMMERCIAL SUBDIVISION PLAN
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100. GENERAL COMMERCIAL SUBDIVISION PLAN

LEGAL DESCRIPTION	OWNER/APPLICANT/DEVELOPER	CIVIL ENGINEER	ARCHITECT	TENTATIVE PARCEL MAP 20393
PARCELS 1, 2, 3, 4 AND 5 OF PARCEL MAP NO. 20393, IN THE CITY OF MONTCLAIR, IN THE COUNTY OF SAN DIEGO, CALIFORNIA, AS SHOWN ON THE PLAT THEREOF, TOGETHER WITH ALL PARTS OF PARCELS 1, 2, 3, 4 AND 5 OF SAID PARCEL MAP.	181 INVESTMENT, LLC AND DONALD INVESTMENT, LLC	MADOLE & ASSOCIATES, INC. 1025 WINDSORGATE AVENUE, SUITE 200 SAN DIEGO, CALIFORNIA 92128 CONTACT: MARK BERTONE 954-831-8224 ext. 100 Email: mbertone@madole.com	SAKA ARCHITECTS 3811 RESEARCH DRIVE SAN DIEGO, CALIFORNIA 92121 CONTACT: ROGER DETROS 954-470-0719 ext. 100 Email: rdetros@sakarch.com	5005 AND 5010 MISSION BOULEVARD MONTCLAIR, CA 91762 APN: 101-31-15, 101-31-17, 101-31-19



Page 5 of 6
Resolution No. 22-3352

Exhibit "B"

Tentative Parcel Map No. 20393

Conditions of Approval

1. Developer shall comply with all requirements of the Subdivision Map Act and the Montclair Municipal Code.
2. The tentative parcel map shall expire three years from the date of City Council approval unless extended under Government Code Section 66452.6. The final map shall be filed with the City Engineer and shall comply with the Subdivision Map Act of the State of California and all applicable Ordinances, requirements, and Resolutions of the City of Montclair.
3. The parcel map may be submitted for plan checking prior to, in conjunction with, or after the submittal of the public improvement plans. Parcel map submittals shall include a preliminary title report, reference deeds, closure calculations, reference maps, and other reference material as may be necessary to check the map. An advance plan check fee, the amount to be determined by the City Engineer, shall be required at the time map is submitted. Prior to approval of the final map, a subdivision agreement will be required. The agreement shall contain provisions for performance and payment bonds for all work within the public rights-of-way, and a monumentation bond for corner monuments in accordance with the Subdivision Map Act.
4. The subdivider/applicant shall reimburse the City for costs associated with the preparation/review of the Tentative Parcel Map and/or Final Parcel Map.
5. In establishing and conducting the subject use, the applicant shall at all times comply with any laws, ordinances, and regulations of the City of Montclair, the County of San Bernardino, and the State of California. Approval of this Tentative Parcel Map shall not waive compliance with any such requirements.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 6, 2022	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	1	PREPARER:	L. LEW/V. FLORES
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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

BACKGROUND: Mayor Pro Tem Ruh has examined the Warrant Register dated June 6, 2022, and the Payroll Documentation dated May 8, 2022, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated June 6, 2022, totals \$1,998,802.04.

The Payroll Documentation dated May 8, 2022 totals \$675,205.75 gross, with \$468,590.13 net being the total cash disbursement.

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



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 6, 2022	FILE I.D.:	STG095/HSV046
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	CITY MGR.
ITEM NO.:	2	PREPARER:	E. STARR
SUBJECT:	CONSIDER AUTHORIZING MAYOR DUTREY TO SIGN A LETTER OF SUPPORT FOR GOVERNOR NEWSOM'S PROPOSED CARE COURT PROGRAM		

REASON FOR CONSIDERATION: In April 2022, [SB1338 \(the Community Assistance, Recovery, and Empowerment \[CARE\] Court Program\)](#) was introduced, proposing a framework for Governor Newsom's plan for courts to compel people with serious mental illnesses and substance use disorders into treatment, while also providing participants with supportive housing and wrap-around services.

The CARE component of CARE Court is a new mental health process intended to provide assistance to people living with under- or un-treated schizophrenia spectrum or other psychotic disorders who lack medical decision-making capacity, many of whom are unhoused.

Governor Newsom has asked the State Legislature to approve CARE Court as part of the state budget — \$65 million is included in Governor Newsom's May Budget Revise for administration of CARE Court.

The May Budget Revise also proposes adding \$700 million atop the [\\$2 billion](#) in Governor Newsom's January 2022 budget plan — and \$12 billion announced last year — to fund a variety of homelessness issues. Absent from the May Budget Revise is a long-term extension of the [flexible grants included in last year's budget](#) that [local governments have sought](#).

As proposed, all 58 counties in California would be required to participate in the CARES Court program. Counties failing to provide requisite services would face penalties.

The City Council is requested to authorize Mayor John Dutrey to sign a letter of support for the CARES Court program. A copy of the letter and supplemental information regarding CARES Court are attached to the agenda report.

BACKGROUND: California Governor Gavin Newsom and State Legislators are making [mental health reform](#) a major objective for the state. In April 2022, SB 1338 (the Community Assistance, Recovery, and Empowerment (CARE) Court Program) was introduced, proposing a framework for Governor Newsom's plan for courts to compel people with serious mental illnesses and substance use disorders into treatment, while also providing participants with supportive housing and wrap-around services. Governor Newsom has asked the State Legislature to approve CARE Court as part of the state budget, placing the plan on track for as early as July 2022.

Under Governor Newsom's proposal, [CARE Court](#) would make it easier to compel as many as 12,000 mentally ill homeless people into treatment centers, via a special judicial proceeding, but with a one-year limit that could be extended only by further proceedings.

The CARE Court would tailor an individualized plan for each person found to be in need of intervention, offering a variety of services including psychological treatment and placement in housing programs managed by a team of medical and non-medical personnel. Each of California's 58 counties would have to participate in the CARE Court program.

Local leaders throughout California support Governor Newsom's proposal, arguing that it will address a portion of California's homelessness problem and help fix the state's broken and costly mental health care system — a system that cycles homeless people struggling with mental health issues and addictions through jails, hospitals and psychiatric centers, only to send them back out on the streets without rehabilitating them, largely because the treatment is voluntary.

Some civil rights advocates argue the problem of homelessness is caused by the cost of housing, and that homelessness will not be solved strictly through treatments for mental health or substance abuse problems. CARE Court opponents suggest that proposed system would be a reversal in California's move away from its past era of institutionalization when the state maintained an extensive network of mental health care hospitals to which people deemed to be dangers to themselves or others were committed, often for decades, with some patients receiving severe forms of treatment.

In the mid-20th century, the state's use of involuntary commitments came under fire, with critics arguing that the hospitals were more like prisons than treatment centers, with patients denied basic civil rights and loss of the right to self-determine care.

In 1967, then Governor Ronald Reagan signed into law the [Lanterman-Petris-Short Act \(LPSA\)](#), establishing an elaborate process that would have to be followed for involuntary commitments, and limiting involuntary commitments to the profoundly disabled. The LPSA had the support of State Legislators who wanted to reduce California's hefty costs for patient hospital care. However, the state failed to provide adequate financial support for local public mental health service providers, which continued to function for the care and treatment of mentally ill and indigent patients. Without sufficient funding, local public health service programs were unable to offer continuum of care programs, and, pursuant to the LPSA, mentally ill patients simply refused treatment. After the passage of the LPSA, state hospitals setup to treat mentally ill patients either closed, converted to other uses, or were redeveloped for other purposes. Over the past few decades, California has seen an explosion of homelessness in the state, and many of those living on the streets suffer from severe mental illnesses.

CARE Courts would compel treatment; however, as proposed, and except under unique circumstances, the program would prevent people from being placed in more restrictive settings, such as conservatorships or in prisons.

Whom would CARE Court serve?

The state estimates between 7,000 and 12,000 Californians would be eligible for CARE Court, a small fraction of the state's total homeless population.

The most recent [Federal Homelessness Count](#) conducted in January 2020 found that [California had approximately 161,000 people experiencing homelessness](#) — increasing by an estimated 10,270 people from year-to-year (January 2019 to January 2020).

A CARE Court [fact sheet](#) says the program “is not for everyone experiencing homelessness or mental illness.” Instead, it “focuses on people with schizophrenia spectrum or other psychotic disorders who lack medical decision-making capacity — before they get arrested and committed to a State Hospital or become so impaired that they end up in a Lanterman–Petris Short [LPS] Mental Health Conservatorship.”

How would CARE Court work?

CARE Court would be a referral-based program. It would allow first responders, law enforcement, behavioral health providers and family members to refer people struggling with addiction and mental illness.

Under the CARE Court program, a judge would appoint the person under referral a public defender, and order a clinical evaluation to determine whether the person meets the criteria for the program. If the criteria are met, the judge would order a “CARE plan” that would outline treatment and medication for up to 12 months.

The plan would be developed by county behavioral health specialists, the participant, and a newly established position called a “supporter,” who would help the participant “understand, consider and communicate decisions,” giving them the tools to make self-directed choices to the greatest extent possible.

A CARE Court judge would review the plan, hold status hearings, and could extend treatment for up to an additional 12 months.

The CARE Court program would include a housing plan for participants who need it. It would, however, be up to the judge to order a county to provide housing, as not all participants are expected to be homeless.

If a participant does not successfully complete their CARE Plan, the judge would have the authority to refer the individual to a conservatorship. If the referral had been from jail or prison and the person failed to complete the program, the judge could order the participant back to incarceration.

Will forced treatment under CARE be effective?

Some health advocates argue that treatment cannot be compelled for someone who is not ready to accept help. People may be taken off the street and placed into treatment, but may not show improvement. Critics of the CARE Court proposal point to a [2014 study from the National Institutes of Health](#), which concluded that empirical evidence does not support the use of coercive treatment, and that more research is needed.

The Newsom administration states that California’s behavioral health treatment programs have evolved beyond the Study’s parameters, and can effectively and humanely treat mental illness and addiction. Under CARE, treatment will not be like the California’s history of overcrowded state hospitals providing extreme forms of treatment. Instead, intensive psychosocial support, housing and medication will be provided to keep those being treated connected to their families and communities.

How will CARE be funded?

The Newsom administration argues that state funds that are now spent cycling people through hospitals, jails and courtrooms — processes that do not address underlying mental health and addiction problems — can be redirected to CARE Court. However, California's 58 county governments would be responsible for providing mental health treatment services for CARE Court participants, and historically those services have been underfunded.

County public health officials are expressing willingness to collaborate to assist participants, but caution that the behavioral health infrastructure is just starting to come out of decades of inadequate funding and support, and housing programs remain elusive. CARE Court, they say, could increase caseloads for county public guardians and conservators who are funded entirely with county general fund dollars.

In response, Governor Newsom has asked the Legislature to approve CARE Court as part of the state budget — \$65 million is included in Governor Newsom's May Budget Revises for administration of CARE Court, including paying for the cost of public defenders, bailiffs and administrative expenses. The May Revises also adds \$700 million atop the [\\$2 billion](#) in Governor Newsom's January 2022 budget plan for homelessness-related services.

California could also pay for CARE Court's treatment and housing costs from the [\\$12 billion Governor Newsom approved for homeless housing and supportive services in last year's state budget](#), which includes \$3 billion to create 22,000 behavioral health-housing beds for people struggling with mental health disorders.

The Newsom administration could also propose using funds generated by [Proposition 63 \(the "Mental Health Services Act"\)](#) which levies an additional 1% income tax on personal incomes above \$1 million. Proposition 63 is expected to produce \$3.8 billion in 2022, according to state officials.

FISCAL IMPACT: Authorizing Mayor Dutrey to sign a CARE Court support letter to Legislators has no fiscal impact on the City of Montclair General Fund.

RECOMMENDATION: Staff recommends the City Council authorize Mayor Dutrey to sign a letter of support for Governor Newsom's proposed CARE Court program.



June 7, 2022

The Honorable Gavin Newsom, Governor
State of California
State Capitol
Sacramento, CA 95814

The Honorable Toni G. Akins
President Pro Tem
California State Senate
1021 O Street, Suite 8518
Sacramento, CA 95814

The Honorable Anthony Rendon
Speaker, California State Assembly
California State Assembly
1021 O Street, Suite 8330
Sacramento, CA 95814

SUBJECT: CARE COURT PROPOSAL

Dear Governor Newsom and Honorable Legislators:

Over the past decade, cities throughout California have struggled with homelessness and the range of issues and personal struggles this expanding problem creates for each respective community and the individuals caught up in this revolving cycle of despair, addiction, and loss of hope.

In the Montclair community, we offer a range of programs and services designed to reverse what has become a life struggle for far too many of our citizens. Unfortunately, too many members of the homeless population suffer from mental health issues that challenge their ability to make proper decisions related to personal health and welfare.

The proposal to establish CARE Courts derives from a mental health approach based on Community Assistance, Recovery and Empowerment that is designed to assist people living with under- or un-treated schizophrenia spectrum or other psychotic disorders who lack medical decision-making capacity, many of whom are unhoused.

CITY OF MONTCLAIR

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

Mayor Javier John Dutrey • Mayor Pro Tem Bill Ruh • Council Members: Tenice Johnson, Corysa Martinez, Benjamin Lopez • City Manager Edward C. Starr

June 7, 2022

Mental health disorders represent a major, contributing factor to chronic homelessness. The CARE Court proposal offers a bold step forward, providing the means for CARE Court judges to compel mentally ill homeless persons into treatment centers, via a special judicial proceeding, but with a one-year limit that could be extended only by further proceedings.

As proposed, the CARE Court would tailor an individualized plan for each person found to be in need of intervention, offering a variety of services including psychological treatment and placement in housing programs managed by a team of medical and non-medical personnel.

For CARE Court to work, each of California's 58 counties would have to participate in the CARE Court program.

The Montclair City Council supports the CARE Court proposal, recognizing that it will address a portion of California's homelessness problem and help fix the state's broken and costly mental health care system — a system that cycles homeless people struggling with mental health issues and addictions through jails, hospitals and psychiatric centers, only to send them back out on the streets without rehabilitating them, largely because the treatment is voluntary.

As the CARE Court proposal works its way through the Legislative process, Montclair asks that Legislators and the Governor's Office consider revising the program, with appropriate funding, to facilitate a collaborative approach between municipal and county officials. Regrettably, homeless populations are on the doorstep of nearly every municipality throughout the state. Only through the direct involvement of municipalities in the process can CARE Court truly function to its intended purpose.

With CARE Court, municipal leaders believe we will have a meaningful tool to connect homeless persons struggling with untreated or undiagnosed mental health issues the care they need and deserve.

Thank you, Governor Newsom, for bringing forward this creative and meaningful solution to address this important and growing issue in our state. The Montclair City Council looks forward to working with your administration on this important matter.

Sincerely,

OFFICE OF THE MAYOR

Javier "John" Dutrey
Mayor




GOVERNOR NEWSOM'S NEW PLAN TO GET CALIFORNIANS IN CRISIS OFF THE STREETS AND INTO HOUSING, TREATMENT, AND CARE

- Community Assistance, Recovery and Empowerment (CARE) Court is a new framework to get people with mental health and substance use disorders the support and care they need.
- CARE Court is aimed at helping the thousands of Californians who are suffering from untreated mental health and substance use disorders leading to homelessness, incarceration or worse.
- California is taking a new approach to act early and get people the support they need and address underlying needs - and we're going to do it without taking away people's rights.
- CARE Court includes accountability for everyone – on the individual and on local governments – with court orders for services.

HOW CARE COURT WORKS

CALIFORNIA'S CARE COURT

Community Assistance, Recovery and Empowerment (CARE) Court is Governor Newsom's new plan to get Californians in crisis off the streets and into housing, treatment, and care.



ACTING EARLY TO GET PEOPLE THE SUPPORT THEY NEED

CARE Court is aimed at helping Californians who are suffering from untreated mental health and substance use disorders leading to homelessness, incarceration or worse. Each person is connected with a court-ordered Care Plan and Supporter for up to 24 months.



SETTING THEM UP WITH AN INDIVIDUALIZED CARE PLAN

CARE Court connects a person with a care team in the community and can include clinically prescribed, individualized treatment with supportive services, stabilizing medication, and a housing plan.

CARE Court connects a person struggling with untreated mental illness – and often also substance use challenges – with a court-ordered Care Plan for up to 24 months. Each plan is managed by a care team in the community and can include clinically prescribed, individualized interventions with several supportive services, medication, and a housing plan. The client-centered approach also includes a public defender and supporter to help make self-directed care decisions in addition to their full clinical team



CARE Court is designed on the evidence that many people can stabilize, begin healing, and exit homelessness in less restrictive, community-based care settings. It's a long-term strategy to positively impact the individual in care and the community around them. The plan focuses on people with schizophrenia spectrum and other psychotic disorders, who may also have substance use challenges, and who lack medical decision-making capacity and advances an upstream diversion from more restrictive conservatorships or incarceration.

The court-ordered response can be initiated by family, county and community-based social services, behavioral health providers, or first responders. Individuals exiting a short-term involuntary hospital hold or an arrest may be especially good candidates for CARE Court. The Care Plan can be ordered for up to 12 months, with periodic review hearings and subsequent renewal for up to another 12 months. Participants who do not successfully complete Care Plans may, under current law, be hospitalized or referred to conservatorship - with a new presumption that no suitable alternatives to conservatorship are available.

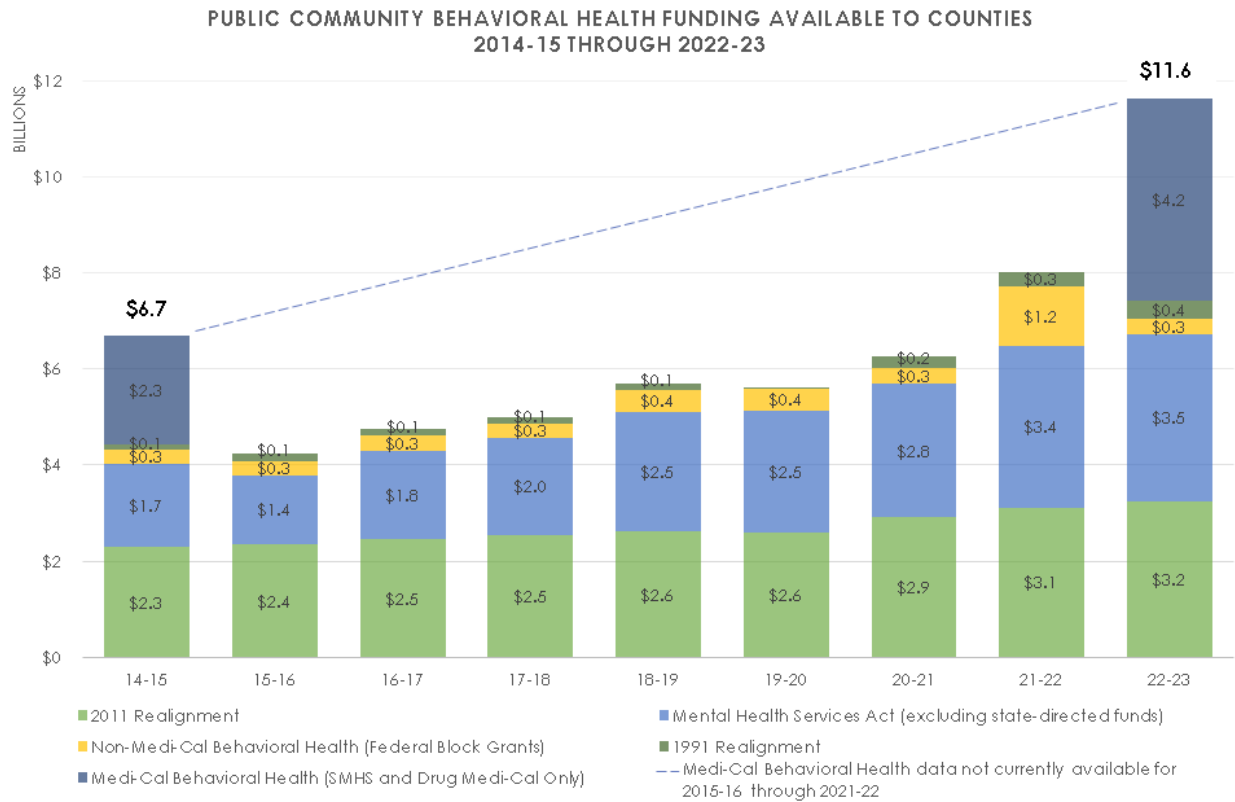
All counties across the state will participate in CARE Court under the proposal. If local governments do not meet their specified duties under court-ordered Care Plans, the court will have the ability to order sanctions and, in extreme cases, appoint an agent to ensure services are provided.

CARE Court builds on Governor Newsom's \$14 billion multi-year investment to provide 55,000 new housing units and treatment slots as well as a more than \$10 billion annual investment in community behavioral health services. The Governor's comprehensive approach combines a focus on bridge housing to quickly rehouse unsheltered individuals with behavioral health issues, all while more new units come online, while also transforming Medi-Cal to provide more behavioral health services to people struggling the most.

Funding Backgrounder: California's Behavioral Health Approach and Funding

CARE (Community Assistance, Recovery, and Empowerment) Court is a new process to assist people living with under or untreated schizophrenia spectrum or other psychotic disorders who lack medical decision-making capacity, many of whom are unhoused. CARE Court empowers Californians in crisis to access the care, treatment, and housing plan they need in their community. It includes accountability for both individuals and local governments with court orders for needed services.

Counties can tap into multiple funding sources to provide the court ordered care and treatment.



*Counties received Medi-Cal behavioral health funding for all years reflected. Estimates are included for 2014-15 and 2022-23 to provide an overall view of growth in this funding over the period reflected.

*Data between 2014-15 and 2020-21 represent actuals, except 2014-15 Medi-Cal Behavioral Health costs, which are an estimate. Data for 2021-22 and 2022-23 are estimates.

*Medi-Cal non-specialty mental health managed care state costs of \$406 million in 2014-15 and \$529.1 million in 2022-23 are not included in this graph. Also, not included in the graph are Medi-Cal carved-out psychotropic medications. For reference, psychotropic medications were estimated to be \$1.1 billion in 2017-18. Additionally, No Place Like Home Program actual expenditures of \$590 million in 2018-19 and \$622 million in 2019-20, and estimated expenditures of \$202 million in 2021-22 and \$400 million in 2022-23 are not included in this graph. Not all Non-Medi-Cal Behavioral Health (Federal Block Grants) are available to counties.

The below represents many of the recent investments designed to support the public community behavioral health system, however the list is not exhaustive (amounts reflected in the graph above are denoted with an asterisk*):

Housing and Homelessness

CARE Court builds on significant new investments, including Governor Newsom's \$14 billion multi-year investment to provide 55,000 new housing units and treatment slots. The Governor's approach focuses on quickly rehousing unsheltered individuals with behavioral health issues, all while new units come online, while also transforming Medi-Cal to provide more behavioral health services to people struggling the most. Part of the \$14 billion investment reflects the following:

- **Behavioral Health Continuum Infrastructure Program:** \$2.2 billion to support competitive grants to qualified entities to construct, acquire, and rehabilitate real estate assets or to invest in mobile crisis infrastructure to expand the community continuum of behavioral health treatment resources.
- **Community Care Expansion Program:** \$805 million for acquisition, construction, and rehabilitation to preserve and expand adult and senior care facilities that serve SSI/SSP and Cash Assistance Program for Immigrants. This program supports seniors and adults who are at risk of or experiencing homelessness, including those who have behavioral health conditions. It expands the state's housing and care continuum, facilitating better treatment outcomes and preventing the cycle of homelessness or unnecessary institutionalization.
- **Behavioral Health Bridge Housing Program:** \$1.5 billion to address the immediate housing and treatment needs of people experiencing unsheltered homelessness with serious behavioral health conditions by providing time-limited operational supports in various bridge housing settings, including existing assisted living settings.

Children and Youth

- **Children and Youth Behavioral Health Initiative:** \$4.7 billion (including \$480.5 million in the Behavioral Health Continuum Infrastructure Program, described above, targeted to individuals 25 years of age and younger) to help transform the state's behavioral health system into an innovative ecosystem in which all children and youth 25 years of age and younger, regardless of payer, are screened, supported, and served for emerging and existing behavioral health needs.

Behavioral Health Workforce

- **Care Economy Workforce:** \$1.7 billion for Care Economy Workforce investments, including funding to recruit and train 25,000 new community health workers as well as additional psychiatric providers.
- ***Peer Support:** \$31.3 million federal funds to add peer support specialist services as a covered Medi-Cal benefit in the public behavioral health delivery system.

Substance Use Disorder

- **Opioid Settlements Funds:** \$86 million to support opioid abatement programs, including, but not limited to, distribution of naloxone to homeless service providers, operation of a web-based statewide addiction treatment locator platform, support of vocational rehabilitation employment services, provider training on opioid treatment, and education and outreach campaigns.

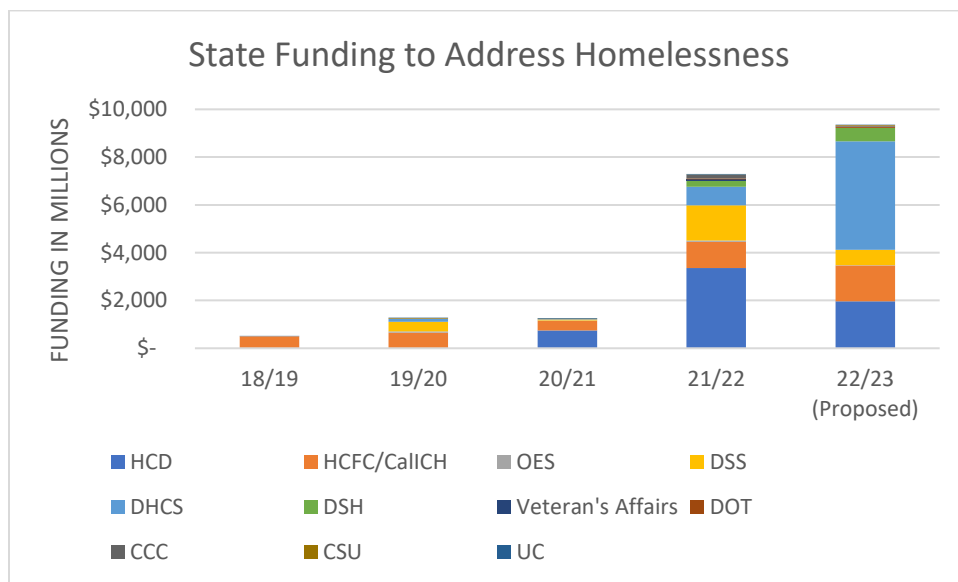
Behavioral Health Crisis Continuum

- ***Behavioral Health Crisis Continuum:** \$20 million one-time federal funds in 2021-22 to expand capacity to the 13 accredited crisis call centers in California. In 2022, the California Health and Human Services Agency is starting a planning process to develop a clear strategy for how all the components of the behavioral health crisis continuum interact, including connections between prevention efforts like hotlines and peer support services, 9-8-8 mental health crisis call centers, and mobile crisis response at the local level.
- ***Medi-Cal Mobile Crisis Benefit:** \$1.4 billion to add qualifying community-based mobile crisis intervention services as a Medi-Cal covered benefit available to eligible Medi-Cal beneficiaries exclusively through the Medi-Cal behavioral health delivery system. Qualifying community-based mobile crisis intervention services will be available 24 hours a day, 7 days a week, and provided by a multidisciplinary mobile crisis team to Medi-Cal beneficiaries in the community.

Funding Backgrounder: California's Homelessness Approach and Funding

CARE (Community Assistance, Recovery, and Empowerment) Court is a new civil court process to deliver community-based behavioral health services and supports to Californians living with under- or untreated schizophrenia spectrum or other psychotic disorders who meet specific criteria, many of whom may be experiencing homelessness. CARE Court empowers these Californians in crisis to access community-based care, treatment, and housing. It includes accountability for both individuals and local governments.

State funding to address homelessness has increased significantly in recent years and the proposed 2022-23 budget includes **an additional \$9.35 billion over multiple years.**



Major Local, State, and Federal Funding to Support Housing Placements

Local governments can tap into various existing local, state, and federal funding streams that may help provide housing to CARE Court participants, including but not limited to the programs listed below.

CA Interagency Council on Homelessness (Cal ICH)

- **Homeless Housing, Assistance, and Prevention** will be administering its 4th round (FY 22/23) of block-grants to large cities, counties, and continuums of care to strengthen homeless services and systems. Grantees are required to work across systems to assure coordination of homelessness and other services.
- **Encampment Resolution Funding** supports a range of activities to provide housing and services solutions for people currently staying in encampments, including supporting people to access permanent housing.

Funding Backgrounder: California's Homelessness Approach and Funding

CA Department of Social Services (CDSS)

- **Project Roomkey and Rehousing** provides operating costs for non congregate shelter and funding for rehousing upon exit.
- **Community Care Expansion** provides funding for the acquisition and rehabilitation of adult and senior care facilities for those who are homeless or at-risk of becoming homeless and have higher level of care needs, and/or for capitalized operating reserves to help preserve existing facilities.
- **CalWORKs Housing Support** offers financial assistance and housing-related wrap-around supportive services to families involved in the CalWORKs program who are experiencing or at risk of homelessness.
- **CalWORKs Housing Assistance** provides families on or apparently eligible for CalWORKs with payments for temporary shelter for up to 16 cumulative calendar days, as well as payments to secure or maintain housing, including a security deposit and last month's rent, or up to two months of rent arrearages.
- **Housing and Disability Advocacy Program** assists individuals to apply for disability benefit programs while also providing housing assistance and other necessary services to help stabilize clients who are experiencing or at risk of homelessness.
- **Home Safe** offers a range of strategies to prevent and end homelessness and support ongoing housing stability for Adult Protective Services clients.
- **Bringing Families Home** offers financial assistance and housing-related wrap-around supportive services to families involved in the child welfare system who are experiencing or at risk of homelessness.
- **Transitional Housing Placement-Plus-Foster Care** provides housing for youth in extended foster care ages 18 to 21.
- **Transitional Housing Program-Plus** offers housing and life skills supports to former foster youth ages 18-25.

CA Department of Health Care Services (DHCS)

- **Mental Health Service Act (MHSA)** funds a broad continuum of prevention, early intervention, and service needs and the necessary infrastructure, technology, and training elements that effectively support the public mental health system including housing.
- **Behavioral Health Continuum Infrastructure Program** provides capital funding to construct, acquire, and rehabilitate real estate assets or to invest in mobile crisis infrastructure to expand the community continuum of behavioral health treatment resources.
- **Behavioral Health Bridge Housing Program (proposed)** would provide funding to address the immediate housing and treatment needs of people experiencing unsheltered homelessness with serious behavioral health conditions by providing time-limited operational supports in various bridge housing settings, including existing assisted living settings. Pending CARE Court legislation would prioritize these funds for CARE Court participants.

Funding Backgrounder: California's Homelessness Approach and Funding

CA Department of Housing and Community Development (HCD)

- **No Place Like Home** provides capital funding and operating subsidies for permanent supportive housing for persons who are in need of mental health services and are experiencing homelessness, chronic homelessness, or at risk of chronic homelessness.
- **California Housing Accelerator Program** provides capital funding to shovel-ready affordable and supportive housing development in lieu of tax credit equity in order to enable projects to proceed to development.
- **Homekey** provides capital funding and operating subsidies to support the acquisition and conversion of properties into affordable and supportive housing or interim housing.
- **Transitional Housing Program** provides grants to counties for the purpose of housing stability to help young adults 18 to 25 years of age secure and maintain housing, with priority given to young adults formerly in the foster care system and probation.
- **Interim Housing** (*proposed*) would house unsheltered individuals on state-owned land through grants to local governments for interim housing and site preparation.

Governor's Office of Emergency Services

- **Transitional Housing Program** supports transitional housing, short-term housing assistance, and supportive services, including follow-up services that move victims of crime into permanent housing.

US Department of Housing and Urban Development (HUD)

- **Continuum of Care (CoC)** program is designed to promote communitywide commitment to the goal of ending homelessness through nationwide focus on permanent supportive housing and other activities.
- **Emergency Solutions Grant** program assists people to quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.
- **Federal Housing Choice Vouchers, Family Unification Program Vouchers, and Emergency Housing Vouchers** provide federally funded rental subsidies, often referred to as Section 8 Vouchers.
- **HOME Investment Partnerships Program** provides grants to state and local governments to create affordable housing for low-income households.
- **Community Development Block Grant** supports community development activities to build stronger and more resilient communities.

CA Department of Veterans Affairs (CalVet) and US Department of Veterans Affairs (VA)

- **Veterans Support to Self-Reliance** provides higher level of on-site supportive services for veterans aging in place who require a higher level of care within permanent supportive housing.

Funding Backgrounder: California's Homelessness Approach and Funding

- **VA Supportive Housing Program** is a collaborative program which pairs HUD's Housing Choice Voucher rental assistance with VA case management and supportive services for homeless Veterans.
- **Supportive Services for Veteran Families** provides a range of supportive services designed to promote housing stability to eligible very low-income Veterans and their families.

For more information on these homelessness programs, see *Putting the Funding Pieces Together: Guide to Strategic Use of New and Recent State and Federal Funds to Prevent and End Homelessness* (September 2021) at

https://bcsh.ca.gov/calich/documents/covid19_strategic_guide_new_funds.pdf



CARE Court

A New Framework for Community Assistance, Recovery & Empowerment

CARE Court is a proposed framework to deliver mental health and substance use disorder services to the most severely impaired Californians who too often languish – suffering in homelessness or incarceration – without the treatment they desperately need.

THE CARE COURT IS A NEW APPROACH AND A PARADIGM SHIFT

It connects a person in crisis with a court-ordered Care Plan for up to 12 months, with the possibility to extend for an additional 12 months. The framework provides individuals with a clinically appropriate, community-based set of services and supports that are culturally and linguistically competent. This includes short-term stabilization medications, wellness and recovery supports, and connection to social services, including housing. Housing is an important component—finding stability and staying connected to treatment, even with the proper supports, is next to impossible while living outdoors, in a tent or a vehicle.

CARE Court is an upstream diversion to prevent more restrictive conservatorships or incarceration; this is based on evidence which demonstrates that many people can stabilize, begin healing, and exit homelessness in less restrictive, community-based care settings. With advances in treatment models, new longer acting antipsychotic treatments, and the right clinical team and housing, individuals who have historically suffered tremendously on the streets or during avoidable incarceration can be

successfully stabilized and supported in the community.

CARE Court is not for everyone experiencing homelessness or mental illness; rather it focuses on people with schizophrenia spectrum or other psychotic disorders who meet specific criteria – before they get arrested and committed to a State Hospital or become so impaired that they end up in a Lanterman-Petris-Short (LPS) Mental Health Conservatorship. Although homelessness has many faces in California, among the most tragic is the face of the sickest who suffer from treatable mental health conditions—this proposal aims connect these individuals to effective treatment and support, mapping a path to long-term recovery. CARE Court will help thousands of Californians on their journey to sustained wellness.

CARE Court engagement begins with a petition to the Court from a wider range of individuals, including care providers, family members, first responders, or counties, among others. CARE Court may be an appropriate next step after a short-term involuntary hospital hold (either 72 hours/5150 or 14 days/5250) or for those who can be safely diverted from certain criminal proceedings.

Supporting a path to recovery and self-sufficiency is core to CARE Court, with a Public Defender and a newly established CARE Supporter for each participant in addition to their full clinical team. The role of the Supporter is to help the participant understand, consider, and communicate decisions, giving the participant the tools to make self-directed choices to the greatest extent possible. The Care plan ensures that supports and services are coordinated and focused on the individual needs of the person it is designed to serve. Often times, care for this vulnerable population fails to bring together the clinical treatment and housing. The creation of a Psychiatric Advance Directive will further provide direction on how to address potential future episodes of impairing illness that are consistent with the expressed interest of the participant and protect against negatives outcomes.

ACCOUNTABILITY IN CARE COURT GOES BOTH WAYS

If a participant cannot successfully complete a Care plan, the individual may be referred by the Court for a conservatorship, consistent with current law. For individuals whose prior conservatorship proceedings were diverted, those proceedings will resume under the presumption that no suitable alternatives to conservatorship are available.

The CARE Court will also hold local governments accountable for providing care to the people who need it, using the variety of robust funding streams available to counties today. These funding

sources include: Mental Health Services Act, mental health realignment, federal funds, and the proposed \$1.5 billion for behavioral health bridge housing, as well as various housing and clinical residential placements available to cities and counties under the Governor's \$12 billion homelessness plan. If local governments do not meet their specified responsibilities under the court-ordered Care plans, the Court will have the ability to order sanctions and, in extreme cases, appoint an agent to ensure services are provided.

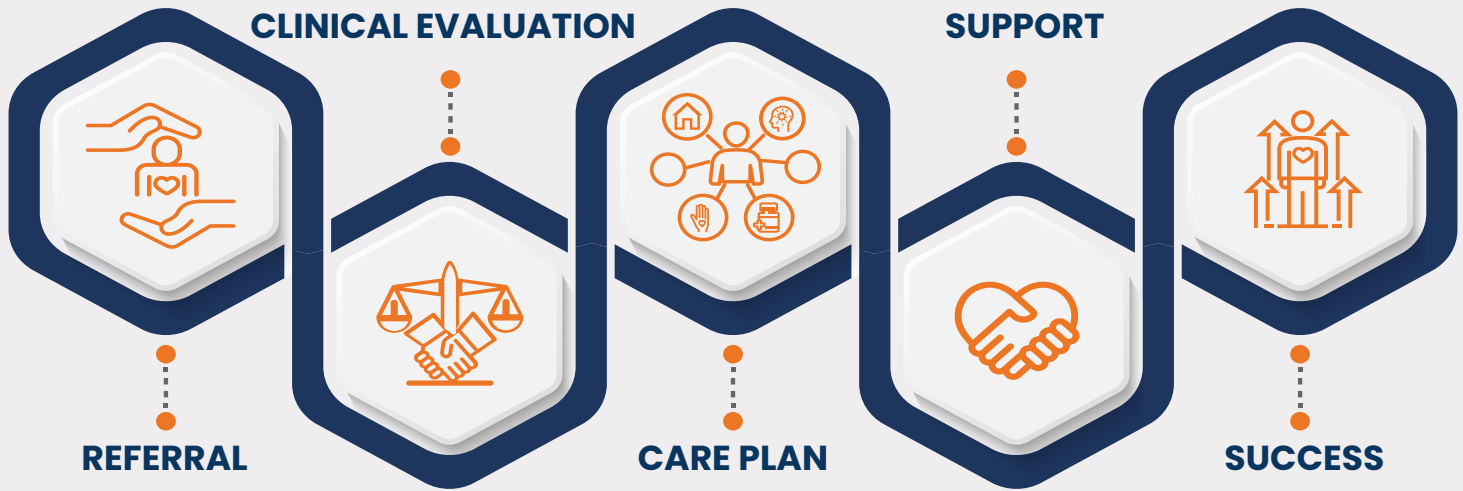
A FRAMEWORK THAT REQUIRES COMMUNITY ENGAGEMENT AND INPUT

This is a framework that requires deep engagement with the community to ensure that it is built with Californians and not for them. In the coming weeks, we intend to engage a broad set of stakeholders to further build this framework out and ensure that it can deliver meaningful results for some of our most vulnerable neighbors.

We call on organizations and individuals alike to engage with us by providing written feedback that can be sent to us at **CARECourt@chhs.ca.gov.**



Pathway through the CARE Court



REFERRAL

Individual with untreated schizophrenia spectrum or other psychotic disorder who meet specific criteria may be referred to the court by a family member, behavioral health provider, first responder, or other approved party to provide care and prevent institutionalization.

CLINICAL EVALUATION

The civil court orders a clinical evaluation and appoints public defender and CARE Supporter. Court reviews the clinical evaluation and, if the individual meets the criteria, the court orders the development of a Care Plan.

CARE PLAN

Care plan is developed by county behavioral health, participant and CARE Supporter including behavioral health treatment, stabilization medication,

and adopts the Care plan with both the individual and county behavioral health as party to the court order for up to 12 months.

SUPPORT

County behavioral health care team, with participant, and CARE Supporter, begin treatment and regularly review and update Care plan, as needed, as well as a Mental Health Advance Directive for any future crises. Court provides accountability with status hearings, for up to a second 12 months, as needed.

SUCCESS

Successful completion and graduation by the Court. Participant remains eligible for ongoing treatment, supportive services, and housing in the community to support long term recovery. Psychiatric Advance Directive in place for any future crises.



CARE Court FAQ

A New Framework for Community Assistance, Recovery, and Empowerment

1. What is CARE Court?

CARE Court is a proposed framework to deliver mental health and substance use disorder services to the most severely impaired Californians who too often languish – suffering in homelessness or incarceration – without the treatment they desperately need.

It connects a person in crisis with a court-ordered Care Plan for up to 12 months, with the possibility to extend for an additional 12 months. The framework provides individuals with a clinically appropriate, community-based set of services and supports that are culturally and linguistically competent. This includes court-ordered stabilization medications, wellness and recovery supports, and connection to social services and a housing plan.

2. How is self-determination supported in the CARE Court model?

Supporting a self-determined path to recovery and self-sufficiency is core to CARE Court, with a Public Defender and a newly established Supporter for each participant in addition to their full clinical team.

The role of the Supporter is to help the participant understand, consider, and communicate decisions, giving the participant the tools to make self-directed choices to the greatest extent possible.

The Care Plan ensures that supports and services are coordinated and focused on the individual needs of the person it is designed to serve.

The creation of a Mental Health Advance Directive further provides direction on how to address potential future episodes of impairing illness that are consistent with the expressed interest of the participant and protect against negatives outcomes such as involuntary hospitalization.

3. What are the criteria for participation in CARE Court?

The criteria are two part: individuals with a) a schizophrenia spectrum or other psychotic disorder diagnosis AND b) whose judgment is so impaired by symptoms of their mental illness (e.g., hallucinations, delusions, disorganization and/or cognitive impairment) that they lack the capacity to make informed or rational decisions about their medically necessary treatment.

CARE Court is NOT for everyone experiencing homelessness or mental illness; rather it focuses on people with schizophrenia spectrum or other psychotic disorders who lack medical decision-making capacity to serve these Californians – before they enter the criminal justice system or become so impaired that they end up in a Lanterman-Petris-Short (LPS) Mental Health Conservatorship.

4. What is the purpose of CARE Court?

CARE Court aims to deliver behavioral health services to the most severely ill and vulnerable individuals, while preserving self-determination and community living.

CARE Court is an upstream diversion to prevent more restrictive conservatorships or incarceration; this is based on evidence which demonstrates that many people can stabilize, begin healing, and exit homelessness in less restrictive, community-based care settings. With advances in treatment models, new longer acting antipsychotic treatments, and the right clinical team and housing plan, individuals who have historically suffered tremendously on the streets or during avoidable incarceration can be successfully stabilized and supported in the community.

CARE Court may be an appropriate next step after a short-term involuntary hospital hold (either 72 hours/5150 or 14 days/5250), an arrest, or for those who can be safely diverted from a criminal proceeding. Remote or virtual proceedings may be especially effective for CARE Court participants.

5. Is CARE Court a conservatorship?

No, it seeks to prevent the need for conservatorship by intervening prior to the need for such restrictive services and providing shorter-term court ordered, community-based care with Supportive Decision Making.

Current Lanterman-Petris-Short (LPS) Act Mental Health conservatorship is rarely timely, difficult to have granted, establishes a substitute decision maker for the person, and typically relies on locked placements as a first line intervention.

6. What does a participant in CARE Court receive?

The framework provides individuals with a clinically appropriate, community-based set of services and supports that are culturally

and linguistically competent. This includes short-term stabilization medications, wellness and recovery supports, and connection to social services and a housing plan. A housing plan is an important component—finding stability and staying connected to treatment, even with the proper supports, is next to impossible while living outdoors, in a tent or a vehicle.

Each participant will also be provided a new, designated Supporter to assist with Supported Decision Making for the CARE Court Care Plan, the creation of a Mental Health Directive, and a “graduation” plan for recovery and wellness post-CARE Court. The role of the Supporter is to help the participant understand, consider, and communicate decisions, giving the participant the tools to make self-directed choices to the greatest extent possible. Participants will also have a designated court appointed attorney, for court proceedings.

7. How does CARE Court work?

Referral: The first step is a petition to the Court, by a family member, behavioral health provider, first responder, or other approved party to provide care and prevent institutionalization.

Clinical Evaluation: The civil court orders a clinical evaluation after a reasonable likelihood of meeting the criteria is found. Court appoints a public defender and Supporter. The court reviews the clinical evaluation and, if the individual meets the criteria, the court orders the development of a Care Plan.

Care Plan: The Care Plan is developed by county behavioral health, participant and Supporter including behavioral health treatment, stabilization medication, and a housing plan. The court reviews and adopts the Care Plan with both the individual and county behavioral health as party to the court order for up to 12 months.

Support: The county behavioral health care team, with the participant and Supporter, begin treatment and regularly review and update the Care Plan, as needed, as well as a Mental Health Advance Directive for any future crises. The court provides accountability with status hearings, for up to a second 12 months, as needed.

Success: Upon successful completion and graduation by the Court, the participant remains eligible for ongoing treatment, supportive services, and housing in the community to support long term recovery. The Mental Health Advance Directive remains in place for any future crises.

8. What is meant by court-ordered stabilization medications?

Stabilization medications may be included in the court ordered Care Plan.

Court ordered stabilization medications are distinct from an involuntary medication order in that they cannot be forcibly administered. Seeking an involuntary medication order for a participant would be outside the proceedings and subject to existing law. Failure to participate in any component of the Care Plan may result in additional actions, consistent with existing law, including possible referral for conservatorship with a new presumption that no suitable alternatives exist.

Stabilization medications would be prescribed by the treating licensed behavioral healthcare provider/prescriber and medication management supports will be offered by the care team. As a participant in the development and on-going maintenance of the Care Plan, the participant will work with their behavioral healthcare provider and their Supporter to address medication concerns and make changes to the treatment plan.

Stabilizing medications will primarily consist of antipsychotic medications, which are evidence-based treatments to reduce the symptoms of hallucinations, delusions, and disorganization—these are the symptoms that cause impaired insight and judgment in individuals living with Schizophrenia spectrum and other psychotic disorders. Medications may be provided as long-acting injections which reduce the day-to-day –adherence challenges many people experience with daily medications.

9. What if an individual does not participate in the Court-ordered Care Plan?

An individual who does not participate in the court-ordered Care Plan may be subject to additional court hearing(s). If a participant cannot successfully complete a Care Plan, the individual may be referred by the Court for a conservatorship, consistent with current law. For individuals whose prior conservatorship proceedings were diverted, those proceedings will resume under a new presumption that no suitable alternatives to conservatorship are available. For individuals whose criminal cases were diverted, those proceedings will resume.

10. Will CARE Court be available statewide?

Yes—all counties will participate in Care Court. There is not an option to opt-out.

11. What if a local government does not provide the court-ordered Care Plan?

If local governments do not meet their specified responsibilities under the court-ordered Care Plans, the Court will have the ability to order sanctions and, in extreme cases, appoint an agent to ensure services are provided.

12. How is CARE Court different from current approaches in California – namely Mental Health (or LPS) Conservatorship and the more recent Laura’s Law (Assisted Outpatient Treatment)?

CARE Court applies only to a small and distinct group of adults with under or untreated Schizophrenia spectrum and other psychotic disorders who lack the capacity to make informed or rational decisions about their medically necessary treatment.

CARE Court differs fundamentally from Mental Health/LPS Conservatorship. It does not include custodial settings or long-term involuntary medications. CARE Court provides a new Supporter role, to empower the individual in directing their care as much as possible. Lastly, the court ordered Care Plan is no longer than 12 or, if extended, 24 months.

CARE Court is different from both Mental Health/LPS Conservatorship and Laura’s Law approaches in that it may be initiated on a petition to the Court by family members, service providers, and other authorized parties, in addition to County Behavioral Health. Local government is also part of the court order, along with the participant, to ensure accountability to the provision of treatment and care.

CARE Court is also separate from Probate Conservatorship where a court may appoint a conservator for people determined to be incapacitated to manage their financial or personal care decisions.

13. How is CARE Court funded?

Existing funding sources for the Care Plan services and supports include nearly \$10 billion annually for behavioral healthcare (including Mental Health Services Act, mental health realignment, federal funds) and the

proposed \$1.5 billion for behavioral health bridge housing, as well as various housing and clinical residential placements available to cities and counties under the Governor’s \$12 billion homelessness investments which began in 2021. County behavioral health is responsible for Medi-Cal Specialty Mental Health Services and Substance Use Disorder (SUD) treatment and community mental health services.

Costs for the Court, the Public Defender, the new Supporter program, and state oversight will require new funding. The state will provide technical assistance to the Counties and will be responsible for data collection, evaluation, and reporting.

14. What housing is available to an individual in CARE Court?

Housing is an important component of CARE Court—finding stability and staying connected to treatment, even with the proper supports, is next to impossible while living outdoors, in a tent or a vehicle. Care Plans will include a housing plan. Individuals who are served by CARE Court will have diverse housing needs on a continuum ranging from clinically enhanced interim or bridge housing, licensed adult and senior care settings, supportive housing, to housing with family and friends.

In the 2021 Budget Act, the state made a historic \$12 billion investment to prevent and end homelessness which included unprecedented new funding to create new community based residential settings and long-term stable housing for people with severe behavioral health conditions. Additionally, the Governor’s proposed 2022–2023 budget includes \$1.5 billion to support Behavioral Health Bridge Housing, which will fund clinically enhanced bridge housing settings that are well suited to serving CARE Court participants.

Frequently Asked Questions

I. Care Plan

1. The CARE plan definition says it is an individualized plan, created by respondent, supporter, their counsel, and county BH. Why then are we allowing the courts to order the plan modified “to better meet the needs of the parties?” What parties? How do the courts know what is better for the respondent? Assisted Outpatient Therapy (AOT) explicitly prohibits a court from ordering any services that are not in the written plan submitted by the licensed mental health treatment provider. Would this go against the respondent’s advance directive?

The CARE plan is an individualized, clinically appropriate range of behavioral health related services and supports provided by a county behavioral health agency, including, but not limited to, clinical care, stabilization medications, and a housing plan, pursuant to Welfare and Insitutions Code section 5982.

The Court may determine that the CARE plan does not include all required elements to address the behavioral health needs of the respondent. Sec 5976 clarifies that modifications to the CARE Plan to better meet the needs of the parties must be within the scope of county behavioral health services.

If the CARE participant has an existing psychiatric advance directive in place, it will be considered. It is far more likely that the participant will work with the supporter, the behavioral health team and others, if desired, to develop a psychiatric advance directive prior to CARE Court graduation.

2. In the CARE plan definition, should there be a more robust menu of services, like in Welfare and Insitutions Code section 5348 for AOT?

The CARE plan is an individualized, clinically appropriate range of behavioral health related services and supports provided by a county behavioral health agency, including, but not limited to, clinical care, stabilization medications, and a housing plan, pursuant to Section 5982. Though not required, counties are encouraged to employ medically necessary, evidence-based practices and promising practices supported with community-defined evidence, which may include assertive community treatment, peer support services, and psychoeducation.

3. Under the CARE plan (see Welfare and Insitutions Code section 5982 (b) (2)) it talks about medication being prescribed by a licensed behavioral health care

provider. Not all licensed providers can prescribe medication. Do we need a clarification that this does not expand scope?

It is not our intention to expand scope of practice and that can be clarified.

II. Eligibility Criteria

1. One of the criteria for CARE is that the respondent “currently lacks medical decision-making capacity.” However, this proposal allows for an affirmation or affidavit by a BH professional who had examined the respondent within three months and states it applies to a respondent who meets or is likely to meet the diagnostic criteria. How does a three-month old examination qualify as “current?” Also, does not “likely to meet” contradict “current?”

The affidavit submitted in the petition must be within 90 days, but as Welfare and Insitutions Code section 5977 (d) stipulates there is an evaluation review hearing where the court reviews the clinical evaluation conducted by county behavioral health as well as any other evidence from all interested individuals, including, but not limited to, evidence from the petitioner, the county behavioral health agency, the respondent, and the supporter. If the court finds that the evaluation and other evidence demonstrate clear and convincing evidence that the respondent meets the CARE criteria, the court is required to order the county behavioral health agency, the respondent, the respondent’s counsel and supporter to jointly develop a CARE plan.

2. Why can only *one* previous 14-day involuntary hold for intensive treatment within the last 90 days qualify you for CARE?

Welfare and Insitutions Code section 5972 outlines the criteria for when the court may order a respondent to participate in CARE proceedings if the court finds, by clear and convincing evidence.

1. *The person is 18 years of age or older.*
2. *The person has a diagnosis of schizophrenia spectrum or other psychotic disorder, as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders.*
3. *The person is not clinically stabilized in on-going treatment with the county behavioral health agency.*
4. *The person currently lacks medical decision-making capacity.*

Sections 5973 and 5974 outline who can submit a petition and what kind of information and evidence it must include. All petitions must include facts that

support the petitioner’s belief that the respondent meets the CARE criteria, including identification of the county behavioral health agency with responsibility for providing care to the respondent, if known. In addition, the petitioner must provide either an affidavit as described in section 5972 OR evidence that the respondent was detained for intensive treatment pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Part 1 within the previous 90 days.

As summarized in the question above, a full evaluation review hearing, including a clinical evaluation, as well as hearing other evidence, must be conducted prior to the court issuing an order for a CARE plan to be developed, unless stipulated to by the parties.

The language, as currently drafted, should be amended for clarity.

3. Why is a court allowed to refer a person to CARE who is the subject of AOT or conservatorship proceedings? Shouldn’t that be the decision of a treating mental health professional—to determine which program is the most clinically appropriate for the person?

We would envision county behavioral health or the individual and their Counsel advising the judge in AOT or LPS conservatorship proceedings on the appropriateness of referral to CARE Court.

4. Is “Schizophrenia spectrum or other psychotic disorders” too narrow? Do you see “other specified psychotic disorder” and “unspecified psychotic disorder” as opening this up? More generally, what is the population we are talking about here?

A diagnosis within the disorder class of schizophrenia spectrum or other psychotic disorders is one of the four criteria for CARE Court outlined in Welfare and Institutions Code section 5972. CARE Court is specifically designed to target psychotic disorders that interfere with a person’s ability to understand reality or make rational decisions due to symptoms of hallucinations, delusions and disorganized thinking, which are the characteristic symptoms of Schizophrenia and Schizoaffective disorders. Like other brain diseases such as neurocognitive diseases (dementias), this category of disease can interfere with an individual’s medical decision-making capacity, and that is the focus of CARE Court. By including “other psychotic disorders” in the qualifying diagnoses, the program is inclusive of other individuals experiencing psychotic symptoms who may not

have received a formal diagnosis of schizophrenia but who lack medical decision-making capacity due to psychotic symptoms.

CARE Court focuses on diseases that impact insight and decision making to avoid conflating these illnesses with other illnesses that may impact functioning but do not interfere with an individual's ability to make medical decisions for themselves. Those served by CARE Court are most likely to benefit from antipsychotic medications to reduce the symptoms of hallucinations, delusions, and disorganization that cause impaired insight and judgment in individuals living with Schizophrenia spectrum and other psychotic disorders.

5. Is this intended for persons who currently lack decision-making capacity, or for persons who are experiencing mental illness but have not yet reached incapacity/are coming off a hold and have stabilized? If it is the former, how can the person meaningfully participate in a settlement agreement/help devise a care plan/give legal consent to a settlement as contemplated by the language? If it is the latter, what is the basis for mandating a person's participation, unless it is provided as a diversion option for persons charged with a misdemeanor?

Medical decision-making capacity is one of the four criteria outlined in Welfare and Institutions Code section 5972. Medical decision-making capacity is a functional assessment regarding a particular decision that evaluates four key components: an ability to express a treatment choice, an ability to express an understanding of causal relationships and outcome probabilities, an ability to appreciate the nature of the illness, treatment options and likely individualized direct outcomes, and an ability to rationally discuss the risks and benefits of treatment options and the reasoning behind a choice.

CARE Court is intended for individuals who lack medical decision-making capacity because their illness is untreated or undertreated, and therefore may require a court ordered CARE plan to secure that treatment, but who can still be supported in making choices about aspects of their care such as preferred medications, psychosocial interventions, and housing environment and who can still regain decision-making capacity through that care.

Medical decision-making capacity is distinct from the LPS criteria for a psychiatric hold in which the individual must be a danger to self, danger to others, or be gravely disabled.

6. If the petitioner is the family member, what evidence does the petitioner need to provide or present to demonstrate prima facie evidence that the respondent lacks medical decision capacity? Alternatively, is it the goal to provide that if you have

been subject of a 5250, you are deemed to have lacked medical decision-making authority?

The criteria for CARE Court participation is outlined in section 5972, including facts (f) and evidence (g). For the petition, the petitioner can provide as evidence (g) either the affirmation or affidavit of a qualified behavioral health professional or that respondent has been subject to a hold for intensive treatment pursuant to 5250. Through the evaluation review hearings, the individual still would be evaluated to determine if they lack medical decision-making capacity, unless the parties stipulate otherwise.

7. Is there a way to allow persons who believe they need mental health services to opt in on a more voluntary basis? For example, persons who are coming out of 5150/5250/5270 holds or conservatorships and who want wraparound services?

The legislation does not provide for a self-petition process—but this is something that should be considered. With regard to it being on a voluntary basis, the CARE Court settlement agreement process creates a pathway for those who are subject to a petition to enter treatment and services that the county behavioral health agency provides, without a court order. In addition, individuals and counties notified of a petition for CARE Court can directly engage in a treatment plan, and then at the Initial Hearing may be found not to meet the criteria for CARE Court due to current provision of and engagement in treatment.

III. Court Process

1. On the court process, the initial CARE hearing is required no later than 14 days from the date of the petition being filed. In AOT, the requirement is within 5 days. Why are we almost tripling the timeframe for this proposal when we are dealing with the most severely mentally ill—given also that, the CARE process allows for various 14-day extensions before the 1-yr clock even starts?

The timing is a result of one of the key differences between AOT and CARE Court – individuals can file directly with the court. To elaborate, in AOT only a county can file and it often takes a county weeks, and sometimes months, to investigate, offer services, and examine the individual before a petition for AOT is filed, so the short time frame between the AOT petition and the first hearing is appropriate. In CARE court, the petition can be filed by a range of designated people, so the petition needs some time for review by the court and for engagement of the parties before proceeding to the Initial Hearing. In CARE Court, the steps of engagement and evaluation happen after petition, through notice and engagement of county behavioral health, the respondent, counsel,

and supporter, which occurs within 5 days of petition; the Initial hearing, within 14 days of petition; and the subsequent Case Management conference hearing.

2. If the respondent stabilizes at any point throughout the process of the petition, does the petition end? Likewise, if at any time during the 1-yr CARE treatment plan the respondent stabilizes, can they petition to have the court-ordered treatment end?

The CARE plan will continue for up to one year to support long term stability of the participant and to provide sufficient time for the CARE plan goals to be realized and a graduation plan to be completed. The respondent may propose modifications to the plan and an earlier graduation.

3. For IST misdemeanants who otherwise are not eligible for mental health diversion, would it make more sense to mirror the new care court referral to what currently exists in the law for AOT or conservatorship referral?

These provisions should be consistent.

4. Would there need to be a Riese hearing on capacity or is that wrapped up in the "Evaluation hearing?"

There is no Riese hearing as part of CARE Court because no medications are forcibly administered. Additionally, CARE Court does not allow for a psychiatric hold where Riese hearings typically take place.

5. The timeframe for the process—stretching over many weeks—suggests there is no imminent destabilization or need for care, as compared to AOT/5150, which happens much more quickly. If the goal is to bring in destabilized persons, should the timeline be tightened up ?

As discussed above, the timing of the CARE court process is more lengthy than the AOT court process because we are allowing a direct petition to the court to begin court supervision of services earlier. That said, alternative timeframes can be considered.

6. Should a CARE plan be specifically mentioned within a settlement agreement under section 5977 (c)?

Yes. The settlement agreement should at a minimum include the required Care plan elements.

7. If an agreement is made under section 5977 (c) (3) are we basically skipping down to (f)? Does that need to be explicit?

We anticipate clarifying that the matter can be terminated after the 60 day hearing if both parties are participating in the settlement agreement.

8. Are there going to be hearsay issues given the *People v. Sanchez* (2016) ruling?

We would imagine that People v. Sanchez would limit an expert witness's use of hearsay in their testimony– as it has in LPS and AOT.

9. Is there a risk of abuse if a person can be brought in with just a petition and prima facie evidence of eligibility, especially because non-experts are permitted to file the petition? AOT requires a concerned person to go through the county and the county decides whether to bring the petition, does this provide better protections?

The petition requires both facts which support the petitioner's belief that the person who is the subject of the petition meets each criteria and supporting evidence, through either an affidavit from a qualified mental health professional that the person meets, or is likely to meet, the criteria or evidence that the person who is the subject of the petition had a section 5250 hold within the last 90 days. The petition shall be signed under the penalty of perjury. The court may dismiss a case with prejudice if finds that the filing was not in good faith.

10. There is no clinical evaluation until after the target of the petition is in the system and has been required to try to reach a settlement agreement. Should there be an evaluation earlier? How can there be a settlement agreement without an evaluation?

If the subject of the petition does not believe they meet the CARE Court criteria they may decline their option of entering into the settlement agreement and move to the evaluation.

11. Welfare and Institutions Code section 5976 states that the target of the petition is entitled to counsel, but does not specify that counsel must be provided if they cannot afford it, as with LPS proceedings. Is the intent to provide counsel?

Yes. Section 5977 requires the court to appoint counsel in all cases, not based on whether the individual can afford counsel.

12. How does the settlement agreement work? Is it essentially a voluntary CARE court treatment plan? Could this be made clearer?

The settlement agreement is a treatment plan entered into by both the respondent and county behavioral health with court supervision, but not court orders.

13. Should the court order the settlement negotiations and the development of a treatment plan to run simultaneously? There seems to be a lot of time before the health department is figuring out what the target of the petition needs, or even before there's an evaluation.

County behavioral health should begin engaging the subject of the petition as early as possible to offer treatment, including upon receipt of notice of a petition. If an individual is clinically stabilized in on-going treatment with the county behavioral health agency, the parties may no longer meet the criteria for CARE Court and the case may be dismissed at the Initial hearing; or they may more promptly enter into a settlement agreement at the Case Management Conference hearing.

14. The timeline for an adopted CARE plan is a status conference at 60 days after implementation, plus regular conferences set at least every 180 days. In a yearlong plan, this means the default is only two status conferences; should there be greater court oversight?

The goal is to limit court involvement if the individual is doing well in the community and the county is providing services— which is why deference has been given to the court. That said, language should be added that clearly lays out how a hearing can be requested in between status conferences.

15. The bill requires notice to be provided to the respondent's counsel. How will the family member know who is the respondent's counsel?

The court will be appointing counsel in every case—likely the public defender in the vast majority of counties. Information on service requirements, including addresses for the entities to be served, will need to be included in the court's self-help center.

16. Should we require the Judicial Council to develop forms – specifically for a petitioner who is a family member – to make it easier for them to know how to do this?

Yes—the intent is to have the Judicial Council develop accessible forms.

IV. Psychiatric Advance Directive

1. How are Psychiatric Advance Directives currently working in practice?
Consenting to care ahead of time that you may refuse in the moment is very

different from the inverse, which is more common for advance directives. Any info from the MHSOAC on their pilot?

U.S. Centers for Medicare and Medicaid Services clarified over 15 years ago that Psychiatric Advance Directives (PAD)s should be part of psychiatric care but only 27 states have enacted laws and policies recognizing PADS. Advance directives are commonly used for physical health conditions and efforts have been underway for over a decade to increase their use for psychiatric conditions. The National Resource Center on Psychiatric Advance Directives (NRC) provides the following definition, “PADS are relatively new legal instruments that may be used to document a competent person’s specific instructions or preferences regarding future mental health treatment. Psychiatric advance directives are used to plan for the possibility that someone may lose the capacity to give or withhold informed consent to treatment during acute episodes of psychiatric illness”.

PADs can help expand the use of Supportive Decision Making tools. PADs are not intended to be used to require on-going medication or involuntary inpatient care. A PAD allows a person in a mental health crisis to retain their decision-making capacity by choosing supporters to help advocate for their choices.

While California may not yet have specific legal statute regarding PADs there are efforts underway to develop what will work best for California. The Mental Health Services Oversight and Accountability Commission has a learning collaborative with several counties to study and develop standardized templates, training, technology and potentially enabling legislation to support accessibility and sustainability of PADs. The administration looks forward to further engaging in these efforts.

V. Respondent Placement and Housing

1. This proposal is silent, as is AOT, on this point, but where is the respondent throughout this whole process? Are they being held? Are they at an inpatient facility? Are they released? Provided with housing?

CARE Court does not include any locked or custodial commitments. Instead, it is an outpatient model that seeks to support housing stability. For participants who are unhoused, counties may utilize local, state, federal and other housing and homelessness funding to serve CARE participants. Additionally, the proposed \$1.5 billion for Behavioral Health Bridge Housing funding would be prioritized to serve CARE Court participants per Sec 5983 (b).

2. Article Five requires the care plan to include a Housing Plan, with language specifying it includes the needs of the respondent and the resources considered in support of an appropriate placement. It goes on to say counties may offer appropriate housing placements in the region as “early as is feasible in the engagement process.” Does the respondent continue to remain unhoused as they move through the Care COURT process depending on the resources available and the county’s ability to identify an appropriate housing option? Could the respondent complete the care court process without their housing needs ever being met if there was a “housing plan” in place but not an actual placement made?

In the 2021 Budget Act, the state made a \$12 billion investment to prevent and end homelessness which included funding to create new community based residential settings and long-term stable housing for people with severe behavioral health conditions. While CARE Court does not create a right to housing, the legislation recognizes the importance of housing in finding stability and staying connected to treatment. To this end, the Governor’s proposed 2022-2023 budget includes \$1.5 billion to support Behavioral Health Bridge Housing, which would fund clinically enhanced bridge housing settings that would be prioritized to serve CARE Court participants, per Sec 5983 (b).

3. Regarding the housing plan, what is a “region?” Counties are being permitted to offer appropriate housing placements “in the region.” Does that mean that someone from Sacramento County may be placed as far east as Lake Tahoe?

Individuals who are served by CARE Court will have diverse housing needs on a continuum ranging from clinically enhanced interim or bridge housing, licensed adult and senior care settings, supportive housing, to housing with family and friends. Housing placement should meet the individual needs of the CARE Court participant, including their geographic preferences to the extent possible. In order to support on-going connection to treatment, identifying housing that is near to treatment and other community resources will support the success of the participant. Particularly in rural areas of the state, the most appropriate and near placements may be in the region, but not the county.

4. If courts are not required to order and counties are not being required to provide housing, doesn’t that negate this whole CARE proposal? Isn’t the purpose to ensure a respondent has a care plan, a supporter, and appropriate housing?

While CARE Court does not provide a right to housing, the 2021 Budget Act made a \$12 billion investment to prevent and end homelessness which included

funding to create new community based residential settings and long-term stable housing for people with severe behavioral health conditions. In addition, the Governor's proposed 2022- 2023 budget includes \$1.5 billion to support Behavioral Health Bridge Housing, which would fund clinically enhanced bridge housing settings that would be prioritized to serve CARE Court participants, per Sec 5983 (b).

5. Does this structure mean the individual has to comply with stabilization medication and specialty mental health treatment to access housing? If so, how does this align with housing first principles as currently defined and practiced?

CARE Court holds the county and the individual accountable to a CARE plan and supports connection to housing as described above. Counties may leverage local, state, federal, and philanthropic resources to support housing placements for CARE Court participants. Nothing in the statute makes housing contingent on CARE Court participation.

6. Does it change the prioritization of limited housing resources available? Would someone be more likely to access housing if they go through CARE Court than other county/city/continuum of care processes?

The Governor's proposed 2022- 2023 budget includes \$1.5 billion to support Behavioral Health Bridge Housing, which would fund clinically enhanced bridge housing settings that would be prioritized to serve CARE Court participants per Sec 5983 (b). This is the only fund source that would statutorily require prioritization of CARE Court participants, though other funds sources for housing are available to serve this population and may also be prioritized at the local level as applicable.

7. If someone does to access housing early on in the CARE court process but then struggle with their treatment plan and fall of their medication, do they lose their housing?

Nothing in the statute makes housing contingent on CARE Court participation.

VI. Post -Hearing Process

1. What happens when a respondent has had two consecutive CARE episodes and they still have not improved? Likewise, if at any time during the first or second year the treating mental health provider does not believe the respondent will improve, what happens?

CARE is a new approach and is designed to provide meaningful connection to treatment and services for up to 24 months. If, at any time during the proceedings, the court determines by a preponderance of evidence that the respondent is not participating in CARE proceedings, after the respondent receives notice, or is not adhering to their CARE plan, the court may terminate the respondent's participation in the CARE program. The court may utilize existing legal authority pursuant to Article 4 (commencing with Section 5200) of Chapter 2 of Part 1, to ensure the respondent's safety. The subsequent proceedings may use the CARE proceedings as a rebuttable presumption that no suitable community alternatives are available to treat the individual.

2. What happens if after one year (or even two years), a respondent improves and is doing well, but they know that without CARE they will not be able to maintain stability, even with targeted outpatient treatment?

Upon successful completion and graduation by the Court, the participant remains eligible for ongoing treatment, supportive services, and housing in the community to support long term recovery. A PAD can remain in place for any future crises.

3. At the 11-month review – what does “successfully completed participation” mean?

This is an evidentiary status hearing. The CARE participant, supporter, counsel, and county behavioral health agency can present evidence, and the court will hear recommendations from the county behavioral health agency. The participant may request graduation or reappointment to CARE court process. If the respondent requests to be graduated from, or times out of, the CARE court process, the court will officially graduate the respondent and terminate its jurisdiction with a graduation plan which successfully completes participation.

4. Where is the authority to reappoint for an additional year if someone is unsuccessful?

A clear standard as to when the program can be extended needs to be added to the language.

5. Should CARE court be limited to the one year, not extended, unless the person chooses to do so voluntarily after successful completion? If they do not succeed at the one year or fail earlier, they would be returned to criminal court for continued proceedings. Rationale is because under regular diversion a misdemeanor's term in a program is a maximum of one year and similarly if a person serves a term in custody the max is anywhere from 6 months to a year.

Since this would be attached to a criminal case, the maximum terms should be the same.

CARE Court should allow for an additional 12 months. This issue may be addressed by terminating the criminal case once the individual is accepted into the program– as is currently done for AOT.

6. What happens if a person is complying with treatment but is not showing progress or considered “successful?”

We consider participation in treatment success. To the extent that the individual has a subsequent mental health crisis, a PAD may be relied upon, or the court may utilize existing legal authority pursuant to Article 4 (commencing with Section 5200) of Chapter 2 of Part 1, to ensure the respondent’s safety.

7. What is the plan for someone who has not complied with a CARE plan but has not destabilized to the point of needing 5150 care, and who did not participate as part of a diversionary program? Is there a basis for imposing consequences?

CARE Court does not create new standards or change existing legal authority pursuant to Article 4 (commencing with Section 5200) of Chapter 2 of Part 1. The county should continue to engage any patients who are terminated from CARE Court and are not subject to existing legal authority.

8. What happens if a CARE court participant moves jurisdictions, or becomes homeless? Is there a possibility of allowing a court to order housing, if the lack thereof is what has kept the person from stabilizing in the past?

WIC 5982 outlines that counties may offer appropriate housing placements in the region as early as feasible in the engagement process but, as currently drafted, does not allow the court to order housing or to require the county to provide housing.

If a person moves jurisdictions, existing rules for behavioral health services continuity should apply.

VII. Support Person

1. Will the supporters be trained in engaging with people with MH/SUD conditions? Likewise, if a respondent decides on a supporter not provided by the Dept of Aging, shouldn’t that supporter receive some kind of training if they will be guiding the respondent through court proceedings, meetings, etc.? Is the Dept of Aging the correct entity to train supporters?

Supporters will be trained in strategies to engage individuals with severe mental illness. A key department responsibility will be to effectively train supporters on supported decision making with individuals who have behavioral health conditions and on the use of psychiatric advance directives. As Welfare and Institutions code 5980 describes this training will be developed with input from peers, family members, disability groups, providers, and other relevant stakeholders.

Self-direction is a critical element of CARE. Welfare and Institutions code 5980(c) explains that if a respondent chooses their own supporter, that person may serve as a supporter without compensation. Volunteer supporters will be provided with required, accessible training that includes, at a minimum, a description of their role, expectations, and conflicts of interest. Respondent may also choose not to have a supporter.

With a focus on individual empowerment and access to services in the home and community, California Department of Aging (CDA) has long focused on person-centered advocacy and support programs for older and disabled adults, including the Long-Term Care Ombudsmen program for residents of nursing homes and assisted living facilities, the Friendship Line for behavioral health support, and, more recently, the Office of the Patient Representative that represents the wishes of incapacitated individuals in long-term care facilities. In July, subject to final budget approval of the Governor's January budget proposal, CDA will be hiring a Conservator/Public Guardian liaison that will work with local Public Guardian/Public Conservator offices to help strengthen probate conservatorships for adults with diminished capacity to make financial and personal care decisions. The supporter program compliments CDA's focus on advocacy and empowerment of older and disabled adults.

2. If the supporter is required to assist the respondent with understanding the entire CARE process, shouldn't the supporter be required to attend court proceedings rather than just being allowed to attend?

The supporter should attend and that clarification in the language would be helpful

3. Why the Department of Aging? Would the office of patient's rights in DHCS make more sense? Will CDA decide the contract specifications if the role is contracted out? Is a competitive process envisioned?

As stated above, CDA has expertise in managing person-centered advocacy and support programs with expert community-based organizations that effectively

serve vulnerable older and disabled adults, including preserving the rights of unrepresented and vulnerable people. They are the appropriate entity to develop and administer a State Supported Decision Making program, in partnership with expert community-based organizations. The Office of Patients' Rights within DHCS has the responsibility to ensure that mental health laws, regulations, and policies for the rights of mental health service recipients are observed in licensed mental health facilities.

As Welfare and Institutions code 5980 outlines CDA may enter into a technical assistance and training agreement to provide trainings either directly to supporters or to the contracted entities who will be responsible for hiring and matching supporters to respondents. CDA will seek stakeholder input on contract specifications and contract award criteria. The Supporter program contracts shall include labor standards.

4. If supporters are being bound to "existing obligations and prohibitions," who is ensuring that a supporter not trained/provided by Dept of Aging knows all this?

As the program is developed, that will be incorporated into the training envisioned for volunteer Supporters.

5. For the supporter, if someone does volunteer, should there be some written commitment to serve in this role like in 5350(e) (2)?

As the program is developed, that will be incorporated into the training envisioned for volunteer Supporters.

6. Who sets the qualifications and compensation? Who is the employer? What about possible conflict of interest?

Welfare and Institutions Code section 5980 outlines that CDA will develop the Supporter program and will do so with support and input from peers, family members, disability groups, providers, and other relevant stakeholders. CDA intends to contract with community-based organizations at the state, regional or local level who will serve as the employer of the supporters. CDA will be responsible for addressing any potential conflicts of interest for CDA funded supporters or contracted entities.

7. The language allows contracted entities to "match" the supporter and has the court appointing a supporter within 5 days of filing. Does CDA or the contractor provide name(s) to the court or to the respondent first? Does the respondent have a choice?

Self-direction and choice are critical elements of CARE Court. Reasonable and feasible strategies will be employed to provide Supporter choice to the respondent, recognizing limitations due to the immediate need to have a supporter available in the 5-day period and in every county in California. Respondents can also decline a supporter.

VIII. Evaluation and Accountability

1. Like we are seeing with LPS, we need specific and robust reporting requirements, should those be included here for technical assistance piece.

A robust data collection, evaluation, and accountability framework will be added to the legislation. This will include demographic data to mitigate against and remedy racial, ethnic, and other inequities in behavioral health and housing.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 6, 2022	FILE I.D.:	FRD200
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	3	PREPARER:	R. HOERNING
SUBJECT:	CONSIDER AMENDING THE 2019-2024 CAPITAL IMPROVEMENT PROGRAM TO ADD THE FIRE STATION NO. 2 LANDSCAPING PROJECT		
	CONSIDER AUTHORIZING A \$30,000 APPROPRIATION FROM 2021 LEASE REVENUE BOND FUNDS FOR COSTS RELATED TO THE CONSTRUCTION OF THE FIRE STATION NO. 2 LANDSCAPING PROJECT		
	CONSIDER APPROVING THE PLANS AND SPECIFICATIONS AND AUTHORIZING STAFF TO ADVERTISE FOR BID PROPOSALS FOR THE FIRE STATION NO. 2 LANDSCAPING PROJECT		

REASON FOR CONSIDERATION: The City Council is requested to consider amending the 2019-2024 Capital Improvement Program (CIP) to add the Fire Station No. 2 Landscaping Project. Amendments to the CIP, non-budgeted appropriations, approval of the plans and specifications, authorization to advertise for bid proposals, and authorizing the award of construction contracts are subject to City Council approval.

BACKGROUND: The Fire Station No. 2 Landscaping was altered when the Monte Vista Grade Separation Improvements were constructed. The Monte Vista Grade Separation Improvements were completed around February 2020.

During the Monte Vista Grade Separation construction, the City was working with Monte Vista Water District to implement a water system service upgrade to the Public Works Yard. The Public Works Yard is located behind Fire Station No. 2. These improvements included the installation of a four-inch water meter in a large vault and a backflow prevention device in front of the fire station. These facilities altered the available landscape area and impacted the site design. Restoration of the fire station landscaping was to be constructed at a future time by the City.

The City, with the assistance of the Chino Basin Water Conservation District, has prepared drought-tolerant landscape and irrigation plans for Fire Station No. 2. The landscape will consist of a succulent plant pallet and strategically placed river rock boulder clusters installed within a decomposed granite surface and irrigated through a newly installed subterranean automatic drip system. The site will be cleared of weeds and other vegetation through a sequence of treatments to minimize subsequent weed growth and to prepare the site for the proposed hardscape, planting, and irrigation improvements.

The project work period is 50 working days. The tentative schedule for the bid opening is July 11, 2022.

FISCAL IMPACT: The Fire Station No. 2 Landscaping Project would be funded using \$30,000 in 2021 Lease Revenue Bond funds. The estimated construction cost is \$18,800. The cost to advertise this project for bid proposals should not exceed \$1,500. The remaining balance of funds will serve as the project contingency.

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

1. Amend the 2019–2024 Capital Improvement Program to add the Fire Station No. 2 Landscaping Project;
2. Authorize a \$30,000 appropriation from 2021 Lease Revenue Bond funds for costs related to the Fire Station No. 2 Landscaping Project; and
3. Approve the project plans and specifications and authorize staff to advertise for bid proposals for the construction of the Fire Station No. 2 Landscaping Project.

Infrastructure Fund Capital Project Funding Information

Project Name: Fire Station No. 2 Landscaping Project
 Project Details: Prepare site for proposed hardscape, planting and irrigation improvements

Preparation Date: May 31, 2022 Department: Public Works

Project No. (Assigned by Finance): _____ Contact/Ext.: Rosemary Hoerning

Phase	Fiscal Years						Total	Fund/Program
	Prior Years	2019/2020	2020/2021	2021/2022	2022/2023	2023/2024		
Environmental								
Design				3,000.00			3,000.00	2021 LRB
R/W Acquisition								
Construction				27,000.00			27,000.00	2021 LRB
Total	0.00	0.00	0.00	30,000.00	0.00	0.00	30,000.00	

Approvals:

Department: _____ By: _____ Date: _____

Finance By: _____ Date: _____

City Council Date: _____

Total Project Cost: 30,000.00

Revision Number: _____



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 6, 2022	FILE I.D.:	PDT430
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	POLICE
ITEM NO.:	4	PREPARER:	A. GRAZIANO

SUBJECT: CONSIDER AUTHORIZING THE PURCHASE OF FOUR PEPPER PROJECTILE SYSTEMS, SPARE TANKS, AND PROJECTILES, DEFINED AS MILITARY EQUIPMENT UNDER ASSEMBLY BILL 481

CONSIDER AUTHORIZING A \$5,700 APPROPRIATION FROM THE FEDERAL ASSET FORFEITURE FUND TO PURCHASE FOUR PEPPER PROJECTILE SYSTEMS, SPARE TANKS, AND PROJECTILES

REASON FOR CONSIDERATION: The Police Department's Military Equipment Policy Section 707 and Montclair Ordinance No. 22-1000 were approved by the City Council on March 21, 2022. The Police Department currently possesses four Pepperball pepper projectile systems in need of replacement. The City Council is requested to authorize a \$5,700 appropriation from the Federal Asset Forfeiture Fund to purchase four replacement pepper projectile systems, spare tanks, and projectiles.

BACKGROUND: Currently, the Police Department possesses four pepper projectile systems manufactured by PepperBall. Its trained police officers may use the systems as a less-lethal force option in various scenarios. The purpose of pepper projectile systems is to limit the escalation of conflict in situations where employment of lethal force is prohibited or undesirable including, but not limited to, self-destructive, dangerous and or combative individuals; riot/crowd control and civil unrest incidents; circumstances where a tactical advantage can be obtained; potentially vicious animals; and training exercises or approved demonstrations. The plastic projectiles are filled with a derivative of oleoresin capsicum (OC) powder. The compressed gas launchers deliver the projectiles with enough force to burst on impact and release the OC powder.

The current pepper projectile systems used by the Police Department are over 15 years old. Of the four launchers, only two are operable and the model has been discontinued, making parts obsolete for maintenance and repair. The current launchers also utilize a large hopper-fed system that makes it difficult to track the exact number of projectiles launched, and can only accommodate round pepper projectiles, which are less accurate than projectiles now available through technological advances.

Police Department Military Equipment Policy 707, Adopted Ordinance No. 22-1000, and Assembly Bill 481

The Police Department's Military Equipment Policy Section 707 was approved pursuant to Ordinance No. 22-1000 adopted by the City Council on March 21, 2022, and includes a description of all military equipment currently used by the Police Department. This includes the Police Department's four pepper projectile systems. AB 481, enacted under the Government Code commencing with Section 7070, includes the definition of military equipment. The pepper projectile systems are itemized under Government Code 7070(c), Category 12, which reads, in part:

“(12) Munitions containing tear gas or OC, excluding standard, service issued handheld pepper spray”

PepperBall is currently offering a launcher trade-up, where the Department would receive a credit for its four existing launchers. PepperBall would provide the latest launcher, the “PepperBall Patrol Carbine,” as well as a case of training and live projectiles per launcher. The PepperBall Patrol Carbine launcher is a CO₂/compressed air-launched, magazine-fed system that allows for accurate tracking of the number of projectiles discharged. This would greatly improve the ability to track the exact number of projectiles discharged as required by State law and policy. Additionally, the PepperBall Patrol Carbine launchers are capable of firing round projectiles and the VXR projectile, which is rifled for greater accuracy. This accuracy helps further reduce the risk of great bodily injury to the public and officers. The expected service life of the launchers is 15 years, and the annual maintenance is projected to be from \$0 to \$300. The Department annually budgets for the expense of replacement training and live munitions, which is not anticipated to increase as a result of this purchase.

Currently, PepperBall is the only producer of these unique less-lethal launchers, which would be purchased through one of its local distributors. Since PepperBall is the Department’s current vendor for pepper projectile systems, the existing serviceable PepperBall equipment, such as compressed gas fill stations, could be used in conjunction with the new pepper projectile systems.

FISCAL IMPACT: If authorized by the City Council, the purchase of the pepper projectile systems, spare tanks, and projectiles would result in an appropriation from Asset Forfeiture Federal Fund (1147) in the amount of \$5,700.

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

1. Authorize the purchase of four pepper projectile systems, spare tanks, and projectiles, defined as military equipment under AB 481.
2. Authorize a \$5,700 appropriation from the Federal Asset Forfeiture Fund to purchase four pepper projectile systems, spare tanks, and projectiles.



CITY COUNCIL AGENDA REPORT

DATE: JUNE 6, 2022

FILE I.D.: PDT362/PDT430

SECTION: CONSENT - ADMIN. REPORTS

DEPT.: POLICE

ITEM NO.: 5

PREPARER: J. MICHEL

SUBJECT: CONSIDER AUTHORIZING THE PURCHASE OF A LENCO BEARCAT G3 TACTICAL ARMORED VEHICLE, DEFINED AS MILITARY EQUIPMENT UNDER ASSEMBLY BILL 481, AND REQUIRED RADIO COMPONENTS, INSTALLATION, AND APPLIED GRAPHICS IN THE TOTAL AMOUNT OF \$336,600 FROM THE PUBLIC SAFETY GRANT FUND

CONSIDER AUTHORIZING A \$2,110.24 APPROPRIATION FROM THE FEDERAL ASSET FORFEITURE FUND TO PURCHASE AN ARMORED OIL PAN GUARD FOR THE LENCO BEARCAT G3 TACTICAL ARMORED VEHICLE

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the purchase of a Lenco BearCat G3 tactical armored vehicle to replace its 1980 Cadillac Peacekeeper currently used by Police Department personnel for tactical operations.

BACKGROUND: The Police Department's current tactical armored vehicle, a 1980 Cadillac Gage Peacekeeper, was obtained in 2002 through the California State Agency for Surplus Property, and is in need of replacement. On May 16, 2022, the City Council held a public meeting and approved the Police Department's request to seek out the purchase of a replacement tactical armored vehicle from a reputable manufacturer, defined by Assembly Bill 481 as military equipment. In the same meeting, the City Council approved Agreement No. 22-43 with San Bernardino County for providing funding for the sole purchase of a tactical armored vehicle, required radio components, and applied graphics, and authorized the receipt of \$336,600 from San Bernardino County for the purchase.

On May 24, 2022, the San Bernardino County Board of Supervisors held a public meeting and approved Agreement No. 22-43. On a future date, and upon request by the Police Department, San Bernardino County will transfer a one-time lump sum payment to the City of Montclair in the amount of \$336,600 for the purchase of a tactical armored vehicle, required radio components, installation, and applied graphics.

Police Department Military Equipment Policy 707 and Assembly Bill 481

The funds provided by San Bernardino County are designated for the purpose of purchasing a tactical armored vehicle qualifying as military equipment as defined by Assembly Bill 481 amending the Government Code commencing with Section 7070. Tactical armored vehicles are considered military equipment under Government Code 7070(c), which reads, in part:

"(2) Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers..."

and

"(3) High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached..."

The Police Department’s Military Equipment Policy Section 707, approved by the City Council on March 21, 2022, includes a description of all military equipment currently used by the Police Department. This includes the Peacekeeper, which is due for replacement, defined as a Category 2 – Armored Personnel Carrier.

Police Department personnel researched manufacturers of tactical armored vehicles, including their respective features, options, and capabilities. Lenco Armored Vehicles was determined to be the most viable vendor to facilitate the purchase of a replacement vehicle. The Lenco BearCat is the only armored rescue vehicle with a 131-inch wheelbase, allowing it to have an inside turning radius of 17 feet 8 inches. Being able to turn the vehicle around in a City street without having to make a three-point turn is critical in tactical response. Lenco Armored Vehicles are widely used throughout San Bernardino County by allied agencies, including but not limited to the Ontario, Fontana, and Chino Police Departments; and San Bernardino, Los Angeles, and Riverside County Sheriffs’ Departments. By purchasing a tactical armored vehicle from the same manufacturer as our allied agencies, personnel involved in a multi-jurisdictional response would have familiarity in the equipment’s operability, capabilities, and limitations. Additionally, Lenco Armored Vehicles is the sole source manufacturer for the Lenco BearCat.

The Lenco BearCat G3 is an armored vehicle built on a Ford F-550 frame and is manufactured for law enforcement purposes. The BearCat armored vehicle provides ballistic protection to officers and citizens from gunfire. The armored vehicle stops rifle rated rounds including .50 caliber, available commercially, which exceeds the protection level of handheld shields and personal body armor possessed by the Police Department. It would be used in response to critical incidents to enhance officer and community safety, improve scene containment and stabilization, assist in resolving critical incidents, and for display at community events.

The Lenco Bearcat has a lifespan of approximately 25 years. Costs for radio components and installation through Motorola were obtained, including an estimate for the application of graphics through the Police Department’s regular vendor, which are listed as follows:

Item	Cost	Tax	Total
Lenco BearCat G3 TAV	\$ 302,815.00	\$ 25,948.35	\$ 328,763.35
Motorola Radios	5,643.70	491.73	6,635.43
Estimated Installation	500.00		
Estimated Graphics	1,200.00		1,200.00
			\$ 336,598.78

After seeking out and obtaining funding for this purchase, Lenco Armored Vehicles made a recommendation to add an armored oil pan guard to the build of the vehicle. The guard would add a layer of protection to the oil pan during circumstances when it has to negotiate through rougher terrain that could expose it to damage.

The use of armored vehicles shall only be authorized by a Watch Commander or member of Command Staff, and would be based on the specific circumstances of a given critical incident. Armored vehicles shall be used only by officers trained in their deployment and in a manner consistent with Department policy and training. The Lenco BearCat is built on a Ford Super Duty platform, and includes a five-year/60,000-mile safety restraint and powertrain, and three-year/36,000-mile bumper-to-bumper Ford warranty. Warranty-covered repairs, maintenance service, and parts replacements on

the vehicle chassis can be performed at any number of OEM dealers, truck centers, and retail parts stores. Should this be the manufacturer we opt to use for the expenditure, annual maintenance costs are anticipated to range from \$500 to \$1,250.

FISCAL IMPACT: If authorized by the City Council, the purchase of the tactical armored vehicle, required radio components, installation and graphics would be funded from the Public Safety Grant Fund pursuant to Agreement No. 22-43 with San Bernardino County. The purchase of the armored oil pan guard would result in an appropriation from Asset Forfeiture Federal Fund (1147) in the amount of \$2,110.24.

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

1. Authorize the purchase of a Lenco BearCat G3 tactical armored vehicle, defined as military equipment under Assembly Bill 481, and required radio components, installation, and applied graphics in the total amount of \$336,600 from the Public Safety Grant Fund.
2. Authorize a \$2,110.24 appropriation from the Federal Asset Forfeiture Fund to purchase an armored oil pan guard for the Lenco BearCat G3 tactical armored vehicle.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 6, 2022	FILE I.D.:	TRN110
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	1	PREPARER:	M. HEREDIA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 22-20 AMENDING AGREEMENT NO. 05-03 WITH SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA CONTRACT NO. 22-1002771) ASSIGNING MAINTENANCE RESPONSIBILITIES TO THE CITY OF MONTCLAIR FOR THE PORTION OF THE PACIFIC ELECTRIC TRAIL BETWEEN MONTE VISTA AVENUE AND CLAREMONT BOULEVARD, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: The City maintains a portion of the Pacific Electric Trail pursuant to agreements with the San Bernardino County Transportation Authority and the City of Upland. Certain aspects of the maintenance arrangement for the trail need to be updated since it has been over 15 years since the contracts were put in place. Agreements with other agencies require City Council approval.

BACKGROUND: On January 3, 2005, the City Council approved Agreement No. 05-03 with the San Bernardino County Associated Governments (SANBAG) for the City to maintain the Pacific Electric Trail (PE Trail) between Monte Vista Avenue and Claremont Boulevard (License Property). Due to an annexation procedure, the trail was later discovered to be located within the City of Upland. However, as part of Agreement No. 04-147 with the City of Upland, which was approved on October 17, 2004, the City of Montclair had agreed to partially fund the construction of the PE Trail and to maintain the trail west of Monte Vista Avenue. The City of Upland maintains the trail between Monte Vista Avenue and Central Avenue.

Proposed Agreement No. 22-20 with the San Bernardino County Transportation Authority (SBCTA), the successor to SANBAG, amends original Agreement No. 05-03, included as "Amendment No. 1 - Attachment A," and includes the future restroom on the western terminus of the PE Trail (see Exhibit A-2 Restroom Location). "Amendment No. 1 - Attachment C" contains new insurance requirements including an umbrella policy. Commercial General Liability is increasing from \$1 million to \$7 million per occurrence, and commercial auto liability is increasing from \$1 million to \$5 million per accident.

The other change to the license agreement is shown on Page 2 of Agreement No. 22-20 under Section IV, Exhibit D, Paragraph 2 - Maintenance of License Property. The City is no longer responsible to enforce unauthorized vehicle parking or occupancy by transients/homeless persons or individuals along the PE Trail. Since the PE Trail is in Upland's jurisdiction, the City shall notify and coordinate with local law enforcement to keep the entire License Property free and clear of unauthorized vehicles or individuals. All other provisions of the original license agreement shall remain in full force and effect.

FISCAL IMPACT: Annual maintenance costs are estimated at less than \$10,000 per year. However, the higher insurance coverage will increase the cost to maintain an insurance policy as required by Agreement No. 22-20 relating to SBCTA Contract No. 22-1002771.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 22-20 with San Bernardino County Transportation Authority (SBCTA Contract No. 22-1002771) assigning maintenance responsibilities to the City of Montclair for the portion of the Pacific Electric Trail between Monte Vista Avenue and Claremont Boulevard, subject to any revisions deemed necessary by the City Attorney.

LICENSE AMENDMENT No. 1

For SBCTA Contract No. 22-1002771

This AMENDMENT is made as of this 1st day of February 2022, between SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, the successor to San Bernardino Associated Governments pursuant to Public Utility Code §§130800 et seq. ("SBCTA"), and the CITY OF MONTCLAIR, ("LICENSEE").

RECITALS:

SBCTA and LICENSEE are now parties to a license agreement dated February 16, 2004, known to SBCTA as Contract No. 22-1002771 (File: RBPk001863), a true and correct copy of which is attached hereto as Attachment A and hereby incorporated by reference, together with any and all modifications, supplements, and amendments thereto, being hereinafter referred to as the "Original License", the basic terms of which are provided in Part I thereunder.

The parties desire to modify the Original License as hereinafter provided, effective as of February 1, 2022. Except as specifically amended by this Amendment, all other provisions of the Original License shall remain in full force and effect.

AMENDMENT TERMS:

It is mutually agreed that the Original License is hereby changed to read, as follows:

- I. All reference to San Bernardino Associated Governments or SANBAG in the Original License are replaced with San Bernardino County Transportation Authority or SBCTA, respectively.
- II. PART I, Item 1, is DELETED in its entirety, and is REPLACED as follows:

1 Description of License Property:

The Baldwin Park Branch right of way, from Claremont Blvd. on the west, to Monte Vista Ave. to the east, located wholly within the City of Upland, County of San Bernardino, State of California, as shown on attached Exhibit A, dated 12/13/04, and Exhibit A-2.

Approximate area:

Milepost 515.82± (Claremont Blvd.) to milepost 516.14 (Monte Vista Ave.)
Excluding areas subject to Lease, License, Easement, or other Agreement. (§1.1)

III. PART I, Item 9, is DELETED in its entirety, and is REPLACED as follows:

9. Facility:

Bicycle path and pedestrian walkway, a restroom, trash receptacles, drainage facilities, irrigation system, all landscaping materials, whether planted as part of this project or pre-existing and allowed to remain in place by Licensee, and other appurtenant improvements. (§1.1)

IV. Exhibit D, Paragraph 2, is DELETED in its entirety, and is REPLACED as follows:

2. Maintenance of License Property. Licensee shall keep the entire License Property free and clear of weeds, trash, vegetation, and graffiti and shall notify and coordinate with local law enforcement to keep the entire License Property free and clear of unauthorized vehicle parking and occupancy by transients/homeless persons or individuals. Licensee acknowledges that the License Property is located in the City of Upland and, notwithstanding that the License Property is located in the City of Upland, Licensee shall be fully and solely responsible for ALL maintenance and maintenance that is required or necessary in connection with Licensee's use of the License Property.

V. Exhibit A-2, attached to this amendment as Attachment B is appended to Exhibit A of the Original License.

VI. Exhibit B, is DELETED in its entirety, and is REPLACED with Exhibit B-2 attached to this amendment as Attachment C. All reference to Exhibit B in the Original License shall be read as Exhibit B-2.

[Signatures on following page.]

IN WITNESS WHEREOF, this AMENDMENT was duly executed by the LICENSEE and SBCTA on the dates below, and is effective as the date executed by SBCTA.

LICENSEE:
CITY OF MONTCLAIR

SBCTA:
SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY, a
county transportation authority pursuant to
Public Utility Code §§130800 et seq.

By: _____
Name: _____
Title _____
Date: _____

By: _____
Name: Raymond W. Wolfe
Title: Executive Director
Date: _____

SANBAG ORIGINAL

LICENSE AGREEMENT

BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

CITY OF MONTCLAIR

LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of 2-16, 2004 by and between the **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, a public agency existing under the authority of the laws of the State of California ("SANBAG"), and the **CITY OF MONTCLAIR** ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below:

PART I

BASIC LICENSE PROVISIONS

1. Description of License Property:
 The Baldwin Park Branch right of way, from Claremont Blvd. on the west, to Monte Vista Ave. to east, in the City of Montclair and Upland, County of San Bernardino, State of California, as shown on attached Exhibit A, dated 12/13/04.
 Approximate area:
 Milepost 515.82 +/- (Claremont Blvd.) to milepost 516.14 (Monte Vista Ave.)
 Excluding areas subject to Lease, License, Easement, or other Agreement. (§1.1)

2. Use of License Property:
 Construction, maintenance, and use by the public of a bikeway and pedestrian walkway and associated landscaping and appurtenances only, and no other uses (§1.1, §10)

3. Commencement Date:
 February 1, 2005 (§1.2)

4. Term (circle one):
~~A. Month-to-month~~
 B. 15 years, ending January 31, 2020. License shall automatically extend one (1) additional year at the end of the initial term, and shall continue to automatically extend one (1) year at a time at the end of each years term, unless canceled by SANBAG as provided in Section 1.2 on twelve (12) months prior notice. (§1.2)

5. License Fees:
 A. Base License Fee:
 \$0 per month, payable (circle one):
~~a. Annually in advance~~
~~b. Monthly in advance~~ (§2.1)

B. Additional License Fee:
~~a. One time fee: N/A~~
~~b. Other fees: N/A~~ (§2.1)

C. Base License Fee Adjustment Dates (Circle, if applicable)
~~a. Annually based on CPI~~
~~b. At intervals of not less than three (3) years based on current fair market rent.~~ (§2.2)

6. Insurance Amount (See Exhibit "B") (§16)

7. SANBAG's Address:
SAN BERNARDINO ASSOCIATED GOVERNMENTS
One Gateway Plaza - 13th Floor
Los Angeles, CA 90012-2952
Attn: Director of Real Estate (§24.1)

8. Licensee's Address:
City of Montclair
Attn: Michael Hudson
5111 Benito St.
Montclair, CA 91763 (§24.1)

9. Facility:
Bicycle path and pedestrian walkway, trash receptacles, drainage facilities, irrigation system, all landscaping materials, whether planted as part of this project or pre-existing and allowed to remain in place by Licensee, and other appurtenant improvements. (§1.1)

The foregoing Basic License Provisions and the General License Provisions set forth in attached Part II are incorporated into and made part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

SANBAG:

SAN BERNARDINO ASSOCIATED GOVERNMENTS

By: Velma C. Marshall

Name: Velma C. Marshall

Title: Director of Real Estate

For: Los Angeles County Metropolitan Transportation Authority

As: Agent for SANBAG

LICENSEE:

CITY OF ~~UPLAND~~ MONTCLAIR

By: Paul M. Eaton

Name: Paul M. Eaton

Title: Mayor

INDEX TO LICENSE AGREEMENT - PART II

<u>Section</u>	<u>Page</u>
1. GRANT OF LICENSE/TERM	1
2. PAYMENTS	1
3. TAXES.....	2
4. CONSTRUCTION.....	2
5. CONTRACTORS; APPROVAL AND INSURANCE.....	2
6. REIMBURSEMENT	3
7. LIENS	3
8. MAINTENANCE AND REPAIR.....	3
9. LANDSCAPING	3
10. USE	3
11. ABANDONMENT	3
12. BREACH	4
13. SURRENDER.....	4
14. INDEMNIFICATION	4
15. ASSUMPTION OF RISK AND WAIVER	5
16. INSURANCE.....	5
17. TESTS AND INSPECTIONS.....	5
18. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY	5
19. UNDERGROUND STORAGE TANKS	6
20. SUBORDINATE RIGHTS	6
21. COMPLIANCE WITH LAWS	6
22. CONDEMNATION	7
23. MARKERS	7
24. GENERAL PROVISIONS.....	7

Exhibits:

- "A" License Property
- "B" Insurance Requirements
- "C" Permitted Hazardous Materials
- "D" Additional Provisions

PART II - GENERAL LICENSE PROVISIONS

1. GRANT OF LICENSE/TERM

1.1 Grant of License. SANBAG hereby grants a non-exclusive license to Licensee in, on, over, under, across and along the real property of SANBAG in the location shown in the diagram attached hereto as Exhibit A and described in Item 1 of the Basic License Provisions (the "License Property"), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Facility described in Item 9 of the Basic License Provisions, and any usual, necessary and related appurtenances thereto (the "Facility"), for the purposes described in Item 2 of the Basic License Provisions, together with rights for access and entry onto the License Property as necessary or convenient for the use of the Facility. In connection with this grant of license, Licensee, its employees, agents, customers, visitors, invitees, licensees and contractors (collectively, "Licensee's Parties") subject to the provisions hereof, may have reasonable rights of entry and access onto adjoining real property of SANBAG if necessary for the use of the Facility or the License Property, with the time and manner of such entry and access to be subject to SANBAG's prior written approval. The License Property, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property".

1.2 Term of Agreement. The term of this Agreement shall commence on the "Commencement Date" specified in Item 3 of the Basic License Provisions. Unless a specific term of this Agreement is filled in at Item 4.B of the Basic License Provisions, or if Item 4.A is circled, this Agreement shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions until terminated by either party on thirty (30) days' prior written notice. If Item 4.B of the Basic License Provisions is filled in, then this Agreement shall be a License for the term specified in said Item 4.B; provided, however, that SANBAG shall have the right to terminate this Agreement after the initial 15 year term, by delivering twelve (12) months prior written notice to Licensee. The term of this Agreement as provided above is referred to as the "Term".

1.3 Condition of License Property. Licensee acknowledges that it has inspected and accepts the License Property in its present condition as suitable for the use for which this Agreement is granted. Execution of this Agreement by Licensee shall be conclusive to establish that the License Property is in good and satisfactory condition as of the Commencement Date.

2. PAYMENTS

2.1 License Fee. As consideration for the rights herein granted, Licensee agrees to pay to SANBAG the amount per month specified in Item 5 of the Basic License Provisions, as such amount may be adjusted as set forth in Section 2.2. If Item 5.B.a of the Basic License Provisions is circled, the one time fee noted therein shall be due and payable upon execution of this Agreement. If Item 5.B.b of the Basic License Provisions is circled, the fee noted therein shall be due and payable as indicated in that item. If Item 5.A.a of the Basic License Provisions is circled, an amount equal to twelve (12) times the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 2.2, shall be due and payable, without demand, annually in advance for the convenience of both parties, without affecting the Term of this Agreement as specified in Section 1.2. If Item 5.A.b of the Basic License Provisions is circled, the first month's Base License Fee noted therein shall be due and payable upon execution of this Agreement. Thereafter, the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 2.2, shall be due and payable, without demand, on or before the first day of each calendar month succeeding the Commencement Date during the Term, except that the Base License Fee for any fractional calendar month at the commencement or end of the Term shall be prorated on a daily basis.

2.2 License Fee Adjustment.

2.2.1 Annual CPI Adjustment. If Item 5.C.a of the Basic License Provisions is circled, then the Base License Fee shall be increased, but not decreased, as provided below on the first day of each month during which an annual anniversary of the Commencement Date occurs unless another date(s) is provided in Item 5 of the Basic License Provisions (the "Adjustment Date"). The adjusted Base License Fee as of each Adjustment Date shall be the greater of the Base License Fee on the day preceding that Adjustment Date or that amount multiplied by a fraction, the numerator of which is the CPI figure for the third month preceding the month during which the particular Adjustment Date occurs and the denominator of which is the CPI figure for the month that is three (3) months prior to the month containing the prior Adjustment Date or, if none, the Commencement Date. As used in this section, the "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles/Riverside/Orange County, all items

(1982-84 = 100), published by the U.S. Department of Labor, Bureau of Labor Statistics, or if such index is no longer published, the U.S. Department of Labor's most comprehensive official index then in use that most nearly corresponds to the index named above. If it is calculated from a base different from the base period 1982-84 = 100, figures used for calculating the adjustment shall first be converted to the base period used under a formula supplied by the Bureau. If a comparable index shall no longer be published by the U.S. Department of Labor, another index generally recognized as authoritative shall be substituted by SANBAG.

2.2.2 Fair Market Adjustment. If Item 5.C.b of the Basic License Provisions is circled, then, at intervals of not less than three (3) years, the Base License Fee (as such fee may be adjusted by Section 2.2.1, above) payable under this Section 2 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the License Property as determined by SANBAG in good faith. Such increases shall be effective on an anniversary date of the Commencement Date. SANBAG shall give Licensee written notice of the date and amount of any such adjustment not less than thirty (30) days prior to the applicable anniversary date. If no adjustment is made on the third anniversary of the Commencement Date, an adjustment may nevertheless be made on a subsequent date and thereafter at intervals of not less than three (3) years apart.

2.3 Late Charge. Licensee acknowledges that late payment by Licensee of any payment owed to SANBAG under this Agreement will cause SANBAG to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any payment due from Licensee is not received by SANBAG within five (5) days of when due, Licensee shall pay to SANBAG an additional sum of ten percent (10%) of the overdue payment as a late charge, up to a maximum amount of \$500 for each late payment. The parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that SANBAG will incur by reason of a late payment by Licensee. Acceptance of any late payment charge shall not constitute a waiver of Licensee's default with respect to the overdue payment, nor prevent SANBAG from exercising any of the other rights and remedies available to SANBAG under this Agreement, at law or in equity, including, but not limited to, the interest charge imposed pursuant to Section 24.5.

3. TAXES

Licensee shall be liable for and agrees to pay promptly and prior to delinquency, any tax or assessment, including but not limited to any possessory interest tax, levied by any governmental authority: (a) against the Facility, the License Property and/or any personal property, fixtures or equipment of Licensee used in connection therewith or (b) as a result of the Facility's operations.

4. CONSTRUCTION

Any work performed or caused to be performed by Licensee on the Facility or the License Property shall be performed (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable laws, rules and regulations (including the SANBAG's rules and regulations), and (c) in a manner which is (i) equal to or greater than the then applicable standards of the industry for such work, and (ii) satisfactory to SANBAG. Prior to commencement of any construction, reconstruction, installation, restoration, alteration, repair, replacement or removal (other than normal maintenance) (hereinafter, "Work") on the License Property, Licensee shall submit work plans to SANBAG for review and approval. Any such Work must be carried out pursuant to work plans approved in writing by SANBAG. In addition, Licensee shall provide SANBAG with at least 10 calendar days' written notice prior to commencement of any Work on the License Property or the Facility, except in cases of emergency, in which event Licensee shall notify SANBAG's representative personally or by phone prior to commencing any Work. Unless otherwise requested by SANBAG, upon completion of any Work, Licensee shall restore the SANBAG Property to its condition immediately preceding the commencement of such Work.

5. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Licensee performing Work on the Facility or the License Property shall first be approved in writing by SANBAG. With respect to such Work, Licensee shall, at its sole cost and expense, obtain and maintain in full force and effect throughout the term of such Work, insurance, as required by SANBAG, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit "B". Additionally, Licensee shall cause any and all of its contractors and subcontractors which may (i) be involved with such Work, or (ii) may, for any reason, need to enter onto the License Property to obtain and maintain in full force and effect during the Term of this Agreement, or throughout the term of such Work (as applicable), insurance, as required by SANBAG, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit "B". SANBAG reserves

the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement or the Work to be performed on the License Property.

6. REIMBURSEMENT

Licensee agrees to reimburse SANBAG for all reasonable costs and expenses incurred by SANBAG in connection with Work on or maintenance of the License Property or the Facility, including, but not limited to, costs incurred by SANBAG in furnishing any materials or performing any labor, reviewing Licensee's Work plans and/or inspecting any Work, installing or removing protection beneath or along SANBAG's tracks, furnishing of watchmen, flagmen and inspectors as SANBAG deems necessary and such other items or acts as SANBAG in its sole discretion deems necessary to monitor or aid in compliance with this Agreement.

7. LIENS

Licensee will fully and promptly pay for all materials joined or affixed to the Facility or SANBAG Property, and fully and promptly pay all persons who perform labor upon said Facility or SANBAG Property. Licensee shall not suffer or permit to be filed or enforced against the SANBAG Property or the Facility, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance or Work, or out of any other claim or demand of any kind.

Licensee shall pay or cause to be paid all such liens, claims or demands, including sums due with respect to stop notices, together with attorney's fees incurred by SANBAG with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend SANBAG from all obligations and claims made against SANBAG for the above described work, including attorney's fees. Licensee shall furnish evidence of payment upon request of SANBAG. Licensee may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to SANBAG in compliance with applicable California law. If Licensee does not discharge any mechanic's lien or stop notice for works performed for Licensee, SANBAG shall have the right to discharge same (including by paying the claimant) and Licensee shall reimburse SANBAG for the cost of such discharge within ten (10) business days after billing.

SANBAG reserves the right at any time to post and maintain on the SANBAG Property such notices as may be necessary to protect SANBAG against liability for all such liens and claims. The provisions of this section shall survive the termination of this Agreement.

8. MAINTENANCE AND REPAIR

Licensee, at Licensee's sole expense, shall maintain the License Property and the Facility in a first-class condition during the Term of this Agreement and shall perform all maintenance and clean-up of the License Property and the Facility as necessary to keep the License Property and the Facility in good order and condition, to SANBAG's satisfaction. If any portion of the SANBAG Property, including improvements or fixtures, suffers damage by reason of the access to or use of the License Property, by Licensee, Licensee's Parties or by Licensee's partners, officers or directors, including but not limited to damage arising from any tests or investigations conducted upon the License Property, Licensee shall, at its own cost and expense, immediately repair all such damage and restore the SANBAG Property to as good a condition as before such cause of damage occurred. Repair of damage shall include, without limitation, regrading and resurfacing of any holes, ditches, indentations, mounds or other inclines created by any excavation by Licensee or Licensee's Parties.

9. LANDSCAPING

SANBAG shall have the right to review and approve landscaping plans prior to installation. All landscaping work shall be done in accordance with the provisions of Section 4 above.

10. USE

The License Property and the Facility shall be used only for the purposes specified in Item 2 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto. No change shall be made by Licensee in the use of the License Property without SANBAG's prior written approval.

11. ABANDONMENT

Should Licensee at anytime abandon the use of the Facility or the License Property, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated

herein, then this Agreement shall terminate to the extent of the portion so abandoned or discontinued, and in addition to any other rights or remedies, SANBAG shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement.

12. BREACH

Should Licensee breach, or fail to keep, observe or perform any agreement, covenant, term or condition on its part herein contained, then, in addition to any other available rights and remedies, SANBAG at its option may:

(a) perform any necessary or appropriate corrective work at Licensee's expense, which Licensee agrees to pay to SANBAG upon demand, or

(b) with or without written notice or demand, immediately terminate this Agreement and at any time thereafter, recover possession of the License Property or any part thereof, and expel and remove therefrom Licensee and any other person occupying the License Property by lawful means, and again repossess and enjoy the License Property and the Facility, without prejudice to any of the remedies that SANBAG may have under this Agreement, at law or equity by reason of Licensee's default or of such termination.

13. SURRENDER

Upon termination of this Agreement, unless otherwise requested in writing by SANBAG prior to the date of termination, Licensee, at its own cost and expense, shall immediately remove the Facility from the forty five foot (45") wide "Rail Corridor", as shown on attached Exhibit A, and restore the SANBAG Property as nearly as possible to the same state and condition as existed prior to the construction, reconstruction or installation of said Facility. Should Licensee fail to comply with the requirements of the preceding sentence, SANBAG may at its option (i) perform the same at Licensee's expense, which costs Licensee agrees to pay to SANBAG on demand, or (ii) assume title and ownership of said Facility. No termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Facility is removed and the SANBAG Property is restored.

14. INDEMNIFICATION

Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG and its subsidiaries, officers, directors, employees, agents, successors and assigns (individually and collectively, "Indemnitees"), to the maximum extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages (including consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions to act of the Licensee, or its officers, directors, affiliates, Licensee's Parties or anyone directly or indirectly employed by or for whose acts Licensee is liable (collectively, "Personnel") or invitees of Licensee in connection with the SANBAG Property or arising from the presence upon or performance of activities by Licensee or its Personnel with respect to the SANBAG Property, (ii) bodily injury to or death of any person (including employees of Indemnitees) or damage to or loss of use of property resulting from such acts or omissions of Licensee or its Personnel, or (iii) non-performance or breach by Licensee or its Personnel of any term or condition of this Agreement, in each case whether occurring during the Term of this Agreement or thereafter.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement. Upon request of SANBAG, Licensee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this Agreement.

Claims against the Indemnitees by Licensee or its Personnel shall not limit the Licensee's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation on the amount or type of damages, compensation, or benefits payable by or for a Licensee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

15. ASSUMPTION OF RISK AND WAIVER

To the maximum extent allowed by law, Licensee assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Facility, the SANBAG Property and any other property of, or under the control or custody of, Licensee, which is on or near the License Property. Licensee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the SANBAG Property, accident or fire or other casualty on the SANBAG Property, or electrical discharge, noise or vibration resulting from SANBAG's transit operations on or near the SANBAG Property. The term "SANBAG" as used in this section shall include: (i) any transit or rail-related company validly operating upon or over SANBAG's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by SANBAG. Licensee, on behalf of itself and its Personnel (as defined in Section 14) as a material part of the consideration for this Agreement, hereby waives all claims and demands against SANBAG for any such loss, damage or injury of Licensee and/or its Personnel. In that connection, Licensee waives the benefit of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The provisions of this section shall survive the termination of this Agreement.

16. INSURANCE

Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this Agreement insurance as required by SANBAG in the amounts and coverages specified and issued by insurance companies as described on Exhibit "B". SANBAG reserves the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement or the Work to be performed on the License Property. Prior to (i) entering the License Property or (ii) performing any Work or maintenance on the License Property, Licensee shall furnish SANBAG with insurance endorsements or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. In most instances, SANBAG does not allow self-insurance, however, if Licensee can demonstrate assets and retention funds meeting SANBAG's self-insurance requirements, SANBAG may permit Licensee to self-insure, provided, however that the right to self-insure with respect to any coverage required to be maintained hereunder may be granted or revoked by SANBAG at its sole and absolute discretion. SANBAG shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Licensee under this Agreement.

17. TESTS AND INSPECTIONS

SANBAG shall have the right at anytime to inspect the License Property and the Facility so as to monitor compliance with this Agreement. If, in SANBAG's sole judgment, any installation on, or use or condition of the License Property may have an adverse effect on the SANBAG Property, adjacent property (whether or not owned by SANBAG) or SANBAG operations, SANBAG shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the License Property, as it determines to be necessary or useful to evaluate the condition of the License Property. Licensee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG. Licensee shall pay or reimburse SANBAG, as appropriate, for all reasonable costs and expenses incurred due to the tests, inspections or any necessary corrective work and inspections thereafter.

18. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY

Licensee shall operate and maintain the License Property in compliance with all, and shall not cause or permit the License Property to be in violation of any federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adopted in the future which are or become applicable to Licensee or the License Property ("Environmental Laws"). Except for Hazardous Materials expressly approved by SANBAG in writing as shown on Exhibit "C", Licensee shall not cause or permit, or allow any of Licensee's Parties to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on or about the SANBAG Property. Any Hazardous Materials on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

Licensee shall indemnify, defend (by counsel acceptable to SANBAG) and hold harmless the Indemnitees (as defined in Section 14) from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys' fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) Licensee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Materials upon or from the Facility or the License Property or contamination of the SANBAG Property or adjacent property (i) which occurs due to the use and occupancy of the Facility or the SANBAG Property by Licensee or Licensee's Parties, or (ii) which is made worse due to the act or failure to act of Licensee or Licensee's Parties.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement.

In addition, in the event of any release on or contamination of the License Property, Licensee, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the SANBAG Property and all affected adjacent property -- whether or not owned by SANBAG) and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of SANBAG and any governmental authorities having jurisdiction thereover.

19. UNDERGROUND STORAGE TANKS

NEITHER LICENSEE NOR LICENSEE'S PARTIES SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE LICENSE PROPERTY UNLESS SPECIFICALLY APPROVED IN ADVANCE IN WRITING BY SANBAG, WHICH APPROVAL MAY BE WITHHELD IN SANBAG'S SOLE DISCRETION.

At SANBAG's option, upon the termination of this Agreement at any time and for any reason, Licensee shall, prior to the effective date of such termination, remove and close all underground storage tanks and related equipment and clean up and remove all Hazardous Materials in, on, under and about the SANBAG Property, in accordance with the requirements of all Environmental Laws and to the satisfaction of SANBAG and any governmental authorities having jurisdiction thereover, and deliver to SANBAG a copy of a certificate of closure issued for such tanks by the appropriate governmental authority.

20. SUBORDINATE RIGHTS

This Agreement is subject and subordinate to the prior and continuing right and obligation of SANBAG, its successors and assigns, to use the SANBAG Property in the exercise of its powers and in the performance of its duties, including those as a public transportation body. Accordingly, there is reserved and retained unto SANBAG, its successors, assigns and permittees, the right to construct, reconstruct, maintain and use existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the SANBAG Property, and in connection therewith the right to grant and convey to others, rights and interests to the SANBAG Property on the License Property and in the vicinity of Facility. This Agreement is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the SANBAG Property now or hereafter, and the words "grant" or "convey" as used herein shall not be construed as a covenant against the existence of any such title exceptions.

21. COMPLIANCE WITH LAWS

Licensee shall comply with all applicable federal, state and local laws, regulations, rules and orders in its work on, or maintenance, inspection, testing or use of, the Facility and the SANBAG Property and shall furnish satisfactory evidence of such compliance promptly upon request of SANBAG. SANBAG may enter the License Property to inspect the Facility at any time, upon provision of reasonable notice of inspection to Licensee. Licensee shall obtain all required permits or licenses required by any governmental authority for its use of the License Property and the Facility, at its sole cost and expense.

22. CONDEMNATION

In the event all or any portion of the License Property shall be taken or condemned for public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), Licensee shall receive compensation (if any) only for the taking and damage to the Facility. Any other compensation or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to SANBAG.

23. MARKERS

Project markers in form and size satisfactory to SANBAG, identifying the Facility and its owners, will be installed and constantly maintained by and at the expense of Licensee at such locations as SANBAG shall designate. Such markers shall be relocated or removed upon request of SANBAG without expense to SANBAG. Absence of markers in or about SANBAG Property does not constitute a warranty by SANBAG of the absence of subsurface installations.

24. GENERAL PROVISIONS

24.1 Notices. All notices and demands which either party is required to or desires to give to the other shall be made in writing by personal delivery, by express courier service or by certified mail postage prepaid, and addressed to such party at its address set forth in the Basic License Provisions. Either party may change its address for the receipt of notice by giving written notice thereof to the other party in the manner herein provided. Notices shall be effective only upon receipt by the party to whom notice or demand is given.

24.2 Non-Exclusive License. The license granted herein is not exclusive and SANBAG specifically reserves the right to grant other Licenses and/or Leases within the License Property.

24.3 Governing Law. This Agreement shall be governed by the laws of the State of California.

24.4 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

24.5 Interest on Past-due Obligations. Except as expressly herein provided, any amount due to SANBAG that is not paid when due shall bear interest, from the date due, at the maximum rate then allowable by law. Such interest will be due SANBAG as it accrues. Payment of such interest shall not excuse or cure any default by Licensee under this Agreement, provided, however, that interest shall not be payable on late charges incurred by Licensee.

24.6 Captions. The captions included in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement or any provision hereof, or in any way affect the interpretation of this Agreement.

24.7 Survival of Obligations. All obligations of Licensee hereunder not fully performed as of the expiration or earlier termination of the Term of this Agreement shall survive the expiration or earlier termination of this Agreement, including without limitation, all payment obligations with respect to License Fees and all obligations concerning the condition of the SANBAG Property and the Facility.

24.8 Waiver of Covenants or Conditions. The waiver by one party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement.

24.9 Effective Date/Nonbinding Offer. Submission of this License for examination or signature by Licensee does not constitute an offer or option for license, and it is not effective as a license or otherwise until executed and delivered by both SANBAG and Licensee. Each individual executing this License on behalf of SANBAG or Licensee represents and warrants to the other party that he or she is authorized to do so.

24.10 Amendment. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

24.11 Assignment. This Agreement and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (whether voluntary or involuntary) this Agreement in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of SANBAG, which may be withheld in SANBAG's sole and absolute discretion, and any attempted act in violation of the foregoing shall be void and without effect and give SANBAG the right to immediately terminate this Agreement.

24.12 Attorneys' Fees. In any judicial or arbitration proceeding involving performance under this Agreement, or default or breach thereof, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

24.13 Nondiscrimination. Licensee certifies and agrees that all persons employed thereby and/or the affiliates, subsidiaries, or holding companies thereof and any contractors retained thereby with respect to the License Property are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

24.14 Further Acts. Licensee agrees to perform any further acts and to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this Agreement, including, at SANBAG's sole discretion, the relocation of the Facility and the license granted hereby.

24.15 Termination for Public Project. Licensee hereby expressly recognizes and agrees that the License Property is located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and other public uses (collectively "Project"), and that Licensee's use of the License Property under this License is an interim use. Accordingly, as a condition to entering into this License, SANBAG expressly reserves the right to terminate the License for any of such public Project. Licensee expressly acknowledges and agrees that: (1) SANBAG may terminate this License for any public project; (2) Licensee will **NOT** oppose any public Project when planned or implemented on or adjacent to the License Property; and (3) in the event SANBAG terminates this License and requires Licensee to vacate the License Property for any public Project, Licensee (a) shall not be entitled to receive any relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code §7260 et seq; and (b) shall not be entitled to any compensation under the eminent domain law, as a result of such termination and vacation of the License Property.



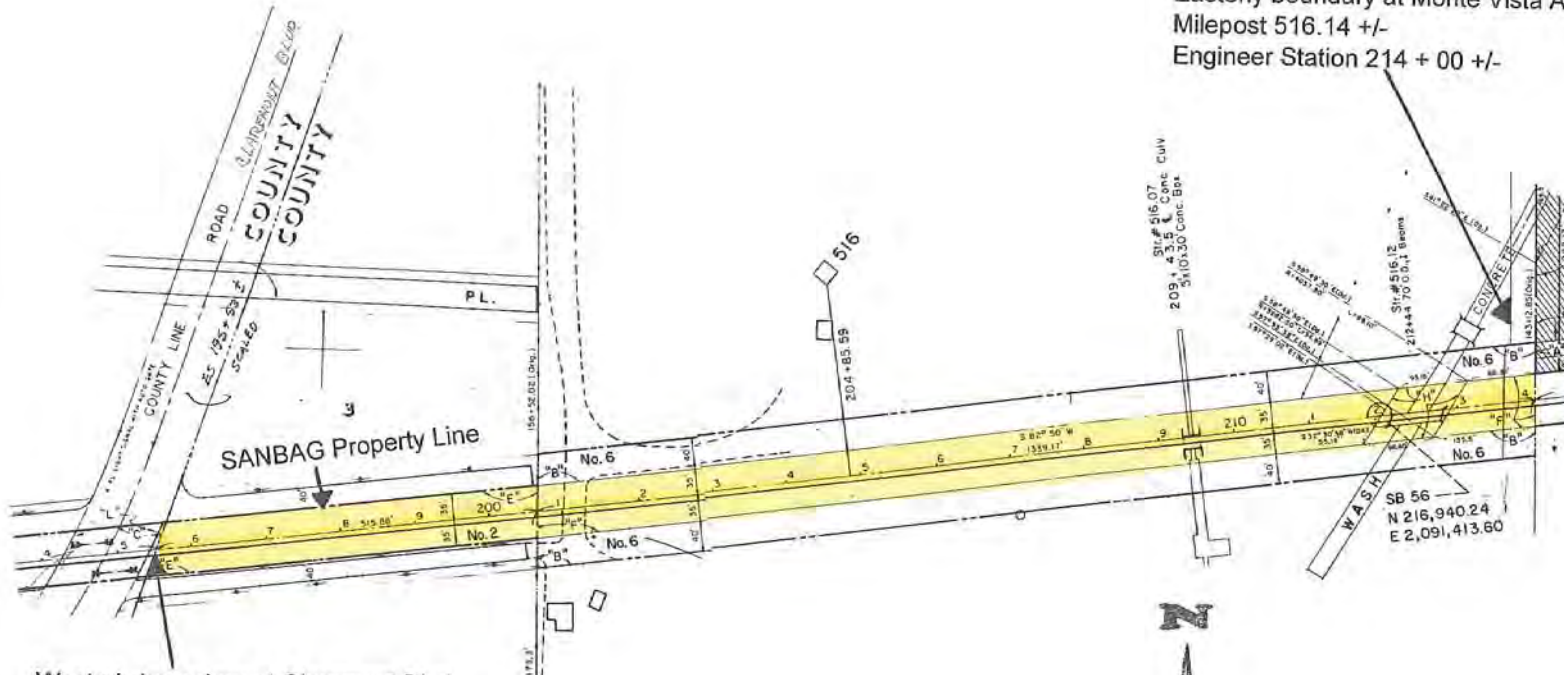
24.16 Time of Essence. Time is of the essence.

24.17 No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the License Property is located, this Agreement, any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereby.

24.18 Revocable License. Licensee agrees that notwithstanding the improvements made by Licensee to the License Property or other sums expended by Licensee in furtherance of this Agreement, the license granted herein is revocable by SANBAG in accordance with the terms of this Agreement.

24.19 Entire Agreement; Amendments. This Agreement and the Exhibits hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

24.20 Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein.

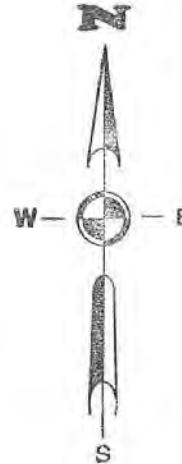


Westerly boundary at Claremont Blvd.
 Milepost 515.82 +/-
 Engineer Station 195 + 60 +/-

Easterly boundary at Monte Vista Ave.
 Milepost 516.14 +/-
 Engineer Station 214 + 00 +/-

Legend

License Area = 0.32 miles, excluding areas subject to Lease, License, Easement, or other Agreement.
 Please reference Boyle Engineering Pacific Electric Inland Empire Master Plan, dated November 2000.
 City responsible for all costs of removal of all improvements placed within 45' rail reserve.




	Branch/Line Baldwin Park	Map Reference BPK 36	Mile Post 515.82 - 516.14	Lessee/Licensee CITY OF MONTCLAIR
	Engineers Station 214 + 00 +/-	Community Montclair	City Montclair/Upland	EXHIBIT 'A-2' Los Angeles Metropolitan Transportation Authority One Gateway Plaza Los Angeles, CA 90012-2862
County San Berndo.	Nearest Cross St. Monte Vista	Thomas Guide Grids 601E3 - 601F3	Legend Blkway	MTA File No. RBP001863
Area 0.32 +/- Miles				Scale N/A
				Date 12/13/04
				M M

Exhibit "B"

INSURANCE REQUIREMENTS FOR LEASES, LICENSES, AND PERMITS

Lessee, Licensee, or Permittee shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of SANBAG and MTA property hereunder by the Lessee, Licensee, or Permittee, his agents, representatives, employees or subcontractors.

Minimum Scope of Insurance (Check all applicable boxes)

Coverage shall be at least as broad as:

- Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
- Course of Construction insurance form providing coverage for "all risks" of loss.
- Property insurance against all risks of loss to any tenant improvements or betterments.
- Insurance Services Office Railroad Protective Liability
- Contractor's Pollution Liability with coverage for:
 - a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
 - b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
 - c. defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and
 - d. losses caused by pollution conditions that arise from the operations of the contractor described under the scope of services of this contract.

Minimum Limits of Insurance (Check all applicable boxes)

Lessee, Licensee, or Permittee shall maintain limits no less than:

- General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage.
- If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- Course of Construction: Completed value of the project.
- Property Insurance: Full replacement cost with no coinsurance penalty provision.
- Railroad Protective Liability: \$2,000,000 per occurrence. Aggregate limit shall apply separately to this project/location or the aggregate limit shall be twice the required per occurrence limit
- Contractors Pollution Liability: \$1,000,000 per occurrence \$2,000,000 annual aggregate.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by SANBAG and MTA. At the option of SANBAG and MTA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SANBAG and MTA, its officials and employees; or the Lessee, Licensee, or Permittee shall procure a bond guaranteeing payment of losses, and related investigations, claim administration and defense expenses.

Exhibit "B"

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. SANBAG and MTA, its subsidiaries, officials and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee, Licensee, or Permittee; products and completed operations of the Lessee, Licensee, or Permittee; premises owned, occupied or used by the Lessee, Licensee, or Permittee; and automobiles owned, leased, hired or borrowed by the Lessee, Licensee, or Permittee. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG and MTA, its subsidiaries, officials and employees.
2. For any claims related to this project, the Lessee, Licensee, or Permittee's insurance coverage shall be primary insurance as respects SANBAG and MTA, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by SANBAG and MTA, its subsidiaries, officials and employees shall be excess of the contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SANBAG and MTA, its subsidiaries, officials and employees.
4. The Lessee, Licensee, or Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either a party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to SANBAG and MTA.
6. Workers' Compensation and Employer's Liability policies shall contain the inclusion of the SANBAG and MTA, its Subsidiaries, officials and employees as additional insured, or provide a waiver of subrogation.

Course of construction policies shall contain the following provisions:

1. SANBAG and MTA shall be named as loss payee.
2. The insurer shall waive all rights subrogation against SANBAG and MTA.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by SANBAG and MTA.

Verification of Coverage

Lessee, Licensee, or Permittee shall furnish SANBAG and MTA with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by the SANBAG and MTA before work commences. As an alternative, the Lessee, Licensee, or Permittee may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

Contractors and Subcontractors

Lessee, Licensee, or Permittee shall include all contractors and subcontractors as insureds under its policies or require certificates and endorsements for each contractor and subcontractor. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein. The administration of insurance compliance of contractors and subcontractors shall be subject to audit review by SANBAG and MTA.

Exhibit "C"

Permitted Hazardous Materials

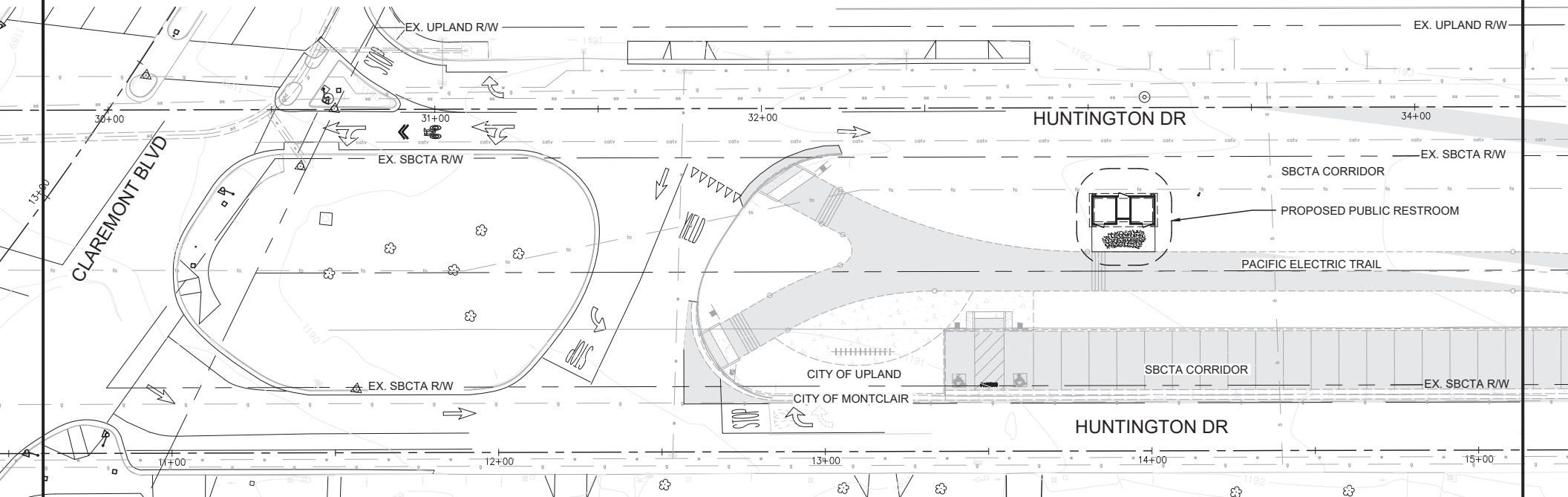
No hazardous materials are permitted to be used or stored on License Property.

Exhibit "D"
Additional Provisions

1. **Importation of Soil/Fill Dirt.** Licensee shall not bring upon or use any Import Soil on the License Property in conjunction with any purposes allowed under this Agreement, until said Import Soil has been laboratory tested by a *certified hazardous waste testing laboratory* and the test results have been approved by SANBAG's Environmental Consultant. Additionally, any soil currently existing on the License Property may not be spread on the License Property unless and until it is characterized as Clean Soil to the reasonable satisfaction of SANBAG's Environmental Consultant.
2. **Maintenance of License Property.** Licensee shall keep the entire License Property free and clear of weeds, trash, vegetation, unauthorized vehicle parking, graffiti and occupancy by transients/homeless persons or individuals. Licensee shall be fully responsible for ALL maintenance and maintenance that is required or necessary in connection with Licensee's use of License Property.
3. **Protection of Underground and Aboveground Installations.** Licensee shall ensure that it and Licensee's Parties protect, from and against any and all damage, all underground and aboveground installations and improvements, such as pipes, fiber optic lines and wires, which may be impacted by any work or any use of the License Property by Licensee.
4. **Improvements.** Both Licensee and SANBAG acknowledge and agree that the License Property is Licensed in "AS IS" condition and any work, including but not limited to, grading, paving and fencing as may be necessary or required to meet Licensee's needs shall be the sole responsibility of the Licensee. Upon termination of this Agreement, Licensee shall be responsible for the removal of all improvements within the forty five foot (45') "Rail Corridor", as shown on the Pacific Electric Inland Empire Trail Master Plan dated November 2000, prepared by Boyle Engineering.
5. **Utilities.** Licensee shall pay for any and all utilities for its benefit, security and use. No additional utility lines shall be installed outside of the scope of the approved Bike Trail plan. Any new utility lines and/or fiber optic crossings, etc., proposed to be added within the right of way by any party at a later date, shall be applied for in the normal process and covered by separate License Agreement directly with SANBAG.
6. **Warranties.** SANBAG makes no warranties as to the suitability of the location for Licensee's intended use as to zoning, visibility, traffic count or any other factors which may cause Licensee to want to License the License Property.
7. **Zoning or Permitting.** Any permits, inspection fees, or costs associated with the use or maintenance of the Premises by any governmental agency, department, or organization, or any labor expenses for the installation or maintenance of any permitted improvements are the Licensee's sole responsibility. Copies of permits are to be readily available for inspection by SANBAG personnel.
8. **SANBAG's Right to Control Leasing and Licensing within entire Right of Way.** SANBAG shall continue to control Leasing, Licensing, Easements, and similar, within the entire Right of Way. All applications for new utility crossings, ground Leases, or similar uses outside the scope of the approved Bike Trail Plan shall continue to be under the direct control and management of SANBAG.



EXHIBIT A-2 RESTROOM LOCATION



KEY PLAN

SCALE: 1"=20'

Amendment No. 1 - Attachment B
SBCTA LICENSE 22-1002771
(FILE: RBP001863)

AMENDMENT NO. 1 - ATTACHMENT C

EXHIBIT B-2

INSURANCE REQUIREMENTS

1. AGREEMENT shall mean the permit, license or lease to which this Exhibit B-2 is attached. WORK shall mean any activity or use permitted under the AGREEMENT. The holder of the AGREEMENT is hereinafter referred to as PERMITTEE. PERMITTEE shall at all times during the term of the AGREEMENT or for such other periods as required herein, procure and maintain broad form insurance, or self-insurance against claims for injuries to persons or damages to property that may arise from, or in connection with, the use of SBCTA property hereunder by the PERMITTEE, its agents, representatives, employees or subcontractors, with coverage at least as broad as the following minimum requirements specified below. Selected subparagraphs to this Paragraph 1 shall apply:

1.1. Worker's Compensation/Employer's Liability. The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident - \$1,000,000 per accident
- Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Work by PERMITTEE or any subconsultant of any tier. All subconsultants of any tier performing any portion of the WORK for PERMITTEE shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of PERMITTEE and all parties named as Indemnitees by the AGREEMENT. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

1.2. Commercial General Liability. The policy must include the following:

- PERMITTEE shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than **\$10,000,000 each occurrence**.
- The policy shall not exclude Rail Road Liability and must contain ISO CG24 17, unless RRPL coverage is provided. The policy also at a minimum shall include, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in the AGREEMENT), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy(ies), and products and completed operations.
 - \$2,000,000 per occurrence limit for property damage or bodily injury

- \$1,000,000 per occurrence limit for personal injury and advertising injury
 - \$2,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01) if SBCTA’s Risk Manager determines it is in SBCTA’s best interests to require such coverage,
 - If a general aggregate applies, it shall apply separately to this project/location. The project name must be indicated under “Description of Operations/Locations” (ISO Form CG 25 03 or CG 25 04).
- Coverage is to be on an “occurrence” form. “Claims made” and “modified occurrence” forms are not acceptable.
 - A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All subconsultants of any tier performing any portion of the WORK for PERMITTEE shall also obtain and maintain the CGL insurance coverage with limits not less than:

- Each occurrence limit: \$1,000,000
- General aggregate limit: \$2,000,000
- Personal injury and advertising limit \$1,000,000
- Products-completed operations aggregate limit \$2,000,000

All subconsultants’ and sub-subconsultants’ deductibles or self-insured retentions must be acceptable to SBCTA’s Risk Manager.

1.2.1. Railroad Exclusion Waiver. The CGL policy shall not exclude coverage of contractual liability relating to railroads or shall be endorsed by ISO Form CG 24 17, or equivalent acceptable to SBCTA, to remove such exclusions to coverage.

1.3. Umbrella/Excess CGL. The policy must include the following:

- If the PERMITTEE elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy must include the following:
 - The umbrella or excess policy shall follow form over the PERMITTEE’s primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
 - The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
 - The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
 - The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits.

There shall be no statement limiting the coverage provided to the parties listed as additionally insureds or as indemnitees in the AGREEMENT.

- 1.4. Commercial Auto. The policy must include the following:
- A total limit of liability of not less than **\$5,000,000 each accident**. This total limit of liability may be met by combining the limits of the primary auto policy with an umbrella or excess policy in accordance with Section 1.3 (Umbrella/Excess CGL), above.
 - Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the WORK.
 - Combined Bodily Injury and Property Damage Liability insurance
The commercial automobile liability insurance shall be written on the most recent edition of ISO Form CA 00 01 or equivalent acceptable to SBCTA.
- 1.5. Pollution Liability The policy must include the following:
- \$2,000,000 per claim or occurrence limits/\$4,000,000 in the aggregate
 - If the WORK involves mold identification / remediation, the policy shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.
 - If the WORK involves lead-based paint or asbestos identification/remediation, the policy shall not contain lead-based paint or asbestos exclusions.
- 1.6. Railroad Protective Liability Insurance: Insurance Services Office Form Railroad Protective Liability, AAR-AASHTO (ISO/RIMA), in the name of SCRRRA with respect to the operations they or any of their subcontractors perform on the Property. Minimum Limits: **\$2 million per occurrence**, combined single limit, for coverage and for losses arising out of injury to or death of all persons and for physical loss or damage to or destruction of Property, including the loss of use thereof. A **\$6 million annual aggregate** shall apply. If providing coverage on the London claims- made form, the following provisions shall apply:
- The limits of liability shall be not less than \$3 million per occurrence, combined single limit. A \$9 million aggregate may apply.
 - Declarations item 6, extended claims made date, shall allow an extended claims made period no shorter than the length of the original policy period plus one year.
 - If equivalent or better, wording is not contained in the policy form, the following endorsement must be included:
 - It is agreed that "physical damage to Property" means direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbed, catenaries, signals, bridges or buildings.

In cases of low hazard activity and insignificant risk to rail facilities, and if the exposure to the track is physically separated by a building, floor or a continuous fence (no

thoroughfares) and the employees of the Contractor are explicitly notified, trained, and supervised such that they are not permitted to have any contact with the track or its related improvements, the Railroad Protective Liability Insurance requirement may be waived by SBCTA, or its designated representative, in SBCTA's sole and absolute discretion, where SBCTA's agreements and obligations with rail operators allow it.

2. General Provisions

- 2.1. Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non- admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-X or better, unless otherwise approved in writing by SBCTA's Risk Manager.
- 2.2. Additional Insured Coverage. All policies, except those for Workers' Compensation insurance, shall be endorsed by ISO Form CG 20 35, or if not available, then ISO Form CG 20 36, or a form that provides substantially similar coverage to name San Bernardino County Transportation Authority and its officers, directors, members, employees, agents and volunteers, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the PERMITTEE permitted under this AGREEMENT, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability but shall allow coverage for SBCTA to the full extent provided by the policy.
- 2.3. Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including declarations pages of each policy, certificates of insurance and the required additional insured endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any WORK, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in the AGREEMENT together with Exhibit B; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, PERMITTEE shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.
- 2.4. Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, PERMITTEE shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Exhibit. PERMITTEE will pay, and shall require its sub-contractor to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Exhibit. In consideration of the fact that PERMITTEE is a municipal corporation SBCTA allows deductibles and/or

SIR in amounts which PERMITTEE typically carries. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to PERMITTEE. The PERMITTEE's policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any PERMITTEE's deductible or SIR.

- 2.5. PERMITTEE's and Subconsultants' Insurance will be Primary. All policies required to be maintained by the PERMITTEE or any subconsultant with the exception of Professional Liability and Worker's Compensation shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13), to be primary coverage, and any coverage carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of PERMITTEE's or subconsultants' pollution, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.
- 2.6. Waiver of Subrogation Rights. To the fullest extent permitted by law, PERMITTEE hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SBCTA, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, PERMITTEE shall require similar written express waivers and insurance clauses from each of its subconsultants of every tier. PERMITTEE shall require all of the policies and coverages required in Exhibit B to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit PERMITTEE from waiving the right of subrogation prior to a loss or claim.
- 2.7. Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, PERMITTEE will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, PERMITTEE will provide SBCTA ten (10) days prior written notice. In any event, PERMITTEE will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which PERMITTEE receives within one business day after PERMITTEE receives it by submitting it to SBCTA at procurement@gosbcta.com to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of the AGREEMENT.
- 2.8. Enforcement. SBCTA may take any steps as are necessary to assure PERMITTEE's compliance with its insurance obligations as identified within the AGREEMENT and / or Exhibit B. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the PERMITTEE fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the PERMITTEE or withhold such expense from amounts owed PERMITTEE, or terminate the AGREEMENT. The insurance

required or provided shall in no way limit or relieve PERMITTEE of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve PERMITTEE for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve PERMITTEE, or any subconsultant of any tier, of their obligations to exercise due care in the performance of their duties in connection with the WORK, and to complete the WORK in strict compliance with the AGREEMENT.

- 2.9. No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of Exhibit B shall not act as a waiver to enforcement of any of these provisions at a later date.
- 2.10. Contractors and Subcontractors Insurance. Insurance required of the PERMITTEE shall be also provided by contractors and subcontractors, or by PERMITTEE on behalf of all contractors and subcontractors, to cover WORK, performed by said contractors and subcontractors, permitted under the AGREEMENT. PERMITTEE may reduce types and the amounts of insurance limits provided by subconsultants to be proportionate to the amount of the sub-contractors contract and the level of liability exposure for the specific type of work performed by the subconsultant. PERMITTEE shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subconsultant.
- 2.11. Higher limits. If PERMITTEE maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by PERMITTEE. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.
- 2.12. Special Risks or Circumstances. SBCTA reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.



CITY COUNCIL AGENDA REPORT

DATE: JUNE 6, 2022

FILE I.D.: PDT362

SECTION: CONSENT - AGREEMENTS

DEPT.: POLICE

ITEM NO.: 2

PREPARER: M. BUTLER

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 22-47 WITH THE SAN BERNARDINO COUNTY OFFICE OF EMERGENCY SERVICES AUTHORIZING THE RECEIPT OF \$16,186 FROM THE FY 2021 EMERGENCY MANAGEMENT PERFORMANCE GRANT/AMERICAN RESCUE PLAN ACT

CONSIDER AUTHORIZING DIRECTOR OF PUBLIC SAFETY/POLICE CHIEF ROBERT AVELS TO SIGN SAID AGREEMENT

CONSIDER AUTHORIZING A \$16,186 APPROPRIATION FROM THE PUBLIC SAFETY GRANT FUND FOR THE PURCHASE OF EQUIPMENT TO UPGRADE THE EMERGENCY OPERATIONS CENTER (EOC)

CONSIDER AUTHORIZING APPROPRIATIONS FROM THE CONTINGENCY FUND IN THE AMOUNTS OF \$16,186 AS A DOLLAR-FOR-DOLLAR MATCH TO RECEIVE THE GRANT FUNDS, AND \$6,056.82 TO COVER THE REMAINING BALANCE OF THE EOC UPGRADE COSTS

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-47 with the San Bernardino County Office of Emergency Services (County OES) authorizing the receipt of \$16,186 from the FY 2021 Emergency Management Performance Grant/American Rescue Plan Act (EMPG-ARPA). The City Council is also requested to authorize a \$16,186 appropriation from the Public Safety Grant Fund to purchase equipment to upgrade the Emergency Operations Center (EOC), and authorize a dollar-for-dollar match to receive funding and an additional appropriation from the Contingency Fund to complete the purchase.

A copy of proposed Agreement No. 22-47 is attached for the City Council's review and consideration.

BACKGROUND: The purpose of the FY 2021 EMPG-ARPA is to support comprehensive emergency management programs at the local level and to encourage the improvement of prevention, protection, mitigation, response, and recovery capabilities for all hazards. It is funded by the California Governor's Office of Emergency Services through funding distributed by the U.S. Department of Homeland Security/Federal Emergency Management Agency, and it is administered by the San Bernardino County OES Grants Unit. San Bernardino County and the 24 Operational Area Coordinating Council (OACC) city and town signatories who have EOCs within the Operational Area are eligible to receive EMPG-ARPA funding. Each are allocated a \$13,000 base with the remainder of the grant distributed on a per capita basis to each eligible jurisdiction. The City of Montclair has been given an allocation of \$16,186; however, the grant requires a dollar-for-dollar match of non-federal funds to receive EMPG-ARPA funding.

During a threat or disaster, an EOC is the centralized location for emergency response and recovery support operations. The Police Department has received approval to use FY 2021 EMPG-ARPA funds to procure equipment for its EOC to enhance its essential functions of command, planning, operations, logistics, and finance. The police facility,

which was constructed in 2008, included a dedicated EOC with modern information technology, including projectors, monitors, a state-of-the-art matrix (audio/video mixer), IP phone system, and connections for presentation computers. In the 14 years since construction, much of this technology has not been updated and is no longer up to current standards. The monitors are original, the projector is no longer of sufficient luminosity to be clearly seen, the matrix has failed on several occasions, and due to obsolescence, has been repaired with used parts. The computer connections are wired in the VGA standard, which is no longer a common video output standard and is not capable of full HD resolution.

Upgrades are sorely needed to replace this aging equipment and bring the EOC into compatibility with current technologies. EMPG-ARPA grant funds would be used toward the purchase of a 10,000 Lumens laser projector with a zoom lens. The City would meet the dollar-for-dollar cost-match requirement for project-related costs, including an iPad, wireless presentation system, 4-series control system, a multi-image processor, miscellaneous mounts and cables, and labor and travel costs. These updated features would ease connectivity with the City’s other IT systems, which is especially important during an EOC activation and emergency response. The proposed equipment would support information management by mobilizing critical resources, establishing command, and enhancing the EOC’s incident recovery capabilities by strengthening its ability to carry out emergency management to protect life and property during critical incidents.

Bid quotations for the purchase of a laser projector and other audiovisual equipment to upgrade the EOC were received from the following vendors:

<u>Vendor</u>	<u>Bid Amount</u>
Matrix Audio Visual Designs, Inc.	\$38,426.08
Western Audio Visual	\$31,794.62
Sunset Audio Visual	\$30,832.52

Staff received three proposals to upgrade the audiovisual equipment in the EOC and carefully reviewed each submission to ensure they met the guidelines of the grant application, including the requirements of City staff. Of the three proposals, Matrix Audio Visual Designs Inc. (Matrix) provided the best overall, comprehensive solutions by delivering a superior laser projector that is brighter, with more vivid colors, and has better video quality than the other proposals. Matrix also provides a short-throw lens that closely matches the current screen size mounted in the EOC. Although most selections for vendors often fall to those offering the lowest bids, in this case, the cost cannot be the only deciding factor in selecting the right solution. One central factor that staff has to consider when choosing a proposal is how scalable and integrated the audiovisual upgrade will impact other conference rooms and meeting facilities within the City because the system needs to be able to connect and communicate with one another. It is vitally important that the EOC facility broadcast and receive audiovisual signals from other sources, including other meeting rooms, to further business continuity in an emergency where the first responders might not be able to get to the EOC facility physically. After reviewing the three proposals, staff concluded that Matrix, although not the lowest bid, is best suited to meet the challenge of upgrading the audiovisual system in the EOC, providing the best overall video projection per the grant application while allowing for interoperability with other audiovisual facilities within the City.

Matrix has been in business for over 30 years, is located in Burbank, California, and has worked with the City of Montclair in the past—proving to be a trusted, reliable resource for the City's audiovisual needs. Matrix responds quickly when there is a support request and takes a tailored approach to audiovisual design, focusing on what the client needs instead of providing a one-size-fits-all solution that is apparent in the other vendors' proposals. Matrix technicians are well-versed in audiovisual technology, and their quality of work is evident by glowing reviews from other local government clients in their portfolio.

FISCAL IMPACT: If approved by the City Council, the purchase of a laser projector would result in an appropriation from the Public Safety Grant Fund (1163) in the amount of \$16,186. The City would receive full reimbursement from the FY 2021 EMPG-ARPA. The funding match of \$16,186 and the remaining balance of \$6,056.82 for all other project-related costs would result in an appropriation from the Contingency Fund.

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

1. Approve Agreement No. 22-47 with the San Bernardino County Office of Emergency Services authorizing the receipt of \$16,186 from the FY 2021 EMPG-ARPA;
2. Authorize Executive Director of Public Safety/Police Chief Robert Avels to sign said Agreement;
3. Authorize a \$16,186 appropriation from the Public Safety Grant Fund for the purchase of equipment to upgrade the EOC; and
4. Authorize appropriations from the Contingency Fund in the amounts of \$16,186 as a dollar-for-dollar match to receive the grant funds, and \$6,056.82 to cover the remaining balance of the EOC upgrade costs.

San Bernardino County Fire Protection District

FY2021 EMERGENCY MANAGEMENT PERFORMANCE GRANT/AMERICAN RESCUE PLAN ACT
(EMPG/ARPA)
CFDA # 97.042
SUBRECIPIENT AGREEMENT
Subaward #: 2021-0014

Name of City/Town/Jurisdiction: City of Montclair

Address: 5111 Benito Street

City: Montclair

State: CA

Zip Code: 91763

Contact Name: Marci Butler

Telephone Number: 909-448-3609

E-mail Address: mbutler@cityofmontclair.org

The above referenced Subrecipient understands and agrees to the following Federal Grant Guidelines, in acceptance of the **FY 2021 EMPG/ARPA** funds, CFDA 97.042 funded by the US Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA), and sub-granted through the State of California's Governor's Office of Emergency Services (Cal OES):

GRANT ASSURANCES

UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS

Government cost principles, uniform administrative requirements, and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (C.F.R.). Updates are issued by the Office of Management and Budget (OMB) and can be found at <http://www.whitehouse.gov/omb/>. **Subrecipients of FY21 EMPG/ARPA funding must follow the administrative requirements and Cost Principles codified in 2 CFR 200.**

State and federal grant award requirements are set forth below. The Applicant hereby agrees to comply with the following:

1. Will obtain proof of authority from the city council, governing board, or authorized body in support of this project. This written authorization must specify that the Applicant and the city council, governing board, or authorized body agree:
 - (a) To provide all matching funds required for the grant project and that any cash match will be appropriated as required;
 - (b) Any liability arising out of the performance of this agreement shall be the responsibility of the Applicant and the city council, governing board, or authorized body;
 - (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board, or authorized body;
 - (d) Applicant is authorized by the city council, governing board, or authorized body to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost, if any) to ensure proper planning, management and completion of the project described in this application; and
 - (e) Official executing this agreement is authorized by the Applicant.

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

2. Will give the awarding agency, the Controller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. The period of performance is specified in the Award. The Applicant is only authorized to perform allowable activities approved under the award, within the period of performance.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. See Articles XI, XII, XIII, XIV, XV, and XVI, above. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) which prohibits discrimination on the basis of handicaps; (d) Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age. In addition, the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records. records; (h) Title VIII of the Civil Right Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application. See Articles XI, XII, XIII, XIV, XV, XVI, and XVII. And any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and 111 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-33.3), regarding labor standards for federally assisted construction sub-agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more; and the National Flood Insurance Act of 1968.

11. Will comply with environmental standards which may be prescribed pursuant to the following: institution of environmental quality control measures under NEPA as amended, see Article XXI; Article XIX; Article XXIV; Article XXVI; and Executive Order (EO) 11514; notification of violating facilities pursuant to EO 11738; evaluation of flood hazards in floodplains in accordance with EO 11988; assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, Pub. L. No. 91-190, § 102, 42 U.S.C. §§ 4321-4347; and National Historic Preservation Act of 1966, as amended, Pub. L. No. 89-665, § 102, 16 U.S.C. § 470. All proposed construction and renovation activities must undergo an Environmental Planning and Historic Preservation (EHP) review, including approval of the review from FEMA, prior to undertaking any action related to the project. Any applicant that is proposing a construction project should pay special attention to the EHP requirements.
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed, the required financial and compliance audits in accordance with the Single Audit Act Amendment of 1996 and Title 2 of the Code of federal Regulations, Part 200, Subpart F Audit Requirements.
18. Will comply with Homeland Security Presidential Directive (HSPD)-5, Management of Domestic Incidents. The adoption of the NIMS is a requirement to receive Federal preparedness assistance, through grants, contracts, and other activities. The NIMS provides a consistent nationwide template to enable all levels of government, tribal nations, nongovernmental organizations, and private sector partners to work together to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity.
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program. This includes all requirements, restrictions and regulations identified in the *FY 2020 EMPG Federal Notice of Funding Opportunity*, *FEMA Preparedness Grants Manual*, and the *FY 2020 EMPG California Supplement to the Federal Notice of Funding Opportunity*.
20. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
21. Will comply with the requirements of the assisting awarding agency regarding the drafting, review and approval of construction plans and specifications.

22. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
23. Will comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating \$25,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 C.F.R. Part 170 Reporting Subaward and Executive Compensation Information.
24. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by this award of assistance.
25. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program. This includes all requirements, restrictions and regulations identified in the Cal OES FY 2021 EMPG Program - California Supplement to the Federal Program Funding Opportunity Announcement; or, The State Guidance.
26. Will comply with the following: (a) All recipients of financial assistance must acknowledge and agree—and require any subrecipients, contractors, successors, transferees, and assignees acknowledge and agree—to comply with applicable provisions governing Cal OES access to records, accounts, documents, information, facilities, and staff; (b) Recipients must cooperate with any site visit, compliance/monitoring review or complaint investigation conducted by Cal OES; (c) Recipients must give Cal OES access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by Cal OES regulations and other applicable laws or program guidance; (d) Recipients must submit timely, complete, and accurate reports to the appropriate Cal OES officials and maintain appropriate backup documentation to support the reports; and (e) Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in the program guidance.
27. Will comply with the EMPG-Funded Personnel Training and Exercise Requirement. All recipients of financial assistance must acknowledge and agree—and require any subrecipients, to acknowledge and agree—to comply with the EMPG-funded personnel training and exercise requirement, as detailed in both the Federal and State program guidance. Failure to comply with this requirement, by individuals whose salary is funded in part or whole with EMPG, as well as personnel whose salary is used as a match, may result in the incurred salary costs associated with the non-compliant EMPG-funded personnel from being eligible for reimbursement and/or result in the recipient's repayment of already disbursed grant funding associated with the non-compliant EMPG-funded personnel's salary-related costs.

ASSURANCES REGARDING SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

1. Subrecipient shall submit (to SBCFPD/Grants Administration) a copy of their procurement policies with their application. Subrecipient shall adhere to its own documented procurement procedures provided that the procurements conform to applicable federal law and standards identified in 2 CFR. 200.318 through 200.326. *If the subrecipient's procurement procedures overlap local, state and federal policies, the subrecipient must follow procedures that allows them to be in compliance with all applicable layers (often referred to as the most restrictive standard).*
2. Subrecipient shall attach Request for Proposals, bid advertisements, and/or photocopies of valid quotes from qualified vendors, etc. to Reimbursement Requests when procurement policies require such procedures in the purchasing of grant equipment. Valid quotes must be obtained prior to the purchase date. Quotes obtained after the date of purchase will not be considered valid. Subrecipient shall take and keep on file color photographs of each equipment item/lot purchased with EMPG funds at the time of acquisition and make available upon notice during any said SBCFPD

inventories. Subrecipient is also required to attach color copies to the Reimbursement Request of the color photographs of each equipment item/lot purchased with EMPG funds.

3. Subrecipient will not make any award or permit any award (sub-grant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension". Suspended or debarred suppliers can be located on <https://sam.gov/content/home>
4. A copy of the search results must be included with applicable reimbursement requests. *Please note that the absence of a party's name at the above website does not mean that the party has been debarred.* Many suppliers are not registered in the SAM system. Subrecipient need only to verify that suppliers receiving grant funds are not debarred or suspended. Subrecipient should search for the company name and the owner's name to ensure that no supplier participants are debarred.
5. Subrecipient must maintain all payment documents and procurement records for grant purchases/expenditures for three (3) years after the close of the grant, which occurs when the California Office of Emergency Services (CalOES) has filed the final report. Subrecipient must notify County Grants Administration prior to purging or destroying any and all supporting documentation for the EMPG grant program, including expense related documents.
6. Subrecipient shall immediately report to (SBCFPD/Grants Administration) all damaged, lost or stolen equipment/property that is purchased with grant funds per 2 CFR § 200.313. Subrecipient must be complete and return the attached "Damaged, Lost, or Stolen Report (DLSR) Form" to SBCFPD/Grants Administration for reporting to CalOES.
7. It shall be the responsibility of the Subrecipient to track and maintain all equipment on a generally accepted accounting system. Subrecipient shall record equipment at the time of acquisition and/or print equipment records upon request should SBCFPD/Grants Administration request periodic progress reports on the location and condition of grant purchased equipment to forward to Cal OES when necessary.
8. Contract provisions: A subrecipient's contract must contain provisions as noted in the sub-section below. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurements Policy.
 - A. Termination for cause and for convenience by the subrecipient including the manner by which it will be affected and the basis for settlement. (All contracts more than \$10,000)
 - B. Notice of awarding agency requirement and regulations pertaining to reporting.
 - C. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
 - D. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
 - E. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
9. Subrecipient is expected to submit "Functional Timesheets" and a Personnel Activity Report (PAR) for any employee funded by federal grants which reflects all hours worked for the pay period charged to the grant with grant hours reflected separately. Subrecipient must maintain time and effort reporting, and document the time they spend working on the grant's objectives. Documentation must reflect "actual" time spent on the grant by the employee with the acknowledgement of supervision (2 CFR 200.430).

10. **PARs and Functional Timesheets must display all hours worked by the employee being charged to the grant, not just the hours charged to the grant activity. Grant hours must be separated from other hours** in accordance with 2 CFR. 200.430. Salaries and wages used in meeting cost sharing or matching requirements must be supported in the same manner as those claimed as allowable costs under federal awards.
11. Signing the certification means that the employee DID NOT spend any time on any other grant (direct or indirect) or on agency activities unrelated to the grant. Note that it is our understanding that anyone who is 100% funded is automatically audited. **Salary costs that are not accurately and properly documented are "unallowable costs" and will not be reimbursed.** If you have been reimbursed for salary that was not properly recorded and supported, the State or Federal Governments may require your agency to pay back any "unallowable costs."

CERTIFICATIONS

1. CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT):

As required by Executive Order 12549 - Debarment and Suspension, and implemented in 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension:

- A. The applicant certifies that it and its principals:
- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
 - 2) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (A)(2) of this certification; and
 - 4) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

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

3. CERTIFICATIONS REGARDING DRUG-FREE WORKPLACE REQUIREMENTS: This certification commits the applicant to compliance with the certification requirements under 28 CFR Part 83 Subpart B *Government-wide Requirements for Drug-Free Workplace (Grants)*.

The grantee certifies that it will or will continue to provide a drug-free workplace by:

- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- B. Establishing an ongoing drug-free awareness program to inform employees about:
 - 1) The dangers of drug abuse in the workplace;
 - 2) The grantee's policy of maintaining a drug-free workplace;
 - 3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (A);
- D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the grant, the employee will:
 - 1) Abide by the terms of the statement; and
 - 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- E. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- F. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:
 - 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F).

4. SWEATFREE CODE OF CONDUCT:

- A. All applicants contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the subgrant have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The applicant further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- B. The applicant agrees to cooperate fully in providing reasonable access to the applicant's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (A).

5. DOMESTIC PARTNERS: For subgrants executed or amended after July 1, 2004, the applicant may elect to offer domestic partner benefits to the applicant's employees in accordance with Public Contract Code section 10295.3. However, the applicant cannot require an employee to cover the costs of providing any benefits which have otherwise been provided to all employees regardless of marital or domestic partner status.

TERMS AND CONDITIONS

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Applicant needs to be aware of the following provisions regarding current or former state employees. If subgrantee has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Public Contract Code §10410):

- A. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- B. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Public Contract Code §10411):

- A. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

- B. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If applicant violates any provisions of above paragraphs, such action by applicant shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

- 2. LABOR CODE/WORKERS' COMPENSATION: Applicant needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and applicant affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
- 3. AMERICANS WITH DISABILITIES ACT: Applicant assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
- 4. APPLICANT NAME CHANGE: An amendment is required to change the applicant's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
- 5. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
- 6. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the applicant shall not be:
 - 1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
 - 2) Subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
 - 3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and applicant may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the applicant has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective jurisdiction to the assurances and certifications listed above.

Authorized Agent/Signature


<i>Printed Name and Title of Person Signing</i>	
Robert Avels, Executive Director, Office of Public Safety	
<i>Date Executed</i>	
11/22/2021	



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 6, 2022	FILE I.D.:	PDT175/SCH125/SCH350
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	3	PREPARER:	B. VENTURA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-50 WITH CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT FOR SPECIALIZED LAW ENFORCEMENT SERVICES DURING FISCAL YEAR 2022-23, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-50 with Chaffey Joint Union High School District (CJUHSD) for one dedicated Safe School Zone Officer for assignment at Montclair High School.

Proposed Agreement No. 22-50 has been reviewed by the City Attorney and is attached for City Council's review and consideration.

BACKGROUND: The City currently has an agreement with CJUHSD for a Safe School Zone/School Resource Officer (SRO). Pursuant to the terms of Agreement No. 22-50, CJUHSD would pay \$110,916 toward the cost of a SRO. The Police Department would be obligated to provide the presence of one SRO for the high school for eight hours each school day.

This contract would be for the regular school year and includes summer school.

FISCAL IMPACT: Should this item be approved, CJUHSD would pay \$110,916 toward the salary of an SRO beginning July 1, 2022, through the remainder of Fiscal Year 2022-23.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-50 with CJUHSD for specialized law enforcement services during Fiscal Year 2022-23, subject to any revisions deemed necessary by the City Attorney.

**AGREEMENT
FOR SPECIALIZED LAW ENFORCEMENT SERVICES**

This Agreement is made and entered into this 1st day of July, 2022 by and between the City of Montclair (hereinafter referred to as CITY) and the Chaffey Joint Union High School District (hereinafter referred to as DISTRICT), both of whom understand as follows:

WITNESSETH

WHEREAS, the following services are to be performed subject to the conditions hereinafter set forth:

NOW, THEREFORE in consideration of these services and mutual conditions hereinafter provided, the parties hereto agree as follows:

- A. Beginning with the school year through the end of the school year 2023, the CITY will perform specialized law enforcement services for the DISTRICT at and about the campus of Montclair High School. It is understood that these services are to be provided, to the extent possible, on regularly scheduled school days between 7:00 a.m. and 3:00 p.m., and during mutually agreed upon “in-service” or familiarization periods.
 - 1. It is acknowledged that the provision of services may be interrupted by the normal working conditions experienced by law enforcement agencies, which include, but are not limited to: employee illness, court appearances, training requirements, prisoner transportation, emergency circumstances taxing on other departmental resources, etc. Should the interruption of services, for any reason, extend beyond two successive days, the CITY shall meet its obligation through the assignment of an alternate sworn employee.

- B. This Agreement will allow the CITY, through its Police Department, to provide the following specialized law enforcement services to the DISTRICT:
 - 1. One Sworn Community Oriented Officer, known as a Safe School Zone Officer, shall, through random patrol and their on-campus presence, strive to maintain a crime-free zone on and around each school campus.
 - 2. Through the Safe School Zone Officer, provide a consistent and timely response to calls for assistance from the high school or concerning students from the high school.
 - 3. Through the Safe School Zone Officer, provide a consistent liaison for the high school administration on law enforcement matters.

4. Through the Safe School Zone Officer, provide resources and materials necessary for classroom presentations on law enforcement matters.
 5. Through the Safe School Zone Officer, maintain a physical presence on campus during the hours of approximately 7:00 a.m. and 3:00 p.m. on each school day subject to possible interruptions as described in paragraph A(1) above. While on campus, the role of the officer is to:
 - a. Act as a positive role model for students.
 - b. Facilitate a positive and interactive student/law enforcement relationship.
 - c. Maintain a proactive stance toward crime prevention and order maintenance.
 - d. Act as first responder to criminal conduct or order maintenance issues occurring on or about the high school campus.
 - e. Within the confines of the law, act as information resource for school administrators on matters of mutual concern.
- C. In addition to the above, beginning with the summer session of 2022, the Safe School Zone Officer will provide services to the high school, adjusting the hours to the school schedule.
1. One Safe School Zone Officer will maintain a physical presence on campus each day during the regularly scheduled school hours.
- D. In consideration for providing these services, the DISTRICT will pay to the CITY a total of \$110,916 invoiced in two equal \$55,458 amounts; the first during November 2022, and the second due in May 2023.
- E. It is understood by both parties that the Safe School Zone Officer or other CITY officers providing this service shall remain CITY's employee at all times. As such, the CITY shall be responsible for all employment costs, supervision, control, and assignment of said officers.
- F. This Agreement is not assignable, either in whole or in part, by DISTRICT without the prior written consent of the CITY. The laws of the State of California shall govern the rights, obligation, duties, and liabilities of the parties to this Agreement and shall also govern the interpretation of the Agreement, if in dispute.
- G. If the DISTRICT in its reasonable discretion is dissatisfied with a School Zone Officer, the CITY shall assign a different School Zone Officer.
- H. The School Zone Officer shall defer to the Principal in all school discipline issues, except those that place students, faculty and staff at risk of harm.

- I. It will be the responsibility of the School Zone Officer to report all crimes originating on campus.
- J. The School Zone Officer shall share information with the principal about persons and conditions that pertain to campus safety concerns.
- K. The School Zone Officer shall coordinate all of his or her activities with the principal and staff members concerned and will seek permission, guidance and advice prior to enacting any programs within the school.
- L. CITY shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner performance of the services or those engaged to perform services under this Agreement. CITY shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the services.
- M. CITY is, and shall at all times be deemed to be, an independent contractor and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between DISTRICT and CITY or any of CITY's agents or employees. CITY assumes exclusive responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. CITY, its agents and employees, shall not be entitled to any rights and/or privileges of DISTRICT's employees and shall not be considered in any manner to be DISTRICT's employees.

TERMINATION OR MODIFICATION OF AGREEMENT

This Agreement shall end on June 30, 2023, unless extended by both the CITY and DISTRICT. The CITY or DISTRICT may terminate all or any portion of this Agreement at any time upon providing a thirty (30) day written notice delivered to the addresses below. In the event the Agreement is terminated by either party prior to June 30, 2023, DISTRICT shall pro-rate its final payment for services rendered at \$11,916 per month.

CITY: City of Montclair
5111 Benito Street
Montclair, California 91763

DISTRICT: Chaffey Joint Union High School District
211 West Fifth Street
Ontario, California 91762

INDEMNIFICATION

DISTRICT shall defend, indemnify and hold harmless the CITY, its elective and appointive boards, officers, agents, and employees from all liability from loss, damage, or injury to persons

or property, in any manner arising out of any negligent or intentional or willful acts or omissions of DISTRICT under this Agreement.

CITY shall defend, indemnify and hold harmless the DISTRICT, its elective and appointive boards, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, in any manner arising out of any negligent or intentional or willful acts or omissions of CITY under this Agreement.

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

CITY OF MONTCLAIR

Javier John Dutrey,
Mayor

ATTEST:

Andrea M. Myrick,
City Clerk

**CHAFFEY JOINT UNION
HIGH SCHOOL DISTRICT**

Dr. Kern Oduro,
Assistant Superintendent of Personnel

With L.D. King, Inc. having already performed the groundwork for the project's design, staff requested a formal proposal from L.D. King, Inc. to complete plans and specifications for the construction of the project. The requested scope of services includes survey services, civil design services, landscape and lighting design services, preparation of a water quality management plan, geotechnical services, assistance with obtaining permits from the Army Corp of Engineers, and assistance with construction administration services. Staff was able to negotiate a service fee of \$248,990 with L.D. King, Inc. for the above-mentioned scope of work.

FISCAL IMPACT: Funding for this agreement is provided through two separate funding sources: the California Department of Parks and Recreation, Per Capita Grant Program, and 2021 Lease Revenue Bond Proceeds.

RECOMMENDATION: Staff recommends that the City Council take the following actions in relation to the Sunset Park Improvement Project:

1. Amend the 2019-2024 Capital Improvement Program to add the Project;
2. Approve Agreement No. 22-52 with L.D. King, Inc. for design services for the Project in the amount of \$248,990, subject to any revisions deemed necessary by the City Attorney; and
3. Authorize a \$50,388 appropriation from the California Department of Parks and Recreation, Per Capita Grant funds and a \$198,602 appropriation from 2021 Lease Revenue Bond funds for design services for the Project.

Infrastructure Fund

Capital Project Funding Information

Project Name: Sunset Park Improvement Project
 Project Details: Design and Construction of Sunset Park. Improvements includes a bicycle trail, walking pathways, exercise equipment, playground equipment, restrooms, shade structures, picnic tables, parking lot improvements, lighting, irrigation and landscape improvements.

Preparation Date: May 31, 2022 Department: Public Works/Engineering Department
 Project No. (Assigned by Finance): _____ Contact/Ext.: M. Heredia _____ 441

Phase	Prior Years	Fiscal Years					Total	Fund/Program
		2019/2020	2020/2021	2021/2022	2022/2023	2023/2024		
Environmental								
Design				50,388.00			50,388.00	Per Capita
				198,602.00			198,602.00	2021 LRB
Construction						151,164.00	151,164.00	Per Capita
						4,174,097.00	4,174,097.00	Clean California
Total	0.00	0.00	0.00	248,990.00	0.00	4,325,261.00	4,574,251.00	

Approvals:

Department: Public Works/Engineering By: _____ Date: _____
 Finance By: _____ Date: _____
 City Council Date: _____
 Revision Number: _____

Total Project Cost: 4,574,251.00

CITY OF MONTCLAIR
AGREEMENT FOR CONSULTANT SERVICES
SUNSET PARK IMPROVEMENTS
ENGINEERING, SURVEY AND LANDSCAPING

THIS AGREEMENT is made and effective as of on June 7, 2022, between the City of Montclair, a municipal corporation ("City") and L.D. King, Inc., a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on June 7, 2022 and shall remain and continue in effect for a period of 18 months until tasks described herein are completed, but in no event later than December 7, 2023, 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, and competently 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. Consultant shall have the duty to prepare any design documents free from defects.

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement and 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 5 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed \$248,990 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 in compliance with this Agreement. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5(c).

7. DEFAULT OF CONSULTANT

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

Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and to the extent the default is 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. Any reuse or modification of the work product without the prior written consent of Consultant will be at the sole risk of the City. 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. Consultant 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 Consultant herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Consultant, including its subcontractors, subconsultants, employees, agents, and other persons or entities performing work for Consultant.

(b) Contractual Indemnity. To the fullest extent permitted under California law, Consultant 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 Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to Consultant's officers, agents, representative, employees, independent contractors, subcontractors, subconsultants, 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 Consultant, including its subcontractors, subconsultants, employees, agents and other persons or entities performing work for Consultant. Indemnification shall include any claim that Consultant, or Consultant'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. Consultant'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/Subconsultants and Indemnification. Consultant 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 Consultant in the performance of any aspect of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant 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 Consultant 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. Consultant 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 Consultant or of Consultant'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. Consultant 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 Consultant under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Consultant begins the work and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Consultant. The indemnity obligations of Consultant 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 Consultant, or for the City to dispute Consultant's refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Consultant 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 Consultant 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 Consultant expressly waives any statutory immunity under such statutes or laws as to the Indemnified Parties. The Consultant'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 Consultant pursuant to this Agreement.

(h) The Consultant'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 Consultant 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, Consultant 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 \$2,000,000 per occurrence, and \$4,000,000 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 \$2,000,000 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 Consultant

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 Consultant from waiving the right of subrogation prior to a loss. Consultant 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, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

The coverage provided shall apply to the obligations assumed by the Consultant 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 Consultant; 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 Consultant under this Agreement.

(h) Failure to Maintain Coverage

Consultant 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 Consultant until Consultant 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 Consultant's expense, the premium thereon.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant 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 Consultant'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

Consultant shall be responsible for causing Subcontractors/Subconsultants 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'/Subconsultant's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as board as CG 20 38 04 13.

11. INDEPENDENT CONTRACTOR

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

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

compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or

party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

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

16. NOTICES

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

To City:

City Engineer
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant:

L.D. King, Inc.
975 N. Haven Avenue, Suite 200
Ontario, CA. 91764

17. ASSIGNMENT AND SUBCONTRACTING

The Consultant 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 Consultant 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 Consultant 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 Consultant shall not subcontract any performance required under this Agreement without the City's prior written consent.

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF REQUEST FOR PROPOSALS

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

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith.

29. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of 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.

30. COUNTERPARTS

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Javier John Dutrey, Mayor

By: _____
Name:
Title:

Attest:

By: _____
Andrea M. Myrick, City Clerk

By: _____
Name:
Title:

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

EXHIBIT A

May 18, 2022

Mr. Steve Stanton
City of Montclair
Engineering Division Manager
5111 Benito Street
Montclair CA 91763

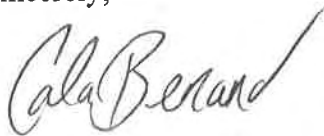
Subject: Proposal for Civil Engineering, Surveying and Landscaping Services for the Sunset Park Improvements located at the northeast corner of Kingsley Avenue and the San Antonio Channel, in the City of Montclair

Dear Steve:

L.D. King, Inc. is pleased to provide this proposal for professional engineering services for the project described above. The Scope of Services and Compensation are more particularly described in the attached proposal.

Should you have any questions or need additional information regarding this proposal, please do not hesitate to contact me.

Sincerely,



Carla E. Berard, P.E.
CEO / Sr. Project Manager

attachments

EXHIBIT B

EXHIBIT "A"

**SUNSET PARK IMPROVEMENTS
ENGINEERING, SURVEYING AND LANDSCAPING**

**SCOPE OF SERVICES
Updated 5/10/22**

Agreement for Civil Engineering Services to provide Engineering, Surveying and Landscaping Services for the Sunset Park Improvements located at the northeast corner of Kingsley Avenue and the San Antonio Channel, in the City of Montclair

GENERAL

In general, this Scope of Services is for engineering, surveying, and landscaping services for the preparation of construction plan sets, easement documents, and US COE 408 Application, for Sunset Park Improvements.

ENGINEERING AND SURVEYING SERVICES

TASK 1 SURVEYING SERVICES

Boundary Research

- Research record maps and documents.
- Calculate boundary from current title report, reference maps and backup documents.
- Recover and tie in existing boundary and centerline monumentation.
- Analyze boundary and prepare base map.

Aerial Topographic Mapping

- Establish ground control for digital aerial topographic mapping.
- Aerial photography and mapping (subconsultant).
- Prepare topographic map (40 scale, 1' contours) with completed boundary.

Base File

- Prepare a base file with existing topo, structures and hardscape shown for use in sending to the landscape company and set up Army Corp. Plans. Collect FS elevations along the channel for use in designing trail.

TASK 2 ENGINEERING SERVICES

Concept Plan

- Prepare a Park Concept Plan based on the park plan provided for the Grant process. The Concept Plan to include the proposed parking lot, hardscape, bike trail, amphitheater seating, exercise areas and playground area. Submit Park Conceptual Plan to the City for review and acceptance.

Park Precise Grade Plan

- Prepare Park Precise Grade Plan based on approved Concept Plan.
- Provide concrete trail with string adjacent to the channel.
- Set Pad grades for pavilion.
- Provide grades on amphitheater seating.
- Provide coordination for new restroom facility.
- Set grades in parking areas.
- Set grades for hardscape.
- Provide grading for rain garden.
- Provide cross sections.
- Prepare Park Precise Grade Plan based on approved Concept Plan. Provide coordination with landscape architect and lighting consultant.

Storm Water Pollution Prevention Plan

- Prepare a Storm Water Pollution Prevention Plan to meet the requirements of the California Construction General Permit Order No. 2009-0009-DWQ as amended by Order No 2010-0014-DWQ and Order No. 2012-0006-DWQ. Submit to the city and file with the SMARTS system for the Regional Water Quality Control Board to obtain a WDID number. All fees shall be the responsibility of the City.

Water Quality Management Plan

- Prepare a Water Quality Management Plans for the site to fulfill the requirements of the City of Montclair MS4 permit related to Santa Ana Regional Water Quality Control Board Order Number R8-2010-0036. NPDES Permit No. CAS618036. The WQMP will conform to the latest approved version of the San Bernardino County Stormwater Program Model WQMP Guidance Document.

Geotechnical Services

- Leighton Group will perform the geotechnical services necessary for engineering design of specific improvements.

Specifications and Special Provisions

- Prepare Project specifications and special provisions including a bid item list and standard plan appendices. Provide quantities and an itemized cost estimate, including a bid item list to be used with the bid documents.

Easement Legal Descriptions and Plats

- Prepare three (3) legal descriptions and plats for bike trail adjacent to the San Antonio Wash.

US ACOE Permit and Submittals

- Prepare a 408 Application package to be processed through the Army Corp of Engineers.
- Prepare a improvement plan depicting all improvements adjacent to the San Antonio Channel to be included as part of the Army Corp. Permit submittal package.

Bid Support

- Assistance will be provided during bidding to provide clarification of the contract documents. Clarification will include preparation of contract addenda, if needed.

Construction Support

- Assistance will be provided during construction for the following services:
- Review of shop drawings, substitutions and alternatives, and other documents as may be submitted for review.
- Response to requests for information from the contractor, field inspectors, field survey crew and other staff associated with the project. All requests should be processed through the City's construction manager as a single point contact.
- Attend construction meetings, utility coordination meetings and other meetings, as necessary, in connection with the project.

Meetings and Coordination

- Attend all meetings as requested by the Client to facilitate design, coordination, and plan processing.

Project Administration

- Provide administrative processing and coordination with the Landscape Architect and Soils Engineer.

LANDSCAPING AND LIGHTING SERVICES

TASK 3 LANDSCAPE AND LIGHTING SERVICES

Architerra Design Group will provide Landscape Architectural Services for Conceptual Park Design, Bidding Assistance and Administration. JCA Engineering will provide electrical construction documents for the park.

Conceptual Design Phase

- Project Kick-Off meeting with Client to discuss the project goals and schedules.
- Site Visit/Field Inventory to review existing conditions, opportunities, and constraints.
- CAD Base Sheet Development @ 40-scale, on 30"x42" sheet format, 1 sheet total.
- Preparation of formal color rendered Site Conceptual Landscape Master Plan (CLMP) @ 40-scale, for Client and Agency review.
- Preparation of formal color rendered Conceptual Enlargement Plan of the new playground @ 20-scale, for Client and Agency review.
- Preparation of materials and amenities boards to convey design intent, playground elements and material choices.
- Client/Agency/Consultant design progress review meeting.
- Revisions to CLMP exhibits per comments from agency.
- Conceptual Site Lighting Plan and Lighting Photometric Illumination Plan (JCA) for incorporation into CLMP exhibits.
- Coordination with sub consultants for preliminary locations of new lighting fixtures and utilities.
- Preparation of budgetary estimate for probable construction costs.

- Client/Agency/Consultant Progress Meetings. (1 virtual meeting anticipated)
- Project Administration (Preparation of Bi-Weekly Status Report and Project Scheduling).
- Telephone Consultation.

Construction Documents

- Base Sheet Preparation @ 20 scale, on 24"x36" sheet City Standard Titleblock format, 4 sheets total.
- Base Sheet Preparation @ 10 scale base for playground enlargement, on 24"x36" sheet City Standard Title block format, 1sheet total.
- Title Sheet Preparation.
- Demolition Plan and coordinate with L.D. King for all proposed removals related to landscape scope (20 scale/4 sheets total).
- Fine Grading coordination with L.D. King Inc. for drainage of landscape areas. Final grading plans by the civil engineer.
- Construction Plan Preparation for layout and detailing of hardscape, tot lot play areas, restroom building, etc. L.D. King to handle parking lot, trail at San Antonio Wash, restroom building plumbing and placement (20 scale/4 sheets total).
- Construction Enlargement Plan showing playground equipment layout and surfacing (20 scale/1 sheet total).
- Construction Detail Preparation for all proposed elements, including hardscape, restroom building, structures, playground, entry monument, and exercise equipment (L.D. King to handle detailing parking lot and associated signage, trail at San Antonio Wash.
- Coordination with JCA Electrical Engineering for electrical design, light pole locations, meter service, conduits, etc.
- Preparation for electrical engineering plans (by JCA) for power to restroom building, new light standards, circuiting, and new electrical controls. Includes structural calculations for (2) two light pole conditions.
- Site visit with City maintenance personnel to review irrigation as-built field conditions to determine P.O.C., controller(s) and irrigation mainline/equipment type for inclusion into retrofitted/new irrigation plans.
- Irrigation Plan Preparation for areas of new planting at southern end. Review of existing irrigation for northern planting and turf for replacement, relocation, or upgrade if necessary to ensure full coverage. (20 Scale/4 sheets total).
- Irrigation Detail Preparation to cover new equipment.
- Prepare Water Efficiency Landscape Worksheet. *
- Prepare 2 Irrigation Controller Charts. *
- Planting plan preparation (2 separate sheets for trees/vines andshrubs/groundcover 4 sheet totals).
- Planting Detail Preparation.
- Prepare Planting/Irrigation Hydro-zone Plan. *
- Construction Specifications.
- Irrigation & Planting Specifications.
- Preparation of final cost estimates.
- Provide Soils Test and Soils Management Report.*
- Prepare Annual Irrigation and Planting Maintenance Schedule.*

- Material/Furnishing Selection.
- Package Coordination.
- Client/Agency/Consultant Progress Meetings (2 virtual meetings anticipated)
- Project Administration (Preparation of Bi-Weekly Status Report and Project Scheduling).
- Agency Plan Check Corrections.
- Project Administration.
- Telephone Consultation.
- Utility Research (Irrigation Point of Connection, Pressure).

Bidding Assistance

- Preparation of bid form/quantities.
- Attend Pre-bid meeting.
- Project Administration.
- Telephone Consultation

Construction Administration

- Construction observation/meetings (estimated 48 visits based on weekly attendance/11-month construction period).
- Respond to RFI's/Review submittals.
- Preparation of site reports/meeting minutes to be prepared for estimated 48 meetings/visits.
- Project close out site review with Certificate of Completion. Project Administration. Telephone Consultation.

OPTIONAL SERVICES:

- Preparation of Title 24 Calculations for exterior parking lot and walkways, if required, (JCA Electrical Engineering).
- Construction Administration, (JCA Electrical Engineering).
- Design of New Electrical Metered Service, Utility Company New Service Forms and Back of Existing Metered services, if required, (JCA Electrical Engineering).

TASK 4 REIMBURSABLE EXPENSES

Client shall reimburse Consultant for the cost of all items such as blueprinting, reproductions, fees, permits, bond premiums, title company charges and overnight delivery fees not specifically covered by the terms of this Agreement. In the event such reimbursable items are paid directly by the Consultant, then such charges and expenses shall be invoiced at direct cost plus 15%.

Client shall reimburse Consultant for the cost of delivering plan sets, reports, or any other items pertaining to the project to City offices, County offices, subconsultant offices, and Client offices. Includes preparing PDF's and Jpegs and preparing CD's. All labor time will be billed at the hourly rates set forth in the attached Rate Schedule.

EXHIBIT 'B'

**SUNSET PARK IMPROVEMENTS
ENGINEERING, SURVEYING AND LANDSCAPING**

COMPENSATION

TASK	DESCRIPTION	FEE
1	Surveying Services	\$16,580.00
2	Engineering Services	\$88,860.00
3	Landscaping and Lighting Services	\$137,850.00
4	Reimbursable Expenses (estimated)	\$2,000.00
	TOTAL	\$245,290.00

OPTIONAL SERVICES:

Title 24 Calculations (JCA)	
Construction Administration (JCA)	
New Electrical Metered Service (JCA)	
TOTAL	\$3,700.00

PROFESSIONAL FEE FOR SERVICES

Client agrees to compensate Consultant for civil engineering services, survey services, landscaping, and lighting services for a fee of \$243,290.00, and for reimbursable expenses on a Time and Materials basis with an estimated fee of \$2,000.00.

EXTRA WORK

Client agrees to pay Consultant compensation for all authorized extra work at the hourly rates set forth in the attached Rate Schedule. All such extra work shall be authorized by the Client prior to commencing such work.

FEE ADJUSTMENTS

Client understands and agrees that the fees quoted for the services to be performed are subject to an annual increase on October 1st of each year, beginning in 2022. The percentage increases (if any) shall apply only to the unexpended portion of the total Agreement amount remaining on each such October adjustment date. The adjustment will be in accordance with adjustments in the Master Agreement between the Civil Engineers and Land Surveyors of Southern California and the International Union of Operating Engineers Local No. 12, AFL-CIO.

REIMBURSABLE EXPENSES

Client shall reimburse Consultant for the cost of all items such as blueprinting, reproductions, fees, permits, bond premiums, title company charges and delivery charges not specifically



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 6, 2022	FILE I.D.:	PER825
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	5	PREPARER:	M. RICHTER
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-56 WITH CPS HR CONSULTING FOR RECRUITMENT TEST RENTAL SERVICES		
	CONSIDER AUTHORIZING HUMAN SERVICES DIRECTOR MARCIA RICHTER TO SIGN SAID AGREEMENT AND RELATED DOCUMENTS		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of proposed Agreement No. 22-56 with Cooperative Personnel Services dba CPS HR Consulting (CPS) for recruitment test rental services, a copy of which is attached for the City Council's review and consideration.

BACKGROUND: The Personnel Division of the Administrative Services Department conducts employment recruitments for the City's personnel staffing vacancies. These recruitments consist of posting job advertisements, reviewing job applications for conformance with minimum and desirable qualifications, coordinating the testing and interview process, and establishing the employment eligibility list.

CPS HR Consulting (CPS) is an agency that provides integrated HR solutions to government agencies and nonprofit organizations, including but not limited to recruitment test products and services. CPS testing and assessment services range from test administration to test rental, and includes rental access to stock tests, as well as creation of semi-stock and custom tests. The City's Personnel Division has used CPS test rental services in the past; however, a new 2-year test rental agreement is required at this time.

Although the City has a substantial bank of recruitment tests, from time to time a recruitment is held for a position that is infrequently recruited for, or infrequently filled, or may be highly specialized, such as in the case of public safety supervisory classifications. These situations may require updating a recruitment test for a number of reasons, for instance, age of the test, changes in a position, or in an effort to deter unfair advantage to those who may have applied in the past and taken the same test. CPS would be used as a resource in a last resort scenario if other test revision options are unsuccessful or are not available (i.e. revising our own test adequately or revising that of another agency). In such a case, using the test rental services by CPS would enhance the City's ability to assess qualified applicants for these positions.

FISCAL IMPACT: The fiscal impact would be minimal because it is likely this service will be rarely used. Test rental consists of a base rate of \$295.00 plus \$9.00 per candidate plus shipping. Funds to cover the cost of this service are included in the Personnel/Risk Management, Personnel Testing section of the Administrative Services Department Fiscal Year 2021-22 Budget.

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

1. Approve Agreement No. 22-56 with CPS HR Consulting for test rental services; and
2. Authorize Human Services Director Marcia Richter to sign said Agreement and related documents.



TEST RENTAL AND USE AGREEMENT

This Test Rental and Use Agreement (“Agreement”) is by and between Cooperative Personnel Services, dba CPS HR Consulting, a California Joint Powers Authority (“CPS HR”) and the Agency or Organization named in the signature block at the end of the Agreement (“Client”).

A. Purpose. This Agreement defines CPS HR test rental, use and security policies and procedures.

CPS HR develops and rents tests for a number of purposes and in a number of formats (including but not limited to print and electronic media). For that reason, some of the below paragraphs apply under certain circumstances. But, unless specifically limited, each paragraph applies to all testing purposes and formats.

B. Ownership of CPS HR Tests.

1. CPS HR owns all rights, title and interest, including copyrights, in all tests provided under this Agreement. They are the property of CPS HR and shall remain the property of CPS HR, even while in the custody of Client.
2. Additionally, tests that have been constructed or modified based on information provided by the client shall not be considered works made for hire, as that term is defined under U.S. Copyright Law. CPS HR shall own all rights, title and interest, including the copyright, in any test it creates for the Client.
3. Ownership of tests specifically developed for a client and of individual test questions supplied by Client, if any, shall be governed by a separate Agreement between CPS HR and Client.

C. Test Materials. Test Materials consist of all used and unused test booklets, proctors instructions, proctors manuals, scoring instructions, key sheets, key overlays, keyed booklets, scoring keys, instructions, CDs (for oral tests), and any other materials generated at the test administration, such as completed answer sheets (if applicable), scratch paper, note paper and the like.

D. Test Security. CPS HR security standards are designed to protect the mutual interests of all Clients that use Test Materials as well as the interests of applicants who take CPS HR tests. In order that no person may gain special advantage by having improper access to the material, all users must sign this Agreement and agree to fulfill its terms, before the Agreement is effective.

1. Client agrees to take all reasonable and diligent steps to keep CPS HR tests, sample tests, and testing processes confidential and free from unauthorized access and use. This includes, but is not limited to, client agreeing not to divulge, convey, copy in whole or part, duplicate, convert to another format or medium, or otherwise disseminate tests, portions of tests, or test materials.
2. For on-line tests, client further agrees to take all reasonable and diligent steps to prevent any modification to or reverse engineering of the testing software, and any transfer, storage or dissemination of tests or testing software and data on any storage medium or computer server other than those specifically authorized by CPS HR.
3. Should Client suspect any breach of test security, Client agrees to immediately notify CPS HR and immediately take all steps necessary to preserve

evidence of or related to the breach, whether physical or electronic.

E. Test Review, Ordering and Administration.

1. Review Copies. Review of CPS HR tests, regardless of format, is subject to the test security standards.

- (a) **Test Rental Division:** To help in deciding whether to rent exams, Client may review CPS HR stock tests and other stock test materials free of charge (e.g., stock supplements, structured interview packages, and specialized item sets).
- (b) **SLPP:** CPS HR does not offer review copies of the Spanish Language Proficiency Program (SLPP) tests. However, for new clients, CPS HR can provide a sample written test booklet showing the different components of the test.
- (c) **On-line Testing:** To help in deciding whether to utilize on-line testing, Client may review sample on-line tests free of charge.

2. Ordering Testing Materials and Scheduling of Examinations.

(a) Test Rental Division:

- (i) To ensure materials are received in time, Client must notify CPS HR at least 10 business days prior to the test date of the total number of candidates in each job classification to be tested. If orders are placed less than 10-business-days prior to the test date, rush shipment charges may apply and timely delivery cannot be guaranteed.
- (ii) Client shall rent one test booklet per candidate to be tested. CPS HR shall provide Client with Test Materials including instructions for administering the test, sufficient test booklets and any other material CPS HR deems necessary.

(b) On-line Testing:

- (i) To ensure Client equipment is functioning and capable of administering on-line testing, Client must request testing from CPS HR at least 10 business days prior to the test date on the first time Client utilizes on-line testing. After Client has successfully used on-line testing, 5 working days notice is normally sufficient for subsequent testing.
- (ii) Client recognizes that CPS HR has no control over the functioning of the internet, and any problems with on-line testing due to the failure thereof are not attributable to CPS HR.

3. After the test date.

(a) Test Rental Division:

- (i) Within 10 business days of the test date, Client shall return to CPS HR all Test Materials including all materials provided by CPS HR for the test administration.
- (ii) Client shall not reuse printed tests on the test date or on any other date but shall return Test Materials to CPS HR, whether or not the test was administered.

(b) On-line Testing:

- (i) After the scheduled test date(s), CPS HR will suspend access to the on-line test site.
- (ii) Within 10 business days of the test date, Client shall destroy all CPS HR Test Materials including scratch paper and note paper in a way that make the materials unrecoverable.

F. Billing, Pricing, and Payment.

1. CPS HR shall bill Client at the billing address provided in Exhibit A, unless notified in writing of a new billing address.
2. The bill shall be derived from the most current applicable Rate Sheet (s): Exhibit B for Test Rental, Exhibit C for Special Services, Exhibit D for Online Skills, and Exhibit E for Personality. Client acknowledges and understands that the Test Price List(s) are only effective as of the date shown each of them and are subject to change.
3. Client shall be billed for any work done on a canceled or postponed test up to the time CPS HR is notified of such cancellation or postponement. Under certain circumstances, and in CPS HR's sole discretion, credit may be given for work already performed if the test is rescheduled.
4. CPS HR may charge Client for lost or compromised tests if Test Materials are not returned according to 3(a) above. Client shall be liable for the actual cost associated with the creation of a substantially similar replacement test up to a maximum of \$15,000.
5. Client agrees to and shall pay all invoices within thirty (30) days of receipt of invoice.
6. Credits. For each unopened package of stock exams that is returned, a \$35.00 credit will be generated that can be applied towards the current or future test order. Credit has no cash value and will expire 12 months after the issue date.

G. Candidate Inspections

1. Test Materials.

CANDIDATE INSPECTION OF TEST MATERIALS SHALL **NOT** BE ALLOWED EXCEPT IN CASE OF ANSWER SHEETS AS DESCRIBED BELOW

2. Answer Sheets.

- (a) If a candidate files a protest regarding the scoring of his or her test, inspection of a candidate's own answer sheet(s) for the purpose of detecting whether any clerical or other error has been made in the scoring of the answer sheets shall be allowed, upon request by the Client, for a 10-business-day period immediately following the notification to the candidate of test results.
- (b) Candidates are not allowed to review the question booklet during this inspection period.

- (c) Not more than one hour will normally be allowed for answer sheet(s) review. A representative of Client's Personnel or Administrative office shall be present to assure that no changes or marks of any kind are made by the candidate on the answer sheet(s) or keyed answer sheet.

H. Client Responsibilities.

1. Client shall perform all parts of the testing process which are not performed by CPS HR. Client has the responsibility for assuring that the testing process performed by Client conforms to any applicable laws, rules or ordinances, and for the test as a whole. Under the federal Uniform Guidelines on Employee Selection Procedures, the Client as test user is responsible for local validation efforts (e.g., SME review, job analysis studies) and the results of the selection process, and Client understands and acknowledges that it must be prepared to demonstrate that the process is valid and meets other testing standards if it adversely affects groups protected by fair employment laws.
2. Client is responsible for insuring that all persons who handle or have access to Test Materials in any capacity for Client shall do so in compliance with this Agreement, and are trained to handle Test Materials and administer tests before they do so.
3. CPS HR retains score reports for 60 days after each test administration date. Test users must maintain the appropriate documentation of score report information for agency record purposes.
4. Client is responsible for making determinations regarding the merit of candidate appeals. CPS HR can assist with researching candidate appeals at the specified hourly rate.

I. Legal Proceedings Involving Test Materials.

1. If Client receives notice of any administrative or court proceeding involving a CPS HR test, or a request for disclosure of Test Materials, such as a subpoena, or a public records or freedom of information request, Client shall notify CPS HR of such request immediately and well before a response is due.
2. Upon CPS HR request, Client shall maintain the confidentiality of the Test Materials pending the grant or denial of a protective order or the decision of a court or administrative body as to whether the requested Test Materials must be disclosed under the applicable public records statute.
3. Client shall cooperate with CPS HR in seeking any relief necessary to maintain the confidentiality of the Test Materials.
4. Client shall indemnify and hold CPS HR harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorney fees and costs) arising out of or in connection with administration of a test, or with maintaining confidentiality of Test Materials.

J. Term and Termination of Agreement.

1. Term. This Agreement is effective beginning the date it is signed by both parties and continuing for two years thereafter unless earlier terminated by either party as stated below.
2. Immediate Termination upon Material Breach. Either party may terminate this Agreement immediately

upon any material breach by the other party. For purposes of this Agreement, but without limiting the meaning of material breach, any breach of the test security provisions, however minor, shall be considered a material breach. Client understands and acknowledges that immediate termination by CPS HR may result in the withholding or recall of Test Materials.

- 3. Termination Without Cause. CPS HR and Client may terminate the Agreement without cause upon thirty days written notice to the other party.
- 4. Return of Test Materials. Upon termination of the Agreement, Client shall immediately return to CPS HR any Test Materials that it possesses.

K. Miscellaneous.

- 1. **Notices.** Any notice to the parties required or permitted under this Agreement shall be given in writing and shall be sent to Client at the address provided for the Principal Signer and to CPS HR at 2450 Del Paso Rd., Ste. 160, Sacramento, CA 95834.
- 2. **Dispute Resolution; Remedies.**
 - (a) In the event of a dispute, the parties may agree to pursue mediation or either binding or nonbinding arbitration to resolve their dispute, under such rules as the parties may agree.
 - (b) Client acknowledges that breach of this Agreement may result in irreparable harm to CPS HR for which damages would be an inadequate remedy and, therefore, in the event of a breach, in addition to its rights and remedies otherwise available by law, CPS HR shall be entitled to seek equitable relief, including injunction.
- 3. **Attorneys Fees.** If any legal action or arbitration or other proceeding is brought to enforce or construe the term of this Agreement or because of an alleged dispute, breach or default in connection with any provision of this Agreement, the successful or

prevailing party shall be entitled to recover reasonable attorneys fees and other costs incurred in that action, arbitration or proceeding in addition to any other relief to which it may be entitled.

- 4. **Waiver.** The failure of any party at any time or times to require performance of any provisions of this Agreement shall in no manner affect its right to enforce such provision at a later time. Nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself. No waiver shall be enforceable unless made in writing and signed by the party granting the waiver.
- 5. **Entire Agreement; Modifications.** This Agreement constitutes the entire Agreement between the parties regarding the subject matter hereof and supersedes all other Agreements, representations and warranties. All modifications and supplements to this Agreement must be in writing and signed by both parties.
- 6. **Counterparts; Facsimile Signature; Electronic Signature.** This Agreement may be executed in any number of counterparts. If this Agreement or any counterpart is signed and then faxed or e-mailed by PDF or otherwise, the faxed or e-mailed copy bearing the signature shall be as good as the original wet-ink signed copy for all intents and purposes.
- 7. **Interpretation; Jurisdiction.** This Agreement shall be interpreted and enforced under the laws of the State of California and jurisdiction shall be in Sacramento County, California. The Agreement shall be interpreted in a fair and balanced manner to best preserve its intent, and without bias against the drafter.
- 8. **Authority to Sign.** The person signing this Agreement on behalf of the Client (the Principal Signer) represents that he or she is the head of the agency or is otherwise duly authorized to sign this Agreement and to bind the Client.

Principal Signer By signing below, I represent that the persons(s) listed in Exhibit A and on any attached sheets is/are authorized to handle CPS HR Test Materials on Clients behalf. I affirm that I will handle all CPS HR Test Materials in accordance with the terms of the CPS HR Test Rental Agreement then in effect, and that I will ensure all individuals handling and/or administering tests are properly trained.

**Cooperative Personnel Services dba
CPS HR Consulting,
A California Joint Powers Authority**

Client

By: _____
Authorized Signature

By: _____
Authorized Signature (Head of Agency)

Name: Amy Bigone

Name: Marcia Richter

Title: Test Rental Program Manager

Title: Human Services Director

Date: _____

Email: mrichter@cityofmontclair.org

Date: June 6, 2022

Exhibit A

Authorized Representative(s) *(use an additional page if needed)* By signing as an Authorized Representative, I affirm that I will handle all CPS HR Test Materials in accordance with the terms of the CPS HR Test Rental Agreement then in effect.

Name, Title Tanya Kresback, Employment & Personnel Coord	Signature <i>Tanya Kresback</i>
E-mail Address tkresback@cityofmontclair.org	Phone Number 909-625-9407

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

II. Billing Contact

Contact Name and Title Tanya Kresback, Employment & Personnel Coordinator	
Agency City of Montclair	
Street Address, City, State, Zip 5111 Benito Street Montclair, CA 91763	
E-Mail tkresback@cityofmontclair.org	Phone Number 909-625-9407

III. Physical Address

Agency / Department Name City of Montclair	
Street Address, City, State, Zip 5111 Benito Street Montclair, CA 91763	

Exhibit B
CPS HR Test Rental Division Rates
Effective January 2022 - Subject to Change

	STOCK TESTS*	SEMI-STOCK TESTS	CUSTOM TESTS	AGENCY TESTS
Base Fee (per order) ‡	\$295.00	\$595.00	\$995.00	\$350.00
1-100 Candidates (per candidate)	\$9.00	\$14.00	\$15.00	\$10.00
101-500 Candidates (per candidate)	\$8.50	\$13.00	\$14.00	\$9.50
501+ Candidates (per candidate)	\$8.00	\$12.00	\$13.00	\$9.00
New Item Writing/Entry	N/A	N/A	\$35 per item	N/A
Pick Up/Handling	5%	5%	5%	5%
Standard Shipping/Handling **	10%	10%	10%	10%
Expedited Shipping/Handling **	15%	15%	15%	15%
Shipping outside contiguous U.S.	20%	20%	20%	20%

Entry-Level Law, Entry-Level Fire and Entry-Level Clerical	
Candidate Materials (available online through Candidate Resource Center)	
<i>Online Preparation Manuals</i>	<i>Online Practice Test</i>
\$3.00 if purchased by client \$5.00 if purchased by candidate	\$10.00 if purchased by client \$15.00 if purchased by candidate

*CPS HR will apply a credit of \$35.00 for each **UNOPENED package of Stock Exams** of test booklets on the current or future **STOCK test order** (see additional terms listed on F.6.).

**Standard shipping applies to orders placed at least 10 business days prior to test date. Expedited shipping applies to orders placed less than 10 business days prior to test date.

‡ Base fee includes the following at no additional charge: Proctor's Manual, Scoring Manual, CPS HR Scoring, CPS HR answer sheets and a scoring report.

Online Testing Option for Written Exams*				
	Stock Tests	Semi-Stock Tests	Agency Tests	Custom Tests
Administrative Set Up Fee (per order)	\$95.00	\$95.00	\$95.00	\$95.00
One Time Exam Set Up Fee	N/A	\$595.00	\$350.00	\$995.00
Per Candidate Fee	\$15.00	\$15.00	\$15.00	\$15.00
Title Change (optional)	\$25.00	N/A	N/A	N/A
Additional Supplement (optional)	\$50.00	N/A	N/A	N/A

* The one time set-up fee will be applied for the first online administration of a semi-stock, agency or custom test.

* All exams must be administered in a proctored environment

Exhibit C
CPS HR Special Services
Effective January 2022 - Subject to Change

REMOTE PROCTOR SERVICES		
	Agency Price	Candidate Price
Administrative Set Up Fee (per order)		\$75.00
1 hour test (per candidate)	\$22.50	\$25.50
1 – 2 hour test (per candidate)	\$30.00	\$33.00
2 – 3 hour test (per candidate)	\$38.75	\$41.75
Over 3 hour test (per candidate)	\$47.50	\$50.50
Take it Now Premium Scheduling (Additional Fee as applicable per candidate)	\$12.00	\$12.00
Take It Soon Premium Scheduling (Additional Fee as applicable per candidate)	\$8.00	\$8.00

SPECIAL SERVICES	
Candidate Appeals Support	\$130 per hour
Cover Change – Stock Exams Only	\$100 base fee (unopened returned books will NOT qualify for a credit)
Re-Scoring/Hand-Scoring of Answer Sheet	\$ 30.00 (Requested directly by Agency)
Review Copies (Hardcopies sent via FedEx)	\$25.00 per order (online review copies are provided at no charge)
Scoring Keys	\$10.00 per Overlay, Key Sheet provided at no additional cost
Spanish Language Proficiency Oral Exam	\$295.00 Base Fee + \$120 per candidate (Professional Scoring Included)
Stock Supplements	\$ 2.00 per book when ordered with a Stock test
Structured Interview Packages	\$595.00 Base Fee + \$15.00 per candidate
Supplemental Orders	\$25 base fee, candidate count fee, and shipping/handling
Writing Proficiency Exam	\$ 350.00 Base Fee + \$ 15.00 per candidate (Professional Scoring included)
Non-specified special Services	CALL FOR DETAILS - Billed at the following rates Consultant Time \$130/hour Technician Time \$ 75/hour

Exhibit D

CPS HR On-line Skills Test Pricing Schedule Effective January 2022 - Subject to Change

ONLINE SKILLS TEST	
Single-Subject Test	
Administrative Set Up Fee (per order)	\$95.00
Per Candidate Fee	\$15.00

Exhibit E

CPS HR On-line Personality Test Pricing Schedule Effective January 2022 - Subject to Change

PERSONALITY TEST	
Report Option	Price Per Candidate
General Employability Report (if used with stock exam)	\$7.50
General Employability Report (if used without a stock exam)	\$10
Advantage Report	\$15
Express Report	\$55
Potential Report	\$155
Challenge Report	\$155
Values Report	\$155
Leader Basis	\$205
Leadership Forecast (includes Potential, Challenge and Values reports)	\$410
Coaching Report	<i>Free with order of Leadership Forecast Report</i>

Test Rental Contact Information:

CPS HR Consulting
Attn: Test Rental Division
2450 Del Paso Rd., Ste. 160, Sacramento CA 95834

Telephone: 916.263.1800 / Toll Free 866.867.5272
Fax: 916.921.6240 / E-mail: testrental@cpshr.us



Contract Number

SAP Number

4400019267

Agreement No. 22-57

Department of Aging and Adult Services

Department Contract Representative	<u>Karol Hamman, Contract Analyst</u>
Telephone Number	<u>909.388.0215</u>

Contractor	<u>City of Montclair</u>
Contractor Representative	<u>Marcia Richter</u>
Telephone Number	<u>909-625-9453</u>
Contract Term	<u>July 1, 2022 through June 30, 2025</u>
Original Contract Amount	<u>\$675,000</u>
Amendment Amount	<u> </u>
Total Contract Amount	<u>\$675,000</u>
Cost Center	<u>5292001036</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County, hereafter referred to as "County," desires to provide Elderly Nutrition Program services; and

WHEREAS, County has been allocated funds by Older Americans Act of 1965 to develop nutrition programs for the elderly; and

WHEREAS, County finds City of Montclair, hereafter referred to as "Contractor," qualified to provide Elderly Nutrition Program services; and

WHEREAS, County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

NOW THEREFORE, County and Contractor mutually agree to the following terms and conditions:

TABLE OF CONTENTS

I. DEFINITIONS 3
II. CONTRACTOR SERVICE RESPONSIBILITIES 7
III. CONTRACTOR GENERAL RESPONSIBILITIES 7
IV. COUNTY RESPONSIBILITIES..... 199
V. FISCAL PROVISIONS 19
VI. RIGHT TO MONITOR AND AUDIT 22
VII. CORRECTION OF PERFORMANCE DEFICIENCIES 233
VIII. TERM..... 244
IX. EARLY TERMINATION 244
X. GENERAL PROVISIONS 244
XI. CONCLUSION..... 288

ATTACHMENTS

- ATTACHMENT A – CLIENT COMPLAINT AND GRIEVANCE PROCEDURE, OLDER AMERICANS ACT PROGRAMS**
- ATTACHMENT B – ASSURANCE OF COMPLIANCE**
- ATTACHMENT C – SCOPE OF WORK**
- ATTACHMENT D – DISCLOSURE OF LOBBYING ACTIVITIES**
- ATTACHMENT E – INFORMATION SHEET**
- ATTACHMENT F – COMMUNITY FOCAL POINTS LIST**
- ATTACHMENT G – PAYMENTS, BUDGETS, CLOSEOUT, AND AUDITS**
- ATTACHMENT H – PROGRAM BUDGET**
- ATTACHMENT I – MATCHING FUNDS NARRATIVE**
- ATTACHMENT J – MONTHLY EXPENDITURE REPORT**
- ATTACHMENT K – REQUEST TO PURCHASE PROPERTY/EQUIPMENT**
- ATTACHMENT L – CONTRACTOR/VENDOR CONFIDENTIALITY STATEMENT (CDA 1024)**
- ATTACHMENT M – SECURITY INCIDENT REPORT (CDA 1025a and CDA 1025b)**

I. DEFINITIONS

- A. Area Agency on Aging (AAA) – In 1976, the State of California designated San Bernardino County Department of Aging and Adult Services (DAAS) as the Area Agency on Aging for the county. As a result of this designation, DAAS receives funding from the California Department of Aging to administer the programs authorized by the Older Americans Act.
- B. California Code of Regulations (CCR) – Is the codification of the general and permanent rules and regulations announced in the California Regulatory Notice Register by California state agencies.
- C. California Department of Aging (CDA) – Administers programs that serve older adults, adults with disabilities, family caregivers and residents in long-term care facilities throughout the state.
- D. California Department of Social Services Manual of Policies and Procedures (CDSS MPP) – The rules and regulations governing the Department and Program.
- E. Catalog of Federal Domestic Assistance (CFDA) – A government-wide compendium of federal programs, projects, services and activities that provide assistance or benefits to the American Public.
- F. Code of Federal Regulation (CFR) – The codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the federal government of the United States.
- G. Congregate Nutrition Services (C-1) – Provides nutritious meals, nutrition education, and nutrition risk screening to individuals age sixty (60) and older in a social setting. The program offers individuals an opportunity to socialize with others to reduce social isolation while promoting health and well-being through nutrition.
- H. Contract – Agreement between County and Contractor, including the terms and conditions, scope of work, attachments, addenda, and amendments, if applicable.
- I. Contractor/Vendor – Refers to an Applicant whose application results in a contract to provide Elderly Nutrition Services.
- J. California Retail Food Code (CRFC) [Section 113700 et seq., California Health and Safety Code] – Replaces California Uniform Retail Food Facilities Law (CURFFL).
- K. Cost Reimbursement – Payment method by which allowable and reasonable costs incurred by a Contractor in the performance of the contract – which may include overhead, personnel, utilities, etc. are reimbursed in accordance with the terms of the Contract.
- L. Department of Aging and Adult Services (DAAS) – San Bernardino County department that empowers older adults and individuals with disabilities by providing services and working with individuals, service providers, and communities to improve or maintain choice, independence, and quality of living.
- M. Department of Justice (DOJ) – A federal executive department of the United States government responsible for the enforcement of the law and administration of justice.
- N. Dietary Reference Intake (DRI) – Nutrient recommendations prepared by the U.S. Academy of Sciences Institute of Medicine.
- O. Disability – A condition attributable to mental or physical impairment, or a combination of mental or physical impairments, that results in substantial functional limitations in one (1) or more of the following areas of major life activity:
 - 1. Self-care
 - 2. Receptive and expressive language
 - 3. Learning
 - 4. Mobility

5. Self-direction
 6. Capacity for independent living
 7. Economic self-sufficiency
 8. Cognitive functioning
 9. Emotional adjustment
- P. Elder – Any person residing in California who is sixty-five (65) years of age or older.
- Q. Elderly Nutrition Program (ENP) – A program which provides nutrition services, as authorized by the Older Americans Act of 1965, as amended, and which shall be provided in accordance with California Code of Regulations, 22 CA ADC § 7630 et. seq.
- R. Eligible Service Population – Older Individuals (sixty (60) years of age or older), giving preference to those in greatest economic or social need with particular attention to low-income minority individuals, older individuals with Limited English Proficiency, and older individuals residing in rural areas.(OAA Section 305 (a)(2)(E), CCR 7125, 7125, 7127,7130, and 7135.
- S. Equipment – Tangible personal property with a useful life of more than one (1) year and an acquisition cost of \$500 or more per unit.
- T. Financial Statement – For non-Federal entities that expend less than \$750,000 in a fiscal year in Federal awards, a statement that reflects the contractor’s financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited.
- U. Frail – An older individual determined to be functionally impaired because the individual either:
1. Is unable to perform at least two (2) activities of daily living, including bathing, toileting, dressing, feeding, breathing, transferring and mobility and associated tasks, without substantial human assistance, including verbal reminding, physical cueing or supervision.
 2. Due to a cognitive or other mental impairment, requires substantial supervision because the older individual behaves in a manner that poses a service health or safety hazard to the individual or to others.
- V. General Program Income – Meal income receive in the form of contributions or donations made by the elderly services rendered under this Contract.
- W. Hazard Analysis Critical Control Point (HACCP) – A systematic preventive approach to food safety from biological, chemical, and physical hazards in production processes that can cause the finished product to be unsafe and designs measures to reduce these risks to a safe level.
- X. HACCP Plan – A written document that delineates the formal procedures for following the HACCP principles that were developed by the National Advisory Committee on Microbiological Criteria for Foods and complies with the requirements of Section 114055, Health and Safety Code.
- Y. HACCP Principles – The seven (7) basic steps of HACCP, which are:
1. The completion of hazard analysis identification by identifying the likely hazards to consumers presented by a specific food.
 2. The determination of critical control points in receiving, storage, preparation, display and dispensing of a food.
 3. The setting or measurable critical limits for each critical control point determined.
 4. Developing and maintaining monitoring practices to determine if critical limits are being met.
 5. Developing and utilizing corrective action plans when failure to meet critical limits is detected.

6. Establishing and maintaining a record keeping system to verify adherence to a HACCP plan.
7. Establishing a system of audits to:
 - a. Initially verify the effectiveness of the critical limits set and appropriateness of the determination of critical control points.
 - b. Periodically verify the effectiveness of the HACCP plan.
- Z. Home Delivered Nutrition Services (C-2) – Provides nutritious home-delivered meals, nutrition education, and nutrition risk screening to individuals age sixty (60) and older who are homebound because of illness, incapacity, disability, or are otherwise isolated.
- AA. Human Services (HS) – San Bernardino County Human Services, a system of integrated services, where the programs and resources of nine (9) County departments come together to provide a rich, more complete array of services to the citizens of San Bernardino County under one coordinated effort.
- BB. Indirect Costs – Costs incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objective specifically benefitted, without effort disproportionate to the results achieved.
- CC. Matching Contributions – The value of third-party in-kind contributions and that portion of program and administrative costs funded (cash or in-kind) by the Contractor, subcontractor, or other local resources.
 1. Cash – Cash other than program income contributed to the project from local or State funds. With the exception of Community Development Block Grants (CDBG), Federal funds cannot be used as match. Costs borne by the Contractor and cash contributions from any and all third parties, i.e., company/private donations, and vendor general fund, are considered cash matching funds.
 2. In-Kind – Contributions from third parties are considered in-kind matching funds. Examples of in-kind match include volunteered time and use of facilities to hold meetings or conduct project activities.
- DD. Non-matching Contributions – Local funding that does not qualify as matching contributions and/or is not being budgeted as matching contributions (e.g., Federal funds).
- EE. Nutrition Education – Informing recipients of congregate and home-delivered meals about current facts and information that will promote improved food selection, eating habits, nutrition, health promotion, and disease prevention practices.
- FF. Nutrition Screening – Completion of a nutrition screening checklist by eligible individuals to determine if they are at nutrition risk. A nutrition screening checklist is a federal public information collection requirement in the National Aging Program Information System (NAPIS), found in the Federal Register, Volume 59, No. 188, September 29, 1994.
- GG. Nutrition Services – The procurement, preparation, transport and service of meals, nutrition education, and nutrition screening, to eligible individuals at congregate sites or in their homes.
- HH. Nutrition Services Incentive Program (NSIP) – Refers to the United States Department of Agriculture's (USDA) cash allotment or commodity program. The purpose of NSIP is to provide incentives and reward effective performance in the efficient delivery of nutritious meals to older individuals. Funding is based on the number of meals served in the prior year and available appropriation.
- II. Older Americans Act (OAA) – The overall purpose of this act is to provide comprehensive, coordinated, community-based systems of service to persons age 60 and older in order to enable them to maintain health, personal dignity, and independence (42 USCA §3001 et seq.).
- JJ. Older Individual – A person sixty (60) years of age or older.

- KK. Office of Management and Budget (OMB) – The business division of the Executive Office of the President of the United States that administers the United States federal budget and oversees the performance of federal agencies.
- LL. Personally Identifiable Information (PII) – Information, which can be used to distinguish or trace an individual's identity, including, but not limited to, name, social security number, date of birth, address, children's names Driver License number, and any computer-based address or identifier.
- MM. Program Income – Revenue generated by the Contractor/subcontractor from contract-supported activities. Program income is:
1. Voluntary contribution received from a participant or responsible party as a result of services.
 2. Income from usage or rental fees of real or personal property acquired with grant funds or funds provided under this Contract.
 3. Royalties received on patents and copyrights from contract-supported activities
 4. Proceeds from sale of items fabricated under a contract agreement.
- NN. Registered Dietician – A person who shall be both:
1. Qualified as specified in Sections 2585 and 2586, Business and Professions Code, and
 2. Registered by the Commission on Dietetic Registration.
- OO. Reimbursable Item – Allowable cost and compensable item.
- PP. Schedule of Expenditures of Federal Awards (SEFA) – A document for planning and conducting an audit organization which includes federal award expenditures, transactions, cost reimbursements, etc.
- QQ. Service Area – Defines a geographic area to be served under this program.
- RR. Single Audit Entity – Non-Federal entities that expend \$750,000 or more in a fiscal year in Federal awards. Single Audit Entities must have a single or program-specific audit conducted for the year in accordance with OMB Circular A-133.
- SS. SOC 341 – Form used to report a suspected incident of abuse of an elder or dependent adult required under Welfare and Institutions Codes Sections 15630 and 15686(a)(1).
- TT. State – State of California.
- UU. Subcontract – To contract with a third party to perform all or part of the work included in this RFP and the resulting contract.
- VV. Title III of the Older Americans Act – Authorizes grants to states and local entities for supportive and nutrition services.
- WW. Title III C-1 (Congregate Nutrition Program) – Nutrition services for older individuals in a congregate setting. Services include meals, nutrition and health promotion education, health promotion programs, nutrition risk screening, and opportunities for socialization. (22 CCR 7368.7 (a)).
- XX. Title III C-2 (Home-Delivered Nutrition Program) – Home-Delivered Nutrition services for older individuals who are frail and homebound by reason of illness, disability, or isolation. (22 CCR 7368.7 (c)).
- YY. United States Code (USC) – The official compilation and codification of the general and permanent federal statutes of the United States.
- ZZ. United States Department of Agriculture (USDA) – Department of the United States government that manages various programs related to food, agriculture, natural resources, rural development and nutrition.

- AAA. Volunteer – An individual who provides services without pay, but may receive reimbursement for expenses.
- BBB. Welfare and Institutions Code (WIC) – Codes enacted by the California State Legislature which address services relating to welfare, dependent children, mental health, handicapped, elderly, delinquency, foster care, Medi-Cal, food stamps, rehabilitation and long-term care, etc.

II. CONTRACTOR SERVICE RESPONSIBILITIES

Contractor shall provide all services as outlined in the Scope of Work (Attachment C) and shall be compensated on a cost reimbursement basis.

III. CONTRACTOR GENERAL RESPONSIBILITIES

- A. In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of San Bernardino County. Contractor agrees to comply with the applicable federal suspension and debarment regulations, including, but not limited to Title 48 Code of Federal Regulations (CFR), Chapter 1, Subchapter B, Part 9.4. By signing this Contract, Contractor certifies that:
 - 1. Neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
 - 2. Have not within a three-year period preceding this Contract been convicted of or had a judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; or a violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction or records, making false statements, or receiving stolen property;
 - 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph (A)(2) herein; and
 - 4. Have not within a three-year period preceding this Contract had one (1) or more public transactions (Federal, State or local) terminated for cause or default.
- B. Contractor shall not be identified as suspended or debarred on the federal System for Award Management's (SAM) excluded list (<https://www.sam.gov>). If at any time during the term of this Contract, the County determines Contractor is identified as either suspended or debarred on the SAM, Contractor shall be considered in material breach of this Contract, and the County may proceed under the Correction of Performance Deficiencies at Section VII of this Contract, including immediate termination of this Contract. If Contractor becomes aware, at any point during the term of this Contract, that it is identified as suspended or debarred on the SAM excluded list, Contractor must immediately inform County. Such inclusion will be considered a material breach of the Contract and be sufficient grounds for immediate termination.
- C. Without the prior written consent of the Assistant Executive Officer of Department Operations, this Contract is not assignable by Contractor either in whole or in part.
- D. This is not an exclusive Contract. The County reserves the right to enter into a contract with other Contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation, under the terms of this Contract.
- E. Contractor agrees to provide or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five (5) years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County Administrative Official" is

defined as a member of the Board of Supervisors or such member's staff, Chief Executive Officer of the County or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

- F. If during the course of the administration of this Contract, the County determines that the Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.
- G. Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.
- H. Contractor agrees not to enter into any subcontracts for work contemplated under this Contract without first obtaining written approval from the Director of DAAS through the HS Contracts Unit. The County may withhold such consent in its sole discretion.

At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Paragraph CC of this Section III. All approved subcontractors shall be subject to the provision of this Contract applicable to Contractor Personnel, including removal pursuant to Paragraphs X and Y of this Section III.

For any subcontractor, Contractor shall:

- 1. Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions;
 - 2. Ensure that the subcontractor follows County's reporting formats and procedures as specified by County; and
 - 3. Include in the subcontractor's subcontract substantially similar terms as are provided in this Contract.
- I. Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. Said records shall be kept and maintained within San Bernardino County. County shall have the right upon reasonable notice and at reasonable hours of business to examine and inspect such records and books.

All records relating to the Contractor's personnel, contractors, subcontractors, service/scope of work and expenses pertaining to this Contract shall be kept in generally acceptable accounting format. Records should include, but are not limited to, monthly summary sheets, sign-in sheets, and other primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must also comply with the appropriate Code of Federal Regulations (CFR) that state the administrative requirements, cost principles and other standards for accountancy. Please refer to http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl for further information.

All records shall be complete and current and comply with all contract requirements. Failure to maintain acceptable records per the preceding requirements shall be considered grounds for withholding of payments for billings submitted and for termination of the Contract.

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

- K. Contractor shall notify County of any continuing vacancies and any positions that become vacant during the term of this Contract that will result in reduction of services to be provided under this Contract. Upon notice of vacancies, the Contractor shall apprise County of the steps being taken to provide the services and to fill the position as expeditiously as possible. Vacancies and associated problems shall be reported to County on each periodically required report for the duration of said vacancies and/or problems.
- L. Contractor shall immediately notify County of any foreseen or unforeseen events that will or may cause a disruption in services. Upon notice of a foreseen or unforeseen event that disrupts service, the Contractor shall apprise County of the steps being taken to provide and/or restore services expeditiously as possible.
- M. Contractor shall designate an individual to serve as the primary point of contact for the Contract. Contractor shall notify the County when the primary contact will be unavailable/out of the office for one (1) or more workdays. Contractor or designee must respond to County inquiries within two (2) County business days. Contractor shall not change the primary contact without written notice to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.
- N. Contractor shall repair, or cause to be repaired, at its own cost, all damage to County property, vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or employees or agents of the Contractor. Contractor shall also be responsible for damage caused by his/her staff to personal property of County employees. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.
- If the Contractor fails to make timely repairs, the County may make any necessary repairs. For such repairs, the Contractor shall repay all costs incurred by the County, by cash payment upon demand or County may deduct such costs from any amounts due to the Contractor from the County, as determined at County's sole discretion.
- O. Contractor shall provide a system, approved by the County, through which recipients of service shall have the opportunity to express and have considered their views and complaints regarding the delivery of services. The procedure must be in writing and posted in clear view of all recipients.
- P. Contractor will ensure that staff are knowledgeable on the Client Complaint and Grievance Procedure, Older Americans Act Programs (Attachment A) and ensure that any complaints by recipients are referred to the County in accordance with the procedure.
- Q. Contractor shall notify the County of all upcoming meetings of the Board of Directors or other governing party and shall keep the County apprised of any and all actions taken by its Board of Directors which may impact on the Contract. Board of Directors' minutes shall be submitted to the County upon request. Further, a County representative shall have the option of attending Board meetings during the term of this Contract.
- R. Contractor shall ensure that all staff, volunteers and/or subcontractors performing services under this Contract comply with the items below prior to providing any services. Additional information concerning these requirements is specified at <http://hss.sbcounty.gov/Privacy>. The information contained thereat is hereby incorporated by this reference.
1. Read, understand and comply with the Privacy and Security Requirements Summary.
 2. Ensure employees, sub-contractors, agents, volunteers and interns who have access to PII complete the Privacy and Security Training and execute the training acknowledgement form and other training materials annually.
 3. Ensure employees, sub-contractors, agents, volunteers and interns who have access to PII sign the Confidentiality Statement annually.

4. Report actual, suspected or potential breaches of PII immediately to the Human Services Privacy and Security Office via email at: HSPrivacySecurityOfficer@hss.sbcounty.gov.
- S. Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this Contract, except for statistical information not identifying any participant. The Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.
- T. Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialized and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.
- U. To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing Services pursuant to this Contract, Contractor must comply with the provisions of the California Consumer Privacy Act (CCPA) (Cal. Civil Code §§1798.100, et seq.). For purposes of this provision, "business," "consumer," and "personal information" shall have the same meanings as set forth at Civil Code Section 1798.140. Contractor must contact the County immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the County, including but not limited to, providing a list of disclosures or deleting personal information. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the County any notice provided by a consumer to Contractor pursuant to Civil Code section 1798.150(b) alleging a violation of the CCPA that involves personal information received or maintained pursuant to this Contract. Contractor must immediately notify the County if it receives a notice of violation from the California Attorney General pursuant to Civil Code section 1798.155(b).
- V. Contractor shall ensure that all known or suspected instances of child abuse or neglect are reported to the appropriate law enforcement agency or to the appropriate Child Protective Services agency. This responsibility shall include:
 1. Assurance that all employees, agents, consultants or volunteers who perform services under this Contract and are mandated by Penal Code Sections 11164 et seq. to report child abuse or neglect, sign a statement, upon the commencement of their employment, acknowledging their reporting requirements and their compliance with them.
 2. Development and implementation of procedures for employees, agents, consultants, or volunteers who are not subject to the mandatory reporting laws for child abuse to report any observed or suspected incidents of child abuse to a mandated reporting party, within the program, who will ensure that the incident is reported to the appropriate agency.
 3. Provision for arrangement of training in child abuse reporting laws (Penal Code section 11164 et seq.) for all employees, agents, consultants, and volunteers, or verification that such persons have received training in the law within thirty (30) days of employment/volunteer activity.
- W. Contractor agrees to and shall comply with the County's Elder and Dependent Adult Abuse Reporting requirements: Under the terms of this Contract, as changes in the Elder and

Dependent Adult Reporting Laws are enacted, the Contractor is bound to comply with the most current regulations.

1. Who Must Report: In accordance with Welfare and Institutions Code (W & I) Section 15630, all employees of the Contractor and its Subcontractors are mandated reporters of elder and dependent adult abuse. Contractor assures all employees, agents, consultants or volunteers who perform services under this Contract and are mandated to report elder and dependent adult abuse will sign a statement (SOC 341A) at <http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC341A.pdf>, upon the commencement of their employment, acknowledging their reporting requirements and their compliance with them.
 2. When to Report: Mandated reporters are required to report all instances of known or suspected abuse of the elderly and dependent adults immediately or as soon as practically possible, under the following circumstances:
 - a. When the mandated reporter has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, isolation, neglect, financial abuse, mental abuse, or sexual abuse; or
 - b. When the mandated reporter is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, neglect, financial abuse, mental abuse, or sexual abuse.
 3. To Whom to Report: Incidents of elder and dependent adult abuse must be reported to the correct agency as follows:
 - a. If the abuse has occurred in a long-term care facility, except a state mental hospital or state developmental center, the report shall be made to the local Long-Term Care Ombudsman or local law enforcement;
 - b. If the abuse has occurred in a state mental hospital or state developmental center, the report shall be made to the designated investigators of the State Department of Mental Health or the State Department of Developmental Services or to the local law enforcement;
 - c. If the abuse occurred anywhere other than a long-term care facility or State mental hospital or State developmental center, the report shall be made to Adult Protective Services or local law enforcement.
 4. How to Report: Mandated reporters are required to take the following steps in all instances of known or suspected abuse of the elderly and dependent adults:
 - a. Place an immediate telephone call to Adult Protective services (1-877-565-2020) or local law enforcement to report the incident.
 - b. Within two (2) working days of making the telephonic report to the responsible agency, complete a written "Report of Suspected Dependent Adult/Elder Abuse" (SOC 341) form, <http://www.cdss.ca.gov/Portals/9/FMUForms/Q-T/SOC341.pdf?ver=2018-11-15-132736-097>. The completed form must be submitted to the same agency to which the incident was reported by telephone.
- X. Contractor shall obtain from the Department of Justice (DOJ) records of all convictions involving any sex crimes, drug crimes, or crimes of violence of a person who is offered employment or volunteers for all positions in which he or she would have contact with a minor, the aged, the blind, the disabled or a domestic violence client, as provided for in Penal Code section 11105.3 prior to providing any services. This includes licensed personnel who are not able to provide documentation of prior DOJ clearance. A copy of a license from the State of California, which requires a DOJ clearance, is sufficient proof. The County must be immediately notified of any records showing a conviction. The County may instruct Contractor to take action to deny/terminate employment or terminate internship and/or volunteer services where the records show the person is unsuitable for employment, internship, or volunteer services.

- Y. Contractor shall notify the County of any staff member, member of the board of directors, paid intern or volunteer who is knowingly or negligently employed who has been convicted of any crime of violence or of any sexual crime. Contractor shall investigate all incidents where an applicant, employee, intern or volunteer has been arrested and/or convicted for any crime listed in Penal Code Section 11105.3 and shall notify the County. In the County's discretion, the County may instruct Contractor to take action to either deny/terminate employment or terminate internship and/or volunteer services where the investigation shows that the underlying conduct renders the person unsuitable for employment, internship, or volunteer services.

Contractor shall immediately notify the County concerning the arrest and/or conviction, for other than minor traffic offenses, of any paid employee, member of the board of directors, agent, consultant, intern, or volunteer staff, when such information becomes known to Contractor.

- Z. In recognition of individual rights to work in a safe, healthful and productive workplace, as a material condition of this Contract, Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

1. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
2. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
3. Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

- AA. Contractor shall make every reasonable effort to prevent employees, consultants or members of its governing bodies from using their positions for purposes that are or give the appearance of being motivated by a desire for private gain for themselves or others, such as those with whom they have family, business, or other ties. In the event County determines a conflict of interest exists, any increase in costs associated with the conflict of interest may be disallowed by County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, agents, or employees have family, business or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicants and such persons have successfully competed for employment with other applicants on a merit basis.
- BB. Contractor shall adhere to the County's Travel Management Policy (08-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.
- CC. Contractor agrees to and shall comply with the following indemnification and insurance requirements:
1. Indemnification – The Contractor 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 contract 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. The Contractor'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.

2. Additional Insured – All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.1185.
3. Waiver of Subrogation Rights – The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.
4. Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.
5. Severability of Interests – The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.
6. Proof of Coverage – The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
7. Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".
8. Deductibles and Self-Insured Retention – Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to Risk Management.
9. Failure to Procure Coverage – In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

10. Insurance Review – Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

11. The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- a. Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- b. Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

1. Premises operations and mobile equipment.
2. Products and completed operations.
3. Broad form property damage (including completed operations).
4. Explosion, collapse and underground hazards.

- 5. Personal injury.
 - 6. Contractual liability.
 - 7. \$2,000,000 general aggregate limit.
- c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one (1) or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
- e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits.

or

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits.

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

- f. Environmental Liability Insurance – In addition to the Basic Requirements/Specifications for all contracts, any contract that involves the use handling, transportation, storage, abatement, containment or testing of any substance that is potentially toxic or hazardous to the environment, including but not limited to, those listed as hazardous by the United States Department of Transportation or the CAL OSHA “Director’s list of Hazardous Substances” or listed as radioactive by the Nuclear Regulatory Commission, shall have the following additional requirements.
- 1. Environmental Liability Insurance with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the County without any restrictions.
 - 2. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the

contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

- g. Abuse/Molestation Insurance – The Contractor shall have abuse or molestation insurance providing coverage for all employees for the actual or threatened abuse or molestation by anyone of any person in the care, custody, or control of any insured, including negligent employment, investigation and supervision. The policy shall provide coverage for both defense and indemnity with liability limits of not less than one million dollars (\$1,000,000) with a two million dollars (\$2,000,000) aggregate limit.
 - h. Cyber (internet) and Electronic Data Processing (EDP) Insurance – Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.
- DD. Contractor shall comply with all applicable laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations and performance under the terms of the Contract and shall procure all licenses and pay all fees and other charges required thereby. Contractor shall maintain all required licenses during the term of this Contract. Failure to comply with the provisions of this section may result in immediate termination of this Contract.
- EE. Contractor shall comply with all applicable local health and safety clearances, including fire clearances, for each site where services are provided under the terms of this Contract.
- FF. Contractor agrees to and shall comply with the County’s Equal Employment Opportunity Program, Employment Discrimination, and Civil Rights Compliance requirements:
- 1. Equal Employment Opportunity Program – The Contractor agrees to comply with the provisions of the Equal Employment Opportunity Program of the San Bernardino County and all rules and regulations adopted pursuant thereto: Executive Orders 11246, as amended by Executive Order 11375, 11625, 12138, 12432, 12250; Title VII of the Civil Rights Act of 1964; Division 21 of the California Department of Social Services Manual of Policies and Procedures; California Welfare and Institutions Code section 10000), the California Fair Employment and Housing Act; and other applicable federal, state, and county laws, regulations and policies relating to equal employment or social services to welfare recipients, including laws and regulations hereafter enacted.
 - 2. Employment Discrimination – During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment or service recipient because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.
 - 3. Civil Rights Compliance – The Contractor shall develop and maintain internal policies and procedures to assure compliance with each factor outlined by state regulation. These policies must be developed into a Civil Rights Plan, which is to be on file with the County Human Services Contracts Unit within thirty (30) days of awarding of the Contract. The Plan must address prohibition of discriminatory practices, accessibility, language services, staff development and training, dissemination of information, complaints of discrimination, compliance review, and duties of the Civil Rights Liaison.

Upon request, the County shall supply a sample of the Plan format. The Contractor shall be monitored by the County for compliance with provisions of its Civil Rights Plan. Contractor is required to maintain and provide a current Civil Rights Plan for the duration of the Contract and submit the Assurance of Compliance form (Attachment B) annually.

- a. Recognize any same-sex marriage legally entered into in a United States (U.S.) jurisdiction that recognizes their marriage, including one of the fifty (50) states, the District of Columbia, or a U.S. territory, or in a foreign country so long as that marriage would also be recognized by a U.S. jurisdiction. This applies regardless of whether or not the couple resides in a jurisdiction that recognizes same-sex marriage. However, this does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under the law of the jurisdiction of celebration as something other than a marriage. Accordingly, recipients must review and revise, as needed, any policies and procedures which interpret or apply federal statutory or regulatory references to such terms as "marriage," "spouse," "family," "household member" or similar references to familial relationships to reflect inclusion of same-sex spouse and marriages. Any similar familial terminology references in the U.S. Department of Health and Human Services' (HHS) statutes, regulations, or policy transmittals will be interpreted to include same-sex spouses and marriages legally entered into as described herein. [USC 7-Section 3 of the Defense of Marriage Act]
 - b. The Contractor and its Subcontractor Vendors shall comply with Governor's Executive Order 2-18-2011, which bans expenditures on promotional and marketing items colloquially known as "S.W.A.G." or "Stuff We All Get."
4. Equity – Contractor shall adhere to and participate in County efforts ensuring all individuals and communities have equal access and opportunity to health and wellbeing by providing culturally and linguistically appropriate services to all people of color and culture, age, disabilities, gender, sexual orientation or gender identity including people with limited English proficiency (LEP). Services provided must be respectful of and responsive to the cultural and linguistic needs of County residents.
- a. Contractor shall assess the demographic make-up and population trends of its service area to identify the cultural and linguistic needs of the eligible service population. Such studies are critical to designing and planning for providing appropriate, effective and equitable services.
 - b. Contractor shall partner with and support community partners in addressing disparities in family stability, health and mental wellness, education, employment, housing and overall delivery of human services. Partnering includes opportunities for partners and community members to design, implement and evaluate practices, and services ensuring equity and cultural and linguistic appropriateness.
 - c. Contractor shall work with County to communicate and provide opportunities for individuals and communities of color and culture to provide feedback on progress and outcomes achieved to address disparities in family stability, health and mental wellness, education, employment, housing and overall delivery of human services.
 - d. Contractor shall recruit, promote and support a culturally and linguistically diverse workforce that is responsive to and represents the population being served. This includes trained and competent bilingual staff.
 - e. Contractor shall provide training to enhance its workforce knowledge on cultural and linguistic competence. Becoming culturally and linguistically competent is a developmental process and incorporates at all levels the importance of culture, the assessment of cross-cultural relations, vigilance towards the dynamics that result from cultural differences, the expansion of cultural knowledge, and the

adaptation of services to meet culturally-unique needs. Providing services in a culturally appropriate and responsive manner is fundamental in any effort to ensure success of high quality and cost-effective health and human services. Offering those services in a manner that fails to achieve its intended result due to cultural and linguistic barriers does not reflect quality of care and is not cost-effective.

- f. To ensure equal access to quality care for diverse populations, Contractors providing health and health care services may adopt the Federal Office of Minority Health Culturally and Linguistically Appropriate Services (CLAS) national standards.
 - g. Upon request, Contractor will provide County Human Services evidence of adherence to requirements listed above.
- GG. Contractor agrees to comply with all applicable provisions of the Americans with Disabilities Act (ADA).
- HH. Contractor shall observe the mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (California Code of Regulations title 20, section 1401 et seq.).
- II. If the amount available to Contractor under this Contract, as specified in Section V, Paragraph A, exceeds \$100,000, Contractor agrees to comply with the Clean Air Act (42 U.S.C. Section 7606), section 508 of the Clean Water Act (33 U.S.C. section 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 C.F.R. section 1.1 et seq.).
- JJ. In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.
- To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractors must also be able to report on environmentally preferable goods used in the provision of Services to the County, utilizing a County approved form.
- KK. Contractor understands and agrees that any and all legal fees or costs associated with lawsuits concerning this Contract against the County shall be the Contractor's sole expense and shall not be charged as a cost under this Contract. In the event of any Contract dispute hereunder, each Party to this Contract shall bear its own attorney's fees and costs regardless of who prevails in the outcome of the dispute.
- LL. Contractor shall register with 211 San Bernardino County Inland Empire United Way within thirty (30) days of contract effective date and follow necessary procedures to be included in the 211 database. The Contractor shall notify the 211 San Bernardino County Inland Empire United Way of any changes in program services, location or contact information within ten (10) days of any change. Services performed as a result of being included in the 211 database, are separate and apart from the services being performed under this Contract and payment for such services will not be the responsibility of the County.
- MM. Contractor agrees that any news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County shall not be made or used without prior written approval of the DAAS Director or their designee, and shall include County approved branding.
- NN. The Contractor, by signing this Contract, hereby certifies to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation renewal, amendment, or modification of and federal contract, grant, loan or cooperative agreement.
 2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of a Member of Congress in connection with the federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities" form (Attachment D), in accordance with its instructions.
- OO. IRAN CONTRACTING ACT 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 (<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-Ineligible-Businesses#@ViewBag.JumpTo>) as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.
- Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205. Contractor agrees that signing the Contract shall constitute signature of this Certification.
- PP. Contractor shall comply with the Environmental Tobacco Smoke/Pro-Children Act of 1994 (20 U.S.C 6081 et seq.).
- QQ. Contractors shall complete and submit Information Sheet (Attachment E) in accordance with its instructions.
- RR. Department of Aging and Adult Services contract with California Department of Aging, Article II Paragraph A (23), requires DAAS to provide contractors with additional resources for their customers called Community Focal Points List (Attachment F).

IV. COUNTY RESPONSIBILITIES

County shall:

- A. Monitor and evaluate the performance of the Contractor in meeting the terms of the Contract and the quality and effectiveness of services provided based on the criteria as determined by the County.
- B. Provide consultation and technical assistance in monitoring the terms of this Contract.
- C. Compensate the Contractor for approved expenses in accordance with Section V of this contract.

V. FISCAL PROVISIONS

- A. The maximum amount payable under this Contract shall not exceed \$675,000, of which a portion will be federally funded, and shall be subject to availability of funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.

B. Contract shall be compensated on a cost reimbursement basis, limited to the obligations and expenditures outlined in the Program Budget (Attachment H) annually, attached hereto and incorporated by reference into this Contract. The Program Budget (Attachment H) will be revised annually, but shall not exceed the aggregate amount over the term of the Contract.

C. Matching Contributions

1. The Contractor shall provide in-kind matching contributions for all Federal Title III funding provided under this contract at a rate of 11.11%. The exact amount will be stated on budget received with annual allocation.
2. Matching contributions must be allowable costs as determined by CDA. Allowable costs may include, but are not limited to, rent, utilities, supplies, and personnel (volunteers).
3. Uncompensated indirect expense or Contractor allocated overhead expenses may be claimed as an in-kind matching expense if such expenses were determined on the basis of an approved indirect cost rate plan.
4. Contractor shall provide a Matching Funds Narrative (Attachment I) to DAAS with the submittal of the initial budget identifying the type, rates applied and, if applicable, source/location of allowable costs to be used as matching contributions for the period of the Contract. The identified matching contributions shall be reported to DAAS by the Contractor on a monthly or quarterly basis as specified in Section V, Paragraph D.
 - a. Services of volunteers shall be valued at rates consistent with those ordinarily paid for similar work by the Contractor. If the Contractor does not have similar work, the rate shall be consistent with those in the labor market.
 - b. All other in-kind contributions shall be valued at current market value.

D. Reports

1. Contractor, at such times and in such forms as DAAS may require, shall furnish statements, records, reports, data, and information requested by DAAS pertaining to the Contractor's performance of services hereunder and other matters covered by this Contract. The forms shall be reviewed for timeliness, completeness, and correctness of the information submitted, by the Program Director or his/her designee, prior to submission to DAAS. Incomplete forms shall be returned to the Contractor for completion. (In the event of changes in these forms, DAAS shall advise the Contractor via written notice.) The Contractor shall develop and implement a process for ensuring quality control. Contractor shall meet the following standards for the submission of required financial reports:
 - a. Financial Reporting – Accurate, current and complete disclosure of the financial results of the program shall be made in accordance with the financial reporting requirements of this Contract. The following reports are to be submitted to DAAS when indicated:
 - 1) Monthly
 - a) Monthly Expenditure Report (Attachment J) (Request for reimbursement) form – Due to DAAS Administration, Aging Fiscal, along with all back-up documentation by the 10th working day of the month following the month of services to the address stated below:

DAAS Administration
Attention: Aging Fiscal
Nutrition Program Staff Analyst
784 E. Hospitality Lane
San Bernardino, CA 92415-0515

- 2) Annually – The following reports are due on an annual basis by no later than July 15:
 - a) Financial Close-out Report
 - b) Periodic Inventory Report
 - c) Single Audit or Financial Statement
 - d) Schedule of Expenditures of Federal Awards (SEFA)
- 3) Single Audit – If Contractor is a Single Audit entity as defined in this Contract, Contractor shall:
 - a) Communicate the Catalog of Federal Domestic Assistance (CFDA) number to the independent auditor conducting the organization’s Single Audit. The CFDA number for the III C Services is 93-045 and 93.053.
 - b) Provide a copy of Contractor’s Schedule of Expenditures of Federal Awards (SEFA) to DAAS on an annual basis.

- E. Under normal conditions, Contractors shall expect payment approximately sixty (60) days after submission of a correctly prepared invoice.
- F. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor’s designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- G. Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- H. Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- I. County is not liable for the payment of any taxes, other than applicable sales or use tax, resulting from this Contract however designated, levied or imposed, unless County would otherwise be liable for the payment of such taxes in the course of its normal business operations.
- J. Upon written demonstration of need by Contractor and at the option of County, funds may be advanced to Contractor by County upon approval of the Director of DAAS. Any such advance will cause the amounts payable to Contractor in the first ten (10) months of the payment year to be reduced by the amount determined by dividing total advance by ten (10). No advance will increase the amount shown in Paragraph A of this Section. In the event of early termination, the Contractor shall pay the remaining balance due to the County within thirty (30) calendar days.

If as a result of advanced income, the project earns interest on funds awarded by DAAS, that interest shall be identified as income to the program and used for program expenditures, with full documentation on file.

Contractor shall expend all funds received hereunder in accordance with this Contract.

DAAS reserves the right to refuse payment to the Contractor or later disallow costs for any expenditure determined by DAAS and/or CDA not to be in compliance with this Contract, or inappropriate to such activities, or for which there is inadequate supporting documentation presented, or for which prior approval is required but not granted.

Contractor shall return to DAAS, immediately upon written demand, any funds provided under the Contract which are not payable for goods or services delivered prior to the termination, cancellation, or expiration of this Contract, or the dissolution of the entity.

- K. Contractor shall maintain accounting records to account for the funds received under the terms and conditions of this Contract separate from any other funds administered by the Contractor. Contractor shall maintain records in accordance with generally accepted accounting principles.
- L. General program income shall be used to increase the number of elderly served by a project, to facilitate access to such meals, and to provide supportive services directly related to nutrition as defined in the Scope of Work (Attachment C). General program income shall be used within the program in which it was earned.
- M. The Contractor shall request a budget amendment, in writing, in advance of expenditures: 1) when aggregate expenditures are expected to exceed an approved budgeted line item by more than fifteen (15%) percent; or 2) to add a new budget line item. No budget revision may result in an increase of the maximum dollar amount stated in Paragraph A, of this Section. The written request must specify the changes requested, by line item and amount, and must include justification. Prior to implementation of a budget revision, the County shall approve (or deny) the budget revision request. The County has the authority to approve line item budget changes to the budget herein, as long as these changes do not exceed the total contract amount. County shall notify the Contractor in writing of the status of the budget revision request within fourteen (14) calendar days of receipt of the Contractor's written request. The County reserves the right to deny the Contractor's invoice for expenditures in excess of the approved budgeted line item amount.

VI. RIGHT TO MONITOR AND AUDIT

- A. County shall have the absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract.
- B. County or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Auditor 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 Contractor in the delivery of services provided under this Contract. Full cooperation shall be given by Contractor in any auditing or monitoring conducted. Contractor shall repay to the County within thirty (30) days of receipt of audit findings any reimbursements made by County to Contractor that are determined by subsequent audit to be unallowable pursuant to the terms of this Contract or by law.
- C. Contractor shall cooperate with County in the implementation, monitoring and evaluation of this Contract and comply with any and all reporting requirements established by this Contract.
- D. All records pertaining to service delivery and all fiscal, statistical and management books and records shall be available for examination and audit by county, federal and state representatives for a period of three (3) years after final payment under the Contract or until all pending county, state, and federal audits are completed, whichever is later. Records of the Contractor which do not pertain to the services under this Contract may be subject to review or audit unless provided in this or another Contract. Technical program data shall be retained locally and made available upon the County's reasonable advance written notice or turned over to County. If said records are not made available at the scheduled monitoring visit, Contractor may, at County's option, be required to reimburse County for expenses incurred due to required rescheduling of monitoring visit(s). Such reimbursement will not exceed \$50 per hour (including travel time) and may be deducted from the following month's claim for reimbursement.
- E. Contractor shall provide all reasonable facilities and assistance for the safety and convenience of County's representatives 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 Contractor.
- F. Upon County request, Contractor shall hire a licensed Certified Public Accountant, approved by the County, who shall prepare and file with County, within sixty (60) days after the termination of

the Contract, a certified fiscal audit of related expenditures during the term of the Contract and a program compliance audit.

- G. Pursuant to Code of Federal Regulations (CFR) – Title 2 CFR 200.501, Contractors expending \$750,000 or more in federal funds within the Contractor’s fiscal year must have a single audit or program-specific audit performed. A copy of the audit performed in accordance with Code of Federal Regulations (CFR) – Title 2 CFR 200.501 shall be submitted to the County within thirty (30) days of completion, but no later than nine (9) months following the end of the Contractor’s fiscal year. Please refer to http://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200_1501&rgn=dv8 for further information.
- H. The following closely related programs identified by the Catalog of Federal Domestic Assistance (CFDA) number are to be considered as an "Other cluster" for purposes of determining major programs or whether a program specific audit may be elected. The Contractor shall communicate this information to the independent auditor conducting the organization's single audit.

US Department of Health and Human Services:
 Number 93.045 Older Americans Title III Grants for State and Community Programs on Aging

 Number 93.053 Older Americans Act Section 311 – Nutrition Services Incentive Program

- I. County is required to identify the Contractor Data Universal Numbering System (DUNS) numbers and Federal Award Identification Number (FAIN) in all County contracts that include Federal funds or pass through of Federal funds. This information is required in order for the County to remain in compliance with 2CFR Section 200.331, and remain eligible to receive Federal funding. The Contractor shall provide the Contractor name as registered in DUNS, as well as the DUNS number to be included in this Contract. Related FAIN will be included in this Contract by the County.

Contractor Name as registered in DUNS	City of Montclair
DUNS	84976919
FAIN	2201CAOACM-01 (Congregate Meals) 2201CAOANS-01 (Nutrition Services Incentive Program) 2101CAHDC5-00 (HDC5) Consolidated Appropriations Act, 2021 suppl. Funding, nutrition OOA Title III C-2 2101CACM6-00 (American Rescue Plan (ARP) for Congregate Meals under Title III-C1 of the OAA) 2101CAHD6-00 (American Rescue Plan (ARP) for Home Delivered Meals under Title III-C2 of the OAA)

VII. CORRECTION OF PERFORMANCE DEFICIENCIES

- A. In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under this Contract, Contractor shall notify the County within one (1) working day, in writing and by telephone.
- B. Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- C. In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract.
 - 1. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at sole discretion of County; and/or
 - 2. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or

3. Withhold funds pending duration of the breach; and/or
 4. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "2" of this paragraph; and/or
 5. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.
- D. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one (1) or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

VIII. TERM

This Contract is effective as of July 1, 2022 and expires June 30, 2025, but may be terminated earlier in accordance with provisions of Section IX of the Contract. The Contract term may be extended for two (2) additional one-year periods by mutual agreement of the parties.

IX. EARLY TERMINATION

- A. The County may terminate the Contract immediately under Section V. Paragraph A, if funds are not available to the County, and under the provisions of Section VII, Paragraph C, Item 5 of the Contract. In addition, the Contract may be terminated without cause by the County by serving a written notice to the Contractor thirty (30) days in advance of termination. The Assistant Executive Officer of Department Operations is authorized to exercise the County's rights with respect to any termination of this Contract.
- B. Contractor shall only be reimbursed for costs and uncancelable obligations incurred prior to the date of termination. Contractor shall not be reimbursed for costs incurred after the date of termination.
- C. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

X. GENERAL PROVISIONS

- A. When notices are required to be given pursuant to this Contract, the notices shall be in writing and mailed to the following respective addresses listed below.

Contractor: City of Montclair
5111 Benito Street
Montclair, CA 91763

County: San Bernardino County
Human Services
Attn: Contracts Unit
150 S. Lena Road
San Bernardino, CA 92415-0515

- B. In the event of any inconsistency between the terms of this Contract and any forms, attachments, statements of work (SOW), or specifications which may be incorporated into this Contract, the following order of precedence shall apply:
 1. This Contract;
 2. Attachments to this Contract, as indicated herein; and

3. Price lists, SOWs, and other documents attached hereto or incorporated herein.
- C. Nothing contained in this Contract shall be construed as creating a joint venture, partnership or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.
- D. Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate any contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

- E. Time is of the essence in performance of this Contract and each of its provisions. Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.
- F. Contractor shall sign and return a Contractor/Vendor Confidentiality Statement (Attachment L) with this Contract to ensure Contractor is aware of, and agrees to comply with, their obligations to protect CDA information assets from unauthorized access and disclosure.
- G. Contractor shall complete the Security Incident Report (Attachment M) when CDA information assets are accessed, modified, destroyed, or disclosed without proper authorization, or are lost or stolen. The Contractor must report all security incidents to DAAS immediately upon detection. The Security Incident Report must be submitted to DAAS within five (5) business days of the date the incident was detected.
- H. Equipment – All equipment, materials, supplies or property of any kind (including vehicles, publications, copyrights, etc.) which has a single unit cost of five hundred dollars (\$500) or more, including tax, purchased with funds received under the terms of this Contract and not fully consumed in one (1) year shall be the property of the County, unless otherwise required by Funding Source, and shall be subject to the provisions of this paragraph. The disposition of equipment or property of any kind shall be determined by County when the Contract is terminated. Additional terms are as follows:
 1. The purchase of any furniture or equipment which exceeds a single unit cost of five hundred dollars (\$500) and/or was not included in the Contractor's approved budget, shall require the prior written approval of County, and shall fulfill the provisions of the Contract which are appropriate and directly related to Contractor's services or activities under the terms of the Contract. County may refuse reimbursement for any cost resulting from such items purchased, which are incurred by Contractor, if prior written approval has not been obtained from County.
 2. Before equipment purchases made by Contractor are reimbursed by county, Contractor must submit paid vendor receipts identifying the purchase price, description of the item, serial numbers, model number and location where equipment will be used during the term of this Contract.

3. Contractor shall submit an inventory of equipment purchased under the terms of this Contract as part of the monthly activity report for the month in which the equipment is purchased.
 4. At the termination of this Contract, Contractor shall provide a final inventory to county and shall at that time query County as to requirements, including the manner and method in returning said equipment to County. Final disposition of such equipment shall be in accordance with instructions from County.
- I. The State and County shall have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation. The Federal Government (Department of Health and Human Services) reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use for Federal Government purposes, such software modification, and documentation. Proprietary software packages that are sold or leased to the general public are not subject to the ownership provisions.
 - J. County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under the Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of the Contract shall acknowledge San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials or properties produced in whole or in part under the Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printed material, and periodicals, assembled pursuant to the Contract must be filed with County prior to publication. Contractor shall receive written permission from County prior to publication of said training materials.
 - K. All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and product, if applicable). All such items shall be delivered to County at the completion of work under the Contract, subject to the requirements of Section VIII, Term. Unless otherwise directed by County, Contractor may retain copies of such items.
 - L. No waiver of any of the provisions of the Contract shall be effective unless it is made in a 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 Contract 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.
 - M. Any alterations, variations, modifications, or waivers of provisions of the Contract, unless specifically allowed in the Contract, 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 Contract. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
 - N. If any provision of the Contract is held by a court of competent jurisdiction to be unenforceable or contrary to law, it shall be modified where practicable to the extent necessary so as to be enforceable (giving effect to the intention of the Parties) and the remaining provisions of the Contract shall not be affected.
 - O. This Contract shall be governed by and construed in all aspects in accordance with the laws of the State of California without regard to principles of conflicts of laws. The Parties agree to the exclusive jurisdiction of the federal court located in the County of Riverside and the state court located in San Bernardino County, for any and all disputes arising under this Contract, to the exclusion of all other federal and state courts.

- P. In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.
- Q. The parties actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall remain in full effect.
- R. In the event that a subpoena or other legal process commenced by a third party in any way concerning the services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise proceed herein in connection with defense obligations by Contractor for County.
- S. This Contract supersedes and replaces all previous contracts, agreements and understandings, oral, written and implied, between the County and Contractor hereto with respect to the subject matter hereof. All such prior contracts, agreements and understandings are hereby terminated and deemed of no further force or effect.
- T. Neither party shall be liable for failure or delay to perform obligations under this Contract, which have become practicably impossible because of circumstances beyond the reasonable control of the applicable party. Such circumstances include without limitation, natural disasters or acts of God; acts of terrorism; labor disputes or stoppages; war; government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies; or any other cause, whether similar in kind to the foregoing or otherwise, beyond the party's reasonable control. Written notice of a party's failure or delay in performance due to force majeure must be given to the other party no later than thirty (30) days following the force majeure event commencing, which notice shall describe the force majeure event and the actions taken to minimize the impact thereof. All delivery dates under this Contract affected by force majeure shall be tolled for the duration of such force majeure. The parties hereby agree, when feasible, not to cancel but reschedule the pertinent obligations and deliverables for mutually agreed dates as soon as practicable after the force majeure condition ceases to exist.
- U. The County desires that Municipalities, School Districts, and other Tax Districts within the San Bernardino County requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this Contract, with the provisions that:
1. Such governmental body does not have and will not have in force any other contract for like purchases.
 2. Such governmental body does not have under consideration for award any other bides or quotations for like purchases.
- Such governmental body shall make purchases directly through and to the Contractor. The County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this Contract.

XI. CONCLUSION

- A. This Contract, consisting of 29 pages and Attachments A through M, is the full and complete document describing services to be rendered by Contractor to County, including all covenants, conditions, and benefits.
- B. The signatures of the Parties affixed to this Contract affirm that they are duly authorized to commit and bind their respective institutions to the terms and conditions set forth in this document.
- C. This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.
- D. IN WITNESS WHEREOF, the Board of Supervisors of San Bernardino County has caused this Contract to be subscribed to by the Clerk thereof, and Contractor has caused this Contract to be subscribed in its behalf by its duly authorized officers, the day, month, and year written.

SAN BERNARDINO COUNTY

CITY OF MONTCLAIR

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

▶

 Curt Hagman, Chairman, Board of Supervisors

By _____
(Authorized signature - sign in blue ink)

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

Name Marcia Richter
(Print or type name of person signing contract)

Lynna Monell
 Clerk of the Board of Supervisors
 San Bernardino County

Title Director of Human Services
(Print or Type)

By _____
 Deputy

Dated: _____

Address 5111 Benito Street
Montclair, CA 91763

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
▶ Jacqueline Carey-Wilson, Deputy County Counsel	▶ Patty Steven, Contracts Manager	▶ Sharon Nevins, Director
Date _____	Date _____	Date _____

CLIENT COMPLAINT AND GRIEVANCE PROCEDURE**Older Americans Act Programs**

Purpose: To provide an orderly procedure for reviewing and resolving grievances promptly and to facilitate the resolution of grievances informally at the lowest level possible. Recipients of services provided by the Older Americans Act programs or persons authorized to act on their behalf can file a complaint against contractors, volunteers, and employees of programs administered by the local Area Agency on Aging (San Bernardino County Department of Aging and Adult Services – DAAS).

Reference: Title 22, Article 5. Grievance Process

Note: You have a right to confidentiality and your right to privacy will be respected to the extent possible. Only information relevant to your complaint will be released to the responding party unless you consent otherwise.

Complaints

May involve, but are not limited to, any or all of the following:

- Amount or duration of a service.
- Denial or discontinuance of a service
- Dissatisfaction with the service provided or with the service provider.
- If your complaint involves an issue of professional conduct that is under the jurisdiction of another entity, you will be referred to the appropriate organization to pursue your complaint.
- Failure of the service provider to comply with any of the requirements in the contract or regulations.
- If you believe you have been discriminated against or that there has been a violation of any laws or regulations.

Instructions

Complete the attached form and provide the requested information:

- Name, mailing address, and telephone number of complainant or person authorized to act on behalf of the complainant.
- Date and time of occurrence and names of individuals involved.
- Name of Service Provider, and type of service involved.
- Description of the grievance. Be as specific as possible.
- Names of witnesses and contact information, if any.
- If applicable, cite the alleged violation of regulation, law or policy.
- Requested remedy or resolution.
- Signature

First Level of Grievance

The service provider (Contractor) is the first administrative level of resolution for complaints from recipients of services or persons authorized to act on their behalf. If the service is provided without a contractor and directly by DAAS, the complaint will be investigated and responded to by DAAS Administration at this level.

Time Frame

- Within one (1) week of alleged violation complete the grievance form and notify the contract provider.
- If possible, discuss issue with contract provider and make a good faith effort to resolve. Contractor will issue a written response no later than ten (10) business days after receipt of grievance or from date of discussion.
- If resolved at this level no further action is required. If your complaint is not resolved, you may appeal the decision of the provider to the Second Level.

Second Level Grievance

The provisions of this section shall apply to both of the following:

- When the AAA (DAAS) is the service provider and the subject of the complaint.
- When the complaint from older individuals or persons authorized to act on their behalf are dissatisfied with the contractor's response at the first level of review.

Time Frame

If the contract provider at the first level of the grievance procedure does not resolve your complaint, you may appeal their decision to the second level of review within fifteen (15) business days of their written decision.

Note the following:

- All Complaints must be in writing and contain the information referenced in the "First Level of Grievance."
- If a complainant cannot submit a written complaint at this level, the complainant may request DAAS to verbally accept the complaint or assistance in writing out the complaint.
- If DAAS writes out the complaint, the complainant must review and sign the written complaint.

Complaints maybe hand delivered or mailed to the following address:

Department of Aging and Adult Services (DAAS)
 Attention: APS Program Deputy Director
 784 East Hospitality Lane
 San Bernardino, CA 92408-3501

Or fax to: 909-891-3940

Second Level Grievance Processing:

- A good faith effort will be made to resolve the complaint.
- The Deputy Director or designee will conduct an impartial investigation of the written complaint.
- A written response will be prepared and issued no later than fifteen (15) business days after receipt of the complaint.
- The written response will address the merits of the complaint and will either resolve the issues at dispute, or deny the complaint with an explanation.
- If the complainant is not satisfied with the decision at this level, they may exercise their right to request an administrative hearing pursuant to Section 7406 of Title 22.

Final Grievance Resolution

- Any complainant dissatisfied with the results of the review conducted at the second level grievance step may appeal the decision within thirty (30) days from the receipt of their written report and request a hearing to present his/her complaint orally before an impartial hearing officer/panel.
- The request for a hearing can be made either orally or in writing to the Director of San Bernardino County, Department of Aging and Adult Services.
- No later than forty-five (45) days from the receipt of the hearing request, a hearing will be scheduled.
- The complainant will be notified of the following:
 - The date, time, and location of the hearing.
 - The complainant's and other party's right to be present at the hearing and/or to have another person act on their behalf, including the right to have legal counsel present.

Hearing Procedure

- An impartial hearing officer or panel will chair manage the hearing.
- All persons testifying at the hearing will be placed under oath or affirmation
- The hearing will be informal with testimony being restricted to the issues requiring resolution.
- Technical rules of evidence and procedure will not apply at the hearing.
- During the hearing all parties will have the right to:
 - Present evidence and witnesses;
 - Examine witnesses and other sources of relevant information and evidence;
 - Be recorded verbatim, either electronically or stenographically.

Conclusion of the Hearing

- No later than thirty (30) days after the date of the hearing was held, the hearing officer/panel will prepare a proposed decision based upon all relevant evidence presented and will consider applicable policies, procedures, regulations, and laws governing the program in reaching a decision.
- The proposed decision will include the following:
 - A description of each issue.
 - A statement indicating the complaint was upheld or denied. In the case of complaints that are upheld, an explanation of the remedy will be included.
 - A citation of applicable laws and regulations.

ATTACHMENT A

- The proposed decision will be forwarded to either the Director of DAAS for the issuance of a final decision.
- If the complaint is against the Director of DAAS, the proposed decision will be forwarded to the Chairperson of the Governing Board for the issuance of a final decision.
- No later than thirty (30) days after receipt of the proposed decision, the director or the chairperson shall either adopt the proposed decision as the final decision or write a new final decision.
- The decision will be mailed to the parties involved.
- The decision is final and not subject to appeal
- The decision will include procedures for ensuring that the remedies, if any, specified in the final decision are implemented.

Civil Rights

If you believe that your civil rights have been violated, please contact:

Deputy Director, Administration
Department of Aging and Adult Services
784 East Hospitality Lane
San Bernardino, CA 92415-0640

GRIEVANCE PROCEDURE CERTIFICATION

This is to certify that I have read, understood, and received a copy of the Client Complaint and Grievance Procedures for Older Americans Act Programs.

Signature of Service Recipient

Date

Grievance/Complaint Form

Older Americans Act Programs

Grievant Name

Name of Service Provider

Home Address

Telephone Number

Date of Action Causing Grievance

Date of Meeting with Contract Provider

Grievance Description (Clear concise statement. Attach additional sheets if necessary)

Multiple horizontal lines for entering the grievance description.

Remedy Sought

Multiple horizontal lines for entering the remedy sought.

Grievant Signature

Date Filed

ASSURANCE OF COMPLIANCE STATEMENT

**ASSURANCE OF COMPLIANCE WITH THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
NONDISCRIMINATION IN STATE AND FEDERALLY ASSISTED PROGRAMS**

CITY OF MONTCLAIR

NAME OF THE CONTRACTING AGENCY

(Hereinafter called the "Agency")

HEREBY AGREES THAT it will comply with Title VI and VII of the Civil Rights act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended and in particular 7 CFR section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code section 11135-11139.8, as amended; California Government Code section 12940 (c), (h), (i), and (j); California Government Code section 4450; California Code of Regulations sections 11140-11200; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed or political belief be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state assistance; and HEREBY GIVES ASSURANCE THAT, it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE AGENCY HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, the Agency agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code Section 10605, or Government Code Section 11135-11139.8, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on the Agency directly or through contract, license, or other provider services, as long as it receives federal or state assistance; and shall be submitted annually with the required Civil Rights Plan Update.

DATE

SIGNATURE

CITY OF MONTCLAIR
ORGANIZATION

San Bernardino County
Elderly Nutrition Program
Scope of Work

This Scope of Work contains the measurable objectives mandated by the Department of Aging and Adult Services (DAAS) and the California Department of Aging (CDA) and required of the Elderly Nutrition Program (ENP) Contractor. The Scope of Work specifies and establishes monthly, quarterly, and annual time frames and constitutes the primary document for ongoing monitoring and annual Program and Fiscal monitoring. It will be used to measure the Contractor's efforts toward providing quality nutrition services.

Contractor: City of Montclair

Region: West Valley

Service Area: Montclair

I. Program Description

- A. The purpose of the ENP is to promote the general health and well-being of older individuals by reducing hunger, food insecurity, and malnutrition. It is also designed to encourage socialization to improve overall health outcomes. ENP providers procure, prepare, transport, and serve meals to eligible individuals. Providers also conduct nutrition screenings and provide nutrition education at congregate sites and/or individuals' place of residence.
- B. The goal of the ENP is to maintain or improve the physical, psychological, and social well-being of older individuals by providing or securing appropriate nutrition services and offering opportunities for socialization.
- C. Objectives of the ENP are to:
 - 1. Give preference to older individuals in greatest economic or social need with particular attention to low-income minority individuals.
 - 2. Serve meals that provide one-third (1/3) of the Dietary Reference Intakes (DRIs) and are safe and of good quality.
 - 3. Promote and maintain high food safety and sanitation standards.
 - 4. Promote good health behaviors through nutrition education and nutrition screening of participants.
 - 5. Promote or maintain coordination with other nutrition-related supportive services for older individuals.
- D. The ENP's target population are individuals who are sixty (60) years of age or older, with an emphasis on those in greatest economic and social need with particular

attention to low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas. The ENP shall:

1. Provide at least one (1) meal per day.
2. Serve meals at least five (5) days per week throughout the service area.
 - a. Contractor operating at a lesser frequency in a service area where such a frequency is not feasible must obtain approval by the Director of DAAS. Requests must be submitted in writing.

II. Eligibility for Nutrition Services

- A. Eligible service population are those who are age sixty (60) or older with an emphasis on those in greatest economic and social need with particular attention to low-income minority older individuals.
 1. Congregate Meals – Individuals eligible to receive a meal at a congregate nutrition site are:
 - a. Any older individual sixty (60) or older.
 - b. The spouse of any older individual.
 - c. A person with a disability, under age sixty (60), who resides in housing facilities occupied primarily by older individuals at which congregate nutrition services are provided.
 - d. A disabled individual who resides at home with and accompanies an older individual who participates in the program.
 2. Volunteer Meals:
 - a. A volunteer under age sixty (60) may be offered a meal if doing so will not deprive an older individual of a meal.
 - b. A written policy for providing and accounting for volunteer meals shall be developed by the Contractor and implemented upon approval by DAAS.
 3. Home-Delivered Meals – Individuals eligible to receive a home-delivered meal are:
 - a. Individuals who are age sixty (60) and frail, as defined below, homebound by reason of illness, disability, or otherwise isolated.
 - 1) “Frail” is defined as an older individual is determined to be functionally impaired because the individual either:
 - a) Is unable to perform at least two (2) activities of daily living, including bathing, toileting, dressing, feeding, breathing, transferring and mobility, and associated tasks, without substantial human assistance, including verbal reminding, physical cueing, or supervision.
 - b) Due to a cognitive or other mental impairment, requires substantial supervision because the older individual behaves in a manner that poses a serious health or safety hazard to the individual or to others.
 - b. A spouse of a person in sub-section (C)(1) above, regardless of age or condition, if an assessment concludes that it is in the best interest of the homebound older individual.

- c. An individual with a disability who resides at home with older individuals if an assessment concludes that it is in the best interest of the homebound older individual who participates in the program.
- d. Priority shall be given to older individuals in sub-section (C)(1) above.

III. Requirements for Nutrition Services

A. Congregate Meals

- 1. Each Congregate Meal Contractor shall:
 - a. Include procedures for obtaining the views of participants about the services received.
 - b. Not preclude the service of a meal to a participant who has failed to make a reservation when food is available.
 - c. Ensure each Congregate Meal participant completes the Client Intake Sheet (provided by DAAS) on the first day of service and annually thereafter.
 - d. Maintain appropriate documentation on each client. Documentation shall be kept on file to be monitored by DAAS.
- 2. Each Congregate Meal site shall meet all of the following:
 - a. Be open to the public.
 - b. Sites including entrances shall be maintained to allow unrestricted and safe access to the meal site.
 - c. Have a paid staff or volunteer designated to be responsible for the day-to-day activities at each site, and physically be on-site during the time that ENP activities are taking place.
 - d. Have restrooms, lighting, and ventilation, which meet the requirements of the California Retail Food Code (CRFC).
 - e. Have equipment, including tables and chairs, which are sturdy and appropriate for older individuals. Tables shall be arranged to assure ease of access and encourage socialization.

B. Home-Delivered Meals

- 1. Each Home-Delivered Meals Contractor shall:
 - a. Develop and implement criteria to assess the level of need for home-delivered nutrition services of each eligible participant.
 - b. An initial determination of eligibility may be accomplished by telephone. This initial contact with the participant shall include completion of sections 1, 2, and 3 of the Client Intake Sheet (provided by DAAS).
 - c. A written assessment shall be done in the home within two (2) weeks of beginning meal service, and shall include an assessment of the type of meal appropriate for the participant in their living environment.
 - d. An older individual eligible for receiving home-delivered meals shall be assessed for need of nutrition-related supportive services, and referred as necessary.

- e. Re-assessment of need shall be determined quarterly. Such re-assessment shall be done in the home of the participant at least annually. Each re-assessment shall include completion of sections 1, 2, and 3 of the Client Intake Sheet (provided by DAAS).
 - 2. Provide written instructions, in the language of the majority of the participants, for handling and re-heating of the meals.
 - 3. Provide home-delivered meals in pre-packaged divided trays (hot or frozen meals).
 - 4. Maintain appropriate documentation on each client. Documentation shall be kept on file to be monitored by DAAS.
- C. Nutrition Services Annual Outcomes
- 1. Number of Days of Service: Meals are served at least five (5) days per week unless approved by the Director of DAAS.
 - 2. Total Number of Meals to be served: A minimum of one (1) meal per day will be served to each eligible individual.
 - 3. Number of Unduplicated Clients: A client is counted only once, no matter how many meals or services the client receives during a funding year. A participant who receives services throughout the year should be counted no more than one time for the purpose of reporting unduplicated client numbers.

A minimum of 95% of the total number of unduplicated clients and meals must be served. The Director of DAAS must approve requests to serve less than 95% of the total number of unduplicated clients and meals. All such requests must be in writing.

Program: C-1 (Congregate Meals)			
Number of Days of Service:		252	
Number of Meals:		20,561	
Number of Unduplicated Clients:		350	
Congregate Meal Site Location(s):		1	
Region	Site Name, City	Meals	Unduplicated Clients
West Valley	Montclair Senior Center, Montclair	20,651	350

Program C-2 (Home-Delivered Meals)			
Number of Days of Service:		N/A	
Number of Meals:		N/A	
Number of Unduplicated Clients:		N/A	
Home-Delivered cities to be served:		N/A	
Region	City	Meals	Unduplicated Clients
N/A	N/A	N/A	N/A

- D. Nutrition Education Services for Participants
- 1. Nutrition Education shall be provided a minimum of four (4) times per year to participants in congregare and home-delivered meal programs.
 - a. Nutrition Education for congregare sites may be delivered in person or via video, audio, online or distribution of hardcopy materials. Examples

include, demonstrations, presentations, social media message (includes text messages), newsletters, lectures or small group discussions, all of which may be augmented with printed materials.

- b. Nutrition Education for home-delivered meal participants may consist solely of printed material.
- 2. Nutrition Education shall be based on the particular need of congregate and home-delivered meal participants.

An annual Needs Assessment shall be performed by the ENP Contractor to make this determination. Contractor will develop a Nutrition Education Plan based on the Needs Assessment.

- 3. The Nutrition Education Plan and annual Needs Assessment tabulated results must be submitted to DAAS by August 1st of the fiscal year in which it is being provided. The Contractor must keep the completed assessment and the tabulated results on file.
- 4. Nutrition Education sessions must be reported monthly to DAAS using the Nutrition Education Monthly Service Unit Report.

E. Nutrition Education Annual Outcomes:

The unit of measure for Nutrition Education is one (1) session.

Program: C-1 (Congregate Meals)		Program: C-2 (Home-Delivered Meals)	
Number of Sessions to be provided annually:	4	Number of Sessions to be provided annually:	N/A
Number of Unduplicated Clients to be served annually:	350	Number of Unduplicated Clients to be served annually:	N/A

F. Client Satisfaction Survey

- 1. The ENP Contractor shall conduct a Client Satisfaction Survey at least annually. The survey instrument will be provided by DAAS and all findings from the survey must be used to improve services. The Contractor must keep the completed surveys and the tabulated results on file. A copy of the tabulated results must be submitted to DAAS by March 3rd of the fiscal year for which it is conducted.

II. Staffing

A. Manager or Director

- 1. The ENP Contractor shall have a manager on staff who shall conduct the day-to-day management and administrative functions of the ENP, and either have a, b, or c:
 - a. Possess an associate degree in institutional food service management, or a closely related field, such as, but not limited to, restaurant management, plus two (2) years' experience as a food service supervisor, or,
 - b. Demonstrate experience in food service such as, but not limited to, cooking at a restaurant, and within twelve (12) months of hire successfully complete a minimum of twenty (20) hours specifically related to food service management, business administration, or personnel management at a college level. Prior to completion of meeting the hours, this individual's

performance shall be evaluated through quarterly monitoring by a registered dietitian, or,

- c. Two (2) years' experience managing food services. Such experience shall be verified and approved by a registered dietitian prior to hire.
2. The ENP Contractor shall maintain documentation on file of the qualifications of the Program Manager or staff.
3. If the Contractor has more than one site, the Manager/Director shall monitor the sites on a bi-monthly basis. The bi-monthly visit shall be for the purpose of monitoring the food service practices of the employees and the implementation of the program requirements at the site level. Documentation of each visit shall be maintained on file for DAAS review.

B. Personnel – Paid Staff/Volunteers

1. There shall be sufficient qualified paid staff or volunteer staff with the appropriate education and experience to carry out the requirements of the ENP. The total number of staff should be based on the method and level of services provided and size of the service area.
2. Contractor must maintain a current organization chart of all positions (paid and volunteers) that perform work under this contract.
3. Contractor is encouraged to hire multi-lingual/multi-cultural staff to increase low-income and ethnic minority program participation in accordance with federal mandates.
4. Contractor shall recruit for vacant positions in an open and competitive application process free of discriminatory questions. Written job descriptions for all paid and volunteer staff shall be maintained.
5. Contractor shall complete a written work performance evaluation on all paid and volunteer staff at least annually.
6. All staff, paid and volunteer, that will be handling food must be in possession of a current San Bernardino County Food Handlers Certification Card.
7. Volunteers shall be recruited and used in any phase of the program operation where qualified.
8. Volunteers shall be screened and selected through a formal process that assesses their capabilities.
9. Volunteers shall receive the same training as paid staff.
10. Volunteers paid through other job training programs are not considered volunteers and must be paid the agreed upon rate charged for regular paid staff.
11. The ENP Contractor shall maintain a written Volunteer Policy that describes how volunteers are recruited, screened, what topics they are taught at orientation, and how often their performance is evaluated.

C. Registered Dietitian

1. Each ENP Contractor shall establish and administer nutrition services with the advice of a Registered Dietitian in accordance with Section 339 of the OAA, and follow the general requirements in Title 22, Division 1.8, Chapter 4, Article 5.

2. The Registered Dietitian will provide the following activities to meet the mandated requirements:
 - a. At a minimum, quarterly monitor for safe food handling and sanitation practices of food facilities.
 - b. Review and approve the content of staff training prior to presentation.
 - c. Develop, or review and approve the cycle menus.
 - d. Approve any food substitutions to meals originally approved.
 - e. Provide input, review, and approve the Nutrition Education Plan prior to presentation.
 - f. Provide technical support and assistance as needed.

III. Staff Training Activities:

- A. A yearly written Staff Training Plan shall be developed, implemented, and maintained on file by the ENP Contractor, as required in Title 22, Division 1.8, Chapter 4, Article 5.
- B. The Contractor's Registered Dietitian shall review and approve the content of the Plan prior to presentation.
- C. The Staff Training Plan must identify who is to be trained, who will conduct the training, content of the training, and when it is scheduled.
- D. A copy of the Staff Training Plan that has been approved by the Contractor's Registered Dietitian must be submitted to DAAS by August 1st of the fiscal year in which it is provided. The DAAS Registered Dietitian will review and approve the Staff Training Plan and return it to the Contractor. The DAAS approved Staff Training Plan must be kept on file.
- E. A minimum of four (4) hours of staff training shall be provided annually for paid and volunteer food service staff, including congregate and home-delivered meal staff.
- F. Training sessions shall be evaluated by those receiving the training. The Contractor must keep the evaluations on file for DAAS review.
- G. The ENP Contractor shall maintain documentation of each training session on file. Documentation includes, but is not limited to, sign-in sheets, agendas, handouts, and completed evaluations.
- H. All staff, paid and volunteer, shall be oriented and trained to perform their assigned responsibilities and tasks. Training, at a minimum, shall include:
 1. Food safety, prevention of food borne illness, and HACCP principles.
 2. Accident prevention, instruction on fire safety, first aid, choking, earthquake preparedness, and other emergency procedures.
 3. Elder Abuse Law and reporting procedures.
 4. CDA Security Awareness Training (annually).

IV. Complaint Procedures

- A. Each Contractor shall have a written Complaint Procedure posted in visible and accessible areas, such as the bulletin boards in multipurpose senior centers. For areas in which a substantial number of older individuals are non-English speaking, the

notification shall also be posted in the primary language of a significant number of older individuals.

- B. The Complaint Procedure will be available for the participants and will provide them the opportunity to provide positive as well as negative feedback to the Program Manager.
- C. The Contractor shall have an assessment tool readily accessible for the seniors attending the congregate site or receiving a home-delivered meal.

V. Menu Planning Guidelines/Menu Requirements

- A. Contractor is responsible for ensuring that all meals comply with the most recent Dietary Guidelines for Americans as mandated by the Older Americans Act Section 339(2)(A)(i).
- B. A minimum of a four (4) week cycle shall be planned and submitted to the DAAS Registered Dietician.
- C. Menu cycles shall include the availability of seasonal foods.
- D. Health, cultural, ethnic, and regional dietary practices shall be considered in menu planning, food selection, and meal preparation.

The menu cycle shall be approved and signed by the Contractor's Registered Dietitian and upon approval forwarded to the DAAS Registered Dietitian for certification. Menus shall be submitted to the DAAS Registered Dietitian forty-five (45) days prior to the beginning of the quarter containing the menu start date. Menu start dates are July, October, January and April. Allow thirty (30) days for the menu certification process. Menus submitted in a timely manner will be returned to the Contractor at least fifteen (15) days prior to the menu start date. ENP Contractors are required to have menus certified prior to the menu start date.

- E. A copy of the certified menu must be posted in a spot conspicuous to clients at each congregate site.
- F. Copies of the menus shall be made available to the participants upon request.
 - 1. When planning the menus, the current California Food Guide and the Dietary Guidelines for Americans (DGA) must be considered. The criteria below are based on the sources mentioned, such as the most current DRIs and the USDA Food Guide, as well as the most recent CDA Program Memo and other guidance published by the CDA. Menus shall conform to these criteria and any updates issued by CDA. Provide a minimum of 550 calories per meal.
 - 2. Limit total fat to no more than 25-30% of the calories averaged for the week.
 - 3. Choose and prepare foods with low amounts of salt, soy sauce, and other high sodium items.
 - 4. Include good sources of dietary fiber such as cooked dry beans at least four times a week and whole grains at least twice a week or 40% of meals per menu cycle if open fewer than five (5) days per week.
 - 5. Include a variety of foods and preparation methods with consideration to color, combinations, texture, size, shape, taste, and preference of the participants served.
 - 6. Dietary Reference Intake Values - Example:

Table 1 below represents the most current DRI values and daily compliance range for target nutrients. The values provided are based on the USDA Food Guide calculated for one (1) meal for a woman over seventy (70) years of age whose activity level is sedentary. This example represents a majority of the older adult population served by the ENP statewide.

- a) The nutrients selected for this table are based on the target nutrients to:
- 1) Promote health and prevent disease.
 - 2) Prevent deficiencies.
 - 3) Indicate diet quality.
 - 4) Manage disease.

Table 1

Target Nutrients

Nutrient	Target Value *	Daily Compliance Range
Calories (Kcal)	>550 Kcal	>550 – 700 Kcal
Protein	15 gm	14 gm (in the entrée)
Fat (% of total calories)	20-35%	<35% weekly average
Trans Fat	<0.5g	CRFC CH 12.6 section 114377. **
Vitamin A (ug)	233 RAE	> 233 RAE 3 out of 5 days /wk or 4 out of 7 days/wk
Vitamin C (mg)	25 mg	25 mg
Vitamin B6 (mg)	0.5 mg	>0.5 mg
Vitamin B12 (ug) **	0.8 ug	0.8 ug **
Calcium (mg)	400 mg	>400 mg
Magnesium (mg)	105 mg	>105 mg
Sodium (mg)	500-750 mg	<1,000 mg
Fiber (gm)	>7 gm	>7 gm (may average over a week based on AL value)
Potassium (gm) **	1565 mg	1565 mg (may average over a week based on AL value)
Vitamin D	200 IU	200 IU/3ug (may average over a week)

*Note: It is necessary to use fortified foods to meet vitamin B12 needs.

**California Retail Food Code: Commencing January 1, 2011, no food containing artificial trans-fat, including oil and shortening that contains artificial trans-fat for use in the deep frying of yeast dough or

cake batter may be stored, distributed, served by or used in the preparation of any food within a food facility.

Recommended sodium content was liberalized based on the information from the 2009 National Survey of OAA participants. Data indicated that the ENP meal provides 40-50 percent of the participant's daily intake for the more than half of the participants. Identify meals containing over 1,000 mg of sodium on the menu with an icon or asterisk referencing high sodium content.

G. Retinol Activity Equivalent (RAE)

Component Meal Pattern Requirements:

1. The California 1600-calorie component meal pattern has been developed to reflect the new DGA requirements for those programs that are not using computerized nutrient analysis.
2. The ENP Contractor has the discretion to allow occasional flexibility in planning meals that may not meet the meal pattern, but does meet the nutrient value requirements. Fortified food products and combination dishes used in a menu may not match the meal pattern, but may provide for the required nutrient values. For example, a fortified snack bar as a dessert could be used to boost the nutrient value of a boxed lunch or special occasion meal.
3. Items that provide the following target nutrients should be identified on the menu when using a component meal pattern template:
 - a. Vitamin C – Provide one-third (1/3) of the DRI for vitamin C each meal – 25 mg (for a 1600-calorie menu).
 - b. Vitamin A – Provide one-third (1/3) of the DRI for vitamin A at least three (3) times per week, 250 µg (for a 1600-calorie menu).
 - c. Sodium – Meals that contain over 1,000 mg of sodium must be noted on the menu as a high sodium meal.
 - d. Fiber – Provide seven grams of fiber per meal. Programs may choose to average fiber content over a week.
4. Table 2 below provides an example of the elements in the California 1600-calorie meal pattern. Serving sizes are based on the USDA My Plate initiative (<https://www.myplate.gov>), which replaced the Food Guide Pyramid. This sample component meal pattern does not assure that meals meet one-third (1/3) of the DRIs and the DGA. Meals will require specific types of fruits and vegetables, whole grains, and high fiber foods in order to assure the target nutrients are provided. The component meal pattern may be deficient in vitamins E, B12, requiring additional nutrition education for participants on the selection of foods that are good sources of these nutrients.

The meal pattern in Table two (2) below is based on the minimum requirements for a sedentary female 70 years of age. If the majority of the population served by a Contractor falls within another requirement range (i.e., active 60 year old men), the serving sizes and minimum number of servings required can be adjusted to meet the service population. ENP Contractors should verify the population served and develop menu criteria accordingly.

Table 2

California 1600 Calorie per Day Component Meal Pattern

Minimum Recommended Elements

Food Group	Required servings for 550 calories per meal	Serving sizes for 1600 calorie level
Lean meat or beans	1 serving 2 ounces per meal	2 ounces = 1 serving
Vegetable	1 – 2 servings	½ cup = 1 serving
Fruit	1 serving	½ cup = 1 serving
Bread or Grain At least ½ whole grain	1 – 2 servings	1 slice Bread = 1 serving ½ cup of rice or pasta = 1 serving
Low-fat milk or milk alternate	1 serving	1 cup or equivalent measure
Fat	Optional	
Dessert	Optional - limit sweets use fruit	Select foods high in fiber and low in fat and sugar

(1) The number of servings per meal estimates provision of one-third of the DRIs.

(2) Caloric value (1,600 Kcal/day) based on a 70 year-old female, “sedentary” physical activity level using Table 3 - Estimated Caloric Requirements in Each Gender and Age Group at Three Levels of Physical Activity, from the DGA 2010.

**Oils and soft margarines include vegetable, nut and fish oils, and soft vegetable oil spreads that have no trans-fats.

H. Meal Components – required for both computerized and component menus

1. Protein – meat, fish, poultry, legumes, eggs, and cheese:

- a. A minimum of 2.0 ounces of cooked, edible portions of meat, fish, poultry, legumes, eggs, cheese, (or a combination thereof) providing at least 14 grams of protein. Programs should consider the preferences of the participants they serve.
- b. Legumes should not be counted as both vegetable and protein. ENP Contractors may use other protein sources to provide the occasional vegetarian meal.

2. Vegetables (1-2 ½ cup servings):

- a. Vegetables as a primary ingredient in soups, stews, casseroles, or other combination dishes should total ½ cup per serving.
- b. Raw leafy vegetables (salads) should equal 1 cup if they are to be considered a serving.
3. Fruit (1 serving):
 - a. A serving of fruit equals:
 - a. 1 medium sized whole fruit.
 - b. ½ cup fresh, chopped, cooked, frozen, or canned drained fruit.
 - c. ½ cup 100% fruit juice.
 - b. Fresh, frozen, or canned fruit should be packed in juice, light syrup, or without sugar. Fruit packed in high sugar content syrup may be rinsed before using.
4. Breads/Grains (1 ounce equivalent serving):

One-half of the daily intake of grains should be from whole grains. Grains that are processed (not whole) must be fortified. Fifty-fifty mixtures of white and brown rice meet the requirement for whole grain and have demonstrated acceptance amount ENP participants. For variety, consider serving other grains such as corn, millet, oats, or quinoa.
5. Milk (8 fl. oz.):

Each meal shall contain eight (8) fluid ounces of fortified skim, low fat, or buttermilk. If religious preference precludes the acceptance of milk with the meal, it may be omitted from the menu (however, an equivalent substitute must be used).
6. Fat (Optional):
 - a. Replace solid fats with plant based oils to improve diet quality without added calories.
 - b. Choose plant based oils which have a high percentage of beneficial monosaturated and polyunsaturated fatty acids.
 - c. The DGAs encourage using oils as they contribute essential fatty acids to the diet. No food containing artificial trans-fat may be stored, distributed, served, or used in the preparation of any food within a food facility [CRFC114377].
 - d. Limit the consumption of solid fats. Solid fats are those that are solid at room temperature and have a high concentration of trans and saturated fats. Common sources of solid fats include butter, beef, chicken, port, stick margarine, and shortening.
7. Dessert (Optional):
 - a. Dessert may be provided as an option to satisfy the caloric requirements or for additional nutrients. Use fruit as a dessert as often as possible and limit sweets. The fruit, grains, and dairy products served as dessert can count towards the fruit, grain, or dairy requirements. Desserts that are low in fat and/or low in sugar are encouraged.

- b. When a dessert contains ½ cup of fruit per serving, it may be counted as a serving of fruit.
 - c. When a dessert contains the equivalent of 1 serving (1 ounce) starches/grains per serving, it may be counted as a serving of starches/grains (example: rice pudding or oatmeal cookie).
 - d. When a dessert contains the equivalent of ½ cup of milk per serving, it may be counted as ½ serving of milk.
8. Condiments and Product Substitutes:
- a. Sugar substitutes, pepper, herbal seasonings, lemon, vinegar, non-dairy coffee creamer, salt, and sugar may be provided, but should not be counted as fulfilling any part of the nutritive requirements.
 - b. Condiments such as salad dressings, ketchup, soy sauce, mustard, and mayonnaise do not need to be counted in a menu analysis if they are served “on the side” and are not combined with the food.
9. Sodium:
- a. The DGAs encourage reducing daily sodium intake to 1,500 mg per day for persons aged 51 or older, African Americans, persons who have hypertension, diabetes, or chronic kidney disease.
 - b. The target value for sodium is 500 mg per meal. The acceptable range is 500 - 750 mg per meal. However, the ENP meal provides 40-50 percent of the nutrient intake for the day for more than half of its participants. This fact provided the basis for establishing an acceptable ENP sodium range that is slightly higher than the DGAs recommends.
 - c. A potassium rich diet blunts the effect of sodium on blood pressure. Research suggests that the general population does not consume sufficient amounts of potassium and would benefit from increasing potassium intake from foods.
 - d. Menu planners should take steps to reduce the levels of sodium in meals over time, including the following:
 - e. Focus on a stepwise reduction of sodium over time.
 - f. Set a goal to reduce sodium content of meals each year. For example:
 - g. The local ENP will reduce the sodium level of the meals by five percent (5%) over this Fiscal Year.
 - h. The ENP will provide not more than two high sodium meals per month.
 - i. Maintain documentation of the reduction of sodium content of meals.
 - j. Place potassium rich foods on the menu consistently.
 - k. Provide nutrition education on the health impacts of high sodium intake on older adults.
 - l. Prepare foods without adding salt in the cooking process.
 - m. Use herbal seasoning to replace salt.
 - n. Avoid potassium chloride salt substitutes. Individuals should only use these products under the supervision of a healthcare professional.

- o. Encourage using oil and vinegar as the preferred salad dressing. Provide at least one low-sodium salad dressing option.
- p. Use an icon, such as a saltshaker, to identify a high sodium meal or clearly state on the menu that this meal contains more than 1,000 mg of sodium. ENPs should establish policies and procedures for purchasing healthful foods that incorporate the DGAs' sodium recommendations.

ENPs can participate in transforming the food service industry by creating a demand for products that are lower in sodium and working with food purveyors to purchase lower sodium foods. Responsibility to reduce the amount of sodium in the diet of all Americans falls on both the food industry and consumers.

10. Meal Component/Nutrient Analysis

A meal component/nutrient analysis of the entire menu cycle conducted and/or approved by a Registered Dietitian shall be done to ensure compliance with Title 22, Division 1.8, Chapter 4, Article 5.

11. Computerized Nutrient Analysis Requirements

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

- 1) Vitamin A.
- 2) Vitamin C.
- 3) Protein.
- 4) Fat.
- 5) Sodium.
- 6) Fiber.

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

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

IX. Food Procurement

- A. Food procurement procedures shall comply with Title 22, California Retail Food Code (CRFC) standards, and HACCP best practices guidelines.
- B. All food shall be of good quality and shall be obtained from sources that conform to Federal, State, and local regulatory standards for quality, sanitation, and safety.
- C. To the extent possible, Contractors are encouraged to participate in group food purchasing.
- D. A comparative cost analysis shall be performed either by the ENP Contractor or its group purchasing organization on an on-going basis to obtain the highest quality food for the lowest price available.

X. Food Storage

- A. Food storage procedures shall comply with Title 22, CRFC standards, and HACCP best practices guidelines.
- B. Adequate and suitable space free from vermin, dirt, and contamination or adulteration shall be provided for the storage of food and beverages, and cooking, serving, and eating supplies.

XI. Food Production

- A. Food production procedures shall comply with Title 22, CRFC standards, and HACCP best practices guidelines.
- B. Food production and meal service shall be under the supervision of a trained staff in food service management to ensure food service sanitation and the practice of hygienic food handling techniques is followed. This person shall function with the advice of the Contractor's Registered Dietitian.
 - 1. Meals shall be served as indicated on the certified menus. In the event that a menu substitution must occur, the following procedure must be followed. The Contractor's Registered Dietitian must approve all menu substitutions.
 - 2. A Menu Substitution Form must be completed and signed by the Contractor's Registered Dietitian.
 - 3. The completed Menu Substitution form shall be kept on file for DAAS review.
- C. Production Control
 - 1. Production schedules or worksheets must be available in the food preparation area.
 - 2. Food shall be prepared in sufficient quantities to serve all participants. Careful planning shall minimize the leftover food and prevent waste.
 - 3. Standardized recipes shall be used to ensure consistency of quality and quantity and adherence to menu guidelines.
 - 4. Appropriate utensils for correct and consistent portion control shall be available and used at each site.
- D. Meal Service/Temperature Monitoring
 - 1. All food for congregate sites shall be packaged and transported in a manner in which it is protected from potential contamination and maintains appropriate hot and cold food temperatures.

2. Meals shall be served to seniors “offer versus serve” – meaning participants are to be given an opportunity to decline a menu item. Food trays shall not be served ahead of time.
3. Temperature Checks:
 - a. All hot, cold, and frozen potentially hazardous meal components, including milk, shall be checked daily immediately prior to dispatch from the central kitchen.
 - b. All hot, cold, and frozen potentially hazardous meal components, including milk, shall be checked at satellite congregate sites upon delivery and at all congregate sites immediately before meal service.
 - c. The ENP Contractor must have written procedures for monitoring food temperature.
 - d. The ENP Contractor must use a form to document food temperatures daily (i.e. Food Temperature Log).
 - e. The ENP Contractor shall have a staff member review the completed Food Temperature Logs at random a minimum of every other month. If problems are discovered, an action plan must be developed to resolve the issue.
 - f. All completed Food Temperature Logs must be maintained on file for DAAS review.
4. To maintain quality in prepared foods, holding times shall be kept to a minimum. Long periods of holding hot foods at required temperatures diminish the nutrient content and palatability of foods.
5. Holding time shall not exceed two (2) hours between the end of production and the beginning of food service at the congregate site.
6. Milk and milk products shall be provided in individual, commercially filled containers, or shall be poured by a staff member directly from commercially filled bulk containers into the glass or cup from which it is consumed.
7. Single service utensils and tableware shall be used one time only and then discarded.
8. Safety of the food after it has been served at the congregate site and then removed by the participant from the congregate site is the sole responsibility of the participant and may be consumed by the participant as he/she deems it appropriate.
9. The Contractor shall have a sign posted in the congregate site stating, “Food removed from the congregate site is at your own risk.”

XII. Food Service Requirements

- A. The ENP Contractor shall ensure that the following forms are available, completed daily, and maintained at each nutrition site for a minimum of 12 months:
 1. Food Temperature Log – one should be maintained for congregate meals, home-delivered meals dispatched from that site, and one for foods chilled and/or frozen for individual meals, if applicable
 2. Cleaning Schedule

3. Equipment Temperature Log – for all dish machines, refrigerators, and freezers.
4. Production Schedule – applicable only if food is cooked at the site.
5. The current Environmental Health inspection shall be available at the site for review.
6. Staff and volunteers who are handling food shall possess a current food handlers' card that shall be available for review.

XIII. Program Requirements

A. Client Intake Sheets / Nutrition Screening

1. The ENP Contractor will ensure that each participant completes the Client Intake Sheet form (provided by DAAS) to determine his or her level of nutritional risk. Forms shall be completed for:
 - 1) Congregate Meal Participants – at the beginning of service and then annually thereafter for clients who remain on the program. Bold and asterisked fields are required for congregate meals.
 - b. Home-Delivered Participants – at the beginning of service and then quarterly thereafter for clients who remain on the program.
 - 1) Sections 1, 2, and 3 are required for home-delivered meals.
2. ENP Contractors are required to enter the client data into the client records management system timely but no later than the tenth (10th) business day following the month in which the intake was completed.

B. Outreach/Marketing Activities:

1. ENP Contractors are required to provide outreach in the community through community organizations and other groups. All outreach and marketing activities shall be documented and kept on file for the annual monitoring visit conducted by DAAS.
2. ENP Contractors shall develop and have handouts, brochures, and/or signs available in languages other than English and posted in locations such as churches, community service locations, and small stores serving the minority communities.
3. All marketing materials must be submitted to the DAAS Program Analyst at least four (4) weeks prior to disseminating and posting for review and approval.

C. Emergency Procedures:

1. ENP Contractors shall have a written Emergency/Disaster Plan.
2. Each nutrition site shall have an evacuation plan posted identifying the emergency exits and assembly areas.
3. Staff must be knowledgeable of emergency procedures.
4. Where feasible and appropriate, ENP Contractors shall make arrangements for the availability of meals to participants during a major disaster, as defined in 42 U.S.C., Chapter 68, Section 5122 (2). Such arrangements shall be included in the Emergency/Disaster Plan.

D. Donations and Confidentiality:

1. An eligible individual who receives a meal shall be given the opportunity to contribute to the cost of the meal
2. The ENP Contractor shall develop a suggested contribution/donation amount. When developing this contribution/donation amount, the income ranges of the older individuals in the community and the Contractor's other sources of income shall be considered.
3. A sign indicating the suggested contribution for eligible individuals and the fee for guests shall be posted near the contribution container at each congregate meal site. A guest fee shall cover all meal costs.
4. No eligible individual shall be denied participation because of failure or inability to contribute. The Contractor shall ensure that the amount of the eligible participant's contribution is kept confidential.
5. The ENP Contractor shall establish written procedures to protect contributions and fees from loss, mishandling, and theft (i.e., Contribution/Donation Procedures). Such procedures shall be kept on file for DAAS review.
6. All contributions and fees shall be identified as program income and used to increase the number of meals served, to facilitate access to such meals, and to provide nutrition-related supportive services.

E. "No Soliciting" Sign:

The ENP Contractor shall ensure that a "No Soliciting" sign is posted on the door leading to the congregate nutrition site. No soliciting of any kind is permitted on the premises during the lunch hours for services or goods promoted by businesses.

F. Coordination:

1. If applicable, develop a fair and equitable policy and procedure for referring participants to the appropriate transportation Contractor for securing public transportation to and from nutrition sites and have the policy available for review by DAAS.
2. Include the following statement on all advertising, brochures, poster, etc.: "Funding for this service has been provided by the San Bernardino County Department of Aging and Adult Services through a grant award from the California Department of Aging."
3. Coordinate service with other County departments and local agencies by providing time for presentations or special activities that promote a community based system of care for the participants attending nutrition sites.

G. Reporting:

1. All fiscal and program data must be reported monthly. Request for Reimbursement, i.e., invoice, is due to DAAS by the 10th business day of the month following the month of service. Client and service data must be available for review in the client records management system before payment can be approved. DAAS will provide training as needed.
2. The Contractor shall maintain support files including, but not limited to, invoices, payroll, Client Intake Sheets, and any other supporting documents to substantiate monthly reports.

3. ENP Contractors are required to report all known or suspected cases of elder abuse to DAAS Adult Protective Service or law enforcement immediately by telephone. A written report must be sent within two (2) working days. Abuse of an elder or dependent adult means physical abuse, neglect, intimidation, cruel punishment, fiduciary abuse, abandonment, isolation, or other treatment resulting in physical harm or pain or mental suffering or the deprivation by a care custodian of goods or services, which are necessary to avoid physical harm or mental suffering.
 4. Maintain records, by month, that support claimed in-kind expenditures.
 5. Report expenditures funded with Deferred Income by September 30th of the FY in which it is being claimed.
 6. Develop and have on hand for review by DAAS a cost allocation plan which explains the methods used to allocate costs between congregate and home-delivered meals or any other program funded by DAAS.
 7. In the event additional funds become available, the Contractor will use the funds to increase the number of meals being provided to participants by either increasing the number of individuals attending its present sites, or by opening new sites in communities not already served by the Contractor. Exceptions to this requirement must be fully documented in writing and submitted to the Director of DAAS for prior approval.
- H. Disposal of Equipment:
1. If the Contractor wishes to dispose of equipment purchased with Nutrition grant funding, they must submit a request, in writing, to DAAS. The request shall state the equipment description, the location of the equipment, and the reason for disposal.
 2. Contractor shall submit a list of equipment purchased with grant funding by location.
- I. Mandatory Meetings
1. Contractor is required to attend all Nutrition Contractor meetings hosted by DAAS.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

0348-0046

(See reverse for public burden disclosure.)

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change</p> <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee</p> <p style="text-align: center;">Tier _____, if known:</p> <p>Congressional District, if known:</p>	<p>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10. a. Name and Address of Lobbying Entity <i>(if individual, last name, first name, MI):</i></p> <p style="text-align: center;"><i>(attach Continuation Sheet(s) SF-LLLA, if necessary)</i></p>	<p>b. Individuals Performing Services (including address if different from No. 10a) <i>(last name, first name, MI)</i></p>	
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>13. Type of Payment (check all that apply):</p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____</p>	
<p>12. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____</p>		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</p> <p style="text-align: center;"><i>(attach Continuation Sheet(s) SF-LLLA, if necessary)</i></p>		
<p>15. Continuation Sheet(s) SF-LLLA attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>
<p>Federal Use Only:</p>		<p>Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)</p>

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the Information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
 (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

INFORMATION SHEET
(one Information Sheet per Vendor)

CONTRACTOR SHALL COMPLETE SECTION I OF THIS FORM AND RETURN
TO:

SAN BERNARDINO COUNTY
Department of Aging and Adult Services
Attn: CONTRACTS

SECTION I: CONTRACTOR INFORMATION			
Contractor Name:			
Address (including City, State and Zip Code):			Phone:
Web Site:	Email:	Fax:	
Site Name for Services (if Different from Contractor):			
Address (including City, State and Zip Code):			Phone:
Web Site:	Email:	Fax:	
Clinic Contact:		Title:	
Contract Signature Authority:			
Name:		Name:	
Title:		Title:	
Signature:		Signature:	
Phone #: ()	E-Mail:	Phone #: ()	E-Mail:
Claim Signature Authority:			
Name:		Name:	
Title:		Title:	
Signature:		Signature:	
Phone #: ()	E-Mail:	Phone #: ()	E-Mail:
SECTION II: DAAS INFORMATION			
Contract Mailing Address:		Contracts Unit:	
San Bernardino County Department of Aging and Adult Services Contracts Unit 784 E. Hospitality Lane San Bernardino, CA 92415-0920		<i>Unit Fax #: 909-891-9150</i>	

COMMUNITY FOCAL POINTS LIST

Name	Address	City/Community	Phone
Adelanto Senior Club	11565 Cortez Avenue	Adelanto, CA 92301	(760) 605-0549
Apple Valley Senior Club	13188 Central Road	Apple Valley, CA 92308	(760) 247-3155
Barstow Senior Citizens Club	555 Melissa Avenue	Barstow, CA 92311-3031	(760) 256-5023
Big Bear Valley Senior Center	42651 Big Bear Blvd.	Big Bear Lake, CA 92315	(909) 584-0323
Bloomington Senior Center	18317 Valley Blvd.	Bloomington, CA 92316	(909) 546-1399
Bonnie Baker Senior Citizens Club	149350 Ukiah Trail	Big River, CA 92242	(760) 665-2667
Chemehuevi Indian Tribal Center	1990 Palo Verde	Havasu Lake, CA 92363	(760) 858-4219
Chino Senior Center	13170 Central Avenue	Chino, CA 91710	(909) 334-3453
Crest Forest Senior Citizens Club	24658 San Moritz Drive	Crestline, CA 92325	(909) 338-5036
Delmann Heights Senior Center	2969 N. Flores St.	San Bernardino, CA 92407	(909) 887-2115
Dino Papavero Senior Center	16707 Marygold Avenue	Fontana, CA 92335	(909) 350-0575
El Mirage Senior Club	1488 Milton	El Mirage, CA 92301	(760) 559-7683
Fontana Community Senior Center	16710 Ceres Avenue	Fontana, CA 92335	(909) 854-5151
Ft. Mohave Tribal Senior Nutrition Program	700 Harrison Street	Needles, CA 92363	(760) 629-2371
George M. Gibson Senior Center	250 N. Third Avenue	Upland, CA 91786	(909) 981-4501
George White Senior Center	8565 Nuevo Avenue/8572 Sierra Ave.(Main Ofc)	Fontana, CA 92335	(909) 822-4493
Grand Terrace Senior Center	22627 Grand Terrace Road	Grand Terrace, CA 92313	(909) 824-1491
Helendale Senior Center	15350 Riverview Rd., Bldg. 2	Helendale, CA 92342	(760) 243-5690
Hesperia Leisure League	9122 Third Avenue	Hesperia, CA 92345	(760) 244-3223
Percy Baaker Community Center	9333 "E" Avenue/PO Box 104055	Hesperia, CA 92340	(760) 244-5488
Highland Senior Center	3102 E. Highland Avenue	Patton, CA 92369	(909) 862-8104
Hinkley Community and Senior Center	35997 Mountain View Road	Hinkley, CA 92347	(760) 253-4677
Hutton Senior Center	660 Colton Avenue	Colton, CA 92324	(909) 370-6168
James L. Brulte Senior Center	11200 Baseline Road	Rancho Cucamonga, CA 91701	(909) 477-2780
Joshua Tree Community Center	6171 Sunburst	Joshua Tree, CA 92252	(760) 366-2471

ATTACHMENT F

Name	Address	City/Community	Phone
Joslyn Senior Center	21 Grant Street	Redlands, CA 92373	(909) 798-7550
Loma Linda Senior Center	25571 Barton Road	Loma Linda, CA 92354	(909) 799-2820
Lucerne Valley Senior Club	10431 Allen Way	Lucerne Valley, CA 92356	(760) 248-2248
Luque Senior Center	292 East "O" Street	Colton, CA 92324	(909) 370-5087
Lytle Creek Senior Center	P.O. Box 182/14082 Center Road	Lytle Creek, CA 92358	(909) 880-8659
Mentone Senior Center	1331 Opal Avenue	Mentone, CA 92359	(909) 794-5280
Montclair Senior Center	5111 Benito Street	Montclair, CA 91763	(909) 625-9483
Morongo Basin Senior Support Center	57121 Sunnyslope Drive	Yucca Valley, CA 92284	(760) 365-9661
Mountain Communities Senior Center	675 Grandview Road	Twin Peaks, CA 92391	(909) 337-1824
Needles Senior Center	1699 Bailey Avenue	Needles, CA 92363	(760) 326-4789
Newberry Springs Senior Family Center	33383 Newberry Road	Newberry Springs, CA 92365	(760) 257-3284
Ontario Senior Center	225 East "B" Street	Ontario, CA 91764	(909) 395-2021
Perris Hill Senior Center	780 E. 21st Street	San Bernardino, CA 92404	(909) 384-5436
Phelan Senior Club	4128 Warbler Rd. #A	Phelan, CA 92371	(760) 868-8067
Pinon Hills Senior Club	10433 Mountain Road	Pinon Hills, CA 92372	(760) 868-8637
Redlands Community Senior Center	111 W. Lugonia	Redlands, CA 92374	(909) 798-7579
Rialto Senior Center	1411 S. Riverside Avenue	Rialto, CA 92376	(909) 877-9706
San Bernardino 5th St Senior Center	600 W 5th Street	San Bernardino, CA 92410	(909)-384-5430
San Moritz Lodge	24658 San Moritz Dr	Crestline, CA 92325	(909)-338-5036
Trona Community Senior Center	13187 Market Street	Trona, CA 93562	(760) 372-5889
Twenty Nine Palms Senior Center	6539 Adobe Road	Twenty Nine Palms, CA 92277	(760) 367-3891
Victorville Senior Center	14874 Mojave Road	Victorville, CA 92392	(760) 245-5018
Wrightwood Community Center	1543 Barbara Street	Wrightwood, CA 92397	(760) 249-3205
Yucaipa Senior Center	12202 First Street	Yucaipa, CA 92399	(909) 797-1177
Yucca Valley Senior Center	57088 29 Palms Highway	Yucca Valley, CA 92284	(760) 228-5453

Payments, Budgets, Closeout, and Audits

July 1, 2022 through June 30, 2025

I. FUNDS

A. Expenditure of Funds

1. Contractor shall expend all funds received hereunder in accordance with this Agreement.
2. Any reimbursement for authorized travel and per diem shall be at rates not to exceed those amounts paid by the State in accordance with California Department of Human Resources' rules and regulations. This is not to be construed as limiting Contractor from paying any differences in costs between the rates specified above and any rates the Contractor is obligated to pay under other contractual agreements from funds other than those provided pursuant to this Agreement.
3. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from County.
4. Contractor agrees to include these requirements in all contracts it enters into with subcontractors or vendors to provide services pursuant to this Agreement.
5. County reserves the right to refuse payment to Contractor or disallow costs for any expenditure, when determined by the County to be out of compliance with this Agreement, unrelated or inappropriate to the contract activities, when adequate supporting documentation is not presented, or where prior approval was required but was either not requested or not granted.

B. Accountability for Funds

1. Contractor shall maintain accounting records for funds received under the terms and conditions of this Agreement. These records shall be separate from those for any other funds administered by Contractor, and shall be maintained in accordance with Generally Acceptable Accounting Principles and Procedures, and the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
2. Contractor shall promptly forward payroll taxes, insurances and contributions, including State Disability Insurance, Unemployment Insurance, Old Age Survivors Disability Insurance, and Federal and State income taxes withheld, to designated governmental agencies.
3. Adequate source documentation of each transaction shall be maintained relative to the allow ability of expenditures reimbursed by DAAS under this Contract. If the allow ability of expenditures cannot be determined because records or documentation of Contractor are nonexistent or inadequate according to Generally Accepted Accounting Principles and Procedures, the expenditures may be disallowed by DAAS.
4. Financial Management Systems
Contractor shall meet the following standards for its financial management systems, as stipulated in 45 CFR Section 92.20 (governmental) or 45 CFR Section 74.21 (not for profit organizations):
 - a. Financial Reporting
 - b. Accounting Records
 - c. Internal Control

- d. Budgetary Control
- e. Allowable Costs
- f. Source Documentation
- g. Cash Management

C. Unexpended Funds

Upon termination, cancellation, or expiration of this Agreement, or dissolution of the entity, the Contractor shall return to County immediately upon written demand, any funds provided under this Agreement, which are not payable for goods or services delivered prior to the termination, cancellation or expiration of this Agreement or dissolution of the entity.

D. Availability of Funds

1. It is understood by the parties that this Agreement may have been written before ascertaining the availability or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made.
2. This Agreement is valid and enforceable only if sufficient funds are made available to the County by the United States Government or State of California for the fiscal years appropriate for the purpose of the services described herein.
3. Funding Reduction(s)
 - a. If funding for any County fiscal year is reduced or deleted for the purposes of this program, the County shall have the option to either:
 - 1) Terminate the Agreement
 - 2) Amend the agreement to reflect the reduced funding that will be available.
 - b. In the event that County elects to offer an amendment, it shall be mutually understood by both parties that 1) County reserves the right to determine which contracts, if any, under this program shall be reduced; 2) some contracts may be reduced by a greater amount than others; 3) the County shall determine in its sole discretion the amount that any or all of the contracts shall be reduced for the fiscal year.

E. Program Income

1. Program Income must be reported and expended under the same terms and conditions as the program funds from which it is generated.
2. Program Income must be used to pay for current allowable costs of the program in the same fiscal year that the income was earned (except as noted below).
3. Program Income must be spent before contract funds and may reduce the amount of contract funds payable to Contractor.
4. If Program Income is earned in excess of the amount reported by County in the Contractor's approved budget, the excess amount may be deferred for use in the first quarter of the following contract period, which is the last quarter of the federal fiscal year, if approved by County.
5. If Program Income is deferred for use it must be used by the last day of the federal fiscal year and reported when used.
6. Program Income may not be used to meet any requirements for matching contributions specified in this Agreement.

7. Program Income must be used to expand baseline services.

F. One Time Only (OTO) Funds:

OTO funds shall be only be used for the following purposes:

1. The purchase of equipment that enhances the delivery of services to the eligible service population. Home and community-based projects that are approved by County in advance.
2. Innovative pilot projects that are approved in advance by County, and are designed for the development of a comprehensive and coordinated system of care as defined in [45 CFR 1321.53(a) & (b).
3. OTO funds may be used to maintain or increase baseline services; however, it is understood by the parties that such use of OTO funds creates no expectation of service delivery beyond the current contract period.

G. Matching Contributions

1. Cash and/or in-kind contributions may be counted as match if such contributions are used to meet program requirements.
2. Matching contributions (cash or in-kind) must be verifiable from the records of the Contractor or its subcontractors. Only allowable costs as established by Office of Management and Budget (OMB) cost principles may be reported as matching contributions.
3. Services of volunteers or other costs reported as “in-kind” matching contributions shall be valued at rates consistent with those of similar work or services paid by Contractor. If Contractor does not offer similar work or purchase similar services, rates shall be consistent with those in local market area.

H. Budget and Budget Revision

1. Contractor shall be compensated for expenses only as itemized in the approved budget that is incorporated by reference into this Agreement. The Contractor shall not be entitled to payment for expenses related to this Agreement until the budget has been reviewed and approved by the County.
2. No budget revision may result in an increase of the maximum dollar amount stated in Section V, Paragraph A. The written request must specify the line item or Service Category changes requested, and must include justification for the requested changes.

For the purposes of this section,

- a. “Service Category” shall be defined as that classification of activities defined in the Older Americans Act (OAA) that is specific to each OAA funded grant program; and
- b. “Service” shall be defined as the activities that are defined within a Service Category.

Examples of Service Categories include Supportive Services, Congregate and Home-delivered Nutrition Services, Disease Prevention/Health Promotion Services, and Family Caregiver or Grandparent Support Services. Examples of services include nutrition education, transportation, information assistance, senior center staffing, respite care, access assistance, and supplemental services.

County shall notify the Contractor in writing of the status of the budget revision request within fourteen (14) calendar days of receipt of the Contractor's written request. The County reserves the right to deny the Contractor's invoice for expenditures in excess of the approved budgeted line item amount.

3. Contractor shall submit a budget revision to the County, in advance of expenditures when:
 - a. Changes to line item expenditures are expected to exceed the amount of the approved budgeted line item by more than ten (10%) of the amount specified in Section V, Paragraph A.
 - b. New budget line items are to be added.
 - c. When the changes being requested involve the transfer of funds between Service Category.
 - d. When otherwise requested by the County.
4. Contractor shall maintain a written record of all budget changes including line item or service category changes. This record shall be available to the Department upon request and shall be maintained in the same manner as all other financial records.
5. The final date to submit to a budget revision is March 30 of the contract period unless otherwise specified by the County.
- I. Indirect Costs
 1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.
 2. Examples of indirect cost may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.
 3. The maximum reimbursement amount allowable for indirect costs is ten (10) percent of Contractor's direct costs, excluding in-kind contributions and non-expendable equipment. Indirect costs exceeding the ten (10) percent maximum may be budgeted as cash match and be used to meet the minimum matching contribution requirements.
 4. Contractor agrees to include the above requirement in all contracts it enters into with subcontractors or vendors to provide services pursuant to this agreement.
 5. Reimbursement for indirect costs shall be on the basis of an indirect cost rate plan documenting the methodology used to determine the indirect cost rate, which shall be submitted by Contractor to the Federal government for approval. After Federal approval the plan will submitted to DAAS and be approved by DAAS.
- J. Financial Closeout
 1. Contractor shall submit a final statement of expenditures and income (Financial Closeout – Attachment G) to County within thirty days of the end of contract period, unless otherwise specified by County.

2. Federal funds otherwise payable to Contractor by County may be reduced proportionately by County to maintain the required matching contributions ratio if amount of matching contributions reported by Contractor is less than minimum required matching contribution amount specified in Section V, Paragraph A, Fiscal Provisions of this Contract .

K. Subcontracts or Vendor Agreements

1. Without the prior written consent of the Director of DAAS or his/her designee through the HS Contracts Unit, this Contract is not assignable by Contractor either in whole or in part.
2. Contractor agrees not to enter into any subcontracts for work contemplated under this Contract without first obtaining written approval from the Director of DAAS or his/her designee. Any subcontractor shall be subject to the same provisions as Contractor. Contractor shall be fully responsible for the performance of any subcontractor.
3. Contractor shall include language in all subcontracts that require subcontractor to comply with all applicable State and Federal Laws.
4. Contractor shall have no authority to contract for, on behalf of, or incur obligations on behalf of County or State.
5. Copies of subcontracts, vendor agreements, Memoranda, and/or Letters of Understanding shall be on file with the Contractor and shall be made available to DAAS upon request.
6. Contractor shall monitor the insurance requirements of its subcontractors and/or vendors.
7. Contractor shall ensure that the subcontractor and/or vendor will complete all reporting and expenditure documents requested by DAAS. These reporting and expenditure documents shall be sent to Contractor in a timely manner and at intervals as determined by DAAS.
8. Contractor shall monitor the budget, expenditures, and performance of its subcontractors and/or vendors.
9. Contractors shall provide support and technical assistance to subcontractors and respond in writing to all written request for direction, guidance, and interpretation of instructions to include client and service data.

L. Audits

1. Contractors that expend \$750,000 or more in Federal awards shall arrange for an audit to be performed as required by the Single Audit Act of 1984, Public Law 98-502, Single Audit Act Amendments of 1996, Public Law 104-156, and Office of Management and Budget [2 CFR Part 200, Subpart F Audit Requirements] [formerly OMB Circular A-133].
2. A copy of audit report shall be submitted to DAAS within thirty (30) days after receipt of the auditor's report or nine months after the audit period, whichever occurs first, unless a longer period is agreed to in advance by the recognized or oversight federal agency.
3. Contractor shall ensure that State-funded expenditures are displayed discretely along with the related federal expenditures in the single audit report's "Schedule of Expenditures of Federal Awards" (SEFA) under the appropriate Catalog of Federal Domestic Assistance (CFDA) number as referenced herein. In addition, should contractor's SEFA totals be reported on the basis of a fiscal year period other than County's fiscal year (July 1 through June 30), a supplemental schedule shall be provided that reconciles Contractor's reported expenditures to County fiscal year periods.

4. For state contracts that do not have CFDA numbers, Contractor shall ensure that State-funded expenditures are discretely identified in the SEFA by the appropriate program name, identifying grant/contract number and as passed through the California Department of Aging.
5. The following closely related programs identified by CFDA number are to be considered as an “Other Cluster” for purposes of determining major programs or whether a program specific audit may be elected. Contractor shall identify the CFDA titles and numbers to the independent auditor conducting the organization’s single audit as well to each of Contractor’s sub-recipients.
6. The Federal Grantor for the following programs is the U.S Department of Health and Human Services, Administration on Aging:

93.044	Special Programs for the Aging – Title III, Part B = Grants for Supportive Services and Senior Centers (Title III-B).
93.045	Special Programs for the Aging – Title III, Part C – Nutrition Services (Title III-C)
93.052	National Family Caregiver Support – Title III, Part E
93.053	Nutrition Services Incentive Program (NSIP)

7. The Federal Grantor for the following program is the U.S Centers for Medicare and Medicaid Services:

93.779	State Health Insurance Assistance Program (HICAP)
93.071	MIPPA: MSP, LIS & Prescription Drug Enrollment Assistance through the Aging Network, SHIP, and ADRCs
93.626	SHIP Options Counseling for Medicare/Medicaid (FA)

8. The Federal Grantor for the following program is the Administration for Community Living grants:

93.071	MIPPA: Priority Area 2 AAAs
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9. Cluster of programs means a grouping of closely-related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA) and other clusters. “Other Clusters” are defined by the OMB in the Compliance Supplement or as designated by a State for federal awards provided to its sub recipients that meet the definition of cluster of programs. When designating an “other cluster”, a State shall identify the federal awards included in the cluster and advise the sub-recipients of compliance requirements applicable to the cluster, consistent with S.400 (d) (1) and S.400 (d) (2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in S.520, and with the exception of R&D as described in S.200 (c), whether a program-specific audit may be elected. (Federal Office of Management and Budget, (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Corporations).

10. Contractor shall perform a reconciliation of its “Financial Closeout Report” to the audited financial statements. The reconciliation shall be maintained and be made available to DAAS for review.
11. Contractor shall ensure that subcontractor single audit reports for Contractor meet [2 CFR Part 200, Subpart F Audit Requirements] [formerly OMB Circular A-133] requirements, including, but not limited to:
 - a. Performed timely – Not less frequently than annually and a report submitted timely. The audit is required to be submitted within 30 days after receipt of the auditor’s report or nine months after the end of the audit period, whichever occurs first.
 - b. Properly procured – Use procurement standards provided for in OMB Circular A-133 and provide maximum opportunities to small and minority audit firms.
 - c. Performed in accordance with Generally Accepted Government Auditing Standards – Shall be performed by an independent auditor and be organization-wide
 - d. All inclusive – Includes an opinion (or disclaimer of opinion) of the financial statements; a report on internal control related to the financial statements and major programs; an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements; and the schedule of findings and questioned costs.
 - e. Performed in accordance with provisions applicable to this program as identified in [2 CFR Part 200, Subpart F Audit Requirements] [formerly OMB Circular A-133 Compliance Supplement].
12. Requirements identified in the provision above shall be included by Contractor in all subcontracts.
13. Contractor shall include in its contract with the independent auditor that the auditor will comply with all applicable requirements/standards, that the County shall have access to all audit reports and supporting work papers, and that the County shall have the option to perform additional work if needed.
14. Unless prohibited by law, the cost of audits completed in accordance with provisions of the Single Audit Act Amendments of 1996 is allowable charges to Federal awards. Contractor may not charge to Federal awards the cost of any audit under the Single Audit Act Amendments of 1996 not conducted in accordance with the Act. Contractor may not charge to Federal Awards the cost of auditing a non-federal entity which has Federal Awards expended of less than \$750,000 per year, and is thereby exempted under OMB Circular A-133, Subsection __200 (d).
15. Contractor shall cooperate with and participate in any additional audits which may be required by State or County.

COUNTY OF SAN BERNARDINO NUTRITION SERVICES
CONGREGATE/HOME DELIVERED MEAL PROGRAM BUDGET

Provider: City of Montclair

Fiscal Year/Period: 2022-23

Orig Amend

Match Requirement: \$ 22,181.90

Service	C-1 Meals		C-1 Nutrition Education		C-2 Meals		C-2 Nutrition Education		Total
	Cash	In-Kind	Cash	In-Kind	Cash	In-Kind	Cash	In-Kind	
Meal Cost	20561								
Expenditure Category:	Cash	In-Kind	Cash	In-Kind	Cash	In-Kind	Cash	In-Kind	Total
1 Personnel	\$ 149,737	\$ 51,328							\$ 201,065
2 Staff Travel & Training	\$ 1,000								\$ 1,000
3 Equipment									\$ -
4 Non-Inventoriable Equipment	\$ 3,000								\$ 3,000
5 Consultants			\$ 3,000						\$ 3,000
6 Catered Food	\$ 130,050								\$ 130,050
7 Raw Food	\$ 5,000								\$ 5,000
8 Other Expenses:									
a Supplies	\$ 18,000								\$ 18,000
b Insurance									\$ -
c Repair & Maintenance									\$ -
d Rent/Building Space									\$ -
e Utilities									\$ -
f Vehicle Operations									\$ -
g Miscellaneous	\$ 2,500								\$ 2,500
9 Indirect Cost									\$ -
Total Expenditures (add lines 1-7)	\$ 309,287	\$ 51,328	\$ 3,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 363,615

Revenue Sources:	Cash	In-Kind							Total
Federal Funds	\$ 118,760				\$ -				\$ 118,760
Federal Funds (ARP)	\$ 47,262				\$ -				\$ 47,262
State Funds	\$ 50,055				\$ -				\$ 50,055
NSIP	\$ 17,087				\$ -				\$ 17,087
County Funds					\$ -				\$ -
Program Income	\$ 44,000		\$ 3,000						\$ 47,000
Matching Cash	\$ 32,123								\$ 32,123
Matching In-Kind		\$ 51,328							\$ 51,328
Non-Match Cash									\$ -
Non-Match In-Kind									\$ -
Total Revenue	\$ 309,287	\$ 51,328	\$ 3,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 363,615

Submitted by:

Marcia Richter, Director of Human Services
Printed Name

M. Richter
Signature

5/3/2022
Date

DAMS Approval:

Jeffrey Young
Printed Name

Jeffrey Young
Signature

5/6/22
Date

- 2201CAOACM-01 (Congregate Meals)
- 2201CAOAHM-01 (Home-Delivered Meals)
- 2201CAOANS-01 (Nutrition Services Incentive Program)
- 2101CAHDCS-00 (HDCS) Consolidated Appropriations Act, 2021 suppl. Funding, nutrition OOA Title III C-2
- 2101CACM6-00 (American Rescue Plan (ARP) for Congregate Meals under Title III-C1 of the OAA)
- 2101CAHDM6-00 (American Rescue Plan (ARP) for Home Delivered Meals under Title III-C2 of the OAA)

SAN BERNARDINO COUNTY NUTRITION SERVICES
 Matching Funds Narrative

Contractor: City of Montclair
 Fiscal Year: 07/01/23-06/30/24

ORIG X Amend ___

CONGREGATE SITES C-1

HOME DELIVERED MEALS C-2

Provide justification, rates, comments, descriptions, etc. for the required 11.11% of the total proposed contract amount in matching funds whether in cash or in-kind. Matching funds may not be fees for services, client donations or program income as defined by 45 CFR 74.41 match.

HOME DELIVERED MEALS C-2

Line Item	Rate	Annual Amount	Description/Justification
Personnel	\$	\$	Volunteers

Monthly Expenditure Report

MONTHLY NUTRITION PROGRAM EXPENDITURE REPORT/REQUEST FOR REIMBURSEMENT			
(due on the 10th working day of the following month)			
			FY 2022-2023
COUNTY OF SAN BERNARDINO DEPARTMENT OF AGING & ADULT SERVICES		CONTRACTOR NAME AND ADDRESS:	
CFDA: 93.045		Service Month:	
CONGREGATE SITES C 1 <input type="checkbox"/>		HOME DELIVERED MEALS C 2 <input type="checkbox"/>	
Number of meals served:			
A		B = C	
Expenditures	COST TO PROVIDER		TOTAL MONTHLY EXPENSE
	CASH	IN-KIND	
Personnel	\$ -	\$ -	\$ -
Staff Travel and Training	\$ -	\$ -	\$ -
Equipment (including One-Time-Only purchases)	\$ -	\$ -	\$ -
Non-inventoriable Equipment	\$ -	\$ -	\$ -
Consultants	\$ -	\$ -	\$ -
Catered Food	\$ -	\$ -	\$ -
Raw Food	\$ -	\$ -	\$ -
Other Expenses			
a. Consumable Supplies	\$ -	\$ -	\$ -
b. Insurance	\$ -	\$ -	\$ -
c. Repair & Maintenance	\$ -	\$ -	\$ -
d. Rent/Building Space	\$ -	\$ -	\$ -
e. Utilities	\$ -	\$ -	\$ -
f. Vehicle Operations	\$ -	\$ -	\$ -
g. Miscellaneous	\$ -	\$ -	\$ -
Nutrition Education	\$ -	\$ -	\$ -
Indirect Costs	\$ -	\$ -	\$ -
Total Expenditures	\$ -	\$ -	\$ -
D		E = F	
Deductions from Expenditures	CASH	IN-KIND	TOTAL DEDUCTIONS:
Program Income (income not from DAAS)	\$ -		\$ -
Deferred Income	\$ -		\$ -
Matching Cash	\$ -		\$ -
Matching In-Kind		\$ -	\$ -
Non-Match Cash	\$ -		\$ -
Non-Match In-Kind		\$ -	\$ -
Total Deductions	\$ -	\$ -	\$ -
Request For Reimbursement (Expenditures minus Reimbursements)			C-F
			\$ -
(For DAAS use only)		PROGRAM FUNDING:	
Inv #		Request for	\$ -
Inv Date		Less Advance	\$ -
Vendor Code		Total Reimbursement	\$ -
Please Pag		Int Order	3000031
Please Pag		Int Order	3000029
Please Pag		Int Order	
Please Pag		Int Order	
		TOTAL REIMBURSEMENT	
Approved by:		Date	

Page 1

DEFINITIONS

COUNTY OF SAN BERNARDINO

DEPARTMENT OF AGING AND ADULT SERVICES

Title III - C

Program Income:	The revenue generated by receiving donations from clients when they consume meals.
Deferred Income:	Enter revenue deferred from prior year.
Cash Match:	Cash, other than program income, contributed to the project from local or State funds. With the exception of Community Development Block Grant (CDBG) funds, Federal funds cannot be used as cash match. Costs borne by the Contractor and cash contributions from any and all third-parties such as company/private donations, or payments made by from the contractor's general fund can be considered cash match. Funds received by the contractor as Program Income can not be counted cash match.
In-Kind:	Contributions other than cash made to the program by third-parties; e.g. volunteered time or donated building space.
Request for Reimbursement:	Requested Reimbursement for this month.

(due on the 10th working day of the following month)						
CONGREGATE SITES C 1 <input checked="" type="checkbox"/>		HOME DELIVERED MEALS C 2 <input type="checkbox"/>				
		A	+	B	=	C
EXPENDITURES:		COST TO PROVIDER		TOTAL MONTHLY		
		CASH	IN-KIND			
1.	Personnel	\$ 10,000.00	\$ 2,000.00	\$ 12,000.00		
2.	Staff Travel and Training	\$ 100.00		100.00		
3.	Equipment (including One-Time-Only purchases)			-		
4.	Consultants	\$ 100.00		100.00		
5.	Catered Food	\$ 4,000.00		4,000.00		
6.	Raw Food			-		
7.	Other Expenses					
	a. Consumable Supplies	\$ 800.00		800.00		
	b. Insurance	\$ 600.00		600.00		
	c. Repair & Maintenance			-		
	d. Rent/Building Space	\$ 600.00		600.00		
	e. Utilities	\$ 200.00		200.00		
	f. Vehicle Operations			-		
	g. Miscellaneous	\$ 100.00		100.00		
8.	Indirect Costs			-		
9.	Total Expenditures (add lines 1-8)	\$ 16,500.00	\$ 2,000.00	\$ 18,500.00		
		D	+	E	=	F
DEDUCTIONS FROM EXPENDITURES:		CASH	IN-KIND	TOTAL DEDUCTIONS:		
10.	Program Income (income not from DAAS)	\$ 300.00		300		
11.	Deferred Income			0		
12.	Matching Cash			0		
13.	Matching In-Kind		2,000	2,000		
14.	Non-Match Cash			0		
15.	Non-Match In-Kind			0		
16.	Total Deductions (add lines 10-15)	\$ 300.00	\$ 2,000.00	\$ 2,300.00		
REQUEST FOR REIMBURSEMENT (line 9 less line 16)				\$ 16,200.00		
PROGRAM FUNDING: (For DAAS use only)						
Repayment of Advance (10% of advance if paid)				\$ -		
NSIP						
NSIP (OTO)						
Federal Funds						
Federal OTO (Baseline)						
Federal OTO (Equipment)						
State Funds						
State OTO						
CDBG						
County Funds						
Repayment of funds from prior period (specify):						
Other funding source (specify):						
TOTAL REIMBURSEMENT				\$ -		

IIIC MONTHLY REPORT INSTRUCTIONS									
1)	Fill out organization name and address, and month of billing.								
2)	Check C-1 or C-2 box.								
3)	Enter your monthly service units								
4)	Enter your expenses for each type in the first section. Cash or In-Kind. (personnel, travel, etc.)								
5)	Fill in the Program Income, if any.								
6)	Fill in the Deferred Income, Match Cash, Non-Match Cash and In-Kind Contributions as applicable.								
7)	Your request for reimbursement will automatically calculate.								
8)	The program funding third section will be completed by DAAS.								
9)	Sign, review and print								
10)	Submit back up documentation as required.								
11)	Submit by the 10th working day of the following month.								

SAN BERNARDINO COUNTY
DEPARTMENT OF AGING AND ADULT SERVICES

REQUEST TO PURCHASE PROPERTY/EQUIPMENT

This form is to be completed whenever a contractor is requesting to purchase property or equipment under a California Department of Aging (CDA) grant. Contractor must obtain a minimum of three (3) bids and attach Equipment Bid Form for each item requested.

Date: _____

FY: 22/23

Contractor Name:		
Address:	Contact:	Phone No:

QTY	DESCRIPTION (Attach additional sheets if required)	VENDOR	COST*	FUNDING SOURCE
1				

Explain how requested item(s) will be used to carry out the objectives related to the funding to be received (attach additional sheet if required):

Administrative Use Only:	
Approved <input type="checkbox"/>	Denied <input type="checkbox"/>
Value over \$500/unit: Yes <input type="checkbox"/> No <input type="checkbox"/>	
Inventory: Yes <input type="checkbox"/> No <input type="checkbox"/>	
Program Review by: Name _____ Title _____ Date _____	
Director Approval : _____ Date _____	

Y:\EQUIPMENT INVENTORY - DAAS\CDA_forms\Equipment Purchase Request COVER SHEET (CDA Funds).docx
Purchase Request COVER SHEET (CDA Funds)_Dec18.doc
Revised 10/18

Equipment Request Justification

Submit with all requests for equipment and vehicles costing \$5,000 or more and any computing devices, regardless of cost (including, but not limited to: workstations, servers, laptops, personal digital assistants, notebook computers, tablets, smartphones, and cellphones), **and all portable electronic storage media regardless of cost** (including, but not limited to: thumb/flash drives and portable hard drives) **with you budget. Respond to the information below:**

1. A description of the item(s)

2. Total Costs (including tax, delivery, shipping, etc. as applicable) of the procurement and the selected vendor if know.

3. Description of the method of procurement (price quotes, county, auction, fleet, etc)

4. Location of equipment

5. Acknowledgement of insurance requirements (vehicles only)

6. Name, phone number and email address of the procurement contact at the AAA.

Justification for an equipment purchase must include the following information:

1. Explanation for the need for the specific type of equipment, including a description of how the equipment will be used, frequency of use.

2. Description of impact on Program if the purchase is not approved.

3. Description of alternatives considered, including shared use with another OAA program or agency, lease, other available vehicles in fleet current under-used.

4. When was the last time this item was purchased?

5. If a vehicle, a list of the AAA's other vehicles and an explanation of why existing vehicle fleet cannot meet the need.

6. Clarification of whether the equipment will be used solely by the specific AAA Program from which the purchase will be funded or whether it will be shared with other program(s) or another AAA. If it will be share, include a cost agreement or Memorandum of Understanding between entities detailing the proration between programs.

STATE OF CALIFORNIA
 CALIFORNIA DEPARTMENT OF AGING
INFORMATION INTEGRITY AND SECURITY STATEMENT
 CDA 1024 (REV 03/2020)



In compliance with California Government Code Section 11019.9, California Civil Code Section 1798 et seq., Department of General Services Management Memo 06-12, and Statewide Information Management Manual (SIMM) 5300 the California Department of Aging (CDA) hereby requires the Contractor/Vendor to:

ACKNOWLEDGE:

- Any wrongful access, inspection, use, or disclosure of Personal, Confidential or Sensitive Information (PSCI) is a crime and is prohibited under state and federal laws, including but not limited to California Penal Code Section 502, California Government Code Section 15619, California Civil Code Section 1798.53 and 1798.55, and the Health Insurance Portability and Accountability Act. Acknowledge.
- Any wrongful access, inspection, use, disclosure, or modification of PSCI information may result in termination of this Contract/Agreement.

MEET THE FOLLOWING REQUIREMENTS:

- PSCI information shall be protected from disclosure in accordance with all applicable laws, regulations, and policies.
- PSCI data be protected by authorized access using the principles of least privilege.
- Any occurrence that actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits or that constitutes a violation or imminent threat of violation of security policies, security procedures or acceptable use policies will immediately be reported to CDA by completing a Security Incident Report CDA (1025A and 1025B).
- All access codes which allow access to confidential information will be properly safeguarded.
- Obligations to protect PSCI information obtained under this Contract/Agreement will continue after termination of the Contract/Agreement with CDA.
- All employees/subcontractors of the Contractor/Vendor will complete the required Security Awareness Training module located at https://aging.ca.gov/Information_security/ within 30 days of the start date of the Contract/Agreement or within 30 days of the start date of any new employee or subcontractor. This training must be completed annually.
- All employees/subcontractors of the Contractor/Vendor must comply with CDA's confidentiality and data security requirements as outlined in the Contract/Agreement.
- All employees/subcontractors of the Contract/Vendor must comply with the Appendix D, section XVIII encryption and self-certification requirements as outlined in the contract.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF AGING
INFORMATION INTEGRITY AND SECURITY STATEMENT
CDA 1024 (REV 03/2020)



CERTIFY:

To protect PSCI information by:

- Accessing, inspecting, using, disclosing or modifying PSCI information only for the purpose of performing official duties.
- Never accessing, inspecting, using, disclosing, or modifying PSCI information for curiosity, personal gain, or any non-business-related reason.
- Securing PSCI information in approved locations.
- Never removing PSCI information from the work site without authorization.

Meets the encryption requirements in Exhibit D Article 18:

- Is in full compliance with the 128 Encryption requirements.
- Is not in compliance with the 128 Encryption requirements and will achieve compliance by _____.

I hereby certify that I have reviewed this Confidentiality Statement and will comply with the above statements.

Contractor/Vendor Printed Name and Title

Contractor/Vendor Signature

Date

CDA Program/Project

Contract Number



17. Type of Personally Identifiable Information (Check all that apply):

No Personal Information Social Security Number
 Health or Medical Information Financial Account Number
 Driver's License/State ID Number Name
 Other (Specify): _____

18. Is a Privacy Disclosure Notice Required? <input type="checkbox"/> Yes <input type="checkbox"/> No	19. Number of Individuals Affected:
---	--

SIGNATURES

20. Agency/Contractor Information Security Officer:	Signature:	Date:
21. Agency/Contractor Privacy Officer:	Signature:	Date:
22. Authorized Signature/Director:	Signature:	Date:

CDA USE ONLY

CDA Incident Number:	CAL-CSIRS Report Number:
-----------------------------	---------------------------------

CDA 1025a (REV 02/2018)



AGENCY/CONTRACTOR	
1. Business Name:	
2. Business Address:	
CONTACT INFORMATION	
3. Incident Manager:	4. Telephone Number:
5. Email Address:	
INCIDENT INFORMATION	
6. CDA Incident Number:	CAL-CIRS Number:
7. Is there an Update to Form 1025A? <input type="checkbox"/> Yes <input type="checkbox"/> No Comments:	
8. Has there been a Change of Scope? <input type="checkbox"/> Yes <input type="checkbox"/> No Explanation:	
9. Is a Privacy Disclosure Notice Required? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, has a Sample Notification been Submitted for Approval? <input type="checkbox"/> Yes <input type="checkbox"/> No	
INCIDENT ROOT CAUSE	
10. What was the Root Cause of the Incident?	

STATE OF CALIFORNIA
 CALIFORNIA DEPARTMENT OF AGING
 SECURITY INCIDENT REPORT PART B



CORRECTIVE ACTION PLAN

11. Corrective Action Plans Attached? _____ Yes _____ No

12. Date Corrective Actions will be Fully Implemented:

INCIDENT COSTS

13. Describe the Costs Associated with Resolving this Incident:

Incident Response: \$ _____

Communications: \$ _____

Notices: \$ _____

Individual Questions: \$ _____

Investigation: \$ _____

Lost or Stolen Items: \$ _____

Total: \$ _____

SIGNATURES

14. Agency/Contractor Information Security Officer:	Signature:	Date:
15. Agency/Contractor Privacy Officer:	Signature:	Date:
16. Authorized Signature/Director:	Signature:	Date:

CDA 1025b (REV 02/2018)



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 6, 2022	FILE I.D.:	HSV030
SECTION:	CONSENT - AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	7	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-58 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO SUPPORT THE MONTCLAIR AFTER-SCHOOL PROGRAM, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-58 with Ontario-Montclair School District (OMSD) to support the Montclair After-school Program.

BACKGROUND: The Human Services Department has delivered after-school programs within OMSD schools since 1999. Funding for these programs originates from the California Department of Education, After-School Education and Safety (ASES) program and the Expanded Learning Opportunity program through grants made available to local education authorities, such as OMSD. The goal of the Montclair After-School Program (MAP) is to improve the academic performance and success of students in the program by providing high-quality academic programming after school while ensuring a safe physical and emotional environment for all.

Proposed Agreement No. 22-58 would provide funding for MAP at the following eight elementary school sites: El Camino, Howard, Kingsley, Lehigh, Mission, Monte Vista, Moreno, Ramona; and two middle school sites: Serrano, and Vernon. The funding for MAP at these ten school sites will be used to support academic, enrichment, and physical activities for children in the after-school programs.

FISCAL IMPACT: Should the City Council approve proposed Agreement No. 22-58, OMSD would provide an amount not to exceed \$2,592,169.42 to fund personnel, training, program supplies, and grant oversight. The City of Montclair will receive the ASES base amount of \$1,342,169.42 and an additional \$250,000 for a total of \$1,592,169 to start the school year. Additional funding not to exceed \$1,000,000 for additional staffing may be requested as needed to meet the required direct supervision ratio of 20:1. The term proposed in Agreement No. 22-58 is July 1, 2022 through June 30, 2023.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-58 with Ontario-Montclair School District to support the Montclair After-school Program, subject to any revisions deemed necessary by the City Attorney.



AGREEMENT FOR SERVICES ONTARIO-MONTCLAIR SCHOOL DISTRICT

950 WEST "D" STREET • ONTARIO, CALIFORNIA 91762 • (909) 459-2500

THIS AGREEMENT is made and entered into this 16 day of June, 2022 by and between the Ontario-Montclair School District, hereinafter referred to as the "DISTRICT," and City of Montclair, hereinafter referred to as the "CONSULTANT."

1. SERVICES TO BE PERFORMED BY CONSULTANT

- a) **Scope of Work.** CONSULTANT agrees to perform the following services on the dates and times herein stated in accordance with directions stipulated to by DISTRICT (provide attachment if necessary):

Provide staff and materials for the ASES expanded learning program. See Attachment A for details.

- b) **Staffing.** CONSULTANT may, at CONSULTANT's own expense, employ such assistants as CONSULTANT deems necessary to perform the services required of CONSULTANT by this Agreement. DISTRICT will not train, control, direct, or supervise CONSULTANT's assistants or employees in the performance of those services.
- c) **Independent Contractor.** Consultant is, and shall at all times be deemed to be, an independent contractor and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between DISTRICT and CONSULTANT or any of CONSULTANT's agents or employees. CONSULTANT assumes exclusive responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. CONSULTANT, its agents and employees, shall not be entitled to any rights and/or privileges of DISTRICT's employees and shall not be considered in any manner to be DISTRICT's employees.
- d) **Public Entity Employee.** If CONSULTANT is a regular employee of a public entity, all services which CONSULTANT renders under this Agreement will be performed at times other than CONSULTANT's regular assigned work day for said entity or during periods of vacation or leave of absence from said entity, using CONSULTANT's own resources.

2. COMPENSATION

- a) **Compensation for Services.** Except as otherwise provided in this Agreement, DISTRICT agrees to compensate CONSULTANT for services rendered under this Agreement as follows:

See Attachment B and Schedule A for details.
Attachment B(I)(H) not to exceed \$1,250,000.00

- b) **Travel Expenses.** DISTRICT will pay no additional amount for travel or other expenses of CONSULTANT under this Agreement unless specified below under section 2(c). Should travel or other expenses be specified below, CONSULTANT shall be entitled to the lesser amount of
 1. The not to exceed amount stated, or
 2. The actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to this Agreement.

c) **Summary of Compensation**

Services:	\$2,592,169.42	
Travel Expense:	NA	
Total contract amount not to exceed (<i>services + travel</i>)		\$2,592,169.42

- d) **Retired STRS or PERS.** If this Agreement is with an individual consultant, CONSULTANT shall notify the DISTRICT whether or not CONSULTANT is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS).
- e) **Income Tax.** DISTRICT will not withhold any federal or state income tax for payment made pursuant to this Agreement but, if applicable, will provide CONSULTANT with a statement of earnings at the end of each calendar year. CONSULTANT is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.
- f) **Documentation Required For Payment.** Unless specified below, payment for services and travel shall be made by DISTRICT to CONSULTANT after services/travel has been completed and consultant submits documentation for payment (e.g. consultant invoice).

3. **TERM OF AGREEMENT**

The term of this Agreement is from July 1, 2022 through June 30, 2023, unless sooner terminated pursuant to the provisions of Section 6 of this Agreement. DISTRICT and CONSULTANT may mutually agree in writing to extend the term of this Agreement provided, however, DISTRICT shall not be obligated to pay CONSULTANT any additional consideration unless CONSULTANT undertakes additional services, in which instance the consideration shall be increased as DISTRICT and CONSULTANT shall agree in writing.

4. **OBLIGATIONS OF CONSULTANT**

- a) **Services Performed.** During the term of this Agreement, CONSULTANT agrees to diligently prosecute the work specified in the "Services to be Performed by Consultant" to completion. CONSULTANT may represent, perform services for, and be employed by such additional clients, persons, or companies as CONSULTANT, in CONSULTANT's sole discretion, sees fit.
- b) **Use of District Space and Resources.** CONSULTANT will provide all space, materials, tools, and instrumentalities required to perform the services under this Agreement at CONSULTANT's expense, and shall not be entitled to reimbursement. CONSULTANT shall not be entitled to any benefits the DISTRICT may make available to its employees, including, but not limited to, office or business equipment, office space, supplies, group health, life insurance, vacation or retirement benefits.

- c) **Regulatory Compliance.** CONSULTANT shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.
- d) **Asbestos Hazard Emergency Response Act (AHERA) and Lead Based Paint Compliance.** CONSULTANT shall comply with the DISTRICT's Asbestos Hazard Emergency Response Act (AHERA) and Lead Based Paint compliance procedures. Prior to starting any construction work at a DISTRICT facility (including demolition, drilling/penetrating, cutting/tearing, sanding, scraping, screwing/unscrewing, or other similar activities) the following requirements must be met:
1. Contact the Facilities Planning and Operations Department (909-418-6366) to discuss the project and the planned method of construction or installation to occur.
 2. Receive and review the District's Asbestos Hazard Emergency Response Act (AHERA) Management Plan Book that identifies the known location(s) of asbestos and/or lead-based paint containing materials for the subject site to confirm these materials will not be disturbed during the course of your work.
 3. Obtain authorization from the Facilities Planning and Operations Department.
- e) **Fingerprinting.** CONSULTANT shall comply with the requirements of Education Code section 45125.1 with respect to fingerprinting of employees who may have any interaction with the DISTRICT's pupils (whether such interaction is in person or electronic, and whether the interaction is through writing, voice or video) if CONSULTANT, including but not limited to CONSULTANT if CONSULTANT is among the agents providing services, has any student interaction outside of the immediate supervision and control of the pupils' parent/guardian or a school employee. If at any time during the term of this Agreement CONSULTANT is either notified by the Department of Justice or otherwise becomes aware that any employee of CONSULTANT, including CONSULTANT, performing services under this Agreement has been arrested or convicted of a violent or serious felony as defined in California Education Code Section 45122.1, CONSULTANT agrees immediately to notify the DISTRICT and remove said employee from performing services on this Agreement. CONSULTANT shall certify in writing to the DISTRICT that neither the CONSULTANT nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Education Code section 45122.1 (Exhibit A).
- f) **Indemnification.** CONSULTANT shall indemnify, pay for the defense of, and hold harmless DISTRICT and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of CONSULTANT's negligent or willful acts and/or omissions in rendering any services hereunder, including but not limited to the negligent or willful acts and/or omissions of CONSULTANT's employees and agents. CONSULTANT shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning CONSULTANT or any employee/agent of CONSULTANT and shall further indemnify, pay for the defense of, and hold harmless DISTRICT of and from any such payment or liability arising out of or in any manner connected with CONSULTANT's performance under this Agreement.
- g) **Insurance Requirements.** During the entire term of this Agreement, CONSULTANT shall procure, pay for and keep in full force and effect the following types of insurance:

1. **General Liability Insurance.** Commercial general liability insurance, covering bodily injury liability, property damage liability and personal injury liability of CONSULTANT with respect to the services provided by, or on behalf of, CONSULTANT under this Agreement. The policy limits shall not be less than One Million dollars (\$1,000,000) per occurrence. The policy may not contain an exclusion for coverage of claims arising from claims for sexual molestation or abuse. In the event that CONSULTANT's policy should have an exclusion for sexual molestation or abuse claims, then CONSULTANT shall be required to procure a supplemental policy providing such coverage.
 - a. The DISTRICT requires the Certificate of Liability Insurance to show the DISTRICT as the "Certificate Holder" and "Additional Insured" on the CONSULTANT'S general liability insurance policy. Requested wording in the "Description box" is as follows:

The Ontario-Montclair School District, its departments, officers, agents, and employees are additional insureds with regard to liability and defense of suits arising from the operations and uses performed by or on behalf of the named "Insured."

2. **Auto Liability Insurance.** CONSULTANT agrees that services in conjunction with this agreement will be conducted in CONSULTANT's office or at a DISTRICT school site and CONSULTANT will not drive Student in private or commercial vehicle to conduct assessments or conduct other business in conjunction with this agreement. Accordingly, commercial automobile insurance will not be required in conjunction with this agreement. Should CONSULTANT need to provide services in conjunction with this agreement that do require Student transportation in a private or commercial vehicle, the DISTRICT and CONSULTANT will mutually agree on services to be provided, and CONSULTANT will provide insurance as follows: Business auto liability insurance covering the use of "owned, non-owned and hired" autos by or on behalf of CONSULTANT respect to the services to be performed under this Agreement. The policy limits shall not be less than One Million dollars (\$1,000,000) per occurrence. The Auto Liability Insurance policy shall include waiver of subrogation via separate endorsement.
3. **Workers' Compensation Insurance.** This coverage is required unless CONSULTANT provides written verification it has no employees. Coverage must be at least as broad as that which is required by the State of California, with Statutory Limits. CONSULTANT must also maintain Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Workers' compensation policy shall include waiver of subrogation via separate endorsement.

The policies of insurance described in Paragraph (4g.1-3) listed above shall be carried with responsible and solvent insurance companies authorized to do business in the State of California. True and correct copies of all certificates of insurance reflecting the coverage required in Paragraph (4g.1-3) shall be provided to DISTRICT prior to the commencement of services under this Agreement. CONSULTANT agrees that it shall not cancel or change the coverage provided by the policies of insurance described in Paragraph (4g.1-3) above without first giving the DISTRICT's Chief Business Official, thirty (30) days prior written notice. Should any such policy of insurance be canceled or changed, CONSULTANT agrees to immediately provide DISTRICT true and correct copies of all new or revised certificates of insurance.

- h) **Written Consent.** Neither this Agreement nor any duties or obligations under this Agreement may be assigned by CONSULTANT without the prior written consent of DISTRICT.

- i) **Vaccine Verification/Testing:** CONSULTANT shall verify the vaccination status of all “workers” and to require all unvaccinated or incompletely vaccinated workers to undergo weekly diagnostic screening testing and shall complete and return the Contractor Attestation of Compliance (Exhibit B).

5. OBLIGATIONS OF DISTRICT

- a) **Professional Services.** DISTRICT agrees to comply with all reasonable requests by CONSULTANT and to provide access to all documents reasonably necessary for the performance of CONSULTANT’s duties under this Agreement.

6. TERMINATION OF AGREEMENT

- a) **Termination without Cause.** Unless otherwise terminated as provided below, this Agreement shall continue in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.
- b) **Termination for Breach.** Should CONSULTANT default in the performance of this Agreement or breach any of its provisions, DISTRICT may terminate this Agreement by giving written notification to CONSULTANT.
- c) **Immediate Suspension/Termination by District.** If at any time during the performance of this Agreement DISTRICT determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, DISTRICT shall have the right to terminate the performance of CONSULTANT’s services hereunder by giving written notification to CONSULTANT of its intention to terminate.
- d) **Effect of Termination.** In the event that DISTRICT terminates this Agreement under paragraph (b) or (c) of this Section, CONSULTANT shall only be paid for those services rendered to the date of termination. All cash deposits made by DISTRICT to CONSULTANT, if any, shall be refundable to DISTRICT in full upon termination of this Agreement unless specified to the contrary below.
NA

7. GENERAL PROVISIONS

- a) **Notices.** Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be deemed given and served upon delivery personally, or three (3) days after depositing in the United States Mail. Mailed notices shall be addressed to the parties at the addresses set forth in this Agreement for DISTRICT and CONSULTANT. The foregoing addresses may be changed by written notice to the other party as provided herein.
- b) **Validity of Agreement.** This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by CONSULTANT and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, signed by both

parties, except DISTRICT may unilaterally amend the Agreement to accomplish the changes listed below:

- (1) Increase dollar amounts; (2) Administrative changes; and (3) Changes as required by law.
- c) **Court Findings.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- d) **California Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- e) **Audit.** Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records and files of DISTRICT, CONSULTANT, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of the DISTRICT or as a part of any audit of DISTRICT, for a period of three (3) years after final payment is made under this Agreement. CONSULTANT shall preserve and cause to be preserved such books, records and files for the audit period.
- f) **Contractual/Equitable Remedies.** CONSULTANT agrees that the DISTRICT is the sole entity against whom the CONSULTANT may seek either contractual or equitable remedies, and further agrees not to seek contractual or equitable remedies (including, but not limited to injunctive relief and quantum meruit) against DISTRICT employees or beneficiaries of the Agreement.
- g) **Board of Trustees Approval.** CONSULTANT warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind it hereto. This Agreement shall not become binding upon the DISTRICT until it has been duly approved or ratified by the Board of Trustees.

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

“DISTRICT”

“CONSULTANT”

Signature

Signature

Date

Javier “John” Dutrey, Mayor

Printed Name/Title

Phil Hillman, Chief Business Official

Printed Name/Title

Date

Ontario-Montclair School District
950 West D Street Ontario, CA 91762

jdutrey@cityofmontclair.org

Email Address/

Approved by OMSD Board:

5111 Benito Street

Street Address

Attest: Andrea Phillips, City Clerk

Montclair, CA 91763

City, State, Zip Code

(909) 626-8571

Telephone Number

Exhibit A

**Certification of Compliance with California Education Code Section 45125.1
(Fingerprinting)**

In compliance with California Education Code Section 45125.1, I hereby certify that no owner or employee of City of Montclair [name of CONSULTANT] (“CONSULTANT”) who may have any interaction with pupils (whether such interaction is in person or electronic, and whether the interaction is through writing, voice or video) outside of the immediate supervision and control of the pupils’ parent/guardian or a school employee, shall be permitted to have any contact with students until after I have received and reviewed a report based on their LiveScan fingerprint report that they have not been convicted of a felony as defined in California Education Code Section 45122.1. In advance of their contact with pupils, I shall certify receipt and review of a report from the LiveScan report that they have not been convicted of a felony as defined in California Education Code Section 45122.1. I also understand that I must provide to the Ontario-Montclair School District any subsequent arrest and conviction information that we receive concerning these individuals, and that I shall immediately remove the person from performing services on this Agreement. The Ontario-Montclair School District is entitled to rely upon my representations in this Certification. CONSULTANT hereby agrees to indemnify Ontario-Montclair School District for any and all claims, damages, suits and liability that arise out of, relate to or is associated with a failure of CONSULTANT to comply with California Education Code Section 45125.1 or with a failure to exercise reasonable care with respect to proper selection and/or supervision of CONSULTANT’s employees who may come in contact with pupils.

CONSULTANT INFORMATION

Signature
Javier “John” Dutrey, Mayor

Printed Name/Title

Date
jdutrey@cityofmontclair.org

Email Address/
5111 Benito Street

Street Address
Montclair, CA 91763

City, State, Zip Code
(909) 626-8571

Telephone Number

VACCINE VERIFICATION/TESTING POLICY

On August 11, 2021, the California Department of Public Health (“CDPH”) issued State Public Health Officer Order of August 11, 2021 (“Order”),¹ which requires all public and private schools serving TK through 12th grade students to verify the vaccination status of all “workers” and to require all unvaccinated or incompletely vaccinated workers to undergo weekly diagnostic screening testing. The Order took effect August 12, 2021, and requires full compliance by October 15, 2021.

To comply with this legal mandate, the District is imposing the following requirements for all “workers” who enter District sites. The term “workers” includes all District employees, contractors, volunteers, and any other paid or unpaid adult serving in the District or who is working on-site at any school campus or District facility.

Vaccine Verification

You must verify the vaccination status of all of your employees using one of the following methods of proof:

- a. COVID-19 Vaccination Record Card (issued by the Department of Health and Human Services Centers for Disease Control & Prevention or WHO Yellow Card²) which includes name of person vaccinated, type of vaccine provided and date last dose administered); OR
- b. A photo of a Vaccination Record Card (front and back) as a separate document; OR
- c. A photo of the worker’s Vaccination Record Card (front and back) stored on a phone or electronic device; OR
- d. Documentation of COVID-19 vaccination from a health care provider that includes the patient’s name, vaccine date(s), and vaccine type; OR
- e. Digital record that includes a QR code that when scanned by a SMART Health Card reader displays to the reader client name, date of birth, vaccine dates and vaccine type.

Workers who are not fully vaccinated, or for whom vaccine status is unknown or documentation is not provided, must be considered unvaccinated. “Fully Vaccinated” means individuals who are considered fully vaccinated for COVID-19: two weeks or more after they have received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna or vaccine authorized by the World Health Organization), or two weeks or more after they have received a single-dose vaccine (Johnson and Johnson [J&J]/Janssen). “Incompletely vaccinated” means persons who have received at least one dose of COVID-19 vaccine but do not meet the definition of fully vaccinated.

¹ The Order is available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Vaccine-Verification-for-Workers-in-Schools.aspx>.

² “WHO Yellow Card” refers to the original World Health Organization International Certificate of Vaccination or Prophylaxis issued to the individual following administration of the COVID-19 vaccine in a foreign country.

Testing Requirement for Workers Not Fully Vaccinated

Effective October 15, 2021, workers will only be permitted on District sites and facilities if they have submitted proof of vaccination (as described above) or if not fully vaccinated, have undergone weekly COVID-19 diagnostic screening testing, as follows:

- a. Workers may be tested with either antigen or molecular tests to satisfy this requirement, but unvaccinated or incompletely vaccinated workers must be tested at least once weekly with either PCR testing or antigen testing. Any PCR (molecular) or antigen test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.
- b. Unvaccinated or incompletely vaccinated workers must also observe all other infection control requirements, and are not exempted from the testing requirement even if they have a medical contraindication to vaccination, since they are still potentially able to spread the illness. Previous history of COVID-19 from which the individual recovered more than 90 days earlier, or a previous positive antibody test for COVID-19, do not waive this requirement for testing.
- c. Effective October 15, 2021, unvaccinated workers who fail or refuse to comply with the weekly testing requirement will be excluded from District sites and facilities.

We are not asking you to provide us with vaccination records or other medical or health records of your employees, but merely that you comply with the requirements set forth above for verifying vaccination status and/or requiring your employees to submit to weekly testing.

CONTRACTOR ATTESTATION OF COMPLIANCE

**MANDATORY VACCINATION VERIFICATION/WEEKLY TESTING OF
CONTRACTED WORKERS PROVIDING SERVICES AT ONTARIO-MONTCLAIR
SCHOOL DISTRICT**

CONTRACTOR NAME: _____

AGREEMENT/PURCHASE ORDER #: C-223-049

NAME OF PERSON MAKING THIS ATTESTATION: _____

TITLE OF PERSON MAKING THIS ATTESTATION: _____

On behalf of the Contractor named above, the undersigned hereby attests:

I/Contractor have read, understand, and will comply with the District’s Vaccine Verification/Testing Policy as outlined in this correspondence and the State Public Health Officer Order of August 11, 2021, with regard to employees of the Contractor providing services at District sites and facilities.

Initial: _____

I/Contractor have verified the vaccination status of all employees who provide services at District sites and facilities using one of the following methods of proof:

- a. COVID-19 Vaccination Record Card (issued by the Department of Health and Human Services Centers for Disease Control & Prevention or WHO Yellow Card³) which includes name of person vaccinated, type of vaccine provided and date last dose administered); OR
- b. A photo of a Vaccination Record Card (front and back) as a separate document; OR
- c. A photo of the worker’s Vaccination Record Card (front and back) stored on a phone or electronic device; OR
- d. Documentation of COVID-19 vaccination from a health care provider that includes the patient’s name, vaccine date(s), and vaccine type; OR
- e. Digital record that includes a QR code that when scanned by a SMART Health Card reader displays to the reader client name, date of birth, vaccine dates and vaccine type.

Initial: _____

³ “WHO Yellow Card” refers to the original World Health Organization International Certificate of Vaccination or Prophylaxis issued to the individual following administration of the COVID-19 vaccine in a foreign country.

I/Contractor attest that any employee associated with Contractor who has not provided proof of full vaccination as described above is undergoing weekly COVID-19 diagnostic screening testing in accordance with the District's Vaccine Verification/Testing Policy, for which the Contractor collects, monitors, and documents weekly test results.

Initial: _____

I/Contractor attest that no employee associated with Contractor will work or visit any District site or facility who is not fully vaccinated or who has not received a negative COVID-19 test within one week of the visit.

Initial: _____

I, the person/official named below, attest under penalty of perjury under the laws of the State of California, that I am duly authorized to legally bind Contractor and that the attestation, statements, and assertions indicated above are true and correct.

AUTHORIZED SIGNATURE: _____

DATE EXECUTED: _____

END OF AGREEMENT FOR CONSULTANT SERVICES

Attachment A

CONSULTANT: City of Montclair

Services to be performed by **CONSULTANT:**

CONSULTANT agrees to perform the following services on the dates and times herein stated in accordance with directions stipulated to by **DISTRICT** (provide attachment if necessary):

- I. **CONSULTANT** will provide staff and materials to operate the expanded learning program services at the following sites:
 - a. El Camino
 - b. Howard
 - c. Kingsley
 - d. Lehigh
 - e. Mission
 - f. Monte Vista
 - g. Moreno
 - h. Ramona
 - i. Serrano
 - j. Vernon.
- II. **CONSULTANT** will have the following responsibilities in support of the ASES program:
 - a. Coordinate the academic assistance, homework support, and enrichment portions (including time for physical activity) of the ASES program at each school site.
 - b. Hire, train, and supervise site staff, including the site coordinators and program leaders.
 - c. Seek regular input from principals regarding performance evaluations, including recommendations for retraining and terminating a site coordinator and/or other site staff.
 - d. Participate in all cross-training for site coordinators and program leaders.
 - e. Maintain ongoing communication between **CONSULTANT** staff and school staff regarding student needs and progress, including, but not limited to attendance at school-day meetings and/or one-on-one meetings with teachers.
 - f. Coordinate ASES activities with school staff to assure program supports current academic goals of teachers and administrators.
 - g. Provide academic assistance and other activities specifically supporting, but not duplicating, daytime curriculum and academic goals.
 - h. Foster communication with and involvement of parents through parent orientations, parent handbook, development and distribution of periodic newsletters, and hosting, at a minimum, one parent night.
 - i. Regularly attend and participate in regularly scheduled operation meetings with **DISTRICT** liaison.
 - j. Provide the **DISTRICT**, in a timely manner, with any required documentation, such as, but not limited to, monthly program evaluations, attendance, and supper counts.
 - k. **CONSULTANT** staffing will be at a ratio of 20 students to one staff for grades 1-8 and at a ratio of 10 students to one staff for grades TK and K.
 - l. In the event there is temporarily not sufficient staffing to meet ratios listed in Attachment A, section II(k), **CONSULTANT** agrees to recruit, hire, and train additional staff to meet the ratios noted in Attachment A, section II(k).
 - m. **CONSULTANT** will be timely in the hiring of necessary staff and communicate any delays in hiring staff to the **DISTRICT**.
- III. In the event **DISTRICT** implements a distance learning model for delivering education services for a part of, or the entire school year, the expanded learning programs, which include programs after school and summer programs may also move to a distance learning format, if permitted by the California Department of Education. Such distance learning formats include, but are not limited to, prerecorded video lessons, printed assignments, or live video lessons. If the expanded learning programs move to a distance learning format, **CONSULTANT** will implement checks to obtain reasonable assurance of student attendance. Such checks may include, but are not limited to virtual roll calls, parental contact, or email confirmations.
- IV. Section 4(f) of this agreement is amended as follows.

Provided however, such indemnification shall be only in proportion to and to the extent such liability, claim, debt, damage, demand, suit, action or cause of action is caused by or results from the improper conduct and/or negligence or intentional acts or omissions of **CONSULTANT**, its officers, employees, or agents.

Attachment B

CONSULTANT: City of Montclair

Compensation:

- I. Except as otherwise provided in this Agreement, **DISTRICT** agrees to compensate **CONSULTANT** for services rendered under this Agreement as follows:
 - a. **CONSULTANT** will be paid 95.0% of grant award from the California Department of Education (henceforth **CDE**), according to Schedule A, attached hereto.
 - b. Administrative costs may not exceed 5.0% of grant award from **CDE**, according to Schedule A, attached hereto.
 - c. If **DISTRICT** fails to receive ASES grant funding, **CONSULTANT** will hold **DISTRICT** harmless for any financial liabilities or obligations it has incurred.
 - d. Timing and amounts of payments will be made according to Schedule A, attached hereto. If the funds received from **CDE** change, a pro rata adjustment to the maximum amount available for payment to **CONSULTANT** will be made.
 - e. **CONSULTANT** fee will only be paid out of funds received by **DISTRICT** from the State and only up to the limits of this agreement.
 - f. **CONSULTANT** is to provide documentation necessary for annual independent audits, in accordance with **CDE** requirements. Any additional audit cost bill to **DISTRICT** due to lack of documentation will be billed to **CONSULTANT** for payment.
 - g. **DISTRICT** may reduce funding if the annual attendance average does not meet at least 75% of the attendance required by **CDE** in a single year or is less than 85% in two consecutive years.
 - h. **CONSULTANT** will be paid up to an additional \$250,000 per school year for 10 additional staff members needed to meet the increase in ratios required in Attachment A, section II(k).
 - i. If additional staff are needed to meet ratios required in Attachment A, section II(k) **CONSULTANT** will be paid at an annualized rate of \$25,000 for the time span each additional staff member is needed to maintain the ratios set forth in Attachment A, section II(k), not to exceed an addition 40 staff members.

Ontario-Montclair School District
 ASES Payment Schedule—City of Montclair
 July 1, 2022 through June 30, 2023

No.	School	Program	Schedule A		OMSD's Balance	Tenthly Payment
			Estimated Allocation	95.00% To Montclair		
060	El Camino	ASES After-school Base	125,994.29	119,694.57	6,299.72	11,969.46
064	Howard	ASES After-school Base	152,612.13	144,981.53	7,630.60	14,498.15
065	Kingsley	ASES After-school Base	162,867.66	154,724.28	8,143.38	15,472.43
066	Lehigh	ASES After-school Base	166,652.44	158,319.82	8,332.62	15,831.98
071	Mission	ASES After-school Base	96,558.52	91,730.60	4,827.92	9,173.06
072	Monte Vista	ASES After-school Base	181,627.94	172,546.54	9,081.40	17,254.65
073	Moreno	ASES After-school Base	152,612.13	144,981.53	7,630.60	14,498.15
074	Ramona	ASES After-school Base	152,612.13	144,981.53	7,630.60	14,498.15
382	Serrano	ASES After-school Base	139,184.30	132,225.09	6,959.21	13,222.51
383	Vernon	ASES After-school Base	82,088.35	77,983.93	4,104.42	7,798.39
			<u>1,412,809.90</u>	<u>1,342,169.42</u>	<u>70,640.48</u>	<u>134,216.93</u>



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 6, 2022	FILE I.D.:	HSV030
SECTION:	CONSENT - AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	8	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-59 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO SUPPORT THE MONTCLAIR AFTER-SCHOOL SUMMER EXPANDED LEARNING PROGRAM, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-59 with the Ontario-Montclair School District (OMSD) to support the Montclair After-school Summer Expanded Learning Program.

BACKGROUND: The Human Services Department has delivered after-school programs within OMSD schools since 1999. Funding for this program originates from the California Department of Education, After-School Education and Safety (ASES) Supplemental Expanded Learning program through grants made available to local education authorities, such as OMSD. The purpose of the funding is to provide communities with enhanced community-based after-school services in an effort to strengthen healthy child development.

Proposed Agreement No. 22-59 would provide funding for summer expanded learning from May to June 2023 at the following five school sites: Kingsley, Lehigh, Mission, Monte Vista, and Serrano. The funding for these school sites, would be used to support summer academic, recreational, and enrichment activities for children in the 2022 Summer expanded learning programs.

FISCAL IMPACT: Should the City Council approve proposed Agreement No. 22-59, OMSD would provide \$141,056.44 to fund personnel, training, supplies, and grant oversight. The term of proposed Agreement No. 22-59 is July 1, 2022, through June 30, 2023.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 21-59 with Ontario-Montclair School District to support the Montclair After-school Program, subject to any revisions deemed necessary by the City Attorney.



AGREEMENT FOR SERVICES ONTARIO-MONTCLAIR SCHOOL DISTRICT

950 WEST "D" STREET • ONTARIO, CALIFORNIA 91762 • (909) 459-2500

THIS AGREEMENT is made and entered into this 16 day of June, 2022 by and between the Ontario-Montclair School District, hereinafter referred to as the "DISTRICT," and City of Montclair, hereinafter referred to as the "CONSULTANT."

1. SERVICES TO BE PERFORMED BY CONSULTANT

- a) **Scope of Work.** CONSULTANT agrees to perform the following services on the dates and times herein stated in accordance with directions stipulated to by DISTRICT (provide attachment if necessary):

Provide staff and materials for the ASES Supplemental expanded learning program. See Attachment A for details.

- b) **Staffing.** CONSULTANT may, at CONSULTANT's own expense, employ such assistants as CONSULTANT deems necessary to perform the services required of CONSULTANT by this Agreement. DISTRICT will not train, control, direct, or supervise CONSULTANT's assistants or employees in the performance of those services.
- c) **Independent Contractor.** Consultant is, and shall at all times be deemed to be, an independent contractor and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between DISTRICT and CONSULTANT or any of CONSULTANT's agents or employees. CONSULTANT assumes exclusive responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. CONSULTANT, its agents and employees, shall not be entitled to any rights and/or privileges of DISTRICT's employees and shall not be considered in any manner to be DISTRICT's employees.
- d) **Public Entity Employee.** If CONSULTANT is a regular employee of a public entity, all services which CONSULTANT renders under this Agreement will be performed at times other than CONSULTANT's regular assigned work day for said entity or during periods of vacation or leave of absence from said entity, using CONSULTANT's own resources.

2. COMPENSATION

- a) **Compensation for Services.** Except as otherwise provided in this Agreement, DISTRICT agrees to compensate CONSULTANT for services rendered under this Agreement as follows:

See Attachment B and Schedule A for details.

- b) **Travel Expenses.** DISTRICT will pay no additional amount for travel or other expenses of CONSULTANT under this Agreement unless specified below under section 2(c). Should travel or other expenses be specified below, CONSULTANT shall be entitled to the lesser amount of
 1. The not to exceed amount stated, or
 2. The actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to this Agreement.

c) **Summary of Compensation**

Services:	\$141,056.44	
Travel Expense:	NA	
Total contract amount not to exceed (<i>services + travel</i>)		\$141,056.44

- d) **Retired STRS or PERS.** If this Agreement is with an individual consultant, CONSULTANT shall notify the DISTRICT whether or not CONSULTANT is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS).
- e) **Income Tax.** DISTRICT will not withhold any federal or state income tax for payment made pursuant to this Agreement but, if applicable, will provide CONSULTANT with a statement of earnings at the end of each calendar year. CONSULTANT is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.
- f) **Documentation Required For Payment.** Unless specified below, payment for services and travel shall be made by DISTRICT to CONSULTANT after services/travel has been completed and consultant submits documentation for payment (e.g. consultant invoice).

3. **TERM OF AGREEMENT**

The term of this Agreement is from July 1, 2022 through June 30, 2023, unless sooner terminated pursuant to the provisions of Section 6 of this Agreement. DISTRICT and CONSULTANT may mutually agree in writing to extend the term of this Agreement provided, however, DISTRICT shall not be obligated to pay CONSULTANT any additional consideration unless CONSULTANT undertakes additional services, in which instance the consideration shall be increased as DISTRICT and CONSULTANT shall agree in writing.

4. **OBLIGATIONS OF CONSULTANT**

- a) **Services Performed.** During the term of this Agreement, CONSULTANT agrees to diligently prosecute the work specified in the "Services to be Performed by Consultant" to completion. CONSULTANT may represent, perform services for, and be employed by such additional clients, persons, or companies as CONSULTANT, in CONSULTANT's sole discretion, sees fit.
- b) **Use of District Space and Resources.** CONSULTANT will provide all space, materials, tools, and instrumentalities required to perform the services under this Agreement at CONSULTANT's expense, and shall not be entitled to reimbursement. CONSULTANT shall not be entitled to any benefits the DISTRICT may make available to its employees, including, but not limited to, office or business equipment, office space, supplies, group health, life insurance, vacation or retirement benefits.

- c) **Regulatory Compliance.** CONSULTANT shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.
- d) **Asbestos Hazard Emergency Response Act (AHERA) and Lead Based Paint Compliance.** CONSULTANT shall comply with the DISTRICT's Asbestos Hazard Emergency Response Act (AHERA) and Lead Based Paint compliance procedures. Prior to starting any construction work at a DISTRICT facility (including demolition, drilling/penetrating, cutting/tearing, sanding, scraping, screwing/unscrewing, or other similar activities) the following requirements must be met:
1. Contact the Facilities Planning and Operations Department (909-418-6366) to discuss the project and the planned method of construction or installation to occur.
 2. Receive and review the District's Asbestos Hazard Emergency Response Act (AHERA) Management Plan Book that identifies the known location(s) of asbestos and/or lead-based paint containing materials for the subject site to confirm these materials will not be disturbed during the course of your work.
 3. Obtain authorization from the Facilities Planning and Operations Department.
- e) **Fingerprinting.** CONSULTANT shall comply with the requirements of Education Code section 45125.1 with respect to fingerprinting of employees who may have any interaction with the DISTRICT's pupils (whether such interaction is in person or electronic, and whether the interaction is through writing, voice or video) if CONSULTANT, including but not limited to CONSULTANT if CONSULTANT is among the agents providing services, has any student interaction outside of the immediate supervision and control of the pupils' parent/guardian or a school employee. If at any time during the term of this Agreement CONSULTANT is either notified by the Department of Justice or otherwise becomes aware that any employee of CONSULTANT, including CONSULTANT, performing services under this Agreement has been arrested or convicted of a violent or serious felony as defined in California Education Code Section 45122.1, CONSULTANT agrees immediately to notify the DISTRICT and remove said employee from performing services on this Agreement. CONSULTANT shall certify in writing to the DISTRICT that neither the CONSULTANT nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Education Code section 45122.1 (Exhibit A).
- f) **Indemnification.** CONSULTANT shall indemnify, pay for the defense of, and hold harmless DISTRICT and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of CONSULTANT's negligent or willful acts and/or omissions in rendering any services hereunder, including but not limited to the negligent or willful acts and/or omissions of CONSULTANT's employees and agents. CONSULTANT shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning CONSULTANT or any employee/agent of CONSULTANT and shall further indemnify, pay for the defense of, and hold harmless DISTRICT of and from any such payment or liability arising out of or in any manner connected with CONSULTANT's performance under this Agreement.
- g) **Insurance Requirements.** During the entire term of this Agreement, CONSULTANT shall procure, pay for and keep in full force and effect the following types of insurance:

1. **General Liability Insurance.** Commercial general liability insurance, covering bodily injury liability, property damage liability and personal injury liability of CONSULTANT with respect to the services provided by, or on behalf of, CONSULTANT under this Agreement. The policy limits shall not be less than One Million dollars (\$1,000,000) per occurrence. The policy may not contain an exclusion for coverage of claims arising from claims for sexual molestation or abuse. In the event that CONSULTANT's policy should have an exclusion for sexual molestation or abuse claims, then CONSULTANT shall be required to procure a supplemental policy providing such coverage.
 - a. The DISTRICT requires the Certificate of Liability Insurance to show the DISTRICT as the "Certificate Holder" and "Additional Insured" on the CONSULTANT'S general liability insurance policy. Requested wording in the "Description box" is as follows:

The Ontario-Montclair School District, its departments, officers, agents, and employees are additional insureds with regard to liability and defense of suits arising from the operations and uses performed by or on behalf of the named "Insured."

2. **Auto Liability Insurance.** CONSULTANT agrees that services in conjunction with this agreement will be conducted in CONSULTANT's office or at a DISTRICT school site and CONSULTANT will not drive Student in private or commercial vehicle to conduct assessments or conduct other business in conjunction with this agreement. Accordingly, commercial automobile insurance will not be required in conjunction with this agreement. Should CONSULTANT need to provide services in conjunction with this agreement that do require Student transportation in a private or commercial vehicle, the DISTRICT and CONSULTANT will mutually agree on services to be provided, and CONSULTANT will provide insurance as follows: Business auto liability insurance covering the use of "owned, non-owned and hired" autos by or on behalf of CONSULTANT respect to the services to be performed under this Agreement. The policy limits shall not be less than One Million dollars (\$1,000,000) per occurrence. The Auto Liability Insurance policy shall include waiver of subrogation via separate endorsement.
3. **Workers' Compensation Insurance.** This coverage is required unless CONSULTANT provides written verification it has no employees. Coverage must be at least as broad as that which is required by the State of California, with Statutory Limits. CONSULTANT must also maintain Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Workers' compensation policy shall include waiver of subrogation via separate endorsement.

The policies of insurance described in Paragraph (4g.1-3) listed above shall be carried with responsible and solvent insurance companies authorized to do business in the State of California. True and correct copies of all certificates of insurance reflecting the coverage required in Paragraph (4g.1-3) shall be provided to DISTRICT prior to the commencement of services under this Agreement. CONSULTANT agrees that it shall not cancel or change the coverage provided by the policies of insurance described in Paragraph (4g.1-3) above without first giving the DISTRICT's Chief Business Official, thirty (30) days prior written notice. Should any such policy of insurance be canceled or changed, CONSULTANT agrees to immediately provide DISTRICT true and correct copies of all new or revised certificates of insurance.

- h) **Written Consent.** Neither this Agreement nor any duties or obligations under this Agreement may be assigned by CONSULTANT without the prior written consent of DISTRICT.

- i) **Vaccine Verification/Testing:** CONSULTANT shall verify the vaccination status of all “workers” and to require all unvaccinated or incompletely vaccinated workers to undergo weekly diagnostic screening testing and shall complete and return the Contractor Attestation of Compliance (Exhibit B).

5. OBLIGATIONS OF DISTRICT

- a) **Professional Services.** DISTRICT agrees to comply with all reasonable requests by CONSULTANT and to provide access to all documents reasonably necessary for the performance of CONSULTANT’s duties under this Agreement.

6. TERMINATION OF AGREEMENT

- a) **Termination without Cause.** Unless otherwise terminated as provided below, this Agreement shall continue in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.
- b) **Termination for Breach.** Should CONSULTANT default in the performance of this Agreement or breach any of its provisions, DISTRICT may terminate this Agreement by giving written notification to CONSULTANT.
- c) **Immediate Suspension/Termination by District.** If at any time during the performance of this Agreement DISTRICT determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, DISTRICT shall have the right to terminate the performance of CONSULTANT’s services hereunder by giving written notification to CONSULTANT of its intention to terminate.
- d) **Effect of Termination.** In the event that DISTRICT terminates this Agreement under paragraph (b) or (c) of this Section, CONSULTANT shall only be paid for those services rendered to the date of termination. All cash deposits made by DISTRICT to CONSULTANT, if any, shall be refundable to DISTRICT in full upon termination of this Agreement unless specified to the contrary below.
NA

7. GENERAL PROVISIONS

- a) **Notices.** Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be deemed given and served upon delivery personally, or three (3) days after depositing in the United States Mail. Mailed notices shall be addressed to the parties at the addresses set forth in this Agreement for DISTRICT and CONSULTANT. The foregoing addresses may be changed by written notice to the other party as provided herein.
- b) **Validity of Agreement.** This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by CONSULTANT and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, signed by both

parties, except DISTRICT may unilaterally amend the Agreement to accomplish the changes listed below:

- (1) Increase dollar amounts; (2) Administrative changes; and (3) Changes as required by law.
- c) **Court Findings.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- d) **California Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- e) **Audit.** Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records and files of DISTRICT, CONSULTANT, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of the DISTRICT or as a part of any audit of DISTRICT, for a period of three (3) years after final payment is made under this Agreement. CONSULTANT shall preserve and cause to be preserved such books, records and files for the audit period.
- f) **Contractual/Equitable Remedies.** CONSULTANT agrees that the DISTRICT is the sole entity against whom the CONSULTANT may seek either contractual or equitable remedies, and further agrees not to seek contractual or equitable remedies (including, but not limited to injunctive relief and quantum meruit) against DISTRICT employees or beneficiaries of the Agreement.
- g) **Board of Trustees Approval.** CONSULTANT warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind it hereto. This Agreement shall not become binding upon the DISTRICT until it has been duly approved or ratified by the Board of Trustees.

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

“DISTRICT”

“CONSULTANT”

Signature

Signature

Date

Javier “John” Dutrey, Mayor

Printed Name/Title

Phil Hillman, Chief Business Official

Printed Name/Title

Date

Ontario-Montclair School District
950 West D Street Ontario, CA 91762

jdutrey@cityofmontclair.org

Email Address/

Approved by OMSD Board:

5111 Benito Street

Street Address

Attest: Andrea Phillips, City Clerk

Montclair, CA 91763

City, State, Zip Code

(909) 626-8571

Telephone Number

Exhibit A

**Certification of Compliance with California Education Code Section 45125.1
(Fingerprinting)**

In compliance with California Education Code Section 45125.1, I hereby certify that no owner or employee of City of Montclair [name of CONSULTANT] (“CONSULTANT”) who may have any interaction with pupils (whether such interaction is in person or electronic, and whether the interaction is through writing, voice or video) outside of the immediate supervision and control of the pupils’ parent/guardian or a school employee, shall be permitted to have any contact with students until after I have received and reviewed a report based on their LiveScan fingerprint report that they have not been convicted of a felony as defined in California Education Code Section 45122.1. In advance of their contact with pupils, I shall certify receipt and review of a report from the LiveScan report that they have not been convicted of a felony as defined in California Education Code Section 45122.1. I also understand that I must provide to the Ontario-Montclair School District any subsequent arrest and conviction information that we receive concerning these individuals, and that I shall immediately remove the person from performing services on this Agreement. The Ontario-Montclair School District is entitled to rely upon my representations in this Certification. CONSULTANT hereby agrees to indemnify Ontario-Montclair School District for any and all claims, damages, suits and liability that arise out of, relate to or is associated with a failure of CONSULTANT to comply with California Education Code Section 45125.1 or with a failure to exercise reasonable care with respect to proper selection and/or supervision of CONSULTANT’s employees who may come in contact with pupils.

CONSULTANT INFORMATION

Signature
Javier “John” Dutrey, Mayor

Printed Name/Title

Date
jdutrey@cityofmontclair.org

Email Address/
5111 Benito Street

Street Address
Montclair, CA 91763

City, State, Zip Code
(909) 626-8571

Telephone Number

Exhibit B

VACCINE VERIFICATION/TESTING POLICY

On August 11, 2021, the California Department of Public Health (“CDPH”) issued State Public Health Officer Order of August 11, 2021 (“Order”),¹ which requires all public and private schools serving TK through 12th grade students to verify the vaccination status of all “workers” and to require all unvaccinated or incompletely vaccinated workers to undergo weekly diagnostic screening testing. The Order took effect August 12, 2021, and requires full compliance by October 15, 2021.

To comply with this legal mandate, the District is imposing the following requirements for all “workers” who enter District sites. The term “workers” includes all District employees, contractors, volunteers, and any other paid or unpaid adult serving in the District or who is working on-site at any school campus or District facility.

Vaccine Verification

You must verify the vaccination status of all of your employees using one of the following methods of proof:

- a. COVID-19 Vaccination Record Card (issued by the Department of Health and Human Services Centers for Disease Control & Prevention or WHO Yellow Card²) which includes name of person vaccinated, type of vaccine provided and date last dose administered); OR
- b. A photo of a Vaccination Record Card (front and back) as a separate document; OR
- c. A photo of the worker’s Vaccination Record Card (front and back) stored on a phone or electronic device; OR
- d. Documentation of COVID-19 vaccination from a health care provider that includes the patient’s name, vaccine date(s), and vaccine type; OR
- e. Digital record that includes a QR code that when scanned by a SMART Health Card reader displays to the reader client name, date of birth, vaccine dates and vaccine type.

Workers who are not fully vaccinated, or for whom vaccine status is unknown or documentation is not provided, must be considered unvaccinated. “Fully Vaccinated” means individuals who are considered fully vaccinated for COVID-19: two weeks or more after they have received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna or vaccine authorized by the World Health Organization), or two weeks or more after they have received a single-dose vaccine (Johnson and Johnson [J&J]/Janssen). “Incompletely vaccinated” means persons who have received at least one dose of COVID-19 vaccine but do not meet the definition of fully vaccinated.

¹ The Order is available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Vaccine-Verification-for-Workers-in-Schools.aspx>.

² “WHO Yellow Card” refers to the original World Health Organization International Certificate of Vaccination or Prophylaxis issued to the individual following administration of the COVID-19 vaccine in a foreign country.

Testing Requirement for Workers Not Fully Vaccinated

Effective October 15, 2021, workers will only be permitted on District sites and facilities if they have submitted proof of vaccination (as described above) or if not fully vaccinated, have undergone weekly COVID-19 diagnostic screening testing, as follows:

- a. Workers may be tested with either antigen or molecular tests to satisfy this requirement, but unvaccinated or incompletely vaccinated workers must be tested at least once weekly with either PCR testing or antigen testing. Any PCR (molecular) or antigen test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.
- b. Unvaccinated or incompletely vaccinated workers must also observe all other infection control requirements, and are not exempted from the testing requirement even if they have a medical contraindication to vaccination, since they are still potentially able to spread the illness. Previous history of COVID-19 from which the individual recovered more than 90 days earlier, or a previous positive antibody test for COVID-19, do not waive this requirement for testing.
- c. Effective October 15, 2021, unvaccinated workers who fail or refuse to comply with the weekly testing requirement will be excluded from District sites and facilities.

We are not asking you to provide us with vaccination records or other medical or health records of your employees, but merely that you comply with the requirements set forth above for verifying vaccination status and/or requiring your employees to submit to weekly testing.

CONTRACTOR ATTESTATION OF COMPLIANCE

**MANDATORY VACCINATION VERIFICATION/WEEKLY TESTING OF
CONTRACTED WORKERS PROVIDING SERVICES AT ONTARIO-MONTCLAIR
SCHOOL DISTRICT**

CONTRACTOR NAME: _____

AGREEMENT/PURCHASE ORDER #: C-223-048

NAME OF PERSON MAKING THIS ATTESTATION: _____

TITLE OF PERSON MAKING THIS ATTESTATION: _____

On behalf of the Contractor named above, the undersigned hereby attests:

I/Contractor have read, understand, and will comply with the District’s Vaccine Verification/Testing Policy as outlined in this correspondence and the State Public Health Officer Order of August 11, 2021, with regard to employees of the Contractor providing services at District sites and facilities.

Initial: _____

I/Contractor have verified the vaccination status of all employees who provide services at District sites and facilities using one of the following methods of proof:

- a. COVID-19 Vaccination Record Card (issued by the Department of Health and Human Services Centers for Disease Control & Prevention or WHO Yellow Card³) which includes name of person vaccinated, type of vaccine provided and date last dose administered); OR
- b. A photo of a Vaccination Record Card (front and back) as a separate document; OR
- c. A photo of the worker’s Vaccination Record Card (front and back) stored on a phone or electronic device; OR
- d. Documentation of COVID-19 vaccination from a health care provider that includes the patient’s name, vaccine date(s), and vaccine type; OR
- e. Digital record that includes a QR code that when scanned by a SMART Health Card reader displays to the reader client name, date of birth, vaccine dates and vaccine type.

Initial: _____

³ “WHO Yellow Card” refers to the original World Health Organization International Certificate of Vaccination or Prophylaxis issued to the individual following administration of the COVID-19 vaccine in a foreign country.

I/Contractor attest that any employee associated with Contractor who has not provided proof of full vaccination as described above is undergoing weekly COVID-19 diagnostic screening testing in accordance with the District's Vaccine Verification/Testing Policy, for which the Contractor collects, monitors, and documents weekly test results.

Initial: _____

I/Contractor attest that no employee associated with Contractor will work or visit any District site or facility who is not fully vaccinated or who has not received a negative COVID-19 test within one week of the visit.

Initial: _____

I, the person/official named below, attest under penalty of perjury under the laws of the State of California, that I am duly authorized to legally bind Contractor and that the attestation, statements, and assertions indicated above are true and correct.

AUTHORIZED SIGNATURE: _____

DATE EXECUTED: _____

END OF AGREEMENT FOR CONSULTANT SERVICES

Attachment A

CONSULTANT: City of Montclair

Services to be performed by **CONSULTANT:**

CONSULTANT agrees to perform the following services on the dates and times herein stated in accordance with directions stipulated to by **DISTRICT** (provide attachment if necessary):

- I. **CONSULTANT** will provide staff and materials to operate the expanded learning program services at the following sites:
 - a. Kingsley
 - b. Lehigh
 - c. Mission
 - d. Monte Vista
 - e. Serrano.
- II. **CONSULTANT** will have the following responsibilities in support of the ASES program:
 - a. Coordinate the academic assistance, homework support, and enrichment portions (including time for physical activity) of the ASES program at each school site.
 - b. Hire, train, and supervise site staff, including the site coordinators and program leaders.
 - c. Seek regular input from principals regarding performance evaluations, including recommendations for retraining and terminating a site coordinator and/or other site staff.
 - d. Participate in all cross-training for site coordinators and program leaders.
 - e. Maintain ongoing communication between **CONSULTANT** staff and school staff regarding student needs and progress, including, but not limited to attendance at school-day meetings and/or one-on-one meetings with teachers.
 - f. Coordinate ASES activities with school staff to assure program supports current academic goals of teachers and administrators.
 - g. Provide academic assistance and other activities specifically supporting, but not duplicating, daytime curriculum and academic goals.
 - h. Foster communication with and involvement of parents through parent orientations, parent handbook, development and distribution of periodic newsletters, and hosting, at a minimum, one parent night.
 - i. Regularly attend and participate in regularly scheduled operation meetings with **DISTRICT** liaison.
 - j. Provide the **DISTRICT**, in a timely manner, with any required documentation, such as, but not limited to, monthly program evaluations, attendance, and supper counts.
 - k. **CONSULTANT** staffing will be at a ratio of 20 students to one staff for grades 1-8 and at a ratio of 10 students to one staff for grades TK and K.
 - l. In the event there is temporarily not sufficient staffing to meet ratios listed in Attachment A, section II(k), **CONSULTANT** agrees to recruit, hire, and train additional staff to meet the ratios noted in Attachment A, section II(k).
 - m. **CONSULTANT** will be timely in the hiring of necessary staff and communicate any delays in hiring staff to the **DISTRICT**.
- III. In the event **DISTRICT** implements a distance learning model for delivering education services for a part of, or the entire school year, the expanded learning programs, which include programs after school and summer programs may also move to a distance learning format, if permitted by the California Department of Education. Such distance learning formats include, but are not limited to, prerecorded video lessons, printed assignments, or live video lessons. If the expanded learning programs move to a distance learning format, **CONSULTANT** will implement checks to obtain reasonable assurance of student attendance. Such checks may include, but are not limited to virtual roll calls, parental contact, or email confirmations.
- IV. Section 4(f) of this agreement is amended as follows.

Provided however, such indemnification shall be only in proportion to and to the extent such liability, claim, debt, damage, demand, suit, action or cause of action is caused by or results from the improper conduct and/or negligence or intentional acts or omissions of **CONSULTANT**, its officers, employees, or agents.

Attachment B

CONSULTANT: City of Montclair

Compensation:

- I. Except as otherwise provided in this Agreement, **DISTRICT** agrees to compensate **CONSULTANT** for services rendered under this Agreement as follows:
 - a. **CONSULTANT** will be paid 95.0% of grant award from the California Department of Education (henceforth **CDE**), according to Schedule A, attached hereto.
 - b. Administrative costs may not exceed 5.0% of grant award from **CDE**, according to Schedule A, attached hereto.
 - c. If **DISTRICT** fails to receive ASES grant funding, **CONSULTANT** will hold **DISTRICT** harmless for any financial liabilities or obligations it has incurred.
 - d. Timing and amounts of payments will be made according to Schedule A, attached hereto. If the funds received from **CDE** change, a pro rata adjustment to the maximum amount available for payment to **CONSULTANT** will be made.
 - e. **CONSULTANT** fee will only be paid out of funds received by **DISTRICT** from the State and only up to the limits of this agreement.
 - f. **CONSULTANT** is to provide documentation necessary for annual independent audits, in accordance with **CDE** requirements. Any additional audit cost bill to **DISTRICT** due to lack of documentation will be billed to **CONSULTANT** for payment.
 - g. **DISTRICT** may reduce funding if the annual attendance average does not meet at least 75% of the attendance required by **CDE** in a single year or is less than 85% in two consecutive years.

Ontario-Montclair School District
 ASES Payment Schedule—City of Montclair
 July 1, 2022 through June 30, 2023

No.	School	Program	Schedule A		OMSD's Balance	Tenthly Payment
			Estimated Allocation	95.00% To Montclair		
065	Kingsley	ASES Supplemental	31,212.78	29,652.14	1,560.64	2,965.21
066	Lehigh	ASES Supplemental	28,219.84	26,808.85	1,410.99	2,680.89
071	Mission	ASES Supplemental	24,925.41	23,679.14	1,246.27	2,367.91
072	Monte Vista	ASES Supplemental	41,559.33	39,481.37	2,077.96	3,948.14
382	Serrano	ASES Supplemental	22,563.09	21,434.94	1,128.15	2,143.49
			<u>148,480.45</u>	<u>141,056.44</u>	<u>7,424.01</u>	<u>14,105.64</u>



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 6, 2022	FILE I.D.:	STB300-17
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	CITY MGR.
ITEM NO.:	1	PREPARER:	C. GRAVES
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 22-3349 AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH CHARGES		

REASON FOR CONSIDERATION: Staff has identified 154 sewer and trash accounts in the even-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien.

BACKGROUND: Ordinance No. 02-815 authorizes the placement of liens on properties on which delinquent civil debts have accrued and makes property owners responsible for delinquent sewer and trash charges accrued after the effective date of the Ordinance (March 1, 2002) for accounts in tenants' names. Prior to the City Council's adoption of Ordinance No. 02-815, property owners were responsible for only those accounts in their own names.

FISCAL IMPACT: Recoverable amount is \$52,394.60, plus \$3,080.00 for release of lien fees, plus \$7,700.00 in lien fees, for a total of \$63,274.60.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 22-3349 authorizing placement of liens on certain properties for delinquent sewer and trash charges as listed on Exhibit A of said Resolution.

RESOLUTION NO. 22-3349

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH ACCOUNTS

WHEREAS, Chapter 1.12 of the Montclair Municipal Code authorizes the City to place liens on properties on which delinquent civil debts have accrued; and

WHEREAS, all owners of property in the City of Montclair were notified about the adoption of Ordinance No. 02-815 authorizing placement of liens on properties on which delinquent civil debts have accrued; and

WHEREAS, it has been determined that there are 154 sewer and/or trash accounts on which there are delinquencies in excess of 90 days; and

WHEREAS, the owners of these properties have received regular billing statements and late notices since the onset of such delinquencies; and

WHEREAS, the owners of these properties were notified on May 5, 2022, that their delinquent accounts are subject to causing a lien to be placed on their properties for settlement of such delinquencies; and that such liens would be considered for approval by the Montclair City Council on Monday, June 6, 2022.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair approves the placement of liens on the properties and in the amounts specified in Exhibit A, entitled Report of Delinquent Civil Debts - June 2022, attached hereto.

BE IT FURTHER RESOLVED that the City Clerk is authorized to provide the San Bernardino County Auditor/Controller-Recorder with the documents required to cause such liens to be placed.

APPROVED AND ADOPTED this XX day of XX, 2022.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3349 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, 2022, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk

**Exhibit A to Resolution No. 22-3349
Report of Delinquent Civil Debts - June 2022**

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
11225	Ada Avenue	Residential	295.24	20.00	50.00	365.24
11239	Ada Avenue	Residential	494.06	20.00	50.00	564.06
11141	Amherst Avenue	Residential	296.83	20.00	50.00	366.83
11151	Amherst Avenue	Residential	295.54	20.00	50.00	365.54
4990	Arrow Hwy	Residential	279.51	20.00	50.00	349.51
4624	Bandera Street	Multifamily	1,229.98	20.00	50.00	1,299.98
4740	Bandera Street	Multifamily	1,188.53	20.00	50.00	1,258.53
4959	Bandera Street	Residential	216.52	20.00	50.00	286.52
5065	Bandera Street	Residential	297.09	20.00	50.00	367.09
5071	Bandera Street	Residential	261.53	20.00	50.00	331.53
5077	Bandera Street	Residential	275.55	20.00	50.00	345.55
5169	Bandera Street	Residential	204.54	20.00	50.00	274.54
5207	Bandera Street	Residential	222.98	20.00	50.00	292.98
5239	Bandera Street	Residential	663.52	20.00	50.00	833.52
5598	Bandera Street	Residential	308.07	20.00	50.00	378.07
10145	Bel Air Avenue	Residential	296.83	20.00	50.00	366.83
10283	Bel Air Avenue	Residential	309.87	20.00	50.00	379.87
5216	Belvedere Way	Residential	261.83	20.00	50.00	331.83
5219	Belvedere Way	Residential	322.78	20.00	50.00	392.78
10376	Benson Avenue	Residential	273.70	20.00	50.00	343.70
5214	Berkshire Way	Residential	208.55	20.00	50.00	278.55
5232	Berkshire Way	Residential	298.98	20.00	50.00	368.98
11235	Big Sky Avenue	Residential	261.83	20.00	50.00	331.83
5011	Birch Street	Residential	319.74	20.00	50.00	389.74
4990	Brooks Street	Multifamily	487.95	20.00	50.00	557.95
11339	Brunswick Lane	Residential	313.25	20.00	50.00	383.25
11457	Brunswick Lane	Residential	313.25	20.00	50.00	383.25
10213	Camulos Avenue	Residential	381.06	20.00	50.00	451.06
10234	Camulos Avenue	Residential	367.93	20.00	50.00	437.93
10259	Camulos Avenue	Residential	296.83	20.00	50.00	366.83
4924	Canoga Street	Residential	296.83	20.00	50.00	366.83
11239	Carriage Avenue	Senior	266.33	20.00	50.00	336.33
11178	Carrillo Avenue	Residential	296.83	20.00	50.00	366.83
9515	Central Avenue	Commercial	501.51	20.00	50.00	571.51
9802	Central Avenue	Commercial	1,683.46	20.00	50.00	1,753.46
11368	Chandler Lane	Residential	264.59	20.00	50.00	334.59
4337	Clair Street	Residential	326.47	20.00	50.00	396.47
4397	Clair Street	Residential	290.40	20.00	50.00	360.40
5216	Clair Street	Residential	255.53	20.00	50.00	325.53
10164	Coalinga Avenue	Residential	296.69	20.00	50.00	366.69
10276	Coalinga Avenue	Residential	224.56	20.00	50.00	294.56
11148	Coalinga Avenue	Residential	296.64	20.00	50.00	366.64
5216	Coventry Way	Residential	411.54	20.00	50.00	481.54
11362	Cumberland Lane	Residential	314.85	20.00	50.00	384.85
11370	Cumberland Lane	Residential	314.85	20.00	50.00	384.85
11373	Cumberland Lane	Residential	332.91	20.00	50.00	402.91
11469	Cumberland Lane	Residential	313.73	20.00	50.00	383.73
11333	Dartmouth Lane	Residential	314.85	20.00	50.00	384.85

**Exhibit A to Resolution No. 22-3349
Report of Delinquent Civil Debts - June 2022**

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
11289	Deer Creek Avenue	Residential	261.83	20.00	50.00	331.83
10190	Del Mar Avenue	Residential	296.83	20.00	50.00	366.83
10236	Del Mar Avenue	Residential	296.83	20.00	50.00	366.83
11159	Essex Avenue	Residential	296.83	20.00	50.00	366.83
4705	Ewart Street	Residential	696.36	20.00	50.00	766.36
4790	Ewart Street	Residential	285.06	20.00	50.00	355.06
5030	Ewart Street	Residential	296.62	20.00	50.00	366.62
4219	Fauna Street	Residential	296.83	20.00	50.00	366.83
4256	Fauna Street	Residential	261.83	20.00	50.00	331.83
4267	Fauna Street	Residential	358.62	20.00	50.00	428.62
4291	Fauna Street	Residential	296.83	20.00	50.00	366.83
4456	Fauna Street	Senior	266.33	20.00	50.00	336.33
4703	Fauna Street	Residential	296.69	20.00	50.00	366.69
4738	Fauna Street	Residential	296.80	20.00	50.00	366.80
4852	Fauna Street	Residential	296.23	20.00	50.00	366.23
5061	Fauna Street	Residential	288.98	20.00	50.00	358.98
8912	Felipe Avenue	Residential	409.65	20.00	50.00	479.65
10232	Felipe Avenue	Residential	296.69	20.00	50.00	366.69
8919-21	Felipe Avenue	Multifamily	593.52	20.00	50.00	663.52
8947-49	Felipe Avenue	Multifamily	593.52	20.00	50.00	663.52
4639	Flora Street	Residential	410.17	20.00	50.00	480.17
4660	Flora Street	Residential	296.69	20.00	50.00	366.69
4704	Flora Street	Residential	298.29	20.00	50.00	368.29
4730	Flora Street	Residential	316.83	20.00	50.00	386.83
4932	Flora Street	Residential	326.33	20.00	50.00	396.33
5185	Flora Street	Residential	339.09	20.00	50.00	409.09
10253	Fremont Avenue	Residential	296.69	20.00	50.00	366.69
10287	Fremont Avenue	Residential	326.33	20.00	50.00	396.33
10945	Fremont Avenue	Multifamily	206.92	20.00	50.00	276.92
10149	Galena Avenue	Residential	296.69	20.00	50.00	366.69
3792	Hampton Drive	Residential	313.25	20.00	50.00	383.25
11418	Hartford Lane	Residential	364.18	20.00	50.00	434.18
4103	Howard Street	Residential	296.83	20.00	50.00	366.83
4341	Howard Street	Residential	296.69	20.00	50.00	366.69
4581	Howard Street	Residential	266.70	20.00	50.00	336.70
4705	Howard Street	Residential	313.25	20.00	50.00	383.25
4910	Howard Street	Residential	453.87	20.00	50.00	523.87
5013	Howard Street	Senior	235.95	20.00	50.00	305.95
4558	Humboldt Court	Residential	333.80	20.00	50.00	403.80
10236	Kimberly Avenue	Residential	296.69	20.00	50.00	366.69
10244	Kimberly Avenue	Residential	403.23	20.00	50.00	473.23
11065	Kimberly Avenue	Residential	290.40	20.00	50.00	360.40
4762	Kingsley Street	Residential	207.74	20.00	50.00	277.74
4909	Kingsley Street	Residential	296.59	20.00	50.00	366.59
5019	Kingsley Street	Residential	296.83	20.00	50.00	366.83
5198	Kingsley Street	Multifamily	249.36	20.00	50.00	319.36
5476	Kingsley Street	Residential	296.83	20.00	50.00	366.83
5524	Kingsley Street	Residential	261.83	20.00	50.00	331.83

**Exhibit A to Resolution No. 22-3349
Report of Delinquent Civil Debts - June 2022**

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
5217-19	Kingsley Street	Residential	580.80	20.00	50.00	650.80
11362	Kingston Lane	Residential	294.85	20.00	50.00	364.85
10360-62	Lehigh Avenue	Multifamily	593.73	20.00	50.00	663.73
10390-62	Lehigh Avenue	Multifamily	487.89	20.00	50.00	557.89
4414	Mane Street	Residential	287.95	20.00	50.00	357.95
4428	Mane Street	Residential	294.25	20.00	50.00	364.25
4543	Mane Street	Residential	296.69	20.00	50.00	366.69
4839	Mane Street	Residential	291.21	20.00	50.00	361.21
8875	Maple Avenue	Residential	323.59	20.00	50.00	393.59
4441	Merle Street	Residential	275.55	20.00	50.00	345.55
10189	Mills Avenue	Residential	331.00	20.00	50.00	401.00
10231	Mills Avenue	Residential	296.83	20.00	50.00	366.83
3788	Millstone Lane	Residential	280.56	20.00	50.00	350.56
3796	Millstone Lane	Residential	307.58	20.00	50.00	377.58
11419	Millstone Lane	Residential	210.51	20.00	50.00	280.51
10120	Monte Vista Avenue	Residential	210.07	20.00	50.00	280.07
10263	Monte Vista Avenue	Residential	262.29	20.00	50.00	332.29
10290	Monte Vista Avenue	Residential	415.56	20.00	50.00	485.56
10163	Oak Glen Avenue	Senior	266.47	20.00	50.00	336.47
10176	Oak Glen Avenue	Senior	370.52	20.00	50.00	440.52
10241	Oak Glen Avenue	Residential	293.12	20.00	50.00	363.12
4595	Oakdale Street	Residential	296.83	20.00	50.00	366.83
4909	Orchard Street	Residential	293.72	20.00	50.00	363.72
4949	Orchard Street	Residential	258.53	20.00	50.00	328.53
5171	Orchard Street	Senior	266.47	20.00	50.00	336.47
5422	Orchard Street	Residential	296.83	20.00	50.00	366.83
3765	Peachwood Drive	Residential	313.25	20.00	50.00	383.25
3789	Peachwood Drive	Residential	209.82	20.00	50.00	279.82
3881	Peachwood Drive	Residential	329.97	20.00	50.00	399.97
3971	Peachwood Drive	Residential	364.18	20.00	50.00	434.18
3979	Peachwood Drive	Residential	330.69	20.00	50.00	400.69
10154	Poulsen Avenue	Residential	336.43	20.00	50.00	406.43
11246	Poulsen Avenue	Residential	261.83	20.00	50.00	331.83
10206	Pradera Avenue	Residential	296.83	20.00	50.00	366.83
4620	Rawhide Street	Residential	412.69	20.00	50.00	482.69
4833	Rawhide Street	Residential	287.95	20.00	50.00	357.95
4675	Saddleback Street	Residential	238.31	20.00	50.00	308.31
10988	San Juan Way	Residential	261.83	20.00	50.00	331.83
11014	San Miguel Way	Residential	296.83	20.00	50.00	366.83
11020	San Pasqual Avenue	Residential	296.83	20.00	50.00	366.83
10204	Santa Anita Avenue	Residential	306.48	20.00	50.00	376.48
10221	Santa Anita Avenue	Residential	374.33	20.00	50.00	444.33
10170	Saratoga Avenue	Residential	239.09	20.00	50.00	309.09
10226	Saratoga Avenue	Residential	485.58	20.00	50.00	555.58
11054	Stagecoach Avenue	Residential	296.69	20.00	50.00	366.69
11011	Stallion Avenue	Residential	301.27	20.00	50.00	371.27
10289	Tudor Avenue	Residential	296.83	20.00	50.00	366.83

**Exhibit A to Resolution No. 22-3349
Report of Delinquent Civil Debts - June 2022**

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
10151	Vernon Avenue	Residential	468.87	20.00	50.00	538.87
4230	Via Amore	Residential	296.69	20.00	50.00	366.69
4184	Via Napoli	Residential	469.93	20.00	50.00	539.93
10422	Via Palma	Residential	290.40	20.00	50.00	360.40
4198	Via Viola	Residential	317.65	20.00	50.00	387.65
11043	Wesley Avenue	Residential	306.68	20.00	50.00	376.68
11053	Wesley Avenue	Residential	298.29	20.00	50.00	368.29
10995	Whitewater Avenue	Residential	324.14	20.00	50.00	394.14
11178	Whitewater Avenue	Residential	296.23	20.00	50.00	366.23
4515	Yosemite Drive	Residential	296.83	20.00	50.00	366.83
10472	Yosemite Drive	Residential	290.41	20.00	50.00	360.41
		Total:	\$52,394.60	\$3,080.00	\$7,700.00	\$63,274.60



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 6, 2022	FILE I.D.:	FIN225
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	FINANCE
ITEM NO.:	2	PREPARER:	J. KULBECK
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 22-3353 CORRECTING THE APPROPRIATIONS LIMIT ESTABLISHED FOR FISCAL YEAR 2021-22 PURSUANT TO ARTICLE 13-B OF THE CALIFORNIA CONSTITUTION AND TO SECTION 7910 OF THE GOVERNMENT CODE		

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Resolution No. 22-3353 correcting the appropriations limit established for Fiscal Year 2021-22. A copy of proposed Resolution No. 22-3353 is attached for the City Council's review and consideration.

BACKGROUND: Government Code Section 7910 requires a city council to establish, by resolution, the City's appropriations limit (Gann Spending Limit) for the following fiscal year pursuant to Article 13-B of the California Constitution. The limit, which restricts the amount of tax revenues spent during the year, is based upon the limit for the preceding year, as adjusted for changes in population and cost of living.

The passage of Proposition 111 in June 1990 requires each city to choose either the percentage change in population within its jurisdiction as its change-in-population factor, or the percentage change in population within the county in which it is located. The City of Montclair elects to use the percentage change in California's per capita personal income, which is available in May of each year, as its change in cost-of-living factor.

On June 30, 2021, the City Council adopted Resolution No. 21-3317 establishing an appropriations limit for Fiscal Year 2021-22 pursuant to Article 13-B of the California Constitution and to Section 7910 of the Government Code.

In reviewing the process for calculating the appropriations limit for Fiscal Year 2021-22 it has been discovered that the limit was incorrectly stated as \$447,695,326. After corrective action was taken it was determined that the City's appropriations limit for Fiscal Year 2021-22 should be \$466,762,772 as established by proposed Resolution No. 22-3353.

FISCAL IMPACT: The City would be authorized to spend all tax revenues received up to \$466,762,772 should the City Council adopt proposed Resolution No. 22-3353.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 22-3353 correcting the appropriations limit established for Fiscal Year 2021-22 pursuant to Article 13-B of the California Constitution and to Section 7910 of the Government Code.

RESOLUTION NO. 22-3353

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR CORRECTING THE APPROPRIATIONS LIMIT FOR FISCAL YEAR 2021-22 WHICH WAS ESTABLISHED PURSUANT TO ARTICLE 13-B OF THE CALIFORNIA CONSTITUTION AND TO SECTION 7910 OF THE GOVERNMENT CODE

WHEREAS, Article 13-B of the California Constitution limits the appropriations budget of a local government, which is financed by taxes to the appropriations limit (Gann Spending Limit) of the prior fiscal year as adjusted by the change in population and the change in cost of living; and

WHEREAS, Government Code Section 7910 requires that the governing body of each local jurisdiction shall, by resolution, annually establish its appropriations limit for the following fiscal year pursuant to Article 13-B of the California Constitution; and

WHEREAS, at a meeting held on June 30, 2021, the City Council selected the change in cost of living and change in population factors to be used in determining the appropriations limit for Fiscal Year 2021-22; and

WHEREAS, the City of Montclair has determined that the corrected said appropriations limit for Fiscal Year 2021-22 is \$466,762,772, and documentation supporting calculation of the limit is available to the public as required by Government Code Section 7910.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby establishes a corrected appropriations limit in the amount of \$466,762,772 for Fiscal Year 2021-22 pursuant to Article 13-B of the Constitution of the State of California and Government Code Section 7910.

BE IT FURTHER RESOLVED that said appropriations limit herein established may be changed as deemed necessary by resolution of the City Council.

APPROVED AND ADOPTED this XX day of XX, 2022.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3353 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, 2022, 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

DATE:	JUNE 6, 2022	FILE I.D.:	GRT225/PRK650
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	HUMAN SVCS./PUBLIC WORKS
ITEM NO.:	3	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 22-3354 AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE SUNSET PARK BEAUTIFICATION PROJECT		

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Resolution No. 22-3354 authorizing the City Manager to execute agreements with the California Department of Transportation for the Sunset Park Beautification Project.

BACKGROUND: The California Department of Transportation (Caltrans) released the request for applications for the Clean California Local Grant program (CCGLP) in December 2021. The Program is one part of the nearly \$1.1 billion Clean California initiative to beautify our local communities to create spaces of pride for all Californians. The Clean California Local Grant Program includes nearly \$300 million for communities to beautify and improve local streets and roads, tribal lands, parks, pathways, and transit centers to restore pride in public spaces. Other parts of the Clean California initiative include litter abatement efforts, state beautification and safety projects, and public education campaigns.

The primary goals of the CCGLP are:

- 1) Reduce the amount of waste and debris within public rights -of -way, pathways, parks, transit centers, and other public spaces;
- 2) Enhance, rehabilitate, restore, or install measures to beautify and improve public spaces and mitigate the urban heat island effect;
- 3) Enhance public health, cultural connections, and community place making by improving public spaces for walking and recreation; and,
- 4) Advance equity for underserved communities. After review of the grant application evaluation elements, staff pursued funding that would make the City most competitive- beautifying Sunset Park.

Caltrans received over 300 applications. The City of Montclair's Sunset Park Beautification Project was one of only 105 applications awarded, and was one of only two awarded in San Bernardino County.

The CCLGP award of \$4,174,097 will fund the Sunset Park Beautification project, which will enhance the entirety of the park which has some features on the north end but no infrastructure, shade, or landscaping on the south end. These improvements will include the construction of a concrete walking trail along the perimeter of the park, exercise stations, picnic tables, playground, benches, water fountains, a bathroom, and drought-tolerant landscaping. Additionally, this project will develop the pilot of the San Antonio Creek Trail which was planned with the 2019 Caltrans Sustainable Community Planning Grant. The completed trail will ultimately span the length of the City. The Sunset Park Beautification project must be completed by June 30, 2024.

FISCAL IMPACT: Adoption of proposed Resolution No. 22-3354 would have no direct fiscal impact on the City's General Fund at this time, but will result in the award of \$4,174,097 for the beautification of Sunset Park. Future impacts to the City's general fund include maintaining the newly enhanced park.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 22-3354 authorizing the City Manager to execute agreements with California Department of Transportation for the Sunset Park Beautification project.

RESOLUTION NO. 22-3354

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE SUNSET PARK BEAUTIFICATION PROJECT

WHEREASthe Ciy Council of the City of Montclair is is eligible to receive State funding for certain transportation-related work through the California Department of Transportation; and

WHEREAS, a Restricted Grant Agreement must be executed with the California Department of Transportation before such funds can be claimed through the Clean California Local Grant Program; and

WHEREAS, the City Council wishes to delegate the authority to execute these agreements and any amendments thereto; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair authorize the City Manager, or their designee, to execute all Restricted Grant Agreements and any amendments thereto with the California Department of Transportation in relation to the Sunset Park Beautification Project.

APPROVED AND ADOPTED this XX day of XX, 2022.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3354 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, 20XX, 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

DATE:	JUNE 6, 2022	FILE I.D.:	COV100/CYC125
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	CITY MGR.
ITEM NO.:	4	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 22-3355 MAKING FACTUAL FINDINGS IN COMPLIANCE WITH AB 361 FOR THE CONTINUATION OF PUBLIC MEETING TELECONFERENCING DURING PUBLIC HEALTH EMERGENCIES FOR THE PERIOD OF JUNE 6, 2022, THROUGH JULY 6, 2022		

REASON FOR CONSIDERATION: The City Council’s adoption of Resolution No. 22-3355 would extend the City’s remote public meeting procedures under AB 361 for an additional 30 days, expiring July 6, 2022.

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. 22-3355.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 22-3355 making factual findings in compliance with AB 361 for the continuation of teleconferencing during public health emergencies for the period of June 6, 2022, through July 6, 2022.

RESOLUTION NO. 22-3355

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 JUNE 6, 2022, THROUGH JULY 6, 2022

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 and Community Activities Commissions may 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 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 and Community Activities Commissions:

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.

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 and Community Activities Commissions 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 and Community Activities Commissions 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 and Community Activities Commissions 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 and Community Activities Commissions 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 and Community Activities Commissions 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 and Community Activities Commissions 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, or the Montclair Planning and Community Activities Commissions to the public by phone or by internet, the Montclair City Council, its committees, and the Montclair Planning and Community Activities Commissions 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 and Community Activities Commissions:** The Montclair Planning Commission and the Montclair Community Activities 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 July 6, 2022, 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, 2022.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3355 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, 2022, 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

DATE:	JUNE 6, 2022	FILE I.D.:	STG085
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	PUBLIC WORKS
ITEM NO.:	5	PREPARER:	M. HEREDIA
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 22-3356 APPROVING A LIST OF PROJECTS TO BE FUNDED IN FY 2022-23 BY SENATE BILL 1, THE CALIFORNIA ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017		

REASON FOR CONSIDERATION: On April 28, 2017, the Governor signed The Road Repair and Accountability Act of 2017, also known as Senate Bill 1 (SB1). To establish eligibility for the legislation, and thereby receive funding, the California Transportation Commission (CTC) requires a resolution specifying the projects for which each city intends to spend its SB1 funding allocation for Fiscal Year 2022-2023. The City Council is requested to consider adopting Resolution No. 22-3356 confirming the allocation of SB1 funding in FY 2022-23 for the Zone 5 & 6 Street Rehabilitation Project.

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

Collected tax revenue is deposited into the RMRA and some of this funding is apportioned by formula to eligible cities and counties. It is important to note that new RMRA allocations may not be used to supplant local agency general fund spending for street maintenance and rehabilitation efforts. Therefore, in addition to meeting the transparency and reporting requirements, local agencies are required to sustain existing maintenance of effort (MOE) levels by continuing general fund street expenditures as specified in the legislation. The City's estimated MOE is \$1,251,522.

For FY 2022-2023, it is estimated that the City of Montclair will receive approximately \$902,623 in RMRA funding, with monthly payments starting in September 2022.

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

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

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

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

Staff has identified one project to be partially funded using RMRA funding:

Zone 5 & 6 Street Rehabilitation Project (Construction)

This project will resurface residential streets located between the limits of Brooks Street on the north, Benson Avenue on the east, Phillips Boulevard on the south, and Mills Avenue on the west.

Improvements include removal and replacement of damaged curb, gutter, and sidewalk; replacement of non-compliant Americans with Disabilities Act (ADA) pedestrian ramps; grinding of existing asphalt concrete pavement; and a new asphalt concrete pavement overlay. This project is identified in the 2019-2024 Capital Improvement Program and is expected to be completed in Fiscal Year 2022-23 with a minimum life expectancy of twenty years.

FISCAL IMPACT: The City Council has not approved an updated Five-Year Capital Improvement Program to date. However, a portion of SB1 funds will be used to pay for the construction of the Zone 5 & 6 Street Rehabilitation Project. The remainder cost for the construction of this project will be funded using 2021 Lease Revenue Bond funds.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 22-3356 approving a list of projects to be funded in FY 2022-23 by SB1, the California Road Repair and Accountability Act.

RESOLUTION NO. 22-3356

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2022-23 FUNDED BY SB 1 - THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

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

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

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

WHEREAS, the City, will receive an estimated \$902,623 in RMRA funding in Fiscal Year (FY) 2022-2023 from SB 1; and

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

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

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

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

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

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

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

1. The foregoing recitals are true and correct.
2. The following project will be funded in-part with FY 2022-2023 Road Maintenance and Rehabilitation Account revenues:

Project Title: Zone 5 & 6 Street Rehabilitation
Project Description: Improvements include removal and replacement of damaged curb, gutter, and sidewalk; replacement of non-compliant Americans with Disabilities Act (ADA) pedestrian ramps; grinding of existing asphalt concrete pavement; and a new asphalt concrete pavement overlay.

Project Location: Resurface residential streets located between the limits of Brooks Street on the north, Benson Avenue on the east, Phillips Boulevard on the south, and Mills Avenue on the west.

Estimated Project Schedule: Start (06/22) - Completion (09/22)

Estimated Project Useful Life: 20 years

APPROVED AND ADOPTED this XX day of XX, 2022.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3356 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, 2022, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk

**MINUTES OF THE REGULAR MEETING OF THE PUBLIC WORKS
COMMITTEE HELD ON THURSDAY, MARCH 17, 2022, AT 4:04 P.M.
HELD VIA ZOOM TELECONFERENCE**

I. CALL TO ORDER

Chair Johnson called the meeting to order at 4:04 p.m.

II. ROLL CALL

Present: Council Member Johnson (Chair); Council Member Lopez (Committee Member); City Manager Starr; Director of Economic Development and Housing Fuentes; Executive Director of Public Safety/Police Chief Avels; Director of Public Works/City Engineer Heredia; Director of Community Development Diaz; Engineering Division Manager Stanton; City Engineering Consultant Hoerning; City Clerk Myrick

III. APPROVAL OF MINUTES

The Committee approved minutes of the February 17, 2022, meeting.

IV. PUBLIC COMMENT — None

V. PUBLIC WORKS DEPARTMENT UPDATES/ITEMS

A. OPERATIONS

1. MAINTENANCE ACTIVITIES

An Operations Activities Report for January through February 2022 was included with the agenda. Director of Public Works/City Engineer Heredia highlighted the completion of 160 work requests, which included the installment of signs, refinishing red curbs, repairing sidewalks, fixing potholes, cleaning sewer lines and storm drain catch basins, maintaining and repairing screens, and spraying herbicide for weed control in parks. Staff repaired two damaged gabions on Central Avenue, prepared the fields for Little League to start their season, continued repairs to the City Hall breakroom patio, and planted four new pear trees at the Civic Center.

Chair Johnson took a moment to commend the Public Works Department's work in planting the pear trees outside City Hall.

2. ADDITIONAL ITEMS — None

B. FACILITIES

1. MAINTENANCE ACTIVITIES

A Facilities Activities Report for February 2022 was included with the agenda. Director of Public Works/City Engineer Heredia informed the Committee that the Facilities crew was busy making several types of building-related repairs including air conditioning, lighting, gates,

flooring, restrooms, sinks, sensors, breakers, pumps, and a generator. There were no questions or issues with the report.

2. **ADDITIONAL ITEMS** — None

C. **ENGINEERING DIVISION**

1. **Safe Routes to School (SRTS) Program – Vernon Middle School**

Director of Public Works/City Engineer Heredia stated that at **Vernon Middle School**, Public Works staff completed the installation of flashing stop signs on Vernon Avenue at the intersections of San Bernardino and Benito Streets. They also refinished the red curbs at both intersections. Director of Public Works/City Engineer Heredia also met with representatives from **Ontario Montclair School District (OMSD)** to discuss proposed improvements recommended by the traffic engineering consultant. A yellow curb along a drop-off zone on San Bernardino Street was painted red. The school is very happy and supportive of the proposed improvements. Public Works has ordered additional signs to have installed in the near future.

Committee Member Lopez asked for clarification regarding the previous drop-off zone at **Vernon Middle School**. Director of Public Works/City Engineer Heredia stated the school requested the drop-off zone be removed.

2. **San Antonio Creek Trail Feasibility Study**

Director of Public Works/City Engineer Heredia stated that there was a community meeting to discuss the draft plan. Twenty-six participants were present and inquired about lighting, restrooms, native plants, and safety. Participants also expressed the importance of connecting to the Pacific Electric Trail, improving the north side first, using the water recharge basins adjacent to the trail, and funding.

3. **Parks and Recreation Master Plan RFP**

Director of Public Works/City Engineer Heredia reported that on March 7, 2022, City Council approved a contract with KTUA to complete the Parks and Recreation Master Plan. Once the contract is executed, staff will schedule a kick-off meeting to start the planning effort.

VI. **POLICE DEPARTMENT UPDATE/ITEMS** — None

VII. **COMMUNITY DEVELOPMENT DEPARTMENT PROJECT UPDATES/ITEMS**

Director of Community Development Diaz informed the Committee that an adult daycare center on Central Avenue was approved by the Community Development Department. It was formerly a tile store. It is located north of Kingsley, and south of Orchard Street. Also, the buildings at 4959 Palo Verde Street are being remodeled with new metal exterior panels and railing, and should be completed by 2023.

Committee Chair Johnson requested an update on the former Fu Lin restaurant building on Central Avenue.

Director of Community Development Diaz informed the Committee that an upscale Mexican restaurant, **Kalaveras**, is in the process of coming to Montclair and is developing plans to remodel the building.

VIII. CAPITAL PROJECT UPDATES

A. LOCAL PROJECTS

1. Reeder Ranch Park Project

Engineering Division Manager Stanton advised the project is in the plan check phase and should move forward in a couple months.

2. Pacific Electric Trail Pedestrian Bridge Replacement

Engineering Division Manager Stanton reported the arrival and installation of the bridge would occur on March 25, 2022. The bridge is expected to be open in mid-April 2022.

3. Zone 5 & 6 Street Rehabilitation Project

Engineering Division Manager Stanton stated the contracts have been signed, adding the preconstruction meeting has not been scheduled, but will take place within the next couple of months.

B. REGIONAL PROJECTS

1. I-10 Corridor Project

Public Works Director/City Engineer Heredia reported the I-10 Corridor project on Monte Vista Avenue is currently reduced to one lane in each direction during the daytime hours and is closed nightly from 7:00 p.m. to 5:00 a.m., Monday through Saturday. Construction activities include constructing portions of the abutment walls, relocating utilities, and drainage. **California Department of Transportation (Caltrans)** installed freeway-only legend signs on the pavement along the southbound lanes leading to the freeway access along Monte Vista Avenue and Central Avenue. Staff is ensuring that **Caltrans** refreshes the lanes as much as possible.

Council Member Lopez expressed safety concerns regarding the left turn signal on northbound Monte Vista Avenue to enter westbound I-10, and requested his concerns be conveyed to **San Bernardino County Transportation Authority (SBCTA)**.

2. Central Avenue Bridge Project

Director of Public Works/City Engineer Heredia stated that staff and the bridge consultant are coordinating with the **Union Pacific Railroad** yard expansion project. Staff had to make minor adjustments to the design and the project is still in the environmental phase.

3. Foothill Gold Line Extension Project

City Manager Starr stated staff submitted to **State Senator Susan Rubio** an extensive document last week regarding the Metro Gold Line Foothill Extension Project asking for \$748 million dollars from the state surplus to go towards the completion of the Gold Line from Pomona to Claremont and to Montclair. In City staff's conversation with **Senator Rubio**, she asked for a document that outlined the request and the entire history of the Gold Line Project out of Union Station eastward towards Montclair. Staff provided her

that as well as the positive environmental impacts that are associated with the light rail, and why the state should consider funding the extension out of Pomona. The document discussed the high-density residential development that is occurring up and down the length of the corridor, but highlights that the bulk of the development is occurring in Montclair's transit district. The document was received by her office last week. She will be meeting with the Governor within the next two weeks to personally lobby for him to consider the \$748 million dollar request.

Senator Rubio also asked for a prospectus on the property that is owned by **Caltrans** at the Transcenter that includes all of the parking fields, the associated bus shelters, and the bus circle. City staff is in the process of completing and getting that to her tomorrow. The prospectus includes a request for **Caltrans** to deed the property that they own to the City of Montclair as opposed to selling it to us. The Governor has clearly stated interest in making certain that high-density development occurs around transit-oriented districts. With the **Caltrans** property in the City's possession, the City could work with developers to develop the parking fields to the north for high-density projects as well as affordable and market-rate housing projects. Properties to the south of the **Caltrans** property could be considered for the construction of a parking garage as 1600 parking spaces need to be maintained. The City also hopes to incorporate some additional housing and commercial components on the south side of the property. **Moule & Polyzoides (M&P)** completed elevations and bird's eye view of what a project could look like should the City decide to develop there. This exhibit will be forwarded to **Senator Rubio's** office as part of the package, which includes other exhibits.

City Manager Starr advised City also received a recent appraisal of the **Caltrans**-owned property. Back in 2004, the City entered into negotiations with **Caltrans** to purchase the property. At that time **Caltrans** conducted an appraisal and the property was estimated at \$10 million dollars; however, their appraisal was based on Montclair developing the North Montclair Downtown Specific Plan (NMDSP). Negotiations started in 2004, and the NMDSP was not adopted by the Council until 2006. It is questionable that the appraiser should have been using a specific plan that had not actually been completed nor adopted by the City Council. Also, at that time, then-**Governor Schwarzenegger** had asked the state under executive order to identify properties in the state that could be put on a surplus property list for the purposes of generating about \$38 billion dollars of new revenue for the state, and the Montclair Transcenter was on that list. Part of the negotiations also had the City asking for **Caltrans** to pull the Transcenter off of the state's surplus list, which they had tentatively agreed to do. While the City contemplated making the purchase, **Caltrans** gave the City a very limited window in which to respond, and the City was unable to meet that window. Unfortunately, the City lost the opportunity to acquire the property because it was not feasible for the City at that time. However, the City was successful in having the property removed from the surplus property list. Now when entering into negotiations with **Caltrans**, they are not willing to negotiate the sale of the property because it is not on a surplus property list.

City Manager Starr explained another obstacle the City faces is that the newly appraised amount takes into consideration the adopted NMDSP, the development patterns that are occurring around the Transcenter, and the specific plan that was developed for the Montclair Place District. The appraisal of the property was quite significant and will be addressed as part of the total package to **Senator Rubio**. It is the City's hope that **Governor Newsom** will understand the value in having **Caltrans** deed this property to the City of Montclair so the City can proceed with pursuing housing developments at this location.

IX. COMMITTEE AND CITY MANAGER ITEMS — None

X. ADJOURNMENT

At 4:28 p.m., Chair Johnson adjourned the meeting of the Public Works Committee. The next meeting of the Public Works Committee is scheduled to be held at 4:00 p.m. on Thursday, April 21, 2022.

Submitted for Public Works Committee approval,



Nadia Paz

Transcribing Secretary

MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
MAY 16, 2022, AT 6:25 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor Pro Tem Ruh called the meeting to order at 6:25 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 May 2,
2022.**

Moved by Council Member Johnson, seconded by Mayor Pro Tem
Ruh, and carried unanimously to approve the minutes of the
Personnel Committee meeting of May 2, 2022.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

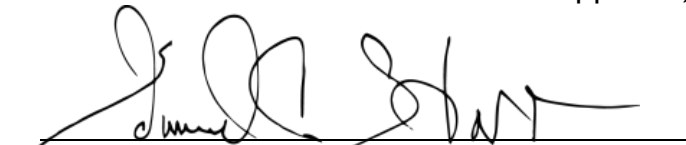
At 6:26 p.m., the Personnel Committee went into Closed Session
regarding personnel matters related to appointments, resignations/
terminations, and evaluations of employee performance.

At 6:50 p.m., the Personnel Committee returned from Closed Session.
Mayor Pro Tem Ruh stated that no announcements would be made at this
time.

VI. ADJOURNMENT

At 6:50 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, MAY 16, 2022 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor/Chair Dutrey called the meeting to order at 7:00 p.m.

II. INVOCATION

Pastor Joe McTarsney, Calvary Montclair, gave the invocation.

III. PLEDGE OF ALLEGIANCE

Mayor Pro Tem/Vice Chair Ruh 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 Community Development Diaz; Director of Human Services Richter; Finance Manager Kulbeck; Executive Director of Public Safety/Police Chief Avels; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS

A. Monte Vista Water District (MVWD) Update on Emergency Conservation Regulations

Mr. Justin Scott-Coe, MVWD General Manager, provided a short PowerPoint presentation demonstrating the sources of the District's water, with 50 percent coming from state and 50 percent from local sources; and adjusted restrictions for customers on water use requirements. He noted MVWD customers are limited to irrigating residential yards on three days per week—Tuesdays, Thursdays, and Saturdays, between 8:00 p.m. and 8:00 a.m. for six minutes per watering session. He added many other districts have had to restrict lawn watering to only one day per week; however, Montclair residents have significantly reduced water use in the past two decades and do not have to endure the strict restrictions of other communities.

Mayor Dutrey stated his support for MVWD's reliance on local water sources like the Chino Groundwater Basin.

Mayor Pro Tem Ruh expressed his continued opposition to live grass landscapes. He asked what would happen should MVWD not meet the target limitations.

Mr. Scott-Coe advised the District is on track to meet its 2022 targets, and there are severe penalties for exceeding the limits.

Council Member Lopez stated he is concerned residents will not take water conservation seriously unless they are threatened with penalties.

Mr. Scott-Coe advised there are enforcement mechanisms in place, including fines of \$100 to \$300 per occurrence; however, the District makes every effort to educate and notify residents before assessing fines. He added if fines do not resolve the excessive water use, the next remedy available is limiting water flow to the property to the minimum required for health and safety.

Council Member Lopez asked if the District has taken larger families and the expansion of accessory dwelling unit permitting into consideration concerning water allowances for each household.

Mr. Scott-Coe noted the District utilizes a budget-based tiered rate

structure and assigns a base allocation for essential indoor and outdoor water use to each customer based on the average household size of four members. He added that larger families may apply for yearly variances to increase their base indoor allocations.

Council Member Lopez asked if **MVWD** is working with the **West Valley Mosquito and Vector Control District (WVMVCD)** since residents will be discouraged from refilling their pools, which could lead to unmaintained green pools and stagnant water creating breeding grounds for mosquitoes.

Mr. Scott-Coe stated property owners are responsible for mitigating conditions that could attract mosquitoes; however, he will make sure **WVMVCD** is informed of the higher potential for those conditions during the drought.

Council Member Johnson asked what would be done if a hypothetically wealthy property owner continues to exceed water use restrictions despite a continuing assessment of fines.

Mr. Scott-Coe advised the District may install a flow restrictor on a property's water meter that significantly reduces water pressure. If the behavior continues, they may completely shut off the water. He asserted the District has never had to shut off water to a customer before based on excessive use, adding that it is common to shut off water for nonpayment.

Mayor Dutrey stated it is good to know our region has done a good job conserving water. He thanked **MVWD** General Manager **Scott-Coe** for his presentation and report.

VI. PUBLIC COMMENT

- A. **Mr. Bruce Culp**, resident, warned that a mega-drought event is imminent due to climate change and global warming. While residents are told to conserve water, he asked the City Council and other local elected officials to do their part by opposing new developments that cause environmental harm, such as warehouse projects.
- B. **Ms. Becky Esqueda** submitted a written comment expressing her concerns about drivers speeding, being distracted, and not stopping at stop signs, and requested solar lighted stop signs be placed at the intersection of Orchard Street and Vernon Avenue like the ones that were installed at the Benito Street and San Bernardino Street intersections near **Vernon Middle School**.

VII. PUBLIC HEARINGS

- A. **First Reading — Consider Ordinance No. 22-1001 Amending Sections Within Chapters 6.02; Amending Section 6.16.020; Repealing Sections 6.16.025 and 6.16.030; and Adding Chapter 6.17 to the Montclair Municipal Code Establishing a Mandatory Organic Waste Disposal Reduction Program**

Consider Setting a Public Hearing for Monday, June 6, 2022, at 7:00 p.m. in the City Council Chambers to Consider Second Reading and Adoption of Ordinance No. 22-1001

City Manager Starr provided a PowerPoint presentation on SB 1383 and the proposed Ordinance. He stated **Mike Arreguin**, Vice President of **Burrtec Waste Industries, Inc.**, the City's franchise waste hauler, is available if the City Council has any questions.

Mayor Dutrey declared it the time and place set for public hearing to consider first reading of Ordinance No. 22-1001 and invited comments from the public.

Mr. Culp recalled from the presentation provided to the City Council in January on the topic of organic waste that some City Council Members expressed concerns about how difficult the transition would be for themselves and the residents. He stated that he has been separating organic waste since he was a child and assured them it is just as easy as regular recycling. He asked how apartment

complexes, such as the one he lives in, would accommodate extra bins for organic waste if there is no room in the trash enclosures. He stated there are currently two types of bins in each of his complex's enclosures—one for regular garbage and another for recycling.

Mrs. Carolyn Raft, resident, asked how soon this program would go into effect and if residents would be notified in advance.

There being no one else in the audience wishing to speak, Mayor Dutrey closed the public hearing and returned the matter to the City Council for its consideration.

In response to **Mr. Culp**, City Manager Starr advised that **Burrtec** and the City would work with large apartment complex managers to implement the program or allow for exceptions. He added most apartment complexes in the City do not currently have green waste bins because the landscapers haul away green waste.

In response to **Mrs. Raft**, City Manager Starr stated the program would be implemented on July 1, 2022, focusing initially on educating residents, and enforcement would begin on July 1, 2024.

Council Member Johnson referenced the part of the law that requires expired and leftover edible food to be redirected to shelters or food pantries rather than tossed. She stated her understanding that businesses could be liable if they donate leftover food that results in illness.

City Manager Starr advised the law cites protections in those cases under the state's "Good Samaritan Law."

Mayor Pro Tem Ruh referenced the definition of organic waste including paper and cardboard products, and expressed confusion about those inclusions. He asked if this would change how paper and cardboard are currently recycled in the blue bin.

City Manager Starr advised that paper and cardboard are generally derived from plants and considered compostable.

Mr. Arreguin advised paper and cardboard products can go in either bin, noting this inclusion allows for food-soiled paper and cardboard, which cannot be recycled, to be disposed of with organic waste. He stressed this information would be included in the educational materials distributed to residents.

Mayor Pro Tem Ruh stated he produces hardly any organic waste because he feeds food scraps to his pets and asked if someone like him would be fined.

Mr. Arreguin stated the fines are only instated for those who continue to dispose of organic waste in the wrong container.

Mayor Pro Tem Ruh asked if all containers in the blue bins need to be devoid of organic residue, noting while residents are being asked to reduce water use, they may not want to waste water rinsing containers.

Mr. Arreguin advised that rinsing containers is no longer necessary due to advanced processes over the years. He stated containers should just be emptied as much as possible.

Council Member Lopez stated he feels the legislation was poorly thought-out and constitutes a state mandate on local governments. He restated his continuing opposition to all unfunded state mandates. He stated that he believes it is a fact that the bags containing food waste would rip open when collected, contaminating the green waste. He asked if the additional costs of implementing this program would be passed on to residents and if those costs were calculated.

Mr. Arreguin advised **Burrtec** has been operating a pilot program with 4,500 homes participating. He reported that about 10 percent of the organic waste ends up mixed with green waste, which is an acceptable level for its use as mulch and fertilizer.

Council Member Lopez referenced a response from **CalRecycle** to Council Member Johnson's question about using garbage disposal systems instead of organic waste recycling at the January workshop. He indicated **CalRecycle** stated the use of a garbage disposal system would not count as compliance with SB 1383. He asked if **Burrtec** would be responsible for checking sewage for organic materials that should have been recycled.

Mr. Arreguin advised **Burrtec** is not responsible for monitoring sewage for compliance with SB 1383.

Council Member Lopez asked who would be responsible for enforcement of the Ordinance.

City Manager Starr advised the City's Code Enforcement Division would be responsible for enforcement, with the help of **Burrtec** for notification of violations.

Mr. Arreguin concurred, noting **Burrtec** would perform audits to determine which households are not in compliance and provide that information to the City.

Mayor Dutrey stated he is aware of a bill in the legislature related to organic waste and asked if it would have any impact on the proposed program.

Mr. Arreguin stated the bill would not have any significant impact.

Mayor Dutrey expressed his shared dissatisfaction with the state for imposing this mandate. He noted cities learned about 10 years ago with the state's dissolution of local redevelopment agencies that the state can do as it wishes with entities it creates, and cities are also entities that exist under the state's permission. He stated that, although politically convenient to oppose the implementation of an organic recycling program, cities have no choice but to comply.

Moved by Mayor Dutrey, seconded by Council Member Johnson, and carried that Ordinance No. 22-1001 be read by number and title only, further reading be waived, and this be declared its first reading; and that the City Council set a public hearing for Monday, June 6, 2022, at 7:00 p.m. to consider second reading and adoption of Ordinance No. 22-1001.

The first reading of Ordinance No. 22-1001 was approved, and a public hearing for its second reading was set, by the following 4-1 vote:

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

VIII. CONSENT CALENDAR

City Attorney Robbins advised the City Council of a recommended action added to Item C-1 to authorize the City Manager to sign the Agreement, noting the revision was made after distribution of the Councils' printed agenda packets.

Council Member Johnson requested discussion on Items C-6, C-7, and C-11.

Mayor Dutrey entertained discussion on Items C-6, C-7, and C-11 prior to the vote on the Consent Calendar, and stated Item C-1 would be considered with the City Attorney's amended recommendation.

Moved by Mayor/Chair Dutrey, seconded by Council Member/Director Lopez, and carried unanimously 5-0, the City Council approved the Consent Calendar with discussion held on Items C-6, C-7, and C-11:

A. Approval of Minutes

1. Regular Joint Meeting — May 2, 2022

The City Council, Successor Agency Board of Directors, Montclair Housing Corporation Board of Directors, Montclair Housing

Authority Commissioners, and Montclair Community Foundation Board of Directors approved the minutes of the May 2, 2022 regular joint meeting.

B. Administrative Reports

1. Receiving and Filing of City Treasurer's Report

The City Council received and filed the City Treasurer's Report for the month ending April 30, 2022.

2. Approval of City Warrant Register and Payroll Documentation

The City Council approved the City Warrant Register dated May 16, 2022, totaling \$1,408,005.57; and the Payroll Documentation dated April 24, 2022, amounting to \$699,954.79 gross, with \$489,222.31 net being the total cash disbursement.

3. Receiving and Filing of Successor Agency Treasurer's Report

The City Council acting as successor to the Redevelopment Agency Board received and filed the Successor to the Redevelopment Agency Treasurer's Report for the month ending April 30, 2022.

4. Approval of Successor Agency Warrant Register

The City Council acting as successor to the Redevelopment Agency Board approved the Successor to the Redevelopment Agency Warrant Register dated 04.01.22-04.30.22 in the amounts of \$20,630.72 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds.

5. Receiving and Filing of MHC Treasurer's Report

The MHC Board received and filed the MHC Treasurer's Report for the month ending April 30, 2022.

6. Approval of MHC Warrant Register

The MHC Board approved the MHC Warrant Register dated 04.01.22-04.30.22 in the amount of \$125,611.24.

7. Receiving and Filing of MHA Treasurer's Report

The MHA Commissioners received and filed the MHA Treasurer's Report for the month ending April 30, 2022.

8. Approval of MHA Warrant Register

The MHA Commissioners approved the MHA Warrant Register dated 04.01.22-04.30.22 in the amount of \$0.00.

9. Approval of Tract Map No. 20273 Located on the North Side of Arrow Highway Near Fremont Avenue

Authorizing Tract Map No. 20273 to be Recorded with the Office of the San Bernardino County Recorder Subject to Final Approval by the City Engineer

The City Council took the following actions:

- (a) Approved Tract Map No. 20273 located on the north side of Arrow Highway near Fremont Avenue.
- (b) Authorized Tract Map No. 20273 to be recorded with the Office of the San Bernardino County Recorder subject to final approval by the City Engineer.

C. Agreements

1. Approval of Agreement No. 22-11 with the San Bernardino County Office of Emergency Services Authorizing the Receipt of \$19,472 from the FY 2020 Homeland Security Grant Program

Authorizing City Manager Edward C. Starr to Sign Said Agreement

Authorizing a \$19,472 Appropriation from the Public Safety Grant Fund to Purchase Communications Equipment for the Command Trailer and a Walk-Through Metal Detector for the Police Station

The City Council took the following actions:

- (a) Approved *Agreement No. 22-11* with the San Bernardino County Office of Emergency Services authorizing the receipt of \$19,472 from the FY 2020 Homeland Security Grant Program.
- (b) Authorized City Manager Edward C. Starr to sign said Agreement.
- (c) Authorized a \$19,472 appropriation from the Public Safety Grant Fund to purchase communications equipment for the Command Trailer and a walk-through metal detector for the Police Station.

2. Authorizing a \$1,076,905 Appropriation from 2021 Lease Revenue Bond Funds for the Preparation of Preliminary Design Plans for Selected Roadways in the North Montclair Downtown Specific Plan (NMDSP) and Montclair Place District Specific Plan (MPDSP)

Approval of *Agreement No. 22-32* with Moule & Polyzoides for the Preparation of Preliminary Design Plans for Selected Roadways in the NMDSP & MPDSP Subject to Any Revisions Deemed Necessary by the City Attorney

Authorizing the City Manager to Amend the Scope of Services as Necessary for a Contingency Amount Not to Exceed \$133,500

The City Council took the following actions:

- (a) Authorized a \$1,076,905 appropriation from 2021 Lease Revenue Bond Funds for the preparation of preliminary design plans for selected roadways in the North Montclair Downtown Specific Plan (NMDSP) and Montclair Place District Specific Plan (MPDSP).
- (b) Approved *Agreement No. 22-32* with Moule & Polyzoides for the preparation of preliminary design plans for selected roadways in the NMDSP & MPDSP subject to any revisions deemed necessary by the City Attorney.
- (c) Authorized the City Manager to amend the scope of services as necessary for a contingency amount not to exceed \$133,500.

3. Approval of *Agreement No. 22-34* with Advanced Creative Concrete to Construct a Concrete Foundation for a Ventilation Training Prop at the Fire Department Training Facility

The City Council approved *Agreement No. 22-34* with Advanced Creative Concrete to construct a concrete foundation for a ventilation training prop at the Fire Department training facility.

4. Approval of *Agreement Nos. 22-38* and *22-39* with the County of San Bernardino to Provide for the Receipt of Grant Funds from the 2020 and 2021 Justice Assistance Grant Awards

Authorizing City Manager Edward C. Starr to Sign Said Agreements

The City Council took the following actions:

- (a) Approved *Agreement Nos. 22-38* and *22-39* with the County of San Bernardino to provide for the receipt of

grant funds from the 2020 and 2021 Justice Assistance Grant Awards.

(b) Authorized City Manager Edward C. Starr to sign said Agreements.

5. Approval of Agreement No. 22-41 with AppleOne Employment Services to Provide Staffing Services for the Montclair After-School Program

The City Council approved *Agreement No. 22-41* with AppleOne Employment Services to provide staffing services for the Montclair After-School Program.

6. Approval of Agreement No. 22-42 with Crafton Hills College Authorizing the Fire Department to Provide Clinical Training for Emergency Medical Students

Council Member Johnson expressed her support for the Fire Department working with local schools, which could entice students to start their careers in Montclair.

The City Council approved *Agreement No. 22-42* with Crafton Hills College authorizing the Fire Department to provide clinical training for emergency medical students.

7. Authorizing the Police Department to Contract with a Reputable Manufacturer for the Purchase of a Tactical Armored Vehicle Defined as Military Equipment Under Assembly Bill 481

Approval of Agreement No. 22-43 with San Bernardino County to Provide Funding for the Sole Purchase of a Tactical Armored Vehicle, Required Radio Components and Installation, and Graphics, Subject to Any Revisions Deemed Necessary by the City Attorney

Authorizing Receipt of \$336,600 from San Bernardino County for the Sole Purchase of a Tactical Armored Vehicle, Required Radio Components and Installation, and Graphics

Council Member Johnson asked if this vehicle would be used for protection of officers only and not offensively.

Executive Director of Public Safety/Police Chief Avels stated he appreciates Council Member Johnson's concerns. He advised this vehicle would replace the City's Peacekeeper and would be used for the same purposes, including both defensive and offensive objectives. He stated the vehicle being purchased has the ability to attach devices to the front such as a battering ram; however, this would only be used in instances where a building is not safe for officers to enter without protection or when a door is barricaded.

Council Member Lopez stated he has seen battering rams used on warehouses that house illegal cannabis grow operations and can see the value in having one available on the force.

The City Council took the following actions:

- (a) Authorized the Police Department to contract with a reputable manufacturer for the purchase of a tactical armored vehicle defined as military equipment under Assembly Bill 481.
- (b) Approved *Agreement No. 22-43* with San Bernardino County to provide funding for the sole purchase of a tactical armored vehicle, required radio components and installation, and graphics, subject to any revisions deemed necessary by the City Attorney.
- (c) Authorized receipt of \$336,600 from San Bernardino County for the sole purchase of a tactical armored vehicle, required radio components and installation, and graphics.

8. Approval of Agreement No. 22-45 with ServiceMaster 360 Premier Cleaning to Provide Custodial Services at the Family Resource Center Subject to Any Revisions Deemed Necessary by the City Attorney

The City Council approved *Agreement No. 22-45* with ServiceMaster 360 Premier Cleaning to provide custodial services at the Family Resource Center subject to any revisions deemed necessary by the City Attorney.

9. Approval of Agreement No. 22-46 with Ontario-Montclair School District for Utilization of the Family Resource Center for Case Management Services and to Support Operating Costs of the Facility Subject to Any Revisions Deemed Necessary by the City Attorney

The City Council approved *Agreement No. 22-46* with Ontario-Montclair School District for utilization of the Family Resource Center for case management services and to support operating costs of the facility subject to any revisions deemed necessary by the City Attorney.

10. Approval of Agreement No. 22-48 with Mt. San Antonio College Authorizing the Fire Department to Provide Clinical Training for Emergency Medical Students

The City Council approved of *Agreement No. 22-48* with Mt. San Antonio College authorizing the Fire Department to provide clinical training for emergency medical students.

11. Approval of Agreement No. 22-49 with 5060 Montclair Plaza Lane Owner, LLC, a Reimbursement Agreement Related to the Development of Property Generally Located on the Southwest Corner of Central Avenue and Moreno Street Subject to Any Revisions Deemed Necessary by the City Attorney

Council Member Johnson asked: if the City is being reimbursed for the cost of the consultants by the developers, why is the City acting as a middle-man?

City Manager Starr advised the California Environmental Quality Act requires that environmental consultants for projects contract with the City rather than the developer.

Council Member Lopez asked why the City only provides five days for the developer to respond to notices of costs in excess of the estimates with an appeal, whereas the City is implicitly provided an undefined amount of time to respond to the developer.

City Manager Starr indicated the City must correspond with several interested parties before responding to the developer such as the consultants, the City Council, and other entities, while the developers can immediately respond when receiving a communication from the City. He advised staff would monitor and be aware if a consultant's costs are close to the cap far in advance of it happening, so the developer would be made aware before it gets to the point of sending a written notice.

Council Member Lopez stated he is concerned the City may be overburdening developers with time limits and other aspects of the process.

The City Council approved *Agreement No. 22-49* with 5060 Montclair Plaza Lane Owner, LLC, a reimbursement agreement related to the development of property generally located on the southwest corner of Central Avenue and Moreno Street subject to any revisions deemed necessary by the City Attorney.

D. Resolutions

1. Adoption of Resolution No. 22-3348 Making Factual Findings in Compliance with AB 361 for the Continuation of Public Meeting Teleconferencing During Public Health Emergencies for the Period of May 16, 2022, through June 15, 2022

The City Council adopted Resolution No. 22-3348 making factual findings in compliance with AB 361 for the continuation of public meeting teleconferencing during public health emergencies for the period of May 16, 2022, through June 15, 2022.

IX. PULLED CONSENT CALENDAR ITEMS — None

X. BUSINESS ITEMS

A. Consider Approval of an Extension to the Requirement, as Provided For in Resolution No. 22-3344, for Council Member Benjamin Lopez to Attend City-Approved Sexual Harassment Prevention Training from “within Thirty (30) Calendar Days” to “within Sixty (60) Calendar Days” Following Adoption of Said Resolution

Consider Authorizing a \$5,000 Transfer From the Contingency Account to City Attorney Program Account No. 1001-4801-52290-400 (Legal Services and Court Costs) to Provide Specialized Sexual Harassment Prevention Training for Council Member Lopez as Required by Resolution No. 22-3344

Mr. Culp stated his disappointment that Council Member Lopez continues to serve on the City Council with little consequence for his behavior. He pointed out that, while Council Member Lopez criticizes the state for passing costs onto local governments, he should look at his own actions that are costing the City money. He asked the City Council to consider amending its action tonight to require Council Member Lopez to forfeit his salary until the City is reimbursed for the costs it incurs in relation to the accommodations being made for him, including this specialized sexual harassment prevention training. He also requested Council Member Lopez be required to report back to the City Council about his training. He insisted Council Member Lopez resign from office.

Mayor Dutrey received confirmation from City Attorney Robbins that the City Council does not have the authority to reduce a Council Member’s salary, which is set by ordinance.

Moved by Council Member Martinez, seconded by Mayor Dutrey, and carried 4-1 (Lopez dissenting), the City Council took the following actions:

1. Approved an extension to the requirement, as provided for in Resolution No. 22-3344, for Council Member Benjamin Lopez to attend City-approved sexual harassment prevention training from “within thirty (30) calendar days” to “within sixty (60) calendar days” following adoption of said Resolution; and
2. Authorize a \$5,000 transfer from the contingency account to City Attorney Program Account No. 1001-4801-52290-400 (Legal Services and Court Costs) to provide specialized sexual harassment prevention training for Council Member Lopez as required by Resolution No. 22-3344.

XI. COMMUNICATIONS

A. Department Reports

1. Human Services Department — Upcoming Events & Programs

Human Services Director Richter announced the following:

- (a) After being closed for the last two seasons, on Saturday, May 28th, the Splash Pad at Alma Hofman Park will reopen

and operate daily from noon to 6:00 p.m. through Labor Day, subject to regular maintenance, emergency repairs, and potential drought restrictions.

- (b) On Monday, May 30th, at 6:00 p.m., the Community Activities Commission will host its 22nd Annual Memorial Day Program in the City Hall Memorial Garden. The presentation will include patriotic songs and the dedication of six new plaques to the Veterans' Memorial Wall.
- (c) The City's 8th Annual Country Fair Jamboree will take place on Saturday, June 4th, from noon to 6:00 p.m. at Alma Hofman Park. The event will include games, food trucks, a petting zoo, carnival rides, craft vendors, contests, and live entertainment. Discount ride wristbands can be purchased in advance at City Hall, and free event parking will be available at **Our Lady of Lourdes Church** with a shuttle service provided.

B. City Attorney

City Attorney Robbins requested the City Council meet in closed session concerning the following:

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

1 Potential Case

C. City Manager/Executive Director — None

D. Mayor/Chair

1. Announcement of 4 Vacancies on the Community Activities Commission (4-Year Terms, July 1, 2022 through June 30, 2026)

Mayor Dutrey announced there are four vacancies on the Community Activities Commission (CAC) and encouraged residents to apply at www.cityofmontclair.org by the deadline at 5:30 p.m. on May 18, 2022 at 5:30 p.m.

2. Consider Scheduling Meetings for Fiscal Year 2022-23 Preliminary Budget Review Presentation and Budget Adoption, Tentatively Proposed for Wednesday, June 22, 2022, at 6:00 p.m., and Tuesday, June 28, 2022, at 6:00 p.m., in the City Council Chambers

Mayor/Chair Dutrey announced the Preliminary Budget Review workshop would be scheduled to take place on Wednesday, June 22, 2022, at 6:00 p.m., and the meeting for adoption of the Budget would be scheduled for Tuesday, June 28, 2022, at 6:00 p.m., if all members of the City Council are available. He noted the continuation of the workshop that took place on May 2, 2022, would also likely take place on June 28th.

Mayor Pro Tem/Vice Chair Ruh stated he would be out of town on the 22nd, but could attend the meeting remotely.

3. Mayor Dutrey made the following comments:

(a) He stated tonight's meeting would be adjourned in memory of Rancho Cucamonga City Council Member **Sam Spagnolo**, who served as Chair of the **Omnitrans** Board of Directors and President of the Inland Empire Division of the **League of California Cities**.

(b) He reported attending the **Southern California Association of Governments (SCAG)** Annual Conference and General Assembly two weeks ago, where he voted on **SCAG** Resolutions as the City's delegate.

Mayor Dutrey stated he must leave the meeting and asked Mayor Pro Tem/Vice Chair Ruh to preside over the meeting in his absence.

At 9:00 p.m., Mayor/Chair Dutrey left the meeting.

E. Council Members/Directors

1. Council Member/Director Martinez thanked residents who spoke this evening and stated she is glad the City will be reporting on the expenses of Council Member Lopez's censure.
2. Council Member/Director Johnson made the following comments:
 - (a) She stated she is delighted to hear the Splash Pad will finally be reopening to give our young residents a chance to play and get some relief from the heat.
 - (b) She reported attending an **Ontario-Montclair School District** parents' conference with Council Member Martinez, City Manager Starr, and Human Services Director Richter, adding many parents were glad to see Montclair representatives at the event.
 - (c) She announced the **Montclair Chamber of Commerce** will be hosting another drive-thru e-waste collection event on Saturday and Sunday, May 28th and 29th, and invited the community to drop by the Chamber office at 8880 Benson Avenue.
3. Council Member/Director Lopez made the following comments:
 - (a) He attended a **Chaffey High School** student production of the Addams Family, which he thoroughly enjoyed.
 - (b) He stated he was shocked and saddened to hear of the passing of **Rancho Cucamonga Council Member Spagnolo**, sharing that he met **Mr. Spagnolo** before he was a City Council Member in the 1980s, and was mentored by him on fire issues.
4. Mayor Pro Tem/Vice Chair Ruh made the following comments:
 - (a) He noted he also knew **Mr. Spagnolo** from his firefighter days. He stated **Mr. Spagnolo** loved his city and his community and did a great job guiding the City of Rancho Cucamonga as a member of its City Council. He expressed his condolences to the family and friends of **Mr. Spagnolo** and the City of Rancho Cucamonga for its significant loss.
 - (b) He stated his disappointment in commercial trash haulers for opposing and lobbying against legislation to reduce waste and produce energy and other societal benefits by diverting solid waste from landfills. He stated he would like to see trash converted to energy and byproducts such as pellets for road construction.
 - (c) He reported that he, representing the City, and Mayor Dutrey, representing **SBCTA**, attended the **Gold Line Joint Powers Authority** meeting to review station artwork last Thursday. He stated the artwork at each station is different and reflects the community in which the station resides. He added the Gold Line, now called the L Line, is the busiest line in the system. He thanked neighboring Cities for supporting the line's extension to Montclair.

F. Committee Meeting Minutes

1. Minutes of Personnel Committee Meeting of May 2, 2022

The City Council received and filed the minutes of the Personnel Committee meeting of May 2, 2022, for informational purposes.

XII. CLOSED SESSION

At 9:15 p.m., the City Council went into closed session to discuss potential litigation.

XIII. CLOSED SESSION ANNOUNCEMENTS

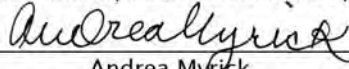
At 9:40 p.m., the City Council returned from closed session.

City Attorney Robbins announced the City Council met in closed session to discuss potential litigation and direction was given to staff to initiate litigation, with the vote of approval being 4-0 (Dutrey absent). She advised that, once the City has formally commenced litigation, the City will disclose the action, the defendant(s), and the other particulars to any person upon inquiry, unless to do so would jeopardize the City's ability to effectuate service of process on one or more unserved parties.

XIV. ADJOURNMENT

At 9:40 p.m., Mayor Pro Tem/Vice Chair Ruh adjourned the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board in memory of Rancho Cucamonga City Council Member **Sam Spagnolo**.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



Andrea Myrick
City Clerk