

CITY OF MONTCLAIR

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

AGENDA

MONDAY, JUNE 20, 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 20, 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 — None

VI. PUBLIC COMMENT

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

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

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

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

A. Approval of Minutes

1. Regular Joint Meeting — June 6, 2022 [CC/SA/MHC/MHA/MCF]

177

	<u>Page No.</u>
B. Administrative Reports	
1. Consider Receiving and Filing of Treasurer’s Report [CC]	6
2. Consider Approval of Warrant Registers & Payroll Documentation [CC]	7
3. Consider Receiving and Filing of Treasurer’s Report [SA]	8
4. Consider Approval of Warrant Register [SA]	9
5. Consider Receiving and Filing of Treasurer’s Report [MHC]	10
6. Consider Approval of Warrant Register [MHC]	11
7. Consider Receiving and Filing of Treasurer’s Report [MHA]	12
8. Consider Approval of Warrant Register [MHA]	13
C. Agreements	
1. Consider Approval of Agreement No. 22-44 with All City Management Services, Inc. for School Crossing Guard Services Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	14
2. Consider Rejecting the Bid from Innovation Painting, Inc. for Painting of Civic Center Facilities [CC]	
Consider Awarding a Contract to Astro Painting Co., Inc. in the Amount of \$159,000 to Paint the City Hall Building; the Youth, Senior, Community, and Recreation Center Buildings; the Library Building; the Ancillary Structure at Alma Hofman Park; and Block Walls, Fencing, and Gates Throughout the Civic Center [CC]	
Consider Approval of Agreement No. 22-53 with Astro Painting Co., Inc. for Painting of Civic Center Facilities Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	22
3. Consider Approval of Agreement No. 22-60 with Consolidated Fire Agencies of San Bernardino County (CONFIRE) for Continued Dispatch and Communication Services Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	30
4. Consider Approval of Agreement No. 22-62, the Sixth Amendment to Agreement No. 06-77 with CASC Engineering, Inc. for Water Quality and Stormwater Compliance Services Subject to any Revisions Deemed Necessary by the City Attorney [CC]	47
5. Consider Approval of Agreement No. 22-63 with the Montclair Chamber of Commerce to Provide Services to Promote Local Economic Development Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	67
6. Consider Approval of Agreement No. 22-64 with Howroyd-Wright Employment Agency, Inc. dba AppleOne Employment Services to Provide Staffing Services for the City of Montclair Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	73
7. Consider Approval of Agreement No. 22-65-I-109, an Irrevocable Annexation Agreement with 11185 Roswell, LLC for 11185 Roswell Avenue, Pomona, CA 91766 (APN 1012-411-51-0000) [CC]	79

8.	Consider Approval of Agreement No. 22-66 with LexisNexis Risk Solutions for Accurant TraX Cellular Phone Data Mapping and Analysis Software for Use in Criminal Investigations [CC]	
	Consider Authorizing a \$6,800 Appropriation from the Prop 30/AB 109 Fund for Costs Associated with Agreement No. 22-66 [CC]	
	Consider Authorizing Executive Director, Office of Public Safety/Police Chief Robert Avels to Sign Said Agreement [CC]	85
9.	Consider Approval of Agreement No. 22-67 with TKE Engineering, Inc. for Engineering Design Services for the Ramona Avenue and Howard Street Roundabout Project [HSIPSL-5326(023)] Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	94
10.	Consider Approval of Agreement No. 22-68, the Seventh Amendment to Cooperative Agreement No. 91-065 with the San Bernardino County Transportation Authority Related to the Management of Jointly Owned Property at the Montclair Transcenter Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	128
11.	Consider Approval of Agreement No. 22-69 With McCain to Upgrade the Central Management Software for Traffic Signal Operations Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	138
12.	Consider Approval of Agreement No. 22-70 with Pivotal Strategies LLC for Community Education and Outreach Services Related to a Proposed Ballot Measure to Establish a Commercial Cannabis Tax Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	141
D. Resolutions		
1.	Consider Adoption of Resolution No. 22-3357 Making Factual Findings in Compliance with AB 361 for the Continuation of Public Meeting Teleconferencing During Public Health Emergencies for the Period of June 20, 2022, through July 20, 2022 [CC]	160
2.	Consider Adoption of Resolution No. 22-3358 Directing Staff to Review the Conflict of Interest Code and Submit the 2022 Biennial Notice Pursuant to the Political Reform Act [CC]	164
3.	Consider Adoption of Resolution No. 22-3359 Calling and Giving Notice of the Holding of a General Municipal Election to be Held on Tuesday, November 8, 2022, for the Election of Certain Officers as Required by the Provisions of the Laws of the State of California Related to General Law Cities [CC]	
	Consider Adoption of Resolution No. 22-3360 Adopting the Regulations for Candidates for Elective Office Pertaining to Candidates' Statements Submitted to the Voters at an Election to be Held on Tuesday, November 8, 2022 [CC]	
	Consider Adoption of Resolution No. 22-3361 Requesting the Board of Supervisors of the County of San Bernardino to Consolidate a General Municipal Election to Be Held on Tuesday, November 8, 2022, with the Statewide General Election to be Held on the Same Date Pursuant to Section 10403 of the California Elections Code [CC]	167
4.	Consider Adoption of Resolution No. 22-3362 Adjusting the Equivalent Dwelling Unit Monthly Fee for Sewer Service [CC]	174

IX. PULLED CONSENT CALENDAR ITEMS

X. COUNCIL/MHC WORKSHOPS

A. Fiscal Year 2022-23 Preliminary Budget Review [CC/MHC]

(The City Council/MHC Board may consider continuing this item to an adjourned meeting on Wednesday, June 22, 2022, at 6:00 p.m. in the City Council Chambers)

B. Continuation of San Antonio Creek Trail Conceptual Plan Presentation by Alta Planning + Design, Inc. [CC]

(The City Council may consider continuing this item to an adjourned meeting on Tuesday, June 28, 2022, at 6:00 p.m. in the City Council Chambers)

C. Presentation of Community Survey Results Pertaining to Cannabis-Related Issues by Fairbank, Maslin, Maullin, Metz & Associates [CC]

(The City Council may consider continuing this item to an adjourned meeting on Monday, July 18, 2022, at 5:45 p.m. in the City Council Chambers)

XI. COMMUNICATIONS

A. Department Reports

1. Police Department — Planned Response to Fireworks

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

2. Request for City Council to Meet in Closed Session Pursuant to Government Code §54956.9(d)(1) Regarding Pending Litigation [CC]

Garcia v. Lopez, City of Montclair, et al.

Fuentes v. Lopez, City of Montclair, et al.

C. City Manager/Executive Director

D. Mayor/Chairperson

1. Consider Making Appointments to Four (4) Scheduled Vacancies on the Community Activities Commission for Full Four-Year Terms Ending June 30, 2026 [CC]
2. Notice of Special Meeting of the City Council and Montclair Housing Corporation Board on Tuesday, June 28, 2022, at 6:30 p.m. in the City Council Chambers to Consider Adoption of the Fiscal Year 2022-23 City and MHC Budgets [CC/MHC]
3. Notice of Cancellation of July 5, 2022 Regular Joint Meeting [CC/SA/MHC/MHA/MCF]

E. Council Members/Directors

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

1. Personnel Committee Meeting — June 6, 2022 [CC]

176

XII. CLOSED SESSION

XIII. CLOSED SESSION ANNOUNCEMENTS

XIV. ADJOURNMENT

The regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board scheduled for Tuesday, July 5, 2022 has been cancelled due to a lack of quorum. The next regular joint meeting will be held on Monday, July 18, 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 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 16, 2022.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	FIN520
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	1	PREPARER:	J. KULBECK
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending May 31, 2022.

BACKGROUND: Included in the City Council's agenda packet is a copy of the Treasurer's Report for the period ending May 31, 2022.

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

RECOMMENDATION: Staff recommends the City Council receive and file the Treasurer's Report for the month ending May 31, 2022.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	2	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 20, 2022, and the Payroll Documentation dated May 22, 2022, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated June 20, 2022, totals \$958,537.71.

The Payroll Documentation dated May 22, 2022 totals \$675,616.61 gross, with \$467,757.97 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 20, 2022	FILE I.D.:	FIN510
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	3	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The City Council acting as Successor to the Redevelopment Agency Board of Directors (Successor Agency Board) is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending May 31, 2022, pursuant to state law.

BACKGROUND: Included in the Successor Agency Board's agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending May 31, 2022.

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

RECOMMENDATION: Staff recommends the Successor Agency Board receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending May 31, 2022.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	FIN530
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	4	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending May 31, 2022, pursuant to state law.

BACKGROUND: Vice Chair Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 05.01.22-05.31.22 in the amounts of \$8,459.22 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds, and finds it to be in order.

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

RECOMMENDATION: Vice Chair Ruh recommends the City Council as Successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending May 31, 2022.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	5	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending May 31, 2022, pursuant to state law.

BACKGROUND: Included in the Montclair Housing Corporation Board agenda packet is a copy of the Treasurer's Report for the period ending May 31, 2022.

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

RECOMMENDATION: Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending May 31, 2022.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	6	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending May 31, 2022, pursuant to state law.

BACKGROUND: Vice Chair Ruh has examined the Warrant Register dated 05.01.22-05.31.22 in the amount of \$84,477.97 for the Montclair Housing Corporation and finds it to be in order.

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

RECOMMENDATION: Vice Chair Ruh recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending May 31, 2022.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	7	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The Montclair Housing Authority Commission is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending May 31, 2022, pursuant to state law.

BACKGROUND: Included in the Montclair Housing Authority Commission's agenda packet is a copy of the Treasurer's Report for the period ending May 31, 2022.

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

RECOMMENDATION: Staff recommends the Montclair Housing Authority Commission receive and file the Treasurer's Report for the month ending May 31, 2022.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	8	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The Montclair Housing Authority Commission is requested to consider receiving and filing the Warrant Register for the month ending May 31, 2022, pursuant to state law.

BACKGROUND: Vice Chair Ruh has examined the Warrant Register dated 05.01.22-05.31.22 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

RECOMMENDATION: Vice Chair Ruh recommends the Montclair Housing Authority Commission approve the Warrant Register for the period ending May 31, 2022.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	PDT205
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	1	PREPARER:	B. VENTURA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-44 WITH ALL CITY MANAGEMENT SERVICES, INC. FOR SCHOOL CROSSING GUARD SERVICES SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-44 with All City Management Services, Inc. for school crossing guard services for Fiscal Year 2022-23.

Proposed Agreement No. 22-44 is attached for City Council's review and consideration.

BACKGROUND: All City Management Services, Inc. has provided school crossing guard services for the City since November 1998 and has notified Police Department staff that its hourly rate for crossing guard services will increase for Fiscal Year 2022-23. The adjustment would increase the current hourly rate by \$1.48, resulting in an hourly billing rate of \$26.39. The wage increase is a direct result of Senate Bill 3, which provides for an annual \$1 increase from January 1, 2021, through January 1, 2023, at which time the hourly minimum wage will have reached \$15 per hour.

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

FISCAL IMPACT: With the rate increase, All City Management Services, Inc. has calculated the estimated annual program cost to be \$200,000. Included in the Police Department's preliminary Fiscal Year 2022-23 Budget is an allocation of \$200,000 to provide crossing guard services for the 2022-23 school year.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-44 with All City Management Services, Inc. for school crossing guard services for Fiscal Year 2022-23 subject to any revisions deemed necessary by the City Attorney.



AGREEMENT FOR CROSSING GUARD SERVICES

This AGREEMENT FOR CROSSING GUARD SERVICES (the “Agreement”) is dated June 20, 2022 and is between the CITY OF MONTCLAIR (hereinafter called the "City"), and ALL CITY MANAGEMENT SERVICES, INC., a California corporation (hereinafter called the "Contractor").

WITNESSETH

The parties hereto have mutually covenanted and agreed as follows:

1. This Agreement is for a period of time which commences on or around July 1, 2022 and ends on June 30, 2023, and for such a term thereafter as the parties may agree upon.
2. The Contractor is an independent contractor and the guards to be furnished by it shall at all times be its employees and not those of the City.
3. The City’s representative in dealing with the Contractor shall be the City Manager or such a person as the City Manager may designate.
4. If, at any time during the contract period, the City questions the meaning of any item of this Agreement, the City may contact the Contractor for interpretation of that item.
5. The City shall have the right to determine the hours and locations when and where the guards shall be furnished by the Contractor. The Contractor shall notify the City in writing of any changes which may need to occur in hours of work or locations. The City further has the power to add to, delete from or revise the work schedule/locations at any time.
6. The Contractor shall provide supervisory personnel to see that guard activities are taking place at the required places and times, and in accordance with all items of this Agreement.
7. The Contractor shall maintain adequate reserve personnel to be able to furnish alternate guards in the event than any person fails to report for work at the assigned time and location.
8. The Contractor shall provide personnel properly trained as herein specified for the performance of duties of Crossing Guards. In the performance of their duties the Contractor and employees of the Contractor shall conduct themselves in accordance with the conditions of this Agreement and laws and codes of the State of California and the City of Montclair.
9. The Contractor shall train, schedule, provide and supervise personnel in accordance with the contract and the rules and regulations of the City of Montclair. Crossing Guards shall perform their duties as trained and within the City’s rules for such guards.

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

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

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

(b) Endorsements

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

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

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

Additional Insured Endorsements shall not:

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

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

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

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

(c) **Notice of Cancellation**

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

(d) **Waiver of Subrogation**

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

(e) **Evidence of Insurance**

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability

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

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

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

(k) Insurance for Subcontractors

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

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

16. The Contractor shall not have the right to assign this Contract to any other person or firm except with the consent of the City.
17. The City agrees to pay Contractor the sum of Twenty-six Dollars and Thirty-nine Cents (\$26.39) per hour for each hour of crossing guard services provided pursuant to this Agreement.
18. In the event that this Agreement is extended beyond June 30, 2023, the compensation for services shall be established by mutual consent of the parties. Said payment shall be made upon written statement to the City by the Contractor and approval of the appropriate City representative.
19. This Agreement shall be governed by and construed in accordance with the law of the State of California.
20. In the event any legal proceeding is instated to enforce any term of provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover Attorney's fees and costs from the opposing party in an amount determined by the court to be reasonable.
21. 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.

[SIGNATURES FOLLOW ON NEXT PAGE]

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

CITY

CONTRACTOR

City of Montclair

All City Management Services, Inc.

By _____
Javier John Dutrey, Mayor

By _____
Baron Farwell, General Manager

Date _____

Attest

Andrea M. Myrick, City Clerk



CITY COUNCIL AGENDA REPORT

DATE: JUNE 20, 2022 **FILE I.D.:** CVC060
SECTION: CONSENT - AGREEMENTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 2 **PREPARER:** M. PARADIS
SUBJECT: CONSIDER REJECTING THE BID FROM INNOVATION PAINTING, INC. FOR PAINTING OF CIVIC CENTER FACILITIES

CONSIDER AWARDING A CONTRACT TO ASTRO PAINTING CO., INC. IN THE AMOUNT OF \$159,000 TO PAINT THE CITY HALL BUILDING; THE YOUTH, SENIOR, COMMUNITY, AND RECREATION CENTER BUILDINGS; THE LIBRARY BUILDING; THE ANCILLARY STRUCTURE AT ALMA HOFMAN PARK; AND BLOCK WALLS, FENCING, AND GATES THROUGHOUT THE CIVIC CENTER

CONSIDER APPROVAL OF AGREEMENT NO. 22-53 WITH ASTRO PAINTING CO., INC. FOR PAINTING OF CIVIC CENTER FACILITIES SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: The City Council is requested to consider awarding a contract to Astro Painting Co., Inc. in the amount of \$159,000.00 for painting of all Civic Center buildings, and approval of Agreement No. 22-53 with Astro Painting Co., Inc. subject to any revisions deemed necessary by the City Attorney.

A copy of proposed Agreement No. 22-53 is attached for the City Council’s review and consideration.

BACKGROUND: On April 19, 2022, staff posted a Request for Bid Proposals (RFB) on Planet Bids for painting of all Civic Center facilities including City Hall; the Youth, Senior, Community, and Recreation Centers; the Library building; the ancillary structure at Alma Hofman Park; and block walls, fencing, and gates.

On May 19, 2022, nine bid proposals were received as follows:

<i>Bidder</i>	<i>Bid Amount</i>
Innovation Painting, Inc.	\$139,000.00
Astro Painting, Co, Inc.	\$159,000.00
Harbor Coating and Restoration	\$179,000.00
Color New Co.	\$192,000.00
Genesis Builders, Inc.	\$266,889.00
Cramer Painting Inc.	\$281,400.00
U.S. National Corp.	\$330,160.00
CTG Construction, Inc.	\$375,000.00
Prime Painting Contractors, Inc.	\$588,000.00

Following the bid opening, the bids were reviewed for completeness and accuracy. The bid proposal from the apparent lowest bidder, Innovation Painting, Inc. does not meet the City’s requirement of having five years of experience. Therefore, staff recommends that their bid be rejected.

The bid proposal from the apparent second lowest bidder, Astro Painting Co, Inc., provided all required documents and was deemed the lowest responsible, responsive bidder for the project. The City Engineer has reviewed and determined that their bid proposal meets the qualifications required in the RFB.

The anticipated duration of this project is 60 working days. The work is expected to begin in July 2022 and be completed in late August 2022.

FISCAL IMPACT: Funds in the amount of \$235,000.00 were included in the Fiscal Year 2021-22 budget for painting the exterior of Civic Center buildings and fencing.

RECOMMENDATION: Staff recommends that the City Council take the following actions in relation to the Civic Center Painting Services:

1. Deem the bid from Innovation Painting, Inc. as non-responsive and reject their bid proposal.
2. Award a contract to Astro Painting Co., Inc., in the amount of \$159,000 to paint the City Hall building; the Youth, Senior, Community, and Recreation Center Buildings; the Library building; the ancillary structure at Alma Hofman Park; and block walls, fencing, and gates throughout the Civic Center.
3. Approve Agreement No. 22-53 with Astro Painting, Inc. for painting of Civic Center facilities subject to any revisions deemed necessary by the City Attorney.

KNOW ALL MEN BY THESE PRESENTS: That the following Agreement is made and entered into as of the date executed by the City Clerk and the Mayor, by and between **ASTRO PAINTING CO., INC.**, a **CORPORATION**, hereinafter referred to as "CONTRACTOR" and the CITY OF MONTCLAIR, hereinafter referred to as "CITY."

A. Recitals.

- (i) Pursuant to Notice Inviting Bid Proposals, bids were received, opened, and declared on the date specified in said notice.
- (ii) CITY did accept the bid of CONTRACTOR.
- (iii) CITY has authorized the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of:
- (iv)

CIVIC CENTER PAINTING SERVICES

"PROJECT" hereinafter.

B. Resolution.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed:

1. GENERAL SCOPE OF WORK: CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for and do all work contemplated and embraced for the PROJECT. Said PROJECT to be performed in accordance with specifications and standards on file in the Office of the City Engineer and in accordance with bid prices hereinafter mentioned and in accordance with the instructions of the Engineer.
2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: The aforesaid specifications are incorporated herein by reference thereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, the Notice Inviting Bids, the Instructions to Bidders, the Proposal and any City-issued addenda, together with this written Agreement, shall constitute the contract between the parties. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written Agreement, the provisions of this written Agreement shall control.
3. TERMS OF CONTRACT: The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of PROJECT within the time specified in the Special Provisions. CONTRACTOR agrees further to the assessment of liquidated damages in the amount specified in the Special Provisions or the Standard Specifications, whichever is higher, for each calendar day PROJECT remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due

the CONTRACTOR under this contract. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

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

5. **INSURANCE:** The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been obtained. The CONTRACTOR shall take out and maintain at all times during the life of this contract the following policies of insurance:

(a) Types of Required Coverages

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

(1) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, with minimum limits of at least \$2,000,000 per occurrence for bodily injury, personal injury and property damage, and \$4,000,000 aggregate total bodily injury, personal injury and property damage. Commercial General Liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

Products-Completed Operations: Contractor shall procure and submit to City evidence of insurance for a period of at least three (3) years from the time that all work under this Contract is completed.

(2) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$1,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

(3) **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and 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.

(b) Endorsements

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

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

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

Additional Insured Endorsements shall not:

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

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

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

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

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

(e) Evidence of Insurance

The Contractor, concurrently with the execution of the contract, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability

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

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

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

(k) Insurance for Subcontractors

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

6. CONTRACTOR'S LIABILITY: The City of Montclair and its respective officers, agents and employees shall not be answerable or accountable in any manner for any loss or damage that may happen to the project or any part thereof, or for any of the materials or other things used or employed in performing the project; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors or the public, whatsoever arising out of or in connection with the performance of the project. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the project or at any time before its completion and final acceptance.

The CONTRACTOR will indemnify CITY against and will hold and save CITY harmless from any and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of the CONTRACTOR, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY, and in connection therewith:

- a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.
- b. The CONTRACTOR will promptly pay any judgment or award rendered against the CONTRACTOR or CITY covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the CONTRACTOR hereunder or reasonable settlement in lieu of judgment or award, and the CONTRACTOR agrees to save and hold the CITY harmless therefrom.
- c. In the event CITY is made a party to any action or proceeding filed or prosecuted against the CONTRACTOR for damages or other claims arising out of or in connection with the project, operation, or activities of the CONTRACTOR hereunder, the CONTRACTOR agrees to pay to CITY any and all costs and expenses incurred by CITY in such action or proceeding together with reasonable attorneys' fees.

Money due to the CONTRACTOR under and by virtue of the contract, as shall be considered necessary by CITY, may be retained by CITY until disposition has been made of such actions or claims for damage as aforesaid.

7. **NONDISCRIMINATION:** No discrimination shall be made in the employment of persons upon public works because of the race, color, sex, sexual preference, sexual orientation, or religion of such persons, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the Labor Code in accordance with the provisions of § 1735 of said Code.

8. **INELIGIBLE SUBCONTRACTORS:** The CONTRACTOR shall be prohibited from performing work on this project with a subcontractor who is ineligible to perform on the project pursuant to § 1777.1 and § 1777.7 of the Labor Code.

9. **CONTRACT PRICE AND PAYMENT:** CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **May 19, 2022**.

10. **ATTORNEYS' FEES:** In the event that any action or proceeding is brought by either party to enforce any term or provision of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs incurred with respect thereto.

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

CONTRACTOR

CITY

ASTRO PAINTING CO., INC.
2988 s. Citrus Street
West Covina, CA 91791

CITY OF MONTCLAIR, CALIFORNIA
5111 Benito Street
Montclair, CA 91763

By: _____

By: _____

Javier "John" Dutrey
Mayor

Name, Title

ATTEST:

By: _____

By: _____

Andrea M. Myrick
City Clerk

Name, Title

APPROVED AS TO FORM:

By: _____

Diane E. Robbins
City Attorney



CITY COUNCIL AGENDA REPORT

DATE: JUNE 20, 2022

FILE I.D.: FRD057

SECTION: CONSENT - AGREEMENTS

DEPT.: FIRE

ITEM NO.: 3

PREPARER: D. POHL

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 22-60 WITH CONSOLIDATED FIRE AGENCIES OF SAN BERNARDINO COUNTY (CONFIRE) FOR CONTINUED DISPATCH AND COMMUNICATION SERVICES SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-60 with Consolidated Fire Agencies of San Bernardino County (CONFIRE) for continued dispatch and communication services subject to any revisions deemed necessary by the City Attorney. A copy of proposed Agreement No. 22-60 is attached for the City Council's review and consideration.

BACKGROUND: CONFIRE currently provides dispatch and communication services for the Fire Department under Agreement No. 21-22, which will end on June 30, 2022. Proposed Agreement No. 22-60 is for Fiscal Year 2022-23.

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

CONFIRE utilizes state-of-the-art computer systems running TriTech CAD with ProQA for emergency medical dispatching, Automatic Vehicle Location (AVL) software, integrated telephone systems running VESTA, and radio systems consisting of VHF and Motorola 800 MHz trunked Smartnet Systems. One of the main advantages provided by contracting with CONFIRE is the use of AVL software, which allows dispatchers to know where fire units are located in real time via a satellite surveillance system. This system allows for the closest fire unit available to be dispatched to an emergency regardless of jurisdictional geography. Proposed Agreement No. 22-60 includes the annual maintenance fees of the WestNet First-In Fire Station Alerting System. CONFIRE has a bulk agreement with WestNet for supported agencies to receive group pricing—this cost has been included in the proposed Agreement with CONFIRE.

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

FISCAL IMPACT: Approval of Agreement No. 22-60 would result in a net cost of \$242,917 for Fiscal Year 2022-23, which is included in the proposed Fiscal Year 2022-23 Budget in Program 4533 Emergency Services, Emergency Communication Services. The cost of service for each contracting agency is based on each contracting agency's call volume for the prior calendar year, as well as costs associated with equipment replacement, technology support, and administration.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-60 with CONFIRE for continued dispatch and communication services subject to any revisions deemed necessary by the City Attorney.



**DISPATCHING COST FOR SERVICES FOR FY 2022-23
CITY OF MONTCLAIR FIRE DEPARTMENT**

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

- A. Operating Costs:**
 The operating costs for services provided will be delivered to the Contracting Agency prior during Fiscal Year 2022/23. These costs will include the Contracting Agency's share of the Admin/Dispatch Costs (100-400), Information Services Costs (600), and Equipment Reserve (5009) as established by the Contracting Agencies share of total calls for service per the agreement between CONFIRE and the Contracting Agency.

Agency % of 2021 Call Volume (share)	1.87%
Operating Costs for 2022-23	\$231,350.00


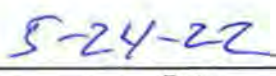
- B. Contract Fee (5% of Operating Costs):**
 Per Exhibit B (Compensation) Section B.1 of agreement. **\$11,567.00**

Total Costs July 1, 2022 thru June 30, 2023 **\$242,917.00**

- C. Payments shall be made in quarterly installments of** **\$60,729.25**

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

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

 _____ Mike Bell (Acting Director) CONFIRE Representative	 _____ Date
---	--

_____ City of Montclair Representative	_____ Date
---	---------------

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

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

1. EXHIBITS

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

Exhibits include:

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

2. INDEPENDENT CONTRACTOR

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

3. SCOPE OF SERVICES

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

4. COMPENSATION

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

5. EFFECTIVE DATE AND TERM

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

6. GENERAL TERMS AND CONDITIONS

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

7. NOTICE

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

To CONFIRE:

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

To Contracting Agency:

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

8. HIPPA BUSINESS ASSOCIATE AGREEMENT

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

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

Consolidated Fire Agencies

City of Montclair

Date: May 24, 2022

Date: _____, 2022

By: [Signature]

By: _____

Print Name: Mike Bell

Print Name: _____

Its: Acting Director

Its: _____

EXHIBIT A
to CONTRACTING AGENCY AGREEMENT

SCOPE OF SERVICES

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

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

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

EXHIBIT B
to CONTRACTING AGENCY AGREEMENT

COMPENSATION

Compensation to be paid as follows:

A. FEES FOR SERVICES:

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

B. ADDITIONAL FEES:

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

EXHIBIT C
to CONTRACTING AGENCY AGREEMENT

EFFECTIVE DATE AND TERM

1. This Agreement is effective on July 1, 2022 (“Effective Date”).
2. Unless terminated or otherwise cancelled in accordance with this Agreement, the term of this Agreement shall be: (i) from the Effective Date through (ii) June 30, 2023 (the “Term”).
3. At any time during the term of this agreement the Contracting Agency may submit to CONFIRE (in accordance with CONFIRE policies and regulations) an application to become a party to the CONFIRE Joint Powers Agreement.
4. Upon admission as a member of CONFIRE, the provisions of the CONFIRE Joint Powers Agreement and any bylaws, policies, or other instruments promulgated thereunder will govern the relationship between the parties of that CONFIRE Joint Powers Agreement and this Agreement will terminate.

EXHIBIT D
to CONTRACTING AGENCY AGREEMENT

GENERAL TERMS AND CONDITIONS

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

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

13. **INDEMNIFICATION.**

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

14. **INSURANCE.**

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

EXHIBIT E
to CONTRACTING AGENCY AGREEMENT

BUSINESS ASSOCIATE AGREEMENT
BY AND BETWEEN
CONTRACTING AGENCY AND CONFIRE

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

RECITALS

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

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

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

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

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

AGREEMENT

1. General Terms and Conditions

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

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

Consolidated Fire Agencies

City of Montclair

Date: May 24, 2022

Date: _____, 2022

By: [Signature]

By: _____

Print Name: Mike Bell

Print Name: _____

Its: Acting Director

Its: _____

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

General Terms and Conditions to Business Associate Agreement

I. DEFINITIONS.

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

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

Business Associate agrees to:

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

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

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

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

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

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

IV. PERMISSIBLE REQUESTS BY COVERED ENTITY.

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

V. TERM AND TERMINATION.

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

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

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

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

VI. MISCELLANEOUS.

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

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

maintain the copyright, trademark and/or patent of said records in the name of the Covered Entity.

- c. Minimum Necessary. To the extent required by the HITECH Act and Regulations, Business Associate shall limit its Use, Disclosure or request of PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, respectively. Effective on the date the Secretary issues guidance on what constitutes "minimum necessary" for purposes of the Applicable Law, Business Associate shall limit its Use, Disclosure or request of PHI to only the minimum necessary as set forth in such guidance.
- d. State Privacy Laws. Business Associate shall comply with California laws to the extent that such state privacy laws are not preempted by Applicable Law.
- e. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. Effect on Underlying Arrangement. In the event of any conflict between this BAA and any underlying arrangement between

Covered Entity and Business Associate, including the Agreements as amended from time to time, the terms of the BAA shall control with respect to Protected Health Information.

- g. Interpretation. This BAA shall be interpreted as broadly as necessary to implement and comply with Applicable Law. The Parties agree that any ambiguity in the BAA shall be resolved in favor of a meaning that complies and is consistent with the Applicable Law.
- h. Governing Law. This BAA shall be construed in accordance with the laws of the State of California.
- i. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this BAA shall be deemed to be inserted herein and this BAA shall be read and enforced as though it were included therein.
- j. Severability. In the event that any provision of this BAA shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this BAA shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this BAA.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	PUB115A
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	4	PREPARER:	S.STANTON

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 22-62, THE SIXTH AMENDMENT TO AGREEMENT NO. 06-77 WITH CASC ENGINEERING, INC. FOR WATER QUALITY AND STORMWATER COMPLIANCE SERVICES SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: Agreement No. 06-77 with CASC Engineering, Inc. was approved by the City Council in 2006 to provide plan-checking services for Water Quality Management Plans (WQMPs). It has been amended and extended five times, with Agreement No. 17-15 being the most recent. Agreement No. 17-15 expires on June 30, 2022. The City Council is requested to consider approval of Agreement No. 22-62 with CASC Engineering to continue assisting the City with WQMPs and stormwater compliance services. A copy of proposed Agreement No. 22-62 with CASC Engineering, Inc. is attached for City Council review and consideration.

BACKGROUND: Since 2004, WQMPs are required for developments in San Bernardino County. The City has been reviewing and approving WQMPs since November 2004. In April 2006, the Regional Water Quality Control Board (Regional Board) notified the City of a change in the requirements for WQMPs. At that time, the Regional Board determined that WQMPs for many projects must address “Hydrologic Conditions of Concern” (HCOC).

Under the direction of the Regional Board, most developers are now required to address HCOC issues in their WQMP. The HCOC requirement, together with other concerns, means the WQMP must be prepared by or under the direction of a registered civil engineer, which is the developer’s responsibility. The City, in turn, must have a registered civil engineer review and approve the information provided. CASC Engineering employs the appropriate personnel to both prepare and review WQMPs.

CASC Engineering also provides a variety of stormwater compliance services, such as Qualified Storm Water Pollution Prevention Plan Practitioner (QSP) services for Capital Improvement Projects under the State Construction General Permit (CGP) and Qualified Industrial Stormwater Pollution Prevention Plan Developer (QISD) services per the Industrial General Permit. Stormwater requirements are ever-increasing with the adoption of every new National Pollutant Discharge Elimination System (NPDES) permit. Therefore, CASC Engineering’s scope of work is expanded to include these services should the City ever need program assistance or management.

The City anticipates the adoption of a new General Stormwater Permit near the end of 2022 or the beginning of 2023. The new permit will be a multi-regional permit where the Counties of San Bernardino, Riverside, and Orange will be required to adopt and enforce the same permit policies. This new permit will significantly change the Inland Empire agencies, as the coastal cities have historically had more stringent stormwater requirements. Approval of Agreement No. 22-62 will allow the City to request assistance from CASC Engineering to ensure a smooth transition to the new permit.

CASC Engineering has been reviewing WQMPs for the City since July 2006 and has performed these reviews exceptionally well. CASC is very responsive to the City with WQMP issues and reviews and has continually maintained its knowledge of state water quality requirements. CASC will continue to assist City staff with new stormwater regulations and future NPDES requirements.

FISCAL IMPACT: The City Council has established plan check fees for WQMP review. It is the developers' responsibility to pay for the cost of reviewing their WQMPs. This review process is self-supporting with the application plan-check fees to pay for work performed by the City's consultant. In addition, CASC Engineering, Inc. does not charge the maximum rate established for plan checks and is not requesting an increase for plan check services. If the City of Montclair needs CASC Engineering to provide additional services, the cost of their services will burden the improvement project so as not to impact the General Fund.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-62, the sixth amendment to Agreement No. 06-77 with CASC Engineering, Inc. for water quality and stormwater compliance services subject to any revisions deemed necessary by the City Attorney.

CITY OF MONTCLAIR
AGREEMENT FOR CONSULTANT SERVICES
NPDES PROGRAM ASSISTANCE

THIS AGREEMENT is made and effective as of on June 20, 2022, between the City of Montclair, a municipal corporation ("City") and CASC Engineering, 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 July 1, 2022 and shall remain and continue in effect for a period of 60 months until tasks described herein are completed, but in no event later than January 30, 2027, 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, based upon actual time spent on the above tasks. This amount shall not exceed \$60,000 annually 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:

CASC Engineering and Consulting
1470 E. Cooley Drive
Colton, CA. 92324

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. CONFIDENTIALITY

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

22. DISCRIMINATION

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

23. EFFECT OF PARTIAL INVALIDITY

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

24. CLAIMS AGAINST CITY

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.

25. AUTHORITY TO EXECUTE THIS AGREEMENT

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

26. NO THIRD PARTY BENEFICIARIES

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

27. COST OF LITIGATION

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

28. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of 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.

29. COUNTERPARTS

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Javier John Dutrey, Mayor

By: _____
Name:
Title:

Attest:

By: _____
Andrea M. Myrick, City Clerk

By: _____
Name:
Title:

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

Water Quality Management Plan (WQMP)

Plan Check and Related Services

Scope of Services

Task 1 – WQMP Plan Checking

The Consultant shall review WQMPs submitted to the City. The purpose of the review is to determine each WQMP's general conformance with the appropriate edition of the document, "Technical Guidance Document for Water Quality Management Plans" (TGD), with development practices acceptable to the City (City Practices), and with the generally accepted standards and practices for urban runoff quality management in California (Industry Practices).

WQMP reviews may require a review of supporting documentation, including but not limited to environmental documents, conditions of approval, grading plans, project plans, landscape plans, hydrology reports, drainage reports, and other documentation submitted by the Applicant.

Comments on WQMPs will be conveyed to the WQMP preparer in the form of "red lines" on documents and plans, and when required, via written narratives. Applicants shall be instructed to return redline comments with subsequent resubmittal of the WQMP. WQMP plan check comments shall be routed through the City of Montclair via email, mail, courier, or other method requested by the City within 10 workdays following receipt of the complete WQMP and supporting documentation.

When a WQMP is determined to conform to the TGD, City Practices, and Industry Practices, the Consultant shall transmit a written WQMP Approval Recommendation to the City: said WQMP Approval Recommendations may include conditions related to the recommendation. The WQMP Approval Recommendation shall be accompanied by a list of recommended minimum inspection milestones. When requested by the City, the Consultant shall update the MS4 Database to reflect the details associated with WQMPs recommended for approval by the City.

Consultant shall maintain a log showing: the status of WQMPs submitted for review; the date the WQMP was received; the date red line comments were returned; the City's project tracking number; and the status of the WQMP (e.g., approved, revise/resubmit). The WQMP log shall be transmitted to the City when requested.

Task 2 – WQMP Meetings

The Consultant shall meet and confer with the City to discuss WQMPs as needed (e.g., when a WQMP proposes BMPs in the public right-of-way). The Consultant shall meet with development Applicants and WQMP preparers when requested by an Applicant/Preparer and approved by the City. The purpose of these meetings shall be to provide general guidance on WQMP preparation or to clarify WQMP red line comments. The meetings may be in-person or via teleconference: in-person meetings shall occur at the City, at the Consultant's office in Colton, or another mutually agreeable location approved by the City.

Task 3 – Construction General Permit and MS4 Permit Services (Public Projects)

The Consultant shall provide on-call services to assist the City meet its obligations under the Construction General Permit (CGP) and its MS4 Stormwater Permit.

The Consultant shall provide on-call Qualified SWPPP Developer (QSD) and Qualified SWPPP Practitioner (QSP) services when requested by the City.

The QSD services are for City projects and may include but are not limited to the preparation of Storm Water Pollution Prevention Plans (SWPPPs) in accordance with the Construction General Permit (CGP); acting as a Data Submitter for filing documents and information in the State’s Storm Water Multi-Application, Reporting, and Tracking System (SMARTS); preparing Notices of Termination (NOTs); and inspection of WQMP BMPs. A certified QSD shall perform QSD services.

The QSP services are for City projects and may include but are not limited to providing observation of assigned construction projects to verify the project is complying with requirements of the project SWPPP; preparing CGP-required Rain Event Action Plans (REAPs); construction site runoff pH and Turbidity testing using field meters; sampling for non-visible pollutants in runoff and analysis of samples via a certified laboratory; taking photographs to document site conditions; preparing observation reports and inspection logs; acting as a Data Submitter to upload construction-phase information to SMARTS; and reporting back to the City regarding findings and observations. A certified QSP or QSD shall provide QSP services.

Task 4 – Construction Compliance Services (Private Projects)

The Consultant shall provide on-call services to assist the City meet its obligations under its MS4 Stormwater Permit, including those related to private construction projects.

The Consultant’s services may include but are not limited to review of Storm Water Pollution Prevention Plans (SWPPPs); conducting periodic inspections of construction sites; preparing written reports; entering inspection data into the regional MS4 database; meeting with applicants and/or construction site operators to review the results of construction site inspections; inspection of WQMP BMPs as they are constructed; and advising City staff regarding the status of inspections, including the need to take enforcement actions. A certified QSP or QSD shall conduct the inspections.

Task 5 – Industrial General Permit and MS4 Permit Services (Public Projects)

The Consultant shall provide on-call services to assist the City meet its obligations under the Industrial General Permit (IGP) and its MS4 Stormwater Permit.

Services may include but are not limited to training of City staff relative to the requirements of the IGP and the MS4 Stormwater Permit; preparing Storm Water Pollution Prevention Plans (SWPPPs); runoff sampling; acting as a Data Submitter for filing documents and information in the State's Storm Water Multi-Application, Reporting, and Tracking Systems (SMARTS); observation of site operations to gauge a site's level of compliance with the IGP and the City's Municipal Code and MS4 Stormwater Permit; inspection of WQMP BMPs; and preparation of observation and inspection reports.

Task 6 – Commercial, Industrial, and Residential Compliance Services (Private Projects)

The Consultant shall provide on-call services to assist the City meet its obligations under its MS4 Stormwater Permit, including those related to private commercial, industrial, and residential sites.

The Consultant's services may include but are not limited to review of Storm Water Pollution Prevention Plans (SWPPPs); conducting periodic inspections of commercial and industrial sites; conducting fats, oils, and grease (FOG) inspections; preparing written reports; entering inspection data into the regional MS4 database; inspection of WQMP BMPs; meeting with facility owners, managers, or operators to review the results of site inspections; and advising City staff regarding the status of inspections, including the need to take enforcement actions. Services may also include response to and investigation of incidents of illicit connections and illegal discharges and dumping (IC/ID). The inspections, responses, and investigation shall be conducted by trained staff under the general supervision of a Qualified Industrial Stormwater Practitioner (QISP).

Task 7 – NPDES Program On-Call Services

Consultant shall assist the City by providing services supporting the City's efforts to comply with its MS4 Stormwater Permit (NPDES).

NPDES on-call services shall be provided when approved by the City representative. Services may include but are not limited to coordination with the Tri-County MS4 Permit Group; attending for and/or representing the City on the San Bernardino County MS4 Permit Management Committee and any of its subcommittees or workgroups; reviewing, preparing comments, and contributing to the development of documents, programs, procedures, and policies associated with the MS4 Permit and its implementation, amendment, renewal, or interpretation at the City or areawide level; assisting the City to prepare for, participate in, and follow up to audits or inspections by the Regional Board or USEPA or other regulatory agency; serve as the MS4 Program Manager on either a short-term or long-term basis, including but not limited to day-to-day management, oversight, and implementation of the City's stormwater program; and other services deemed necessary by the City to effectively comply with its MS4 Permit and to develop and implement its NPDES program.

Task 8 – Project Coordination

Consultant shall coordinate with City representatives as needed to provide for the effective and efficient conduct of the work. Consultant shall invoice the City monthly for services performed, with a breakdown showing the allocation of labor and expenses by project or task assigned by the City.

Terms

Consultant shall provide services on a time and expense basis in accordance with the rates in Exhibit B.

Information and Materials to be Provided by the City

The City shall provide the Consultant with information and materials related to projects assigned to the Consultant, including but not limited to project plans, engineering plans, drainage plans, storm drain plans, and other plans and reports needed to support the conduct of on-call services. The City shall identify a City representative to be the primary point of contact between the City and the Consultant.

Service Statement

CASC Engineering and Consulting (CASC) has developed broad-based expertise in the NPDES regulatory requirements and, as such, provides consulting services to a multitude of clientele including developers/builders, industrial facility owners/operators, contractors, and public agencies.

CASC is committed to providing all of our clients with practical and cost-effective consulting services to assist them in achieving compliance with water quality regulations. CASC does not accept assignments, and will terminate our services, where the client's objective is to evade regulatory compliance or obfuscate non-compliance.

At times CASC may be in the position of providing consulting services to multiple entities within a jurisdiction (such as document preparation for a contractor or industrial facility owner and inspection services for the local agency). In such instances, CASC will:

- Not accept assignments that pose a direct conflict of interest
- Advise clients of such known specific occurrences when we have coincident compliance interests
- Assign separate staff to each client when we have coincident compliance interests



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	COC050
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ECONOMIC DEV.
ITEM NO.:	5	PREPARER:	T. MARTIN
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-63 WITH THE MONTCLAIR CHAMBER OF COMMERCE TO PROVIDE SERVICES TO PROMOTE LOCAL ECONOMIC DEVELOPMENT SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-63 with the Montclair Chamber of Commerce to provide services to strengthen and enhance local economic development activities.

A copy of proposed Agreement No. 22-63 is attached for review and consideration.

BACKGROUND: The Montclair Chamber of Commerce was organized in 1958 and has offered its services to the local business community since that time. The Montclair Chamber of Commerce promotes business growth and a business-friendly climate in the Montclair community.

Agreement No. 22-63 would provide funding to the Montclair Chamber of Commerce, a partner agency, for the following services to support economic development in the City of Montclair:

- Monitor and aid in the retention, expansion, and development of existing businesses.
- Promote Montclair as an attractive and prime location for business operations.
- Provide for the support and nurturing of businesses and the development of an entrepreneurial environment through cooperation with other local, county, state, and federal economic development organizations.
- Endeavor to represent all business interests wherever located in the City of Montclair and to conduct its affairs in such a way as to benefit all businesses and areas of the City.

The term of Agreement No. 22-63 is July 1, 2022 through June 30, 2023.

FISCAL IMPACT: If approved by the City Council, the Montclair Chamber of Commerce would receive \$15,000 from the City, payable in equal quarterly payments of \$3,750. This amount was included in the proposed City Budget in the Economic Development Fund for Fiscal Year 2022-23.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-63 with the Montclair Chamber of Commerce to provide services to promote local economic development subject to any revisions deemed necessary by the City Attorney.

AGREEMENT NO. 22-63

CITY OF MONTCLAIR
5111 BENITO STREET
MONTCLAIR, CALIFORNIA 91763

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 1st day of July, 2022, by the City of Montclair, hereinafter referred to as the "CITY," and the Montclair Chamber of Commerce, hereinafter referred to as the "CHAMBER."

1. RECITALS

a. The parties hereto agree that it is the best interest of the **CITY** and the **CHAMBER** to strengthen and enhance economic development activities within the **CITY** and the **CHAMBER** through an Agreement renewed annually by the close of each current fiscal year.

b. The parties hereto agree that all funding provided by the **CITY** for this venture will be expended to fulfill a public purpose, that is economic development, and that periodic auditing will be performed in order to assure that the funds provided by the **CITY** will be utilized only for public purposes as set forth herein.

2. AGREEMENT

a. NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties here to agree as follows:

ARTICLE 1 – RECITALS

The parties acknowledge and agree that above state recitals are true and correct and incorporated herein by reference.

ARTICLE 2 – SERVICES

The **CHAMBER** desires to engage in economic development efforts for the **CITY** area which shall include, but not limited to, the following:

- a. Employ a President/CEO who is an economic development professional with the requisite knowledge, skills, expertise necessary to lead the economic development efforts.
- b. Advise private business concerns located within the **CITY**, existing business and the business community of the available opportunities within the **CITY** and within its utilities service area of which they may take advantage and

counsel them regarding their suitability to participate in available county, state, and federal economic development programs and grants.

- c. Monitor and aid in the retention, expansion and development of existing businesses.
- d. Advise and counsel private business concerns about the development of infrastructure plans for the expansion of business districts and the creation of business and industrial parks.
- e. Advise and counsel private business concerns of strategies designed to foster the best possible pro-business environment within the **CITY**.
- f. Promote the **CITY** as a location for business operations, clean manufacturing, and research and development companies.
- g. Serve as an information source for those interested in economic development and provide relevant referrals to all requests for economic development information, including up-to-date trade area demographics and inventories of available property (retail, industrial, office, etc.).
- h. Provide a **CHAMBER** web page to be linked to the **CITY**'s web site. The web page shall be updated continuously to provide the most current information concerning economic development in the **CITY** and surrounding trade area for the purpose of furthering the mission of the **CHAMBER**.
- i. Provide for the support and nurturing of businesses and the development of an entrepreneurial environment through cooperation with other local, county, state, and federal economic development organizations.
- j. Endeavor to represent all business interests wherever located in the **CITY** and to conduct its affairs in such a way as to benefit all businesses and areas of the **CITY**.
- k. Host the annual State of the City address in collaboration with the **CITY**'s Economic Development Coordinator, **CITY** staff, and the **CITY** Council.

ARTICLE 3 – PLACE OF WORK

It is understood that the **CHAMBER** will administer services largely at 8880 Benson Avenue, Suite 110, Montclair, California 91763; although the **CHAMBER** will, on request, come to City Hall or such other places as designated by the **CITY** to meet with **CITY**'s representatives.

ARTICLE 4 – PAYMENT

The **CITY** will pay the **CHAMBER** the total sum of \$15,000 annually payable in equal quarterly payments of \$3,750 on or before the 30th day of the beginning of each quarter.

ARTICLE 5 – REPORTING

- a. The **CHAMBER** will submit and present to the **CITY** annually a receipt and expenditure report on the use of **CITY** funds.

ARTICLE 6 – RELATIONSHIP OF PARTIES

- a. The **CHAMBER** is an independent entity and not a department, agency or subdivision of the **CITY**. The **CITY** and the **CHAMBER** are two separate and autonomous entities.
- b. **CHAMBER** 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 **CHAMBER** shall at all times be under **CHAMBER'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 **CHAMBER** or any of **CHAMBER's** officers, employees, or agents, except as set forth in this Agreement. **CHAMBER** 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**. **CHAMBER** shall not incur or have the power to incur any debt, obligation, or liability whatever against **CITY**, or bind **CITY** in any manner. No employee benefits shall be available to **CHAMBER** in connection with the performance of this Agreement. Except for the fees paid to **CHAMBER** as provided in the Agreement **CITY** shall not pay salaries, wages, or other compensation to **CHAMBER** for performing services hereunder for **CITY**. **CITY** shall not be liable for compensation or indemnification to **CHAMBER** for injury or sickness arising out of performing services hereunder.
- c. The **CITY** and the **CHAMBER** acknowledge that this Agreement is not a delegation of any public function of the **CITY** and that neither party will play an integral part in either party's decision-making process by reason of this Agreement.

ARTICLE 7 – DURATION

- a. The initial term of this Agreement shall be for a period of one (1) year commencing July 1, 2022, and continuing through June 30, 2023; this **AGREEMENT** may be renewed annually.
- b. Either party may terminate this Agreement upon ninety (90) days written notice to the other party.
- c. Any notice required or allowed hereunder shall be in writing and sent by certified mail, return receipt requested, or in person with proof of delivery, to the address first listed above, or such other addresses as either party shall have specified by written notice to the other party delivered in accordance herewith.

ARTICLE 8 – NONDISCRIMINATION

- a. The **CHAMBER** shall not discriminate against any employee or person served under this Agreement on account of race, color, sex, age, religion, ancestry, national origin, handicap, or marital status or as otherwise prohibited by applicable law.

ARTICLE 9 – MISCELLANEOUS

- a. The **CHAMBER** acknowledges that the **CITY**, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted or the reduction of revenues for those budgeted agreements that may be available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void; and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreement for a period of exceeding one year, but any agreement so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the **CITY's** performance and obligation to pay under this Agreement is contingent upon annual appropriation.
- b. The **CHAMBER** shall obtain and possess throughout the term of this Agreement all licenses and permits applicable to its operations under federal, state, and local laws.
- c. The **CHAMBER** shall at all times maintain its status as a private not-for-profit corporation, organized and created under the laws of the State of California.
- d. This Agreement may be modified or amended by mutual written agreement of the parties, duly executed by both parties.
- e. This Agreement contains all the terms and conditions agreed upon by the parties.
- f. This Agreement shall be governed and construed in accordance with the laws of the State of California. The venue of any legal action to enforce or interpret this Agreement shall be in San Bernardino County, California.
- g. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.
- h. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- i. If any party seeks to enforce or interpret this Agreement through litigation, each party shall bear its own attorney's fees and costs incurred.

- j. Each person executing this Agreement 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 the parties hereto.
- k. The **CHAMBER** 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 **CHAMBER** 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 **CHAMBER** to comply with this Section.
- l. 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 economic development activities during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or subagreement, or the proceeds thereof, for work to be performed in connection with the activities performed under this Agreement.
- m. **CHAMBER** agrees to defend, indemnify, and hold harmless the **CITY**, its officers, employees, agents, and volunteers from any and all liabilities for injury to persons and damage to property arising out of any act or omission of **CHAMBER**, its officers, employees, agents, or volunteers in connection with **CHAMBER's** performance of its obligations under this Agreement.

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

"CITY"
City of Montclair
 5111 Benito Street
 Montclair, CA 91763
 (909) 626-8571

"CHAMBER"
Montclair Chamber of Commerce
 8880 Benson Avenue, Suite 110
 Montclair, CA 91763
 (909) 985-5104

By: _____
 Javier John Dutrey
 Mayor

By: _____
 Steve Hammitt
 President/CEO

Date: _____

Date: _____

ATTEST:

 Andrea M. Myrick
 City Clerk



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	HSV030
SECTION:	CONSENT - AGREEMENTS	DEPT.:	HUMAN SVCS./ADMIN. SVCS.
ITEM NO.:	6	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-64 WITH HOWROYD-WRIGHT EMPLOYMENT AGENCY, INC. DBA APPLEONE EMPLOYMENT SERVICES TO PROVIDE STAFFING SERVICES FOR THE CITY OF MONTCLAIR SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-64 with Howroyd-Wright Employment Agency, Inc. dba AppleOne Employment Services (AppleOne) to provide staffing services for the City of Montclair. Agreement No. 22-64 is attached for City Council's consideration.

BACKGROUND: Operating since 1964, AppleOne is the largest, privately-held women and minority-owned staffing agency in North America. AppleOne has the resources of a large company; however, they are a family-owned and customer focused company that can stay flexible to respond to each customers unique needs. AppleOne has serviced the Inland Empire since 1986 and ten offices within a twenty-five mile radius of Montclair.

The City of Montclair has worked with AppleOne Staffing recruitment since 2019 to help with Montclair After-School Program (MAP) recruitment. Recruiting staff for MAP has increased in difficulty, with recent years proving to be the most challenging. AppleOne has assisted the City with successfully recruiting eleven Learning Leaders. The City does not currently have a staff member dedicated to recruitment, utilizing AppleOne services has helped to ensure the Montclair After-School Program is staffed to meet the demands of the students who wish to participate in the program.

The attached Agreement No. 22-64 is a conditions of service agreement for the all departments of the City of Montclair to continue work with AppleOne utilizing temporary-employees or temporary-to-hire services. In the future, if the City chooses to contract with AppleOne to recruit for a specific position the City and AppleOne will agree to the cost, term, and any other conditions, for example a replacement guarantee, with an agreement letter.

FISCAL IMPACT: If approved, this agreement will not impact the General Fund. If the City decides to utilize AppleOne in the future, agreements that outline costs and term will be executed. The term of this agreement begins June 20, 2022 and remains in effect until terminated.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-64 with Howroyd-Wright Employment Agency, Inc. dba AppleOne Employment Services (AppleOne) to provide staffing services for the City of Montclair.



This Conditions of Service ("**Agreement**") is between _____ City of Montclair _____ ("**Client**") and Howroyd-Wright Employment Agency, Inc. dba AppleOne Employment Services ("**AppleOne**"). In consideration of the parties' mutual covenants, conditions, and promises contained herein, the parties agree as follows:

TEMPORARY AND TEMPORARY-TO-HIRE SERVICES

1. Employees or associates of AppleOne or any of its subcontractors temporarily assigned to Client shall be referred to in the singular as "**Temporary Employee**" and in the plural as "**Temporary Employees.**" Temporary Employees are subject at all times to Client's direct and indirect supervision; AppleOne does not supervise such employees on their assignments. Client further agrees that while on assignment with Client, Temporary Employees shall not be permitted, without express advance written approval by an officer of AppleOne, to i) engage in travel or otherwise operate a motor vehicle or any non-office machinery or equipment on behalf of Client, ii) handle cash or valuables or negotiable instruments (Client shall also not pay Temporary Employees directly or advance any funds to them.), iii) be permitted unsupervised or uncontrolled access to confidential or proprietary information, including confidential access codes, iv) be permitted unsupervised access to or control of Client's business premises, v) remove any property of Client from Client's business premises, vi) purchase, consume or distribute any alcohol, or vii) consume drugs, unless advance written authorization is provided by a physician. Should any Temporary Employee be permitted to engage in any of the activities described in i) - vii) above, AppleOne shall have no responsibility arising therefrom, and Client agrees to indemnify, defend and hold harmless AppleOne for any and all liabilities, losses, claims, injuries, suits, judgments, expenses, charges, fines, interest or penalties (collectively, "**Losses**") resulting from the employee's conduct.
2. Background check services are available for an additional fee to Client and must be agreed to in writing between AppleOne and Client. Background check services may be conducted by one or more of AppleOne's preferred, third-party vendors (e.g., A-Check Global). Client shall indemnify, defend and hold harmless AppleOne for any and all Losses arising from or related to i) the background checks or the performance thereof and ii) AppleOne's assignment of any Temporary Employees to Client, at Client's request, before the full completion of Client- or AppleOne-required background checks, including any legal requirements associated therewith.
3. AppleOne provides its services in compliance with its obligations as an equal opportunity and affirmative action employer. AppleOne's recruiting procedures are free of discrimination based on race, religion, ancestry, color, national origin, age, gender identity or expression, genetic information, marital status, medical condition, physical or mental disability, protected veteran status, sex (including pregnancy), sexual orientation, or any other characteristic protected by applicable federal, state or local laws. AppleOne also consider qualified applicants regardless of criminal histories, consistent with legal requirements.
4. Client agrees to immediately contact its AppleOne representative or the AppleOne Human Resources Hotline at (800) 270-9120 upon receipt of any complaint by a Temporary Employee regarding, but not limited to, any of the following: sexual harassment, discrimination, retaliation, bullying, wage and hour issues, meal and rest breaks or any other employment-related concern. Further, Client agrees to comply with the American with Disabilities Act and any local health accommodation requirements, and upon request by AppleOne, agrees to participate in an interactive process with AppleOne and any Temporary Employee who seeks a reasonable workplace accommodation.
5. Client agrees to indemnify, defend and hold harmless AppleOne and its subsidiaries and related entities, and all of their respective officers, directors, shareholders, employees, agents and representatives (collectively, "**AppleOne Parties**") for Losses arising out of any violation of laws by Client. In addition, Client agrees to comply with all laws, regulations and ordinances relating to work site health and safety, and agrees to provide Temporary Employees a safe and healthful workplace. Client agrees to indemnify, defend and hold harmless AppleOne Parties for Losses arising out of Client's violations of the Occupational Safety and Health Act of 1970, or any similar state law with respect to workplaces owned, leased or supervised by Client, and/or to which Temporary Employees are assigned. For any serious injury, illness or death of a Temporary Employee occurring in a place of employment or in connection with an AppleOne employee's assignment with Client, Client shall notify AppleOne immediately (Notification to AppleOne is also required in the event of any accident or medical treatment.) and is

required to report immediately, by telephone or fax, to the nearest Occupational Safety and Health Administration (“OSHA”) office. Client is authorized and required by AppleOne to make the report on behalf of both AppleOne and Client. Client shall provide to OSHA all information required by applicable law, as well as AppleOne’s name, address, phone number and contact person, and the Temporary Employee’s name. Client shall notify AppleOne immediately after the report has been made.

6. Client will not reassign or relocate a Temporary Employee without prior written authorization by AppleOne. Client agrees to assume all liability for any third party claim arising after any reassignment or relocation that occurs without such authorization.

7. Client understands that Temporary Employees are assigned to Client to render temporary services, and that absent an agreement to the contrary, are not assigned to become employed by Client. Client acknowledges the considerable expense incurred by AppleOne to advertise, recruit, evaluate, train and quality control its employees. Client will not, without prior written authorization by AppleOne, hire an AppleOne employee, interfere with the employment relationship between AppleOne and its employee, or directly or indirectly cause an AppleOne employee to transfer to another temporary help service.

8. Client understands that AppleOne may refer candidates for Client’s evaluation or assign AppleOne employees to render temporary services at Client often while such persons seek direct hire employment through AppleOne. If Client, either directly or indirectly, such as through any company within Client’s control, solicits, offers employment to and/or hires any AppleOne candidate or employee as an employee or consultant in any position, or utilizes such person’s services through another temporary or outsourcing service, or any party affiliated with Client refers such person to any other employer and said person becomes employed by that employer: i) at any time from the date such person’s identity is provided by AppleOne to Client until six (6) months thereafter, or ii) within six (6) months after termination of such person’s temporary assignment through AppleOne at Client, whichever is the later, Client agrees to pay AppleOne a direct hire fee in accordance with AppleOne’s standard fee schedule stipulated by the parties to be equal to thirty percent (30%) of such person’s first year annualized wage or salary. Unless Client presents written evidence to AppleOne of Client’s prior knowledge of an AppleOne referred candidate i) within three (3) business days of AppleOne’s referral of such candidate to Client, or ii) prior to Client’s interview of such candidate, or iii) prior to AppleOne’s assignment of such candidate at Client, whichever is earliest, Client understands and agrees that Client is liable for the payment of any direct hire fee due to AppleOne pursuant to this Agreement.

9. AppleOne offers temporary-to-hire services to Client. An AppleOne employee temporarily assigned to Client is an employee of AppleOne until released to Client. Should Client be interested in hiring an AppleOne referred candidate or employee, Client shall contact AppleOne, who will establish the terms and conditions for releasing such person to Client’s payroll, including the conversion fee to be paid by Client if such terms are not otherwise agreed to between the parties. If any Client accounts are in default according to the payment terms in Section 12, Client shall bring the accounts current prior to the hiring. If Client hires an AppleOne employee with a Client account in default, Client agrees to pay AppleOne a conversion fee equivalent to the direct hire fee as set forth in Section 8 of this Agreement.

INVOICING AND PAYMENT

10. Client understands that Temporary Employees must be paid weekly, and agrees to promptly review and approve or verify timecards or hours worked. Client agrees to pay and shall be liable for any and all charges incurred based upon Client approved or verified timecards or hours or similar information submitted by Client to AppleOne. If timecards or hours lack timely Client approval or verification, AppleOne will process payroll and invoices based upon the timecards or hours submitted by the employees.

11. Client shall reimburse AppleOne for any expenses that are incurred by AppleOne or Temporary Employees, which are reasonably related to or arise out of the services provided to Client or the discharge of duties by Temporary Employees for Client under this Agreement (“**Reimbursable Expenses**”). Such Reimbursable Expenses may include a reasonable amount for Temporary Employee internet service or mobile device service for remote work, Client-required equipment and tools, Client-required uniforms, pre-employment health screening (e.g., COVID-19 testing) and fit for duty doctor’s visit costs. Expenses for travel shall not be invoiced or reimbursed unless such travel expenses have been previously authorized by Client.

12. AppleOne shall invoice Client weekly for services and any other obligations hereunder. Client agrees that payment of invoices is due upon receipt. Client agrees that an account balance that remains unpaid thirty (30) days after the invoice date will be considered in default and that AppleOne may assess a default charge of one and one-half percent (1.5%) per month on any such balance. Client agrees to pay any such default charges and any costs of collection, including attorneys' fees.

13. Client's payment method (Check box.): **ApplePay's eCheck**. Client may sign up at www.applepay.com. ACH/Other shall be discussed between Client and the AppleOne representative. Notwithstanding anything to the contrary in this Agreement, in the event that AppleOne is subject to any third party fees or costs related to AppleOne's compliance with Client's invoicing or payment policies or practices (e.g., Ariba fees, credit card fees, etc.), AppleOne will pass such fees or costs through to Client without markup.

14. Client and AppleOne acknowledge that through the Patient Protection and Affordable Care Act of 2010, as amended ("**ACA**"), and regulations promulgated thereby, statutory requirements have been imposed upon certain employers of certain employees working in the United States. AppleOne is committed to fulfilling its ACA obligations through offering ACA-compliant benefits to eligible contingent workers, including Temporary Employees. In demonstrating Client's commitment to ACA compliance, Client agrees to share in ACA-related costs by paying a \$0.54 surcharge for each hour of service provided by each Temporary Employee. The surcharge will be billed to Client in a separate line item on the invoice.

15. Client, or federal, state or local laws, either currently existing or enacted in the future, may mandate that Temporary Employees undergo specific training (e.g., sexual harassment prevention training), presentations and other curricula ("**Trainings**"), where the payment of wages is required by law. Unless otherwise agreed to by the parties in writing, the parties agree that AppleOne will invoice Client for the time spent by Temporary Employee on such Trainings, as well as for voting, as allowed by applicable law, according to the regular markup percentage or bill rate that AppleOne charges for such employee.

16. Federal, state or local laws, either currently existing or enacted in the future, may require AppleOne or Client to provide one or more Temporary Employees with certain paid sick, quarantine or COVID-19-related leave (Each such law is a "**Paid Leave Law**"). AppleOne and Client agree to comply with all provisions of each Paid Leave Law with respect to Temporary Employees as such laws become effective. Unless otherwise agreed to by the parties in a writing, to address the costs for compliance with a Paid Leave Law, the parties agree that AppleOne will invoice Client for the paid leave of a Temporary Employee according to the regular markup percentage or bill rate that AppleOne charges for such employee provided that the criteria required for the payment of leave to such employee under applicable law has been met.

17. Unless otherwise agreed to by the parties elsewhere in the Agreement and/or in any of the Agreement's mutually agreed upon ancillary exhibit(s) or document(s), to the extent that AppleOne may be required to pay the Temporary Employee overtime under any federal, state or local law, AppleOne, as applicable, will bill Client i) based upon the Temporary Employee's legally applicable hourly pay rate for overtime work plus the markup percentage for the Temporary Employee, or ii) an overtime bill rate, which will be calculated by applying a multiplier of 1.5 or 2.0 (for double time, where applicable) to the Temporary Employee's hourly bill rate.

18. Additional agreed upon pricing for the services to Client under this Agreement may be set forth in one (1) or more exhibit(s) to this Agreement or as mutually agreed upon by the parties in writing. The parties agree that upon thirty (30) days' written notice to Client, pricing under this Agreement may change if AppleOne's expenses for statutory or other fixed costs increase, or if new or additional statutory or government-imposed taxes, fees or costs are incurred by AppleOne after the Effective Date. These taxes, fees or costs may include, but are not limited to those related to: Workers' Compensation Insurance, State Unemployment Insurance, federal, state or local taxes, regulations or ordinances (including but not limited to Wage Determinations, Health & Welfare Benefits, SCLS/SCA, vacation pay, holiday pay, Paid Leave Laws or minimum wage laws), or an increase in the ACA surcharge. The parties agree that such written notice may be in the form of an electronic communication, including email.

OTHER TERMS

19. Despite anything to the contrary in the Agreement, Client shall defend, indemnify and hold harmless AppleOne Parties from and against any and all Losses to the extent caused by Client's failure to inform AppleOne, in writing, that Client or any job orders or services hereunder, are subject to Federal Acquisition Regulation and/or

Defense Federal Acquisition Regulation Supplement, Service Contract Labor Standards, formerly known as the McNamara-O'Hara Service Contract Act of 1965 ("**SCLS/SCA**"), Davis-Bacon Act of 1931, Federal Paid Sick Leave (EO 13706), or any other federal law where a security clearance or any kind of government-issued credential or designation is required.

20. To the maximum extent permitted by applicable law, neither Client nor AppleOne shall have any liability for any indirect, consequential, special or incidental damages, damages for loss of profits or revenues, whether in an action in contract or tort, even if such party has been advised of the possibility of such damages, unless such party has engaged in gross negligence or willful misconduct or the damages arise from a third party claim for which a party is entitled to indemnification in this Agreement.

21. This Agreement supersedes any and all other agreements, either oral or written, between the parties or anyone acting on behalf of a party hereto, with respect to the subject matter hereof. This Agreement contains all of the covenants, conditions, warranties, representations, inducements, promises or agreements (oral, written, on a website, or otherwise) ("**Promises**") between the parties with respect to the subject matter hereof. Each party hereto acknowledges that no Promises have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other Promises, which are not contained herein, shall be valid or binding. Any oral Promises or modifications concerning this Agreement shall be of no force or effect, except by a subsequent written amendment to this Agreement.

22. The confidential and/or proprietary information of the disclosing party will be held in strict confidence by the receiving party and will not be disclosed by the receiving party to any third party, or used by the receiving party for its own purposes, except to the extent that such disclosure or use is necessary in the performance by the receiving party of its obligations under this Agreement, or as otherwise required by law. The receiving party upon the request of the disclosing party will destroy or return all writings or documents that contain information subject to the protections of this section.

23. The laws of the State of California shall govern this Agreement, its interpretation and any disputes regarding the services. Any action concerning this Agreement or the services shall be instituted in the state or federal courts located in County of San Bernardino in the State of California, and AppleOne and Client agree to the exclusive personal jurisdiction of said courts and waive any rights to a change of venue. In the event that a party hereto commences any legal or equitable action or other proceeding, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to any other relief.

24. This Agreement shall be in effect from the last date set forth below ("**Effective Date**") and shall continue until terminated at any time by either party in writing. Absent a prior agreement between the parties, services provided by AppleOne to Client before the Effective Date shall be considered as having been provided subject to the provisions of this Agreement. The rights and obligations in this Agreement, which by their nature should survive, will remain in full force and effect following the termination of this Agreement.

25. In the event that any provision of this Agreement shall be unenforceable or inoperative as a matter of law, the remaining provisions shall remain in full force and effect.

26. As Client's staffing supplier, AppleOne considers itself a critical vendor to Client, and AppleOne is committed to helping its clients through turbulent times. To ensure alignment on this issue, AppleOne requests and Client agrees that, in the unlikely event of a Client bankruptcy filing, that AppleOne will be a critical vendor of Client so that all services performed by AppleOne under this Agreement, or any other agreement between the parties, before and after any bankruptcy filing, are paid in accordance with the parties' applicable contractual terms.

27. A waiver of a breach of any covenant, condition, or promise of this Agreement shall not be deemed a waiver of any succeeding breach of the same or any other covenant, condition, or promise of this Agreement. No waiver shall be deemed to have been given unless given in writing.

28. The parties agree that this Agreement (and/or any of the Agreement's mutually agreed upon ancillary exhibit(s) or document(s)) may be electronically signed and that any electronic signature appearing on this Agreement (and/or such exhibit(s) or document(s)) is the same as a handwritten signature for the purposes of validity, enforceability and admissibility. Further, the parties agree that this Agreement may be executed in counterparts, each of which together shall be deemed one and the same instrument. Moreover, the exchange of this entire executed Agreement (and/or such exhibit(s) or document(s)) that is in photostatic or portable document format (.pdf) form by electronic mail or by another electronic means shall be considered original(s) and shall constitute effective execution and delivery of the original(s).

For Client	For AppleOne
Signature	Signature
Javier John Dutrey	Printed Name
Printed Name	Printed Name
Mayor	Title
Title	Title
June 20, 2022	Date
Date	Date
5111 Benito Street	327 W Broadway
Address	Address
Montclair, CA 91763	Glendale, CA 91204
Address	Address

AppleOne is an equal opportunity and affirmative action employer. We proudly embrace diversity in all of its manifestations. We are firmly committed to anti-racism, and as leaders of fairness in work, do not tolerate or support racism or any discriminatory practices.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	SEW080
SECTION:	CONSENT - AGREEMENTS	DEPT.:	COMMUNITY DEV.
ITEM NO.:	7	PREPARER:	S. GUTIERREZ
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-65-I-109, AN IRREVOCABLE ANNEXATION AGREEMENT WITH 11185 ROSWELL, LLC FOR 11185 ROSWELL AVENUE, POMONA, CA 91766 (APN 1012-411-51-0000)		

REASON FOR CONSIDERATION: Irrevocable Annexation Agreements are subject to City Council review and approval. The City Council is requested to consider approval of Agreement No. 22-65-I-109, an Irrevocable Annexation Agreement (IAA) with 11185 Roswell, LLC, to connect 11185 Roswell Avenue, Pomona to the City's sewer system and annex the property into the City of Montclair at a future date.

BACKGROUND: On December 20, 2021, the Montclair City Council granted approval for a proposed IAA under Agreement No. 21-86-I-107, which allowed a connection to the sanitary sewer system owned and operated by the City of Montclair for a 0.88-acre industrial site located within the City's Sphere of Influence at 11185 Roswell Avenue.

Following approval of the IAA, but prior to its recording against the property, the applicant sold the property. The change of ownership prior to Agreement No. 21-86-I-107's recordation rendered the IAA null and void. The new property owner, Andrew Pennor, is requesting approval of a new Irrevocable Annexation Agreement under the name 11185 Roswell, LLC, and a new agreement number, Agreement No. 22-65-I-109, was assigned.

The County's zoning designation for the site is "Community Industrial (IC)." On May 21, 2021, the County of San Bernardino approved Minor Use Project No. PROJ-2020-00103 allowing the development of a 3,000 square foot office building and two pre-fabricated warehouse structures, totaling 7,000 square feet in area, with associated site improvements. The new development will provide office and storage space for a steel fabricating business. The project is currently under construction.

A City-owned 8-inch diameter sewer line is present and available in Roswell Avenue adjacent to the property's frontage (Exhibit A). The proposed sewer connection request is consistent with the City's policies and requirements. In exchange, the Agreement would require annexation of the property to the City when feasible at a future date. If approved by the City Council, staff will forward Agreement No. 22-65-I-109 to San Bernardino County's Local Agency Formation Commission (LAFCO) for review and approval. Following City Council and LAFCO approvals, the IAA is recorded against the property and becomes binding on future owners, heirs, successors, or assigns. Staff recommends City Council approve the proposed IAA to allow the requested City sewer connection for the new commercial use.

FISCAL IMPACT: The proposed Agreement would pose no fiscal impact on the City's General Fund at this time, but will have a positive impact when the property is connected to the sewer in the future and begins to pay for sewer service.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-65-I-109, an Irrevocable Annexation Agreement with 11185 Roswell, LLC for 11185 Roswell Avenue, Pomona, CA 91766 (APN 1012-411-51-0000).

Recording Requested by:

Silvia Gutiérrez
City of Montclair

When Recorded Mail To:

Silvia Gutiérrez
Senior Planner
City of Montclair
5111 Benito Street, P.O. Box 2308
Montclair, CA 91763

This Space for Recorder's Use Only

FREE RECORDING PURSUANT TO GOVERNMENT CODE §27383

**AGREEMENT NO. 22-65-I-109
AN IRREVOCABLE AGREEMENT TO ANNEX
TO THE CITY OF MONTCLAIR**

**11185 Roswell, LLC
11185 Roswell Avenue
Pomona, CA 91766**

APNs: 1012-411-51-0000

AGREEMENT NO. 21-65-I-109

**AN IRREVOCABLE AGREEMENT TO ANNEX
TO THE CITY OF MONTCLAIR**

11185 Roswell, a California Limited Liability Company
11185 Roswell, Pomona, CA 91766-3955 (APN 1012-411-51-0000)

This agreement is entered into this ____ day of _____, 2022, between 11185 Roswell, LLC, hereinafter referred to as "Owner," and the City of Montclair hereinafter referred to as "City."

WHEREAS, Owner is the legal property owner of the real property located at 11185 Roswell, Pomona, CA 91766-3955, the land referred to herein below as referenced by the San Bernardino County Tax Assessor Parcel Number (APN) 1011-411-51-0000, shown as Exhibit "A" attached and is further described as follows:

LOT 44 OF POMONA HOMES ACRES, AS PER MAP RECORDED IN BOOK
25 PAGE 1 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF
SAN BERNARDINO COUNTY

WHEREAS, the subject property is approximately 0.88-acres in total size, and located within unincorporated San Bernardino County and the Sphere of Influence of the City of Montclair; and

WHEREAS, the County zoning designation for the site is "Community Industrial (IC);" and

WHEREAS, on May 21, 2021, the County of San Bernardino approved Minor Use Project No. PROJ-2020-00103 allowing the development of a 3,000 square foot office building, two pre-fabricated warehouse structures, for a total development size of 7,000 square feet, and associated site improvements which are currently under construction; and

WHEREAS, the Owner is required and desires to connect the property to the sanitary sewer system in the Roswell Avenue roadway, which is owned and maintained by the City of Montclair; and

WHEREAS, the City is willing to allow a connection to said sanitary sewer system if a request is made at the earliest possible time to annex to the City of Montclair; and

WHEREAS, Owner desires to annex to the City of Montclair; and

WHEREAS, the City intends to pursue annexation of Owner's property, but said annexation would cause a delay in connecting to said sewer line, which would create a substantial hardship for Owner of said property; and,

WHEREAS, the agreements, conditions, and covenants contained herein are made for the direct benefit of the land subject to this Agreement and described herein and shall

create an equitable servitude upon the land and operate as a covenant running with the land for the benefit of the Owner of the land and his/her heirs, successors, and assigns.

NOW, THEREFORE, the Owner does agree as follows:

1. Owner does hereby give irrevocable consent to annex to the City of Montclair at such time as the annexation may be properly approved through appropriate legal proceedings, and Owner does further agree to provide all reasonable cooperation and assistance to the City in the annexation proceedings. Said cooperation is contemplated to include signing any applications of consent prepared by the City and submitting any evidence reasonably within the control of the Owner to the various hearings required for the annexation. Said cooperation does not include, however, any obligation on behalf of the Owner to institute any litigation or judicial proceeding whatsoever to force annexation to the City.

2. The City of Montclair does hereby agree to allow a connection of said property to the sewer line owned by the City of Montclair, which is located in Roswell Avenue, at such time as all applicable permits have been obtained and associated fees have been paid.

3. Owner agrees to pay such annexation fees and costs and other municipal charges as would ordinarily be charged in the annexation of property to the City. Said fees shall be payable when the same becomes due and payable. (In some circumstances, these fees may be borne by the City).

4. Owner shall pay all fees and charges and make all deposits required by the City to connect to and use the sewer, and Owner agrees to be bound by all City ordinances, rules, and regulations with respect to the sewer system. The owner agrees to pay monthly sewer charges beginning on the date this agreement is approved by the City Council.

5. Owner shall be responsible for the maintenance and repair of the sewer lateral from the building, and/or structure to which the sewer lateral is connected to the public sewer main in the street or City easement. This responsibility includes both the portion of the sewer lateral on private property and the portion located beneath the street up to the point where the lateral connects to the public sanitary sewer main. Property owner's responsibilities include maintenance and repair of the lateral, overflow cleanup, and damages to sewer main and/or pavement. The City may respond and take corrective action in the event of a sewage overflow from a lateral where there is an immediate threat to health or safety. However, the property owner shall be responsible for all costs incurred by the City.

6. Owner shall install any and all future improvements upon said property to the City's standards, except that the County standard(s) shall apply when more restrictive than the City standard(s).

7. Owner shall execute this agreement on behalf of himself, his heirs, successors, and assigns, and said agreement shall be irrevocable without the prior written consent of both parties hereto.

8. The benefit and responsibilities to the subject property shall inure to the benefit and responsibilities of subsequent owners, their heirs, successors, and assigns; and the agreements, conditions, and covenants contained herein shall be binding upon them and upon the land.

9. This agreement shall be recorded with the Office of the Recorder of the County of San Bernardino.

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

CITY:

OWNER(S):

CITY OF MONTCLAIR, CALIFORNIA

11185 ROSWELL, LLC.

Javier John Dutrey, Mayor

Andrew Pennor

Date: _____

Date: _____

ATTEST:

Andrea M. Myrick, City Clerk

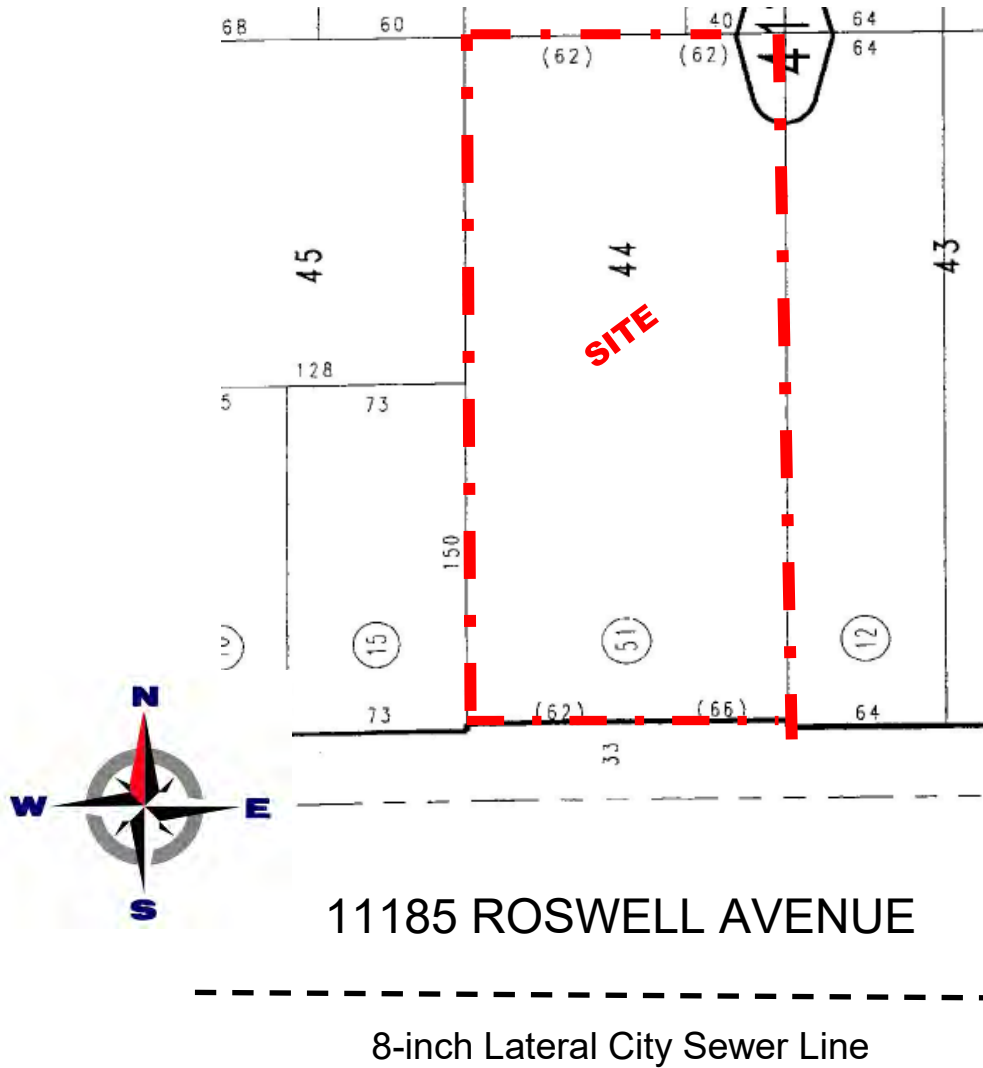
Date: _____

APPROVED AS TO FORM:

Diane E. Robbins, City Attorney

EXHIBIT A

IAA 22-65-I-109 (CASE 2021-40A)



In addition to the Department being an existing customer for other LexisNexis products, law enforcement agencies within the county, including the Montclair Police Department, are in the process of entering into a larger data-sharing agreement with LexisNexis for their Accurint Virtual Crime Center (AVCC). This system is planned as the replacement for Coplink, the existing data sharing system for agencies throughout the region. TraX integrates with these other LexisNexis products and enhances their function by adding data to searches and analysis. This allows for the ability to use other law enforcement data to identify and locate suspects. These unique factors eliminate any other competing products from consideration as they would not have the same functionality and compatibility with existing systems as TraX.

LexisNexis Risk Solutions provided a quote of \$6,800 for a year of access to its Accurint TraX GIS cellular phone data mapping and analysis software. The term of the proposed agreement is one year with a 5 percent cost increase for each year thereafter.

FISCAL IMPACT: If authorized by the City Council, funding for Agreement No. 22-66 would result in an appropriation of \$6,800 from the Prop 30/AB 109 Fund (1141). Additional years of service, if authorized by the City Council, would result in an expenditure of \$6,800 plus 5 percent for each year thereafter from the City's General Fund.

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

1. Approve Agreement No. 22-66 with LexisNexis Risk Solutions for Accurint TraX cellular phone data mapping and analysis software for use in criminal investigations.
2. Authorize a \$6,800 appropriation from the Prop 30/AB 109 Fund to pay for the costs associated with Agreement No. 22-66.
3. Authorize Executive Director, Office of Public Safety/Police Chief Robert Avels to Sign Said Agreement.

NON-FCRA PERMISSIBLE USE CERTIFICATION – GOVERNMENT

Customer (Agency) Name: Montclair Police Department
DBA: _____
Address: 4870 Arrow Highway
City, State, Zip: Montclair, CA 91763
Contact Name: Brandon Kumanski **Phone:** 909-448-3605
REQUIRED Please describe your purpose of use: Assist with criminal investigations

Definitions. Gramm-Leach-Bliley Act, (15 U.S.C. § 6801, et seq.) and related state laws (collectively, the “GLBA”) Drivers Privacy Protection Act, (18 U.S.C. § 2721 et seq.) and related state laws (collectively, the “DPPA”)

Law Enforcement Agencies Only: Review and, if appropriate, certify to the following: Customer represents and warrants that it will use the LN Services solely for law enforcement purposes, which comply with applicable privacy laws including, but not limited to the GLBA and the DPPA. To certify, check here: Proceed to SECTION 3. QUALIFIED ACCESS

SECTION 1. GLBA EXCEPTION/PERMISSIBLE PURPOSE - NOT APPLICABLE TO LAW ENFORCEMENT

Some LN Services use and/or display nonpublic personal information that is governed by the privacy provisions of the GLBA. Customer certifies it has the permissible purposes under the GLBA to use and/or obtain such information, as marked below, and Customer further certifies it will use such information obtained from LN Services only for such purpose(s) selected below or, if applicable, for the purpose(s) indicated by Customer electronically while using the LN Services, which purpose(s) will apply to searches performed during such electronic session:

No applicable GLBA exception/permissible use. Proceed to SECTION 2. DPPA PERMISSIBLE USES

(At least one (1) must be checked to be permitted access to GLBA data)

<input type="checkbox"/>	As necessary to effect, administer, or enforce a transaction requested or authorized by the consumer.
<input type="checkbox"/>	As necessary to effect, administer, or enforce a transaction requested or authorized by the consumer by verifying the identification information contained in applications.
<input type="checkbox"/>	To protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability.
<input type="checkbox"/>	In required institutional risk control programs.
<input type="checkbox"/>	In resolving consumer disputes or inquiries.
<input type="checkbox"/>	Use by persons, or their representatives, holding a legal or beneficial interest relating to the consumer.
<input type="checkbox"/>	Use by persons acting in a fiduciary or representative capacity on behalf of the consumer.
<input type="checkbox"/>	In complying with federal, state, or local laws, rules, and other applicable legal requirements.
<input type="checkbox"/>	To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, to law enforcement agencies (including a Federal functional regulator, the Secretary of Treasury, a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety.

SECTION 2. DPPA PERMISSIBLE USES - NOT APPLICABLE TO LAW ENFORCEMENT

Some LN Services use and/or display personal information, the use of which is governed by the DPPA. Customer certifies it has a permissible use under the DPPA to use and/or obtain such information and Customer further certifies it will use such information obtained from LN Services only for one (1) or more of the purposes selected below or for the purpose(s) indicated by Customer electronically while using the LN Services, which purpose(s) will apply to searches performed during such electronic session:

No permissible use. Proceed to SECTION 3. QUALIFIED ACCESS

(At least one (1) must be checked to be permitted access to DPPA data)

<input type="checkbox"/>	For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court.
--------------------------	--

	For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only— (A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and (B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
	Use by a government agency, but only in carrying out its functions.
	Use by any person acting on behalf of a government agency, but only in carrying out the agency's functions.
	Use by an insurer (or its agent) in connection with claims investigation activities or antifraud activities.
	In connection with motor vehicle safety or theft, or driver safety (except by or for a motor vehicle manufacturer).
	Use by an employer or its agents or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under Chapter 313 of Title 49 of the United States Code.
	For use in providing notice to the owners of towed or impounded vehicles.
	For use in connection with the operation of private toll transportation facilities.

With regard to the information that is subject to the DPPA, some state laws' permissible uses may vary from the permissible uses identified above. In such cases, some state information may not be available under each permissible use listed above and/or Customer may be asked to certify to a permissible use permitted by applicable state law to obtain information from a specific state.

Customer agrees and certifies it will use the information described above only in accordance with the permissible uses selected above or those selected subsequently in connection with a specific information request.

SECTION 3. QUALIFIED ACCESS

Certain users ("Authorized Users") may be able to obtain full social security numbers (nine (9) digits) and driver's license numbers (collectively, "QA Data"), when appropriate, through some LN Services. Only those users that are within the Authorized User List below, and that use QA Data for an Authorized Use identified below, may qualify. To potentially qualify as an Authorized User, Customer must certify that its business is within the Authorized User List below and its use of QA Data is within the Authorized Use List below.

- Customer is **NOT** requesting access to QA Data. Proceed to SECTION 4. DEATH MASTER FILE
- Customer is requesting access to QA Data. Complete the sections below.

What department will be using QA Data? Montclair Police Department

SOCIAL SECURITY NUMBERS

- Not an authorized user. Proceed to DRIVER'S LICENSE NUMBERS

1. AUTHORIZED USER (At least one (1) must be checked to receive Social Security Numbers)

<input checked="" type="checkbox"/>	Federal, state or local government agency with law enforcement responsibilities.
	Special investigative unit, subrogation department and claims department of a private or public insurance company for the purposes of detecting, investigating or preventing fraud.
	Financial institution for the purposes of (a) detecting, investigating or preventing fraud, (b) compliance with federal or state laws or regulations, (c) collecting debt on their own behalf, and (d) such other uses as shall be appropriate and lawful.
	Collection department of a creditor.
	Collection company acting on behalf of a creditor or on its own behalf.
	Other public or private entity for the purpose of detecting, investigating or preventing fraud. Describe your business:

2. AUTHORIZED USE (At least one (1) must be checked to receive Social Security Numbers)

<input checked="" type="checkbox"/>	Location of suspects or criminals.
	Location of non-custodial parents allegedly owing child support and ex-spouses allegedly owing spousal support.
	Location of individuals alleged to have failed to pay taxes or other lawful debts.
	Identity verification.
	Other uses similar to those described above. Describe your use:

By selecting above, the Customer certifies that it is an Authorized User, and that it will use Social Security Numbers only for the purpose(s) it designated on the Authorized Use List and for no other purpose(s).

DRIVER'S LICENSE NUMBERS

Not an authorized user. Proceed to SECTION 4. DEATH MASTER FILE

1. AUTHORIZED USER (At least one (1) must be checked to receive Driver's License Numbers)

X	Federal, state or local government agency with law enforcement responsibilities.
	Special investigative unit, subrogation department and claims department of a private or public insurance company for the purposes of detecting, investigating or preventing fraud.
	Financial institution for the purposes of (a) detecting, investigating or preventing fraud, (b) compliance with federal or state laws or regulations, (c) collecting debt on their own behalf, and (d) such other uses as shall be appropriate and lawful.
	Collection department of a creditor.
	Collection company acting on behalf of a creditor or on its own behalf.
	Other public or private entity for the purpose of detecting, investigating or preventing fraud. Describe your business:

2. AUTHORIZED USE (At least one (1) must be checked to receive Driver's License Numbers)

X	Location of suspects or criminals.
	Location of non-custodial parents allegedly owing child support and ex-spouses allegedly owing spousal support.
	Location of individuals alleged to have failed to pay taxes or other lawful debts.
	Identity verification.
	Other uses similar to those described above. Describe your use:

By selecting above, the Customer certifies that it is an Authorized User, and that it will use Driver's License Numbers only for the purpose(s) it designated on the Authorized Use List and for no other purpose(s).

SECTION 4. DEATH MASTER FILE

For access to Limited Access DMF Data only.

No permissible purpose. Proceed to AUTHORIZATION AND ACCEPTANCE OF TERMS

I. Definitions. For purposes of this Certification, these terms are defined as follows:

- a. DMF Agreement:** The Limited Access Death Master File Non-federal Licensee Agreement for Use and Resale executed by LexisNexis Risk Data Retrieval Services LLC, on behalf of itself, its affiliates and subsidiaries, and its and their successors, with the federal government (NTIS, as below defined). The DMF Agreement form is found at www.lexisnexis.com/risk/DMFDocuments.
- b. Certification Form:** The Limited Access Death Master File Subscriber Certification Form executed by LexisNexis Risk Data Retrieval Services LLC, on behalf of itself, its affiliates and subsidiaries, and its and their successors, with the federal government (NTIS, as below defined). The Certification Form is found at www.lexisnexis.com/risk/DMFDocuments.
- c. DMF:** The federal Death Master File.
- d. NTIS:** National Technical Information Service, U.S. Department of Commerce
- e. Open Access DMF:** The DMF product made available through LN, which obtains the data from NTIS, and which does not include DMF with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death. Open Access DMF data should not be accessed pursuant to this Certification but should be accessed pursuant to a customer contract for such DMF data that is not Limited Access DMF.
- f. Limited Access DMF:** Limited Access DMF includes DMF data with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death. Limited Access DMF is made available through LN as a Certified Person, by NTIS. This Certification governs Customer's access to Limited Access DMF from LN (or the applicable LN affiliate), whether full or partial Limited Access DMF records or indicators of deceased status, and via any format, including online, XML feed, or in-house file processing through LN.

II. Certification.

Customer's access to the Limited Access DMF requires certification of purpose, as required by 15 CFR Part 1110 and section 1001 of Title 18, United States Code. Customer hereby certifies that it has the indicated permissible purpose(s) under part (a) of this Section II ("Certification") and that it meets the requirements of part (b) of this Section II:

(a) Such Customer has a legitimate fraud prevention interest, or has a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty, will use the Limited Access DMF only for such purpose(s), and specifies the basis for so certifying as (choose any applicable purposes that apply to Customer's use):

Legitimate Fraud Prevention Interest: Customer has a legitimate fraud prevention interest to detect and prevent fraud and/or to confirm identities across its commercial business and/or government activities.

Legitimate Business Purpose Pursuant to a Law, Governmental Rule, Regulation, or Fiduciary Duty: Customer has one or more of the purposes permitted under 42 USC 1306c including fraud prevention and ID verification purposes. Customer's specific purpose(s) for obtaining Limited Access DMF data under this Certification is:

- Fraud Prevention and identity verification purposes
- For uses permitted or required by law
- For uses permitted or required by governmental rules
- For uses permitted or required by regulation
- For uses necessary to fulfill or avoid violating fiduciary duties

and

(b) Customer has systems, facilities, and procedures in place to safeguard Limited Access DMF, and experience in maintaining the confidentiality, security, and appropriate use of such information, pursuant to requirements similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986, and

(c) Customer agrees to satisfy the requirements of such section 6103(p)(4) as if such section applied to Customer.

III. Flow-down Agreement Terms and Conditions

The Parties agree that the following terms and conditions are applicable to Recipient and ordering, access to, and use of Limited Access DMF:

1. **Compliance with Terms of Agreement and CFR.** Recipient of Limited Access DMF must comply with the terms of the Agreement and the requirements of 15 CFR Part 1110, as though set forth as a Subscriber therein, and Recipients may not further distribute the Limited Access DMF.
2. **Change in Status.** Should Recipient's status change such that it would no longer have a permissible purpose to access Limited Access DMF under this Addendum, Recipient agrees to immediately notify LN in writing in the manner and format required for notices under the Contract. Should Recipient cease to have access rights to Limited Access DMF, Recipient shall destroy all Limited Access DMF, and will certify to LN in writing that it has destroyed all such DMF.
3. **Security and Audit.** Recipient will at all times have security provisions in place to protect the Limited Access DMF from being visible, searchable, harvestable or in any way discoverable on the World Wide Web. Recipient understands that any successful attempt by any person to gain unauthorized access to or use of the Limited Access DMF provided by LN may result in immediate termination of Recipient's access and this Addendum. In addition, any successful attempt by any person to gain unauthorized access may under certain circumstances result in penalties as prescribed in 15 CFR § 1110.200 levied on Recipient and the person attempting such access. Recipient will take appropriate action to ensure that all persons accessing the Limited Access DMF it obtains from LN are aware of their potential liability for misuse or attempting to gain unauthorized access. Any such access or attempted access is a breach, or attempted breach, of security and Recipient must immediately report the same to NTIS at dmfcert@ntis.gov; and to LN by written notification to the LN Information Assurance and Data Protection Organization at 1000 Alderman Drive, Alpharetta, Georgia 30005 and by email (security.investigations@lexisnexis.com) and by phone (1-888-872-5375). Recipient agrees to be subject to audit by LN and/or NTIS to determine Recipient's compliance with the requirements of this Addendum, the Agreement, and 15 CFR Part 1110. Recipient agrees to retain a list of all employees, contractors, and subcontractors to which it provides Limited Access DMF and to make that list available to NTIS and/or LN as part of any audits conducted hereunder. Recipient will not resell or otherwise redistribute the Limited Access DMF.
4. **Penalties.** Recipient acknowledges that failure to comply with the provisions of paragraph (3) of the Certification Form may subject Recipient to penalties under 15 CFR § 1110.200 of \$1,000 for each disclosure or use, up to a maximum of \$250,000 in penalties per calendar year, or potentially uncapped for willful disclosure.
5. **Law, Dispute Resolution, and Forum.** Recipient acknowledges that this Addendum is governed by the terms of federal law. Recipient acknowledges that the terms of Section 14 of the Agreement govern disagreement handling, and, without limitation to the foregoing, that jurisdiction is federal court.

6. **Liability.** The U.S. Government/NTIS and LN (a) make no warranty, express or implied, with respect to information provided under the Agreement, including but not limited to, implied warranties of merchantability and fitness for any particular use; (b) assume no liability for any direct, indirect or consequential damages flowing from any use of any part of the Limited Access DMF, including infringement of third party intellectual property rights; and (c) assume no liability for any errors or omissions in Limited Access DMF. The Limited Access DMF does have inaccuracies and NTIS and the Social Security Administration (SSA), which provides the DMF to NTIS, and LN, do not guarantee the accuracy of the Limited Access DMF. SSA does not have a death record for all deceased persons. Therefore, the absence of a particular person in the Limited Access DMF is not proof that the individual is alive. Further, in rare instances, it is possible for the records of a person who is not deceased to be included erroneously in the Limited Access DMF. Recipient specifically acknowledges the terms of Attachment B to the Agreement, which terms apply to Recipient.
7. **Indemnification.** To the extent not prohibited by law, Recipient shall indemnify and hold harmless LN and NTIS and the Department of Commerce from all claims, liabilities, demands, damages, expenses, and losses arising from or in connection with Recipient's, Recipient's employees', contractors', or subcontractors' use of the Limited Access DMF. This provision will include any and all claims or liability arising from intellectual property rights.
8. **Survival.** Provisions hereof related to indemnification, use and protection of Limited Access DMF, audit, disclaimer of warranties, and governing law shall survive termination of this Addendum.
9. **Conflict of Terms.** Recipient acknowledges that the terms of this Addendum, in the event of conflict with the terms of the Contract, apply in addition to, and not in lieu of, such Contract terms, with respect to the Limited Access DMF only.

AUTHORIZATION AND ACCEPTANCE OF TERMS

I HEREBY CERTIFY that I have direct knowledge of the facts stated above and that I am authorized to execute this Certification on behalf of the Customer listed above.

CUSTOMER:	Montclair Police Department
Signature	
Print Name	
Title	
Dated	(mm/dd/yy)

LexisNexis Risk Solutions

**SCHEDULE A
Accurint TraX
Online (Subscription)**

Customer Name:	<u>Montclair Police Department</u>
Billgroup #:	<u>6968693</u>
LN Account Manager:	<u>Elizabeth Marshall</u>

This Schedule A sets forth additional or amended terms and conditions for the use of the Accurint TraX services ("LN Services"), as set forth in the services agreement for the LN Services between Customer and the LexisNexis Risk Solutions entity as further defined therein ("Agreement"), to which this Schedule A is incorporated by reference. For purposes of the Agreement and this Schedule A, all LexisNexis Risk Solutions affiliates shall be individually and collectively referred to as "LN". The LN Services herein shall be provided by LexisNexis Risk Solutions FL Inc.. Customer acknowledges that the services provided under this Schedule A are non-FCRA services and are not "consumer reports" within the meaning of the FCRA and Customer agrees not to use such reports in any manner that would cause them to be characterized as "consumer reports".

1. SCHEDULE A TERM

The term of this Schedule A will be 12 months beginning July 1, 2022 (the "Initial Term"). Following the Initial Term, this Schedule A shall automatically renew for additional periods of twelve (12) months (each one, a "Renewal Term"), unless written notice of termination is provided to either party at least sixty (60) days prior to the expiration of the Initial Term or any Renewal Term. If an account is activated after the first day of a calendar month, charges will not be pro-rated.

2. ACCURINT TRAX FEES

2.1 Annual Subscription Fee: Beginning on the effective date hereof, Customer shall pay to LN each 12-month period ("Year") an annual subscription fee of \$6,800.00 ("Annual Subscription Fee"), to be invoiced in equal monthly Installments, in exchange for access to and use of the Accurint TraX service.

2.2 Fee Increases: At the end of each Year, the fees herein will be increased 5.00 %.

2.3 Accurint TraX Amounts Payable: Customer agrees to pay LN in accordance with any invoice for the fees set forth above.

3. EXPIRATION

Unless otherwise accepted by LN, the terms herein are valid if the Schedule A is signed by the Customer and received by LN on or before **June 20, 2022**.

4. CLOUD SERVICES

LN is executing a multi-year plan to move certain LexisNexis Risk Solutions products and services to Microsoft Azure Cloud services. Should you have questions regarding this plan, please document and send them via email to cloudquestions@lexisnexisrisk.com.

5. CONFIDENTIAL INFORMATION

This Schedule A contains the confidential pricing information of LN. Customer acknowledges that the disclosure of such pricing information could cause competitive harm to LN, and as such, Customer agrees to maintain this Schedule A in trust and confidence and take reasonable precautions against disclosure to any third party to the extent permitted by local and state law.

AGREED TO AND ACCEPTED BY: Montclair Police Department

Signed: _____

Name: _____

Title: _____

Date: _____



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	STA850
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	9	PREPARER:	M. HEREDIA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-67 WITH TKE ENGINEERING, INC. FOR ENGINEERING DESIGN SERVICES FOR THE RAMONA AVENUE AND HOWARD STREET ROUNDABOUT PROJECT [HSIPSL-5326(023)] SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: Engineering design services are required for the Ramona Avenue and Howard Street Roundabout Project. Agreements for professional services are subject to City Council approval. The City Council is requested to consider approval of Agreement No. 22-67 with TKE Engineering, Inc. for engineering design services for the Ramona Avenue and Howard Street Roundabout Project [HSIPSL-5326(023)]. Proposed Agreement No. 22-67 with TKE Engineering, Inc. is attached for City Council review and consideration.

BACKGROUND: On March 26, 2021, the City was notified by the California Department of Transportation that the Highway Safety Improvement Program (HSIP) for Cycle 10 was successful and the City was awarded \$771,000 for the Ramona Avenue and Howard Street Roundabout Project. The funding is designated for design services in the amount of \$115,500 and construction in the amount of \$655,500. Staff released a Request for Proposals via Planet Bids to solicit proposals for engineering design services. The City received four proposals as follows:

1. KOA Corporation
2. L.D. King, Inc.
3. Michael Baker International
4. TKE Engineering, Inc.

A panel of three staff members from the Public Works Department reviewed all proposals based on the criteria of qualifications, experience with similar projects, completeness, and clarity of proposal. The evaluating panel selected TKE Engineering, Inc. (TKE) as the successful applicant. TKE has extensive experience with HSIP, Safe Routes to School (SRTS), and Active Transportation Plan (ATP) state- and federally-funded design projects. TKE has prepared design plans for five HSIP projects within the past five years and numerous other SRTS and ATP projects for more than ten cities throughout Southern California. Their project scope and in-depth understanding of roundabout design, knowledge of the funding source, and wide range of experience will allow TKE to hit the ground running.

FISCAL IMPACT: TKE Engineering, Inc. submitted a proposal to perform the work for \$139,411. HSIP funds in the amount of \$115,500 will cover the majority of the cost, and \$23,911 in 2021 Lease Revenue Bond Funds will cover the remainder.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-67 with TKE Engineering, Inc. for engineering design services for the Ramona Avenue and Howard Street Roundabout Project [HSIPSL-5326(023)] subject to any revisions deemed necessary by the City Attorney.

Infrastructure Fund Capital Project Funding Information

Project Name: Ramona Avenue and Howard Street Roundabout Project
 Project Details: Includes design and construction of the intersection improvements. Project includes removal of the traditional four way stop and construction of a roundabout intersection.

Preparation Date: June 14, 2022 Department: Public Works/Engineering
 Project No. (Assigned by Finance): 17034 Contact/Ext.: M. Heredia 441

Phase	Fiscal Years					Total	Fund/Program
	Prior Years	2019/2020	2020/2021	2021/2022	2022/2023		
Environmental							
Design				115,500.00		115,500.00	HSIP
				23,911.00		23,911.00	2021 LRB
R/W Acquisition							
Construction				46,200.00		46,200.00	HSIP
				609,400.00		609,400.00	HSIP
Total	0.00	0.00	0.00	795,011.00	0.00	795,011.00	

Approvals: _____ By: _____ Date: _____
 Department: Public Works/Engineering
 Finance By: _____ Date: _____
 City Council Date: _____
 Revision Number: _____

Total Project Cost: 795,011.00

City of Montclair Professional Services Agreement
RAMONA AVENUE AND HOWARD STREET ROUNDABOUT PROJECT
HSIPSL-5326(023)

ARTICLE I INTRODUCTION

This AGREEMENT is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the “**CONSULTANT**” is as follows:

TKE Engineering, Inc.,
Incorporated in the State of state of California

The Project Manager for the “CONSULTANT” will be Octavio Parada

The name of the “**LOCAL AGENCY**” is as follows:

City of Montclair

The Contract Administrator for the City of Montclair will be Monica Heredia, P.E. Public Works
Director/City Engineer

- A. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT’s Cost Proposal dated 6/22/2022. The approved CONSULTANT’s Cost Proposal is attached hereto Exhibit B and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- B. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys’ and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- C. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.

- D. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- E. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.
- F. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the Local AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- G. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- H. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- I. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

(Option 1 - Use paragraphs A & B below for standard AGREEMENTs)

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY's Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

ARTICLE III STATEMENT OF WORK

Preliminary engineering, right of way engineering, environmental CEQA/NEPA technical studies, utility coordination and complete federal PS&E package to rehabilitate and widen the existing bridge spanning over UPRR tracks and roadway approaches on both ends, and independent bridge structure review (per RFP dated July 29, 2019 attachment No. 1). The services have been refined and described in the Scope of Services attached hereto as Exhibit "A."

ARTICLE IV PERFORMANCE PERIOD

Time of Performance is from April 4, 2020 to December 22, 2023.

- A. This AGREEMENT shall go into effect on April 4, 2020, contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on December 22, 2023, unless extended by AGREEMENT amendment.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

- A. The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY's approved overhead rate set forth in the Cost Proposal. In the event, that LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by LOCAL AGENCY shall be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I" of this Article shall not be exceeded, unless authorized by AGREEMENT amendment.
- B. The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT. CONSULTANT's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or AGREEMENT award.
- C. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$285,139.25. The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- E. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT.
- G. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.

- H. CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

City of Montclair, Monica Heredia, P.E. Public Works Director / City Engineer
5111 Benito Street Montclair, CA 91763

- I. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed \$3,352,355.
- J. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.

- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VIII RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommend-

ations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
 4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.
- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.

ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
 - 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
 - 2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.

3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
 5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
 2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
 3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
 4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:

- a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING

(Include this article in all AGREEMENTs where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the AGREEMENT; delete this article and re-number the subsequent articles.)

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
 - 1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- B. 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 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT’s signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT’s benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment 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, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours’ notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT’s signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 3. Does not have a proposed debarment pending; and
 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This AGREEMENT is subject to 49 CFR Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”. CONSULTANTs who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California’s statewide overall DBE goal.
- B. The goal for DBE participation for this AGREEMENT is _____ 0%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) , or in [Exhibit 10-O2: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT (See Exhibit C). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

- D. DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of AGREEMENTs financed in whole or in part with federal funds. The LOCAL AGENCY, CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the LOCAL AGENCY deems appropriate, which may include, but is not limited to:
- (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the contractor from future bidding as non-responsible
- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR §26.53(f). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- F. Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the LOCAL AGENCY's Contract Administrator.
- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. Upon completion of the AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, [Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise \(DBE\) First-Tier Subconsultants](#), certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five

percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

- L. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- M. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant shall complete and email the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to: business.support.unit@dot.ca.gov with a copy to the Agency.
- N. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX INSURANCE

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
 - 1. That the insurer will not cancel the insured's coverage without thirty (30) calendar days prior written notice to LOCAL AGENCY.
 - 2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
 - 3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.
- C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.
 - 1. Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.
 - 2. Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents ("Indemnified

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

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

4. INSURANCE

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

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	3,000,000
Commercial general liability at least as broad as ISO CG 0001 (general aggregate)	5,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	1,000,000
Professional Liability (per claim)	3,000,000
Professional Liability (aggregate)	5,000,000
Worker's Compensation as required by law	

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

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

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

- i. Exclude "Contractual Liability"
- ii. Restrict coverage to the "Sole" liability of Consultant
- iii. Exclude "Third-Party-Over Actions"
- iv. Contain any other exclusion contrary to the Contract

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

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.

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

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

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

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

ARTICLE XX FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI CHANGE IN TERMS

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY's Contract Administrator.

ARTICLE XXII CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and Noel Castillo, P.E. Public Works Director / City Engineer, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

ARTICLE XXVI OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY’s operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY’s actions on the same, except to LOCAL AGENCY’s staff, CONSULTANT’s own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY’S written permission.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City’s attorney’s fees and disbursements, including without limitation experts’ fees and disbursements.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT’s failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT’s performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXXI RETENTION OF FUNDS

No retainage will be withheld by LOCAL AGENCY from progress payments due the CONSULTANT. Retainage by the CONSULTANT or subconsultants is prohibited, and no retainage will be held by the CONSULTANT from progress due subconsultants. Any violation of this provision shall subject the violating CONSULTANT or subconsultants to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non- DBE CONSULTANT and subconsultants.

ARTICLE XXXII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

TKE Engineering, Inc.
Terry Renner, Principal In Charge
500 S. Main Street, Ste. 400
Orange, CA 92868

LOCAL AGENCY:

City of Montclair
Monica Heredia, Contract Administrator
5111 Benito Street
Montclair, CA 91763

ARTICLE XXXIII CONTRACT

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXIV SIGNATURES

City of Montclair

TKE Engineering, Inc.

By:

Javier John Dutrey, Mayor

By:

Terry Renner, Principal

Attest:

By:

Andrea M. Myrick, City Clerk

Approved as to Form:

By:

Diane Robbins, City Attorney

SECTION C | PROJECT DESIGN

A. PROJECT UNDERSTANDING

The City of Montclair (City) desires to utilize State grant funds through the Highway Safety Improvement Program (HSIP) to design and construct roundabout improvements, including refuge islands with high visibility crosswalks, ADA improvements and upgraded lighting at the intersection of Ramona Avenue and Howard Street to address safety issues, including the recent fatality at the intersection. Funding therefore must follow guidelines as outlined in the Caltrans Local Assistance Procedures Manual (LAPM) and Local Assistance Procedures Guidelines (LAPG). The intersection is in close proximity to Howard and Ramona Elementary Schools as well as Essex Park which will lead to high volumes of pedestrian and vehicular traffic at peak morning and afternoon pickup times. Ramona Avenue is a five-lane arterial roadway with the center lane being a left turn lane and Howard Street is a two-lane residential/collector street with additional street width for street parking. Analysis will be required to determine if the roundabout will be a single lane only, single lane with dedicated right turn lanes or a multilane roundabout.

B. PROJECT APPROACH

Our approach to your project, recognizing that both schedule and budget are of primary concern, dictates that design decisions must be made quickly and carefully. When this is coupled with the various constraints present, it is critical that the City choose a consultant with a proven track record of delivering. With a familiar team of senior level design professionals, TKE is the right choice for this project.

With a project of this type, our experience tells us that there has to be a proactive approach to completing the work. This includes early identification of critical design elements and accurate cost estimating throughout the entire process, as well as familiarity with the funding source. In preparing this proposal, our team established key issues so we can "hit the ground running" to make this a successful project for the City.

CRITICAL ISSUES

TKE has extensive experience with HSIP, SR2S and ATP State and Federally funded design projects. TKE has prepared design for five HSIP projects within the past five years and numerous other SR2S and ATP projects for more than ten different Cities throughout Southern California. The project scope and design components for this project include every element for several projects in which we have recently completed or still working on with the City's of Fontana and Calimesa. With our in depth understanding of roundabout design, relationships with City Staff, knowledge of the funding source and wide range of experience, TKE is able to hit the ground running for the design of the current project.

IDENTIFICATION OF CRITICAL DESIGN ELEMENTS

Our approach to identifying critical issues will be to immediately go into the field and document all the critical design elements so they can be presented to the City. This will give us a head start on instructing our survey team about what detailed information to collect. Some of these elements include key ground elevation information at the curb returns to determine how ADA access will be maintained and how proposed bike lanes will transition through the roundabout.

PRIVATE IMPROVEMENTS

Private improvements such as mailboxes, fences, walls and landscaping will be impacted by the street improvements. TKE will identify such impacts early during project design and will develop an action plan for working with residents that will be impacted. Our goal will be to complete design that will provide ADA accessibility at the same time as minimizing private property impacts.

UTILITY COORDINATION

Based on field review, some utilities will require relocation and/or adjustment for the proposed improvements. These facilities include water backflow, street lights and power poles. Again, we will identify these facilities early in project design to begin coordination at the earliest opportunity. Agencies that maintain private utilities can be cumbersome in getting facilities relocated. Early coordination will prevent project delays.



DRAINAGE

Roundabout design which minimizes impacts to the vehicular traffic often severs connectivity of drainage paths. TKE is familiar with methods of capturing or collecting and bypassing drainage to minimize drainage impacts to the design.

PAVEMENT REHABILITATION

Review of the pavement conditions on Ramona Avenue and Howard Street indicate the majority of the pavement is in good condition with no need for major rehabilitation. For areas of new pavement, TKE will review the adjacent pavement conditions and provide the proposed structural section. Included with the Geotechnical services presented in the scope of services is pavement design. Samples will be taken of the street subgrade for laboratory testing to determine the correct section for street design.

RIGHT-OF-WAY

Upon determination of construction limits, TKE will assess right-of-way needs. Based on our preliminary research of existing right-of-way limits, it appears that right-of-way will be required for construction of the proposed street improvements on 4 parcels. Right of entries or temporary construction rights-of-way will also be needed for private improvement restoration.

ACCURATE COST ESTIMATING

TKE understands the limits on HSIP funding. Because of the limited budget for this project, it is important to keep costs controlled. Our approach to controlling costs is to provide frequent and accurate cost estimates by using TKE's detailed cost estimating database. In addition to using this database, TKE utilizes our considerable experience with Construction Management to assist in providing constructability reviews and cost estimating based on current information from our on-going projects. Finally, with the current economic climate, construction costs are widely varying. We will also discuss the project elements with local contractors to assure that we have the most current construction information available so that the City can ensure the most value for the public's dollar.

FAMILIARITY WITH FUNDING SOURCE

TKE is well versed with Caltrans Local Assistance requirements as well as the general guidelines for

implementing State funded Highway Safety Improvement Projects. They include:

- Requesting that Caltrans furnish an expenditure authorization number.
- Submitting allocation request and finance letters to Caltrans Local Assistance requesting reimbursable costs allocation
- Ensuring Caltrans prepares a Program Supplement Agreement for City execution. If the City does not have a "State Funds Master Agreement" on file with Caltrans, one will be required.
- Ensuring that the City acquires Local Assistance approval for all required environmental clearances (CEQA) and right-of-way needed for the project.
- Ensuring that the project complies with the requirements of the Americans with Disabilities Act.

Processing invoices to Caltrans Local Assistance for reimbursement.

C . SCOPE OF WORK

TKE will provide project management and design services in three progressive phases, 60% Level Completion, 90% Level Completion and 100% Level Completion. TKE's scope of services is presented in the following paragraphs:

TASK NO. 1 PROJECT MANAGEMENT

TKE's Project Manager will be responsible for the entire project team. He will attend all meetings, prepare agendas and corresponding meeting minutes together with collection of signatures for meeting attendees (sign-in sheets). He will meet with the City at appropriate times and will meet as needed with agencies, residents, property owners, and utilities in addition to the meetings presented below. We will also update TKE's project budget and schedule prior to each City meeting for discussion with staff.

Deliverables

Agendas, Meeting Minutes, Exhibits, and Project Progress, Schedule and TKE Budget Updates



TASK NO. 2 INITIAL 'KICK OFF' MEETING

Prior to commencement of services, we propose to meet City staff to review project obligations and to discuss all project requirements in detail. TKE's Project Manager and Project Engineer will attend the meeting to determine project protocol, design requirements, grant requirements and obtain City record drawings.

Deliverables

Agenda, Minutes, and Distribution to all Entities

TASK NO. 3 RECORDS RESEARCH

We will thoroughly research existing utility records and acquire copies of all available records. The purpose of the records research is to assemble survey records to establish locations of street centerlines, street rights-of-way, and easements and determine locations of all existing utilities and improvements. The research will consist of assembling copies of assessors' maps, tract maps, parcel maps, easement documents, monument ties, benchmark data, corner records, street and storm drain improvement plans, and utility drawings. We will request the City provide copies of available pertinent City records, such as survey ties, benchmarks, and street, sewer and storm drain improvement plans.

We will notify Underground Service Alert to acquire a complete list of underground utility purveyors. The utility drawings will include existing drawings from the City, and drawings and/or atlas maps from all private utility companies, and/or agencies. We will confer and coordinate with the following agencies as well as any additional agencies listed in the Underground Service Alert:

- Monte Vista Water District
- Verizon Telephone
- AT&T and PacBell
- Sprint
- Southern California Gas Co.
- Southern California Edison
- Time Warner Cable Television

We will send first utility notice letters to all listed utility companies and agencies requesting their data. We will maintain copies of the letters and correspondence for future reference. We shall also

provide the City with a complete copy of all correspondence with all utility companies.

Deliverables

Record Data and Utility Information

TASK NO. 4 DESIGN SURVEY

TKE will conduct a conventional design survey of the project area due to the level of detail needed for precise grading design. Our field survey crews will collect appropriate detail as required to prepare a topographic map for the entire reach of Ramona Avenue and Howard Street. The topographic map shall be a minimum of 120-feet wide and shall extend 100-feet beyond end of centerline. In addition, we will collect 50-foot cross sections with shots extending to right-of-way and 25-feet beyond right-of-way on each side where possible. Survey data will include visible grade breaks, trees over 2-inches in diameter, buildings, walkways, sidewalks, driveways, curbs, gutters, cross gutters, fire hydrants, water valves, manholes, water meters, signs, street lights, power poles, fences, structure, and all other visible features. In addition, we will survey the existing height of overhead wires near the traffic signal modification improvements.

Our crews will set 100-foot stationing along street centerlines and collect existing topography as needed to provide sufficient level of detail for precise design. The crew will also measure invert, top of cone and rim elevations for all existing manholes in the project area and invert and rim elevations for all drainage facilities. The crew will set temporary benchmarks within the project limits and each will be shown on the drawings.

Deliverables

Ground Topography, Utilities and Data in ASCII Format with Description Codes

TASK NO. 5 TOPOGRAPHIC MAP/SURVEY CONTROL PLAN

We will prepare a topographic map for the entire reach of Ramona Avenue and Howard Street. The topographic map shall be prepared in AutoCAD format at 1"=40' scale and shall include 1 foot contours.



A survey control plan shall be prepared and shall show all existing found monumentation, benchmarks, ties and temporary control points. All found monumentation will include descriptions and tie-out information.

The survey control plan will be provided to the City in hard copy (mylar) and digital (AutoCAD and PDF) formats.

Deliverables

Topographic Mapping

TASK NO. 6 BASE CONSTRUCTION DRAWINGS

We will prepare the base construction drawings on 24" by 36" sheets with the City's standard title block using AutoCAD 2021 software, at a drawing scale of 1"=40'. The base construction drawings will include a plan view based on the accumulated conventional survey data. We will add the sheet north arrow, graphic scale, existing improvements and utilities (based on both assembled records and field data), property lines, public and private right-of-way, easement areas, assessor parcel numbers, street centerline, street names, building locations, water service location; sewer manhole lids and water valve lids; cross gutters; driveways, pedestrian ramps; traffic stripes and legends; curb returns; details of private improvements, fences, gates, irrigation systems, mailboxes, trees and landscaping, and survey data to the drawings. Once the base drawings are complete, we will perform a careful field review to ensure all underground facilities are shown correctly.

Deliverables

Base Construction Drawings in Plan View

TASK NO. 7 GEOMETRIC ALIGNMENT DESIGN

Geometric configuration for the roundabout will require extensive coordination between TKE and the City to determine the preferred alignment configuration that will balance the roundabouts functionality and performance versus its safety and fastest path, while considering right-way impacts. The central island size, entry width, lane width and entry deflection angle will require extensive analysis to develop the appropriate dimensions for each to meet City goals and provide a functional

and safe roundabout. Using the topographic and base mapping, TKE will prepare the roundabout geometric alignment to be used for analyzing the proposed speeds through the roundabout, inscribed circle diameter, entry width, circulatory roadway width, central island, entry and exit curves, splitter islands and pedestrian crossing treatments, fastest path review versus operational functionality for the design vehicle, stopping sight distance, intersection sight distance and non-motorized design users. The geometric analysis will follow the Federal Highway Administration design guidelines for roundabouts. Upon completion of the alignment design, TKE will present the information to the City for approval.

In addition, we will prepare preliminary construction drawings showing proposed street improvements. Proposed improvements will be designed in accordance with the City's current street design standards and specifications for ultimate street widening. Of note, with the incorporation of roundabouts, the standard ultimate street half width is typically not required. We will include proposed curb, sidewalk, driveway and ramp locations to assess right-of-way requirements. We will show the typical street section incorporating existing utility and improvement locations, existing drainage improvements, existing right-of-way, proposed right-of-way requirements at each intersection, and right-of-way exhibit.

We will prepare quantity estimates for all proposed improvements. In addition, we will prepare a preliminary construction cost estimate using an Excel spreadsheet. Descriptions of work, unit prices, and quantities will be included in the spreadsheet.

Deliverables

Geometric Alignment Exhibit in Plan View and Preliminary Estimate

TASK NO. 8 GEOTECHNICAL INVESTIGATION

We would propose to retain Aragón Geotechnical, Inc. (AGI) as a subconsultant to provide geotechnical services for the project. AGI will provide geotechnical evaluations and recommendations for pavement design and other geotechnical considerations for the project. They will perform the following:



- Drilling, sampling and logging of necessary borings for evaluation of street structural section. AGI will notify Underground Service Alert and will provide necessary traffic control for the field operations. The borings will be drilled to a depth of at least five feet. The asphalt pavement thickness and base thickness will be noted during the boring operations.
- Design of pavement structural section using City provided traffic indices. The pavement will be designed for the larger of the two indices plus one point.
- Laboratory testing of representative soil samples to evaluate in-situ moisture content, density tests, max density and optimum tests, sieve analysis, R-value, direct shear tests, consolidation and collapse tests and percolation test of the on-site soils.
- Data compilation and geotechnical analysis of existing geotechnical maps, reports, and field and laboratory data to provide recommendations for pavement design. Analysis will include recommendations for new pavement section alternatives, based on the traffic indices and R-value testing.
- Preparation of a report presenting their findings, conclusions and recommendations pertaining to design, compaction requirements, and subgrade preparation for each street. In addition, the report will provide recommendations for asphalt pavement recycling and other recommendations for rehabilitative repair strategies. The report will include a scale plan showing locations and identifications of all borings and other geotechnical information.

Deliverables

Geotechnical Report and Field Log Data

TASK NO. 9 COMPOSITE UTILITY PLAN

TKE will prepare a composite utility plan which identifies all existing utilities within the proposed right-of-way and all utilities affected by the proposed street and traffic signal improvements and requiring relocation. The plan shall show all above and below ground utilities including all laterals. The utility plan will be for City use in coordinating with utility companies.

Deliverables

Composite Utility Plan

TASK NO. 10 60% DESIGN

60% Design will include preparation geometric roadway improvement exhibits, preliminary construction drawings, preliminary technical specifications, preliminary construction estimates, and completed geotechnical report.

Construction drawings will show proposed street and intersection geometrics including locations of proposed curb, drive approaches, sidewalk, center island, refuge islands, swales, ramps, spandrels and cross gutters. In addition, street grades will be prepared to establish project grading requirements. Proposed improvements will be designed in accordance with the City's current street and drainage design standards and specifications for ultimate street widening. The proposed improvements will be designed to minimize grading, earthwork and transitions onto private property.

For the drawings, it is estimated we will prepare 1 title sheet, 1 construction note sheet, 2 demolition sheets, 4 plan/profile sheets, 2 drainage sheets, 1 cross-section sheet, 4 landscape and irrigation sheets, 1 street lighting sheets, 3 electrical sheets, 2 signing and striping sheets, and necessary detail sheets.

The title sheet shall include the title of the job, a vicinity map showing the City in relationship to surrounding communities, a location map showing the project limits, construction notes, an index for the drawings, list of references on the City's standard title block.

The construction note sheets will show general construction notes, a list of abbreviations used, benchmark data, general notes, utilities with phone numbers, and project specific requirements.

The demolition sheets will show existing improvement demolition including limits of pavement removal, saw cutting locations and limits and concrete cross gutters and curbs, if required. In addition, the plan will specify relocation of private improvement such as mailboxes fences, etc. as required.

Plan/profile sheets will show proposed improvements including curb and gutter, roundabout median curbs, sidewalks, handicap



ramps, driveways, pavement limits, storm drain pipe, manholes, catch basins, overlay limits, signs, traffic stripes, existing utility relocations (if any), water service relocations, and sewer manhole, valve, and vault cover grade adjustments. For the profile portion of the drawings, we will show existing and proposed pavement elevations at centerline and existing edge of pavement on both sides of the streets with appropriate design data together with proposed top of curb elevations.

The drainage sheets will be prepared in accordance with City standards and requirements. The sheet will be prepared at a 1"=20' scale and will show existing right-of-way, curb, gutter, sidewalk, existing utilities, existing right-of-way, curb, gutter, sidewalk, existing utilities, existing drainage improvements and all proposed improvements including catch basins, pipe and connections. Storm drain sheets will show top of pipe, flowline, structures utility crossings and ground surface.

The street cross-sections sheets will show street sections at appropriate drawing scales. The sections will be dimensioned and construction and demolition notes will be shown. In addition, rights-of-way and limits of work will be shown.

Landscape and irrigation sheets will include design for the landscaping within the proposed roundabouts. The sheets will include the point of connection, irrigation layout and planting materials to be installed and shall be in conformance with City standards, specifications, ordinances, regulations and requirements.

Street lighting sheets will be prepared in accordance with City standards and requirements. The sheets will be prepared at a 1"=20' scale and will show existing right-of-way, curb, gutter, sidewalk, existing utilities, existing right-of-way, curb, gutter, sidewalk, existing utilities, existing and proposed street light improvements and all proposed modifications including conduit extension and head replacements.

The electrical sheets will include design for decorative lighting at each roundabout intersection, including splitter islands to accommodate pedestrian warning lighting. The sheets will be prepared at a 1"=20' scale and will show existing right-of-way, curb, gutter, sidewalk, existing utilities, existing right-of-way, curb, gutter, sidewalk, existing utilities, existing and proposed electrical improvements and connections.

The signing and striping sheets will include all required pavement markings, lane stripes and signage in accordance with the MUTCD, California supplement and all other applicable City requirements, for the project limits. The sheets will be prepared at 1"=40' scale and include full geometrical layouts at each intersection.

For the specifications, we will amend the City Standards Technical Provisions as required for the projects. The construction specifications will be prepared in Microsoft Word (2016 Version) format in accordance with City standards.

In addition, we will prepare quantity estimates for all proposed improvements prepared using an excel spreadsheet showing an itemized construction cost breakdown. Descriptions of work, unit prices, and quantities will be included in the spreadsheet.

60% Design (construction drawings, technical specifications, construction estimates, completed geotechnical report, environmental documents and right-of-way documents and approvals) will be submitted with a project summary memorandum together with an updated project schedule, utility contact matrix, stakeholder meeting summary, and internal plan review documentation.

Deliverables

60% Design Sheets

ASK NO. 11 COORDINATION WITH AGENCIES/ UTILITIES

After 60% design is complete, plans will be sent to agencies having facilities in the project areas requesting that they verify their facilities are shown correctly and that they furnish any construction requirements they desire. We will highlight each agency's facilities and advise each of potential conflicts and relocation requirements. We will request that they respond within two weeks and we will follow up with telephone calls to confirm all agency requirements have been incorporated. We will document all conferences with utilities and agencies and copy the City via e-mail.

Deliverables

Utility Coordination Matrix



TASK NO. 12 60% DESIGN
REVIEW MEETINGS

After the City has completed its review, we will meet with City staff to acquire Staff’s comments for preparation of revised plans, specifications and estimates. It is anticipated that the City will be involved in the 60% plan check process and subsequent 60% design review meeting.

Deliverables

Meeting Agenda, Minutes and Final Design Approval

TASK NO. 13 RIGHT-OF-
WAY

We will prepare all necessary final right-of-way documents for the project including permanent and temporary construction right-of-way. We will prepare legal descriptions and plats for each parcel requiring acquisition. The City will provide appraisal reports and negotiate the acquisition. We will maintain a right-of-way acquisition map and will update it as right-of-way progress. Each will be prepared in accordance with the City requirements. For this project we have assumed 4 right-of-way acquisitions will be required.

Deliverables

Legals and Plats

TASK NO. 14 90% DESIGN

90% design will include incorporation of City comments, final street and roundabout, drainage, lighting and signing and striping plans.

We will verify that the project will comply with ADA design requirements and that adequate drainage will be achieved.

90% Design will be submitted with a project summary memorandum together with updated project specifications and estimates.

Deliverables

90% Design Sheets

TASK NO. 15 FINAL
COORDINATION WITH AGENCIES/
UTILITIES

After the final drawings are approved by the City, we will again submit them to all agencies/utilities having underground facilities in the project area requesting that they verify their facilities are shown correctly and we will advise them of the project construction schedule and relocation requirements. In addition, we will coordinate final relocation construction prior to project bidding. We will document all meetings and conferences with utilities and agencies.

Deliverables

Utility Coordination Matrix

TASK NO. 16 90% DESIGN
REVIEW MEETINGS

After the City has completed its review, we will meet with City staff to acquire Staff’s comments for preparation of revised plans, specifications and estimates.

Deliverables

Meeting Agenda, Minutes and Final Design Approval

TASK NO. 17 100% DESIGN

100% design will include incorporation of City comments, final plans, specifications, and estimates, ready for public bidding. Final documents will include mylars and hard copy specifications with signatures and electronic copies of final documents.

100% Design will be submitted with a project summary memorandum together with an updated project schedule, additional stakeholder meeting summary, and internal plan review documentation.

Deliverables

One (1) Full-Size Mylar of 100% Drawings; Hard Copy of Specifications and Estimate, Electronic Files of Final Plans, Specifications and Estimate



TASK NO. 18 BIDDING ASSISTANCE

TKE will assist the City during project bidding by attending pre-bid meeting, answering questions about or provide clarifications of the contract documents as requested by the City, and will prepare addenda if necessary.

Deliverables

Response to RFI's, Addenda Preparation and Bid Analysis Recommendations

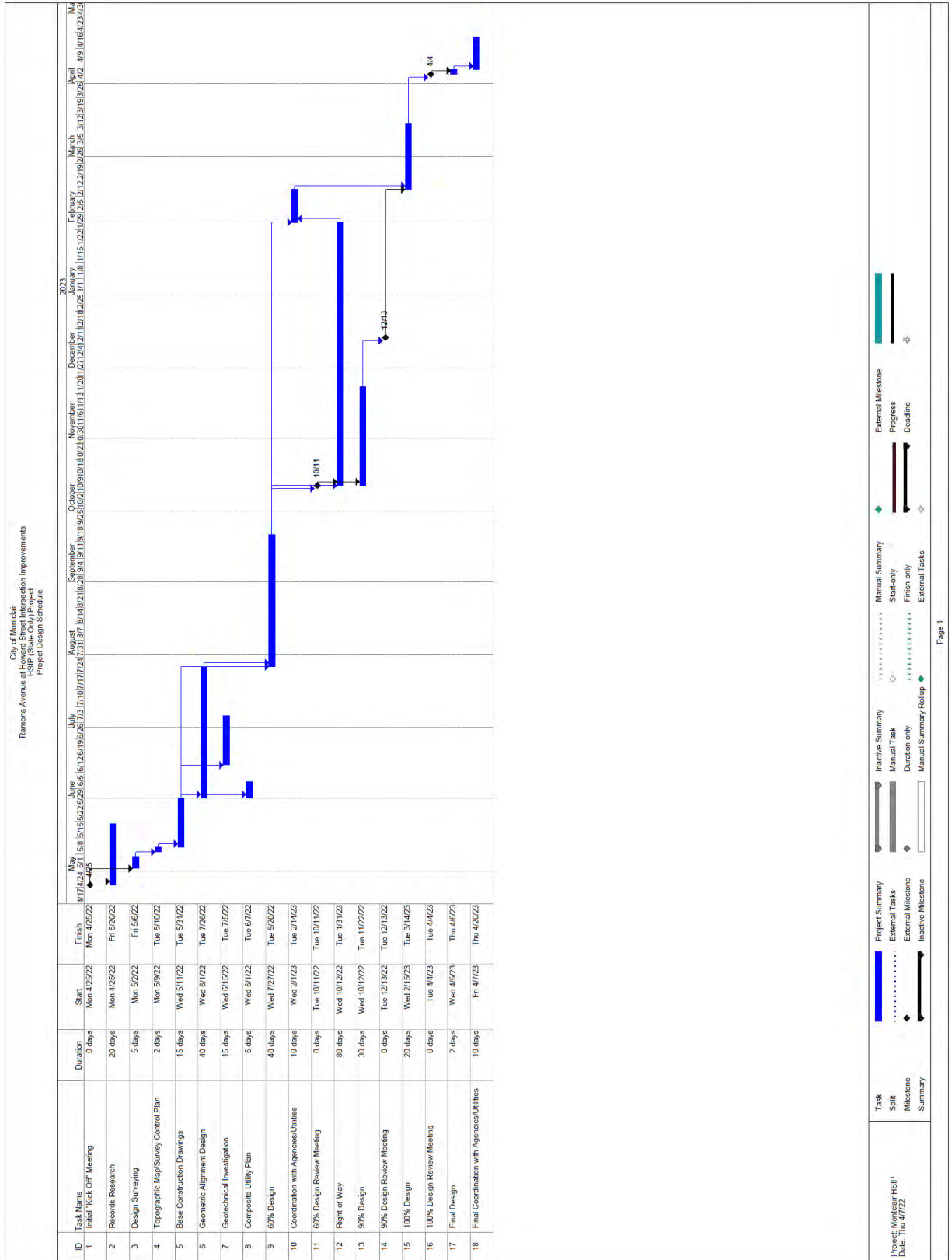
TASK NO. 19 ASSISTANCE DURING CONSTRUCTION

TKE shall attend the preconstruction meeting and upon receipt of redlined drawings, TKE will prepare a complete set of signed and stamped record drawings, which will reflect the improvements as constructed; any changes made during project construction. Said record drawings will be based on data furnished by the public agencies, the contractor, and the City.

Deliverables

Response to RFI's, Shop Drawing Submittals, and As-Built Preparation

SECTION D | PROJECT SCHEDULING



SECTION E | RESOURCE REQUIREMENTS

City of Montclair Engineering Design Services for Ramona Avenue and Howard Street Intersection Improvements HSIP (State Only) Project Resource Allocation Matrix						
Task No.	Task	Principal in Charge Hours	Project Manager Hours	Project Engineer Hours	Assistant Engineer/Designer Hours	Survey Crew Hours
Schedule I						
1.	Project Management	4	16	16		
2.	Initial "Kick Off" Meeting		4	4		
3.	Records Research		2	2	8	
4.	Design Surveying	2	2	2		20
5.	Topographic Map/Survey Control Plan	2	2	4	4	
6.	Base Construction Drawings	4	4	4	32	
7.	Geometric Alignment Design		8	16	64	
8.	Geotechnical Investigation ²⁾	2	2	2	2	
9.	Composite Utility Plan	2	2	4	16	
10.	60% Design	8	16	48	80	
11.	Coordination with Agencies/Utilities	2	8	24	8	
12.	60% Design Review Meeting		4	4	1	
13.	Right-of-Way	4	8	16	40	
14.	90% Design	4	8	32	56	
15.	Final Coordination with Agencies/Utilities	2	8	24	8	
16.	90% Design Review Meeting		4	4	1	
17.	100% Design	2	4	16	32	
18.	Bidding Assistance	2	2	4	8	
19.	Assistance During Construction	2	8	24	16	
	Subtotal:	42	112	250	372	20

TKE Engineering, Inc.



Engineering Design Services Ramona Avenue at Howard Street
 Intersection Improvements Program (HSIP Cycle 10) Project

City of Montclair



Exhibit B to Agreement No. 22-67

City of Montclair

Engineering Design Services for Ramona Avenue and Howard Street Intersection Improvements
HSIP (State Only) Project
Fee Schedule Breakdown

Task No.	Task	Principal in Charge		Project Manager		Project Engineer		Assistant Engineer/Designer		Clerical		Survey Crew		Subconsultants		Total		
		Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	
Schedule I																		
1.	Project Management	4	\$ 700	16	\$ 2,640	16	\$ 2,480			24	\$ 2,040						\$ 7,860	
2.	Initial "Kick Off" Meeting		\$ -	4	\$ 660	4	\$ 620			2	\$ 170						\$ 1,450	
3.	Records Research		\$ -	2	\$ 330	2	\$ 310	8	\$ 1,080	8	\$ 680						\$ 2,400	
4.	Design Surveying	2	\$ 350	2	\$ 330	2	\$ 310					20	\$ 4,800				\$ 5,790	
5.	Topographic Map/Survey Control Plan	2	\$ 350	2	\$ 330	4	\$ 620	4	\$ 540								\$ 1,840	
6.	Base Construction Drawings		\$ -	4	\$ 660	4	\$ 620	32	\$ 4,320								\$ 5,600	
7.	Geometric Alignment Design	4	\$ 700	8	\$ 1,320	16	\$ 2,480	64	\$ 8,640								\$ 13,140	
8.	Geotechnical Investigation ²⁾	2	\$ 350	2	\$ 330	2	\$ 310			2	\$ 170				\$ 5,890		\$ 7,050	
9.	Composite Utility Plan	2	\$ 350	2	\$ 330	4	\$ 620	16	\$ 2,160								\$ 3,460	
10.	60% Design	8	\$ 1,400	16	\$ 2,640	48	\$ 7,440	80	\$ 10,800	24	\$ 2,040						\$ 24,320	
12.	60% Design Review Meeting	2	\$ 350	8	\$ 1,320	24	\$ 3,720	8	\$ 1,080	8	\$ 680						\$ 7,150	
13.	Right-of-Way		\$ -	4	\$ 660	4	\$ 620			1	\$ 85						\$ 1,365	
14.	90% Design	4	\$ 700	8	\$ 1,320	16	\$ 2,480	40	\$ 5,400	8	\$ 680						\$ 10,580	
15.	Final Coordination with Agencies/Utilities	4	\$ 700	8	\$ 1,320	32	\$ 4,960	56	\$ 7,560	16	\$ 1,360						\$ 15,900	
17.	100% Design	2	\$ 350	8	\$ 1,320	24	\$ 3,720	8	\$ 1,080	8	\$ 680						\$ 7,150	
16.	90% Design Review Meeting		\$ -	4	\$ 660	4	\$ 620			1	\$ 85						\$ 1,365	
18.	Bidding Assistance	2	\$ 350	4	\$ 660	16	\$ 2,480	32	\$ 4,320	8	\$ 680						\$ 8,490	
19.	Assistance During Construction	2	\$ 350	2	\$ 330	4	\$ 620	8	\$ 1,080	4	\$ 340						\$ 2,720	
		2	\$ 350	8	\$ 1,320	24	\$ 3,720	16	\$ 2,160	2	\$ 170						\$ 7,720	
Subtotal:		42	\$ 7,350	112	\$ 18,480	250	\$ 38,750	372	\$ 50,220	116	\$ 9,860	20	\$ 4,800				\$ 135,350	
																Reimbursables (@3%):		\$ 4,061
																Project Total:		\$ 139,411

Rates:

Principle in Charge	\$ 175 /HR
Project Manager	\$ 165 /HR
Project Engineer	\$ 155 /HR
Assistant Engineer/Designer	\$ 135 /HR
Clerical	\$ 85 /HR
2-Man Survey Crew	\$ 240 /HR

Notes:

- 1.) Reimbursables Include Cost for Prints, Copies, Mileage, Etc.
- 2.) Subconsultant Fees for Aragon Geotechnical, Inc.

TKE Engineering, Inc.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	TRN240
SECTION:	CONSENT - AGREEMENTS	DEPT.:	CITY MGR.
ITEM NO.:	10	PREPARER:	E. STARR
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-68, THE SEVENTH AMENDMENT TO COOPERATIVE AGREEMENT NO. 91-065 WITH THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY RELATED TO THE MANAGEMENT OF JOINTLY OWNED PROPERTY AT THE MONTCLAIR TRANSCENTER SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City and the San Bernardino County Transportation Authority (SBCTA) wish to amend Agreement No. 91-65 related to certain authorities, insurance requirements and easement privileges related to the maintenance and operation of the Montclair Transcenter and real property jointly owned and operated by the City and SBCTA. The Montclair City Council is the City's approving authority for amendments to Cooperative Agreement No. 91-65 between the City and SBCTA.

A copy of Agreement No. 22-68 with SBCTA is attached for City Council review and consideration.

BACKGROUND: The City of Montclair and San Bernardino County Transportation Authority (SBCTA) jointly own and manage 1.6 acres of property at the Montclair Transcenter currently used as open space and a childcare facility. The original contract, Agreement No. 91-65, was entered into on December 16, 1992, between the Montclair Redevelopment Agency (RDA) and San Bernardino Associated Governments (SANBAG).

On January 12, 2012, the City became the successor agency to the RDA pursuant to California Health and Safety Code Section 34173.

On January 1, 2017, SBCTA became successor agency to SANBAG pursuant to California Public Utilities Code Section 130800, *et. seq.* — also known as the *San Bernardino County Transportation Authority Consolidation Act of 2017*.

The Parties (the City/RDA and SANBAG/SBCTA) have previously amended Agreement No. 91-065 on six different occasions:

1. On April 7, 1993, to provide for the establishment of a Day Care Facility on the Site;
2. On December 6, 1995, to add the City as a party to the Cooperative Agreement; to transfer certain property to the State of California in exchange for State properties; to add a new Maintenance and Reimbursement section for maintenance costs; add new Section XIV related to Indemnification; and to add new Sections XV, XVI, and XVII;
3. On August 17, 1999, to allow the RDA to be the lead agency in negotiating and administering agreements and leases for the development of the Site, and establishing the rights of the Parties in approving development for the Site and execution of leases;

4. On August 7, 2002, allowing the City to be reimbursed by Authority for construction management services for a second platform;
5. On April 2, 2003, to assign to City maintenance responsibility of the northern platform extension, southern platform and landscape area; and
6. On February 7, 2007, to clarify the management responsibility of the Site; reimbursement of Transcenter security costs for a two-year period; and reimbursement of maintenance expenses for the first two years relating to the pedestrian undercrossing below the Metrolink platforms.

The Parties wish to amend Agreement No. 91-065 a seventh time, as follows ("City" is the City of Montclair, "Authority" is SBCTA, and "Site" is the subject property):

1. Article V. Section 4.06, Development of the 1.61 Acre Site is deleted in its entirety and replaced to include the following:
 - a. City, at its cost, shall act as lead agency in negotiating, entering into and administering agreements and leases for development of the Site. Such authority, to include, but not be limited to, screening and selection of tenants and uses; entering into or amending any Site lease; determining, collecting, depositing and disbursing rents, charges and fees; extending tenancies; commencing evictions; executing notices to vacate; and initiating judicial proceedings. Collectively, each of the preceding actions hereafter to be known as "Lease Administration Services."
 - b. City shall provide Authority with a copy of each proposed or amended lease agreement and a written statement that the City has negotiated terms in a reasonable and good faith manner.
 - c. City may engage in any non-binding alternative dispute resolution process arising from the Site leases; and Authority shall be bound by any judgement entered into by a court of competent jurisdiction to the extent necessary for City to comply with the judgement. Provided, however, the City is not released from any responsibility, obligation, liability, or duty under or pursuant to the Agreement; nor does Authority waive any rights or remedies provided in the Agreement, or available to Authority pursuant to or at law or equity.
 - d. City may retain for its use three percent of all gross lease and other income producing agreement revenue from the Site to pay for Lease Administration Services.
 - e. City shall retain that portion of gross lease and other income producing agreement revenue for City's provision of security and maintenance of the Transcenter and any facilities, grounds and/or capital improvements at the Transcenter.
 - f. Any excess income shall be equally divided between City and Authority, and City shall provide a Authority a semi-annual reconciliation of gross lease and other income producing agreement revenue, if any, and City Lease Administration Services, and maintenance, security, and improvement-related expenses.

6. Article XIV – appends the following sentence to Article XIV, Indemnification:
 - a. *Each Party shall obtain and maintain, during the time this Agreement as amended is in effect, adequate insurance or self-insurance to cover its liability, defense and indemnification obligations in order to protect itself and the other Party.*
7. Article XIX, Pedestrian Undercrossing Maintenance makes minor language change.
8. Adds Article XX, Pedestrian Undercrossing Access Rights, provides for the following:
 - a. For the term of Agreement No. 91-065, Authority grants City an access easement for pedestrian egress and ingress from and between the Transcenter Pedestrian Undercrossing and the public easement on the site of the Village Partners Project; i.e., Village at Montclair. The pedestrian access right is a continuation of adjoining public access easements dedicated to City, which together provide access to the Pedestrian Undercrossing across the south line of Authority's right-of-way. The easement will be open to the public during hours in which City provides security at the Transcenter. Physical access across Authority's south right-of-way must be secured against unauthorized access during times the City does not provide security at the Transcenter (via a secured gate). The easement extinguishes if the Pedestrian Undercrossing is permanently removed, the adjoining public access easements dedicated to City are extinguished, or Agreement No. 91-065 is terminated.

FISCAL IMPACT: Pursuant to Section 4.08 and Section 5.06 of proposed Amendment No. 7 to Agreement No. 91-65, the requirement for annual reimbursement of fifty percent of the cost of property insurance, to be paid by the City to SBCTA, is not expected to exceed \$20,000 in the first year of the amended agreement.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-68, the seventh amendment to Cooperative Agreement No. 91-065 with the San Bernardino County Transportation Authority (SBCTA) related to the management of jointly owned property at the Montclair Transcenter subject to any revisions deemed necessary by the City Attorney.

**AMENDMENT NO. 7 TO
COOPERATIVE AGREEMENT 91-065
BETWEEN THE
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
AND
THE CITY OF MONTCLAIR**

This Amendment No. 7 to Cooperative Agreement No. 91-065 is hereby made and entered into and effective this 6th day of July, 2022, by and between the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA) and the CITY OF MONTCLAIR (CITY) with regard to the management of jointly owned property at the Montclair Transit Center.

WHEREAS, under SANBAG Contract No. 91-065, dated December 16, 1991, SAN BERNARDINO ASSOCIATED GOVERNMENTS (SANBAG) and the CITY OF MONTCLAIR REDEVELOPMENT AGENCY (RDA) entered into an agreement (Cooperative Agreement), pursuant to which the parties agreed to purchase and develop a transit center (hereafter, the “Transcenter”) upon that certain parcel of real property of approximately 22.147 acres located within the City of Montclair; and

WHEREAS, SANBAG and RDA amended the Cooperative Agreement by the first amendment of the Cooperative Agreement on April 7, 1993, to add Paragraph 4.07, Establishment of Day Care Facility on Transcenter Site; and

WHEREAS, SANBAG and RDA amended the Cooperative Agreement by the second amendment to the Cooperative Agreement (CITY Agreement No. 95-66) on December 6, 1995, to add the CITY as a party to the Cooperative Agreement to transfer certain property to the State of California pursuant to Paragraph 4.05, Exchange for State Properties, and to add new Section XIII, Maintenance and Reimbursement for Maintenance Costs; new Section XIV, Indemnification; and new Sections XV, XVI, and XVII; and

WHEREAS, SANBAG, CITY and RDA amended the Cooperative Agreement by the third amendment to the Cooperative Agreement (CITY Agreement No. 99-70) on August 17, 1999, to allow the RDA to be the lead agency in negotiating and administering agreements and leases for the development of the plus or minus 1.61 acre site within the Transcenter retained by SANBAG and RDA for development and establishes the rights of the parties in approving development of the site and execution of leases; and

WHEREAS, SANBAG, CITY and RDA amended the Cooperative Agreement, by the fourth amendment (CITY Agreement No. 02-103) on August 7, 2002, allowing the CITY to be reimbursed by SANBAG for construction management services with the construction of a second platform in an amount not to exceed \$62,500; and

WHEREAS, SANBAG, CITY and RDA amended the Cooperative Agreement by a fifth amendment (CITY Agreement No. 03-40) on April 2, 2003, to assign to CITY the maintenance responsibility of the northern platform extension, southern platform and landscape area; and

WHEREAS, SANBAG, CITY and RDA amended the Cooperative Agreement by the sixth amendment (CITY Agreement No. 07-26) on February 7, 2007, to clarify the management responsibility of jointly owned property, the reimbursement of the provision of security for a two-year period at the Transcenter, and the reimbursement of maintenance expenses for the first two years relating to the pedestrian undercrossing at the Montclair Metrolink Station; and

WHEREAS, on January 12, 2012, the CITY became the successor agency to the RDA pursuant to California Health and Safety Code Section 34173; and

WHEREAS, on January 1, 2017, SBCTA became the successor agency to SANBAG pursuant to California Public Utilities Code Section 130800 et. seq., also known as the San Bernardino County Transportation Authority Consolidation Act of 2017; and

WHEREAS, SBCTA and CITY (collectively PARTIES and individually PARTY) desire to further amend the aforesaid Cooperative Agreement to clarify the responsibility of the PARTIES with respect to the insurance of assets under the Cooperative Agreement and the apportionment of costs for said insurance.

NOW THEREFORE, the PARTIES hereto do mutually agree to amend the Cooperative Agreement as follows:

1. The recitals above are true and correct and are hereby incorporated herein by this reference.
2. Except as specifically amended by this Amendment No. 7, all other provisions of the Cooperative Agreement, as amended by Amendments Nos. 1 through 6 inclusive, shall remain in full force and effect.
3. All references in the Cooperative Agreement to SAN BERNARDINO ASSOCIATED GOVERNMENTS or SANBAG shall mean SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA). All references in the Cooperative Agreement to CITY OF MONTCLAIR REDEVELOPMENT AGENCY or RDA shall mean CITY OF MONTCLAIR (CITY).
4. Article IV, Section 4.06 Development of the 1.61 Acre Site, is DELETED in its entirety and REPLACED as follows:

Section 4.06 Development of the 1.61 Acre Site. CITY, at its cost, is authorized to act as the lead agency on behalf of the PARTIES hereto in negotiating, entering into and administering agreements and leases for the development of the 1.61 acre site (hereafter, the "SITE") shown as Area "A" on Exhibit "C" to Amendment No. 2. Such administration of leases includes, but is not limited to, screening and

selection of tenants and uses; entering into or amending any lease for use of the SITE; determining, collecting, depositing and disbursing rents, charges, fees, and/or deposits of any other amount payable or receivable with respect to the occupancy of the SITE; extending or terminating tenancies; commencing evictions, executing notices to vacate, and initiating judicial proceedings to effect such actions (collectively, the “Lease Administration Services”). CITY shall enter into leases and perform the Lease Administration Services in a reasonable and good faith manner. CITY, prior to amending a lease or entering into a new lease, shall provide SBCTA staff with a copy of each proposed amended or new lease and a written statement that CITY has negotiated terms of each amended or new lease in a reasonable and good faith manner. CITY may engage in any non-binding alternative dispute resolution arising from leases, provided CITY provides SBCTA notice of disputes and SBCTA has the option to participate in any such dispute resolution process. SBCTA shall be bound by any judgment entered into by a court of competent jurisdiction affecting the Non-Operating Property, to the extent necessary for CITY to comply with the judgment; provided, however, that CITY acknowledges and agrees that CITY is not released or relieved of or from any responsibility, obligation, liability or duty under or pursuant to this Agreement by SBCTA’s agreement to be bound by such judgments, nor does SBCTA waive any rights or remedies provided hereunder or available pursuant to or at law or in equity. Lastly, notwithstanding anything to the contrary elsewhere in this Agreement, CITY may retain for its use 3% of all gross lease and other income producing agreement revenue from the SITE to pay the reasonable cost of CITY’s Lease Administration Services. In addition, CITY shall retain that portion of gross lease and other income producing agreement revenue as reasonably determined necessary by CITY for CITY’s provision of security and maintenance for the Transcenter as identified in Article XIII of this Agreement and any facility, grounds, and capital improvements thereon. Any income in excess of that which is required, as reasonably determined by CITY, for reasonable Lease Administration Services and as needed for Transcenter maintenance and security costs and facility, grounds, and/or capital improvements, shall be equally divided between the CITY and SBCTA. CITY shall provide SBCTA a semi-annual reconciliation of gross lease and other income producing agreement revenue, if any, CITY Lease Administration Services, and CITY’s Transcenter maintenance, security and improvement-related expenses including facility, grounds, and/or capital improvements. Notwithstanding the provisions of this section, CITY and SBCTA agree that if SITE is developed as a parking field to accommodate extension of light rail service to, and light rail platform service at, the Transcenter, CITY and SBCTA mutually agree that public use of the SITE for public parking shall not be subject to the provisions of this Section.

5. ADD Article VI, Section 4.08 CITY Provided Insurance:

Section 4.08 CITY Provided Insurance. CITY shall obtain and maintain property insurance covering the Non-Operating Property shown as Area “A” on Exhibit “C”. Such insurance must be in such types and amounts as are or should be reasonably and typically maintained from time to time by CITY for other property owned by

CITY, provided that, in any event, CITY shall provide SBCTA with an endorsement naming SBCTA as an additional insured. In the event of any damage to the Non-Operating Property, CITY and SBCTA shall reasonably cooperate with each other in obtaining and using proceeds of such insurance to repair such damage; provided, however, CITY may be self-insured up to the limits of its self-insured retention fund, and CITY shall have final say as to effecting repair of any damage to Non-Operating Property; provided, however, that in no case shall SBCTA be required to contribute any money toward said repair beyond insurance proceeds paid to SBCTA from such CITY obtained and maintained property insurance or self-insurance described in this Section 4.08. CITY shall annually reimburse SBCTA for fifty percent (50%) of the cost of property insurance provided by SBCTA under Section 5.06 one fiscal year in the arrears.

6. ADD Article V, Section 5.06 SBCTA Provided Insurance:

Section 5.06 SBCTA Provided Insurance. SBCTA shall obtain and maintain real property insurance covering the Station Platforms, the canopies within SBCTA right-of-way, and the Pedestrian Undercrossing in amounts as are or should be reasonably and typically maintained from time to time by SBCTA for other real and personal property owned by SBCTA, provided that SBCTA shall provide CITY with an endorsement naming CITY as an additional insured on all such policies. In the event of any damage to the Station Platforms or canopies, CITY and SBCTA shall reasonably cooperate with each other in obtaining and using the proceeds of such insurance to repair such damage. Each fiscal year SBCTA shall notify CITY of the cost of insurance described in this Section 5.06 in the then current fiscal year no later than January 31st of each fiscal year, and shall invoice CITY for reimbursement of fifty percent (50%) of the cost of the insurance provided under this Section 5.06.

7. Article IX, Section 8.01 Distribution to Parties is DELETED in its entirety and REPLACED as follows:

Section 8.01 Distribution to Parties. All proceeds that may accrue to the PARTIES under this Agreement shall be distributed to the PARTIES hereto in equal shares.

8. Article XIII, Paragraph 13.06 DELETE the instance of “fifteen (15)” and REPLACE with “thirty (30)”; DELETE the word “insuring” and REPLACE it with “ensuring”; DELETE the word “insure” and REPLACE it with “ensure”.

9. APPEND the following sentence to Article XIV, **INDEMNIFICATION**:

Each PARTY shall obtain and maintain, during the time this Agreement as amended is in effect, adequate insurance or self-insurance to cover its liability,

defense and indemnification obligations in order to protect itself and the other PARTY.

10. Article XIX, **Pedestrian Undercrossing Maintenance**, DELETE the word “insure” and REPLACE it with “ensure”.

11. ADD Article XX, **Pedestrian Undercrossing Access Rights**:

For the term of this Agreement, SBCTA shall grant to CITY an access easement for pedestrian egress and ingress from Lot 107 of the College Heights Tract, recorded in Book 17 of Maps, Pages 77 and 78, records of San Bernardino County, California, subject to the provisions of this Article. This pedestrian access right is a continuation of adjoining public access easements dedicated to CITY on Tract Map No. 20273, which together provide access to the Pedestrian Undercrossing across the south line of SBCTA’s right of way. The easement to be granted will be open to the general public during the hours which CITY provides security at the Transcenter. Physical access across SBCTA’s south right of way line pursuant to the easement for pedestrian access must be secured against unauthorized access during the times which CITY does not provide security at the Transcenter. The easement will extinguish if the Pedestrian Undercrossing is permanently removed, the adjoining public access easements dedicated to CITY on Tract Map No. 20273 are extinguished, or this Agreement is terminated.

[Signatures on the following page.]

IN WITNESS WHEREOF, the authorized PARTIES have signed below;

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

CITY OF MONTCLAIR

By: _____
Art Bishop
Board President

By: _____
Javier John Dutrey
Mayor

Date: _____

Date: _____

APPROVED AS TO FORM

ATTEST

By: _____
Julianna K. Tillquist
SBCTA General Counsel

By: _____
Andrea M. Myrick
City Clerk

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____
Diane E. Robbins
City Attorney

Date: _____



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	TRC600
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	11	PREPARER:	M. HEREDIA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-69 WITH MCCAIN TO UPGRADE THE CENTRAL MANAGEMENT SOFTWARE FOR TRAFFIC SIGNAL OPERATIONS SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City has been a long-standing user of McCain's QuicNet Pro software as its centralized traffic management system. This system fully supported the City's field traffic controller and software. However, QuicNet Pro has reached the end of its development life cycle, and there is a need for the City to migrate to a newer central management system. McCain is proposing Transparency TMS. This new system, developed in 2013, is currently being used by over 100 agencies, including neighboring Southern California agencies of Azusa, Downey, Pasadena, and Menifee, among others.

The City Council is requested to consider approval of Agreement No. 22-69 with McCain to upgrade the central management software for traffic signal operations. McCain has provided a quote for the upgrade, which is attached for City Council's review. Once the contract is received, the City Attorney will review prior to the City's signature.

BACKGROUND: QuicNet Pro is a software that has met the needs of hundreds of agencies for several decades. However, the architecture and programming language of QuicNet Pro is outdated. Built on a code that is more than 20 years old, QuicNet Pro is not compatible with the platforms that the newest operating systems are built on. While McCain still provides some basic technical support for QuicNet Pro, McCain does not offer any engineering support, meaning bug fixes and feature updates will no longer be provided.

QuicNet Pro was developed to explicitly communicate with legacy traffic controllers, which utilized a proprietary communication protocol (QuicComm). As the National Transportation Communications for Intelligent Transportation Systems Protocol (NTCIP) became more widely adopted by the Transportation industry, QuicNet Pro is not equipped to support NTCIP as the software platform does not have the capacity for additional device communication protocols.

Transparency is a .NET service-oriented software platform designed to meet the existing and emerging needs of the transportation industry. The architecture of Transparency is completely modernized and web-ready, providing immeasurable benefits in productivity, new device and software integration, and usability. With this architecture in place, Transparency has a built-in guard against becoming obsolete.

As new interfaces relating to web, mobile applications, and third-party software integrations emerge, the services of Transparency are ready to supply the data necessary to populate such interfaces. Transparency was designed from its inception to support NTCIP protocols between center-to-field devices and center-to-center applications. At the

same time, Transparency also supports the legacy QuicComm protocol, providing agencies with a migration path from legacy field devices to modern traffic controllers. McCain is the sole provider of Transparency, which is fully compatible with the City's existing 170 traffic controller hardware and 233 local software. The older 200 local software can also be compatible with a simple chip swap. An advantage of sole-sourcing the Transparency software is reducing costs by not having to replace the current traffic controllers. As an existing QuicNet Pro user, the City can reuse the timing databases and graphics and automatically migrate the system configuration to Transparency.

This results in further cost and time savings for the City as there is no need to recreate any of these essential central system objects manually. Transparency can also utilize the existing communications equipment and connections that QuicNet Pro uses. Again, this saves the City from added costs by reducing the system "downtime."

Finally, McCain's history of working with the City provides an intimate familiarity of the City's traffic system needs that cannot be replicated by any other provider.

FISCAL IMPACT: McCain Inc. quote to update to Transparency is \$64,275. Funds in the amount of \$65,000 were included in the Fiscal Year 2021-22 budget for this software update.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 22-69 with McCain to upgrade the central management software for traffic signal operations subject to any revisions deemed necessary by the City Attorney.



QUOTE

June 14, 2022

From: Ray Laigo
 McCain, Inc.
 2365 Oak Ridge Way
 Vista, CA 92081

Attn: Monica Heredia, P.E.
 Public Works Director/City Engineer - City of Montclair
 5111 Benito Street
 Montclair, CA 91763

Reference: Quote #RL061422 - Montclair, CA - Transparency TMS Upgrade

Dear Ms. Heredia

McCain is pleased to provide this quotation on the following item(s):

Item #	Qty	Unit	Description	Unit Cost	Ext. Cost
Central System Software <small>(see scope notes 1 & 2)</small>					
1	1	EA	Transparency Server - DELL R640	\$15,000.00	\$15,000.00
2	1	Lump	(ES-TMS-50) Transparency TMS with 50 licenses - discounted pricing	\$30,000.00	\$30,000.00
3	1	Lump	Remote installation and configuration	\$1,200.00	\$1,200.00
4	1	Lump	Database creation and system map configuration for up to 50 locations. <small>NOTE: Agency will use existing backgrounds from QuicNet or default backgrounds (default may not show proper intersection configuration)</small>	\$1,500.00	\$1,500.00
5	1	Lump	Field support for upgrades to 200CA at 22 locations (McCain provides free software upgrades and PROM chips)	\$5,600.00	\$5,600.00
Training, Testing, and Maintenance					
6	1	Day	Onsite Transparency TMS Training - at City of Montclair facility <small>(see scope note 3)</small>	\$2,400.00	\$2,400.00
7	1	Day	Onsite Acceptance Test - at City of Montclair facility <small>(see scope note 3)</small>	\$2,400.00	\$2,400.00
8	1	Yr	1-Yr. Software Maintenance Agreement for a system with up to 50 locations <small>(see scope note 4)</small>	\$7,325.00	\$7,325.00
				Total	\$65,425.00

To be paid according to the following Billing Schedule/Milestones	Billable Amount
Receipt of Transparency server	\$15,000.00
Completion of Transparency TMS installation, database creation, and system map configuration for up to 50 locations	\$32,700.00
Completion of field support for upgrades to 200CA at 22 locations	\$5,600.00
Completion of Onsite Transparency Training - sign-off from customer	\$2,400.00
Completion of Onsite Acceptance Test - sign-off from customer. This also marks project completion and start of 1-yr. maintenance period	\$9,725.00

Scope Notes:

- All labor is remote unless indicated otherwise. VPN or internet access is required to provide remote support. Prior to upgrade - City must provide an inventory of currently deployed local controller and software.
- Customer is responsible for ensuring that communications and detection is operational and for providing the network scheme, as applicable. Does not include field installation or timing conversion support.
- Training and testing will be onsite by McCain ITS Project Engineer. McCain requires 4-8 weeks advance notice for onsite work.
- Maintenance agreement covers a total of **ten (10)** hours that include telephone, email, or remote support and **two (2)** remote maintenance sessions each year. Maintenance cost is for a **standard** TMS implementation with up to **50** locations. **NOTE: As locations increase or more functionality is required e.g. C2C, CV, cost is subject to increase.**

Quote Notes:

- Discounted pricing only available through sole-source purchase. Additional licenses at \$1,000/ea. All prices are in US Dollars. All payments to be made in US Dollars.
- Purchase order (PO) must match line items in quote.
- Prices are firm for 30 days. Tax and freight are **not** included.
- All software available through remote download only.
- Sale is subject to McCain's standard terms and conditions.

Quotation prepared by:

Ray Laigo
 ITS Project Manager
 McCain, Inc.

cc: Lori Tackett, Senior Project Manager, McCain Inc.
 cc: Bob Ung, Director of ITS Solutions, McCain Inc.

The information contained in this document is intended for the person or entity to which it is addressed and may contain confidential and/or legally privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	ADM810
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ECONOMIC DEV.
ITEM NO.:	12	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-70 WITH PIVOTAL STRATEGIES LLC FOR COMMUNITY EDUCATION AND OUTREACH SERVICES RELATED TO A PROPOSED BALLOT MEASURE TO ESTABLISH A COMMERCIAL CANNABIS TAX SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-70 with Pivotal Strategies (formerly Cerrell) for community education and outreach services related to a potential proposed ballot measure to establish a commercial cannabis tax subject to any revisions deemed necessary by the City Attorney. The City Council approves all agreements for professional services. A copy of proposed Agreement No. 22-70 with Pivotal Strategies is attached for the City Council's review and consideration.

BACKGROUND: In 2019, the City Council conducted a series of special meetings regarding compliance with Proposition 64 (Adult Use of Marijuana Act, or "AUMA") and the potential for a series of draft ordinances, collectively known as the Medicinal and Adult-Use Cannabis Regulation and Safety Law (MAUCRSL) regulating commercial cannabis activities in the City of Montclair. The special meetings were conducted to present the City Council with concepts contained in the draft ordinances and to determine if the City Council desired to proceed with public hearings and possible adoption of said ordinances.

At the conclusion of the special meetings, the City Council elected to table the draft ordinances in order to further evaluate the regulation of commercial cannabis activities in the City of Montclair given the nascent nature of the cannabis industry in the state.

Since the series of special meetings, staff has continued to monitor the regulation and evolution of the commercial cannabis industry at both the state and local levels, paying close attention to local agencies that have chosen to allow commercial cannabis activities to occur in their jurisdictions.

Public Opinion Survey — FM3

At the March 7, 2022 City Council meeting, the City Council approved Agreement No. 22-15 with Fairbank, Maslin, Maullin, Metz and Associates (FM3) to conduct a public opinion survey focusing on cannabis-related issues including the viability of a commercial cannabis tax measure to be placed on the November 2022 ballot. FM3 is scheduled to present their findings of the public opinion survey at a City Council Workshop tentatively scheduled to be held on Monday, July 18, 2022.

In preparing for a possible commercial cannabis tax measure to be placed on the November 2022 ballot, staff was directed by the City Council to prepare all necessary documents pending City Council approval, and to hire a firm to conduct community education and outreach services.

In order to conduct community education and outreach services related to a proposed commercial cannabis tax measure, staff is recommending that the City contract with Pivotal Strategies LLC for community education and outreach services.

Community Education and Outreach Services

Community education and outreach is considered essential to the successful presentation of any tax measure to members of the public.

City of Montclair officials (elective and appointed officials and employees) are prohibited by state law from preparing or distributing materials in support of or opposition to a ballot initiative during working hours. However, City officials can prepare and distribute to citizens neutral fact sheets concerning the fiscal impact of a tax measure on agency revenues and possible impacts on expenditures. This effort can include the use of staff time to research the impact of a ballot measure for the purpose of gathering facts, and the use of third party consultants to advise and direct on an education effort.

Local governments can make an objective and fair presentation of facts as a normal and regular part of conducting local government affairs. Information may be distributed by using normal methods of communication, including newsletters, utility bill inserts, and other ways used to communicate with citizens.

The City Council, as the local governing body, may pass a resolution in support or opposition of a ballot proposition or measure at an open public meeting. Any required notice must include the title and number of the ballot measure, and members of the legislative body and public who hold an opposing view must be given an equal opportunity to express their views at the public meeting. For example, an elected official may make a statement of support or opposition; however, this exception does not extend to appointed officials or employees while on duty.

Members of the governing body may separately communicate opposition or support of a ballot measure, for example, as in a letter to the editor of a local newspaper of general circulation; however, there should be no implication in the letter that the writer is expressing an official position on behalf of the public agency.

City staff contacted several cities throughout the state that have recently passed commercial cannabis tax measures including the cities of Banning, Costa Mesa, Covina, El Monte, Hemet, Jurupa Valley, Moreno Valley, Oceanside, Pomona, Santa Ana, Santa Clara, Simi Valley, and West Hollywood in order to understand how those cities provided education and outreach services related to their respective commercial cannabis tax measures. Many of those cities noted that they used Pivotal Strategies for community education and outreach services pertaining to their proposed commercial cannabis tax measures. As a result, staff requested and obtained a quote from Pivotal Strategies for community education and outreach services.

Pivotal Strategies provided three different levels of service — Standard, Enhanced, and Premium. After reviewing the three levels of service, staff is recommending using the Standard level of service with two direct mailings both in English and in Spanish. The quote provided for these services would total \$40,550.

It should be noted that the City of Montclair has utilized the services of Pivotal Strategies (formerly Cerrell) for community education and outreach services in 2020 (Agreement No. 20-50) related to Measure L on the November 2020 ballot.

After careful consideration, staff has elected to use the services of Pivotal Strategies based on cost, familiarity with the City of Montclair, feedback from various other local government agencies who have utilized the services of Pivotal Strategies, and prior services provided to the City of Montclair. Staff is also recommending a \$10,000 contingency for additional services that may arise during the community education and outreach program.

Scope of Work

A copy of the full proposal provided detailing the full scope of services to be provided by Pivotal Strategies is attached as *Exhibit A* to this Agenda Report. The relevant scope of services is summarized as follows:

The Standard level focuses on core public education and engagement activities to raise awareness among Montclair residents and businesses about a proposed commercial cannabis tax measure.

1. Strategic Counsel:
 - Montclair needs a local, experienced and responsive consultant that can adapt their approach based on changes on the ground. Pivotal Strategies will be that guide directing which tools to use and when from our kickoff meeting through Election Day.
2. Brand Development
 - Every Pivotal Strategies municipal education program has a distinct brand, something that will resonate with residents and business owners as being local and authentic.
3. Message and Theme Development:
 - Pivotal Strategies will work to develop the themes and messages that will serve as the cornerstone for all public outreach and external communication activities.
4. Materials Development:
 - Based on the theme and messages, Pivotal Strategies will develop a set of multilingual collateral materials to communicate with residents. These materials will have the look and feel of other City materials and will be Pivotal Strategies' primary tool to disseminate messages to external audiences.
5. Message Dissemination:
 - Pivotal Strategies will work with the City to disseminate educational messages through its existing electronic and printed newsletters, to reach a broader audience and enhance educational efforts.
6. Media Relations:
 - To prevent any disinformation, Pivotal Strategies will support the City in engaging with key reporters and editors, mainly from the Inland Valley Daily Bulletin.
7. Online/Social Media:
 - Pivotal Strategies will complement traditional outreach methods with a robust online presence to reach the broadest audience of Montclair's residents. The City's existing channels already have established audiences among residents and business owners, and distributing messages through these trusted channels will ensure a greater acceptance of the messages and wider distribution.

FISCAL IMPACT: Approval of proposed Agreement No. 22-70 with Pivotal Strategies LLC would result in a total cost to the City of \$50,550, inclusive of a \$10,000 contingency, payable from the Economic Development Fund.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-70 with Pivotal Strategies LLC for community education and outreach services related to a proposed ballot measure to establish a commercial cannabis tax subject to any revisions deemed necessary by the City Attorney.

CONSULTING SERVICES AGREEMENT

This CONSULTING SERVICES AGREEMENT (this “**Agreement**”) will memorialize the terms and conditions of the engagement of PIVOTAL STRATEGIES LLC, a California limited liability company located for notice at 9619 National Blvd, Los Angeles, CA 90034 (“**Pivotal**”), by the undersigned (“**Client**”).

1. ENGAGEMENT; SERVICES.

1.1 **Engagement.** Client hereby engages Pivotal, and Pivotal accepts such engagement, during the Term (as defined below), pursuant to the terms and conditions set forth in this Agreement. During the Term, Pivotal shall render (i) those services set forth on the proposal delivered to Client by Pivotal attached as Exhibit A of this Agreement which is incorporated herein by reference (such proposal being the initial “**SOW**”), and (i) such other related services as Pivotal and Client may mutually agree to from time to time, which may be memorialized by additional SOWs, each of which will be incorporated herein by reference (collectively, the “**Services**”).

1.2 **Instructions.** Pivotal shall follow Client’s reasonable instructions, and shall devote such time to the performance of the Services as may be reasonable under the circumstances. Pivotal shall render the Services to or on behalf of Client in a professional manner, provided that Client’s instructions may request or require rendering of the Services in a manner in which Pivotal would otherwise determine to be against acceptable practices.

1.3 **Change Orders.** If either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other in writing. Pivotal, without creating any obligation to accept a change order, shall, within a reasonable time after such request provide a written estimate to Client of: (i) the likely time required to implement the change, (ii) any necessary variations to the fees and other charges for the Services arising from the change, (iii) the likely effect of the change on the Services, and (iv) any other impact the change might have on the performance of this Agreement. Notwithstanding the forgoing provisions of this Section 1.3, the Pivotal may, in its sole discretion, determine whether to accept or reject any change order.

2. TERM; TERMINATION.

2.1 **Term.** The term of this Agreement (the “**Term**”) shall commence on the date hereof and shall continue until November 11, 2022, provided that any new SOW entered into after the Term shall revive and reinstate the Agreement for a new Term. For the purpose of determining completion of the Services, the Services shall deemed complete upon **Pivotal**’s reasonable determination of completion of the Services to Client’s reasonable specifications and satisfaction. The Term shall be subject to earlier termination as provided in Section 2.2 below.

2.2 **Termination.** This Agreement, or any SOW, may be terminated prior to the expiration of the Term by either Party, with or without reason or cause (i.e. for “convenience”) by providing the other Party with at least ten (10) days’ advance written notice of termination. Upon any termination of this Agreement, or any SOW, Client shall immediately pay to Pivotal all accrued and unpaid expense reimbursements and Fees prorated through the effective date of termination with respect to the Agreement or terminated SOW(s).

3. **CONSIDERATION.**

3.1 **Fees Generally.** In consideration of its rendering of the Services, Client shall pay to Pivotal fees (“Fees”) set forth in the SOW with respect to Services. The Fees will be a non-refundable retainer, paid monthly, for the purpose of Client engaging Pivotal and causing Pivotal to dedicate and reserve substantial time, effort, and resources to Client regardless of whether or not Client actually avails itself of Pivotal’s time, efforts, and resources.

3.2 **Expenses.** Client agrees to reimburse Pivotal for all reasonable travel and out-of-pocket expenses incurred by Pivotal in connection with the performance of the Services [that have been approved in advance in writing by Client, including, without limitation, Pivotal personnel travel time from Pivotal’s office to Client, and license fees for third Party licenses necessary to render the Services.

3.3 **Invoicing.** Pivotal shall issue invoices to Client only in accordance with the terms of this Section, and Client shall pay all properly invoiced amounts due to Pivotal within thirty (30) days after Client’s receipt of such invoice, unless otherwise specified in the applicable SOW.

4. **INDEPENDENT CONTRACTOR.**

4.1 **Work Outside of Client.** Pivotal is, and at all times during the Term shall remain, an independent contractor under this Agreement. As such, Pivotal may perform services on behalf of other persons and entities. Pivotal represents however, that it is not, as of the effective date of this Agreement, aware of any conflict of interest, but in the event such a conflict should arise, Pivotal will promptly notify Client, and act in a commercially reasonable manner to resolve any such conflict.

4.2 **No Other Relationship.** Nothing in this Agreement shall be construed to create any employment relationship, partnership or other venture between Pivotal and Client. Neither Party shall have the authority whatsoever to bind the other Party to any agreement or other matter without the written approval of an authorized representative of the such Party. Neither Party shall hold itself out in any manner that is contrary to the relationship of independent contractor created by this Agreement, and neither Party shall become liable or have any obligation whatsoever by reason of any representation, act or omission to the contrary.

5. **REPRESENTATIONS AND WARRANTIES.**

5.1 **By Client.** Client represents, warrants, covenants, and agrees as follows:

5.1.1 **Right and Authority.** Client has the full right and authority to enter into this Agreement. The execution and delivery of this Agreement has been duly authorized and approved by Client, and the person signing this Agreement on Client’s behalf has due authorization to effectively bind Client hereunder.

5.1.2 **No Conflict.** Client’s execution of this Agreement will not violate, conflict with or result in a breach of any provision of, or constitute a default (or an event that, with notice or lapse of time, or both, would constitute a default) under, any contract or other obligation to which Client is a party or by which Client bound.

5.1.3 **No Infringement.** No materials provided by Client to Pivotal for integration into the Services will infringe upon the rights of any third party.

5.1.4 **Client Cooperation.** Client shall respond promptly, completely, and truthfully to any Pivotal request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Pivotal to perform Services in accordance with the requirements of this Agreement. Client shall provide such materials and/or information as Pivotal may reasonably request, in order to carry out the Services, in a timely manner, and ensure that it is true, complete, and accurate in all material respects

5.2 **By Pivotal.** Pivotal represents, warrants, covenants, and agrees as follows:

5.2.1 **Organization.** Pivotal is a limited liability company, duly formed under the laws of the State of California.

5.2.2 **Right and Authority.** Pivotal has the full right and authority to enter into this Agreement. The execution and delivery of this Agreement has been duly authorized and approved by Pivotal, and the person signing this Agreement on Pivotal's behalf has due authorization to effectively bind Pivotal hereunder.

5.2.3 **No Conflict.** Pivotal's execution of this Agreement will not violate, conflict with or result in a breach of any provision of, or constitute a default (or an event that, with notice or lapse of time, or both, would constitute a default) under, any contract or other obligation to which Pivotal is a party or by which Pivotal bound.

6. **DISCLAIMER AND LIMITATION OF LIABILITY.** The Services are provided "as is," "as available," with all faults and without any warranties, representations or conditions of any kind. Pivotal does not make any representations, warranties or conditions about the quality, accuracy, security, reliability, completeness, quiet enjoyment, currency, or timeliness of the Services. Pivotal does not assume any responsibility for any incompleteness, errors, problems, omissions, inaccuracies or other limitations in, or interruptions in the Services. To the fullest extent permitted by law, Pivotal disclaims all warranties, representations and conditions of any kind with respect to the Services and Deliverables, whether express, implied or collateral. To the fullest extent permissible by applicable law, Pivotal hereby disclaims all, and shall not be liable for any indirect, special, consequential, exemplary or punitive loss or damage, including lost profits or savings, even if Pivotal or Client has been advised of the possibility of the damages and regardless of any prior course of dealing between the Parties. Pivotal assumes no liability for any damage to, or loss relating to, Client's business resulting from any cause whatsoever. The maximum liability of Pivotal to Client arising out of or in connection with this agreement shall be limited to an amount equal to the total amount actually paid by Client to Pivotal under the SOW to which any claim relates, during the sixty (60) day period preceding any such claim. Client acknowledges Pivotal has set its prices and entered into this agreement in reliance on the limitations of liability and the disclaimers or warranties and damages set forth herein, and that the same form an essential basis of the bargain between the Parties. The Parties agree that the limitations and exclusions of liability and disclaimers specified in this agreement will survive and apply even if found to have failed of their essential purpose.

7. **ARBITRATION.** Any claim, controversy or other dispute between or among the Parties, or any of them, regarding any matter relating to this Agreement any breach or interpretation of this Agreement (each a "Dispute"), shall be settled and resolved by binding arbitration in Los Angeles, California, before a single arbitrator at ADR Services, Inc. ("ADRS"). The arbitration shall

be conducted in accordance with ADRS’s rules and procedures, except as expressly modified by this paragraph. In reaching a decision on any Dispute, the arbitrator shall be bound by the provisions of this Agreement and by the law that the Parties have selected to govern the enforcement and interpretation of this Agreement. The arbitrator’s decision on the Dispute shall be a final and binding determination, and such decision may be confirmed and shall be fully enforceable as an arbitration award in any court having jurisdiction and venue over the Parties. The arbitrator shall have exclusive jurisdiction to determine any questions of arbitrability. Each Party agrees to accept service of process for all arbitration proceedings in accordance with Section 8.7. Nothing in this paragraph shall prevent any Party from (i) seeking and obtaining injunctive or other equitable relief through an action in court; (ii) joining any Party as a defendant in any action brought by or against a third party; (iii) bringing an action in court to collect Fees, or effect any attachment or garnishment furtherance thereof; or (iv) bringing an action in court to compel arbitration as required by this paragraph.

8. **MISCELLANEOUS.**

8.1 **Entire Agreement.** This Agreement, together with all SOWs, exhibits, schedules, and attachments, contains the entire agreement among the Parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements or understandings among the Parties with respect thereto. The exhibits and schedules to this Agreement, including all prior and concurrent SOWs agreed to by the Parties, are incorporated into this Agreement by this reference.

8.2 **Survival.** The provisions of each of Sections 4-8, shall survive any termination or expiration of this Agreement.

8.3 **Governing Law; Submission to Jurisdiction.** This Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in the city of Los Angeles and County of Los Angeles, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party’s address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

8.4 **Assignment.** Except for the rights granted in the Deliverables, Client shall not assign any right or other interest provided to Client under this Agreement without Pivotal’s prior written consent, which Pivotal may withhold in its sole and absolute discretion. Client acknowledges that Pivotal may delegate certain work and duties to its ordinary subcontractors without further consent of Client.

8.5 **Amendment, Modification, and Waiver.** This Agreement may not be amended, modified or supplemented except pursuant to an instrument in writing signed by each of the Parties hereto, except that any Party to this Agreement may waive any obligation owed to such Party by another Party under this Agreement, provided such waiver is in writing. The waiver by any Party hereto of a breach of any provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

8.6 **Severability.** If any provision of this Agreement as applied to any Party or to any circumstance shall be found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstance, or the validity or enforceability of this Agreement, and any provision that is found to be void, invalid or unenforceable shall be curtailed and limited only to the extent necessary to bring such provision within the requirements of the law.

8.7 **Notices.** All notices, statements and other documents that any Party is required or desires to give to any other Party hereunder shall be given in writing and shall be served in person by express mail, certified mail, overnight delivery, or by email at the respective addresses of the Parties as set forth in the introductory paragraph, or at such other addresses as may be designated in writing by such Party in accordance with the terms of this paragraph. The time to respond to any notice shall run from the time the notice is actually delivered to the person to whom the notice is addressed.

8.8 **Binding Effect.** All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

8.9 **Further Acts.** Each Party shall execute and deliver all such further instruments, documents and papers, and shall perform any and all acts necessary to give full force and effect to all of the terms and provisions of this Agreement.

8.10 **Force Majeure.** Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, except for any obligations to make payments to the other Party hereunder, when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, without limitation: (i) acts of God; (ii) flood, fire or explosion; (iii) war, invasion, riot or other civil unrest; (iv) actions, embargoes or blockades in effect on or after the date of this Agreement; (v) national or regional emergency; (vi) strikes, labor stoppages or slowdowns or other industrial disturbances; (vii) compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; (viii) shortage of adequate power or telecommunications or transportation facilities; or (ix) any other event which is beyond the reasonable and actual control of such Party (each of the foregoing, a "**Force Majeure Event**"). A Party whose performance is affected by a Force Majeure Event shall give notice to the other Party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event. During the Force Majeure Event, the non-affected Party may similarly suspend its performance obligations until such time as the affected Party resumes performance. The non-affected Party may terminate any affected Statement of Work if such failure or delay continues for a period of sixty (60) days or more. Unless this Agreement is terminated pursuant to the foregoing sentence, the Term of this Agreement shall be automatically extended by a period equal to the period of suspension.

8.11 **Client Delay.** If Pivotal's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants or employees, Pivotal shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay.

8.12 **Construction.** Whenever used in this Agreement, the terms “including,” “include,” “includes” and the like are not intended as terms of limitation, and, hence, shall be deemed to be followed by “without limitation.”

8.13 **Counterparts.** This Agreement may be executed in one or more counterpart signature pages, including PDF signature pages, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of June 20, 2022.

“Pivotal”

PIVOTAL STRATEGIES LLC

By: _____
Name: Brandon Stephenson
Its: Founding Partner

“Client”

CITY OF MONTCLAIR

By: _____
Name: Javier John Dutrey
Its: Mayor

Attest:

By: _____
Name: Andrea M. Myrick
Its: City Clerk

Approved as to Form:

By: _____
Name: Diane E. Robbins
Its: City Attorney

EXHIBIT A
Statement of Work

This statement of work (this “SOW”) is made with reference to that certain CONSULTING SERVICES AGREEMENT (the “MSA”), and will memorialize additional terms and conditions of the engagement of PIVOTAL STRATEGIES LLC, by the CITY OF MONTCLAIR (“Client”), under the MSA.

Pivotal Strategies will conduct public education services in collaboration with the City regarding a potential November 2022 ballot measure. Exhibit A includes the full scope.

In consideration of the services to be provided by Pivotal, the City of Montclair shall pay Pivotal a monthly fee of \$5,500 with proration for the months of June and November as identified in Section 2.1 of this agreement. In addition, the program specified in the proposal dated June, 15, 2022, recommends the City send two direct mail pieces to registered households within the City at a cost of \$6,350 per standard letter-sized 8.5 x 11” mailing. Other program costs include up to \$2,000 in professional translation of public education materials to Spanish. The total program cost is a not-to-exceed amount of \$40,550.

Ratification and Extension of Term. In the event of any conflict between the MSA, and this SOW, this SOW shall control. Notwithstanding any provision of the MSA which is not specifically contradicted by this SOW, the MSA is hereby ratified by the Parties, and shall remain in full force and effect until terminated pursuant to its terms. In the event that the MSA has previously expired or been terminated, this SOW shall act to reinstate the MSA, and once again ratify its terms. On that basis, the Parties hereby reaffirm their obligations under the MSA (whether or not the MSA has previously expired or been terminated) as modified herein and hereby, and accordingly the Term of the MSA will be extended pursuant to Section 2 of the MSA. All capitalized or defined terms not defined herein have the meaning set forth in the MSA.

IN WITNESS WHEREOF, the Parties hereto have executed this SOW effective as of June 20, 2022.

“Pivotal”
PIVOTAL STRATEGIES LLC

By: _____
Name: Brandon Stephenson
Its: Founding Partner

“Client”
CITY OF MONTCLAIR

By: _____
Name: Javier John Dutrey
Its: Mayor

Attest:

By: _____
Name: Andrea M. Myrick
Its: City Clerk

Approved as to Form:

By: _____
Name: Diane E. Robbins
Its: City Attorney

BALLOT MEASURE PUBLIC EDUCATION PROGRAM

June 15, 2022





9619 National Blvd.
Los Angeles, CA 90034
Phone: 310.736.2337

June 15, 2022

Mikey Fuentes
Director of Economic Development and Housing
City of Montclair
Sent via email to mfuentes@cityofmontclair.org

Re: Pivotal Strategies Proposal for Public Education Services

Dear Mr. Fuentes,

Thank you for speaking with us about the City of Montclair's ongoing discussions regarding a potential revenue measure for the November 2022 election cycle. We appreciated your time and the information you provided.

Pivotal Strategies (Pivotal) has the ballot measure, communications, and community engagement expertise, coupled with the local knowledge, needed to effectively run Montclair's ballot measure public education program. We have a passion for working with and strengthening cities. We're storytellers who take complex or controversial issues, simplify them, and create engaging communications programs to educate diverse communities.

We can immediately become Montclair's partner and launch a customized, integrated, and bilingual education program to ensure constituents understand all aspects of a cannabis tax measure. We will construct a narrative demonstrating the City's strengths and challenges, why the Council is considering the measure, and most importantly the effects on City services, infrastructure, and facilities if the measure is approved or rejected by voters.

Our team is made up of experts with the skills and experience necessary to meet the City's needs, from developing the strategic framework of the program to providing the City with the tools to communicate and educate the Montclair community. Our previous work for Montclair in 2020 on Measure L illustrates our expertise.

Our team has built countless successful strategic communications and community engagement programs to help cities, counties and other government agencies create compelling narratives and engage communities on a wide range of issues. No matter the size, location, or demographics of a city, we always customize our education programs. From what messages should be communicated, to when and how, our approach ensures the most effective program communications possible.

Our team's public education and ballot measure work covers diverse cities such as Burbank, Costa Mesa, Culver City, Downey, Duarte, El Monte, Glendale, Los Alamitos, Montclair, Norwalk, Ontario, South El Monte, and Westminster among others. These cities can attest to the effectiveness of our programs and the ease of integration we had with their teams.

We're pleased to submit to the following information about how we would collaborate with the City on this important matter. We thoroughly enjoyed our previous partnership with the City

educating residents on Measure L and we hope we're ultimately selected as the City's partner for this public education program.

Moving Forward Together

Based on our conversation, the City has an important story to tell. Residents should be made aware of the current legal status of cannabis operations within the City as well as the specific nature of a potential ballot measure to capture general fund revenue through a tax on the five stages of the cannabis supply chain – cultivation, manufacturing, distribution, transportation, and retail.

Perhaps more than any issue, cannabis holds a mystique that we intend to dispel and clarify through our outreach. It's crucial that residents and voters receive clear and concise information on legalized cannabis operations, including where they can be located within the City and the strict regulatory nature of the industry.

As you've seen from our team's previous work with the City, Montclair's partnership with Pivotal will take the City through every step of a ballot measure's public education lifecycle. From Day 1, we'll be by your side providing the expertise cities have come to expect from us.

We'll translate the information from the City's polling into compelling messages and meaningful actions, as we launch a program to educate the public about the Council's consideration of a ballot measure. And we'll keep our integrated and innovative communications going through Election Day if the Council decides that placing a measure before voters is in the City's best interests.

Voters must understand the reasons why the Council made this decision, the measure's accountability measures, and the tangible impacts the measure will have on their community. More importantly, they must understand the effects of the proposed measure on them, their families and businesses, and their quality of life.

Like all cities trying to educate constituents about a new program or potential revenue measure, Montclair will face challenges – competing measures at the County or state level, potential stakeholder groups or outside entities attacking the measure, potential voter apathy. These challenges are not reasons to stop the City from moving forward; rather, these challenges highlight the need to have a robust communications program.

We pride ourselves on following the letter and spirit of communications regulations. This includes following the rules that govern the type of messages that can be communicated by a government entity for an education program. Our messages and activities will be educational only, without any advocacy or spin. We believe that all activities and messages should be reviewed by the City Attorney or other legal counsel to maintain the highest ethical standards.

Scope of Work

To provide the City with some options and flexibility, we've presented two levels of service – standard and premium. While it is our recommendation to employ the most comprehensive program, surrounding residents in multiple ways with our public education messages, we have presented these varying levels to work within your budget parameters.

Standard

The Standard Level focuses on core public education and engagement activities to raise awareness among Montclair residents and businesses about the City's financial situation and the challenges that remain. Over the life of this program, we will gradually weave in messages focused on a potential cannabis legalization and tax revenue measure building toward the Council's decision on whether to place a November 2022 measure before voters.

- **Strategic Counsel:** Montclair needs a local, experienced and responsive consultant that can adapt their approach based on changes on the ground. We'll be that guide directing which tools to use and when from our kickoff meeting through Election Day.
- **Program Launch Meeting:** We'll quickly coordinate a team meeting to go over our proposed program and timing. The meeting will allow us to have a thorough discussion about the survey results and ensuring we're moving forward with a consensus approach. This would be followed by brief weekly calls.
- **Brand Development:** Every Pivotal municipal education program has a distinct brand, something that will resonate with residents and business owners as being local and authentic. Since a measure wouldn't receive a letter designation until approximately August, creating a unique brand for the program will allow all messages and materials to be seen as part of a unified voice on the City's behalf. As we did with the Measure L program, we'd work with you to customize the branding and logo for Montclair's efforts for this election.
- **Message and Theme Development:** We'll develop the themes and messages that will serve as the cornerstone for all public outreach and external communication activities. These messages will rely heavily on those tested in the survey research and will incorporate existing messages the City uses to communicate with its constituents. We will create a core messaging document from which all written and verbal communications will be based.
- **Materials Development:** Based on our theme and messages, we will develop a set of bilingual collateral materials to communicate with residents. These materials would have the look and feel of other City materials and would be our primary tool to disseminate messages to external audiences. Materials could include the following:
 - Fact sheet
 - Frequently Asked Questions (FAQ) document
 - PowerPoint presentation
 - Palm Card (for public events)
- **Message Dissemination:** We will work with the City to disseminate educational messages through its existing electronic and printed newsletters, to reach a broader audience and enhance our educational efforts. Additionally, we recommend that our materials be placed in all City facilities and explore utilizing other City communications platforms to distribute our messages/materials.
- **Media Relations:** One of the quickest ways for a public communications program to spin out of control is for the media to misinterpret the City's intentions or the potential community impact of a revenue-generating measure. To prevent any misunderstanding, we will support

the City in engaging with key reporters and editors, mainly from the *Inland Valley Daily Bulletin*.

- **Online/Social Media:** We will complement our traditional outreach methods with a robust online presence to reach the broadest audience of Montclair’s residents. The City’s existing channels already have established audiences among residents and business owners and distributing our messages through these trusted channels will ensure a greater acceptance of the messages and wider distribution.
 - **Website:** We will work with the City to populate its existing website with our approved messages and information. We recommend the development of a simple landing page to host our collateral materials and to serve as a clearinghouse of information and messaging.
 - **Social Media:** A vital avenue to further educate the public and share links to outreach materials and other resources, Pivotal will create a social media calendar and content for the City’s existing social media channels. Whenever possible, we will ensure that social media content is visually interesting, incorporating graphic elements and multimedia content.
- **Mail:** Mail sent directly to voters is the most effective way to engage Montclair’s registered voters and deliver the program’s messages. We recommend distributing at least two bilingual educational pieces – one soon after the Council’s vote to place a measure on the ballot to build awareness around the matter, and one afterwards leading up to Election Day.

Enhanced

The Enhanced Level expands on the Standard Level’s public education activities to create a more robust, proactive program to further engage the Montclair community.

- **Community/Stakeholder Outreach:** An expanded public education effort involves consistent stakeholder engagement. These activities also play a critical role in gaining valuable community feedback. Working closely with the City, we will help identify stakeholders in the community to engage, who will hopefully help amplify the City’s messages to a wide array of audiences. We believe the City already possesses a robust communications network of community stakeholders. We would work with the City to augment this network with organizations such as:
 - Homeowners associations
 - Civic associations
 - Business groups
 - Ecumenical entities
 - Large businesses

We’ll reach out to these stakeholder organizations with our materials and encourage them to share our information with their respective networks, allowing our messages to organically spread throughout the community.

Premium

The Premium Level takes the Enhanced Level’s proactive engagement approach and adds even more direct touchpoints to surround residents with our messages to ensure the maximum education levels possible.

- **Community Town Hall/Council Meetings:** To further engage the broader community, we might recommend the City host a community forum. We understand that the City previously held workshops in 2018 to hear from the community and collect their thoughts on cannabis operations within Montclair. This would be an opportunity to hear from residents a final time and educate them on the specifics of the cannabis tax measure.

We've used this type of event in the past for staff to convey what a city budget might look like with the new revenue and what it could look like without it. We envision this meeting being hosted by the City in partnership with key community organizations and led by City personnel, with Pivotal assisting in the development of the meetings' program and logistics management.

- **Information Booths:** We will work with City staff to identify highly attended community events and meetings in Montclair, and create a calendar of events where we would plan to have a presence. These events allow residents to connect face-to-face with City staff.

Staying On the Same Page

Through regular team meetings and conference calls, the Pivotal team will provide continuing status updates on the program's components, ensuring the timely completion of individual benchmarks and the delivery of the final report. This includes a monthly providing updates on all activities that the City's management team can share with the Council.

We will also develop a task list to drive our activities and provide the City and Pivotal teams a firm understanding of the deliverables in the days and weeks ahead. Pivotal can attend any City Board or Council meeting to present and receive direction on our approach and progress to date at the discretion of the City.

An Integrated Team

We firmly believe that City personnel are the most authentic voices for this public education effort. As such, we recommend that City staff conduct any requested presentations and lead any community meetings. Residents value personal interactions with their City's leaders, and these meetings will strengthen the City's position as responsive and accessible to constituents – a necessary component to effectively communicate new policies and ideas.

About Pivotal Strategies

At any time, you might find yourself facing a pivotal moment. How you engage a community, the media, sway public opinion or protect your brand from a crisis can determine whether you can successfully reach your goals. When you're facing these types of pivotal moments, make sure you have the right team in place.

Pivotal Strategies is a Los Angeles-based public affairs and public relations firm. Our passionate and experienced team creates innovative solutions to solve your complex challenges. We're storytellers that establish our clients as thought leaders at the forefront of change through strategic communications, campaigns and issues management and engagement programs.

We move ideas and clients forward to positively impact the quality of life for all Californians. We've helped our clients improve equitable access to health care and social services, housing and mobility options, expand sensible development and enhance essential neighborhood services.

Project Team

Our project team has an unmatched expertise with innovative local ballot measures, vast experience with public education and communications programs, and local knowledge – the three key ingredients the City must have for this program to be effective. Collectively, we have decades of experience on the exact type of program Montclair needs to engage and educate its constituents.

Founding Partner Brandon Stephenson

Brandon will serve as Project Lead and oversee the strategic framework and implementation of this project. For over 20 years, he has played a game-changing role on numerous public education programs and excels at crafting engagement programs that resonate with diverse audiences.

Vice President John Anderson

John will be the day-to-day Project Manager, and your primary point-of-contact. John not only manages our municipal programs, he's also the driving force behind our creative content and digital communications for government entities. Depending on our final scope of work, John could manage all aspects of our portion of this project, including overseeing the creation of all documents/materials, managing all community engagement, and ensuring that we keep to the project timeline agreed upon by the City.

Both Brandon and John were involved in our past Measure L work.

Senior Associate Alina Ambrosino

Alina will provide support in all areas of the project. Alina's political and corporate campaign experience, along with expertise in direct mail programs, will be vital for the program's communications and community engagement tactics. Alina will help in the development of materials and assist with our community engagement.

What It Will Cost

We have provided Pivotal's fee for the two proposed services levels as outlined above. We are willing to scale our proposed activities and the amount of mail pieces distributed based on the City's needs.

The proposed monthly rates do not include hard costs, such as mail pieces, printing of materials or professional translation services (which will be needed to ensure our messages are accessible to the City's Spanish-speaking population). We would provide the City with a detailed budget before moving forward with that part of the program.

As previously noted, we recommend at least two mail pieces be distributed to the City's residents. During our previous engagement with the City in 2020, it was determined to send mail to only households with at least one registered voter. Following that practice for this program, we would mail to approximately 8,458 households. Based on this number, we anticipate each mailing to cost approximately \$6,350 for a standard letter-sized 8.5 x 11" mail piece. We

understand any budget constraints that the City is faced with and can work with our mail vendors to produce smaller dimension pieces which could reduce the cost of each mailing by nearly \$1,600.

Level	Cerrell Fee
Standard	\$5,500 / month
Enhanced	\$6,500 / month
Premium	\$8,000 / month
Hard Costs	
Direct mail (two 8.5 x 11" mailings to registered households)	\$12,700
Professional translation	\$2,000

We're Ready to Begin!

We're excited about working with you again and rounding out your team to ensure that Montclair receives the best possible program – one that will consistently educate the City's constituents and ensure voters can make an informed decision in November 2022. We're looking forward to your thoughts on this and, more importantly, to getting started.

Please contact John or Brandon or at (310) 736-2337 or by email at janderson@pivotalstrategies.com or bstephenson@pivotalstrategies.com with any questions or if you need additional information. We're looking forward to hearing from you.



CITY COUNCIL AGENDA REPORT

DATE:	JUNE 20, 2022	FILE I.D.:	COV100/CYC125
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	CITY MGR.
ITEM NO.:	1	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 22-3357 MAKING FACTUAL FINDINGS IN COMPLIANCE WITH AB 361 FOR THE CONTINUATION OF PUBLIC MEETING TELECONFERENCING DURING PUBLIC HEALTH EMERGENCIES FOR THE PERIOD OF JUNE 20, 2022, THROUGH JULY 20, 2022		

REASON FOR CONSIDERATION: The City Council's adoption of Resolution No. 22-3357 would extend the City's remote public meeting procedures under AB 361 for an additional 30 days, expiring July 20, 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. 22-3357.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 22-3357 making factual findings in compliance with AB 361 for the continuation of teleconferencing during public health emergencies for the period of June 20, 2022, through July 20, 2022.

RESOLUTION NO. 22-3357

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 20, 2022, THROUGH JULY 20, 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 20, 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.

ATTEST:

Mayor

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3357 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 20, 2022	FILE I.D.:	FPP150
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	2	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 22-3358 DIRECTING STAFF TO REVIEW THE CONFLICT OF INTEREST CODE AND SUBMIT THE 2022 BIENNIAL NOTICE PURSUANT TO THE POLITICAL REFORM ACT		

REASON FOR CONSIDERATION: The City Council is the designated code-reviewing body for the City’s Conflict of Interest Code (“Code”). It is necessary to review the Code on a biennial basis, which includes the filing of a Local Agency Biennial Notice and amending the Code to update the list of designated employees who are required to file Statements of Economic Interests and to incorporate any other necessary changes.

BACKGROUND: Pursuant to the Political Reform Act of 1974 (Government Code Section 8100, *et seq.*), all public agencies are required to adopt a Conflict of Interest Code. The Code designates positions annually required to file Fair Political Practices Commission (FPPC) Form 700 Statements of Economic Interest (“Form 700”), and assigns disclosure categories specifying the types of interests to be reported. The Form 700 is a public document intended to alert public officials and members of the public to the types of financial interests that may create conflicts of interest.

The City of Montclair’s Conflict of Interest Code, first adopted on October 4, 1976, contains the requirement that all City Council Members, Planning Commissioners, City Manager, City Attorney, and designated employees responsible for managing public investments annually file the Form 700. In addition, the Code requires there be a listing of designated employees who, by job title, “make or participate in the making of governmental decisions which may have a foreseeable material effect on financial interests.”

The Political Reform Act requires state and local government agencies to review their Conflict of Interest Code every even-numbered year to determine if it is accurate or, alternatively, to amend the Code if necessary. Before July 1, 2022, the City Council must direct staff to review the Conflict of Interest Code and to submit a Biennial Notice to the City Council no later than October 3, 2022. The blank Biennial Notice form is attached for reference. The City Council must adopt any proposed amendments to the Code within 90 days of filing the Biennial Notice.

Adoption of Resolution No. 22-3358 would satisfy the requirement that the City Council direct staff to review the Code. Staff will submit the Biennial Notice to the City Council at a regular meeting in September, which will report the findings of the review. If amendments are required, the City Council will be requested to adopt a resolution updating the Conflict of Interest Code.

FISCAL IMPACT: There would be no fiscal impact associated with the City Council’s adoption of Resolution No. 22-3358.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 22-3358 directing staff to review the Conflict of Interest Code and submit the 2022 Biennial Notice pursuant to the Political Reform Act.

2022 Local Agency Biennial Notice

Name of Agency: _____

Mailing Address: _____

Contact Person: _____ Phone No. _____

Email: _____ Alternate Email: _____

Accurate disclosure is essential to monitor whether officials have conflicts of interest and to help ensure public trust in government. The biennial review examines current programs to ensure that the agency's code includes disclosure by those agency officials who make or participate in making governmental decisions.

This agency has reviewed its conflict of interest code and has determined that (*check one BOX*):

An amendment is required. The following amendments are necessary:

(*Check all that apply.*)

- Include new positions
- Revise disclosure categories
- Revise the titles of existing positions
- Delete titles of positions that have been abolished and/or positions that no longer make or participate in making governmental decisions
- Other (*describe*) _____

The code is currently under review by the code reviewing body.

No amendment is required. (If your code is over five years old, amendments may be necessary.)

Verification (to be completed if no amendment is required)

This agency's code accurately designates all positions that make or participate in the making of governmental decisions. The disclosure assigned to those positions accurately requires that all investments, business positions, interests in real property, and sources of income that may foreseeably be affected materially by the decisions made by those holding designated positions are reported. The code includes all other provisions required by Government Code Section 87302.

Signature of Chief Executive Officer

Date

All agencies must complete and return this notice regardless of how recently your code was approved or amended. Please return this notice no later than **October 3, 2022**, or by the date specified by your agency, if earlier, to:

(*PLACE RETURN ADDRESS OF CODE REVIEWING BODY HERE*)

PLEASE DO NOT RETURN THIS FORM TO THE FPPC.

www.fppc.ca.gov
FPPC Advice: advice@fppc.ca.gov (866.275.3772)
Page 1 of 1

RESOLUTION NO. 22-3358

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA, DIRECTING STAFF TO REVIEW THE CONFLICT OF INTEREST CODE AND SUBMIT THE 2022 LOCAL AGENCY BIENNIAL NOTICE AS REQUIRED BY THE POLITICAL REFORM ACT

WHEREAS, the Political Reform Act of 1974 (Government Code §8100 et seq.) requires cities to adopt a Conflict of Interest Code; and

WHEREAS, the City of Montclair first adopted a Conflict of Interest Code on October 4, 1976; and

WHEREAS, the Conflict of Interest Code must be reviewed every two years and amended when circumstances change; and

WHEREAS, the City Council is the Code Reviewing Body for the City of Montclair; and

WHEREAS, no later than July 1st of each even-numbered year, code reviewing bodies must notify each agency within their jurisdiction to review its Conflict of Interest Code; and

WHEREAS, no later than October 1st of each even-numbered year, City staff shall submit to the code reviewing body a notice indicating whether or not an amendment is necessary; however, October 1, 2022 falls on a weekend, so the deadline is extended to October 3, 2022; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair directs staff to review the Conflict of Interest Code and to submit a 2022 Local Agency Biennial Notice indicating if any amendments are necessitated due to a change circumstances.

BE IT FURTHER RESOLVED that the City Clerk shall transmit the 2022 Biennial Notice and recommendations to the City Council prior to October 3, 2022.

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. 22-3358 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 20, 2022

FILE I.D.: CCK140

SECTION: CONSENT - RESOLUTIONS

DEPT.: CITY MGR.

ITEM NO.: 3

PREPARER: A. MYRICK

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 22-3359 CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATED TO GENERAL LAW CITIES

CONSIDER ADOPTION OF RESOLUTION NO. 22-3360 ADOPTING THE REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATES' STATEMENTS SUBMITTED TO THE VOTERS AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022

CONSIDER ADOPTION OF RESOLUTION NO. 22-3361 REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE PURSUANT TO SECTION 10403 OF THE CALIFORNIA ELECTIONS CODE

REASON FOR CONSIDERATION: Provisions of the laws related to general law cities in the State of California require the governing body to call and give notice of a General Municipal Election and to adopt regulations for Candidates' Statements. In addition, pursuant to the requirements of Section 10403 of the Elections Code, it is also necessary for the governing body to request the County Board of Supervisors to consolidate a General Municipal Election with the Statewide General Election and to authorize payment to the County for services rendered related to consolidation of this election.

Copies of proposed Resolution Nos. 22-3359, 22-3360, and 22-3361 are attached for the City Council's review and consideration.

BACKGROUND: Proposed Resolution No. 22-3359 formally calls for a General Municipal Election to be held on Tuesday, November 8, 2022, for the election of a Mayor and two Members of the City Council. The Mayoral seat now held by Javier John Dutrey and City Council seats now held by Corysa Martinez and Bill Ruh are the seats to be filled at this election.

Proposed Resolution No. 22-3360 provides that each candidate may prepare a Candidate's Statement of 200 words or fewer for inclusion in the Sample Ballot. The Statement shall be filed with the candidate's Nomination Papers and may be withdrawn, but not changed, during the filing period and until 5:00 p.m. of the next working day after the close of the filing period. The San Bernardino County Registrar of Voters will provide a cost estimate of the Candidate's Statement to be paid by the candidate to the City of Montclair as a deposit. The amount covers the cost of printing the Statement in the Sample Ballot and includes the cost of the Statement being translated into Spanish as required by the Voting Rights Act of 1965, as amended.

Proposed Resolution No. 22-3361 requests that the Board of Supervisors of the County of San Bernardino consent and agree to consolidation of a General Municipal Election with the Statewide General Election to be held on Tuesday, November 8, 2022. The County is expected to bill the City for actual costs related to conducting the City's General Municipal Election by March of 2023.

FISCAL IMPACT: The San Bernardino County Registrar of Voters is unable to provide a cost estimate for election services at this time due several changes in procedure including redistricting, some jurisdictions changing from at-large to district elections, and recently increased printing and mailing and pre-paid postage requirements. Based on previous years' escalating election costs, staff estimates the cost for election services will be \$50,000, which was requested in the City's proposed Fiscal Year 2022-23 Budget.

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

1. Adopt Resolution No. 22-3359 calling and giving notice of the holding of a General Municipal Election to be held on Tuesday, November 8, 2022, for the election of certain officers as required by the provision of the laws of the State of California related to General Law cities.
2. Adopt Resolution No. 22-3360 adopting regulations for candidates for elective office pertaining to Candidates' Statements submitted to the voters at the election to be held on Tuesday, November 8, 2022.
3. Adopt Resolution No. 22-3361 requesting the Board of Supervisors of the County of San Bernardino to consolidate a General Municipal Election to be held on Tuesday, November 8, 2022, with the Statewide General Election to be held on the same date pursuant to Section 10403 of the California Elections Code.

RESOLUTION NO. 22-3359

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA, CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATED TO GENERAL LAW CITIES

WHEREAS, under the provisions of the laws related to General Law cities in the State of California, a General Municipal Election shall be held on Tuesday, November 8, 2022, for the election of Municipal Officers.

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

Section 1. That pursuant to the requirements of the laws of the State of California related to General Law cities, there is called and ordered to be held in the City of Montclair, California, on Tuesday, November 8, 2022, a General Municipal Election for the purpose of electing a Mayor for the full term of four years and two Members of the City Council for full terms of four years each.

Section 2. That the ballots to be used at the election shall be in form and content as required by law.

Section 3. That the City Clerk is authorized, instructed, and directed to procure and furnish any and all official ballots; notices; printed matter; and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

Section 4. That the polls for the election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same date when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.

Section 5. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 6. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election in time, form, and manner as required by law.

Section 7. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

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. 22-3359 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

RESOLUTION NO. 22-3360

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA, ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATE STATEMENTS SUBMITTED TO THE VOTERS AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022

WHEREAS, Section 13307 of the Elections Code of the State of California provides that the governing body of any local agency adopt regulations pertaining to materials prepared by any candidate for a municipal election including cost of the Candidate Statement.

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

Section 1. GENERAL PROVISIONS. Pursuant to Section 13307 of the Elections Code of the State of California, each candidate for elective office to be voted for at an Election to be held in the City of Montclair on Tuesday, November 8, 2022, may prepare a Candidate Statement on an appropriate form provided by the City Clerk. The Candidate Statement may include the name, age, and occupation of the candidate and a brief description of no more than 200 words of the candidate's education and qualifications expressed by the candidate himself or herself. The Candidate Statement shall not include party affiliation of the candidate nor membership or activity in partisan political organizations. The Candidate Statement shall be filed in the Office of the City Clerk at the time the candidate's Nomination Papers are filed. The Candidate Statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:00 p.m. of the next working day after the close of the nomination period.

Section 2. FOREIGN LANGUAGE POLICY.

A. Pursuant to the Federal Voting Rights Act of 1965, as amended, Candidate Statements will be translated into all languages required by the San Bernardino County Registrar of Voters Office ("County"). The County is required to translate Candidate Statements into the following language: Spanish.

B. The County will print and mail Voter Information Guides that include Candidate Statements to all voters in the City of Montclair, or the County will mail separate Voter Information Guides that include Candidate Statements in the City of Montclair to only those voters who are on the county voter file as having requested a voter information guide in a particular language. The County will make the Voter Information Guides and Candidate Statements in the required languages available at all polling places, on the County's website, and in the Election Official's office.

Section 3. PAYMENT.

A. The candidate shall be required to pay for the cost of printing the Candidate Statement in English.

B. The candidate shall be required to pay for the cost of translating the Candidate Statement into Spanish pursuant to State and/or Federal law.

C. The candidate shall be required to pay for the cost of printing the Candidate Statement in Spanish.

D. The County will provide an estimate for the total cost of printing, handling, translating, and mailing of each Candidate Statement filed pursuant to the Elections Code, including costs incurred as a result of complying with the Voting Rights Act of 1965, as amended. The City Clerk shall require each candidate filing a Statement to pay in advance the amount estimated by the County for his or her estimated pro-rata share as a condition of having his or her Candidate Statement included in the Voter's Pamphlet. The estimate is just an approximation of the actual cost that varies from one election to another election and may be significantly more or less than the estimate, depending on the actual number of candidates filing Candidate Statements. Accordingly, the City Clerk is not bound by the estimate and within 30 days after receiving the invoice from the County shall either bill each candidate for any cost in excess of the deposit or shall refund any unused portion of the deposit.

Section 4. ADDITIONAL MATERIALS. No candidate will be permitted to include additional materials in the Voter Information Guide.

Section 5. MISCELLANEOUS.

A. All translations shall be provided by professionally-certified translators.

B. Candidate Statements will be printed as submitted in type of uniform size and darkness, and with uniform spacing. Spelling, punctuation, and grammatical errors will not be corrected by the Elections Official. Statements should be typed in sentence case with upper- and lowercase letters—not all “CAPS,” single-spaced, in paragraph format. The City Clerk, as the Elections Official, shall have the authority to make formatting corrections or to strike any language not in compliance with the Elections Code.

C. The City Clerk shall comply with all recommendations and standards set forth by the California Secretary of State regarding occupational designations and other matters relating to elections.

Section 6. The City Clerk shall provide each candidate or the candidate’s representative a copy of this Resolution at the time nomination papers are issued.

Section 7. All previous Resolutions establishing Council policy on payment for Candidate Statements are repealed.

Section 8. This Resolution shall apply only to the election to be held on Tuesday, November 8, 2022, and shall then be repealed.

Section 9. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

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. 22-3360 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

RESOLUTION NO. 22-3361

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO SECTION 10403 OF THE CALIFORNIA ELECTIONS CODE

WHEREAS, the City Council of the City of Montclair, California, called a General Municipal Election to be held on Tuesday, November 8, 2022, for the purpose of a Mayor for the full term of four years and two Members of the City Council for full terms of four years each; and

WHEREAS, it is desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the City the precincts, polling places, and election officers of the two elections be the same and that the San Bernardino County Registrar of Voters Office canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

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

Section 1. That pursuant to the requirements of Section 10403 of the California Elections Code, the Board of Supervisors of the County of San Bernardino is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election to be held on Tuesday, November 8, 2022, for the purpose of electing a Mayor and two Members of the City Council.

Section 2. That the San Bernardino County Registrar of Voters Office is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

Section 3. That the Board of Supervisors is requested to issue instructions to the Registrar of Voters Office to take any and all steps necessary for the holding of the consolidated election.

Section 4. That the City of Montclair recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any such costs.

Section 5. That in the event of a tie vote (if any two or more persons receive an equal and the highest number of votes for an office) as certified by the County of San Bernardino Registrar of Voters, the City Council, in accordance with Election Code Section 15651(a), shall set a date and time and place and summon the candidates who have received the tie votes to appear and the City Clerk will determine the winner by lot.

Section 6. That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the Registrar of Voters Office of the County of San Bernardino.

Section 7. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

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. 22-3361 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 20, 2022 **FILE I.D.:** FLP180/SEW075
SECTION: CONSENT - RESOLUTIONS **DEPT.:** PUBLIC WORKS
ITEM NO.: 4 **PREPARER:** M. HEREDIA
SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 22-3362 ADJUSTING THE EQUIVALENT DWELLING UNIT MONTHLY FEE FOR SEWER SERVICE

REASON FOR CONSIDERATION: The Inland Empire Utilities Agency (IEUA) provides sewage treatment services to the City of Montclair and six other regional contracting agencies. The IEUA Board of Directors has approved a rate increase for the fee charged to the contracting agencies for this sewage treatment. This higher rate is effective July 1, 2022. In order to cover the cost of the rate increase by IEUA, the City must increase the rates charged to its customers. The rate may be changed by a resolution adopted by the City Council.

BACKGROUND: IEUA provides sewage treatment for seven regional contracting agencies, including the City of Montclair. Treatment costs are passed on to City residents and businesses via a monthly fee based on an equivalent dwelling unit (EDU). Annual adjustments in these rates may be made, provided that the rates have been approved by the City Council, under the requirements of Proposition 218.

On July 22, 2019, the City Council conducted a public hearing in accordance with Proposition 218 requirements. As a result of that hearing process, rate caps were approved by the City Council for a five-year period ending June 30, 2024. For Fiscal Year (FY) 2022-23, the maximum rate established by the City Council was \$32.82 per EDU per month, of which \$23.15 per EDU was projected to be the cap for IEUA’s portion. IEUA recently approved its portion of the rate for FY 2022-23 at \$21.86 per EDU effective July 1, 2022, for a total rate of \$31.14.

The current rate and the proposed rate for FY 2022-23 are as follows:

Effective Date	Part 1 IEUA Sewer Treatment Fee	Part 2 City Sewer Maintenance Fund	Part 3 City Sewer Replacement Fund	Total Rate
July 1, 2021	\$21.22	\$7.78	\$1.50	\$30.50
July 1, 2022	\$21.86	\$7.78	\$1.50	\$31.14

FISCAL IMPACT: Adoption of Resolution No. 22-3362 will allow the City to collect the sufficient funds to pay the higher treatment rate being assessed by IEUA, pay for increased maintenance costs, and continue to contribute to the sewer replacement fund. Should the City not adopt Resolution No. 22-3362, it would still be obligated to pay the increased IEUA treatment rate and find some other source of funds for sewer maintenance, or operate the sewer program at a deficit.

RECOMMENDATION: Staff recommends that the City Council adopt Resolution No. 22-3362 adjusting the equivalent dwelling unit monthly fee for sewer service.

RESOLUTION NO. 22-3362

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR SETTING THE EQUIVALENT DWELLING UNIT RATE FOR SEWER SERVICE

WHEREAS, on July 22, 2019, the City Council of the City of Montclair conducted a public hearing to discuss maximum sewer rates for the five-year period commencing July 1, 2019, and terminating June 30, 2024; and

WHEREAS, the City Council of the City of Montclair approved the rates as recommended by staff; and

WHEREAS, the maximum monthly rate to be charged per equivalent dwelling unit (EDU) for the period commencing July 1, 2022, and ending June 30, 2023, is set as follows:

Part 1 Fee - Inland Empire Utilities Agency Treatment Fee	\$ 21.86
Part 2 Fee - City Sewer Maintenance Fund	7.78
Part 3 Fee - City Sewer Replacement Fund	<u>1.50</u>

Total Maximum Monthly EDU Rate \$31.14; and

WHEREAS, the Regional Advisory Committees and the Board of Directors of Inland Empire Utilities Agency (IEUA) have approved the Regional Wastewater Program Budget with an associated sewer service rate for Fiscal Year 2022-23; and

WHEREAS, effective July 1, 2022, IEUA has set the total service rate for the operation and maintenance of the regional sewage system and the treatment of domestic sewage at \$21.86 per equivalent dwelling unit (EDU) per month.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby set the monthly EDU rate as follows:

Part 1 Fee - Inland Empire Utilities Agency Treatment Fee	\$ 21.86
Part 2 Fee - City Sewer Maintenance Fund	7.78
Part 3 Fee - City Sewer Replacement Fund	<u>1.50</u>

Total Maximum Monthly EDU Rate \$31.14

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. 22-3362 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 MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
JUNE 6, 2022, AT 6:30 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 6:30 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Ruh, Council Member Johnson, City Manager Starr, and Director of Human Services Richter

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of May 16, 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 16, 2022.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

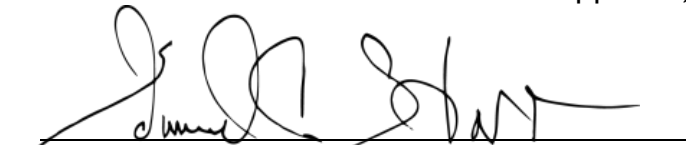
At 6:31 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:55 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 6:55 p.m., Mayor Pro Tem Ruh adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, JUNE 6, 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

Reverend Maggie Burbank-Yenoki, Monte Vista Unitarian Universalist Congregation, gave the invocation.

III. PLEDGE OF ALLEGIANCE

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

IV. ROLL CALL

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

City Manager/Executive Director Starr; Director of 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 — None

VI. PUBLIC COMMENT — None

VII. PUBLIC HEARINGS

A. **Second Reading — Consider Adoption of 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**

Mayor Dutrey declared the time and place set for public hearing to consider first reading of Ordinance No. 22-1001 and invited comments from the public.

Mrs. Carolyn Raft, resident, asked if businesses will need to convert to using three bins.

City Manager Starr advised non-food service businesses will not need to acquire additional bins, and those with food waste will do the same as residential customers by separating organic waste into bags and using their green waste bins. He noted tier 1 and tier 2 restaurants have more strict requirements.

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.

Moved by Council Member Johnson, seconded by Council Member Lopez, and carried that Ordinance No. 22-1001 be read by number and title only, further reading be waived, and this be declared its second reading; and that the City Council adopt Ordinance No. 22-1001.

Council Member Lopez restated his disagreement with state mandates and the resulting rate increases imposed on residents. He encouraged residents to vote for legislators who do not support such mandates on local governments.

Mayor Pro Tem Ruh concurred and emphasized the need for other solutions such as waste-to-energy plants.

Ordinance No. 22-1001 was adopted 5-0 by the following vote:

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

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

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

Mayor Dutrey declared it the time and place set for public hearing to consider Resolution Nos. 22-3350, 22-3351, and 22-3352 and invited comments from the public.

There being no one in the audience wishing to speak, Mayor Dutrey closed the public hearing and returned the matter to the City Council for its consideration.

Mayor Pro Tem Ruh asked if this property used to house an RV storage park.

Director of Community Development Diaz advised it did in the past, but has been vacant for several years.

Mayor Pro Tem Ruh asked if the site would need to be cleared of harmful chemicals that may have seeped into the ground.

Director Diaz stated the builder would be responsible for performing soils reports and taking mitigation measures.

Council Member Lopez asked if the concerns about noise and traffic in the letter submitted to the Planning Commission after the Environmental Impact Report (EIR) comment deadline had been addressed.

Director Diaz advised that, although the letter was not submitted in time to be included with the EIR, all concerns brought forth are addressed in the Mitigation Monitoring and Reporting Program.

Council Member Lopez asked if the owner have shared information about potential businesses that would occupy the buildings.

Director Diaz stated that information has not been shared.

Moved by Council Member Lopez, seconded by Council Member Johnson, and carried 5-0, the City Council took the following actions:

1. Adopted 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. Adopted 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”; and
3. Adopted 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.

VIII. CONSENT CALENDAR

Mayor Pro Tem Ruh requested clarification on Item C-1.

Council Member Johnson requested the same for Items B-4 and C-3.

Council Member Lopez noted he had comments on Item B-3.

Mayor Dutrey entertained discussion on Items B-3, B-4, C-1, and C-3 prior to the vote on the Consent Calendar.

Moved by Council Member/Director Lopez, seconded by Mayor Pro Tem/Vice Chair Ruh, and carried unanimously 5-0, the City Council approved the Consent Calendar with discussion held on Items B-3, B-4, C-1, and C-3:

A. Approval of Minutes

1. Regular Joint Meeting — May 16, 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 16, 2022 regular joint meeting.

B. Administrative Reports

1. Approval of City Warrant Register and Payroll Documentation

The City Council approved the City Warrant Register dated June 6, 2022, totaling \$1,998,802.04; and the Payroll Documentation dated May 8, 2022, amounting to \$675,205.75 gross, with \$468,590.13 net being the total cash disbursement.

2. Authorizing Mayor Dutrey to Sign a Letter of Support for Governor Newsom's Proposed CARE Court Program

The City Council authorized Mayor Dutrey to sign a letter of support for Governor Newsom's proposed CARE Court program.

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

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

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

Council Member Lopez stated he is pleased to see this issue is being addressed after his requests for the past two years. He asked if staff would seek input from the **Chino Basin Water Conservation District (CBWCD)** for drought-tolerant landscape design.

City Manager Starr advised **CBWCD** was involved in the design process.

The City Council took the following actions:

- (a) Amended the 2019-2024 Capital Improvement Program to add the Fire Station No. 2 Landscaping Project.
- (b) Authorized a \$30,000 appropriation from 2021 Lease Revenue Bond funds for costs related to the construction of the Fire Station No. 2 Landscaping Project.
- (c) Approved the plans and specifications and authorize staff to advertise for bid proposals for the Fire Station No. 2 Landscaping Project.

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

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

Council Member Johnson asked if the “spare tanks” were directly related to the projectiles or if they were the vehicular kind.

Executive Director of Public Safety/Police Chief Avels clarified that the tanks are compressed air tanks used for the projectiles.

The City Council took the following actions:

- (a) Authorized the purchase of four pepper projectile systems, spare tanks, and projectiles, defined as military equipment under Assembly Bill 481.
 - (b) Authorized a \$5,700 appropriation from the Federal Asset Forfeiture Fund to purchase four pepper projectile systems, spare tanks, and projectiles.
5. **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**

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

The City Council took the following actions:

- (a) Authorized 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.
- (b) Authorized 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.

C. Agreements

1. **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**

Mayor Pro Tem Ruh asked if the City is now responsible for maintenance of the Pacific Electric Trail.

City Manager Starr stated the City is only responsible for the portion between Claremont Avenue and Monte Vista Avenue.

Council Member Lopez asked, if Upland is responsible for the portion north of the Montclair Transcenter, why did the Montclair Fire Department respond to an incident on that portion of the trail last year?

City Manager Starr advised the closest Fire Department will usually respond to an incident due to mutual aid agreements between fire agencies that are not related to the agreements for maintenance of the trail.

The City Council approved *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.

2. **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 Authorizing Director of Public Safety/Police Chief Robert Avels to Sign Said Agreement**

Authorizing a \$16,186 Appropriation from the Public Safety Grant Fund for the Purchase of Equipment to Upgrade the Emergency Operations Center (EOC)

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

The City Council took the following actions:

- (a) Approved *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.
- (b) Authorized Director of Public Safety/Police Chief Robert Avels to sign said Agreement.
- (c) Authorized a \$16,186 appropriation from the Public Safety Grant Fund for the purchase of equipment to upgrade the Emergency Operations Center (EOC).
- (d) Authorized 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.

3. **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**

Council Member Johnson stated she is glad the City has a school resource officer at **Montclair High School**, and asked if the City has talked to **Ontario-Montclair School District (OMSD)** about having police presence at the middle and elementary schools after some recent gun threats made to one of the **OMSD** schools.

Executive Director/Police Chief Avels advised in the past there have been school resource officers at **OMSD** schools, and in the wake of the recent mass shooting at **Robb Elementary School** in Uvalde, Texas, the Montclair Police Department has been in discussion with **OMSD** and provided additional services to the schools; however, there is no active contract for a school resource officer for **OMSD** and the Department currently lacks the staff to provide one.

The City Council approved *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.

4. **Amending the 2019-2024 Capital Improvement Program to Add the Sunset Park Improvement Project**

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

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

The City Council took the following actions:

- (a) Amended the 2019–2024 Capital Improvement Program to add the Sunset Park Improvement Project.
- (b) Approved *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.
- (c) Authorized 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.

5. Approval of *Agreement No. 22–56* with CPS HR Consulting for Recruitment Test Rental Services

Authorizing Human Services Director Marcia Richter to Sign Said Agreement and Related Documents

The City Council took the following actions:

- (a) Approved *Agreement No. 22–56* with CPS HR Consulting for recruitment test rental services.
- (b) Authorized Human Services Director Marcia Richter to sign said Agreement and related documents.

6. 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

Authorizing Human Services Director Marcia Richter to Sign Said Agreement and Any Amendments Thereto

The City Council took the following actions:

- (a) Approved *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.
- (b) Authorized Human Services Director Marcia Richter to sign said Agreement and any amendments thereto.

7. 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

The City Council approved *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.

8. 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

The City Council approved *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.

D. Resolutions

1. Adoption of Resolution No. 22–3349 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges

The City Council adopted Resolution No. 22–3349 authorizing

placement of liens on certain properties for delinquent sewer and trash charges.

2. 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

The City Council adopted 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.

3. 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

The City Council adopted Resolution No. 22-3354 authorizing the City Manager to execute agreements with the California Department of Transportation for the Sunset Park Beautification Project.

4. 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

The City Council adopted 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.

5. 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

The City Council adopted 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.

IX. PULLED CONSENT CALENDAR ITEMS — None

X. COMMUNICATIONS

A. Department Reports

1. Human Services Department — Upcoming Events & Programs

Human Services Director Richter announced the following:

- (a) The Memorial Day event took place last Monday. She thanked the Community Activities Commissioners and staff for assisting with the program, noting the event was well-received and a “thank you” note was received today from a resident who attended.
- (b) Over 3,500 people participated in the Country Fair Jamboree on Saturday, enjoying over 40 vendors, carnival rides, the Splash Pad, food, games, contests, and music.
- (c) Bingo started back up today at the Senior Center and over 100 lunches were served. Bingo will take place following lunch on Mondays from 1:00 to 4:00 p.m.; other Senior Center programming starting back up this week includes Line Dancing on Thursdays from 1:00 to 2:00 p.m., and on Fridays: Arts and Crafts from 9:00 to 11:30 a.m. and Bridge from 1:00 to 3:30 p.m. A representative from the Department of Aging and Adult Services will be at the Senior Center from noon to 10:00 a.m. on Thursday, June 23rd. The Senior Center is now open Monday through Friday, 8:00 a.m. to 5:00 p.m.

- (d) The 61st Annual Summer Concert and Movie Series will begin next Tuesday night at Alma Hofman Park. The concert and movie schedule can be found on the City's website, and a postcard will be mailed to all residents. Bands start at 7:00 p.m. and movies start at 8:00 p.m. During these evenings, there will be free children's activities, refreshments for sale, and the Splash Pad will be open until 8:00 p.m.

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 54957.6 Regarding Conference with Designated Labor Negotiator Edward C. Starr

Agency: City of Montclair
Employee Management
Organizations: Montclair City Confidential Employees Assn.
Montclair General Employees Association
Montclair Fire Fighters Association
Montclair Police Officers Association

C. City Manager/Executive Director

City Manager/Executive Director Starr gave Mayor/Chair Dutrey his best wishes during this difficult time of his father's terminal illness.

D. Mayor/Chair

1. Mayor Dutrey made the following comments:

- (a) He recognized the following causes, celebrations, and remembrances for the month of June: the 78th anniversary of D-Day on June 6th; Philippines Independence Day on June 12th; National Flag Day on June 14th; Father's Day and Juneteenth on June 19th; Caribbean American Heritage Month; and LGBT Pride Month. He recognized and thanked contributions of residents of Caribbean heritage, and LGBTQ+ residents.
- (b) He stated last Friday he spoke with **Senator Susan Rubio**, who will soon be representing Montclair in the California Senate, about her support for the Gold Line's construction to Montclair. He added this is a key week for the **Gold Line Construction Authority**, noting **Senator Anthony Portantino**, Chair of the Senate Appropriations Committee, and **Assembly Member Chris Holden**, Chair of the Assembly Appropriations Committee, are both pushing for \$750 million in the state's budget to bridge the current funding gap.
- (c) He reported his attendance, along with Council Member Johnson, Mayor Pro Tem Ruh, and City staff, at the **Innovating Commerce Serving Communities (ICSC) Conference** in Las Vegas to promote business and development opportunities in the City.
- (d) He noted he is wearing a lapel pin of the Basque flag alongside his American flag pin in honor of his father, without whom he would not have gone into politics.

E. Council Members/Directors

1. Mayor Pro Tem/Vice Chair Ruh made the following comments:

- (a) He noted he was also present during the meeting with **Senator Rubio**, who is fully supportive of the Gold Line's extension to Montclair.

- (b) He noted there were several good prospects at the **ICSC Conference** including a developer who converts existing buildings into affordable housing.
 - (c) He noted today is also National Hunger Awareness Day, noting food insecurity is a huge problem in this nation and many children and seniors in our own community suffer from hunger on a daily basis, which should not happen in an advanced society.
 - (d) He stated he thoroughly enjoyed the Country Fair Jamboree, and described an act of true heroism he witnessed at the event when an elderly man suddenly lost consciousness near the **Montclair Hospital Medical Center** booth, and the medical staff present rushed to his aid until paramedics arrived.
 - (e) He attended the Memorial Day event recognizing the sacrifices made by our local veterans, and acknowledged the lives lost during the Allied Forces' invasion of Normandy, France during World War II to liberate northwest Europe from Nazi occupation, on the 78th anniversary of D-Day.
 - (f) He stated tomorrow is Election Day and urged everyone to vote.
2. Council Member/Director Lopez made the following comments:
- (a) He congratulated Mayor Pro Tem Ruh for being recognized as a top 20 individual in the 20th state senate district.
 - (b) He recognized the veterans whose names were added to the Veterans Memorial Wall on Memorial Day: **Rudy Gomez**, a former Montclair employee; **Donald Vodvarka**, a former Planning Commissioner; **Leonard Paulitz**, Montclair's longest-serving Council Member; and longtime Montclair resident **John Mendez**.
 - (c) He urged residents to vote tomorrow.
 - (d) He wished Mayor Dutrey, his mother, and his family prayers in this difficult time.
3. Council Member/Director Johnson commented as follows:
- (a) She stated in the wake of several recent car accidents and complaints of drivers running stop signs, she would like the City to consider investing in more flashing stop signs throughout the City.
Mayor Dutrey suggested this be discussed at the upcoming budget review meeting.
Mayor Pro Tem Ruh asked that smart lights for traffic signal timing also be included in that discussion.
 - (b) She thanked Mayor Dutrey for recognizing the many things to be celebrated this month and suggested the Council Chamber exterior be illuminated in different colors to recognize each month as well.
 - (c) She encouraged everyone to vote at the polls tomorrow in honor for those who died for that right, noting she will be doing so.
4. Council Member/Director Martinez commented as follows:
- (a) She commended staff who helped to organize and participated in the Country Fair Jamboree and Memorial Day events.
 - (b) She thanked City Manager Starr for successfully funding the Pacific Electric Trail Bridge Replacement Project with

contributions from other agencies and without using the General Fund.

F. Committee Meeting Minutes

1. Minutes of Public Works Committee Meeting of March 17, 2022

The City Council received and filed the minutes of the Public Works Committee meeting of March 17, 2022, for informational purposes.

2. Minutes of Personnel Committee Meeting of May 16, 2022

The City Council received and filed the minutes of the Personnel Committee meeting of May 16, 2022, for informational purposes.

XI. CLOSED SESSION

At 7:57 p.m., the City Council went into closed session to discuss labor negotiations.

XII. CLOSED SESSION ANNOUNCEMENTS

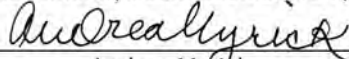
At 8:45 p.m., the City Council returned from closed session. Mayor Dutrey announced the City Council met in closed session to discuss labor negotiations; information was received and direction given to staff; and no further announcements would be made at this time.

XIII. ADJOURNMENT

At 8:46 p.m., Mayor/Chair Dutrey adjourned the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board.

The meeting was adjourned in memory of the victims of the mass shooting that took place in Uvalde, Texas at **Robb Elementary School** on Tuesday, May 24, 2022.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



Andrea Myrick
City Clerk

**CITY OF MONTCLAIR
TREASURER'S REPORT
FOR THE MONTH ENDING**

MAY 31, 2022

TABLE OF CONTENTS

SCHEDULE 1

STATEMENTS OF COMPLIANCE WITH INVESTMENT POLICY AND INVESTMENT STRATEGY FOR MAY 31, 2022

SCHEDULE 2

STATEMENT OF CASH AND INVESTMENTS BY FUND

SCHEDULE 3

STATEMENT OF CASH AND INVESTMENT ACCOUNTS

GRAPH

CASH AND INVESTMENTS BY TYPE

**CITY OF MONTCLAIR
STATEMENTS OF COMPLIANCE WITH THE INVESTMENT POLICY
AND INVESTMENT STRATEGY**

MAY 31, 2022

COMPLIANCE STATEMENT

The City has the following amount invested in various financial instruments. This conforms with the investment policy approved by the City Council.

Total Investments \$ 32,845,145

During the current month the City was in compliance with the internal control procedures set forth in the Investment Policy.

INVESTMENT STRATEGY FOR THE UPCOMING MONTH

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund and other investments authorized in the Investment Policy. The City has sufficient monies available to meet expenditures during the next six month period.

CITY OF MONTCLAIR
STATEMENT OF CASH AND INVESTMENTS BY FUND
AS OF MAY 31, 2022

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance
General Fund	\$ 5,476,447.23	\$ 6,425,378.03	\$ 2,080,479.82	-	\$ 9,821,345.44 (1)
Gas Tax Fund	(264,145.40)	79,458.27	59,697.59	-	(244,384.72) (2)
Road Maintenance - Section 2032	1,107,503.63	64,068.45	36,388.80	-	1,135,183.28
Measure 1 Fund	4,462,297.40	-	-	-	4,462,297.40
Traffic Safety	94,728.56	5,084.89	1,668.90	-	98,144.55
Disability Access Fund - Bus. License	44,403.90	867.60	101.60	-	45,169.90
Park Maintenance	72,719.21	6,161.80	4,734.69	-	74,146.32
Park Development	1,154,807.06	-	-	-	1,154,807.06
CDBG	(49,976.24)	-	10,147.22	-	(60,123.46) (2)
SB2 Planning Grant	(20,842.50)	-	-	-	(20,842.50) (2)
Air Quality Improvement Trust	123,203.04	-	1,792.26	-	121,410.78
SB City Cares Act Infrastructure	(23,385.40)	-	91.58	-	(23,476.98) (2)
Senior Nutrition Program	(104,071.78)	60,132.20	21,226.44	-	(65,166.02) (2)
American Rescue Plan	2,408,090.00	-	8,687.25	-	2,399,402.75
Forfeiture Fund - State	117,769.11	213.92	-	-	117,983.03
Proposition 30/SB 109	105,575.65	-	-	-	105,575.65
SB 509 Public Safety	179,025.08	38,295.00	15,026.09	-	202,297.99
Forfeiture Fund-Federal/DOJ	309,333.43	-	-	-	309,333.43
Asset Seizure Fund	0.08	0.01	-	-	0.09
Section 11489 Subfund	42,107.46	37.75	-	-	42,145.21
Fed Asset Forfeiture-Treasury	131,398.05	1,394.83	-	-	132,792.88
School District Grant Fund	49,158.00	-	-	-	49,158.00
State Supplemental Law Enforce	410,221.33	-	-	-	410,221.33
P.C. 1202.5 Crime Prevention	2,198.43	48.02	-	-	2,246.45
Recycling Grant Fund	76,217.67	-	-	-	76,217.67
Homeless Emergency Aid Program	(11,361.00)	11,069.59	-	-	(261.41) (2)
Bureau of Justice Assistance	(111.00)	-	-	-	(111.00) (2)
Statewide Park Dev Grant	180,634.00	-	-	-	180,634.00
Homeless Housing Assist Preven	(3,449.95)	20,000.00	2,000.00	-	14,550.05 (2)
LEAP Grant	(25,561.50)	8,145.00	-	-	(33,706.50) (2)
After School Program Fund	683,159.44	148,747.34	100,336.82	-	731,569.96
OTS Grant	-	-	-	-	-
FIRST 5 Fund	1,290.78	-	-	-	1,290.78
Safety Dept. Grants	260,874.70	4,398.00	-	-	265,272.70
OSMD Immunization Grant	1,370.50	-	-	-	1,370.50 (2)
Kaiser Permanente Grant	4,441.35	-	-	-	4,441.35
Resource Center Grant - OMSD	23,641.87	-	2,138.92	-	21,502.95
Title IIIB Sr Support Services	(7,154.44)	3,986.44	3,036.04	-	(6,204.04) (2)
Community Foundation Grant	15,543.01	-	100.06	-	15,442.95
ASES Supplemental Grant	126,337.77	14,110.52	-	-	140,448.29
E.M.S. - Paramedic Fund	6,380.54	3,484.00	2,358.78	-	7,505.76 (3)
Economic Development	4,353,109.54	791,095.86	100,528.08	-	5,043,677.32
City Contributions/Donations Fund	500.00	-	-	-	500.00
Sewer Operating Fund	2,717,096.98	434,545.07	473,385.43	-	2,678,256.62
Sewer Replacement Fund	2,244,611.29	-	-	-	2,244,611.29
CFD 2011-1 (Passes)	171,683.49	-	2,157.86	-	169,525.63
CFD 2011-2 (Arrow Station)	90,998.31	169.25	1,208.01	-	89,959.55
Inland Empire Utility Agency	1,320,689.02	392.67	261,094.81	-	1,059,974.21
Sewer Expansion Fee Fund	608,601.16	-	-	-	608,601.16
Developer Impact Fees - Local	1,172,464.90	-	-	-	1,172,464.90
Developer Impact Fees - Regional	77,950.83	-	-	-	77,950.83
Burtec Pavement Impact Fees	158,349.61	-	-	-	158,349.61
PUC Reimbursement Fund-MVGS	324,111.38	-	-	-	324,111.38
Utility Underground In-Lieu	340,516.52	-	-	-	340,516.52
General Plan Update Fee	98,419.49	1,103.10	-	-	99,522.59
Housing Fund	555,708.20	-	-	-	555,708.20
Public Education/Govt. PEG Fee Fund	78,061.95	-	-	-	78,061.95
Infrastructure Fund	(444,343.93)	-	129,454.33	-	(573,798.26) (4)
COVID-19	(88,655.33)	-	6,725.23	-	(95,380.56)
Successor Agency Bonds-Taxable	4,798,780.57	3,781.56	-	-	4,802,562.13
Successor Agency Bonds-Tax Exempt	8,122,722.11	6,431.51	116,053.00	-	8,013,090.62
2014 Lease Revenue Bond Proceeds	(284,589.74)	-	-	-	(284,589.74)
2021 Lease Revenue Bond Proceeds	(228,170.87)	-	18,113.65	-	(246,284.52)
2014 Lease Revenue Bond Debt Svc	(732,978.49)	-	-	-	(732,978.49)
2021 Lease Revenue Bond Debt Svc	1,725,255.75	-	-	-	1,725,255.75
Pension Obligation Bond Debt Svc	(3,500.00)	-	914,144.32	-	(917,644.32)
Contingency Fund	233,836.96	-	-	-	233,836.96
Assigned General Fund Reserves	12,013,591.82	-	-	-	12,013,591.82
TOTALS	\$ 56,585,620.59	\$ 8,124,489.68	\$ 4,381,032.58	\$ -	\$ 60,329,077.69

Negative Cash Notes follow this presentation.

Notes on Negative Cash Balances

- (1) The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this negative, the City is not utilizing restricted resources.
- (2) These are reimbursable grant funds that utilize general pool monies initially to cover expenditures pending reimbursement from the granting agencies. Therefore, it is not uncommon for these to be negative until that reimbursement is received.
- (3) This fund has operational deficits annually. At the end of the fiscal year it is restored by a General Fund Transfer.
- (4) The Infrastructure Fund receives transfers from other funds to accomplish infrastructure projects. Those transfers are usually recorded when the projects nears completion or prior to mid-year budget preparation. Any negative in that fund will be eliminated at those times. Transfers from these funds (C.D.B.G., Gas Tax, Measure I, etc.) may go negative on cash pending collections of these revenues. In this way we can determine if obligations for projects are exceeding current resources.
- (5) This debt service operation utilizes transaction and use taxes which are part of the sales tax and Successor Agency property taxes. These have been sufficient in prior fiscal years to cover the necessary debt service; however, they are not completely received until fiscal year-end. Once debt service is covered the excess will be transferred to the General Fund.

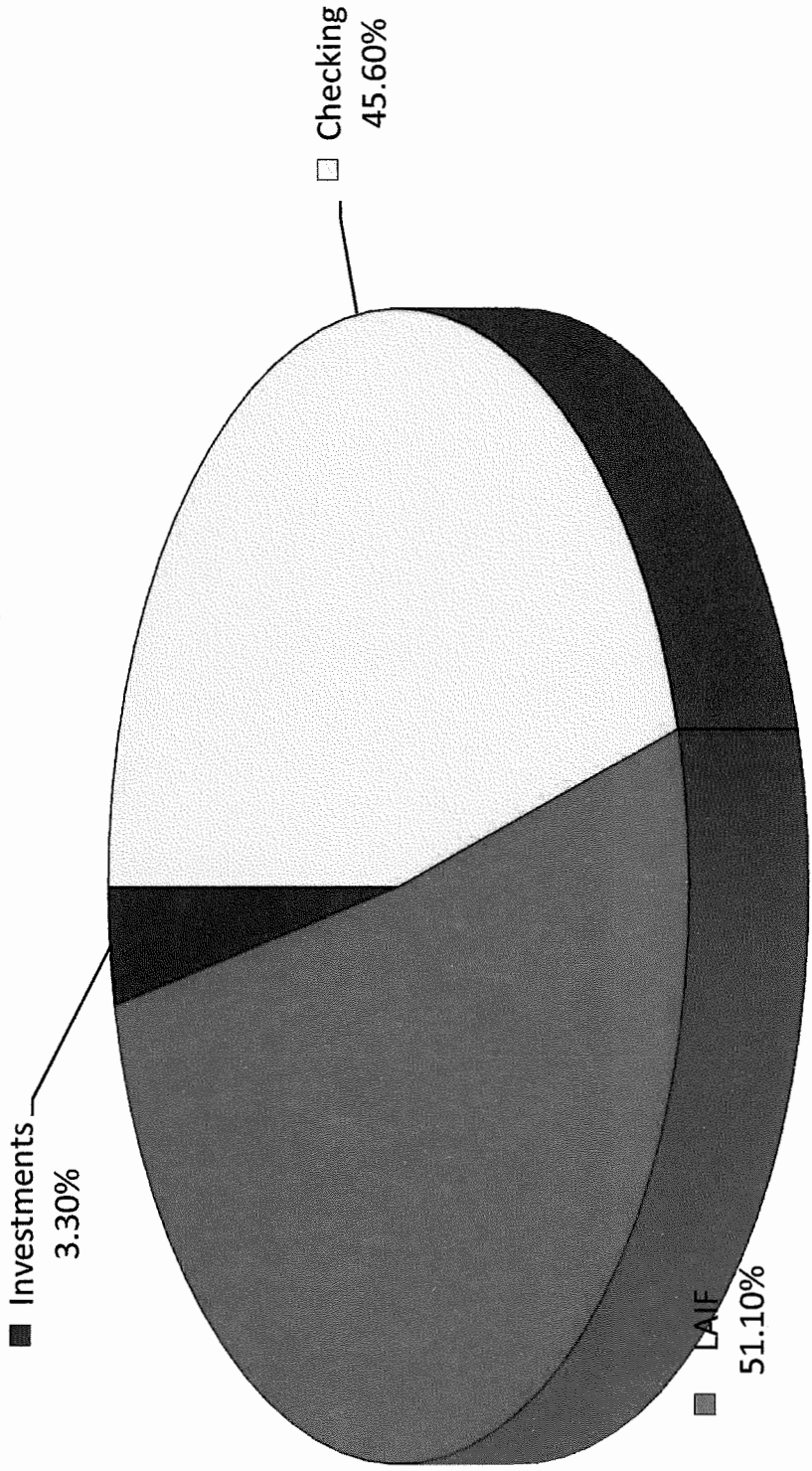
SCHEDULE 3

CITY OF MONTCLAIR
 STATEMENT OF CASH AND INVESTMENT ACCOUNTS
 AS OF MAY 31, 2022

	Par Value	Purchase Date	Maturity Date	Coupon Interest Rate	Current Market Value	Balance at Cost	Totals
CHECKING ACCOUNT							
Checking Account							\$ 27,481,464.12
Asset Seizure Account							\$ 2,468.74
CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES							
Local Agency Investment Fund (LAIF)				0.740%	30,766,154.12	30,845,144.83	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 32,766,154.12</u>		\$ 32,845,144.83
U.S. AGENCY SECURITIES							
							\$ -
TOTAL							<u>\$ 60,329,077.69</u>

Current market values obtained from US Bank.

CITY OF MONTCLAIR
CASH AND INVESTMENTS BY TYPE
May 30, 2022
Total Cash & Investments \$60,329,078



**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
TREASURER'S REPORT**

FOR THE MONTH ENDING

May 31, 2022

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH BY FUND
May 31, 2022**

COMBINED OPERATING FUND

Operating	<u>(1,821.41)</u>	\$	(1,821.41)
-----------	-------------------	----	------------

LRPRP Fund

Operating	<u>0.00</u>	\$	0.00
-----------	-------------	----	------

RORF

	1,114,878.84		
RORF Area I	0.00		
RORF Area II	0.00		
RORF Area III	0.00		
RORF Area IV	0.00		
RORF Area V	0.00		
RORF Area VI	0.00	\$	1,114,878.84

TOTAL CASH

\$ 1,113,057.43

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH
May 31, 2022**

Checking Account

US Bank

1,113,057.43

TOTAL CASH

1,113,057.43

NOTE:

In accordance with State law, the Successor Agency receives the monies necessary to cover its obligations for the upcoming six month period. The monies are received in January and June of each year.

The Successor Agency has sufficient funds available to meet expenditures during the upcoming six-month period.

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
WARRANT REGISTER**

FOR THE MONTH ENDING

May 31, 2022

City of Montclair
 Final Warrant Register
 Council Date 06/20/2022
 Regular Warrants
 Checking Account: Successor to the RDA

	Warrants	US Bank transfers	Area Totals
SRDA Combined Operating Fund	0.00	8,459.22	8,459.22
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	0.00
	0.00	8,459.22	
May 2022 Total			8,459.22

Note: Reimburse City for 4/28 payrolls
 Reimburse City for 5/12 payrolls
 Reimburse City for 5/26 payrolls

Vice Chair Ruh

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR
SinglePoint
Reported Activity From 05/02/2022 To 05/31/2022
Printed on 06/02/2022 at 8:27 AM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
05/26/2022	\$2502.78	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimburse City for 05/26/22 Payroll
Initiate Date 05/26/2022
Initiate Time 10:40AM CDT
Initiated By JKULBECK
Completed Date 05/26/2022
Completed Time 10:40AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
05/12/2022	\$3414.53	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimburse City for 05/12/22 Payroll
Initiate Date 05/12/2022
Initiate Time 01:06PM CDT
Initiated By JKULBECK
Completed Date 05/12/2022
Completed Time 01:06PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
05/03/2022	\$2541.91	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimburse City for 04/28/22 Payroll
Initiate Date 05/03/2022
Initiate Time 12:34PM CDT
Initiated By JKULBECK
Completed Date 05/03/2022
Completed Time 12:34PM CDT

Total Number of Book Transfers: 3
Total Amount of Book Transfers: \$8,459.22

--- End of Report ---

**CITY OF MONTCLAIR
HOUSING CORPORATION
TREASURER'S REPORT
FOR THE MONTH ENDING**

May 31, 2022

TABLE OF CONTENTS

SCHEDULE 1 - STATEMENT OF CASH AND INVESTMENTS

CASH AND INVESTMENTS GRAPH

**CITY OF MONTCLAIR
HOUSING CORPORATION
STATEMENT OF CASH AND INVESTMENTS
May 31, 2022**

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
Checking Account			
US Bank			386,252.13
Investments			
LAIF	0.73%	1,710,750.88	<u>1,715,143.16</u>
TOTAL CASH & INVESTMENTS			<u><u>2,101,395.29</u></u>

NOTE:

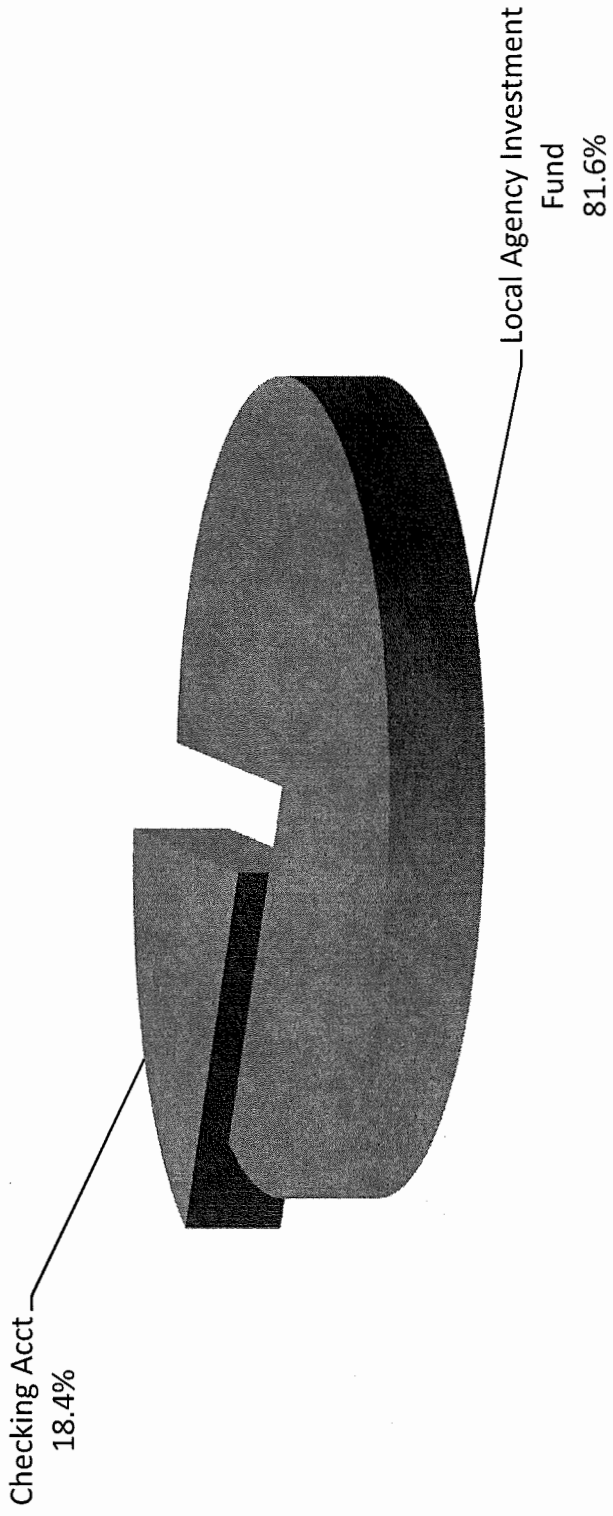
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

The Corporation has sufficient funds available to meet expenditures during the upcoming six-month period.

The Corporation is in compliance with the internal control procedures set forth in its Investment Policy.

**CITY OF MONTCLAIR
HOUSING CORPORATION
CASH AND INVESTMENTS GRAPH
May 31, 2022**

Total Cash & Investments - \$2,101,395



**CITY OF MONTCLAIR
HOUSING CORPORATION
WARRANT REGISTER**

FOR THE MONTH ENDING

May 31, 2022

City of Montclair
Final Warrant Register
Council Date 06/20/2022
Regular Warrants
Checking Account: MHC

<u>Warrants</u>	<u>ACH Transfers</u>	<u>Voided Checks</u>	<u>US Bank transfers</u>	<u>Totals</u>
68,514.41	0.00	0.00	15,963.56	84,477.97

May 2022 Total

84,477.97

US Bank transfers:

Reimburse City for 04/28 payroll

Reimburse City for MHC Exp-Exterior Paint Samples, House Number Sign

Reimburse City for 05/12 payroll

Reimburse City for 05/26 payroll

Vice Chair Ruh

Accounts Payable

Checks by Date - Summary by Check Number

User: cramirez
Printed: 6/2/2022 10:37 AM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5315	ACI0001	ACI Flooring, Inc.	05/12/2022	1,668.00
5316	Arti005	Artic Plumbing And Drain Cleaning	05/12/2022	2,139.00
5317	Buch002	Buchbinder Maintenance, Inc.	05/12/2022	12,458.32
5318	Denk001	Denkers Garage Doors	05/12/2022	1,915.00
5319	Ecol001	Ecological Cleaning	05/12/2022	2,500.00
5320	JGL001	JGL Electric Company, Inc.	05/12/2022	3,680.00
5321	Nagc006	NAGCO GLASS	05/12/2022	326.20
5322	Perf003	Performance Construction & Remodeling I	05/12/2022	15,350.00
5323	Ecol001	Ecological Cleaning	05/26/2022	3,800.00
5324	hugo001	Hugo Jaramillo	05/26/2022	18,835.00
5325	mont002	City of Montclair	05/26/2022	1,745.52
5326	mont074	Monte Vistá Water District	05/26/2022	2,798.49
5327	Sout018	Southern California Edison Co	05/26/2022	527.47
5328	Sout021	Southern California Gas Co	05/26/2022	771.41
Report Total (14 checks):				68,514.41

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR
 SinglePoint
 Reported Activity From 05/02/2022 To 05/31/2022
 Printed on 06/02/2022 at 8:25 AM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
05/26/2022	\$4247.59	153499275821	153499275805	Completed

Debit Account Name MONTCLAIR HOUSING CORPORATION
 Debit Account Type DDA
 Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
 Credit Account Type DDA
 Template Name .
 Memo Reimburse City for 05/26/22 Payroll
 Initiate Date 05/26/2022
 Initiate Time 10:40AM CDT
 Initiated By JKULBECK
 Completed Date 05/26/2022
 Completed Time 10:40AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
05/12/2022	\$7306.68	153499275821	153499275805	Completed

Debit Account Name MONTCLAIR HOUSING CORPORATION
 Debit Account Type DDA
 Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
 Credit Account Type DDA
 Template Name .
 Memo Reimburse City for 05/12/22 Payroll
 Initiate Date 05/12/2022
 Initiate Time 01:06PM CDT
 Initiated By JKULBECK
 Completed Date 05/12/2022
 Completed Time 01:06PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
05/11/2022	\$161.68	153499275821	153499275805	Completed

Debit Account Name MONTCLAIR HOUSING CORPORATION
 Debit Account Type DDA
 Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
 Credit Account Type DDA
 Template Name .
 Memo Reimb City for MHC Exp - Exterior Paint Samples, House Number Sign
 Initiate Date 05/11/2022
 Initiate Time 10:02AM CDT
 Initiated By JKULBECK
 Completed Date 05/11/2022
 Completed Time 10:02AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
05/03/2022	\$4247.61	153499275821	153499275805	Completed

Debit Account Name MONTCLAIR HOUSING CORPORATION
 Debit Account Type DDA
 Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
 Credit Account Type DDA
 Template Name .
 Memo Reimburse City for 04/28/22 Payroll
 Initiate Date 05/03/2022
 Initiate Time 12:34PM CDT
 Initiated By JKULBECK
 Completed Date 05/03/2022
 Completed Time 12:34PM CDT

Total Number of Book Transfers: 4
 Total Amount of Book Transfers: \$15,963.56

--- End of Report ---

**CITY OF MONTCLAIR
HOUSING AUTHORITY
TREASURER'S REPORT
FOR THE MONTH ENDING
May 31, 2022**

Schedule 1

**CITY OF MONTCLAIR
HOUSING AUTHORITY
STATEMENT OF CASH
May 31, 2022**

	<u>Amount</u>
Checking Account	
US Bank	3,178,959.69
TOTAL CASH	\$ <u><u>3,178,959.69</u></u>

NOTE:

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund. The MHA has sufficient monies available to meet expenditures during the next six month period.

**CITY OF MONTCLAIR
HOUSING AUTHORITY
WARRANT REGISTER
FOR THE MONTH ENDING
May 31, 2022**

City of Montclair
Final Warrant Register
Council Date 06/20/2022
Regular Warrants
Checking Account: MHA

<u>Warrants</u>	<u>Voided Checks</u>	<u>US Bank transfers - out.</u>	<u>Totals</u>
0.00	0.00	0.00	0.00
May 2022 Total			<u><u>0.00</u></u>

Vice Chair Ruh