

CITY OF MONTCLAIR

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

AGENDA

Monday, May 1, 2023
7:00 p.m.



Mayor

Javier "John" Dutrey

Mayor Pro Tem

Tenice Johnson

Council Members

Bill Ruh

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, May 1, 2023
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

Please note Council Member Ruh will participate via teleconferencing by speakerphone or other electronic means from the following additional location, which is accessible to the public: The Citizen Hotel, 926 J Street, Sacramento, CA 95814 in the Scandal Lounge.

*If you want to provide comments on an agenda item, including public hearing and closed session items, please complete a Speaker Card located 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

- A. Presentation of Annual Donation by the Montclair Chamber of Commerce to the Montclair Community Foundation for the Montclair to College Program
- B. Southern California Edison Presentation of 2023 Edison Scholar Award and \$50,000 Scholarship to Montclair High School Student Antonio Camarillo
- C. Proclamation Declaring May 4, 2023 as National Day of Prayer in the City of Montclair
- D. Proclamation Declaring Montclair as a Purple Heart City

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 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. Adjourned Meeting — April 3, 2023 [CC] | 198 |
| 2. Regular Joint Meeting — April 3, 2023 [CC/SA/MHC/MHA/MCF] | 199 |

B. Administrative Reports

- | | |
|--|----|
| 1. Consider Receiving and Filing of Treasurer's Report [CC] | 5 |
| 2. Consider Approval of Warrant Register & Payroll Documentation [CC] | 6 |
| 3. Consider Receiving and Filing of Treasurer's Report [SA] | 7 |
| 4. Consider Approval of Warrant Register [SA] | 8 |
| 5. Consider Receiving and Filing of Treasurer's Report [MHC] | 9 |
| 6. Consider Approval of Warrant Register [MHC] | 10 |
| 7. Consider Receiving and Filing of Treasurer's Report [MHA] | 11 |
| 8. Consider Approval of Warrant Register [MHA] | 12 |
| 9. Consider Receiving and Filing Annual Reports from Independent Auditing Firm for the City of Montclair and the Successor Agency for the City of Montclair Redevelopment Agency [CC/SA] | 13 |
| 10. Consider Authorizing a \$471,710.04 Appropriation from Lease Revenue Bond Proceeds for Excess Costs Associated with the Zone 5-6 Street Rehabilitation Project [CC] | |
| Consider Approval of the Filing of a Notice of Completion with the San Bernardino County Recorder for the Zone 5-6 Street Rehabilitation Project Constructed by Gentry Brothers, Inc. [CC] | |
| Consider Authorizing Release of Retention 30 Days after Recordation of the Notice of Completion [CC] | 15 |
| 11. Consider Receiving and Filing the Montclair Police Department 2022-23 Military Equipment Annual Report Pursuant to GC §7072 [CC] | |
| Consider Authorizing the Scheduling of a Follow-up Police Department Community Engagement Meeting on Wednesday, May 17, 2023, at 5:00 p.m. in the Police Department's Emergency Operations Center Community Room at 4870 Arrow Highway, Montclair [CC] | 18 |

C. Agreements

1. Consider Approval of Agreement No. 23-20 with Southern California Transcription Services for Transcription of Digital, Audio-Recorded Material, subject to any revisions deemed necessary by the City Attorney [CC] 33
2. Consider Approval of Agreement Nos. 23-22 and 23-23 with Ontario-Montclair School District to Support Expanding the Montclair After-School Summer Program Through July 2023 at Kingsley Elementary and Serrano Middle School [CC] 41
3. Consider Approval of Agreement Nos. 23-24 and 23-25 with Ontario-Montclair School District to Support the Montclair After-School Program at Various Sites for the 2023-2024 School Year [CC] 74
4. Consider Rejecting the Bid Received from Great Western Installation, Inc. for the Alma Hofman Park Playground Surface Replacement Project [CC]
Consider Awarding a Contract to Spectraturf, Inc. in the Amount of \$180,599.50 for the Alma Hofman Park Playground Surface Replacement Project [CC]
Consider Approval of Agreement No. 23-26 with Spectraturf, Inc. for the Alma Hofman Park Playground Surface Replacement Project, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]
Consider Authorizing a \$180,599.50 Appropriation from 2021 Lease Revenue Bond Proceeds to Cover Costs Related to Agreement No. 23-26 [CC] 108
5. Consider Authorizing a \$41,397.45 Appropriation from the Contingency Fund to Participate in a Public/Private Emergency Ambulance and Interfacility Transport Service Bidding for the County Contract [CC]
Consider Approval of Agreement No. 23-28, a Memorandum of Understanding with CONFIRE Agreeing to Become a Contracting Agency in the EMS Division [CC]
Consider Authorizing City Manager Edward C. Starr to Sign Agreement No. 23-28 and a Declaration of Intent to Participate in the CONFIRE EMS Division Contract [CC] 115

D. Resolutions

1. Consider Adoption of Resolution No. 23-3403 Approving Agreement No. 23-27, an Affordable Housing Agreement with the Montclair Housing Authority and the Montclair Housing Corporation; Authorizing the Transfer of 9814, 9875, and 9878 Monte Vista Avenue, Montclair, to the Montclair Housing Authority for use as Affordable Housing Units; and Declaring Such Real Property to be Exempt Surplus Land [CC]
Consider Adoption of Resolution No. 23-01 Approving Agreement No. 23-27, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Authority [MHC]
Consider Adoption of Resolution No. 23-01 Approving Agreement No. 23-27, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Corporation, and Accepting the Transfer of Certain Real Property from the City of Montclair [MHA]
Consider Authorizing a \$75,000 Appropriation from the Housing Trust Fund for Rehabilitation of Certain Real Property [MHA] 136

IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

A. Department Reports

- 1. Human Services — Upcoming Events and Programs

B. City Attorney

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

City of Montclair v. Monte Vista Water District

- 2. Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations [CC]

Property: APN 1008-611-15-0000

Negotiating Parties: City of Montclair and Yum Yum Donut Shop Inc.

City Negotiator: Edward C. Starr, City Manager

Under Negotiation: Recommendations Regarding Purchase Price

- 3. Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations [CC]

Properties: APN 1008-611-18-0000, 1008-611-19-0000

Negotiating Parties: City of Montclair and Fonseca, Ricardo R. Trust

City Negotiator: Edward C. Starr, City Manager

Under Negotiation: Recommendations Regarding Purchase Price

A. City Manager/Executive Director

B. Mayor/Chairperson

- 1. Announcement of Vacancies on Planning Commission (3)
Apply at www.cityofmontclair.org by May 23, 2023 at 5:30 p.m

C. Council Members/Directors

D. Committee Meeting Minutes (for informational purposes only)

- 1. Personnel Committee Meeting — April 3, 2023 [CC]

197

XI. CLOSED SESSION

XII. CLOSED SESSION ANNOUNCEMENTS

XIII. ADJOURNMENT

The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, May 15, 2023, 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, April 27, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	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 March 31, 2023.

BACKGROUND: Included in the City Council's agenda packet is a copy of the Treasurer's Report for the period ending March 31, 2023.

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 March 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	2	PREPARER:	A. VONG/V. FLORES
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTERS AND PAYROLL DOCUMENTATION		

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

BACKGROUND: Mayor Pro Tem Johnson has examined the Warrant Registers dated April 17, 2023 and May 1, 2023, and the Payroll Documentation dated March 12, 2023, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated April 17, 2023, totals \$1,066,468.56. The Warrant Register dated May 1, 2023, totals \$1,428,272.77.

The Payroll Documentation dated March 12, 2023 totals \$752,142.71 gross, with \$512,589.77 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:	MAY 1, 2023	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 March 31, 2023, 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 March 31, 2023.

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 March 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	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 March 31, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Successor to the Redevelopment Agency Warrant Register dated 03.01.23-03.30.23 in the amounts of \$9,211.19 for the Combined Operating Fund and \$2,579,009.50 for the Redevelopment Obligation Retirement Funds, and finds it to be in order.

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

RECOMMENDATION: Vice Chair Johnson 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 March 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	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 March 31, 2023, 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 March 31, 2023.

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 March 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	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 March 31, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Warrant Register dated 03.01.23-03.31.23 in the amount of \$39,608.67 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 Johnson recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending March 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	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 March 31, 2023, 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 March 31, 2023.

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 March 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	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 March 31, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Warrant Register dated 03.01.23-03.31.23 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 Johnson recommends the Montclair Housing Authority Commission approve the Warrant Register for the period ending March 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	FILE I.D.:	FIN100/130
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE/SA
ITEM NO.:	9	PREPARER:	J. KULBECK
SUBJECT:	CONSIDER RECEIVING AND FILING ANNUAL REPORTS FROM INDEPENDENT AUDITING FIRM FOR THE CITY OF MONTCLAIR AND THE SUCCESSOR AGENCY FOR THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY		

REASON FOR CONSIDERATION: Though not required by law, in order to provide more transparency and documentation, the City Council is asked to receive and file the annual reports prepared by the City's independent auditing firm and a compliance audit required by Measure I.

BACKGROUND: The City of Montclair has engaged the auditing firm of Van Lant & Fankhanel, LLP, Certified Public Accountants (City Auditors) to perform independent audit of its financial transaction and to conduct other reviews required by law. Attached for City Council's information are copies of the reports issued by this firm which are discussed in detail below.

The results of these engagements and the reports associated with them are as follows:

- Financial audit of the City of Montclair for the fiscal year ended June 30, 2022 which contains financial statements covering City operations. The financial statements presented in this report received an unqualified opinion from the auditing firm.
- Audit Communication Regarding Conduct of Audit - This letter provides information on the conduct of the audit. The auditor's indicated:
 - All significant transactions have been recognized in the financial statements in the proper period.
 - They encountered no significant difficulties in dealing with management in performing and completing their audit.
 - Any misstatements noted were corrected by management.
 - No disagreements with management arose during the course of the audit.
- Report on Internal Control over Financial Reporting and on Compliance and Other Matters. This report covers deficiencies and weaknesses in internal control that could cause material misstatements. No deficiencies were noted by the auditors.
- Report on Agreed-Upon Procedures Applied to Appropriation Limit Worksheets. This is a set of procedures performed on the City's Gann Appropriation Limit as required by State Law. No findings were noted in the performance of these procedures.

- **Successor Agency – Bonding Requirement Financial Disclosure Financial Statements**– This is a special purpose audit covering only those operations of the Successor Agency (prior redevelopment agency) that affect bond issues. Prior to the elimination of redevelopment there was a separate financial audit performed and that was required as part of our continuing disclosure requirement for those bond issues. That audit was eliminated in the dissolution process and we now prepare this special report to comply with those disclosure requirements. This report gives the bond community specific information on the transactions associated with those bonds. To the best of staff’s knowledge, we are the only successor agency that prepares this type of disclosure. For the fiscal year ended June 30, 2022, all of the continuing disclosure reporting requirements were completed, within the prescribed time limits.
- **Single Audit Report on Federal Awards Programs** – This is an organization-wide financial statement and federal awards’ audit of a non-federal entity that expends \$750,000 or more in federal funds in one year. The Single Audit Report provides assurance to the Federal Government that a non-federal entity has adequate internal controls in place, and is generally in compliance with program requirements.

The financial audits of the City, the special audit of the Successor Agency, and the Single Audit were completed in March 2022. No management comments have been made by the City Auditors to the City indicating any policies and/or procedures that they would like to see improved.

Additionally, as required by Measure I, independent auditors are engaged by the San Bernardino County Transportation Authority to annually perform a financial and compliance audit of the City of Montclair’s Measure I fund. This audit is to include a computation of Maintenance of Effort. For Fiscal Year 2021–2022 this audit was performed by Eide Bailly LLP, Certified Public Accountants and their report is attached. The Measure I Fund received an unqualified financial statement opinion and no noncompliance was noted. The Maintenance of Effort computation, which compares general city street and highway expenditures against an annual base requirement, indicated that the City of Montclair has exceeded its cumulative Maintenance of Effort requirement by \$19,130,592.

FISCAL IMPACT: There is no fiscal impact in receiving and filing the reports provided by the City and Measure I Auditors.

RECOMMENDATION: Staff recommends that the City Council receive and file annual reports from independent auditing firm for the City of Montclair and the Successor Agency for the City of Montclair Redevelopment Agency.



CITY COUNCIL AGENDA REPORT

DATE: MAY 1, 2023 FILE I.D.: STA818

SECTION: CONSENT - ADMIN. REPORTS DEPT.: PUBLIC WORKS

ITEM NO.: 10 PREPARER: S. STANTON

SUBJECT: CONSIDER AUTHORIZING A \$471,710.04 APPROPRIATION FROM LEASE REVENUE BOND PROCEEDS FOR EXCESS COSTS ASSOCIATED WITH THE ZONE 5-6 STREET REHABILITATION PROJECT

CONSIDER APPROVAL OF THE FILING OF A NOTICE OF COMPLETION WITH THE SAN BERNARDINO COUNTY RECORDER FOR THE ZONE 5-6 STREET REHABILITATION PROJECT CONSTRUCTED BY GENTRY BROTHERS, INC.

CONSIDER AUTHORIZING RELEASE OF RETENTION 30 DAYS AFTER RECORDATION OF THE NOTICE OF COMPLETION

REASON FOR CONSIDERATION: State law requires a Notice of Completion to be recorded with the County Recorder upon completing and accepting a Public Works project. The City Council is requested to consider approving the filing of a Notice of Completion with the San Bernardino County Recorder's Office and taking related actions concerning the Zone 5-6 Street Rehabilitation Project.

BACKGROUND: On February 7, 2022, the Montclair City Council awarded a construction contract for the Zone 5-6 Street Rehabilitation Project to Gentry Brothers, Inc., and entered into Agreement No. 22-09.

The Zone 5-6 Street Rehabilitation Project resurfaced City streets and repaired or replaced damaged curbs, gutters, sidewalks, and non-compliant pedestrian ramps. The project limits were from Brooks Street on the north, Benson Avenue on the east, Phillips Street on the south, and Kadota Avenue on the west. The project also included a portion of Zone 2, located between Palo Verde Street on the north, Central Avenue on the east, San Bernardino Street on the south, and Fremont Avenue on the west.

While Gentry Brothers, Inc., was already performing work within the City, staff opted to have this contractor complete several roadway improvements that the Public Works Department staff has been unable to perform. The additional items of work resulted in the following six change orders:

- 1) Complete removal and replacement of asphalt pavement on State Street from the Los Angeles County line to Kadota Avenue.

Over the past two years, the City has received several complaints about the road conditions, and maintenance crews have filled potholes monthly. This extra work required a full road closure of State Street for multiple days and extensive traffic control.

- 2) Traffic striping and signage on Orchard Street near the Monte Vista Elementary School.

City staff met with School personnel and discussed a solution to create safer pedestrian conditions. The additional work included the removal of the existing

traffic striping, placement of new traffic striping, traffic signal modifications, and other signage along Orchard Street.

3) Emergency repairs to a sinkhole located at 5436 Holt Boulevard

The repairs included removing the existing asphalt pavement, repairing a sewer utility maintenance hole, backfilling, compaction, and replacing new asphalt pavement.

4) Removal and replacement of a storm drain catch basin located in the 4400 block of Brooks Street.

The existing catch basin appeared to be damaged by an oversized vehicle.

5) Grind, overlay and construct asphalt curb on northbound Monte Vista Avenue from Phillips Street to Grand Street.

The pavement on Monte Vista Avenue had become a weekly maintenance issue due to the aging asphalt and the amount of rain we received this winter. The asphalt was ground and repaved and a new asphalt curb was constructed along the eastern edge of the street in order to prevent erosion at the driveway entrance of two residential properties.

6) Grade and construct an asphalt driveway and concrete flow lines at MacArthur Park.

MacArthur Park has historically been subject to standing water created by runoff surrounding the I-10 Freeway. The saturated soil created problems for maintenance vehicles entering the park to perform maintenance of the cell tower site. The new driveway creates a solid entrance for vehicles and addresses the standing water by constructing concrete flow lines that can handle excessive water.

In addition to the items listed above, one additional change order was issued to cover the cost of inflation associated with increased asphalt and fuel prices. The contract unit price was negotiated before the commencement of work.

FISCAL IMPACT: The Zone 5-6 Street Rehabilitation Project is completely funded with 2021 Lease Revenue Bonds. The total construction cost for the Zone 5-6 Street Rehabilitation Project was \$4,470,313.27. The total award amount was \$3,598,603.23, with a construction contingency of \$400,000, totaling \$3,998,603.23. With the added items above, including amended concrete quantities, the project has an overrun of \$471,710.04. Staff recommends using 2021 Lease Revenue Bonds to cover the additional change orders.

RECOMMENDATION: Staff recommends that the City Council take the following actions related to the Zone 5-6 Street Rehabilitation Project:

1. Authorize a \$471,710.04 appropriation from Lease Revenue Bond Proceeds for excess costs associated with the Zone 5-6 Street Rehabilitation Project;
2. Approve the filing of a Notice of Completion with the San Bernardino County Recorder for the Zone 5-6 Street Rehabilitation Project constructed by Gentry Brothers, Inc.; and
3. Authorize release of retention 30 days after recordation of the Notice of Completion.

RECORDING REQUESTED BY:

City of Montclair
5111 Benito Street
Montclair, CA 91763

**AND WHEN RECORDED MAIL
DOCUMENT AND TAX STATEMENT TO:**

Same as above

RECORDER:

Record without fee subject to
Govt. Code 6103

SPACE ABOVE FOR RECORDER'S USE ONLY

NOTICE OF COMPLETION

ASSESSOR'S PARCEL NUMBER(S): Various Locations

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is owner of the interest or estate stated below in the property hereinafter described.
2. The name of the property is: Zone 5-6 Street Rehabilitation Project
3. Full address of the undersigned is: Monica Heredia, Director of Public Works/City Engineer
5111 Benito Street
Montclair, CA 91763
4. The nature of the title of the undersigned is: In Fee
5. The work of improvement on the property hereinafter described was completed on: April 14, 2023
6. The name of the CONTRACTOR for such work of improvement was:
Gentry Brothers, Inc., 384 Live Oak Ave., Irwindale, CA 91706
7. The property on which said work or improvement was completed is in the County of San Bernardino, State of California, more particularly described as follows: Various Locations throughout the City

VERIFICATION

I, the undersigned, say that I am agent for the owner of the aforesaid interest or estate in the property described in the above notice. I have read the foregoing notice and know and understand the contents thereof, and the facts stated herein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 1, 2023, at 5111 Benito Street, Montclair, California

BY: _____
Monica Heredia, Public Works Director/City Engineer
City of Montclair



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	FILE I.D.:	PDT430
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	POLICE
ITEM NO.:	11	PREPARER:	J. REED
SUBJECT:	CONSIDER RECEIVING AND FILING THE MONTCLAIR POLICE DEPARTMENT 2022-23 MILITARY EQUIPMENT ANNUAL REPORT PURSUANT TO GC §7072		

CONSIDER AUTHORIZING THE SCHEDULING OF A FOLLOW-UP POLICE DEPARTMENT COMMUNITY ENGAGEMENT MEETING ON WEDNESDAY, MAY 17, 2023, AT 5:00 P.M. IN THE POLICE DEPARTMENT'S EMERGENCY OPERATIONS CENTER COMMUNITY ROOM AT 4870 ARROW HIGHWAY, MONTCLAIR

REASON FOR CONSIDERATION: A recently-implemented State law required the Police Department to implement a Military Equipment Policy in compliance with Assembly Bill 481 (2021). AB 481 codified Government Code (GC) Sections (§§) 7070-7075. In compliance with GC § 7072, the Police Department is required to annually submit for review a Military Equipment Annual Report to the City Council.

BACKGROUND: On March 21, 2022, the City Council adopted Ordinance No. 22-1000 approving the Montclair Police Department's Military Equipment Policy §707 in compliance with AB 481. AB 481, codified as GC §§ 7070-7075, places requirements on California law enforcement agencies relating to the funding, acquisition, or use of "military equipment" as defined in GC §7070.

Montclair Police Department Policy §707.7 and GC§7072 requires the Police Department to submit to City Council and post on the City's website the attached Military Equipment 2022-23 Annual Report. This report is required to contain a summary of the following:

- How the military equipment was used and the purpose of its use
- Complaints or concerns received concerning the military equipment
- The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response
- The total annual cost and quantity for each type of military equipment, including acquisition, personnel training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of this report
- The Montclair Police Department's intention to acquire additional military equipment in the next year, including the quantity sought for each type of military equipment

Government Code §7072(b) requires that, within 30 days of submitting and publicly releasing an annual military equipment report, the law enforcement agency hold at least one well-publicized and conveniently located community engagement meeting at which the general public may discuss and ask questions regarding the annual military equipment report, including the funding, acquisition, or use of military equipment. In accordance with the procedure set forth in GC §7072(b), this required meeting is

requested to occur at the Montclair Police Department's Emergency Operations Center Community Room on Wednesday, May 17, 2023 at 5:00 p.m. Those wishing to attend via zoom may do so as well. This meeting will also be well publicized by utilizing the City's website, social media platforms, and a press release.


FISCAL IMPACT: Approval of the Military Equipment 2022-23 Annual Report would not have any fiscal impact to the City.

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

1. Receive and file the Montclair Police Department 2022-23 Military Equipment Annual Report pursuant to GC §7072; and
2. Consider authorizing the scheduling of a follow-up Police Department community engagement meeting on Wednesday, May 17, 2023, at 5:00 p.m. in the Police Department's Emergency Operations Center Community Room at 4870 Arrow Highway, Montclair.



MEMORANDUM

Date: April 17, 2023
To: Robert Avels, Chief of Police
From: Jason Reed, Captain 
Subject: *Military Equipment – 2022/23 Annual Report*

On March 21, 2022, the City Council adopted Ordinance No. 22-1000 approving our Military Equipment Policy §707, in compliance with Assembly Bill 481. AB 481, codified as Government Code sections 7070 through 7075, places requirements on California law enforcement agencies relating to the funding, acquisition, or use of “military equipment” as defined in GC §7070.

Policy § 707.7 and GC §7072 requires the Police Department to submit to City Council an annual military equipment report regarding the following:

1. A summary of how the military equipment was used and the purpose of its use
2. A summary of any complaints or concerns received concerning the military equipment
3. The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response
4. The total annual cost and quantity for each type of military equipment, including acquisition, personnel training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of this report
5. The Montclair Police Department’s intention to acquire additional military equipment in the next year, including the quantity sought for each type of military equipment

Military Equipment Usage and Purpose of Use

Following implementation of the Military Equipment Policy, the Department established internal tracking mechanisms regarding the usage of the equipment. Throughout the past year, the Department utilized equipment pertaining to this Policy on six (6) occasions listed below:

- *On 3/31/22, the Montclair Police Command Trailer was utilized at the scene of a hazardous materials incident on State Street. Montclair Police Officers were on the scene providing security and conducting evacuations due to a large explosion resulting in a structure fire. The Command Trailer was utilized as a command center allowing emergency personnel to not be exposed to the weather and securely conducted briefings. The Command trailer was utilized from approximately 1700 hours until 2030 hours.*
- *On 4/4/22, the Upland Police Department requested the use of our Armored Personnel Carrier during a high-risk search warrant. The Armored Personnel Carrier was requested and used as ballistic protection as officers approached a high-risk search warrant location, and remained at the location for a position of retreat if needed. One Montclair officer responded as the driver and assisted for approximately two hours and 30 minutes.*
- *On 4/20/22, the Upland Police Department requested the use of our Armored Personnel Carrier during a high-risk call regarding deceased subjects inside a residence. Upon the arrival of Upland officers a subject barricaded himself inside. The Armored Personnel Carrier was requested and used as ballistic protection as officers approached and staged outside the location. The Vehicle remained at the location for a position of retreat if needed. One Montclair officer responded as the driver and assisted for approximately four hours.*
- *On 5/2/22, the Upland Police Department requested the use of our Armored Personnel Carrier during a high-risk search warrant. The Armored Personnel Carrier was requested and used as ballistic protection as officers approached a high-risk search warrant location, and remained at the location for a position of retreat if needed. One Montclair officer responded as the driver and assisted for approximately three and a half hours.*
- *On 6/4/22, the City hosted its annual Country Fair Jamboree event held at Alma Hofman Park, located at 5201 Benito Street. The Police Department's Peace Keeper and Command Trailer were displayed during the course of the event, which took place from*

1200 to 1800 hours. The Peace Keeper was used as a display item, and officers were present to talk about its use with members of the public. The Command Trailer was situated at the event and used by assigned personnel, which included serving as a place to take breaks during the duration of the event.

- On 8/2/22, the Police Department hosted its annual National Night Out event held at Alma Hofman Park, located at 5201 Benito Street. The Police Department's Peace Keeper and Command Trailer were displayed during the course of the event, which took place from 1830 to 2200 hours. The Peace Keeper was used as a display item, and officers were present to talk about its use with members of the public. The Command Trailer was situated at the event and used by assigned personnel, which included serving as a place to take breaks during the duration of the event.

Complaints or Concerns

No complaints or concerns regarding the Department's Policy or usage of Military Equipment were received. In compliance with the Military Equipment Policy, the Department's website maintained information and a means for the public to reach out for any questions, complaints, or concerns regarding the policy. An audit was conducted of complaints received throughout the year, and none were related to the Military Equipment Policy or its usage.

Internal Audits or Violations

Throughout the year, multiple audits were conducted of the possession, maintenance, cleaning, and training of the Military Equipment; mainly by the Technical Services Division as part of their normal duties. No violations were found to have occurred.

Annual Cost / Ongoing Cost / Funding Sources

Attached to this report is an entire inventory of the Montclair Police Department's Military Equipment List, which will also be attached to our Policy Manual. The Department did not incur any additional costs associated with the transportation, maintenance, or storage of any of the equipment. Funding sources for the existing Military Equipment will remain the same in the calendar year following the submission of this report.

- In Category 12, Tear Gas, the Department sought and received approval to replenish CN and CS gas as the items became expired via their advertised shelf-

life. The Department is budgeted for, and in the process of acquiring approximately \$4000 worth of various items of CN and CS gas within this category prior to July 1, 2023. The funding source for these items is the *General Fund*.

- In Category 12, Tear Gas, the Department sought and received approval through a City Council Agenda Report on June 6, 2022 to purchase four (4) Pepperball pepper projectile systems. The prior Pepperball pepper projectile systems were listed in last year's report as having ended their service life after approximately 15 years of service. The City Council approved the purchase of four new systems, which included spare CO2 tanks and projectiles. The purchase was completed on August 4, 2023, totaling \$5700. This cost included the purchase of 375 projectiles to replenish our inventory, as the Department only used these for training during the past year. The funding source for these items was from the *Asset Forfeiture Federal Fund*.
- In Category 12, Projectile Launch Platforms, the Department sought and received approval to purchase 150 12 gauge, 40-gram lead-filled cotton-ballistic fiber blend projectiles for the listed Remington 870 112 Gauge Multi-Shot Beanbag Launcher. The purchase of these projectiles was to replenish those projectiles utilized for training purposes throughout the year. None of these projectiles were utilized in the field during the past year. The cost of these items was approximately \$930. The funding source for these items is the *General Fund*.

Intention to Acquire Additional Military Equipment

In Category 2, Armored Personnel Carrier, the Department currently is in possession of one (1) "Peacekeeper" brand Armored Rescue Vehicle; as listed in the current Military Equipment List. Listed in the "Expected Lifespan" portion of the vehicle, it is noted the Department has been in possession of the 1980 model Peacekeeper for over 25 years, and it is due for replacement.

Prior to the implementation of Assembly Bill 481 on September 30, 2021, the Montclair Police Department submitted a request for procurement funding from San Bernardino County for the sole purchase of a tactical armored vehicle. The submittal date was August 25, 2021, to replace the aging Peacekeeper.

After approval and implementation of the Department's Military Equipment Policy on March 21, 2022, the Department continued the process of seeking authorization to

contract with a reputable manufacturer for the purchase of a tactical armored vehicle; including funding for the installation of police radio, equipment, and graphics. On May 16, 2022, the City Council held a public meeting and approved the Police Department's request to seek out the purchase and replacement tactical armored vehicle. In the same meeting, the City Council approved Agreement No. 22-43 with San Bernardino County for providing funding for the sole purchase of a tactical armored vehicle, required radio components, and applied graphics; ultimately authorizing the receipt of \$336,000 from San Bernardino County for the purchase.

On May 24, 2022, the San Bernardino County Board of Supervisors held a public meeting and approved the Agreement No. 22-43. After extensive research, the Department determined Lenco Armored Vehicles was determined to be the most viable vendor for the Lenco Bearcat G3. The City Council approved the purchase of this vehicle on June 6, 2022, and the funding source was the *Public Safety Grant Fund*.

It was determined that an armored oil pan guard for the Lenco Bearcat G3 was a viable upgrade, and the City Council also approved the purchase of such for approximately \$2111, and the funding source was the *Federal Asset Forfeiture Fund*.

It was also determined through staff discussion the viable addition of a camera system for the operation of the Lenco Bearcat G3 was necessary for functionality, officer safety, and public safety. On December 19, 2022, the City Council approved the addition of approximately \$2,317 for the addition of this equipment. The funding source was the *Federal Asset Forfeiture Fund*.

This vehicle is currently under construction in Massachusetts, with its completion date estimated later in 2023.

Montclair Police Department

Military Equipment List

1. Armored Personnel Carrier, vehicle with entry apparatus attached (Category 2)

a. Quantity, Description, Capabilities, and Purchase Cost:

One (1) "Peacekeeper" brand Armored Rescue Vehicle, Cadillac Gage Peacekeeper, built on a 1980 Dodge chassis; Cost: Obtained through the California State Agency for Surplus Property in 2002 as non-operable, and refurbished through donations by various local vendors; The Peacekeeper is designed to provide ballistic protection during tactical events (designed to withstand multiple bullet strikes from small arms fire as well as low level explosions). Equipped with emergency lights/siren and a public address system. Common uses for the Peacekeeper include citizen and officer rescues, evacuations, and the deployment of officers and approved equipment. The Peacekeeper is a regional mutual-aid asset that has been requested and deployed to surrounding cities as well as public community outreach events for display.

b. Purpose:

To be used in response to critical incidents to enhance officer and community safety, improve scene containment and stabilization, assist in resolving critical incidents, or display at a community event that is taking place.

c. Authorized Use:

The use of armored vehicles shall only be authorized by a Watch Commander based on the specific circumstances of a given critical incident. Armored vehicles shall be used only by officers trained in their deployment and in a manner consistent with Department policy and training.

d. Expected Lifespan:

25 years (Expired) Due for replacement.

e. Fiscal Impact:

Annual maintenance cost estimated between \$0 and \$1000 annually

2. Command and Control Vehicles (Category 5)

a. Quantity, Description, Capabilities, and Purchase Cost:

One (1) Model Year 2014 "Ultra Haulers" brand Command Trailer; Cost: \$37,286,. The Command Trailer is a mobile command post and an equipment storage trailer. Computerized screen used for tracking operations or projecting public information on the exterior. Desk with radios for dispatch on the interior. Several storage areas for the different equipment used by department members. Water, generator, tables, chairs and televisions.

- b. **Purpose:**
To be used based on the specific circumstances of a given critical incident, large event, natural disaster, or display at a community event that is taking place.
- c. **Authorized Use:**
The Command Trailer shall be used by officers trained in its deployment and in a manner consistent with Department policy and training. The driver of the vehicle towing the trailer shall have a valid California driver's license.
- d. **Expected Lifespan:**
25 Years
- e. **Fiscal Impact:**
Annual maintenance cost estimated between \$0 and \$1000 annually.

3. **Specialized Firearms and Ammunition (Category 9)**

- a. **Quantity, Description, Capabilities, and Purchase Cost:**
Twenty-four (24) Colt Carbine Rifle LE6945CQB firearms, capable of accurately stopping an armed subject at various distances. The Colt Carbine Rifle is a lightweight, air-cooled, gas operated, magazine fed, shoulder fired weapon, designed for semi-automatic fire. The Carbine Rifle does not have an expiration and will need to be serviced or replaced when the rifle fails or breaks. The 5.56 NATO cartridge is used as a lethal option designed to stop a violent encounter. The projectile is capable of penetrating soft body armor worn by armed subjects. Cost: The purchase of the rifles was a "\$0" cost in 2015, as the Department was credited for an exchange of previously owned rifles. Optics for \$9,795 and suppressors for \$7,694 were purchased to make the rifle patrol ready.
 - I. The Hornady 5.56 NATO, 75 grain, BTHP T2 Tap Precision cartridge is the primary duty ammunition deployed during potential lethal encounters.
- b. **Purpose:**
To be used as precision weapons to address a threat with more precision and/or at greater distances than a handgun, if present and feasible within Department Policy and Applicable Law
- c. **Authorized Use:**
Only members that are POST certified Peace Officers, and have completed the POST Firearms / Tactical Rifle Course
- d. **Expected Lifespan:**
 - I. Carbine Rifle – No expiration.
 - II. The Hornady 5.56 NATO, 75 grain BTHP T2 TAP – No expiration.
- e. **Fiscal Impact:**
 - I. Carbine Rifle – Annual cost between \$0 - \$1000.
 - II. The Hornady 5.56 NATO, 75 grain BTHP T2 TAP– Annual cost between \$0 - \$1,380 for all rifles combined, duty ammunition, excluding training rounds.

4. Tear Gas (Category 12)

a. Quantity, Description, Capabilities, and Purchase Cost:

Various Quantities of Chemical agent munitions, which are commonly referred to as “tear gas,” are used by the Montclair Police Department as a non-lethal tool to disperse rioting suspects and on barricaded suspects per Montclair Police Department Policy and applicable law. The Montclair Police Department uses chemical agents which are used by law enforcement across the United States: CS (2 Chlorobenzylidenemalononitrile) and OC (Oleoresin Capsicum). CS is an irritating agent and lachrymator (irritates the eyes and causes tears to flow). CS has been medically tested in the UK and US, specifically by the U.S. Army. There are no known allergic reactions to CS. OC was de-regulated in California in 1996, is endorsed by the FBI, and is available to civilians to legally possess (2.5 oz. or less). OC is an inflammatory agent which causes involuntary closure of eyes (open in 2-5 minutes) and respiratory inflammation (subsides in approximately 2 minutes).

- I. Pocket Tactical SAF-Smoke White™ – Pyrotechnic grenade emitting non-irritant SAF Smoke through multiple emission ports for 20 to 30 seconds to cover small areas. May be launched or hand-thrown Cost: \$17.50 per munition.
- II. SAF-Smoke White™ – Pyrotechnic grenade emitting non-irritant SAF Smoke through multiple emission ports for 30 to 40 seconds to cover large areas. May be launched or hand-thrown Cost: \$33.83 per munition.
- III. 8230 – Pyrotechnic canister grenade emitting CS smoke through multiple emission ports for 20 to 30 seconds. May be launched or hand-thrown. Cost: \$17.50 per munition.
- IV. 9230 – The 9230 CS Jet-Lite Rubber Ball Grenade is one of the smaller diameter burning grenades that discharges a high volume of chemical agents through multiple emission ports. Can be hand thrown. Cost: \$29.26 per munition.
- V. 9590 – Stinger™ 32-Caliber Rubber Balls is designed to deliver rubber pellets from a handheld rubber ball grenade to disperse the intended target. Cost: \$56.80 per munition.
- VI. Spede-Heat SAF Smoke™ 40mm Short Range Round incorporates an aluminum shell and utilizes black powder as the propellant. The Spede-Heat™ 40mm Short Range Round is designed to deliver one dual-ported chemical canister from a 40mm launcher 75 yards to the intended target zone. Cost: \$26.40 per munition.
- VII. 4558 – 40mm Short Range Rubber Pellets incorporates an aluminum shell and utilizes black powder as the propellant. The 4558 40mm Short Range Round is designed to deliver 60 caliber rubber pellets from a 40mm launcher at close range to disperse the intended target. Cost: \$25.60 per munition.
- VIII. 4233 – 40mm Short Range CS Round incorporates an aluminum shell and utilizes black powder as the propellant. The 4233 40mm Short Range Round is designed to deliver three multi-ported chemical canisters from a 40mm launcher 75 yards to the intended target zone. Cost: \$40.05 per munition.

IX. 5231 – CS Pyrotechnic grenade emitting CS smoke through three chemical canister that discharges a high volume of chemical agents through multiple emission ports to the intended target zone. Cost: \$34.61 per munition.

b. **Purpose:**

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Situations for use of the less-lethal weapon systems may include, but are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.
- ii. Riot/crowd control and civil unrest incidents.
- iii. Circumstances where a tactical advantage can be obtained.
- iv. Potentially vicious animals.
- v. Training exercises or approved demonstrations.

c. **Authorized Use:**

Only officers who have received POST certification or manufacturer-specific training in the use of chemical agents are authorized to use chemical agents.

d. **Expected Lifespan:**

- I. Pocket Tactical SAF-Smoke White™ – 5 years
- II. SAF-Smoke White™ – 5 years
- III. 8230 – 5 years
- IV. 9230 – 5 years
- V. 9590 – 5 years
- VI. Spede-Heat SAF Smoke™ 40mm – 5 years
- VII. 4558 – 5 years
- VIII. 4233 – 5 years
- IX. 5231 – 5 years

e. **Fiscal Impact:**

- I. Pocket Tactical SAF-Smoke White™– Estimated between \$0 and \$140 annually.
- II. SAF-Smoke White™ – Estimated between \$0 and \$271 annually.
- III. 8230 – Estimated between \$0 and \$140 annually.
- IV. 9230 – Estimated between \$0 and \$234 annually.
- V. 9590 – Estimated between \$0 and \$341 annually.
- VI. Spede-Heat SAF Smoke™ 40mm – estimated between \$0 and \$211 annually.
- VII. 4558 – Estimated between \$0 and \$213 annually.
- VIII. 4233 – Estimated between \$0 and \$641 annually.
- IX. 5231 – Estimated between \$0 and \$347 annually.

5. **PepperBall Launcher (Category 12)**

a. **Quantity, Description, Capabilities, and Purchase Cost:**

Four (4) Pepperball Patrol Carbine (PPC) Launchers. In July 2022, the PPC Launchers were purchased through Pepperball Inc. for \$5,618.65. The PPC Launchers are lightweight and portable designed to give patrol officers an easy to operate non-lethal option to deploy .68 caliber round or VXR projectiles that deliver PAVA powder, MAXSAICIN PAVA powder, inert powder, paint solution, or solid composite projectiles (similar to a paintball delivery system).The PPC

Launcher is powered by either High-Pressure Air (HPA) or an 88-gram single use CO2 cartridge. The system is capable of launching projectiles at a subject of a distance up to 150 feet and area saturation up to 390 feet. It is a non-lethal option for law enforcement officers to deliver chemical agents and 8–15 j of kinetic energy impacts to subjects in a potentially violent encounter. It is a de-escalation tool used to avoid further injuries or lethal options on a subject; Cost: \$990 per launcher

- I. PepperBall LIVE PROJECTILE, The basic PepperBall projectile contains 2.5 grams of PAVA powder, and is designed for direct impact and area saturation, especially in confined, interior spaces. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-300 feet per second (FPS). The projectile has a direct impact of 60 feet and an area of saturation of 150 + feet. The projectile contains 2% PAVA powder; Cost \$967 (300 Count).
- II. PepperBall LIVE-X PROJECTILE, A PepperBall projectile contains 2.5 grams of PAVA powder, and is designed for direct impact and area saturation, especially in confined, interior spaces. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-300 feet per second (FPS). The projectile has a direct impact of 60 feet and an area of saturation of 150 + feet. The projectile contains 5% PAVA powder; Cost \$322 (90 Count).
- III. PepperBall Marking PROJECTILE, A PepperBall projectile contains 2.5 grams of paint solution that can be used to mark suspects for later apprehension and/or marking doors, openings, or objects for identification, and is designed for direct impact. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-300 feet per second (FPS). The projectile has a direct impact of 60 feet and an area of saturation of 150 + feet. The projectile contains 2% PAVA powder; Cost: \$81 (90 Count).
- IV. PepperBall INERT PROJECTILE, A PepperBall projectile contains 2.5 grams of inert powder Containing a harmless, scented powder. This projectile is best suited for training, qualifications, and direct impact when chemical exposure is not desired. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-300 feet per second (FPS). The projectile has a direct impact of 60 feet and an area of saturation of 150 + feet. The projectile contains inert powder; Cost \$323 (300 Count).
- V. PepperBall Glass Breaker Projectiles, a solid projectile used to shatter windows only. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-300 feet per second (FPS); Cost: \$27 (10 Count).

b. **Purpose:**

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Situations for use of the less-lethal weapon systems may include but, are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.

- ii. Riot/crowd control and civil unrest incidents.
- iii. Circumstances where a tactical advantage can be obtained.
- iv. Potentially vicious animals.
- v. Training exercises or approved demonstrations.

c. **Authorized Use:**

Only those officers who have been trained in the use of PepperBall launchers are authorized to use the PepperBall launchers.

d. **Expected Lifespan:**

- I. PepperBall Launcher – No expiration
- II. Live Projectile – 3 years
- III. Inert Projectiles – 3 years
- IV. Marking Projectiles – 3 years
- V. Glass Breaker Projectiles – No expiration

e. **Fiscal Impact:**

- I. PepperBall Launcher – Repairs estimated between \$0 and \$1000 annually.
- II. Live Projectile – Estimated between \$0 and \$967 annually.
- III. Inert Projectiles – Estimated between \$0 and \$200 annually
- IV. Marking Projectiles – Estimated between \$0 and \$400 annually
- V. Glass Breaker Projectiles – Estimated between \$0 and \$100 annually.

6. Projectile Launch platforms and associated munitions (Category 14)

a. **Quantity, Description, Capabilities, and Purchase Cost:**

Two (2) Defense Technology 40mm Single Launcher: Cost: Unknown, purchased @ 20 years ago. The Defense Technology 40mm Single Launcher is not a firearm, but a Less-Lethal launching system that uses smokeless powder to deliver 40MM projectiles from a safe distance. The Less-Lethal launcher is capable of launching 40MM munitions at a subject up to 40 yards. The Less-Lethal launcher is a single launcher, which allows the Officer to assess after every spent munition. Less-Lethal launcher does not have an expiration and will need to be serviced or replaced when the launcher fails or breaks.

- I. The 40MM munition is a Direct Impact Spin Stabilized Smokeless Sponge Munition. The Sponge Baton munition is used as a Less-Lethal weapon designed to de-escalate a potentially violent encounter; Cost: \$17.50 per unit.

b. **Quantity, Description, Capabilities, and Purchase Cost:**

Twenty-three (23) Remington 870 12 Gauge Multi-Shot Beanbag Launcher: Cost: Unknown, purchased over 25 years ago. The Remington 870 12 Gauge Multi-Shot Beanbag Launcher is a converted Remington 870 used as a Less-Lethal launching system. The launching system uses smokeless powder to deliver a 12 gauge 40-gram lead-filled cotton-ballistic fiber blend projectile from a safe distance. The Less-Lethal launcher is capable of launching munitions at a subject up to 75 feet. The Less-Lethal launcher is a pump-action launcher, which allows the officer to assess after every spent munition. Less-Lethal launcher

does not have an expiration and will need to be serviced or replaced when the launcher fails or breaks.

- i. ALS1212T – 12 gauge 40-gram lead-filled cotton-ballistic fiber blend stabilized bean bag munition is designed to produce blunt trauma and pain compliance The bean bag munition is used as a Less-Lethal weapon designed to de-escalate a potentially violent encounter; Cost: \$1,117.

c. **Purpose:**

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable.

d. **Authorized Use:**

Situations for use of the less-lethal weapon systems may include, but are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.
- ii. Riot/crowd control and civil unrest incidents.
- iii. Circumstances where a tactical advantage can be obtained.
- iv. Potentially vicious animals.
- v. Training exercises or approved demonstrations.

e. **Expected Lifespan:**

- I. 40mm Launcher: No expiration
- II. 40mm Sponge Munition – 5 years
- III. Bean Bag Launcher – 5 years
- IV. Bean Bag Munitions – 5 years

f. **Fiscal Impact:**

- I. 40mm Launcher – Estimated between \$0 and \$1000 annually
- II. 40mm Sponge Munition – Estimated between \$0 and \$1000 annually.
- III. Bean Bag Launcher – Estimated between \$0 and \$1000 annually.
- IV. Bean Bag Munitions – Estimated between \$0 and \$1117 annually.

8. **Long Range Acoustic Device (Category 13)**

a. **Quantity, Description, Capabilities, and Purchase Cost:**

One (1). The Montclair Police Department shares a Genasys Systems Long Range Acoustic Device LRAD-1000 with the cities of Ontario, Chino, and Upland. The device is owned by the San Bernardino County Sheriff's Department. The device is a power-efficient, long-distance communication system designed for applications ranging from critical infrastructure protection, border and port security, and search and rescue applications. It features a rugged carbon fiber emitter head integrated with electronics and amplification has an extremely high decibel capacity. The device is used as a less-lethal weapon for crowd control and broadcasting emergency messages; Cost: \$0;

b. **Purpose:**

To limit the escalation of conflict where deployment of higher force is prohibited or undesirable.

c. **Authorized Use:**

Only Montclair officers who are trained in the use of the device shall be authorized to deploy the device. Situations for use of the less lethal weapon system may include, but are not limited to:

- i. Riot/crowd control and civil unrest incidents.
- ii. Circumstances where a tactical advantage can be obtained.
- iii. Training exercises or approved demonstrations.

d. **Expected Lifespan:**

- I. Long Range Acoustic Device: No expiration

e. **Fiscal Impact:**

- I. Long Range Acoustic Device: \$0 annually.



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	FILE I.D.:	PDT175
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	1	PREPARER:	M. BUTLER
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-20 WITH SOUTHERN CALIFORNIA TRANSCRIPTION SERVICES FOR TRANSCRIPTION OF DIGITAL, AUDIO-RECORDED MATERIAL, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-20 with Southern California Transcription Services for transcription of digital, audio-recorded material.

A copy of proposed Agreement No. 23-20 is attached for City Council's review and consideration.

BACKGROUND: The Police Department has utilized Southern California Transcription Services for the past nine years for transcription of audio-recorded material on an as-needed basis. Services provided include, but are not limited to, transcription of employee interviews and meetings, dispatch recordings, and officer belt recordings.

Staff proposes to enter into another 36-month contract with Southern California Transcription Services that would be effective starting June 5, 2023. In accordance with proposed Agreement No. 23-20, Southern California Transcription Services would be paid an hourly rate of \$35 per hour for transcription from English and \$40 per hour for transcription and translation from Spanish—these rates have stayed the same since 2013. The total amount paid for services rendered would not exceed \$13,000 over the 36-month term of said Agreement.

To ensure confidentiality of the recorded media, staff would have access to a secure internet-based resource to allow for the transfer of digital audio files from the Department to the contractor. Completed documents would be made available in a Microsoft Word format and emailed to the requestor within four business days of receipt.

Southern California Transcription Services would be bound by the confines of said Agreement with regard to confidentiality. Information obtained by Southern California Transcription Services in performance of said Agreement shall be considered confidential and not releasable by Southern California Transcription Services, its officers, employees, agents, or subcontractors without prior written authorization from the City Manager or City Attorney.

FISCAL IMPACT: The total cost of services to be provided by Southern California Transcription Services, pursuant to Agreement No. 23-20, would not exceed \$13,000 for the 36-month term of the Agreement without prior authorization of the City Manager and/or the City Council. Funding for transcription services is allocated annually in the Police Department Fiscal Year Budget in the SB 509 Public Safety Fund 1143.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 23-20 with Southern California Transcription Services for transcription of digital, audio-recorded material, subject to any revisions deemed necessary by the City Attorney.

CITY OF MONTCLAIR

AGREEMENT FOR TRANSCRIPTION SERVICES

THIS AGREEMENT is made and effective as of June 5, 2023, between the City of Montclair, a municipal corporation ("City") and Laureen Minnich, Owner, Southern California Transcription Services, a sole proprietor ("Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on the fifth day of June, 2023, and shall remain and continue in effect for a period of 36 months unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Contractor shall provide the following Services: (1) digital transcription of recorded materials, to include but not limited to recorded employee interviews and meetings, dispatch recordings, and officer belt recordings, (2) access to a secure internet based resource to allow for the transfer of digital audio files from City to Contractor, (3) completed transcription in Microsoft Word format emailed to the requestor within four business days of receipt.

3. PERFORMANCE

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

4. CITY MANAGEMENT

City's Police Chief shall represent City in all matters pertaining to the administration of this Agreement, and review and approval of all products submitted by Contractor, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Contractor. City's Police Chief shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Contractor's compensation, subject to Section 5 hereof.

5. PAYMENT

(a) The City agrees to pay Contractor monthly based upon actual time spent on the above tasks. Compensation for Services shall be based on the actual amount of time spent in adequately performing the Services, and shall be billed at the hourly rates of \$35.00 per hour for transcription from English and \$40.00 per hour for transcription/translation from Spanish. This total amount shall not exceed \$13,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Contractor 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. Contractor shall be compensated for any additional services in the amounts and in the

manner as agreed to by City Manager and Contractor at the time City's written authorization is given to Contractor 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 Fifteen Thousand Dollars (\$15,000.00). Any additional work in excess of this amount shall be approved by the City Council.

(c) Contractor 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 Contractor's fees, it shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(d) Contractor agrees that, in no event shall City be required to pay to Contractor 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 Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor 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 Contractor on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the City pursuant to Section 5(c).

7. DEFAULT OF CONTRACTOR

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

(b) If the City Manager or his/her delegate determines that the Contractor 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 Contractor a written notice of the default. The Contractor 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 Contractor 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) Contractor 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. Contractor 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. Contractor 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 Contractor. With respect to computer files, Contractor shall make available to the City, at the Contractor's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Contractor's services, to the fullest extent permitted by law, Contractor 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 Contractor, its officers, agents, employees or Subcontractors (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Contractor shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents 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 Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to officers,

agents, employees or Subcontractors of Contractor. Said indemnification shall include any claim that Contractor, or Contractor's employees or agents, are considered to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law.

(c) General Indemnification Provisions. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every Subcontractor or other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor 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 Contractor and shall survive the termination of this Agreement or this section.

10. WORKERS COMPENSATION

(a) Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents as required by law, and agrees to defend, hold harmless and indemnify City for any and all claims arising out of any injury, disability or death of any of Contractor's employees or agents.

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

The Contractor 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 Contractor 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 Contractor to comply with this Section.

13. UNDUE INFLUENCE

Contractor 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 Contractor, or from any officer, employee or agent of Contractor, 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 Contractor in performance of this Agreement shall be considered confidential and shall not be released by Contractor without City's prior written authorization. Contractor, its officers, employees, agents, or Subcontractors, 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 Contractor gives City notice of such court order or subpoena.

(b) Contractor shall promptly notify City should Contractor, its officers, employees, agents or Subcontractors 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 Contractor and/or be present at any deposition, hearing, or similar proceeding. Contractor agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Contractor. 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) Contractor 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. Contractor 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 Subcontractor.

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

To Contractor: Lauren Minnich, Owner
Southern California Transcription Services
4354 Avon Drive
La Mesa, CA 91941

17. ASSIGNMENT

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

18. LICENSES

At all times during the term of this Agreement, Contractor 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 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.

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

22. DISCRIMINATION

The Contractor 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 Contractor agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

23. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY
City of Montclair

By: _____
Javier John Dutrey, Mayor

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

CONTRACTOR
Southern California Transcription Services

By: _____
Laureen Minnich, Owner



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	FILE I.D.:	HSV030
SECTION:	CONSENT - AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	2	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NOS. 23-22 AND 23-23 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO SUPPORT EXPANDING THE MONTCLAIR AFTER-SCHOOL SUMMER PROGRAM THROUGH JULY 2023 AT KINGSLEY ELEMENTARY AND SERRANO MIDDLE SCHOOL		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-22 and 23-23 with Ontario-Montclair School District (OMSD) to support expanding the Montclair After-School Summer Program through July 2023 at Kingsley Elementary and Serrano Middle School.

BACKGROUND: The Human Services Department has delivered after-school programs within OMSD schools since 1999. Funding for this program originates from the California Department of Education through grants made available to local education authorities, such as OMSD. The purpose of the funding is to provide communities with enhanced community-based after-school services in an effort to strengthen healthy child development.

In Spring 2023, Ontario-Montclair School District began using a competitive bidding process for provision of their after-school programs. The City of Montclair submitted a proposal and was awarded contracts to provide summer programming from July 1 to July 26, 2023 at Kingsley Elementary and Serrano Middle Schools.

FISCAL IMPACT: Should the City Council approve proposed Agreement Nos. 23-22 and 23-23, OMSD would provide funding at \$13.00 per Transitional Kinder/Kindergarten student per day and \$11.50 per first- to eighth-grade student per day to fund personnel, training, supplies, and grant oversight. The term length of proposed Agreement Nos. 23-22 and 23-23 is July 1, 2023, through July 26, 2023.

RECOMMENDATION: Staff recommends the City Council approve Agreement Nos. 23-22 and 23-23 with Ontario-Montclair School District to support expanding the Montclair After-School Summer Program through July 2023 at Kingsley Elementary and Serrano Middle School.



AFTER-SCHOOL PROVIDER SERVICES SUMMER AGREEMENT

ONTARIO-MONTCLAIR SCHOOL DISTRICT

950 WEST "D" STREET • ONTARIO, CALIFORNIA 91762 • (909) 459-2500

THIS AGREEMENT is made and entered into this 7th day of April, 2023, by and between the Ontario-Montclair School DISTRICT, hereinafter referred to as the "DISTRICT," and **CITY OF MONTCLAIR**, hereinafter referred to as the "PROVIDER" to provide summer school program services to DISTRICT pupils. The parties hereby agree to the following terms:

1. SERVICES TO BE PERFORMED BY PROVIDER

PROVIDER agrees to operate the summer school programs every day during the summer school dates, in accordance with the policies and procedures by the DISTRICT, including the coordination of the academic assistance, homework support, and physical education and enrichment portions of the summer school program at each of the school sites ("Site"):

- o Kingsley Elementary School

2. TERM OF AGREEMENT

The term of this Agreement is from July 6, 2023 through July 26, 2023, unless sooner terminated pursuant to the provisions of Section 9 of this Agreement. DISTRICT and PROVIDER may mutually agree in writing to extend the term of this Agreement provided, however, DISTRICT shall not be obligated to pay PROVIDER any additional consideration unless PROVIDER undertakes additional services, in which instance the consideration shall be increased as DISTRICT and PROVIDER shall agree in writing.

3. PROVIDER RESPONSIBILITIES

PROVIDER agrees to the following in support of the summer school Program:

- PROVIDER will work collaboratively with DISTRICT and cluster Sites to design and operate the summer school Program. The summer school Program shall include the academic components to promote participating students' achievement and a range of services and programs to support the mental, physical, social and emotional development of participating students.
- PROVIDER shall designate a PROVIDER employee at each of the various schools to serve as liaison between the PROVIDER, the school Site, and the DISTRICT. For the purposes of this agreement, the individual liaison shall be deemed the "Site Coordinator".

- Site Coordinator shall maintain ongoing communication between PROVIDER staff and School Site staff regarding student needs and progress, including, but not limited to, attendance at school-day meetings and/or one-on-one meetings with teachers.
- PROVIDER will maintain a waiting list of students to ensure that vacancies are filled as soon as they occur. Site Supervisors will ensure priority enrollment to Foster Youth and McKinney Vento (Homeless) students in agreement with Grant requirements.
- PROVIDER will cooperate in the recruiting and retaining of students to achieve the number of budgeted students to be served.
- PROVIDER, working with DISTRICT, shall ensure staffing sufficient to operate program and perform the requirements in accordance with the DISTRICT staffing ratios and the terms and conditions of the expanded learning opportunities program, relevant Education Code provisions, as applicable at each school throughout the 2023-2024 school year, including on days designated as “minimum” or “modified” days.
- Staffing ratios must minimally meet the 1:20 ratio for the ELOP requirements for Average Daily Attendance (ADA).
- PROVIDER shall submit to the DISTRICT a roster of PROVIDER’s staff at each Site to include contact information (work telephone, cellular phone, e-mail address). The initial roster is due to the DISTRICT prior to the start of the new school year and every first of the month thereafter.
- PROVIDER shall provide each program staff with a PROVIDER name photo identification badge and lanyard.
- PROVIDER shall provide all necessary training and supervision of staff to meet all contractual obligations.
- PROVIDER shall provide training to all agency staff in areas including but not limited to health and safety protocols from California Department of Education, California Department of Public Health, and the DISTRICT.
- PROVIDER shall comply with the DISTRICT’s safety procedures, including but not limited to:
 - PROVIDER shall develop and train PROVIDER’s staff and volunteers in emergency and disaster procedures aligned with the Site emergency disaster plan shall be provided by DISTRICT to PROVIDER upon execution of this MOU, including an evacuation and reunification plan for use during program hours.
 - PROVIDER shall ensure that the disaster preparedness kit provided by the DISTRICT is maintained and stored in a locked cabinet.
 - PROVIDER shall train staff and conduct the following emergency procedure drills per semester at each schools during program hours: fire, disaster, and lock down.
 - PROVIDER shall complete the emergency preparedness drill log. PROVIDER shall report any injury or incident (i.e. an injury involving medical attention or involving police or social services, student leaving area for students under the direct supervision, student behaving inappropriately while participating in virtual activities) to the parent/guardian, school administrator, the Site’s Teacher on Assignment/Expanded Learning Opportunity Program Coordinator (“Site ELOP Coordinator”), the DISTRICT’s ELOP Coordinator,

- and the PROVIDER administrative office within 24 hours of the incident, utilizing the DISTRICT's incident report form or the injury report form.
- In addition to the injury report form, all head injuries must be reported to the parent/guardian on the DISTRICT's head injury report form.
 - Any severe incident/injury must be reported to the parent/guardian, school administrator, Site ELOP Coordinator, DISTRICT ELOP Coordinator, if available, and DISTRICT immediately.
 - PROVIDER shall report all minor accidents or injuries on the DISTRICT designated form with one copy provided to the parent/guardian and one copy placed in the student's file on campus.
- All PROVIDER staff shall be trained in positive behavior management, instructional, academic and enrichment activities aligned with the DISTRICT standards. PROVIDER shall submit current training plan to the contract prior to the start of the new school year.
 - PROVIDER shall ensure program staff conforms to appropriate professional conduct, which includes but is not limited to positive interaction with students, parent/guardians and school staff, use of personal cell phone and dress code.
 - PROVIDER certifies that all PROVIDER employees who work directly with pupils at the Site will have a TB test and live scan investigation, which consists of FBI and DOJ clearances, and at a minimum, meet the qualifications for an Instructional Aide (Ed Code 8483.4) prior to employment. PROVIDER shall provide verification to DISTRICT of such qualifications prior to assigning the employees to a Site.
 - PROVIDER assumes financial responsibility for PROVIDER staff taking or being placed on leave (i.e. sick leave, workers compensation, vacation, administrative leave).
 - The PROVIDER certifies its employees who work directly with pupils at the Site will be trained in First Aid and CPR, Child Abuse/Mandated Reporting, Classroom Management, Curriculum, etc. prior to placement at the Site.
 - The PROVIDER shall ensure that all staff members who work directly with the pupils at the Site will be trained on and comply with child abuse and missing children reporting obligations and procedures under California law, including but not limited to, California Education Code Section 49370 and California Penal Code section 111666, et seq. prior to placement at the Site. PROVIDER shall adopt a written child abuse reporting procedure and provide annual training to all its employees regarding mandated reporting of child abuse and missing children. The PROVIDER shall provide verification to the DISTRICT that all employees have received annual training. The PROVIDER warrants that all staff members will timely abide by such laws.
 - The PROVIDER employees will work collaboratively with the Site in order to maximize program resources. This collaboration includes attending and supporting special events, program development, professional development and meetings.
 - PROVIDER to provide training and professional development to employees assigned to the Site and DISTRICT program staff, as stated in the professional development plan, afterhours or on weekends.
 - The PROVIDER acknowledges the DISTRICT's right to institute a program audit with or without cause and agrees to provide best efforts in assisting in the DISTRICT's completion of program audits.

- The PROVIDER acknowledges the DISTRICT's right to examine and audit all of PROVIDER books, records, documents, accounting procedures and practices and other evidence that reflect all costs claimed to have been incurred or fees claimed to have been earned under this Agreement.
- PROVIDER will make available to DISTRICT all budgetary information including operating budgets submitted for the relevant contract period being audited. PROVIDER will make such evidence and documents available at the DISTRICT office at all reasonable times and without charge within 5 days of a written request from DISTRICT. PROVIDER will, at no cost to DISTRICT, provide assistance for such examination or audit.
- PROVIDER agrees to meet with each participating Site to determine their budget (based on NOT TO EXCEED amount in Exhibit A, modified by Site program staffing and costs)
- PROVIDER shall exercise care when utilizing DISTRICT facilities or equipment. Any DISTRICT classroom or school equipment, which is established to have been damaged by the negligence or misconduct of PROVIDER's staff, will be replaced or repaired at the expense of the PROVIDER. PROVIDER agrees to provide replacement for missing or damaged classroom materials and school equipment attributable to the negligence or misconduct of PROVIDER's employees in classrooms and other areas utilized by PROVIDER. PROVIDER shall ensure facility space used by the program shall be clean and organized by program staff at each location.
- PROVIDER shall assist the Site Coordinator on the content and calendar for a monthly parent newsletter and calendar of activities and events for each assigned school and submit a copy to the DISTRICT no later than the first day of each month.
- PROVIDER shall not permit staff to be on School campuses prior to the start time of the Program unless otherwise agreed upon between Site Principal and Site Supervisor.
- All Program services shall be completed by 6:30 p.m. and/or until the last student is picked up by the student's designated parent and/or legal guardian.
- Pupil discipline is the PROVIDER'S responsibility. PROVIDER will give written notice to the relevant School Principal of any pupil dismissed from the Program, and any incident involving physical injury to a pupil. PROVIDER shall not direct or discipline any pupil during compulsory school hours, except in exigent circumstances.
- Work with the DISTRICT to implement a comprehensive annual program Evaluation Plan. As required, attend and participate in evaluation subcommittee meetings. Evaluation Plan shall include, but not be limited to, attendance tracking, collection of teacher, parent and participating student surveys, and data entry of survey results. Evaluations will be completed by PROVIDER in accordance with CDE guidelines and due dates.
- Regularly attend and participate in governance and operations meetings.
- Provide monthly attendance reports and quarterly expenditure reports to the DISTRICT by the 15th of the month for the previous month; including all required documents and reports required by DISTRICT Food Services Department.

- a) **Emergency Procedures.** Program staff will hold quarterly Site emergency drills based on the complete Site emergency plan and related staff training at each of the Schools.

In the event an emergency occurs after any School office is closed, or during a period when the PROVIDER is hosting a special event, Site Supervisor will employ agreed-upon emergency and/or evacuation procedures. Site Supervisors must have student identification information, including emergency contact information, to be able to notify parents, police, medical support, and anyone else who might need to be contacted.

- b) **Staffing.** PROVIDER shall, at PROVIDER's own expense, employ such agents/assistants as PROVIDER deems necessary to perform the services required of PROVIDER by this Agreement. DISTRICT will not train, control, direct, or supervise PROVIDER's assistants or employees in the performance of those services.

Each School's Principal reserves the right to review the performance of the Program staff and make recommendations for changes as he/she sees fit to the PROVIDER, who will communicate on a monthly basis with certain individuals, to include and not limited to: the Schools' Principals, City personnel and DISTRICT coordinator. All Program staff who directly supervises students must meet the minimum requirements for an instructional aide pursuant to the policies of the DISTRICT. Program staff must also meet the No Child Left Behind (NCLB) requirements of a highly qualified paraprofessional.

PROVIDER will recruit and train volunteers to lower the student/adult ratios, based on PROVIDER guidelines in the Program.

- c) **Independent Contractor.** PROVIDER is, and shall at all times be deemed to be, an independent contractor and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between DISTRICT and PROVIDER or any of PROVIDER's agents or employees. PROVIDER assumes exclusive responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. PROVIDER, its agents and employees, shall not be entitled to any rights and/or privileges of DISTRICT's employees and shall not be considered in any manner to be DISTRICT's employees.
- d) **Public Entity Employee.** If PROVIDER is a regular employee of a public entity, all services which PROVIDER renders under this Agreement will be performed at times other than PROVIDER's regular assigned work day for said entity or during periods of vacation or leave of absence from said entity, using PROVIDER's own resources.

4. DISTRICT RESPONSIBILITIES

DISTRICT agrees to the following in support of the summer school program:

- Provide access to on-site indoor and outdoor facilities for the school program appropriate to the number of participants and activities.
- Promote and foster a positive environment for the development of a successful site Program.
- Coordinate collaborative meetings with PROVIDER staff to discuss program goals and effectiveness.
- Provide a site summer school teacher/DISTRICT liaison for a portion of the Program hours.
- DISTRICT agrees to comply with all reasonable requests by PROVIDER and to provide access to all documents reasonably necessary for the performance of PROVIDER'S duties under this Agreement.
- DISTRICT and/or site(s) will provide PROVIDER with student identification information including student ID numbers, to be able to notify parents, police, medical support, and anyone else who might need to be contacted.
- DISTRICT and/or site(s) reserve the right to make recommendations for appropriate placements for students and will work with Site Supervisors to coordinate services with other established programs, such as after-school academic interventions and other public agency programs/projects, and provide aligned services that meet the needs of the students and Grant requirements.
- Principals or their designees shall cooperate in the recruiting and retaining of students to achieve the number of budgeted students to be served.
- DISTRICT and/or site(s) and PROVIDER will agree which facilities will be used for the Program. Facilities will include the MPR/cafe/tertia, classroom(s), computer lab, and other facilities the DISTRICT/site(s) and PROVIDER may agree are necessary. Facilities may include the library and gym.
- DISTRICT and/or site(s) reserves the right to review the performance of the Program staff and make recommendations for changes as he/she sees fit and PROVIDER will communicate on a monthly basis with certain individuals, to include and not limited to: the Schools' Principals, City personnel and DISTRICT coordinator.
- DISTRICT agrees to comply with all reasonable requests by PROVIDER and to provide access to all documents reasonably necessary for the performance of PROVIDER'S duties under this Agreement. PROVIDER will abide by applicable federal and state laws, rules and regulations concerning the rights of privacy and/or confidentiality of any information provided by DISTRICT, including both student and personnel records.
- The DISTRICT understands the difficulty staffing for this Program and may provide support to PROVIDER in addressing the necessary steps to meet the staffing expectations. The DISTRICT is not, however, taking on the responsibility of the PROVIDER to staff all Sites at appropriate staffing levels.

5. COMPENSATION

- a) **Compensation for Services.** Except as otherwise provided in this Agreement, DISTRICT agrees to compensate PROVIDER for services rendered under this Agreement as detailed in Exhibit 'X'.
- b) **Travel Expenses.** DISTRICT will pay no additional amount for travel or other expenses of PROVIDER under this Agreement unless specified below under section 2(c). Should travel or other expenses be specified below, PROVIDER shall be entitled to the lesser amount of
 - 1. The not to exceed amount stated, or
 - 2. The actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to this Agreement.
- c) **Summary of Compensation**

Per Rate Sheet (Attachment A)
- d) **Retired STRS or PERS.** If this Agreement is with an individual PROVIDER, PROVIDER shall notify the DISTRICT whether or not PROVIDER is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS). DISTRICT undertakes no responsibility to award contracts or hours in a way which protects PROVIDER's retirement benefits.
- e) **Income Tax.** DISTRICT will not withhold any federal or state income tax for payment made pursuant to this Agreement but, if applicable, will provide PROVIDER with a statement of earnings at the end of each calendar year. PROVIDER is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.
- f) **Documentation Required For Payment.** Unless specified below, payment for services and travel shall be made by DISTRICT to PROVIDER after services/travel has been completed and PROVIDER submits documentation for payment (e.g. PROVIDER invoice).

6. GENERAL OBLIGATIONS OF PROVIDER

- a) **Services Performed.** During the term of this Agreement, PROVIDER agrees to diligently prosecute the work specified in the "Services to be Performed by PROVIDER" to completion. PROVIDER may represent, perform services for, and be employed by such additional clients, persons, or companies as PROVIDER, in PROVIDER's sole discretion, sees fit.
- b) **Use of DISTRICT Space and Resources.**

DISTRICT and/or site(s) and PROVIDER will confer on which facilities will be used for the Program. Facilities may include the MPR/cafeteria, classroom(s), computer

lab, and other facilities the DISTRICT/site(s) and PROVIDER may agree are necessary. Facilities may include the library and gym. PROVIDER staff shall ensure that the facilities and work areas used for the Program are left clean and tidy at the end of each day the Program is operated.

- c) **Regulatory Compliance.** PROVIDER shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.
- d) **Fingerprinting.** PROVIDER shall comply with the requirements of Education Code section 45125.1 and Business and Professions Code section 18975 with respect to fingerprinting of employees and regular volunteers who may have any interaction with the DISTRICT's pupils (whether such interaction is in person or electronic, and whether the interaction is through writing, voice or video). If at any time during the term of this Agreement PROVIDER is either notified by the Department of Justice or otherwise becomes aware that any employee of PROVIDER, including PROVIDER, performing services under this Agreement has been arrested or convicted of a violent or serious felony as defined in California Education Code Section 45122.1, PROVIDER agrees immediately to notify the DISTRICT and remove said employee from performing services on this Agreement. PROVIDER shall certify in writing to the DISTRICT that neither the PROVIDER nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Education Code section 45122.1 (Exhibit X).
- e) **Indemnification.** PROVIDER shall indemnify, pay for the defense of, and hold harmless DISTRICT and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of PROVIDER's acts and/or omissions in rendering any services hereunder, including but not limited to the negligent or willful acts and/or omissions of PROVIDER's employees and agents. PROVIDER shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning PROVIDER or any employee/agent of PROVIDER and shall further indemnify, pay for the defense of, and hold harmless DISTRICT of and from any such payment or liability arising out of or in any manner connected with PROVIDER's performance under this Agreement.
- f) **Insurance Requirements.** During the entire term of this Agreement, PROVIDER shall procure, pay for and keep in full force and effect the following types of insurance:
 - 1. **General Liability Insurance.**
 - 2. Commercial general liability insurance, covering bodily injury liability, property damage liability and personal injury liability of PROVIDER with respect to the services provided by, or on behalf of, PROVIDER under this Agreement. The

policy limits shall not be less than Two Million dollars (\$2,000,000) per occurrence with a general aggregate limit of not less than Four Million dollars (\$4,000,000).

- a. The DISTRICT requires the Certificate of Liability Insurance to show the DISTRICT as the "Certificate Holder" and "Additional Insured" on the PROVIDER'S general liability insurance policy. Requested wording in the "Description box" is as follows:

The Ontario-Montclair School DISTRICT, its departments, officers, agents, and employees are additional insureds with regard to liability and defense of suits arising from the operations and uses performed by or on behalf of the named "Insured."

3. **Auto Liability Insurance.**

PROVIDER agrees that services in conjunction with this agreement will be conducted in PROVIDER'S office or at a DISTRICT school Site and PROVIDER will not drive Student in private or commercial vehicle to conduct assessments or conduct other business in conjunction with this agreement. Accordingly, commercial automobile insurance will not be required in conjunction with this agreement. Should PROVIDER need to provide services in conjunction with this agreement that do require Student transportation in a private or commercial vehicle, the DISTRICT and PROVIDER will mutually agree on services to be provided, and PROVIDER will provide insurance as follows: Business auto liability insurance covering the use of "owned, non-owned and hired" autos by or on behalf of PROVIDER respect to the services to be performed under this Agreement. The policy limits shall not be less than One Million dollars (\$1,000,000) per occurrence. The Auto Liability Insurance policy shall include waiver of subrogation via separate endorsement.

4. **Workers' Compensation Insurance.** This coverage is required unless PROVIDER provides written verification it has no employees. Coverage must be at least as broad as that which is required by the State of California, with Statutory Limits. PROVIDER must also maintain Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Workers' compensation policy shall include waiver of subrogation via separate endorsement.

5. **Sexual Molestation and/or Abuse.** The general liability policy above may not contain an exclusion for coverage of claims arising from claims for sexual molestation or abuse. In the event that PROVIDER'S policy should have an exclusion for sexual molestation or abuse claims, then PROVIDER shall be required to procure a supplemental policy providing such coverage of not less than \$2,000,000 per occurrence with an aggregate of not less than \$4,000,000 for damages because of bodily injury by reason of negligent hiring and supervision.

6. **Cyber Security Liability.** Coverage for both electronic and non-electronic data breach of \$1,000,000 per occurrence with an aggregate limit of not less than \$2,000,000 and shall cover all of Company's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Company or District's computers or servers to affect, alter, copy, corrupt, delete, disrupt or destroy a computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer of computer virus, Trojan horse, worms or any other type of malicious or damaging code; and for Third-Party Liability encompassing judgments or settlement and defense costs arising out of litigation due to a data breach and data breach response costs for customer notification and credit monitoring service fees.

The policies of insurance described above shall be carried with responsible and solvent insurance companies authorized to do business in the State of California. True and correct copies of all certificates of insurance reflecting the coverage required in Paragraph (4g.1-3) shall be provided to DISTRICT prior to the commencement of services under this Agreement. PROVIDER agrees that it shall not cancel or change the coverage provided by the policies of insurance described in Paragraph (4g.1-3) above without first giving the DISTRICT's Chief Business Official, thirty (30) days prior written notice. Should any such policy of insurance be canceled or changed, PROVIDER agrees to immediately provide DISTRICT true and correct copies of all new or revised certificates of insurance.

The PROVIDER shall not commence performing any portion of the services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to DISTRICT. Certificates and insurance policies shall include the following:

- A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to DISTRICT, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
- Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- An endorsement stating that DISTRICT and its agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that PROVIDER's insurance policies shall be primary to any insurance or self-insurance maintained by DISTRICT.
- If the PROVIDER or PROVIDER's subcontractor(s) maintains broader coverage and/or higher limits than the minimums shown above, DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by the PROVIDER. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to DISTRICT.

- PROVIDER, or its subcontractors as the case may be, shall be responsible for payment of all deductibles on all insurances required to be furnished by DISTRICT or subcontractors.
- All policies shall be written on an occurrence form.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to DISTRICT.

g) **Written Consent.** Neither this Agreement nor any duties or obligations under this Agreement may be assigned or transferred by PROVIDER without the prior written consent of DISTRICT.

7. CHILD ABUSE, MANDATED REPORTER, AND CPR REQUIREMENTS:

PROVIDER shall ensure that all staff members who work directly with students, are trained on and comply with child abuse and missing children reporting obligations and procedures under California law, including but not limited to, California Education Code Section 49370 and California Penal Code section 11165.7, 11166, et seq. PROVIDER shall adopt a written child abuse reporting procedure and provide annual training to all its employees regarding mandated reporting of child abuse and missing children. The PROVIDER shall provide verification to the District that all employees have received annual training. The PROVIDER warrants that all staff members will timely abide by such laws.

PROVIDER certifies its employees who work directly with pupils will be trained, including but not limited to, in First Aid, CPR, and Classroom Management, prior to placement at the Site.

8. CONFIDENTIALITY

PROVIDER and its subcontractors agree to comply with all applicable laws in the performance of its obligations under this Agreement, and in particular applicable federal and state regulations regarding student records, student privacy, and the commercial use of student information, including the Family Educational Rights and Privacy Act (FERPA), Student Online Personal Information Protection Act (SOPIPA), AB 1584 (Ed. Code 49073.1) Pupil Data Privacy and the District (including but not limited to Administrative Regulation and Policy No. 5022 and 5125) to the end that the rights and privacy of the students enrolled in the District and of their parents are not violated or invaded.

These provisions include, but are not limited to, ensuring that:

- A. No identification of students or their parent/guardians by persons other than representatives of PROVIDER is permitted.
- B. The individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained.
- C. No access to individual student data shall be granted by PROVIDER to any other person, persons, agency or organization without the written consent of the pupil's parent/guardian, except for sharing with other

persons within the District or representatives of PROVIDER so long as those persons have a legitimate interest in the information.

- D. PROVIDER recognizes and agrees that such access will be extended in reliance on representations made in this assurance, and that the District shall have the right to enforcement of this assurance, or revocation of such access (including return of all physical forms of such data and destruction of all such electronic data) immediately upon evidence of noncompliance by PROVIDER. This assurance is binding PROVIDER on and such persons as may be employed by PROVIDER to assist in any phase of the contractual obligation to the District.

PROVIDER further represents and warrants that District's and District users' access to and use of the PROVIDER's software or other services as described in this MOU will not infringe any third party copyright.

9. TERMINATION OF AGREEMENT

- a) **Termination without Cause**. Unless otherwise terminated as provided below, this Agreement shall continue in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.
- b) **Termination for Breach**. Should PROVIDER default in the performance of this Agreement or breach any of its provisions, DISTRICT may terminate this Agreement by giving Thirty (30) Days' Notice in writing to PROVIDER to the address stated in this Agreement. If, within ten (10) calendar days prior to the expiration of the Thirty (30) Days' notice period, the PROVIDER provides evidence of a cure or corrects the default or breach, the DISTRICT may withdraw the Thirty (30) Days' notice.
- c) **Immediate Suspension/Termination by DISTRICT**. If at any time during the performance of this Agreement DISTRICT determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, DISTRICT shall have the right to terminate the performance of PROVIDER's services hereunder by giving written notification to PROVIDER of its intention to terminate.
- d) **Effect of Termination**. In the event that DISTRICT terminates this Agreement under paragraph (b) or (c) of this Section, PROVIDER shall only be paid for those services rendered and reimbursable expenses incurred up to the date of termination. All cash deposits made by DISTRICT to PROVIDER, if any, shall be refundable to DISTRICT in full upon termination of this Agreement unless specified to the contrary below.
- e) **Budget Contingency**
It is mutually agreed that if sufficient funds are not appropriated for the Program in the current year budget and/or subsequent years covered under this

Agreement, then this Agreement shall be of no further force and effect. In this event, the DISTRICT shall have no liability to pay any funds to the PROVIDER or furnish any other considerations under this Agreement, and the PROVIDER shall not be obligated to perform any provisions of this Agreement.

10. GENERAL PROVISIONS

- a) **Notices.** Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be deemed given and served upon delivery personally, or three (3) days after depositing in the United States Mail. Mailed notices shall be addressed to the parties at the addresses set forth in this Agreement for DISTRICT and PROVIDER. The foregoing addresses may be changed by written notice to the other party as provided herein.

- b) **Validity of Agreement.** This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by PROVIDER and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, signed by both parties, except DISTRICT may unilaterally amend the Agreement to accomplish the changes listed below:
 - (1) Increase dollar amounts; (2) Administrative changes; and (3) Changes as required by law.

- c) **Court Findings.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way. In the event any party to this Agreement shall commence any action against the other party relating to this Agreement or for the breach of any obligation contained in this Agreement, the prevailing party shall be entitled to recover such party's legal fees and other legal costs and expenses from the other party.

- d) **California Laws.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Venue for any legal action shall be San Bernardino County, California. 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.

- e) **Audit.** Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records and files of DISTRICT,

PROVIDER, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of the DISTRICT or as a part of any audit of DISTRICT, for a period of three (3) years after final payment is made under this Agreement. PROVIDER shall preserve and cause to be preserved such books, records and files for the audit period.

- f) **Non-discrimination.** Parties shall ensure that services and benefits are provided without regard to sex, sexual orientation, gender, ethnic group, race, ancestry, origin, immigration status, religion, color, mental disability, or physical disability, age, marital or parental status or any other unlawful consideration in accordance with Title VI of the Civil Rights Act of 1964, California Government Code, Section 503-504 of the Rehabilitation Act of 1973, as amended, and Title IX of the Education Amendments of 1972 (Pub. L. 92-318).
- g) **Contractual/Equitable Remedies.** PROVIDER agrees that the DISTRICT is the sole entity against whom the PROVIDER may seek either contractual or equitable remedies, and further agrees not to seek contractual or equitable remedies (including, but not limited to injunctive relief and quantum merit) against DISTRICT employees or beneficiaries of the Agreement.
- h) **Board of Trustees Approval.** PROVIDER warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind it hereto. This Agreement shall not become binding upon the DISTRICT until it has been duly approved or ratified by the Board of Trustees.

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

Ontario-Montclair School District

City of Montclair

Signature

Signature

Date

Javier John Dutrey, Mayor

Printed Name/Title

Phil Hillman, Chief Business Official

May 1, 2023

Date

Ontario-Montclair School DISTRICT
950 West D Street Ontario, CA 91762

Email Address/
5111 Benito Street

Street Address
Montclair CA 91763

Approved by OMSD
Board:

City, State, Zip Code

909-625-9459

Telephone Number

Attachment A

TK/K	1-8
\$13/day	\$11.50/day



AFTER-SCHOOL PROVIDER SERVICES SUMMER AGREEMENT

ONTARIO-MONTCLAIR SCHOOL DISTRICT

950 WEST "D" STREET • ONTARIO, CALIFORNIA 91762 • (909) 459-2500

THIS AGREEMENT is made and entered into this 7th day of April, 2023, by and between the Ontario-Montclair School DISTRICT, hereinafter referred to as the "DISTRICT," and **CITY OF MONTCLAIR**, hereinafter referred to as the "PROVIDER" to provide summer school program services to DISTRICT pupils. The parties hereby agree to the following terms:

1. SERVICES TO BE PERFORMED BY PROVIDER

PROVIDER agrees to operate the summer school programs every day during the summer school dates, in accordance with the policies and procedures by the DISTRICT, including the coordination of the academic assistance, homework support, and physical education and enrichment portions of the summer school program at each of the school sites ("Site"):

- o Serrano Middle School

2. TERM OF AGREEMENT

The term of this Agreement is from July 6, 2023 through July 26, 2023, unless sooner terminated pursuant to the provisions of Section 9 of this Agreement. DISTRICT and PROVIDER may mutually agree in writing to extend the term of this Agreement provided, however, DISTRICT shall not be obligated to pay PROVIDER any additional consideration unless PROVIDER undertakes additional services, in which instance the consideration shall be increased as DISTRICT and PROVIDER shall agree in writing.

3. PROVIDER RESPONSIBILITIES

PROVIDER agrees to the following in support of the summer school Program:

- PROVIDER will work collaboratively with DISTRICT and cluster Sites to design and operate the summer school Program. The summer school Program shall include the academic components to promote participating students' achievement and a range of services and programs to support the mental, physical, social and emotional development of participating students.
- PROVIDER shall designate a PROVIDER employee at each of the various schools to serve as liaison between the PROVIDER, the school Site, and the DISTRICT. For the purposes of this agreement, the individual liaison shall be deemed the "Site Coordinator".

- Site Coordinator shall maintain ongoing communication between PROVIDER staff and School Site staff regarding student needs and progress, including, but not limited to, attendance at school-day meetings and/or one-on-one meetings with teachers.
- PROVIDER will maintain a waiting list of students to ensure that vacancies are filled as soon as they occur. Site Supervisors will ensure priority enrollment to Foster Youth and McKinney Vento (Homeless) students in agreement with Grant requirements.
- PROVIDER will cooperate in the recruiting and retaining of students to achieve the number of budgeted students to be served.
- PROVIDER, working with DISTRICT, shall ensure staffing sufficient to operate program and perform the requirements in accordance with the DISTRICT staffing ratios and the terms and conditions of the expanded learning opportunities program, relevant Education Code provisions, as applicable at each school throughout the 2023-2024 school year, including on days designated as “minimum” or “modified” days.
- Staffing ratios must minimally meet the 1:20 ratio for the ELOP requirements for Average Daily Attendance (ADA).
- PROVIDER shall submit to the DISTRICT a roster of PROVIDER’s staff at each Site to include contact information (work telephone, cellular phone, e-mail address). The initial roster is due to the DISTRICT prior to the start of the new school year and every first of the month thereafter.
- PROVIDER shall provide each program staff with a PROVIDER name photo identification badge and lanyard.
- PROVIDER shall provide all necessary training and supervision of staff to meet all contractual obligations.
- PROVIDER shall provide training to all agency staff in areas including but not limited to health and safety protocols from California Department of Education, California Department of Public Health, and the DISTRICT.
- PROVIDER shall comply with the DISTRICT’s safety procedures, including but not limited to:
 - PROVIDER shall develop and train PROVIDER’s staff and volunteers in emergency and disaster procedures aligned with the Site emergency disaster plan shall be provided by DISTRICT to PROVIDER upon execution of this MOU, including an evacuation and reunification plan for use during program hours.
 - PROVIDER shall ensure that the disaster preparedness kit provided by the DISTRICT is maintained and stored in a locked cabinet.
 - PROVIDER shall train staff and conduct the following emergency procedure drills per semester at each schools during program hours: fire, disaster, and lock down.
 - PROVIDER shall complete the emergency preparedness drill log. PROVIDER shall report any injury or incident (i.e. an injury involving medical attention or involving police or social services, student leaving area for students under the direct supervision, student behaving inappropriately while participating in virtual activities) to the parent/guardian, school administrator, the Site’s Teacher on Assignment/Expanded Learning Opportunity Program Coordinator (“Site ELOP Coordinator”), the DISTRICT’s ELOP Coordinator,

and the PROVIDER administrative office within 24 hours of the incident, utilizing the DISTRICT's incident report form or the injury report form.

- In addition to the injury report form, all head injuries must be reported to the parent/guardian on the DISTRICT's head injury report form.
 - Any severe incident/injury must be reported to the parent/guardian, school administrator, Site ELOP Coordinator, DISTRICT ELOP Coordinator, if available, and DISTRICT immediately.
 - PROVIDER shall report all minor accidents or injuries on the DISTRICT designated form with one copy provided to the parent/guardian and one copy placed in the student's file on campus.
- All PROVIDER staff shall be trained in positive behavior management, instructional, academic and enrichment activities aligned with the DISTRICT standards. PROVIDER shall submit current training plan to the contract prior to the start of the new school year.
 - PROVIDER shall ensure program staff conforms to appropriate professional conduct, which includes but is not limited to positive interaction with students, parent/guardians and school staff, use of personal cell phone and dress code.
 - PROVIDER certifies that all PROVIDER employees who work directly with pupils at the Site will have a TB test and live scan investigation, which consists of FBI and DOJ clearances, and at a minimum, meet the qualifications for an Instructional Aide (Ed Code 8483.4) prior to employment. PROVIDER shall provide verification to DISTRICT of such qualifications prior to assigning the employees to a Site.
 - PROVIDER assumes financial responsibility for PROVIDER staff taking or being placed on leave (i.e. sick leave, workers compensation, vacation, administrative leave).
 - The PROVIDER certifies its employees who work directly with pupils at the Site will be trained in First Aid and CPR, Child Abuse/Mandated Reporting, Classroom Management, Curriculum, etc. prior to placement at the Site.
 - The PROVIDER shall ensure that all staff members who work directly with the pupils at the Site will be trained on and comply with child abuse and missing children reporting obligations and procedures under California law, including but not limited to, California Education Code Section 49370 and California Penal Code section 111666, et seq. prior to placement at the Site. PROVIDER shall adopt a written child abuse reporting procedure and provide annual training to all its employees regarding mandated reporting of child abuse and missing children. The PROVIDER shall provide verification to the DISTRICT that all employees have received annual training. The PROVIDER warrants that all staff members will timely abide by such laws.
 - The PROVIDER employees will work collaboratively with the Site in order to maximize program resources. This collaboration includes attending and supporting special events, program development, professional development and meetings.
 - PROVIDER to provide training and professional development to employees assigned to the Site and DISTRICT program staff, as stated in the professional development plan, afterhours or on weekends.
 - The PROVIDER acknowledges the DISTRICT's right to institute a program audit with or without cause and agrees to provide best efforts in assisting in the DISTRICT's completion of program audits.

- The PROVIDER acknowledges the DISTRICT's right to examine and audit all of PROVIDER books, records, documents, accounting procedures and practices and other evidence that reflect all costs claimed to have been incurred or fees claimed to have been earned under this Agreement.
- PROVIDER will make available to DISTRICT all budgetary information including operating budgets submitted for the relevant contract period being audited. PROVIDER will make such evidence and documents available at the DISTRICT office at all reasonable times and without charge within 5 days of a written request from DISTRICT. PROVIDER will, at no cost to DISTRICT, provide assistance for such examination or audit.
- PROVIDER agrees to meet with each participating Site to determine their budget (based on NOT TO EXCEED amount in Exhibit A, modified by Site program staffing and costs)
- PROVIDER shall exercise care when utilizing DISTRICT facilities or equipment. Any DISTRICT classroom or school equipment, which is established to have been damaged by the negligence or misconduct of PROVIDER's staff, will be replaced or repaired at the expense of the PROVIDER. PROVIDER agrees to provide replacement for missing or damaged classroom materials and school equipment attributable to the negligence or misconduct of PROVIDER's employees in classrooms and other areas utilized by PROVIDER. PROVIDER shall ensure facility space used by the program shall be clean and organized by program staff at each location.
- PROVIDER shall assist the Site Coordinator on the content and calendar for a monthly parent newsletter and calendar of activities and events for each assigned school and submit a copy to the DISTRICT no later than the first day of each month.
- PROVIDER shall not permit staff to be on School campuses prior to the start time of the Program unless otherwise agreed upon between Site Principal and Site Supervisor.
- All Program services shall be completed by 6:30 p.m. and/or until the last student is picked up by the student's designated parent and/or legal guardian.
- Pupil discipline is the PROVIDER'S responsibility. PROVIDER will give written notice to the relevant School Principal of any pupil dismissed from the Program, and any incident involving physical injury to a pupil. PROVIDER shall not direct or discipline any pupil during compulsory school hours, except in exigent circumstances.
- Work with the DISTRICT to implement a comprehensive annual program Evaluation Plan. As required, attend and participate in evaluation subcommittee meetings. Evaluation Plan shall include, but not be limited to, attendance tracking, collection of teacher, parent and participating student surveys, and data entry of survey results. Evaluations will be completed by PROVIDER in accordance with CDE guidelines and due dates.
- Regularly attend and participate in governance and operations meetings.
- Provide monthly attendance reports and quarterly expenditure reports to the DISTRICT by the 15th of the month for the previous month; including all required documents and reports required by DISTRICT Food Services Department.

- a) **Emergency Procedures.** Program staff will hold quarterly Site emergency drills based on the complete Site emergency plan and related staff training at each of the Schools.

In the event an emergency occurs after any School office is closed, or during a period when the PROVIDER is hosting a special event, Site Supervisor will employ agreed-upon emergency and/or evacuation procedures. Site Supervisors must have student identification information, including emergency contact information, to be able to notify parents, police, medical support, and anyone else who might need to be contacted.

- b) **Staffing.** PROVIDER shall, at PROVIDER's own expense, employ such agents/assistants as PROVIDER deems necessary to perform the services required of PROVIDER by this Agreement. DISTRICT will not train, control, direct, or supervise PROVIDER's assistants or employees in the performance of those services.

Each School's Principal reserves the right to review the performance of the Program staff and make recommendations for changes as he/she sees fit to the PROVIDER, who will communicate on a monthly basis with certain individuals, to include and not limited to: the Schools' Principals, City personnel and DISTRICT coordinator. All Program staff who directly supervises students must meet the minimum requirements for an instructional aide pursuant to the policies of the DISTRICT. Program staff must also meet the No Child Left Behind (NCLB) requirements of a highly qualified paraprofessional.

PROVIDER will recruit and train volunteers to lower the student/adult ratios, based on PROVIDER guidelines in the Program.

- c) **Independent Contractor.** PROVIDER is, and shall at all times be deemed to be, an independent contractor and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between DISTRICT and PROVIDER or any of PROVIDER's agents or employees. PROVIDER assumes exclusive responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. PROVIDER, its agents and employees, shall not be entitled to any rights and/or privileges of DISTRICT's employees and shall not be considered in any manner to be DISTRICT's employees.
- d) **Public Entity Employee.** If PROVIDER is a regular employee of a public entity, all services which PROVIDER renders under this Agreement will be performed at times other than PROVIDER's regular assigned work day for said entity or during periods of vacation or leave of absence from said entity, using PROVIDER's own resources.

4. DISTRICT RESPONSIBILITIES

DISTRICT agrees to the following in support of the summer school program:

- Provide access to on-site indoor and outdoor facilities for the school program appropriate to the number of participants and activities.
- Promote and foster a positive environment for the development of a successful site Program.
- Coordinate collaborative meetings with PROVIDER staff to discuss program goals and effectiveness.
- Provide a site summer school teacher/DISTRICT liaison for a portion of the Program hours.
- DISTRICT agrees to comply with all reasonable requests by PROVIDER and to provide access to all documents reasonably necessary for the performance of PROVIDER'S duties under this Agreement.
- DISTRICT and/or site(s) will provide PROVIDER with student identification information including student ID numbers, to be able to notify parents, police, medical support, and anyone else who might need to be contacted.
- DISTRICT and/or site(s) reserve the right to make recommendations for appropriate placements for students and will work with Site Supervisors to coordinate services with other established programs, such as after-school academic interventions and other public agency programs/projects, and provide aligned services that meet the needs of the students and Grant requirements.
- Principals or their designees shall cooperate in the recruiting and retaining of students to achieve the number of budgeted students to be served.
- DISTRICT and/or site(s) and PROVIDER will agree which facilities will be used for the Program. Facilities will include the MPR/cafe/tertia, classroom(s), computer lab, and other facilities the DISTRICT/site(s) and PROVIDER may agree are necessary. Facilities may include the library and gym.
- DISTRICT and/or site(s) reserves the right to review the performance of the Program staff and make recommendations for changes as he/she sees fit and PROVIDER will communicate on a monthly basis with certain individuals, to include and not limited to: the Schools' Principals, City personnel and DISTRICT coordinator.
- DISTRICT agrees to comply with all reasonable requests by PROVIDER and to provide access to all documents reasonably necessary for the performance of PROVIDER'S duties under this Agreement. PROVIDER will abide by applicable federal and state laws, rules and regulations concerning the rights of privacy and/or confidentiality of any information provided by DISTRICT, including both student and personnel records.
- The DISTRICT understands the difficulty staffing for this Program and may provide support to PROVIDER in addressing the necessary steps to meet the staffing expectations. The DISTRICT is not, however, taking on the responsibility of the PROVIDER to staff all Sites at appropriate staffing levels.

5. COMPENSATION

- a) **Compensation for Services.** Except as otherwise provided in this Agreement, DISTRICT agrees to compensate PROVIDER for services rendered under this Agreement as detailed in Exhibit 'X'.
- b) **Travel Expenses.** DISTRICT will pay no additional amount for travel or other expenses of PROVIDER under this Agreement unless specified below under section 2(c). Should travel or other expenses be specified below, PROVIDER shall be entitled to the lesser amount of
 - 1. The not to exceed amount stated, or
 - 2. The actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to this Agreement.
- c) **Summary of Compensation**

Per Rate Sheet (Attachment A)
- d) **Retired STRS or PERS.** If this Agreement is with an individual PROVIDER, PROVIDER shall notify the DISTRICT whether or not PROVIDER is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS). DISTRICT undertakes no responsibility to award contracts or hours in a way which protects PROVIDER's retirement benefits.
- e) **Income Tax.** DISTRICT will not withhold any federal or state income tax for payment made pursuant to this Agreement but, if applicable, will provide PROVIDER with a statement of earnings at the end of each calendar year. PROVIDER is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.
- f) **Documentation Required For Payment.** Unless specified below, payment for services and travel shall be made by DISTRICT to PROVIDER after services/travel has been completed and PROVIDER submits documentation for payment (e.g. PROVIDER invoice).

6. GENERAL OBLIGATIONS OF PROVIDER

- a) **Services Performed.** During the term of this Agreement, PROVIDER agrees to diligently prosecute the work specified in the "Services to be Performed by PROVIDER" to completion. PROVIDER may represent, perform services for, and be employed by such additional clients, persons, or companies as PROVIDER, in PROVIDER's sole discretion, sees fit.
- b) **Use of DISTRICT Space and Resources.**

DISTRICT and/or site(s) and PROVIDER will confer on which facilities will be used for the Program. Facilities may include the MPR/cafeteria, classroom(s), computer

lab, and other facilities the DISTRICT/site(s) and PROVIDER may agree are necessary. Facilities may include the library and gym. PROVIDER staff shall ensure that the facilities and work areas used for the Program are left clean and tidy at the end of each day the Program is operated.

- c) **Regulatory Compliance.** PROVIDER shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.
- d) **Fingerprinting.** PROVIDER shall comply with the requirements of Education Code section 45125.1 and Business and Professions Code section 18975 with respect to fingerprinting of employees and regular volunteers who may have any interaction with the DISTRICT's pupils (whether such interaction is in person or electronic, and whether the interaction is through writing, voice or video). If at any time during the term of this Agreement PROVIDER is either notified by the Department of Justice or otherwise becomes aware that any employee of PROVIDER, including PROVIDER, performing services under this Agreement has been arrested or convicted of a violent or serious felony as defined in California Education Code Section 45122.1, PROVIDER agrees immediately to notify the DISTRICT and remove said employee from performing services on this Agreement. PROVIDER shall certify in writing to the DISTRICT that neither the PROVIDER nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Education Code section 45122.1 (Exhibit X).
- e) **Indemnification.** PROVIDER shall indemnify, pay for the defense of, and hold harmless DISTRICT and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of PROVIDER's acts and/or omissions in rendering any services hereunder, including but not limited to the negligent or willful acts and/or omissions of PROVIDER's employees and agents. PROVIDER shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning PROVIDER or any employee/agent of PROVIDER and shall further indemnify, pay for the defense of, and hold harmless DISTRICT of and from any such payment or liability arising out of or in any manner connected with PROVIDER's performance under this Agreement.
- f) **Insurance Requirements.** During the entire term of this Agreement, PROVIDER shall procure, pay for and keep in full force and effect the following types of insurance:
 - 1. **General Liability Insurance.**
 - 2. Commercial general liability insurance, covering bodily injury liability, property damage liability and personal injury liability of PROVIDER with respect to the services provided by, or on behalf of, PROVIDER under this Agreement. The

policy limits shall not be less than Two Million dollars (\$2,000,000) per occurrence with a general aggregate limit of not less than Four Million dollars (\$4,000,000).

- a. The DISTRICT requires the Certificate of Liability Insurance to show the DISTRICT as the "Certificate Holder" and "Additional Insured" on the PROVIDER'S general liability insurance policy. Requested wording in the "Description box" is as follows:

The Ontario-Montclair School DISTRICT, its departments, officers, agents, and employees are additional insureds with regard to liability and defense of suits arising from the operations and uses performed by or on behalf of the named "Insured."

3. **Auto Liability Insurance.**

PROVIDER agrees that services in conjunction with this agreement will be conducted in PROVIDER'S office or at a DISTRICT school Site and PROVIDER will not drive Student in private or commercial vehicle to conduct assessments or conduct other business in conjunction with this agreement. Accordingly, commercial automobile insurance will not be required in conjunction with this agreement. Should PROVIDER need to provide services in conjunction with this agreement that do require Student transportation in a private or commercial vehicle, the DISTRICT and PROVIDER will mutually agree on services to be provided, and PROVIDER will provide insurance as follows: Business auto liability insurance covering the use of "owned, non-owned and hired" autos by or on behalf of PROVIDER respect to the services to be performed under this Agreement. The policy limits shall not be less than One Million dollars (\$1,000,000) per occurrence. The Auto Liability Insurance policy shall include waiver of subrogation via separate endorsement.

4. **Workers' Compensation Insurance.** This coverage is required unless PROVIDER provides written verification it has no employees. Coverage must be at least as broad as that which is required by the State of California, with Statutory Limits. PROVIDER must also maintain Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Workers' compensation policy shall include waiver of subrogation via separate endorsement.

5. **Sexual Molestation and/or Abuse.** The general liability policy above may not contain an exclusion for coverage of claims arising from claims for sexual molestation or abuse. In the event that PROVIDER'S policy should have an exclusion for sexual molestation or abuse claims, then PROVIDER shall be required to procure a supplemental policy providing such coverage of not less than \$2,000,000 per occurrence with an aggregate of not less than \$4,000,000 for damages because of bodily injury by reason of negligent hiring and supervision.

6. **Cyber Security Liability.** Coverage for both electronic and non-electronic data breach of \$1,000,000 per occurrence with an aggregate limit of not less than \$2,000,000 and shall cover all of Company's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Company or District's computers or servers to affect, alter, copy, corrupt, delete, disrupt or destroy a computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer of computer virus, Trojan horse, worms or any other type of malicious or damaging code; and for Third-Party Liability encompassing judgments or settlement and defense costs arising out of litigation due to a data breach and data breach response costs for customer notification and credit monitoring service fees.

The policies of insurance described above shall be carried with responsible and solvent insurance companies authorized to do business in the State of California. True and correct copies of all certificates of insurance reflecting the coverage required in Paragraph (4g.1-3) shall be provided to DISTRICT prior to the commencement of services under this Agreement. PROVIDER agrees that it shall not cancel or change the coverage provided by the policies of insurance described in Paragraph (4g.1-3) above without first giving the DISTRICT's Chief Business Official, thirty (30) days prior written notice. Should any such policy of insurance be canceled or changed, PROVIDER agrees to immediately provide DISTRICT true and correct copies of all new or revised certificates of insurance.

The PROVIDER shall not commence performing any portion of the services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to DISTRICT. Certificates and insurance policies shall include the following:

- A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to DISTRICT, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
- Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- An endorsement stating that DISTRICT and its agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that PROVIDER's insurance policies shall be primary to any insurance or self-insurance maintained by DISTRICT.
- If the PROVIDER or PROVIDER's subcontractor(s) maintains broader coverage and/or higher limits than the minimums shown above, DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by the PROVIDER. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to DISTRICT.

- PROVIDER, or its subcontractors as the case may be, shall be responsible for payment of all deductibles on all insurances required to be furnished by DISTRICT or subcontractors.
- All policies shall be written on an occurrence form.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to DISTRICT.

g) **Written Consent.** Neither this Agreement nor any duties or obligations under this Agreement may be assigned or transferred by PROVIDER without the prior written consent of DISTRICT.

7. CHILD ABUSE, MANDATED REPORTER, AND CPR REQUIREMENTS:

PROVIDER shall ensure that all staff members who work directly with students, are trained on and comply with child abuse and missing children reporting obligations and procedures under California law, including but not limited to, California Education Code Section 49370 and California Penal Code section 11165.7, 11166, et seq. PROVIDER shall adopt a written child abuse reporting procedure and provide annual training to all its employees regarding mandated reporting of child abuse and missing children. The PROVIDER shall provide verification to the District that all employees have received annual training. The PROVIDER warrants that all staff members will timely abide by such laws.

PROVIDER certifies its employees who work directly with pupils will be trained, including but not limited to, in First Aid, CPR, and Classroom Management, prior to placement at the Site.

8. CONFIDENTIALITY

PROVIDER and its subcontractors agree to comply with all applicable laws in the performance of its obligations under this Agreement, and in particular applicable federal and state regulations regarding student records, student privacy, and the commercial use of student information, including the Family Educational Rights and Privacy Act (FERPA), Student Online Personal Information Protection Act (SOPIPA), AB 1584 (Ed. Code 49073.1) Pupil Data Privacy and the District (including but not limited to Administrative Regulation and Policy No. 5022 and 5125) to the end that the rights and privacy of the students enrolled in the District and of their parents are not violated or invaded.

These provisions include, but are not limited to, ensuring that:

- A. No identification of students or their parent/guardians by persons other than representatives of PROVIDER is permitted.
- B. The individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained.
- C. No access to individual student data shall be granted by PROVIDER to any other person, persons, agency or organization without the written consent of the pupil's parent/guardian, except for sharing with other

persons within the District or representatives of PROVIDER so long as those persons have a legitimate interest in the information.

- D. PROVIDER recognizes and agrees that such access will be extended in reliance on representations made in this assurance, and that the District shall have the right to enforcement of this assurance, or revocation of such access (including return of all physical forms of such data and destruction of all such electronic data) immediately upon evidence of noncompliance by PROVIDER. This assurance is binding PROVIDER on and such persons as may be employed by PROVIDER to assist in any phase of the contractual obligation to the District.

PROVIDER further represents and warrants that District's and District users' access to and use of the PROVIDER's software or other services as described in this MOU will not infringe any third party copyright.

9. TERMINATION OF AGREEMENT

- a) **Termination without Cause**. Unless otherwise terminated as provided below, this Agreement shall continue in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.
- b) **Termination for Breach**. Should PROVIDER default in the performance of this Agreement or breach any of its provisions, DISTRICT may terminate this Agreement by giving Thirty (30) Days' Notice in writing to PROVIDER to the address stated in this Agreement. If, within ten (10) calendar days prior to the expiration of the Thirty (30) Days' notice period, the PROVIDER provides evidence of a cure or corrects the default or breach, the DISTRICT may withdraw the Thirty (30) Days' notice.
- c) **Immediate Suspension/Termination by DISTRICT**. If at any time during the performance of this Agreement DISTRICT determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, DISTRICT shall have the right to terminate the performance of PROVIDER's services hereunder by giving written notification to PROVIDER of its intention to terminate.
- d) **Effect of Termination**. In the event that DISTRICT terminates this Agreement under paragraph (b) or (c) of this Section, PROVIDER shall only be paid for those services rendered and reimbursable expenses incurred up to the date of termination. All cash deposits made by DISTRICT to PROVIDER, if any, shall be refundable to DISTRICT in full upon termination of this Agreement unless specified to the contrary below.
- e) **Budget Contingency**
It is mutually agreed that if sufficient funds are not appropriated for the Program in the current year budget and/or subsequent years covered under this

Agreement, then this Agreement shall be of no further force and effect. In this event, the DISTRICT shall have no liability to pay any funds to the PROVIDER or furnish any other considerations under this Agreement, and the PROVIDER shall not be obligated to perform any provisions of this Agreement.

10. GENERAL PROVISIONS

- a) **Notices.** Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be deemed given and served upon delivery personally, or three (3) days after depositing in the United States Mail. Mailed notices shall be addressed to the parties at the addresses set forth in this Agreement for DISTRICT and PROVIDER. The foregoing addresses may be changed by written notice to the other party as provided herein.
- b) **Validity of Agreement.** This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by PROVIDER and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, signed by both parties, except DISTRICT may unilaterally amend the Agreement to accomplish the changes listed below:
- (1) Increase dollar amounts; (2) Administrative changes; and (3) Changes as required by law.
- c) **Court Findings.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way. In the event any party to this Agreement shall commence any action against the other party relating to this Agreement or for the breach of any obligation contained in this Agreement, the prevailing party shall be entitled to recover such party's legal fees and other legal costs and expenses from the other party.
- d) **California Laws.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Venue for any legal action shall be San Bernardino County, California. 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.
- e) **Audit.** Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records and files of DISTRICT,

PROVIDER, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of the DISTRICT or as a part of any audit of DISTRICT, for a period of three (3) years after final payment is made under this Agreement. PROVIDER shall preserve and cause to be preserved such books, records and files for the audit period.

- f) **Non-discrimination.** Parties shall ensure that services and benefits are provided without regard to sex, sexual orientation, gender, ethnic group, race, ancestry, origin, immigration status, religion, color, mental disability, or physical disability, age, marital or parental status or any other unlawful consideration in accordance with Title VI of the Civil Rights Act of 1964, California Government Code, Section 503-504 of the Rehabilitation Act of 1973, as amended, and Title IX of the Education Amendments of 1972 (Pub. L. 92-318).
- g) **Contractual/Equitable Remedies.** PROVIDER agrees that the DISTRICT is the sole entity against whom the PROVIDER may seek either contractual or equitable remedies, and further agrees not to seek contractual or equitable remedies (including, but not limited to injunctive relief and quantum merit) against DISTRICT employees or beneficiaries of the Agreement.
- h) **Board of Trustees Approval.** PROVIDER warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind it hereto. This Agreement shall not become binding upon the DISTRICT until it has been duly approved or ratified by the Board of Trustees.

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

Ontario-Montclair School District

City of Montclair

Signature

Signature

Date

Javier John Dutrey, Mayor

Printed Name/Title

May 1, 2023

Phil Hillman, Chief Business Official

Date

Ontario-Montclair School DISTRICT
950 West D Street Ontario, CA 91762

Email Address/

Street Address

Montclair CA 91763

City, State, Zip Code

909-625-9459

Telephone Number

Approved by OMSD
Board:

Attachment A

TK/K	1-8
\$13/day	\$11.50/day



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	FILE I.D.:	HSV030
SECTION:	CONSENT - AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	3	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NOS. 23-24 AND 23-25 WITH ONTARIO-MONTCLAIR SCHOOL DISTRICT TO SUPPORT THE MONTCLAIR AFTER-SCHOOL PROGRAM AT VARIOUS SITES FOR THE 2023-2024 SCHOOL YEAR		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement Nos. 23-24 and 23-25 with Ontario-Montclair School District (OMSD) to support the Montclair After-school Program at various sites for the 2023-2024 school year.

BACKGROUND: The Human Services Department has delivered after-school programs within OMSD schools since 1999. Funding for these programs originates from the California Department of Education through grants made available to local education authorities, such as OMSD. The purpose of the funding is to provide communities with enhanced community-based after-school services in an effort to strengthen healthy child development.

In Spring 2023, Ontario-Montclair School District began using a competitive bidding process for provision of their after-school programs. Applicants were invited to bid on pre-determined clusters of schools based on their middle school territories. The City of Montclair submitted a proposal and was awarded contracts to provide programming during the 2023-2024 school year at two clusters:

- Cluster 3:
 - Serrano Middle School
 - Lehigh Elementary School
 - Monte Vista Elementary School
 - Moreno Elementary School
 - Ramona Elementary School

- Cluster 4:
 - Vernon Middle School
 - Buena Vista Elementary School
 - El Camino Elementary School
 - Elderberry Elementary School
 - Kingsley Elementary School
 - Montera Elementary School

As of July 1, 2023, the City of Montclair will no longer provide an After-school Program at Howard or Mission Elementary schools. The Montclair After-school Program will now be provided at two new schools, Buena Vista and Elderberry Elementary Schools, and the program will return to Montera Elementary School.

FISCAL IMPACT: Should the City Council approve proposed Agreement Nos. 23-24 and 23-25, OMSD would provide funding at \$13.00 per Transitional Kinder/Kindergarten student per day and \$11.50 per first to eighth grade student per day to fund personnel, training, supplies, and grant oversight. The term length of proposed Agreement Nos. 23-24 and 23-25 is July 1, 2023, through June 30, 2024.

RECOMMENDATION: Staff recommends the City Council approve Agreement Nos. 23-24 and 23-25 with Ontario-Montclair School District to support the Montclair After-School Program at various sites for the 2023-2024 school year.



AFTER-SCHOOL PROVIDER SERVICES AGREEMENT
ONTARIO-MONTCLAIR SCHOOL DISTRICT
950 WEST "D" STREET • ONTARIO, CALIFORNIA 91762 • (909) 459-2500

THIS AGREEMENT is made and entered into this 7th day of April by and between the Ontario-Montclair School DISTRICT, hereinafter referred to as the "DISTRICT," and **CITY OF MONTCLAIR**, hereinafter referred to as the "PROVIDER" to provide After School Educational and Safety ("ASES") program services ("ASES Program") to DISTRICT pupils. The parties hereby agree to the following terms:

1. SERVICES TO BE PERFORMED BY PROVIDER

PROVIDER agrees to operate the ASES Program Programs every day during the regular school calendar year, in accordance with the policies and procedures by the DISTRICT, including the coordination of the academic assistance, homework support, and physical education and enrichment portions of the ASES Program at each of the school sites ("Site") within the following school cluster ("Cluster"):

- o CLUSTER 3
 - Lehigh Elementary School
 - Monte Vista Elementary School
 - Moreno Elementary School
 - Ramona Elementary School
 - Serrano Middle School

2. TERM OF AGREEMENT

The term of this Agreement is from July 1, 2023 through June 30, 2024, unless sooner terminated pursuant to the provisions of Section 9 of this Agreement. DISTRICT and PROVIDER may mutually agree in writing to extend the term of this Agreement provided, however, DISTRICT shall not be obligated to pay PROVIDER any additional consideration unless PROVIDER undertakes additional services, in which instance the consideration shall be increased as DISTRICT and PROVIDER shall agree in writing.

3. PROVIDER RESPONSIBILITIES

PROVIDER agrees to the following in support of the ASES Program:

- PROVIDER will work collaboratively with DISTRICT and cluster Sites to design and operate the ASES Program. The ASES Program shall include the academic components to promote participating students' achievement and a range of services and programs to support the mental, physical, social and emotional development of participating students.

- PROVIDER shall designate a PROVIDER employee at each of the various schools to serve as liaison between the PROVIDER, the school Site, and the DISTRICT. For the purposes of this agreement, the individual liaison shall be deemed the "Site Coordinator".
 - Site Coordinator shall maintain ongoing communication between PROVIDER staff and School Site staff regarding student needs and progress, including, but not limited to, attendance at school-day meetings and/or one-on-one meetings with teachers.
- PROVIDER will maintain a waiting list of students to ensure that vacancies are filled as soon as they occur. Site Supervisors will ensure priority enrollment to Foster Youth and McKinney Vento (Homeless) students in agreement with Grant requirements.
- PROVIDER will cooperate in the recruiting and retaining of students to achieve the number of budgeted students to be served.
- PROVIDER, working with DISTRICT, shall ensure staffing sufficient to operate program and perform the requirements in accordance with the DISTRICT staffing ratios and the terms and conditions of the ASES Program grant, relevant Education Code provisions, as applicable at each school throughout the 2023-2024 school year, including on days designated as "minimum" or "modified" days.
- Staffing ratios must minimally meet the 1:20 ratio for the ASES Program/Site's targeted Average Daily Attendance (ADA).
- If the program does not meet 95% of the ADA target for any month, beginning October 1, 2023, a meeting will be scheduled between the PROVIDER, the Site, and the DISTRICT to discuss strategic plans to improve attendance and identify opportunities for the program to improve services.
- PROVIDER shall submit to the DISTRICT a roster of PROVIDER's staff at each Site to include contact information (work telephone, cellular phone, e-mail address). The initial roster is due to the DISTRICT prior to the start of the new school year and every first of the month thereafter.
- PROVIDER shall provide each program staff with a PROVIDER name photo identification badge and lanyard.
- PROVIDER shall provide all necessary training and supervision of staff to meet all contractual obligations.
- PROVIDER shall provide training to all agency staff in areas including but not limited to health and safety protocols from California Department of Education, California Department of Public Health, and the DISTRICT.
- PROVIDER shall comply with the DISTRICT's safety procedures, including but not limited to:
 - PROVIDER shall develop and train PROVIDER's staff and volunteers in emergency and disaster procedures aligned with the Site emergency disaster plan shall be provided by DISTRICT to PROVIDER upon execution of this MOU, including an evacuation and reunification plan for use during program hours.
 - PROVIDER shall ensure that the disaster preparedness kit provided by the DISTRICT is maintained and stored in a locked cabinet.
 - PROVIDER shall train staff and conduct the following emergency procedure drills per semester at each schools during program hours: fire, disaster, and lock down.

- PROVIDER shall complete the emergency preparedness drill log. PROVIDER shall report any injury or incident (i.e. an injury involving medical attention or involving police or social services, student leaving area for students under the direct supervision, student behaving inappropriately while participating in virtual activities) to the parent/guardian, school administrator, the Site's Teacher on Assignment/Expanded Learning Opportunity Program Coordinator ("Site ELOP Coordinator"), the DISTRICT's ELOP Coordinator, and the PROVIDER administrative office within 24 hours of the incident, utilizing the DISTRICT's incident report form or the injury report form.
 - In addition to the injury report form, all head injuries must be reported to the parent/guardian on the DISTRICT's head injury report form.
 - Any severe incident/injury must be reported to the parent/guardian, school administrator, Site ELOP Coordinator, DISTRICT ELOP Coordinator, if available, and DISTRICT immediately.
 - PROVIDER shall report all minor accidents or injuries on the DISTRICT designated form with one copy provided to the parent/guardian and one copy placed in the student's file on campus.
- All PROVIDER staff shall be trained in positive behavior management, instructional, academic and enrichment activities aligned with the DISTRICT standards. PROVIDER shall submit current training plan to the contract prior to the start of the new school year.
- PROVIDER shall ensure program staff conforms to appropriate professional conduct, which includes but is not limited to positive interaction with students, parent/guardians and school staff, use of personal cell phone and dress code.
- PROVIDER certifies that all PROVIDER employees who work directly with pupils at the Site will have a TB test and live scan investigation, which consists of FBI and DOJ clearances, and at a minimum, meet the qualifications for an Instructional Aide (Ed Code 8483.4) prior to employment. PROVIDER shall provide verification to DISTRICT of such qualifications prior to assigning the employees to a Site.
- PROVIDER assumes financial responsibility for PROVIDER staff taking or being placed on leave (i.e. sick leave, workers compensation, vacation, administrative leave).
- The PROVIDER certifies its employees who work directly with pupils at the Site will be trained in First Aid and CPR, Child Abuse/Mandated Reporting, Classroom Management, Curriculum, etc. prior to placement at the Site.
- The PROVIDER shall ensure that all staff members who work directly with the pupils at the Site will be trained on and comply with child abuse and missing children reporting obligations and procedures under California law, including but not limited to, California Education Code Section 49370 and California Penal Code section 111666, et seq. prior to placement at the Site. PROVIDER shall adopt a written child abuse reporting procedure and provide annual training to all its employees regarding mandated reporting of child abuse and missing children. The PROVIDER shall provide verification to the DISTRICT that all employees have received annual training. The PROVIDER warrants that all staff members will timely abide by such laws.
- The PROVIDER employees will work collaboratively with the Site in order to maximize program resources. This collaboration includes attending and

supporting special events, program development, professional development and meetings.

- PROVIDER to provide training and professional development to employees assigned to the Site and DISTRICT program staff, as stated in the professional development plan, afterhours or on weekends.
- The PROVIDER acknowledges the DISTRICT's right to institute a program audit with or without cause and agrees to provide best efforts in assisting in the DISTRICT's completion of program audits.
- The PROVIDER acknowledges the DISTRICT's right to examine and audit all of PROVIDER books, records, documents, accounting procedures and practices and other evidence that reflect all costs claimed to have been incurred or fees claimed to have been earned under this Agreement.
- PROVIDER will make available to DISTRICT all budgetary information including operating budgets submitted for the relevant contract period being audited. PROVIDER will make such evidence and documents available at the DISTRICT office at all reasonable times and without charge within 5 days of a written request from DISTRICT. PROVIDER will, at no cost to DISTRICT, provide assistance for such examination or audit.
- PROVIDER agrees to meet with each participating Site to determine their budget (based on NOT TO EXCEED amount in Exhibit A, modified by Site program staffing and costs), and will prepare and submit to the DISTRICT a detailed budget no later than August 10, 2023.
- PROVIDER will submit a completed Professional Development Plan for all staff including DISTRICT staff no later than August 10, 2023.
- PROVIDER shall exercise care when utilizing DISTRICT facilities or equipment. Any DISTRICT classroom or school equipment, which is established to have been damaged by the negligence or misconduct of PROVIDER's staff, will be replaced or repaired at the expense of the PROVIDER. PROVIDER agrees to provide replacement for missing or damaged classroom materials and school equipment attributable to the negligence or misconduct of PROVIDER's employees in classrooms and other areas utilized by PROVIDER. PROVIDER shall ensure facility space used by the program shall be clean and organized by program staff at each location.
- PROVIDER shall assist the Site Coordinator on the content and calendar for a monthly parent newsletter and calendar of activities and events for each assigned school and submit a copy to the DISTRICT no later than the first day of each month.
- PROVIDER shall conduct a minimum of two (2) family events annually at each school, which may be conducted during program hours. Such events may include student performances, or other celebratory themes. The goal of such events should be to build communication with parents/guardians and create stronger family involvement within the program. PROVIDER's program staff shall work collaboratively with school staff to coordinate the events. PROVIDER shall submit a copy of the flyer detailing the event, prior to the event for distribution by Site staff.
- PROVIDER shall not permit staff to be on School campuses prior to the start time of the Program unless otherwise agreed upon between Site Principal and Site Supervisor.

- All Program services shall be completed by 6:30 p.m. and/or until the last student is picked up by the student's designated parent and/or legal guardian.
 - Pupil discipline is the PROVIDER'S responsibility. PROVIDER will give written notice to the relevant School Principal of any pupil dismissed from the Program, and any incident involving physical injury to a pupil. PROVIDER shall not direct or discipline any pupil during compulsory school hours, except in exigent circumstances.
 - Work with the DISTRICT to implement a comprehensive annual program Evaluation Plan. As required, attend and participate in evaluation subcommittee meetings. Evaluation Plan shall include, but not be limited to, attendance tracking, collection of teacher, parent and participating student surveys, and data entry of survey results. Evaluations will be completed by PROVIDER in accordance with CDE guidelines and due dates.
 - Regularly attend and participate in governance and operations meetings.
 - Provide monthly attendance reports and quarterly expenditure reports to the DISTRICT by the 15th of the month for the previous month; including all required documents and reports required by DISTRICT Food Services Department.
- a) **Emergency Procedures.** Program staff will hold quarterly Site emergency drills based on the complete Site emergency plan and related staff training at each of the Schools.

In the event an emergency occurs after any School office is closed, or during a period when the PROVIDER is hosting a special event, Site Supervisor will employ agreed-upon emergency and/or evacuation procedures. Site Supervisors must have student identification information, including emergency contact information, to be able to notify parents, police, medical support, and anyone else who might need to be contacted.

- b) **Staffing.** PROVIDER shall, at PROVIDER's own expense, employ such agents/assistants as PROVIDER deems necessary to perform the services required of PROVIDER by this Agreement. DISTRICT will not train, control, direct, or supervise PROVIDER's assistants or employees in the performance of those services.

Each School's Principal reserves the right to review the performance of the Program staff and make recommendations for changes as he/she sees fit to the PROVIDER, who will communicate on a monthly basis with certain individuals, to include and not limited to: the Schools' Principals, City personnel and DISTRICT coordinator. All Program staff who directly supervises students must meet the minimum requirements for an instructional aide pursuant to the policies of the DISTRICT. Program staff must also meet the No Child Left Behind (NCLB) requirements of a highly qualified paraprofessional.

PROVIDER will recruit and train volunteers to lower the student/adult ratios, based on PROVIDER guidelines in the Program.

- c) **Independent Contractor.** PROVIDER is, and shall at all times be deemed to be, an independent contractor and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the

terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between DISTRICT and PROVIDER or any of PROVIDER's agents or employees. PROVIDER assumes exclusive responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. PROVIDER, its agents and employees, shall not be entitled to any rights and/or privileges of DISTRICT's employees and shall not be considered in any manner to be DISTRICT's employees.

- d) **Public Entity Employee.** If PROVIDER is a regular employee of a public entity, all services which PROVIDER renders under this Agreement will be performed at times other than PROVIDER's regular assigned work day for said entity or during periods of vacation or leave of absence from said entity, using PROVIDER's own resources.

4. **DISTRICT RESPONSIBILITIES**

DISTRICT agrees to the following in support of the ASES Program:

- Provide access to on-site indoor and outdoor facilities for the Site ASSETS/ASES Program appropriate to the number of participants and activity.
- Promote and foster a positive environment for the development of a successful site Program.
- Coordinate collaborative meetings with PROVIDER staff to discuss programs goals and effectiveness.
- Provide a site after-school teacher/DISTRICT liaison for a portion of the Program hours.
- DISTRICT agrees to comply with all reasonable requests by PROVIDER and to provide access to all documents reasonably necessary for the performance of PROVIDER's duties under this Agreement.
- DISTRICT and/or site(s) will provide PROVIDER with student identification information including student ID numbers, to be able to notify parents, police, medical support, and anyone else who might need to be contacted.
- DISTRICT and/or site(s) reserve the right to make recommendations for appropriate placements for students and will work with Site Supervisors to coordinate services with other established programs, such as after-school academic interventions and other public agency programs/projects, and provide aligned services that meet the needs of the students and Grant requirements.
- Principals or their designees shall cooperate in the recruiting and retaining of students to achieve the number of budgeted students to be served.
- DISTRICT and/or site(s) and PROVIDER will agree which facilities will be used for the Program. Facilities will include the MPR/cafeteria, classroom(s), computer lab, and other facilities the DISTRICT/site(s) and PROVIDER may agree are necessary. Facilities may include the library and gym.
- DISTRICT and/or site(s) reserves the right to review the performance of the Program staff and make recommendations for changes as he/she sees fit and PROVIDER will communicate on a monthly basis with certain individuals, to include and not limited to: the Schools' Principals, City personnel and DISTRICT coordinator.

- DISTRICT agrees to comply with all reasonable requests by PROVIDER and to provide access to all documents reasonably necessary for the performance of PROVIDER'S duties under this Agreement. PROVIDER will abide by applicable federal and state laws, rules and regulations concerning the rights of privacy and/or confidentiality of any information provided by DISTRICT, including both student and personnel records.
- The DISTRICT understands the difficulty staffing for this Program and may provide support to PROVIDER in addressing the necessary steps to meet the staffing expectations. The DISTRICT is not, however, taking on the responsibility of the PROVIDER to staff all Sites at appropriate staffing levels.

5. COMPENSATION

- a) **Compensation for Services.** Except as otherwise provided in this Agreement, DISTRICT agrees to compensate PROVIDER for services rendered under this Agreement as detailed in Exhibit 'X'.
- b) **Travel Expenses.** DISTRICT will pay no additional amount for travel or other expenses of PROVIDER under this Agreement unless specified below under section 2(c). Should travel or other expenses be specified below, PROVIDER shall be entitled to the lesser amount of
 1. The not to exceed amount stated, or
 2. The actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to this Agreement.
- c) **Summary of Compensation**

Per Rate Sheet (Attachment A)
- d) **Retired STRS or PERS.** If this Agreement is with an individual PROVIDER, PROVIDER shall notify the DISTRICT whether or not PROVIDER is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS). DISTRICT undertakes no responsibility to award contracts or hours in a way which protects PROVIDER's retirement benefits.
- e) **Income Tax.** DISTRICT will not withhold any federal or state income tax for payment made pursuant to this Agreement but, if applicable, will provide PROVIDER with a statement of earnings at the end of each calendar year. PROVIDER is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.
- f) **Documentation Required For Payment.** Unless specified below, payment for services and travel shall be made by DISTRICT to PROVIDER after services/travel has been completed and PROVIDER submits documentation for payment (e.g. PROVIDER invoice).

6. GENERAL OBLIGATIONS OF PROVIDER

a) **Services Performed.** During the term of this Agreement, PROVIDER agrees to diligently prosecute the work specified in the "Services to be Performed by PROVIDER" to completion. PROVIDER may represent, perform services for, and be employed by such additional clients, persons, or companies as PROVIDER, in PROVIDER's sole discretion, sees fit.

b) **Use of DISTRICT Space and Resources.**

DISTRICT and/or site(s) and PROVIDER will confer on which facilities will be used for the Program. Facilities may include the MPR/cafeteria, classroom(s), computer lab, and other facilities the DISTRICT/site(s) and PROVIDER may agree are necessary. Facilities may include the library and gym. PROVIDER staff shall ensure that the facilities and work areas used for the Program are left clean and tidy at the end of each day the Program is operated.

c) **Regulatory Compliance.** PROVIDER shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.

d) **Fingerprinting.** PROVIDER shall comply with the requirements of Education Code section 45125.1 and Business and Professions Code section 18975 with respect to fingerprinting of employees and regular volunteers who may have any interaction with the DISTRICT's pupils (whether such interaction is in person or electronic, and whether the interaction is through writing, voice or video). If at any time during the term of this Agreement PROVIDER is either notified by the Department of Justice or otherwise becomes aware that any employee of PROVIDER, including PROVIDER, performing services under this Agreement has been arrested or convicted of a violent or serious felony as defined in California Education Code Section 45122.1, PROVIDER agrees immediately to notify the DISTRICT and remove said employee from performing services on this Agreement. PROVIDER shall certify in writing to the DISTRICT that neither the PROVIDER nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Education Code section 45122.1 (Exhibit X).

e) **Indemnification.** PROVIDER shall indemnify, pay for the defense of, and hold harmless DISTRICT and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of PROVIDER's acts and/or omissions in rendering any services hereunder, including but not limited to the negligent or willful acts and/or omissions of PROVIDER's employees and agents. PROVIDER shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning PROVIDER or any employee/agent of PROVIDER and shall further indemnify, pay

for the defense of, and hold harmless DISTRICT of and from any such payment or liability arising out of or in any manner connected with PROVIDER's performance under this Agreement.

f) **Insurance Requirements.** During the entire term of this Agreement, PROVIDER shall procure, pay for and keep in full force and effect the following types of insurance:

1. **General Liability Insurance.**

2. Commercial general liability insurance, covering bodily injury liability, property damage liability and personal injury liability of PROVIDER with respect to the services provided by, or on behalf of, PROVIDER under this Agreement. The policy limits shall not be less than Two Million dollars (\$2,000,000) per occurrence with a general aggregate limit of not less than Four Million dollars (\$4,000,000).

a. The DISTRICT requires the Certificate of Liability Insurance to show the DISTRICT as the "Certificate Holder" and "Additional Insured" on the PROVIDER'S general liability insurance policy. Requested wording in the "Description box" is as follows:

The Ontario-Montclair School DISTRICT, its departments, officers, agents, and employees are additional insureds with regard to liability and defense of suits arising from the operations and uses performed by or on behalf of the named "Insured."

3. **Auto Liability Insurance.**

PROVIDER agrees that services in conjunction with this agreement will be conducted in PROVIDER's office or at a DISTRICT school Site and PROVIDER will not drive Student in private or commercial vehicle to conduct assessments or conduct other business in conjunction with this agreement. Accordingly, commercial automobile insurance will not be required in conjunction with this agreement. Should PROVIDER need to provide services in conjunction with this agreement that do require Student transportation in a private or commercial vehicle, the DISTRICT and PROVIDER will mutually agree on services to be provided, and PROVIDER will provide insurance as follows: Business auto liability insurance covering the use of "owned, non-owned and hired" autos by or on behalf of PROVIDER respect to the services to be performed under this Agreement. The policy limits shall not be less than One Million dollars (\$1,000,000) per occurrence. The Auto Liability Insurance policy shall include waiver of subrogation via separate endorsement.

4. **Workers' Compensation Insurance.** This coverage is required unless PROVIDER provides written verification it has no employees. Coverage must be at least as broad as that which is required by the State of California, with Statutory Limits. PROVIDER must also maintain Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Workers'

compensation policy shall include waiver of subrogation via separate endorsement.

5. **Sexual Molestation and/or Abuse.** The general liability policy above may not contain an exclusion for coverage of claims arising from claims for sexual molestation or abuse. In the event that PROVIDER's policy should have an exclusion for sexual molestation or abuse claims, then PROVIDER shall be required to procure a supplemental policy providing such coverage of not less than \$2,000,000 per occurrence with an aggregate of not less than \$4,000,000 for damages because of bodily injury by reason of negligent hiring and supervision.

6. **Cyber Security Liability.** Coverage for both electronic and non-electronic data breach of \$1,000,000 per occurrence with an aggregate limit of not less than \$2,000,000 and shall cover all of Company's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Company or District's computers or servers to affect, alter, copy, corrupt, delete, disrupt or destroy a computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer of computer virus, Trojan horse, worms or any other type of malicious or damaging code; and for Third-Party Liability encompassing judgments or settlement and defense costs arising out of litigation due to a data breach and data breach response costs for customer notification and credit monitoring service fees.

The policies of insurance described above shall be carried with responsible and solvent insurance companies authorized to do business in the State of California. True and correct copies of all certificates of insurance reflecting the coverage required in Paragraph (4g.1-3) shall be provided to DISTRICT prior to the commencement of services under this Agreement. PROVIDER agrees that it shall not cancel or change the coverage provided by the policies of insurance described in Paragraph (4g.1-3) above without first giving the DISTRICT's Chief Business Official, thirty (30) days prior written notice. Should any such policy of insurance be canceled or changed, PROVIDER agrees to immediately provide DISTRICT true and correct copies of all new or revised certificates of insurance.

The PROVIDER shall not commence performing any portion of the services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to DISTRICT. Certificates and insurance policies shall include the following:

- A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to DISTRICT, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

- Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- An endorsement stating that DISTRICT and its agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that PROVIDER's insurance policies shall be primary to any insurance or self-insurance maintained by DISTRICT.
- If the PROVIDER or PROVIDER's subcontractor(s) maintains broader coverage and/or higher limits than the minimums shown above, DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by the PROVIDER. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to DISTRICT.
- PROVIDER, or its subcontractors as the case may be, shall be responsible for payment of all deductibles on all insurances required to be furnished by DISTRICT or subcontractors.
- All policies shall be written on an occurrence form.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to DISTRICT.

g) **Written Consent.** Neither this Agreement nor any duties or obligations under this Agreement may be assigned or transferred by PROVIDER without the prior written consent of DISTRICT.

7. **CHILD ABUSE, MANDATED REPORTER, AND CPR REQUIREMENTS:**

PROVIDER shall ensure that all staff members who work directly with students, are trained on and comply with child abuse and missing children reporting obligations and procedures under California law, including but not limited to, California Education Code Section 49370 and California Penal Code section 11165.7, 11166, et seq. PROVIDER shall adopt a written child abuse reporting procedure and provide annual training to all its employees regarding mandated reporting of child abuse and missing children. The PROVIDER shall provide verification to the District that all employees have received annual training. The PROVIDER warrants that all staff members will timely abide by such laws.

PROVIDER certifies its employees who work directly with pupils will be trained, including but not limited to, in First Aid, CPR, and Classroom Management, prior to placement at the Site.

8. CONFIDENTIALITY

PROVIDER and its subcontractors agree to comply with all applicable laws in the performance of its obligations under this Agreement, and in particular applicable federal and state regulations regarding student records, student privacy, and the commercial use of student information, including the Family Educational Rights and Privacy Act (FERPA), Student Online Personal Information Protection Act (SOPIPA), AB 1584 (Ed. Code 49073.1) Pupil Data Privacy and the District (including but not limited to Administrative Regulation and Policy No. 5022 and 5125) to the end that the rights and privacy of the students enrolled in the District and of their parents are not violated or invaded.

These provisions include, but are not limited to, ensuring that:

- A. No identification of students or their parent/guardians by persons other than representatives of PROVIDER is permitted.
- B. The individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained.
- C. No access to individual student data shall be granted by PROVIDER to any other person, persons, agency or organization without the written consent of the pupil's parent/guardian, except for sharing with other persons within the District or representatives of PROVIDER so long as those persons have a legitimate interest in the information.
- D. PROVIDER recognizes and agrees that such access will be extended in reliance on representations made in this assurance, and that the District shall have the right to enforcement of this assurance, or revocation of such access (including return of all physical forms of such data and destruction of all such electronic data) immediately upon evidence of noncompliance by PROVIDER. This assurance is binding PROVIDER on and such persons as may be employed by PROVIDER to assist in any phase of the contractual obligation to the District.

PROVIDER further represents and warrants that District's and District users' access to and use of the PROVIDER's software or other services as described in this MOU will not infringe any third party copyright.

9. TERMINATION OF AGREEMENT

- a) Termination without Cause. Unless otherwise terminated as provided below, this Agreement shall continue in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.
- b) Termination for Breach. Should PROVIDER default in the performance of this Agreement or breach any of its provisions, DISTRICT may terminate this Agreement by giving Thirty (30) Days' Notice in writing to PROVIDER to the address stated in this Agreement. If, within ten (10) calendar days prior to the expiration of the Thirty (30) Days' notice period,

the PROVIDER provides evidence of a cure or corrects the default or breach, the DISTRICT may withdraw the Thirty (30) Days' notice.

- c) **Immediate Suspension/Termination by DISTRICT.** If at any time during the performance of this Agreement DISTRICT determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, DISTRICT shall have the right to terminate the performance of PROVIDER's services hereunder by giving written notification to PROVIDER of its intention to terminate.
- d) **Effect of Termination.** In the event that DISTRICT terminates this Agreement under paragraph (b) or (c) of this Section, PROVIDER shall only be paid for those services rendered and reimbursable expenses incurred up to the date of termination. All cash deposits made by DISTRICT to PROVIDER, if any, shall be refundable to DISTRICT in full upon termination of this Agreement unless specified to the contrary below.
- e) **Budget Contingency**
It is mutually agreed that if sufficient funds are not appropriated for the Program in the current year budget and/or subsequent years covered under this Agreement, then this Agreement shall be of no further force and effect. In this event, the DISTRICT shall have no liability to pay any funds to the PROVIDER or furnish any other considerations under this Agreement, and the PROVIDER shall not be obligated to perform any provisions of this Agreement.

10. **GENERAL PROVISIONS**

- a) **Notices.** Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be deemed given and served upon delivery personally, or three (3) days after depositing in the United States Mail. Mailed notices shall be addressed to the parties at the addresses set forth in this Agreement for DISTRICT and PROVIDER. The foregoing addresses may be changed by written notice to the other party as provided herein.
- b) **Validity of Agreement.** This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by PROVIDER and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, signed by both parties, except DISTRICT may unilaterally amend the Agreement to accomplish the changes listed below:

(1) Increase dollar amounts; (2) Administrative changes; and (3) Changes as required by law.

- c) **Court Findings.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way. In the event any party to this Agreement shall commence any action against the other party relating to this Agreement or for the breach of any obligation contained in this Agreement, the prevailing party shall be entitled to recover such party's legal fees and other legal costs and expenses from the other party.
- d) **California Laws.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Venue for any legal action shall be San Bernardino County, California. 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.
- e) **Audit.** Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records and files of DISTRICT, PROVIDER, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of the DISTRICT or as a part of any audit of DISTRICT, for a period of three (3) years after final payment is made under this Agreement. PROVIDER shall preserve and cause to be preserved such books, records and files for the audit period.
- f) **Non-discrimination.** Parties shall ensure that services and benefits are provided without regard to sex, sexual orientation, gender, ethnic group, race, ancestry, origin, immigration status, religion, color, mental disability, or physical disability, age, marital or parental status or any other unlawful consideration in accordance with Title VI of the Civil Rights Act of 1964, California Government Code, Section 503-504 of the Rehabilitation Act of 1973, as amended, and Title IX of the Education Amendments of 1972 (Pub. L. 92-318).
- g) **Contractual/Equitable Remedies.** PROVIDER agrees that the DISTRICT is the sole entity against whom the PROVIDER may seek either contractual or equitable remedies, and further agrees not to seek contractual or equitable remedies (including, but not limited to injunctive relief and quantum merit) against DISTRICT employees or beneficiaries of the Agreement.
- h) **Board of Trustees Approval.** PROVIDER warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind it hereto. This Agreement shall not become binding upon the DISTRICT until it has been duly approved or ratified by the Board of Trustees.

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

Ontario-Montclair School District

City of Montclair

Signature

Signature

Date

Javier John Dutrey

Printed Name/Title

May 1, 2023

Phil Hillman, Chief Business Official

Date

Ontario-Montclair School DISTRICT
950 West D Street Ontario, CA 91762

Email Address/
5111 Benito Street

Street Address
Montclair CA 91763

City, State, Zip Code
909-625-9459

Telephone Number

Approved by OMSD
Board:

ATTACHMENT A

Gap	TK/K ExLP	ExLP
\$ 13.00	\$ 13.00	\$ 11.50
\$ 13.00	\$ 13.00	\$ 11.50
\$ 13.00	\$ 13.00	\$ 11.50
\$ 13.00	\$ 13.00	\$ 11.50
\$ 13.00	\$ 13.00	\$ 11.50



AFTER-SCHOOL PROVIDER SERVICES AGREEMENT

ONTARIO-MONTCLAIR SCHOOL DISTRICT

950 WEST "D" STREET • ONTARIO, CALIFORNIA 91762 • (909) 459-2500

THIS AGREEMENT is made and entered into this 7th day of April by and between the Ontario-Montclair School DISTRICT, hereinafter referred to as the "DISTRICT," and **CITY OF MONTCLAIR**, hereinafter referred to as the "PROVIDER" to provide After School Educational and Safety ("ASES") program services ("ASES Program") to DISTRICT pupils. The parties hereby agree to the following terms:

1. SERVICES TO BE PERFORMED BY PROVIDER

PROVIDER agrees to operate the ASES Program Programs every day during the regular school calendar year, in accordance with the policies and procedures by the DISTRICT, including the coordination of the academic assistance, homework support, and physical education and enrichment portions of the ASES Program at each of the school sites ("Site") within the following school cluster ("Cluster"):

- CLUSTER 4
 - Buena Vista Elementary School
 - El Camino Elementary School
 - Elderberry Elementary School
 - Kingsley Elementary School
 - Montera Elementary School
 - Vernon Middle School

2. TERM OF AGREEMENT

The term of this Agreement is from July 1, 2023 through June 30, 2024, unless sooner terminated pursuant to the provisions of Section 9 of this Agreement. DISTRICT and PROVIDER may mutually agree in writing to extend the term of this Agreement provided, however, DISTRICT shall not be obligated to pay PROVIDER any additional consideration unless PROVIDER undertakes additional services, in which instance the consideration shall be increased as DISTRICT and PROVIDER shall agree in writing.

3. PROVIDER RESPONSIBILITIES

PROVIDER agrees to the following in support of the ASES Program:

- PROVIDER will work collaboratively with DISTRICT and cluster Sites to design and operate the ASES Program. The ASES Program shall include the academic components to promote participating students' achievement and a range of

services and programs to support the mental, physical, social and emotional development of participating students.

- PROVIDER shall designate a PROVIDER employee at each of the various schools to serve as liaison between the PROVIDER, the school Site, and the DISTRICT. For the purposes of this agreement, the individual liaison shall be deemed the "Site Coordinator".
 - Site Coordinator shall maintain ongoing communication between PROVIDER staff and School Site staff regarding student needs and progress, including, but not limited to, attendance at school-day meetings and/or one-on-one meetings with teachers.
- PROVIDER will maintain a waiting list of students to ensure that vacancies are filled as soon as they occur. Site Supervisors will ensure priority enrollment to Foster Youth and McKinney Vento (Homeless) students in agreement with Grant requirements.
- PROVIDER will cooperate in the recruiting and retaining of students to achieve the number of budgeted students to be served.
- PROVIDER, working with DISTRICT, shall ensure staffing sufficient to operate program and perform the requirements in accordance with the DISTRICT staffing ratios and the terms and conditions of the ASES Program grant, relevant Education Code provisions, as applicable at each school throughout the 2023-2024 school year, including on days designated as "minimum" or "modified" days.
- Staffing ratios must minimally meet the 1:20 ratio for the ASES Program/Site's targeted Average Daily Attendance (ADA).
- If the program does not meet 95% of the ADA target for any month, beginning October 1, 2023, a meeting will be scheduled between the PROVIDER, the Site, and the DISTRICT to discuss strategic plans to improve attendance and identify opportunities for the program to improve services.
- PROVIDER shall submit to the DISTRICT a roster of PROVIDER's staff at each Site to include contact information (work telephone, cellular phone, e-mail address). The initial roster is due to the DISTRICT prior to the start of the new school year and every first of the month thereafter.
- PROVIDER shall provide each program staff with a PROVIDER name photo identification badge and lanyard.
- PROVIDER shall provide all necessary training and supervision of staff to meet all contractual obligations.
- PROVIDER shall provide training to all agency staff in areas including but not limited to health and safety protocols from California Department of Education, California Department of Public Health, and the DISTRICT.
- PROVIDER shall comply with the DISTRICT's safety procedures, including but not limited to:
 - PROVIDER shall develop and train PROVIDER's staff and volunteers in emergency and disaster procedures aligned with the Site emergency disaster plan shall be provided by DISTRICT to PROVIDER upon execution of this MOU, including an evacuation and reunification plan for use during program hours.
 - PROVIDER shall ensure that the disaster preparedness kit provided by the DISTRICT is maintained and stored in a locked cabinet.

- PROVIDER shall train staff and conduct the following emergency procedure drills per semester at each schools during program hours: fire, disaster, and lock down.
- PROVIDER shall complete the emergency preparedness drill log. PROVIDER shall report any injury or incident (i.e. an injury involving medical attention or involving police or social services, student leaving area for students under the direct supervision, student behaving inappropriately while participating in virtual activities) to the parent/guardian, school administrator, the Site's Teacher on Assignment/Expanded Learning Opportunity Program Coordinator ("Site ELOP Coordinator"), the DISTRICT's ELOP Coordinator, and the PROVIDER administrative office within 24 hours of the incident, utilizing the DISTRICT's incident report form or the injury report form.
- In addition to the injury report form, all head injuries must be reported to the parent/guardian on the DISTRICT's head injury report form.
- Any severe incident/injury must be reported to the parent/guardian, school administrator, Site ELOP Coordinator, DISTRICT ELOP Coordinator, if available, and DISTRICT immediately.
- PROVIDER shall report all minor accidents or injuries on the DISTRICT designated form with one copy provided to the parent/guardian and one copy placed in the student's file on campus.
- All PROVIDER staff shall be trained in positive behavior management, instructional, academic and enrichment activities aligned with the DISTRICT standards. PROVIDER shall submit current training plan to the contract prior to the start of the new school year.
- PROVIDER shall ensure program staff conforms to appropriate professional conduct, which includes but is not limited to positive interaction with students, parent/guardians and school staff, use of personal cell phone and dress code.
- PROVIDER certifies that all PROVIDER employees who work directly with pupils at the Site will have a TB test and live scan investigation, which consists of FBI and DOJ clearances, and at a minimum, meet the qualifications for an Instructional Aide (Ed Code 8483.4) prior to employment. PROVIDER shall provide verification to DISTRICT of such qualifications prior to assigning the employees to a Site.
- PROVIDER assumes financial responsibility for PROVIDER staff taking or being placed on leave (i.e. sick leave, workers compensation, vacation, administrative leave).
- The PROVIDER certifies its employees who work directly with pupils at the Site will be trained in First Aid and CPR, Child Abuse/Mandated Reporting, Classroom Management, Curriculum, etc. prior to placement at the Site.
- The PROVIDER shall ensure that all staff members who work directly with the pupils at the Site will be trained on and comply with child abuse and missing children reporting obligations and procedures under California law, including but not limited to, California Education Code Section 49370 and California Penal Code section 111666, et seq. prior to placement at the Site. PROVIDER shall adopt a written child abuse reporting procedure and provide annual training to all its employees regarding mandated reporting of child abuse and missing children. The PROVIDER shall provide verification to the DISTRICT that all employees have received annual training. The PROVIDER warrants that all staff members will timely abide by such laws.

- The PROVIDER employees will work collaboratively with the Site in order to maximize program resources. This collaboration includes attending and supporting special events, program development, professional development and meetings.
- PROVIDER to provide training and professional development to employees assigned to the Site and DISTRICT program staff, as stated in the professional development plan, afterhours or on weekends.
- The PROVIDER acknowledges the DISTRICT's right to institute a program audit with or without cause and agrees to provide best efforts in assisting in the DISTRICT's completion of program audits.
- The PROVIDER acknowledges the DISTRICT's right to examine and audit all of PROVIDER books, records, documents, accounting procedures and practices and other evidence that reflect all costs claimed to have been incurred or fees claimed to have been earned under this Agreement.
- PROVIDER will make available to DISTRICT all budgetary information including operating budgets submitted for the relevant contract period being audited. PROVIDER will make such evidence and documents available at the DISTRICT office at all reasonable times and without charge within 5 days of a written request from DISTRICT. PROVIDER will, at no cost to DISTRICT, provide assistance for such examination or audit.
- PROVIDER agrees to meet with each participating Site to determine their budget (based on NOT TO EXCEED amount in Exhibit A, modified by Site program staffing and costs), and will prepare and submit to the DISTRICT a detailed budget no later than August 10, 2023.
- PROVIDER will submit a completed Professional Development Plan for all staff including DISTRICT staff no later than August 10, 2023.
- PROVIDER shall exercise care when utilizing DISTRICT facilities or equipment. Any DISTRICT classroom or school equipment, which is established to have been damaged by the negligence or misconduct of PROVIDER's staff, will be replaced or repaired at the expense of the PROVIDER. PROVIDER agrees to provide replacement for missing or damaged classroom materials and school equipment attributable to the negligence or misconduct of PROVIDER's employees in classrooms and other areas utilized by PROVIDER. PROVIDER shall ensure facility space used by the program shall be clean and organized by program staff at each location.
- PROVIDER shall assist the Site Coordinator on the content and calendar for a monthly parent newsletter and calendar of activities and events for each assigned school and submit a copy to the DISTRICT no later than the first day of each month.
- PROVIDER shall conduct a minimum of two (2) family events annually at each school, which may be conducted during program hours. Such events may include student performances, or other celebratory themes. The goal of such events should be to build communication with parents/guardians and create stronger family involvement within the program. PROVIDER's program staff shall work collaboratively with school staff to coordinate the events. PROVIDER shall submit a copy of the flyer detailing the event, prior to the event for distribution by Site staff.

- PROVIDER shall not permit staff to be on School campuses prior to the start time of the Program unless otherwise agreed upon between Site Principal and Site Supervisor.
 - All Program services shall be completed by 6:30 p.m. and/or until the last student is picked up by the student's designated parent and/or legal guardian.
 - Pupil discipline is the PROVIDER'S responsibility. PROVIDER will give written notice to the relevant School Principal of any pupil dismissed from the Program, and any incident involving physical injury to a pupil. PROVIDER shall not direct or discipline any pupil during compulsory school hours, except in exigent circumstances.
 - Work with the DISTRICT to implement a comprehensive annual program Evaluation Plan. As required, attend and participate in evaluation subcommittee meetings. Evaluation Plan shall include, but not be limited to, attendance tracking, collection of teacher, parent and participating student surveys, and data entry of survey results. Evaluations will be completed by PROVIDER in accordance with CDE guidelines and due dates.
 - Regularly attend and participate in governance and operations meetings.
 - Provide monthly attendance reports and quarterly expenditure reports to the DISTRICT by the 15th of the month for the previous month; including all required documents and reports required by DISTRICT Food Services Department.
- a) **Emergency Procedures.** Program staff will hold quarterly Site emergency drills based on the complete Site emergency plan and related staff training at each of the Schools.

In the event an emergency occurs after any School office is closed, or during a period when the PROVIDER is hosting a special event, Site Supervisor will employ agreed-upon emergency and/or evacuation procedures. Site Supervisors must have student identification information, including emergency contact information, to be able to notify parents, police, medical support, and anyone else who might need to be contacted.

- b) **Staffing.** PROVIDER shall, at PROVIDER's own expense, employ such agents/assistants as PROVIDER deems necessary to perform the services required of PROVIDER by this Agreement. DISTRICT will not train, control, direct, or supervise PROVIDER's assistants or employees in the performance of those services.

Each School's Principal reserves the right to review the performance of the Program staff and make recommendations for changes as he/she sees fit to the PROVIDER, who will communicate on a monthly basis with certain individuals, to include and not limited to: the Schools' Principals, City personnel and DISTRICT coordinator. All Program staff who directly supervises students must meet the minimum requirements for an instructional aide pursuant to the policies of the DISTRICT. Program staff must also meet the No Child Left Behind (NCLB) requirements of a highly qualified paraprofessional.

PROVIDER will recruit and train volunteers to lower the student/adult ratios, based on PROVIDER guidelines in the Program.

- c) **Independent Contractor.** PROVIDER is, and shall at all times be deemed to be, an independent contractor and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between DISTRICT and PROVIDER or any of PROVIDER's agents or employees. PROVIDER assumes exclusive responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. PROVIDER, its agents and employees, shall not be entitled to any rights and/or privileges of DISTRICT's employees and shall not be considered in any manner to be DISTRICT's employees.
- d) **Public Entity Employee.** If PROVIDER is a regular employee of a public entity, all services which PROVIDER renders under this Agreement will be performed at times other than PROVIDER's regular assigned work day for said entity or during periods of vacation or leave of absence from said entity, using PROVIDER's own resources.

4. **DISTRICT RESPONSIBILITIES**

DISTRICT agrees to the following in support of the ASES Program:

- Provide access to on-site indoor and outdoor facilities for the Site ASSETS/ASES Program appropriate to the number of participants and activity.
- Promote and foster a positive environment for the development of a successful site Program.
- Coordinate collaborative meetings with PROVIDER staff to discuss programs goals and effectiveness.
- Provide a site after-school teacher/DISTRICT liaison for a portion of the Program hours.
- DISTRICT agrees to comply with all reasonable requests by PROVIDER and to provide access to all documents reasonably necessary for the performance of PROVIDER's duties under this Agreement.
- DISTRICT and/or site(s) will provide PROVIDER with student identification information including student ID numbers, to be able to notify parents, police, medical support, and anyone else who might need to be contacted.
- DISTRICT and/or site(s) reserve the right to make recommendations for appropriate placements for students and will work with Site Supervisors to coordinate services with other established programs, such as after-school academic interventions and other public agency programs/projects, and provide aligned services that meet the needs of the students and Grant requirements.
- Principals or their designees shall cooperate in the recruiting and retaining of students to achieve the number of budgeted students to be served.
- DISTRICT and/or site(s) and PROVIDER will agree which facilities will be used for the Program. Facilities will include the MPR/cafeteria, classroom(s), computer lab, and other facilities the DISTRICT/site(s) and PROVIDER may agree are necessary. Facilities may include the library and gym.
- DISTRICT and/or site(s) reserves the right to review the performance of the Program staff and make recommendations for changes as he/she sees fit and PROVIDER

will communicate on a monthly basis with certain individuals, to include and not limited to: the Schools' Principals, City personnel and DISTRICT coordinator.

- DISTRICT agrees to comply with all reasonable requests by PROVIDER and to provide access to all documents reasonably necessary for the performance of PROVIDER'S duties under this Agreement. PROVIDER will abide by applicable federal and state laws, rules and regulations concerning the rights of privacy and/or confidentiality of any information provided by DISTRICT, including both student and personnel records.
- The DISTRICT understands the difficulty staffing for this Program and may provide support to PROVIDER in addressing the necessary steps to meet the staffing expectations. The DISTRICT is not, however, taking on the responsibility of the PROVIDER to staff all Sites at appropriate staffing levels.

5. COMPENSATION

- a) Compensation for Services. Except as otherwise provided in this Agreement, DISTRICT agrees to compensate PROVIDER for services rendered under this Agreement as detailed in Exhibit 'X'.
- b) Travel Expenses. DISTRICT will pay no additional amount for travel or other expenses of PROVIDER under this Agreement unless specified below under section 2(c). Should travel or other expenses be specified below, PROVIDER shall be entitled to the lesser amount of
 1. The not to exceed amount stated, or
 2. The actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to this Agreement.
- c) Summary of Compensation

Per Rate Sheet (Attachment A)
- d) Retired STRS or PERS. If this Agreement is with an individual PROVIDER, PROVIDER shall notify the DISTRICT whether or not PROVIDER is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS). DISTRICT undertakes no responsibility to award contracts or hours in a way which protects PROVIDER's retirement benefits.
- e) Income Tax. DISTRICT will not withhold any federal or state income tax for payment made pursuant to this Agreement but, if applicable, will provide PROVIDER with a statement of earnings at the end of each calendar year. PROVIDER is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.
- f) Documentation Required For Payment. Unless specified below, payment for services and travel shall be made by DISTRICT to PROVIDER after services/travel has been completed and PROVIDER submits documentation for payment (e.g. PROVIDER invoice).

6. GENERAL OBLIGATIONS OF PROVIDER

a) **Services Performed.** During the term of this Agreement, PROVIDER agrees to diligently prosecute the work specified in the "Services to be Performed by PROVIDER" to completion. PROVIDER may represent, perform services for, and be employed by such additional clients, persons, or companies as PROVIDER, in PROVIDER's sole discretion, sees fit.

b) **Use of DISTRICT Space and Resources.**

DISTRICT and/or site(s) and PROVIDER will confer on which facilities will be used for the Program. Facilities may include the MPR/cafeteria, classroom(s), computer lab, and other facilities the DISTRICT/site(s) and PROVIDER may agree are necessary. Facilities may include the library and gym. PROVIDER staff shall ensure that the facilities and work areas used for the Program are left clean and tidy at the end of each day the Program is operated.

c) **Regulatory Compliance.** PROVIDER shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.

d) **Fingerprinting.** PROVIDER shall comply with the requirements of Education Code section 45125.1 and Business and Professions Code section 18975 with respect to fingerprinting of employees and regular volunteers who may have any interaction with the DISTRICT's pupils (whether such interaction is in person or electronic, and whether the interaction is through writing, voice or video). If at any time during the term of this Agreement PROVIDER is either notified by the Department of Justice or otherwise becomes aware that any employee of PROVIDER, including PROVIDER, performing services under this Agreement has been arrested or convicted of a violent or serious felony as defined in California Education Code Section 45122.1, PROVIDER agrees immediately to notify the DISTRICT and remove said employee from performing services on this Agreement. PROVIDER shall certify in writing to the DISTRICT that neither the PROVIDER nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Education Code section 45122.1 (Exhibit X).

e) **Indemnification.** PROVIDER shall indemnify, pay for the defense of, and hold harmless DISTRICT and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of PROVIDER's acts and/or omissions in rendering any services hereunder, including but not limited to the negligent or willful acts and/or omissions of PROVIDER's employees and agents. PROVIDER shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning

PROVIDER or any employee/agent of PROVIDER and shall further indemnify, pay for the defense of, and hold harmless DISTRICT of and from any such payment or liability arising out of or in any manner connected with PROVIDER's performance under this Agreement.

f) **Insurance Requirements.** During the entire term of this Agreement, PROVIDER shall procure, pay for and keep in full force and effect the following types of insurance:

1. **General Liability Insurance.**

2. Commercial general liability insurance, covering bodily injury liability, property damage liability and personal injury liability of PROVIDER with respect to the services provided by, or on behalf of, PROVIDER under this Agreement. The policy limits shall not be less than Two Million dollars (\$2,000,000) per occurrence with a general aggregate limit of not less than Four Million dollars (\$4,000,000).

a. The DISTRICT requires the Certificate of Liability Insurance to show the DISTRICT as the "Certificate Holder" and "Additional Insured" on the PROVIDER'S general liability insurance policy. Requested wording in the "Description box" is as follows:

The Ontario-Montclair School DISTRICT, its departments, officers, agents, and employees are additional insureds with regard to liability and defense of suits arising from the operations and uses performed by or on behalf of the named "Insured."

3. **Auto Liability Insurance.**

PROVIDER agrees that services in conjunction with this agreement will be conducted in PROVIDER's office or at a DISTRICT school Site and PROVIDER will not drive Student in private or commercial vehicle to conduct assessments or conduct other business in conjunction with this agreement. Accordingly, commercial automobile insurance will not be required in conjunction with this agreement. Should PROVIDER need to provide services in conjunction with this agreement that do require Student transportation in a private or commercial vehicle, the DISTRICT and PROVIDER will mutually agree on services to be provided, and PROVIDER will provide insurance as follows: Business auto liability insurance covering the use of "owned, non-owned and hired" autos by or on behalf of PROVIDER respect to the services to be performed under this Agreement. The policy limits shall not be less than One Million dollars (\$1,000,000) per occurrence. The Auto Liability Insurance policy shall include waiver of subrogation via separate endorsement.

4. **Workers' Compensation Insurance.** This coverage is required unless PROVIDER provides written verification it has no employees. Coverage must be at least as broad as that which is required by the State of California, with Statutory Limits. PROVIDER must also maintain Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Workers'

compensation policy shall include waiver of subrogation via separate endorsement.

5. **Sexual Molestation and/or Abuse.** The general liability policy above may not contain an exclusion for coverage of claims arising from claims for sexual molestation or abuse. In the event that PROVIDER's policy should have an exclusion for sexual molestation or abuse claims, then PROVIDER shall be required to procure a supplemental policy providing such coverage of not less than \$2,000,000 per occurrence with an aggregate of not less than \$4,000,000 for damages because of bodily injury by reason of negligent hiring and supervision.

6. **Cyber Security Liability.** Coverage for both electronic and non-electronic data breach of \$1,000,000 per occurrence with an aggregate limit of not less than \$2,000,000 and shall cover all of Company's employees, officials and agents. Coverage shall apply to any dishonest, fraudulent, malicious or criminal use of Company or District's computers or servers to affect, alter, copy, corrupt, delete, disrupt or destroy a computer system or to obtain financial benefit for any party; to steal, take or provide unauthorized access of electronic data, including publicizing confidential electronic data or causing confidential electronic data to be accessible to unauthorized persons; transfer of computer virus, Trojan horse, worms or any other type of malicious or damaging code; and for Third-Party Liability encompassing judgments or settlement and defense costs arising out of litigation due to a data breach and data breach response costs for customer notification and credit monitoring service fees.

The policies of insurance described above shall be carried with responsible and solvent insurance companies authorized to do business in the State of California. True and correct copies of all certificates of insurance reflecting the coverage required in Paragraph (4g.1-3) shall be provided to DISTRICT prior to the commencement of services under this Agreement. PROVIDER agrees that it shall not cancel or change the coverage provided by the policies of insurance described in Paragraph (4g.1-3) above without first giving the DISTRICT's Chief Business Official, thirty (30) days prior written notice. Should any such policy of insurance be canceled or changed, PROVIDER agrees to immediately provide DISTRICT true and correct copies of all new or revised certificates of insurance.

The PROVIDER shall not commence performing any portion of the services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to DISTRICT. Certificates and insurance policies shall include the following:

- A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to DISTRICT, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

- Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- An endorsement stating that DISTRICT and its agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that PROVIDER's insurance policies shall be primary to any insurance or self-insurance maintained by DISTRICT.
- If the PROVIDER or PROVIDER's subcontractor(s) maintains broader coverage and/or higher limits than the minimums shown above, DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by the PROVIDER. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to DISTRICT.
- PROVIDER, or its subcontractors as the case may be, shall be responsible for payment of all deductibles on all insurances required to be furnished by DISTRICT or subcontractors.
- All policies shall be written on an occurrence form.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to DISTRICT.

g) **Written Consent.** Neither this Agreement nor any duties or obligations under this Agreement may be assigned or transferred by PROVIDER without the prior written consent of DISTRICT.

7. **CHILD ABUSE, MANDATED REPORTER, AND CPR REQUIREMENTS:**

PROVIDER shall ensure that all staff members who work directly with students, are trained on and comply with child abuse and missing children reporting obligations and procedures under California law, including but not limited to, California Education Code Section 49370 and California Penal Code section 11165.7, 11166, et seq. PROVIDER shall adopt a written child abuse reporting procedure and provide annual training to all its employees regarding mandated reporting of child abuse and missing children. The PROVIDER shall provide verification to the District that all employees have received annual training. The PROVIDER warrants that all staff members will timely abide by such laws.

PROVIDER certifies its employees who work directly with pupils will be trained, including but not limited to, in First Aid, CPR, and Classroom Management, prior to placement at the Site.

8. CONFIDENTIALITY

PROVIDER and its subcontractors agree to comply with all applicable laws in the performance of its obligations under this Agreement, and in particular applicable federal and state regulations regarding student records, student privacy, and the commercial use of student information, including the Family Educational Rights and Privacy Act (FERPA), Student Online Personal Information Protection Act (SOPIPA), AB 1584 (Ed. Code 49073.1) Pupil Data Privacy and the District (including but not limited to Administrative Regulation and Policy No. 5022 and 5125) to the end that the rights and privacy of the students enrolled in the District and of their parents are not violated or invaded.

These provisions include, but are not limited to, ensuring that:

- A. No identification of students or their parent/guardians by persons other than representatives of PROVIDER is permitted.
- B. The individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained.
- C. No access to individual student data shall be granted by PROVIDER to any other person, persons, agency or organization without the written consent of the pupil's parent/guardian, except for sharing with other persons within the District or representatives of PROVIDER so long as those persons have a legitimate interest in the information.
- D. PROVIDER recognizes and agrees that such access will be extended in reliance on representations made in this assurance, and that the District shall have the right to enforcement of this assurance, or revocation of such access (including return of all physical forms of such data and destruction of all such electronic data) immediately upon evidence of noncompliance by PROVIDER. This assurance is binding PROVIDER on and such persons as may be employed by PROVIDER to assist in any phase of the contractual obligation to the District.

PROVIDER further represents and warrants that District's and District users' access to and use of the PROVIDER's software or other services as described in this MOU will not infringe any third party copyright.

9. TERMINATION OF AGREEMENT

- a) **Termination without Cause.** Unless otherwise terminated as provided below, this Agreement shall continue in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.
- b) **Termination for Breach.** Should PROVIDER default in the performance of this Agreement or breach any of its provisions, DISTRICT may terminate this Agreement by giving Thirty (30) Days' Notice in writing to PROVIDER to the address stated in this Agreement. If, within ten (10) calendar days prior to the expiration of the Thirty (30) Days' notice period,

the PROVIDER provides evidence of a cure or corrects the default or breach, the DISTRICT may withdraw the Thirty (30) Days' notice.

- c) **Immediate Suspension/Termination by DISTRICT.** If at any time during the performance of this Agreement DISTRICT determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, DISTRICT shall have the right to terminate the performance of PROVIDER's services hereunder by giving written notification to PROVIDER of its intention to terminate.
- d) **Effect of Termination.** In the event that DISTRICT terminates this Agreement under paragraph (b) or (c) of this Section, PROVIDER shall only be paid for those services rendered and reimbursable expenses incurred up to the date of termination. All cash deposits made by DISTRICT to PROVIDER, if any, shall be refundable to DISTRICT in full upon termination of this Agreement unless specified to the contrary below.
- e) **Budget Contingency**
It is mutually agreed that if sufficient funds are not appropriated for the Program in the current year budget and/or subsequent years covered under this Agreement, then this Agreement shall be of no further force and effect. In this event, the DISTRICT shall have no liability to pay any funds to the PROVIDER or furnish any other considerations under this Agreement, and the PROVIDER shall not be obligated to perform any provisions of this Agreement.

10. **GENERAL PROVISIONS**

- a) **Notices.** Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be deemed given and served upon delivery personally, or three (3) days after depositing in the United States Mail. Mailed notices shall be addressed to the parties at the addresses set forth in this Agreement for DISTRICT and PROVIDER. The foregoing addresses may be changed by written notice to the other party as provided herein.
- b) **Validity of Agreement.** This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by PROVIDER and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, signed by both parties, except DISTRICT may unilaterally amend the Agreement to accomplish the changes listed below:

(1) Increase dollar amounts; (2) Administrative changes; and (3) Changes as required by law.

- c) **Court Findings.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way. In the event any party to this Agreement shall commence any action against the other party relating to this Agreement or for the breach of any obligation contained in this Agreement, the prevailing party shall be entitled to recover such party's legal fees and other legal costs and expenses from the other party.
- d) **California Laws.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Venue for any legal action shall be San Bernardino County, California. 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.
- e) **Audit.** Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records and files of DISTRICT, PROVIDER, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of the DISTRICT or as a part of any audit of DISTRICT, for a period of three (3) years after final payment is made under this Agreement. PROVIDER shall preserve and cause to be preserved such books, records and files for the audit period.
- f) **Non-discrimination.** Parties shall ensure that services and benefits are provided without regard to sex, sexual orientation, gender, ethnic group, race, ancestry, origin, immigration status, religion, color, mental disability, or physical disability, age, marital or parental status or any other unlawful consideration in accordance with Title VI of the Civil Rights Act of 1964, California Government Code, Section 503-504 of the Rehabilitation Act of 1973, as amended, and Title IX of the Education Amendments of 1972 (Pub. L. 92-318).
- g) **Contractual/Equitable Remedies.** PROVIDER agrees that the DISTRICT is the sole entity against whom the PROVIDER may seek either contractual or equitable remedies, and further agrees not to seek contractual or equitable remedies (including, but not limited to injunctive relief and quantum merit) against DISTRICT employees or beneficiaries of the Agreement.
- h) **Board of Trustees Approval.** PROVIDER warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind it hereto. This Agreement shall not become binding upon the DISTRICT until it has been duly approved or ratified by the Board of Trustees.

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

Ontario-Montclair School District

City of Montclair

Signature

Signature

Date

Javier John Dutrey

Printed Name/Title

Phil Hillman, Chief Business Official

May 1, 2023

Date

Ontario-Montclair School DISTRICT
950 West D Street Ontario, CA 91762

Email Address/
5111 Benito Street

Street Address
Montclair CA 91763

Approved by OMSD
Board:

City, State, Zip Code

909-625-9459

Telephone Number

Attachment A

Gap	TK/K ExLP	ExLP
\$ 13.00	\$ 13.00	\$ 11.50
\$ 13.00	\$ 13.00	\$ 11.50
\$ 13.00	\$ 13.00	\$ 11.50
\$ 13.00	\$ 13.00	\$ 11.50
\$ 13.00	\$ 13.00	\$ 11.50



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	FILE I.D.:	PRK200F
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	4	PREPARER:	M. PARADIS

SUBJECT: CONSIDER REJECTING THE BID RECEIVED FROM GREAT WESTERN INSTALLATION, INC. FOR THE ALMA HOFMAN PARK PLAYGROUND SURFACE REPLACEMENT PROJECT

CONSIDER AWARDING A CONTRACT TO SPECTRATURF, INC. IN THE AMOUNT OF \$180,599.50 FOR THE ALMA HOFMAN PARK PLAYGROUND SURFACE REPLACEMENT PROJECT

CONSIDER APPROVAL OF AGREEMENT NO. 23-26 WITH SPECTRATURF, INC. FOR THE ALMA HOFMAN PARK PLAYGROUND SURFACE REPLACEMENT PROJECT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A \$180,599.50 APPROPRIATION FROM 2021 LEASE REVENUE BOND PROCEEDS TO COVER COSTS RELATED TO AGREEMENT NO. 23-26

REASON FOR CONSIDERATION: The City Council is requested to consider awarding a contract and approval of Agreement No. 23-26 with SpectraTurf, Inc. in the amount of \$180,599.50 for the Alma Hofman Park Playground Surface Replacement Project.

A copy of proposed Agreement No. 23-26 is attached for the City Council's review and consideration.

BACKGROUND: On October 18, 2021, and November 10, 2021, the City Council held workshops to discuss the 2021 Lease Revenue Bonds (LRB) Infrastructure projects. The workshops outlined several park improvement projects and other infrastructure projects, including at Alma Hofman Park.

On March 23, 2023, staff posted a Request for Proposals (RFP) on Planet Bids for playground surface replacement at Alma Hofman Park. On April 19, 2023, two bid proposals were received with total costs as follows:

<i>Bidder</i>	<i>Bid Amount</i>
Great Western Installation, Inc.	\$179,068.50
SpectraTurf, Inc.	\$180,599.50

Following the bid opening, the bids were reviewed for completeness and accuracy. The bid proposal from the apparent lowest bidder, Great Western Installation, Inc. did not contain the required documentation as listed in the Request for Proposals. Therefore, staff recommends that their bid be rejected. The bid proposal from the apparent second lowest bidder, SpectraTurf, Inc., provided all required documents and was deemed the lowest responsible, responsive bidder for the project. The City Engineer has reviewed their bid proposal and has determined it meets the qualifications required in the RFP.

The anticipated duration of this project is 15 working days. Unfortunately, the contractor is not able to begin work until July 2023 due to the rain events in the last few months creating a heavy backlog.

FISCAL IMPACT: The cost to replace the playground surface is \$180,599.50, which can be covered using 2021 Lease Revenue Bond Proceeds.

RECOMMENDATION: Staff recommends that the City Council take the following actions in relation to the Alma Hofman Park Playground Surface Replacement Project:

1. Reject the bid received from Great Western Installation, Inc. for the Project;
2. Award a contract to SpectraTurf, Inc. in the amount of \$180,599.50 for the Project;
3. Approve Agreement No. 23-26 with SpectraTurf, Inc. for the Project subject to any revisions deemed necessary by the City Attorney; and
4. Authorize a \$180,599.50 appropriation from the 2021 Lease Revenue Bond Proceeds to cover costs for the Project.

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 **SPECTRATURF, 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)

PLAYGROUND SURFACE REPLACEMENT

"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. Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish to the Engineer a policy of insurance or proper endorsement as proof that he has taken out full compensation insurance for all persons whom he may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract.

In accordance with the provisions of §3700 of the California Labor Code, every contractor shall secure the payment of compensation to his employees. CONTRACTOR, prior to commencing work, shall sign and file with CITY a certification as follows:

"I am aware of the provisions of §3700 of the Labor Code which require every employer to be insured against liability for worker's 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 contract."

b. For all operations of the CONTRACTOR or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage:

- (1) Public Liability - Bodily Injury (not auto) \$1,000,000 each person; \$2,000,000 each accident.
- (2) Public Liability - Property Damage (not auto) \$500,000 each accident; \$1,000,000 aggregate.
- (3) Contractor's Protective - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
- (4) Contractor's Protective - Property Damage \$500,000 each accident; \$1,000,000 aggregate.

- (5) Automobile - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
 - (6) Automobile - Property Damage \$500,000 each accident.
- c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:
- (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;
 - (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.
- d. Each such policy of insurance provided for in paragraph b. shall:
- (1) Be issued by an insurance company approved in writing by CITY, which is qualified to do business in the State of California;
 - (2) Name as additional insureds the CITY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;
 - (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
 - (4) Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."
 - (5) Otherwise be in form satisfactory to CITY.
- e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraphs a. and b., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.

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 **April 19, 2023**.

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

SPECTRATURF, INC.
555 s. Promenade Ave., #103
Corona, CA 92879

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: MAY 1, 2023

FILE I.D.: FRD215

SECTION: CONSENT - AGREEMENTS

DEPT.: FIRE

ITEM NO.: 5

PREPARER: R. AVELS

SUBJECT: CONSIDER AUTHORIZING A \$41,397.45 APPROPRIATION FROM THE CONTINGENCY FUND TO PARTICIPATE IN A PUBLIC/PRIVATE EMERGENCY AMBULANCE AND INTERFACILITY TRANSPORT SERVICE BIDDING FOR THE COUNTY CONTRACT

CONSIDER APPROVAL OF AGREEMENT NO. 23-28, A MEMORANDUM OF UNDERSTANDING WITH CONFIRE AGREEING TO BECOME A CONTRACTING AGENCY IN THE EMS DIVISION

CONSIDER AUTHORIZING CITY MANAGER EDWARD C. STARR TO SIGN AGREEMENT NO. 23-28 AND A DECLARATION OF INTENT TO PARTICIPATE IN THE CONFIRE EMS DIVISION CONTRACT

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing a \$41,397.45 appropriation from the Contingency Fund to participate in a public/private emergency ambulance and interfacility transport service, bidding for the County contract, and to consider approval of Agreement No. 23-28, a Memorandum of Understanding with Consolidated Fire Agencies (CONFIRE) agreeing to become a contracting agency in the Emergency Medical Services (EMS) Division. The City Council is also requested to consider authorizing City Manager Starr to sign Agreement No. 23-28 and a Declaration of Intent to participate in the CONFIRE EMS Division contract.

A copy of proposed Agreement No. 23-28 and the Declaration of Intent are attached for the City Council’s review and consideration.

BACKGROUND: For approximately four years, ambulance services throughout San Bernardino County have not continuously met the required response times as outlined in the American Medical Response (AMR) contract. AMR is currently the only contracted ambulance transport service provider within the County of San Bernardino; however, San Bernardino County Fire and the City of Rialto provide some level of ambulance transport within their respective areas. The County is responsible for ensuring the delivery of emergency medical services to residents and visitors of San Bernardino County. The Inland Counties Emergency Medical Agency (ICEMA) serves as the County agent for coordinating and regulating a strategically organized comprehensive system of care that fulfills this obligation.

To ensure equitable services throughout the region, ambulance Exclusive Operating Areas (EOAs) have been established. The following table shows the EOA breakdown for the County’s comprehensive service areas:

EOA	General Area
1	Rancho Cucamonga, Upland, Mt. Baldy
2	Chino, Montclair
3	Chino Hills, Ontario
4	Fontana, Bloomington, Lytle Creek
5b	Unincorporated pockets in Rialto

EOA	General Area
6	Colton, San Bernardino, Muscoy, Devore
7	Grand Terrace, Parts of Redlands, Highland, Parts of Colton
8	Redlands, Highland, Mentone, Yucaipa, Oak Glen
9	Loma Linda
11	Waterman Canyon, San Bernardino National Forest Front Country
12a	Victorville, Adelanto, Apple Valley

The above table shows that Montclair shares EOA #2 with the City of Chino. AMR is the only ambulance transport for this area and is contractually required to arrive on-scene within nine minutes, fifty-nine seconds (9:59). In many instances, ambulance arrivals have exceeded 20 minutes, which in turn prolongs patient care on-scene and can lead to a detrimental patient outcome. In addition to a delay in response times, many of the ambulances responding to calls throughout Montclair have been Basic Life Support (BLS) ambulances instead of Advanced Life Support (ALS) ambulances. Instances where a BLS ambulance responds in lieu of an ALS ambulance, a Montclair Medic Engine paramedic must then ride into the hospital with the patient to ensure proper care is provided, should it be needed. As a result, this keeps the Medic Engine unable to respond to any other calls during the time it takes to deliver the patient to the hospital and accept them for treatment in the emergency department. The growing delay in response times, as well as the lack of appropriate ambulances available, can affect the patient's outcome. Moreover, it consumes valuable time in which Fire personnel could be responding to another call or incident, thus adversely affecting the citizens of Montclair.

Executive leaders from the various fire organizations within the EOAs have had many discussions about the ongoing performance concerns with AMR and the methods that could be implemented to mitigate or improve the ambulance service. One outcome of these discussions resulted in a few fire organizations acquiring ambulances to staff with their own personnel in situations where AMR ambulances are not available.

In October of 2021, the San Bernardino County Board of Supervisors (BOS) initiated a competitive process to award a contract to provide emergency ambulance and inter-facility transport services within the EOAs in San Bernardino County. The BOS also approved a contract extension to AMR ending March 31, 2024.

On January 11, 2022, the BOS approved a contract with EndPoint Consulting LLC to develop a request for proposals (RFP) to award a contract for the provision of emergency ambulance and interfacility transport services within the County's existing EOAs.

In having a comprehensive knowledge of the ambulance transport and response issues that have impacted the communities within the respective EOAs, executive leaders of the various fire organizations determined the respective communities could be better served by the development of an ambulance response service managed by an EMS Division of CONFIRE, coupled with the partnership of a private ambulance transport company. The EMS Division within CONFIRE would be comprised of all CONFIRE Member Agencies and Contract Agencies.

In anticipation of the issuance of the RFP, CONFIRE created the EMS Division. The West End Joint Powers Authority (JPA) contracted with a consulting firm to put together a proposal when the RFP was released. All participating agencies will be sharing in the cost of the consulting firm, attorney fees, and other related costs, which is estimated to be \$455,372. In the event the initial estimated cost is determined to be greater, the initial participation cost will be increased accordingly. Currently, Montclair's share of

the cost would be \$41,397.45. These costs incurred by the participating agencies would precede the submission of a proposal to the County, bidding for the County ambulance service contract via the CONFIRE EMS Division. The initial membership cost would not be repaid regardless if the EMS Division is awarded the contract or not.

All participating agencies would have a position and one alternate position on the EMS Division Committee. This venture would be a public/private partnership that would give cities as well as fire departments greater control of how ambulance services are provided to the communities of their respective cities. This would be a benefit to the City of Montclair, giving the City the authority of ambulance delivery. City representatives having input ensures the City of Montclair will receive the correct type of ambulance on-scene provided in the agreed-upon time frame.

If the CONFIRE EMS Division is awarded the County ambulance service contract, the EMS Division will begin working towards the implementation of the contract, which will take effect no later than April 1, 2024.

FISCAL IMPACT: If authorized by the City Council, funding to participate in a public/private emergency ambulance and interfacility transport service bidding for the County contract would result in an appropriation of \$41,397.45 from the Contingency Fund. This is the baseline entry-level fee for the 11 contracting agencies. In the event that the estimated initial cost is higher than estimated above, the cost would be increased as determined by a formal review by the EMS Committee.

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

1. Authorize a \$41,397.45 appropriation from the Contingency Fund to participate in a public/private emergency ambulance and interfacility transport service bidding for the County contract.
2. Approve Agreement No. 23-28, a Memorandum of Understanding with CONFIRE agreeing to become a contracting agency in the EMS Division.
3. Authorize City Manager Starr to sign Agreement No. 23-28 and a Declaration of Intent to participate in the CONFIRE EMS Division contract.

**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 general law city duly formed and existing under Article XI, Section 7 of the California Constitution. 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: Services
- Exhibit B: Contributions
- Exhibit C: Effective Date and Term
- Exhibit D: General Terms and Conditions
- Exhibit E: HIPAA Business Associate Agreement
(Note: Same Agreement utilized by all Contractor Agencies)
 - Appendix 1 to Exhibit E: General Terms and Conditions to HIPAA Business Associate Agreement

2. INDEPENDENT CONTRACTOR

- a. 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.
- b. 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. SERVICES

Contracting Agency shall benefit from the services and participate in the services described in Exhibit A (“Services”).

4. **CONTRIBUTION**

Contracting Agency shall make financial contributions for their participation in the Services as set forth in Exhibit B (“Contribution”).

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: Nathan Cooke, Director
1743 Miro Way
Rialto, CA 92376

To Contracting Agency:

City of Montclair
Attn: Edward C. Starr
5111 Benito Street
Montclair, CA 91763
cc: David Pohl, Fire Chief

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

Date: April 20, 2023

By: [Signature]

Print Name: Nathan Cooke

Its: Interim Director

City of Montclair

Date: April 19, 2023

By: [Signature]

Print Name: Edward C. Starr

Its: City Manager

EXHIBIT A
to CONTRACTING AGENCY AGREEMENT

SERVICES

Contracting Agency shall be a member of the CONFIRE EMS Division Subsidiary Committee as set forth in Administrative Committee Policy 6.002, attached hereto as **Exhibit A-1**. As a member of the CONFIRE EMS Division Subsidiary Committee Contracting Agency shall share in the responsibility of the collaborative development and implementation of a regionally shared EMS delivery system, that provides Advanced Life Support and Basic Life Support Ground Ambulance Services. Contracting Agency shall also benefit from the regionally shared EMS delivery system, that provides Advanced Life Support and Basic Life Support Ground Ambulance Services.

EXHIBIT A-1
to CONTRACTING AGENCY AGREEMENT

CONSOLIDATED FIRE AGENCIES
MANUAL OF ADMINISTRATIVE COMMITTEE POLICIES

Policy: 6.002
Title: EMS Division Subsidiary Committee
Adopted: [09.13.2022]
Revised: [12.13.2022]

EMS Division Subsidiary Committee

There is hereby established an EMS Division Subsidiary Committee, which shall be organized and be responsible for the collaborative development and implementation of a regionally shared EMS delivery system.

A. Definitions

1. **EMS:** Also known as Emergency Medical Services.
2. **EMS Division:** One of four divisions within CONFIRE, established by action of the Administrative Committee at its meeting on March 7, 2022.
3. **EMS Division Subsidiary Committee:** Also known as the EMS Division Committee, established by the Administrative Committee through this Policy.
4. **EMS Division Participants/Participant(s):** All CONFIRE Member Agencies and Contract Agencies that enter into an MOU with CONFIRE to participate in the EMS Division.
5. **Member Agency:** The Parties to the Third Amended and Restated Joint Powers Agreement for Consolidate Fire Agencies (CONFIRE), which are Apple Valley Fire Protection District, Chino Valley Fire District, City of Colton, City of Loma Linda, City of Redlands, City of Rialto, City of Victorville, Rancho Cucamonga Fire Protection District and San Bernardino County Fire Protection District. Additional Parties may be added upon amendment of the Joint Powers Agreement.
6. **Contract Agency:** An entity that has been sponsored by an existing Member Agency, approved by the Board of Directors according to terms acceptable to CONFIRE.
7. **Initial Membership Cost:** Payment that shall be made by a Contract Agency participating in the EMS Division, as set forth in this Policy.

B. Authority & Purpose

The EMS Division Committee shall meet regularly with the CONFIRE Director and Administrative Committee to provide advice and direction on matters related to the EMS Division, both operationally and administratively.

EMS Division Committee is responsible for all matters relating to the origination and operation of the EMS Division as delegated by the Administrative Committee. Such delegated responsibilities include but are not limited to:

- Establish the initial governance, EMS Division Operational Structure, financing and cost sharing methods of CONFIRE’s EMS Division. Present recommendation to the Administrative Committee and Board of Directors for approval.
- Establish an annual EMS Division Budget for presentation to and approval by the Administrative Committee and Board of Directors with the following priorities:
 - Priority 1 – Contractual obligations & Operational costs for the EMS Division
 - Priority 2 – Build reserves for the EMS Division
 - Priority 3 – System enhancements and system reinvestment
 - Priority 4 – If applicable, repayment of cost contributions by EMS Division Committee Participants or Private Ambulance Partner.
Note: Initial Membership Costs shall not be repaid.
 - Priority 5 – Equitable distribution of unused / unassigned fund balance to the Participants through FRALS agreements. FRALS agreements will be created based upon the ambulance contract between San Bernardino County and CONFIRE.
- Monitor fiscal and operational performance.
- Participate in annual CONFIRE audit.
- Develop policies for the operations and administration of the EMS Division.
- Evaluate need for ongoing governance model changes.
- Evaluate performance of Private Ambulance Partner.

C. Membership

Each Member, or Contract Agency of the EMS Division through MOU, shall be entitled to one (1) seat and one (1) alternate seat on the EMS Division Committee (“Participant”).

Participation on the EMS Division Committee is not mandatory. However, participation is required for those Member and Contract Agencies that intend to invest in the regionally shared EMS delivery System and realize any potential benefits derived from that investment. Each Participant assumes full risk and liability.

Contracting Agencies shall formally declare in writing their intent to participate in the EMS Division no later than December 31, 2022. Any city, district or agency who desires to participate at a later date will not have an opportunity to do so until such time as the JPA seeks contract extension with ICEMA anticipated to be at five years post the date of inception of services, currently anticipated to be in 2029. At that time, said entity shall declare their wishes to participate in the JPA EMS Division which will be considered by the CONFIRE Board of Directors and Administrative Committee.

Initial Membership Cost for a Contract Agency participating in the EMS Division is based on Total Cost divided by Total EMS Division Participants. Examples of EMS Division Initial Membership Costs are the following:

- Consulting Fees
- Legal Fees
- Reserves
- Other Related Fees

The Initial Membership Cost, is due no later than 60 days following the signing of a Memorandum of Understanding to participate as a Contracting Agency no later than February 28, 2023, unless extended by unanimous approval by the EMS Division Committee. The formula below outlines assumed costs for the formal response to San Bernardino County’s Request for Proposals for Ambulance Services, and shall serve as the baseline entry level fee for Contracting Agencies.

Initial Membership costs shall be based on the following formula:

Initial Membership Cost = (Consulting Fees + Legal Fees + Reserves Expended + Other Related Costs)

Total Participants

Estimated Initial Costs = (\$255,372+100,000+100,000)
11 Participants

Note: The estimated costs assume 11 participants and provides a good faith estimate on the expected costs.

In the event that the Estimated Initial Cost is higher than estimated above, as determined by a formal review by the EMS Committee, the Initial Membership Cost will be increased accordingly. Any additional Initial Membership cost owed by a Contract Agency shall be paid within sixty (60) days.

The following EOAs and the prospective EMS Participant, are listed below:

EOA	General Area	EMS Participant(s) within EOA
1	Rancho Cucamonga, Upland, Mt. Baldy	RCF, BDC
2	Chino, Montclair	CHO, MTC
3	Chino Hills, Ontario	CHO, OTO
4	Fontana, Bloomington, Lytle Creek	BDC
5b	Unincorporated pockets in Rialto	BDC
6	Colton, San Bernardino, Muscoy, Devore	COL, BDC
7	Grand Terrace, Parts of Redlands, Highland, Parts of Colton	BDC, RED, HGH, COL
8	Redlands, Highland, Mentone, Yucaipa, Oak Glen	RED, HGH, BDC, YUC
9	Loma Linda	LOM

11	Waterman Canyon, San Bernardino National Forest Front Country	BDC
12a	Victorville, Adelanto, Apple Valley	VCV, BDC, APP

D. Meetings

Meetings of the EMS Division Committee will be called on an as-needed basis.

1. Quorum

While participation is not mandatory, two thirds of the Participants must be present for a recommendation to be brought forward to the Administrative Committee and/or Board of Directors of CONFIRE.

2. Voting

Each Participant shall cast one (1) vote. In order for the EMS Division Committee to bring forward a recommendation, a majority of the quorum must approve the action.

EXHIBIT B
to CONTRACTING AGENCY AGREEMENT

CONTRIBUTION

Contracting Agency's Contribution "Initial Contribution" and any subsequent Contribution shall be consistent with Administrative Committee Policy 6.002, attached hereto as **Exhibit A-1**.

A. INITIAL MEMBERSHIP COST

1. In exchange for their initial membership Contracting Agency shall pay CONFIRE a sum of:

$$\text{Initial Membership Cost} = \frac{(\$255,372 + 100,000 + 100,000)}{11 \text{ Participants}}$$

TOTAL: \$41,397.45

EXHIBIT C
to CONTRACTING AGENCY AGREEMENT

EFFECTIVE DATE AND TERM

1. This Agreement is effective on January 1, 2023 (“Effective Date”).
2. Unless terminated as set forth below, the term of this Agreement shall be: (i) from the Effective Date through (ii) June 30, 2029 (the “Term”).
3. TERMINATION

This Agreement shall automatically terminate in the event that CONFIRE and the County of San Bernardino do not enter into a contract for CONFIRE and its independent third party to provide EMS services to include Advanced Life Support and Basic Life Support Ground Ambulance Services, for the EOA’s identified in Administrative Committee Policy 6.002, attached hereto as **Exhibit A-1**.

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.

{00223632.2}

Contracting Agency Agreement between CONFIRE and City of Montclair

Page 10 of 16

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 is 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.

15. **ASSUMPTION OF UNFUNDED LIABILITIES ATTRIBUTABLE TO CONTRACTING AGENCY.**

- A. The Parties expressly acknowledge:
- (1) CONFIRE, in providing the Services in this Agreement, will incur otherwise unfunded liabilities, (e.g., continuing obligations to provide for the pensions CONFIRE staff hired to provide service to Contracting Agency) (“Unfunded Liabilities”);
 - (2) The Contribution set forth in the Agreement does not adequately compensate CONFIRE for such Unfunded Liabilities; and

- (3) The Parties intend this Section 15 to ensure that CONFIRE is held harmless from otherwise unfunded liabilities to the extent that those Unfunded Liabilities are attributable to Contracting Agency.
- (4) The Parties do not intend this Section 15 to apply to unfunded liabilities that are solely attributable to an increase in service level provided to all of CONFIRE's member agencies and contracting agencies.
- B. To the furthest extent permitted by applicable law, Contracting Agency shall indemnify CONFIRE from any and all liabilities of any kind, nature, and description directly or indirectly arising out of, connected with, or resulting from Unfunded Liabilities incurred by CONFIRE as a result of CONFIRE providing the Services to Contracting Agency, unless the liabilities are caused wholly by CONFIRE activities of general applicability to all of CONFIRE's member agencies and contracting agencies. By way of illustration and not by limitation, in the event that CONFIRE must hire staff to render the Services to Contracting Agency, and as a result of this Agreement's termination such staff must be laid-off, and as a result CONFIRE incurs unfunded pension liability, then Contracting Agency shall indemnify CONFIRE for such unfunded pension liability.
- C. The provisions of Section 15.A and 15.B shall not be applicable to a Contracting Agency who applies for, and is accepted for, membership status in the CONFIRE joint powers agreement. In such cases, the provisions of the CONFIRE joint powers agreement then in effect shall control all matters relating to unfunded liability.

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 general law city duly formed and existing under Article XI, Section 7 of the California Constitution. 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

Date: April 20, 2023

By: 

Print Name: Nathan Cook

Its: Interim Director

City of Montclair

Date: April 19, 2023

By: 

Print Name: Edward C. Starr

Its: City Manager

**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.

{00223632.2}

- 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

{00223632.2}

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.

DECLARATION OF INTENT
CONFIRE EMS DIVISION CONTRACT AGENCY
City of Montclair

I.
RECITALS

- A. On October 26, 2021, the San Bernardino County Board of Supervisors (“BOS”) directed staff to initiate a competitive process to award contracts to provide emergency ambulance and interfacility transport services within eight (8) Health and Safety Code section 1797.224 exclusive operating areas (“EOAs”) in the County of San Bernardino (“County”) and to engage stakeholders regarding the potential inclusion of additional EOAs within such competitive process.
- B. On October 26, 2021, the BOS approved an extension of the County’s contract with its existing emergency ambulance and interfacility transport services provider through March 31, 2024.
- C. On January 11, 2022, the BOS approved a contract between County and EndPoint Consulting LLC to develop a request for proposals (“RFP”) to award a contract for the provision of emergency ambulance and interfacility transport services within the County’s existing EOAs numbered 1, 2, 3, 4, 5 ,6, 7 ,8, 9, and 12a, subject to change based on County policy direction.
- D. The County anticipates issuing a request for proposals (“RFP”) upon receiving the RFP back from the State EMSA.
- E. In anticipation of the issuance of the RPF, CONFIRE adopted Administrative Committee Policy 6.002, entitled EMS Division Subsidiary Committee.
- F. Administrative Committee 6.002 requires that all interested Agencies shall formally declare in writing their intent to participate in the EMS Division no later than December 31, 2022.

II.
AGREEMENT
(“Declaration of Intent”)

- 1. The recitals set forth above are adopted as part of this Declaration of Intent.
- 2. The City of Montclair hereby declares its intent to participate in the EMS Division as required by Policy 6.002.
- 3. The individual executing this Agreement on behalf of the City of Montclair warrants that they are authorized to execute the Agreement on behalf of the City of Montclair and that the City of Montclair will enter into good faith negotiations for a Memorandum of

Understanding with CONFIRE to become a Contracting Agency.

4. In the event that after good faith negotiations, City of Montclair and CONFIRE are unable to enter into an MOU, City of Montclair reserves the right to rescind its declaration of intent.

IN WITNESS WHEREOF, the undersigned Party executes this Declaration of Intent as of the date listed below.

CITY OF MONTCLAIR

Date: December 19, 2022

By: 

Print Name: Edward C. Starr

Its: _____



CITY COUNCIL AGENDA REPORT

DATE:	MAY 1, 2023	FILE I.D.:	EDD100/MHA100
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	ECONOMIC DEV./MHA
ITEM NO.:	1	PREPARER:	M. FUENTES

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 23-3403 APPROVING AGREEMENT NO. 23-27, AN AFFORDABLE HOUSING AGREEMENT WITH THE MONTCLAIR HOUSING AUTHORITY AND THE MONTCLAIR HOUSING CORPORATION; AUTHORIZING THE TRANSFER OF 9814, 9875, AND 9878 MONTE VISTA AVENUE, MONTCLAIR, TO THE MONTCLAIR HOUSING AUTHORITY FOR USE AS AFFORDABLE HOUSING UNITS; AND DECLARING SUCH REAL PROPERTY TO BE EXEMPT SURPLUS LAND

CONSIDER ADOPTION OF RESOLUTION NO. 23-01 APPROVING AGREEMENT NO. 23-27, AN AFFORDABLE HOUSING AGREEMENT WITH THE CITY OF MONTCLAIR AND THE MONTCLAIR HOUSING AUTHORITY

CONSIDER ADOPTION OF RESOLUTION NO. 23-01 APPROVING AGREEMENT NO. 23-27, AN AFFORDABLE HOUSING AGREEMENT WITH THE CITY OF MONTCLAIR AND THE MONTCLAIR HOUSING CORPORATION, AND ACCEPTING THE TRANSFER OF CERTAIN REAL PROPERTY FROM THE CITY OF MONTCLAIR

CONSIDER AUTHORIZING A \$75,000 APPROPRIATION FROM THE HOUSING TRUST FUND FOR REHABILITATION OF CERTAIN REAL PROPERTY

REASON FOR CONSIDERATION: Proposed Agreement No. 23-27 is an Affordable Housing Agreement between the City of Montclair (City), the Montclair Housing Authority (MHA), and the Montclair Housing Corporation (MHC) for the conveyance of real properties located at 9814, 9875, and 9878 Monte Vista Avenue and the subsequent leasing and operations of said properties as affordable housing units.

Proposed City Council Resolution No. 23-3403 would approve entering into Agreement No. 23-27, and would authorize the transfer of Properties from the City to the MHA.

Proposed MHC Resolution No. 23-01 would approve entering into Agreement No. 23-27.

Proposed MHA Resolution No. 23-01 would approve entering into Agreement No. 23-27, and accept the transfer of Properties from the City to the MHA.

A copy of the proposed resolutions and agreement are attached for review and consideration by the City Council, MHA Commissioners, and MHC Board.

BACKGROUND: In June 1987, the former Redevelopment Agency (RDA) Board of Directors adopted the *Central Avenue Single-family Acquisition Policy* (Policy) authorizing staff to make purchase offers on single-family residences along the Central Avenue corridor, subject to the former Redevelopment Agency Board of Directors' approval.

The Policy was later expanded to include areas along Central Avenue or in locations of high visibility. Pursuant to the Policy, a total of 17 single-family homes were purchased by the former RDA before its dissolution.

With the dissolution of community redevelopment agencies in 2011 (AB 1X 26) and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, the City Council elected to continue the former RDA's policy of acquiring single-family residences along the Central Avenue corridor or in locations of high visibility and further expanded the Policy to included residences along all of the City's major corridors.

The properties formerly owned by the RDA were transferred to the Montclair Housing Authority (MHA), the successor housing entity, and are currently rented to low- to-moderate-income families and are managed by the Montclair Housing Corporation (MHC), a nonprofit public-benefit corporation organized for the purpose of increasing, improving, and preserving affordable housing in the City of Montclair.

The rents and other income from the MHC belong to the MHA; however, they are granted to the MHC for use in covering expenses of operating the various housing units. The amount of rents collected from the renters is established by the State Department of Housing and Community Development and varies based upon income levels.

Agreement No. 23-27 Affordable Housing Agreement

In order to meet the City's Regional Housing Needs Assessment (RHNA), a representation of future housing needs for all income levels in a region, staff recommends the properties be operated as rental units made available to low-to-moderate-income persons. As such, staff has prepared Agreement No. 23-27 an affordable housing agreement by and between the City, MHA, and MHC.

Proposed Agreement No. 23-27 contains language related to the conveyance of the Properties, compliance with applicable laws, use of the properties, remedies, and general provisions. The more salient points of proposed Agreement No. 23-27 relate to the conveyance of fee title of Properties from the City to the MHA and leasing of the properties from the MHA to the MHC for the day-to-day operation of the properties, as well as the rehabilitation and rental of the properties to low-to-moderate-income persons.

9814, 9875, and 9878 Monte Vista Avenue

The subject Properties are located on a highly visible and desirable portion of Monte Vista Avenue between Benito Street and San Bernardino Street, thereby meeting the criteria established in the City Council's Policy to acquire properties along the City's major corridors and areas of high visibility.

The properties were built between 1953 and 1957 and the lot sizes range from 7,272 - 7,420 square feet. The dwelling units range from 1,612 - 1,769 square feet with three to four bedrooms and two bathrooms.

Due to the age of the properties, and in order to bring the properties up to code, staff is recommending several improvements to the residential units. The bulk of the improvements to the properties would address general property clean-up, paint, fence replacement, updates to bathrooms, and new landscaping. Due to current and projected future drought conditions, simple water-efficient landscape-planting design for the rear and front yards are also being recommend.

The proposed improvements alone would have an immediate positive impact to the neighborhood. Staff is requesting that a \$75,000 appropriation from the Housing Trust Fund be authorized to fund the recommend repairs to the properties.

FISCAL IMPACT: Adoption of Agreement No. 23-27 would produce no fiscal impact to the City of Montclair General Fund.

Staff is recommending an allocation of \$75,000 from the Housing Trust Fund in order to cover estimated costs for rehabilitation of the properties.

RECOMMENDATION: Staff recommends that the City Council adopt Resolution No. 23-3403 approving Agreement No. 23-27, an Affordable Housing Agreement with the Montclair Housing Authority and Montclair Housing Corporation; authorizing transfer of certain real property located at 9814, 9875, and 9878 Monte Vista Avenue, Montclair, to the Montclair Housing Authority for use as affordable housing units; and declaring such real property to be exempt surplus land.

Staff recommends that the Montclair Housing Corporation Board of Directors adopt Resolution No. 23-01 approving Agreement No. 23-27, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Authority.

Staff recommends that the Montclair Housing Authority Commissioners take the following actions:

1. Adopt Resolution No. 23-01 approving Agreement No. 23-27, an Affordable Housing Agreement by and between the City Of Montclair, Montclair Housing Authority, and Montclair Housing Corporation and accepting the transfer of certain real property from the City of Montclair to the Montclair Housing Authority.
2. Authorize a \$75,000 appropriation from the Housing Trust Fund for rehabilitation of certain real property.

RESOLUTION NO. 23-3403

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING AGREEMENT NO. 23-27, AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR HOUSING CORPORATION; AUTHORIZING TRANSFER OF CERTAIN REAL PROPERTIES LOCATED AT 9814, 9875, AND 9878 MONTE VISTA AVENUE FROM THE CITY OF MONTCLAIR TO THE MONTCLAIR HOUSING AUTHORITY; AND DECLARING SUCH REAL PROPERTIES TO BE EXEMPT SURPLUS LAND

WHEREAS, the City of Montclair (the "City") acquired properties located at 9814, 9875, and 9878 Monte Vista Avenue (the "Properties") with funds from the City's Housing Trust Fund for the purpose of increasing, improving, and preserving the City of Montclair's supply of low-and-moderate income housing available at an affordable cost; and

WHEREAS, the City is the owner of those Properties within the corporate limits of the City of Montclair; and

WHEREAS, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

WHEREAS, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

WHEREAS, the Montclair Housing Corporation (the "Housing Corporation") was formed as a 501(c)(3) to operate and maintain the housing assets including single and multi-family residential units of the Housing Authority; and

WHEREAS, the City desires to convey to the Housing Authority the Properties and the Housing Authority desires to acquire the Properties from the City; and

WHEREAS, no development of the Properties is contemplated; and

WHEREAS, upon acquiring of the Properties, the Housing Authority intends to lease the Properties to the Housing Corporation for operation of the Properties as affordable rental housing resources for low-to-moderate income households; and

WHEREAS, Agreement No. 23-27, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements; and

WHEREAS, Assembly Bill 1486 ("AB 1486") expanded the Surplus Land Act (Government Code section 54220 et seq.) (the "SLA") requirements for local agencies prior to the disposition and disposal of any "surplus land" or "exempt surplus land"; and

WHEREAS, the Properties meet the definition of "surplus land," as it is no longer necessary for the City's use and the City seeks to dispose of the Properties; and

Whereas, even if the SLA were to apply, the Properties would be exempt surplus land, pursuant to section 54221(f)(1)(D) of the SLA, because it is being transferred to the MHA, another government agency, for its use.

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

SECTION 1: The above recitals are true and correct and are a substantive part of this Resolution.

SECTION 2: The City of Montclair hereby finds and determines that the transfer of the Properties to the Montclair Housing Authority will ensure the continued

preservation and availability of low- and moderate-income housing is available at an affordable cost.

SECTION 3: The City of Montclair is hereby authorized and directed to enter Agreement 23-27, an Affordable Housing Agreement by and among the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation.

SECTION 4: The City of Montclair agrees to the transfer of the Properties to the Montclair Housing Authority. The City Manager, or designee, is authorized to record the grant deeds and further actions that are necessary or appropriate to transfer the Properties to the Montclair Housing Authority.

SECTION 5: The City of Montclair hereby finds and declares that the Properties are no longer necessary for the City's use and are surplus land, as defined in California Government Code section 54221, based on the true and correct written findings found in this Resolution and incorporated herein by reference. The City is authorized to transfer the Properties without regard to the SLA pursuant to Governemnt Code section 54221(f)(1)(D), so long as the transfer is to another govenremnt agency, the Montclair Housing Atuhoirty, for their use.

SECTION 6: The City Clerk shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this XX day of XX, 2023.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 23-3403 was duly adopted by the Montclair City Council at a regular meeting thereof held on the XX day of XX, 2023, 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. 23-01

A RESOLUTION OF THE MONTCLAIR HOUSING AUTHORITY APPROVING AGREEMENT NO. 23-27, AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR HOUSING CORPORATION, AND ACCEPTING THE TRANSFER OF CERTAIN REAL PROPERTIES LOCATED AT 9814, 9875, AND 9878 MONTE VISTA AVENUE FROM THE CITY OF MONTCLAIR

WHEREAS, the City of Montclair (the "City") acquired properties located at 9814, 9875, and 9878 Monte Vista Avenue (the "Properties") with funds from the City's Housing Trust Fund for the purpose of increasing, improving, and preserving the City of Montclair's supply of low-and-moderate income housing available at an affordable cost; and

WHEREAS, the City is the owner of those Properties within the corporate limits of the City of Montclair; and

WHEREAS, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

WHEREAS, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

WHEREAS, the Montclair Housing Corporation (the "Housing Corporation") was formed as a 501(c)(3) to operate and maintain the housing assets including single and multi-family residential units of the Housing Authority; and

WHEREAS, the City desires to convey to the Housing Authority the Properties and the Housing Authority desires to acquire the Properties from the City; and

WHEREAS, upon acquiring of the Properties, the Housing Authority intends to lease the Properties to the Housing Corporation for operation of the Properties as affordable rental housing resources for low-to-moderate income households; and

WHEREAS, Agreement No. 23-27, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, BE IT RESOLVED that the Montclair Housing Authority Board of Directors does hereby find, determine, and order as follows:

SECTION 1: The above recitals are true and correct and are a substantive part of this Resolution.

SECTION 2: The Montclair Housing Authority hereby finds and determines that the transfer of the Properties to the Montclair Housing Authority will ensure the continued preservation and availability of low- and moderate-income housing is available at an affordable cost.

SECTION 3: The Montclair Housing Authority is hereby authorized and directed to enter Agreement 23-27, an Affordable Housing Agreement by and among the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation.

SECTION 4: The Montclair Housing Authority agrees to accept the transfer of Properties from the City of Montclair. The Executive Director of the Montclair Housing Authority, or designee, is authorized to record the grant deeds and further actions which are necessary or appropriate to transfer the Properties to the Montclair Housing Authority.

SECTION 5: The Montclair Housing Authority Secretary shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this XX day of XX, 2023.

Chairman

ATTEST:

Secretary

I, Andrea M. Myrick, Secretary of the Montclair Housing Authority, DO HEREBY CERTIFY that Resolution No. 23-01 was duly adopted by the Montclair Housing Authority Board of Directors at a regular meeting thereof held on the XX day of XX, 2023, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
Secretary

RESOLUTION NO. 23-01

A RESOLUTION OF THE MONTCLAIR HOUSING CORPORATION APPROVING AGREEMENT NO. 23-27, AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR HOUSING CORPORATION

WHEREAS, the City of Montclair (the "City") acquired properties located at 9814, 9875, and 9878 Monte Vista Avenue (the "Properties") with funds from the City's Housing Trust Fund, for the purpose of increasing, improving, and preserving the City of Montclair's supply of low-and-moderate income housing available at an affordable cost; and

WHEREAS, the City is the owner of that Properties within the corporate limits of the City of Montclair; and

WHEREAS, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

WHEREAS, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

WHEREAS, the Montclair Housing Corporation (the "Housing Corporation") was formed as a 501(c)(3) to operate and maintain the housing assets including single and multi-family residential units of the Housing Authority; and

WHEREAS, the City desires to convey to the Housing Authority the Properties and the Housing Authority desires to acquire the Properties from the City; and

WHEREAS, upon acquiring of the Properties, the Housing Authority intends to lease the Properties to the Housing Corporation for operation of the Properties as affordable rental housing resources for low-to-moderate income households; and

WHEREAS, Agreement No. 23-27, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, BE IT RESOLVED that the Montclair Housing Corporation Board of Directors does hereby find, determine, and order as follows:

SECTION 1: The above recitals are true and correct and are a substantive part of this Resolution.

SECTION 2: The Montclair Housing Corporation hereby finds and determines that the transfer of the Properties to the Montclair Housing Authority will ensure the continued preservation and availability of low- and moderate-income housing is available at an affordable cost.

SECTION 3: The Montclair Housing Corporation is hereby authorized and directed to enter Agreement 23-27, an Affordable Housing Agreement by and among the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation.

SECTION 4: The Montclair Housing Corporation Secretary shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this XX day of XX, 2023.

ATTEST:

Chair

Secretary

I, Andrea M. Myrick, Secretary of the Montclair Housing Corporation, DO HEREBY CERTIFY that Resolution No. 23-01 was duly adopted by the Montclair Housing Corporation Board of Directors at a regular meeting thereof held on the XX day of XX, 2023, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
Secretary

AFFORDABLE HOUSING AGREEMENT

by and among the

MONTCLAIR HOUSING AUTHORITY

and the

CITY OF MONTCLAIR

and the

MONTCLAIR HOUSING CORPORATION

TABLE OF CONTENTS

1. DEFINITIONS 1

2. CONVEYANCE OF THE PROPERTY 2

 2.1 Conveyance of Fee Title 2

 2.2 Lease Terms 3

 2.3 Conditions Precedent to Commencement of Lease 3

3. COMPLIANCE WITH LAWS 3

4. USE OF THE PROPERTY 4

 4.1 Use In Conformance with Agreement 4

 4.2 Affordable Rental Housing 4

 4.3 Occupancy Standards 5

 4.4 Management and Maintenance 5

 4.5 Rights of Access 6

 4.6 Nondiscrimination 7

 4.7 Effect of Violation of the Terms and Provisions of this Agreement After
 Completion of Construction 8

5. REMEDIES 8

 5.1 Events of Default 8

 5.2 Remedies 8

 5.3 Force Majeure 8

 5.4 Attorneys’ Fees 9

 5.5 Remedies Cumulative 9

 5.6 Waiver of Terms and Conditions 9

 5.7 Non-Liability of Authority Officials and Employees 9

6. GENERAL PROVISIONS 9

 6.1 Time 9

 6.2 Notices 9

 6.3 Representations and Warranties of Operator 10

 6.4 Limitation Upon Change in Ownership, Management and Control of Operator 10

 6.5 No Third Parties Benefited 11

 6.6 Partial Invalidity 11

 6.7 Governing Law 11

 6.8 Amendment 11

 6.9 Approvals 11

ATTACHMENT NO. 1 – LEGAL DESCRIPTION
ATTACHMENT NO. 2 – LEASE
ATTACHMENT NO. 3 – CITY DEED

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (the “Agreement”) is hereby entered into as of May 2, 2023 (the “Date of Agreement”), by and among the **MONTCLAIR HOUSING AUTHORITY**, a public body, corporate and politic (the “Authority”), the and **MONTCLAIR HOUSING CORPORATION**, a California nonprofit public benefit corporation (the “Operator”).

RECITALS

A. Authority is a housing authority duly established and operating as a local housing authority pursuant to the California Housing Authority Law, Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code (“Housing Authority Law” or “HAL”).

B. City is the owner of that certain properties located within the corporate limits of the City of Montclair, located at 9814, 9875, and 9878 Monte Vista Avenue, Montclair, California (the “Properties” or “Houses”). The Properties are further described in the Legal Description which is attached hereto as Attachment No. 1.

C. City desires to convey to Authority the Properties and Authority desires to acquire the Properties from the City as provided herein.

D. Upon acquiring the Properties, Authority intends to lease the Properties to the Operator for the operation of the Properties as affordable rental housing resources for households of “Low Income” as defined below.

E. The transaction contemplated by this Agreement is in the vital and best interest of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, the parties hereto agree as follows:

1. DEFINITIONS. The following terms shall have the following definitions for the purpose of this Agreement:

“**Additional Rent**” is defined in Section 2.2 hereof.

“**Affordable Rent**” is defined in Section 4.2(f) hereof.

“**Authority**” means the Montclair Housing Authority, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

“**Agreement**” means this Affordable Housing Agreement among Authority, City, and Operator.

“**Authority Executive Director**” means the Executive Director of the Authority or his or her designee.

“**City**” means the City of Montclair, California, a California municipal corporation.

“**City Code**” means and refers to the City of Montclair Municipal Code as revised from time to time.

“**City Deed**” means a grant deed substantially in the form of Attachment No. 3.

“**Date of Agreement**” is defined in the first paragraph of this Agreement.

“**Event of Default**” means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 5.1 hereof.

“**House**” means the single family homes which are located on and constitute part of the Properties.

“**Housing Authority Law**” or “**HAL**” has the meaning set forth therefor in Recital A.

“**Low Income Household**” shall mean a household earning not greater than eighty percent (80%) of San Bernardino County median income as determined pursuant to Health and Safety Code Section 50079.5.

“**Net Profits**” shall mean all gross income from the Properties, including without limitation rents and interest on security deposits, less the sum of the Operating Expenses.

“**Operating Expenses**” shall mean actual, reasonable and customary costs, fees and expenses directly incurred and attributable to the operation, maintenance, and management of the Properties. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation.

“**Operator**” means the Montclair Housing Corporation, a California nonprofit public benefit corporation.

“**Parties**” means, collectively, City, Authority, and Operator.

“**Properties**” means the single family houses in the City of Montclair located at 9814, 9875, and 9878 Monte Vista Avenue, Montclair, California, and described in the Legal Descriptions.

“**Property Value**” means the amount of _____ Dollars (\$_____). The Properties Value is mutually believed to be by each of the Parties to represent the fair market value of the Properties as of the Date of Agreement.

“**Redevelopment Plan**” means the redevelopment plan adopted by the City for Redevelopment Project No. V (the “Redevelopment Project”) as heretofore amended.

2. CONVEYANCE OF THE PROPERTY.

2.1 Conveyance of Fee Title. City agrees to convey to Authority the Properties by City Deed. The purchase price payable by Authority to City in consideration of the conveyance of the Properties shall be One Dollar (\$1.00) (the “Authority Purchase Price”) for each house; provided

that City may waive receipt of Authority Purchase Price. Upon request therefor by Authority, City will, in connection with the conveyance of the Properties, provide to Authority an owner's standard ALTA policy of title insurance as to the Properties by a title insurer mutually acceptable to City and Authority, with the policy to be based upon the Property Value (the "Authority Title Policy"). Any and all documentary transfer taxes, recording fees, escrow charges, premiums for title insurance, and any costs associated with the conveyance of the Properties to Authority shall be borne by City.

2.2 Lease Terms. Subject to the satisfaction of all of the conditions precedent to commencement of the Lease set forth in Section 2.3 hereof, the Authority shall lease the Properties to the Operator for a fifteen (15) year term at a base rental amount of One Dollar (\$1.00) per year, per house, together with the "Additional Rent" as set forth below. The terms and conditions of such lease shall be set forth in a "Lease" to be executed by the Authority and the Operator in the form of Attachment No. 2 which is attached hereto and incorporated herein.

At the end of each operating year, the Operator shall calculate total gross operating revenue for that year, and shall thereupon pay to the Authority as "Additional Rent" an amount equal to Net Profits, which equals total gross operating revenue less the Operating Expenses for that year. If total gross revenue from the Properties for that year is less than the Operating Expenses, no Additional Rent shall be payable and the Operator shall be responsible for such additional costs from its own funds, and shall not be entitled to additional compensation from the Authority or be entitled to reduce the required level of services. The Authority and its authorized representatives shall, at all times, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of the Operator which in any manner relate to the expenses and revenues of the Properties under this Agreement and the Operator's obligations hereunder. The Operator's staff shall cooperate fully with authorized auditors when they conduct audits and examinations of Authority funded programs. Within thirty (30) days of the submittal of such audit report, the Operator shall provide a written response to all conditions or findings reported in such audit report. The response must discuss each condition or finding and set forth a proposed resolution, including a schedule for correcting any deficiency. All conditions or correction actions shall take place within six (6) months after receipt of the audit report unless the Authority Executive Director or designee authorizes an extension of time to submit such corrections.

2.3 Conditions Precedent to Commencement of Lease. Prior to and as conditions to the Authority's execution of and the commencement of the Lease: (i) City shall have conveyed the titles of the Properties to Authority; (ii) if requested by Authority, City shall have caused to be delivered to Authority the Authority Title Policy; (iii) Operator shall have executed the Lease; and (iv) Operator shall have provided proof of insurance (certificates) conforming to Section 3.7 of this Agreement.

3. COMPLIANCE WITH LAWS. Operator shall carry out the operation of the Properties in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

4. USE OF THE PROPERTY.

4.1 Use in Conformance with Agreement. The Operator covenants and agrees for itself, its successors, its assigns and every successor in interest to the Properties or any part thereof that, during the term of this Agreement, the Operator, such successors and such assignees, shall use, operate and maintain the Properties in conformity with this Agreement and shall devote the Properties to the uses specified in this Agreement for the periods of time specified therein.

4.2 Affordable Rental Housing.

(a) Number of Units. Upon the commencement of the Lease, the Operator agrees to make available, restrict occupancy to, and rent the Houses to Low Income Households, at an Affordable Rent.

(b) Lease Requirements. Prior to rental of the Houses within the Properties, the Operator shall submit a standard lease form to the Authority for the Authority's approval. The Authority Executive Director, or designee, shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement. The Operator shall enter into a lease, in the form approved by the Authority, with each tenant of the Houses.

(c) Duration of Affordability Requirements. The Houses shall be subject to the requirements of this Section 4.2 for a period coextensive with the term of the Lease. The duration of this requirement shall be known as the "Affordability Period." All tenants residing in the Houses during the last two (2) years of the Affordability Period shall be given notice at least once every six (6) months of the expiration date of this requirement, and that the rent payable on the Houses may be raised to a market rate rent at the end of the Affordability Period.

(d) Selection of Tenants. The Houses shall be leased to tenants selected by the Operator who meet all of the requirements provided herein. The Authority may, from time to time, assist in the leasing of the Houses by providing to the Operator names of persons who have expressed interest in renting the Houses. The Operator shall adopt a tenant selection system, which shall be approved by the Authority Executive Director, or designee. The tenant selection system shall include, without limitation, a method for investigation of the credit history of proposed tenants through obtaining a credit report on the proposed tenant. Highest priority in the selection of tenants shall be given to those applicants who have been displaced by Authority projects, if any.

(e) Income of Tenants. Prior to the rental or lease of the Houses to tenants, and annually thereafter, the Operator shall obtain an income certification from each tenant of the Properties. The Operator shall verify the income certification of the tenant in one or more of the following methods:

(1) obtain two (2) paycheck stubs from the tenant's two (2) most recent pay periods, if any.

(2) obtain a true copy of an income tax return from the tenant for the most recent tax year in which a return was filed.

(3) obtain an income verification certification from the employer of the tenant.

(4) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies.

(5) obtain a credit report from a commercial credit reporting agency.

(6) obtain an alternate form of income verification reasonably requested by the Operator, if none of the above forms of verification is available to the Operator.

A person or family who at the time of income certification qualified as a Low Income Household shall continue to be deemed so qualified until such time as the person or family's income is redetermined and the person or family is determined by the Operator to no longer be so qualified, even if such person or family's income has subsequently increased to an amount above the applicable income level. Upon the Operator's determination that the tenant is no longer qualified as a Low Income Household, such tenant shall no longer be eligible to rent such Houses and shall be given a written notice which requires such tenant to vacate the Houses within sixty (60) days, and the Operator shall provide assistance to such tenants in finding another appropriate rental unit in the vicinity. The tenant lease shall contain the above provisions. In addition, the Operator shall annually submit to the Authority a certification that the Houses are actually occupied by a Low Income Household in the form which is provided by the Authority.

(f) Determination of Affordable Rent for the Property. The Houses shall be rented at an "Affordable Rent" to be established by the Authority as provided herein. The maximum monthly rental amount for the Houses shall be established at not greater than the lesser of (a) fair market rent, as reasonably determined by the Operator, or (b) thirty percent (30%) of sixty percent (60%) of San Bernardino County median income for a household size appropriate for the Houses or, if greater, the amount determined pursuant to Health and Safety Code section 50053(b)(3). For purposes of this Section 4.2, "rent" means the total of monthly payments for (a) use and occupancy of the Houses and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Operator which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Operator. The Authority may in its discretion base the utilities allowance on a utilities allowance adopted in connection with the Section 8 program administered by the United States Department of Housing and Urban Development. Household size appropriate to the unit shall mean two persons for a one bedroom House, three persons for a two bedroom House, four persons for a three bedroom House, and five persons for a four bedroom House. Upon the approval of the Authority or the Authority Executive Director, rents may be established at amounts which are lower than the maximum monthly rental amounts set forth above.

4.3 Occupancy Standards. Occupancy of the Houses shall be limited to five (5) persons.

4.4 Management and Maintenance. The Operator shall manage and maintain the Properties in conformity with the City Code. The following standards shall be complied with by Operator and its maintenance staff, contractors or subcontractors:

(a) Operator shall maintain the Properties in a safe and sanitary fashion and in first class condition for single family houses of their age and type.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, parking areas, driveways and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(d) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

(e) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied only by persons possessing valid California applicators licenses, and in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

(f) Operator shall make such capital repairs to the Properties as are necessary, including the following: carpet and drape replacement; appliance replacement; exterior painting, hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; and lighting fixture replacement.

Management and maintenance shall be overseen by the Authority or its designee and, if the above standards are breached, after notice and opportunity to cure within the time set forth in this paragraph, the Authority or its designee may in its reasonable discretion direct the Operator to and the Operator shall hire a management company acceptable to the Authority to manage the Properties. If, at any time, the Operator or the management company fails to adequately maintain such areas, and such condition is not corrected immediately upon notice of an imminent threat to health and safety or after expiration of thirty (30) days from the date of written notice from the Authority for all other violations, the Authority may (but shall not be obligated to) perform the necessary maintenance and Operator shall pay such costs as are reasonably incurred for such maintenance.

4.5 Rights of Access. The Authority, for itself and for the City and other public agencies, at their sole risk and expense, shall have the right to inspect the Properties. Any such inspection shall be made only after reasonable notice to Operator. Upon receipt of such notice, the Operator agrees to cooperate with the Authority in making the Properties available for inspection by the Authority and/or City. Operator acknowledges and agrees that in the event that if for any reason the Operator fails to consent to such entry or inspection, the Authority may obtain an administrative

inspection warrant or take such other legal actions as may be necessary to gain entry to and inspect the Properties. Authority shall indemnify and hold Operator harmless from any costs, claims, damages or liabilities pertaining to any entry.

4.6 Nondiscrimination. The Operator covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Properties, nor shall Operator itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof. The foregoing covenants shall run with the land.

The Operator shall refrain from restricting the rental, sale or lease of the Properties on the basis of race, color, creed, religion, sex, marital status, disability, familial status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(b) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(c) In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises

subject to this agreement nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises.”

The covenants established in this Agreement and the Lease for the Properties shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Authority, its successors and assigns, the City and any successor in interest to the Properties. The covenants against discrimination shall remain in effect in perpetuity. However, nothing in this Section 4.6 shall give the Operator any additional rights to convey a fee or leasehold interest in the Property except as otherwise authorized by this Agreement.

4.7 Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding upon and for the benefit and in favor of the Operator and the Authority, their respective successors and assigns, as to those covenants which are for their benefit. The covenants contained in this Agreement shall remain in effect until the expiration of the Affordability Period. The covenants against discrimination shall remain in perpetuity. The Authority is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the Authority, without regard to whether the Authority has been, remains or is an owner of any land or interest therein in the Properties or in the Redevelopment Project area. The Authority shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

5. REMEDIES.

5.1 Events of Default. An “Event of Default” shall occur under this Agreement when there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the defaulting party without the defaulting party curing such breach, or if such breach cannot reasonably be cured within such thirty (30) day period, commencing the cure of such breach within such thirty (30) day period and thereafter diligently proceeding to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of this Agreement, the specific provision shall control.

5.2 Remedies. The occurrence of any Event of Default shall give the nondefaulting party the right to proceed with any and all remedies set forth in this Agreement, including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.

5.3 Force Majeure. Subject to the party’s compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires,

assaults, acts of God, acts of the public enemy, epidemics, pandemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, acts or failures to act of any public or governmental entity (except that the Authority's acts or failure to act shall not excuse performance of the Authority hereunder), or any other causes beyond the control and without the fault of the party claiming an extension of time to perform. An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause.

In addition to the foregoing, following the acquisition of the Properties by Authority, the Authority Executive Director shall have the authority to extend times for performance by up to one hundred eighty (180) days in the aggregate without necessity of further action by the governing board of the Authority.

5.4 Attorneys' Fees. In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover from the other party its costs of suit, including without limitation expert witness fees, and reasonable attorneys' fees.

5.5 Remedies Cumulative. No right, power, or remedy given to the Authority by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Authority by the terms of any such instrument, or by any statute or otherwise against Operator and any other person.

5.6 Waiver of Terms and Conditions. The Authority may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

5.7 Non-Liability of Authority Officials and Employees. No member, official, employee or agent of the City or Authority shall be personally liable to Operator, or any successor in interest, in the event of any default or breach by the Authority or for any amount which may become due to Operator or its successors, or on any obligations under the terms of this Agreement.

6. GENERAL PROVISIONS.

6.1 Time. Time is of the essence in this Agreement.

6.2 Notices. Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, or by personal delivery, addressed to the appropriate party at the following addresses:

Authority: Montclair Housing Authority
5111 Benito Street
Montclair, California 91763
Attention: Executive Director

Lessee: Montclair Housing Corporation
5111 Benito Street
Montclair, California 91763
Attention: Executive Director

City: City of Montclair
5111 Benito Street
Montclair, California 91763
Attention: City Manager

6.3 Representations and Warranties of Operator. Operator hereby represents and warrants to the Authority as follows:

(a) Organization. Operator is a duly organized, validly existing nonprofit corporation in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Operator. Operator has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Valid Binding Agreement. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Operator enforceable against it in accordance with their respective terms.

(d) Pending Proceedings. Operator is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Operator, threatened against or affecting Operator, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Operator, materially affect Operator's ability to perform its obligations hereunder.

6.4 Limitation Upon Change in Ownership, Management and Control of Operator.

(a) Prohibition. The identity and qualifications of Operator are of particular concern to the Authority. It is because of this identity and these qualifications that the Authority has entered into this Agreement with Operator. No voluntary or involuntary successor in interest of Operator shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall Operator make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Properties without the prior written approval of the Authority Executive Director, which approval may be granted, conditionally granted, or denied at the sole and absolute discretion of the Authority Executive Director; provided that the rental of the Properties by Operator to a Low Income household at Affordable Rent in conformity with the Lease shall not require the specific approval by the Authority Executive Director.

(b) Successors and Assigns. This Agreement shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon Operator and the permitted successors and assigns of Operator. Whenever the term “Operator” is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

6.5 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of the Authority, its successors and assigns, City, successors and assigns, and Operator, its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

6.6 Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

6.7 Governing Law. This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

6.8 Amendment. This Agreement may not be changed orally, but only by agreement in writing signed by Operator and the Authority.

6.9 Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the Authority, such approval may be given on behalf of the Authority by the Authority Executive Director or his or her designee. The Authority Executive Director or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement. The Authority Executive Director is authorized to execute amendments of this Agreement so long as such amendments do not materially increase the costs to be incurred by the Authority hereunder or materially decrease the revenues to be received by the Authority hereunder.

IN WITNESS WHEREOF, the Authority, City, and the Operator have executed this Agreement as of the date set forth above.

MONTCLAIR HOUSING AUTHORITY,
a public body corporate and politic

By: _____
Authority Executive Director

CITY OF MONTCLAIR,
a municipal corporation

By: _____
City Manager

MONTCLAIR HOUSING CORPORATION,
a California nonprofit public benefit corporation

By: _____
Its: _____

ATTACHMENT NO. 1
LEGAL DESCRIPTION

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APNS:

1009-273-19-0000
Tract 5156 Lot 159

1010-021-03-0000
Tract 3932 Lot 43

1009-273-25-0000
Tract 5156 Lot 165

ATTACHMENT NO. 2

LEASE

By and Between

THE MONTCLAIR HOUSING AUTHORITY

and

MONTCLAIR HOUSING CORPORATION

LEASE

THIS LEASE (the “Lease”) is made as of May 2, 2023, by and between the **MONTCLAIR HOUSING AUTHORITY**, a public body, corporate and politic (the “Authority” or “Lessor”), and **MONTCLAIR HOUSING CORPORATION**, a California nonprofit public benefit corporation (the “Operator” or “Lessee”).

SECTION 1. SUBJECT OF LEASE.

1.1 Purpose of the Lease. The purpose of this Lease is to effectuate the Affordable Housing Agreement by and among the Authority, the City of Montclair, a municipal corporation (the “City”), and the Operator dated May 2, 2023 (the “Agreement”), by providing for the lease of the “Properties” (as hereinafter defined) within the Redevelopment Project area to Lessee and the sublease of the Properties to Low Income Persons. The Agreement, which is available in the offices of the Authority as a public record, is incorporated herein by reference and made a part hereof as though fully set forth herein.

1.2 The Redevelopment Plan. As of the “Commencement Date” (as hereinafter defined), the “Properties” (as hereinafter defined) is in compliance with the Redevelopment Plan for the Redevelopment Project.

SECTION 2. LEASE OF THE PROPERTIES.

The Authority, for and in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Lessee to be paid, kept, performed and observed by Lessee, hereby leases to Lessee, and Lessee hereby leases from Authority, that certain real property consisting of single family houses in the City of Montclair (the “City”) located at 9814, 9875, and 9878 Monte Vista Avenue (the “Houses”), and having the legal description in the “Legal Description” attached hereto as Exhibit A and incorporated herein by this reference. Except as expressly provided to the contrary in this Lease, reference to the Properties is to the described land, inclusive of any improvements now or hereafter located on the land.

SECTION 3. LEASE TERM.

Lessee shall lease the Properties from Authority and Authority shall lease the Properties to Lessee for a term commencing on May 2, 2023 (the “Commencement Date”) and continuing until [May 2, 2038] (the “Term”), unless sooner terminated as provided for herein. The term “Lease Year” shall mean a period commencing on the Commencement Date or an anniversary thereof and continuing for one full calendar year thereafter.

SECTION 4. USE OF THE PROPERTIES.

4.1 Use of the Properties. Lessee covenants and agrees for itself, its successors and assigns, that during the Term, the Properties shall be devoted to those uses as set forth in the Agreement and the Redevelopment Plan.

4.2 Management. Lessee shall manage or cause the Properties to be managed in a prudent and business-like manner, consistent with first-class single family rental housing in San Bernardino County, California.

Lessee may contract with a management company or manager to operate and maintain the Properties in accordance with the terms of this Lease; provided, however, that the selection and hiring of such management company shall be subject to approval by Authority, or its Executive Director. Lessee may act as manager. Approval of a management company or manager by Authority shall not be unreasonably withheld. If, at any time, the management company is not performing to the reasonable satisfaction of the Authority, or its Executive Director or the City Manager of the City, and said condition is not corrected after expiration of ninety (90) days from the date of written notice from the Authority, the Authority may direct the Lessee to, and the Lessee shall, terminate immediately the management contract. Notwithstanding the above, Lessee shall use its best efforts to correct any defects in management at the earliest feasible time and, if necessary, to replace the management company prior to the elapsing of such time period.

4.3 Only Lawful Uses Permitted. Lessee shall not use the Properties for any purpose that is in violation of any law, ordinance or regulation of any federal, state, county or local governmental agency, body or entity. Furthermore, Lessee shall not maintain or commit any nuisance, as now or hereafter defined by any applicable statutory or decisional law, on the Properties, or any part thereof.

SECTION 5. RENT.

5.1 Net Lease. It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Authority and that Lessee shall pay all costs, charges and expenses of every kind and nature against the Properties which may arise or become due during the Term and which, except for execution hereof, would or could have been payable by Authority.

5.2 Rent.

(A) During the Term of this Lease, Lessee agrees to pay in advance, on the Commencement Date and thereafter on the first day of each “Lease Year” (as hereinafter defined), rent in the amount of One Dollar (\$1.00) per house. The parties understand and acknowledge that the primary consideration for this Lease is the performance of the covenants set forth in this Lease and the Agreement, particularly (without limitation, however) the covenants to rent the units to low- and moderate income tenants at an affordable rent pursuant to Section 6 hereof and Section 4.2 of the Agreement. As used herein, a “Lease Year” shall consist of twelve (12) consecutive calendar months ending on the anniversary (the “Anniversary Date”) of the day immediately preceding the Commencement Date.

(B) During the Term of this Lease, Lessee agrees to pay at the end of each Lease Year the “Additional Rent,” as herein defined. At the end of each Operating Year, the Lessee shall calculate total gross operating revenue for that year, and shall thereupon pay to the Authority as “Additional Rent” an amount equal to total gross operating revenue less the operating costs for that year. If total gross operating revenue for that year is less than operating costs, no Additional Rent shall be payable and the Lessee and the Authority shall negotiate in good faith for the Authority to provide additional compensation to cover such deficit. The Authority and its authorized representatives shall, at all times, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of the Lessee which in any manner relate to the expenses and revenues

of the Properties under this Lease and the Lessee's obligations hereunder. The Lessee's staff shall cooperate fully with authorized auditors when they conduct audits and examinations of Authority funded programs. Within thirty (30) days of the submittal of such audit report, the Lessee shall provide a written response to all conditions or findings reported in such audit report. The response must discuss each condition or finding and set forth a proposed resolution, including a schedule for correcting any deficiency. All conditions or correction actions shall take place within six (6) months after receipt of the audit report unless the Authority Executive Director or designee authorizes an extension of time to submit such corrections.

5.3 Payment of Rent. All rent that becomes due and payable pursuant to this Lease shall be paid to the Authority at the address of the Authority listed in Section 26.7 or such other place as the Authority may from time to time designate by written notice to the Lessee without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension or deduction. Except as expressly provided herein, under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall the Authority be expected or required to make any payment of any kind whatsoever or to perform any act or obligation whatsoever or be under any obligation or liability hereunder or with respect to the Properties.

SECTION 6. AFFORDABLE HOUSING REQUIREMENTS

6.1 Affordable Unit. The Lessee agrees to make available, restrict occupancy to, and rent the Houses to "Low Income Households" at the rents established pursuant to Section 6.6 hereof. "Low Income Household" shall mean a household earning not greater than eighty percent (80%) of San Bernardino County median income as further set forth in California Health and Safety Code Section 50079.5.

6.2 Lease Requirements. Prior to rental of the Properties, Lessee shall submit a standard lease form to the Authority for Authority's approval. The Authority shall approve such lease form upon finding that such lease form is consistent with this Lease and the Agreement. The Lessee shall enter into a lease, in the form approved by the Authority, with each tenant of the Houses.

6.3 Duration of Affordability Requirements. The Properties shall be subject to the requirements of this Section 6 for a period coextensive with the term of this Lease beginning on the Commencement Date. The duration of this requirement shall be known as the "Affordability Period." All tenants residing in the Houses during the last two (2) years of the Affordability Period shall be given notice by the Lessee at least once every six (6) months of the expiration date of this requirement, and that the rent payable on the Properties may be raised to a market rate rent at the end of the Affordability Period.

6.4 Selection of Tenants. The Properties shall be leased to tenants selected by the Lessee who meet all of the requirements provided herein. The Authority may, from time to time, assist in the leasing of the Houses by providing to the Lessee names of persons who have expressed interest in renting the Houses. Lessee shall adopt a tenant selection system, which shall be approved by the Authority. The tenant selection system shall include, without limitation, a method for investigation of the credit history of proposed tenants through obtaining a credit report on the proposed tenant. Highest priority in the selection of tenants shall be given to those applicants who have been displaced by Authority projects, if any.

6.5 Income of Tenants. Prior to the rental or lease of each of the Houses to a tenant, and annually thereafter, the Lessee shall obtain an income certification from the tenant of the Properties. The Lessee shall verify the income certification of the tenant in one or more of the following methods:

- (A) obtain two (2) paycheck stubs from the tenant's two (2) most recent pay periods, if any.
- (B) obtain a true copy of an income tax return from the tenant for the most recent tax year in which a return was filed.
- (C) obtain an income verification certification from the employer of the tenant.
- (D) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies.
- (E) obtain a credit report from a commercial credit reporting agency.
- (F) obtain an alternate form of income verification reasonably requested by the Lessee, if none of the above forms of verification is available to the Lessee.

A person or family who at the time of income certification qualified as a Low Income Household shall continue to be deemed so qualified, until such time as the person or family's income is redetermined and the person or family is determined by the Lessee to no longer be so qualified, even if such person or family's income has subsequently increased to an amount above the applicable income level. Upon the Lessee's determination that the tenant is no longer qualified as a Low Income Household, such tenant shall no longer be eligible to rent the Properties and shall be given a written notice which requires such tenant to vacate the Properties within sixty (60) days, and the Lessee shall provide assistance to such tenants in finding another appropriate rental unit in the vicinity. The tenant lease shall contain the above provisions. In addition, the Lessee shall annually submit to the Authority a certification that the Houses is actually occupied by Low-Income Households in such form as may be provided by the Authority.

6.6 Determination of Affordable Rent for the Properties. The Houses shall be rented at an "Affordable Rent" to be established by the Authority as provided herein. The maximum monthly rental amount for the Properties shall be established at the lesser of (a) fair market rent, as reasonably determined by the Operator, or (b) thirty percent (30%) of sixty percent (60%) of San Bernardino County median income for a household size appropriate for the unit or, if greater, the amount determined pursuant to Health and Safety Code section 50053(b)(3). Household size appropriate to the unit shall mean two persons for a one bedroom House, three persons for a two bedroom House, four persons for a three bedroom House, and five persons for a four bedroom House. The rents of the Properties may be increased once per year, regardless of when particular tenants commenced occupancy of the Houses. The maximum monthly rental amount for the Houses shall include a reasonable utilities allowance to be determined by the Authority, which utilities allowance shall be set at an amount which will cover the projected charge for all utilities (whether paid for by Lessee or paid directly by the individual tenant), including gas and electrical service, water, sewer and garbage collection, but excluding telephone service and cable television. The Authority may in its discretion base the utilities allowance on a utilities allowance adopted in connection with the Section 8 program administered by the United States Department of Housing and Urban Development. Upon the approval

of the Authority or Authority Executive Director, rents may be established at amounts which are lower than the maximum monthly rental amounts set forth above.

SECTION 7. UTILITIES AND TAXES.

7.1 Utilities. Lessee shall pay or cause to be paid by the tenants all charges for gas, electricity, water, sewer, garbage collection, cable television, and other utilities furnished to the Houses.

7.2 Real Estate Taxes.

(A) As used herein, the term “real estate taxes” shall mean all real estate taxes, assessments for improvements to the Houses, municipal or county water and sewer rates and charges which shall be levied against the Houses, or any interest therein, and which become a lien thereon and accrues during the Term.

(B) The Properties shall be assessed and taxed in the same manner as privately owned property, provided, however, that Lessee may apply for and obtain a full or partial exemption from property taxes. The Authority shall provide notice to the San Bernardino County Assessor within thirty (30) days of the commencement of this Lease as required by Health and Safety Code Section 33673.1. Lessee shall pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes levied against any and all interests in the Property during the Term, and not merely the assessed value of the leasehold interest in the Property.

(C) Any real estate taxes which are payable by Lessee hereunder shall be prorated between Authority and Lessee as of the Commencement Date and then again at the expiration or earlier termination of the Term.

(D) Lessee shall have the right to apply for the “welfare exemption” and any other applicable exemption from real property taxes, and shall further have the right to contest the amount or validity of any real estate taxes, in whole or in part, by appropriate administrative and legal proceedings, without any costs or expense to Authority. Lessee may postpone payment of any such contested real estate taxes pending the prosecution of such proceedings and any appeals so long as such proceedings shall operate to prevent the collection of such real estate taxes and the sale of the Property to satisfy any lien arising out of the nonpayment of the same, and Lessee furnishes a bond to Authority securing the payment of the same in the event a decision in such contest shall be adverse to Lessee.

7.3 Personal Property Taxes. Lessee covenants and agrees to pay before delinquency all personal property taxes, assessments and liens of every kind and nature upon all personalities as may be from time to time situated within the Property.

SECTION 8. OWNERSHIP OF IMPROVEMENTS, FIXTURES AND FURNISHINGS.

The Properties shall, during the Term, be and remain the property of the Authority. Upon termination of this Lease, whether by expiration of the Term or otherwise, all fixtures and furnishings within the Properties shall, without compensation to Lessee, be Authority’s property, free and clear of all claims to or against them by Lessee or any third person, firm or entity.

SECTION 9. INDEMNIFICATION: FAITHFUL PERFORMANCE.

Lessee shall not suffer or permit any liens to be enforced against the fee simple estate as to the Properties, nor against Lessee’s leasehold interest therein by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone holding the Properties, or any part thereof, through or under Lessee, and Lessee agrees to defend, indemnify and hold Authority harmless against such liens. If any such lien shall at any time be filed against the Properties, Lessee shall, within thirty (30) days after notice to Lessee of the filing thereof, cause the same to be discharged of record; provided, however, that Lessee shall have the right to contest the amount or validity, in whole or in part, of any such lien by appropriate proceedings but in such event, Lessee shall notify Authority and promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of California or provide other security acceptable to Authority. Lessee shall prosecute such proceedings with due diligence. Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of Authority, express or implied, by inference or otherwise, to any person, firm or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Properties or any part thereof. Prior to commencement of any repair or alteration to the Properties, Lessee shall give Authority not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws; provided that a shorter notice may be given in cases of emergency.

SECTION 10. MAINTENANCE AND REPAIR.

Lessee agrees to assume full responsibility for the management, operation and maintenance of the Properties throughout the Term without expense to Authority, and to perform all repairs and replacements necessary to maintain and preserve the Properties in a clean and safe condition reasonably satisfactory to Authority and in compliance with all applicable laws. Lessee agrees that Authority shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Properties. Lessee hereby waives all rights to make repairs or to cause any work to be performed at the expense of Authority as provided for in Section 1941 and 1942 of the California Civil Code. The Lessee shall manage and maintain the Properties in conformity with the Montclair Municipal Code.

The following standards shall be complied with by Lessee and its maintenance staff, contractors or subcontractors:

(A) Lessee shall maintain the Properties in a safe and sanitary fashion in a first class condition.

(B) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(C) Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, parking areas, driveways and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or

unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(D) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

(E) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied only by persons possessing valid California applicators licenses, and in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

(F) Lessee shall make such capital repairs to the Properties as are necessary, including the following: carpet and drape replacement; appliance replacement; exterior painting, hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; and lighting fixture replacement.

Management and maintenance shall be overseen by the Authority or its designee and, if the above standards are breached, after notice and opportunity to cure within the time set forth in this paragraph, the Authority or its designee may in its reasonable discretion direct the Lessee to and the Lessee shall hire a management company acceptable to the Authority to manage the Properties. If, at any time, the Lessee or the management company fails to adequately maintain such areas, and such condition is not corrected immediately upon notice of an imminent threat to health and safety or after expiration of thirty (30) days from the date of written notice from the Authority for all other violations, the Authority may (but shall not be obligated to) perform the necessary maintenance and Lessee shall pay such costs as are reasonably incurred for such maintenance.

SECTION 11. ENVIRONMENTAL MATTERS.

11.1 Definitions. For the purposes of this Lease, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

(A) The term “Hazardous Materials” shall mean (i) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, *et seq.*), as amended from time to time, and regulations promulgated thereunder; (ii) any “hazardous substance” as defined by the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Sections 25300, *et seq.*), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) petroleum, oil, gasoline (refined and unrefined) and their respective by products and constituents; and (vi) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any “Governmental Requirements” (as defined in Subparagraph c of this Section 11.1) either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment.

(B) The term “Hazardous Materials Contamination” shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater,

air or other elements on, in or of the Properties by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Date of Lease) emanating from the Property.

(C) The term “Governmental Requirements” shall mean all past, present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property are located, and any other state, county city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over Authority, Lessee or the Properties.

11.2 Responsibility for Contamination. Lessee assumes any and all responsibility and Liabilities (as defined in Section 11.4 of this Lease) for all Hazardous Materials Contamination, which occurs during the Term of this Lease.

11.3 Indemnification. Lessee shall save, protect, defend, indemnify and hold harmless Authority and its officers, directors, shareholders, employees and agents from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants’ fees, investigation and laboratory fees, reasonable attorneys’ fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as “Liabilities”) which may now or in the future be incurred or suffered by Authority and its officers, directors, shareholders, employees or agents by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (1) the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Properties of any Hazardous Materials or Hazardous Materials Contamination after the commencement of this Lease, including any Liabilities incurred under any Governmental Requirements relating to such Hazardous Materials or Hazardous Materials Contamination, (2) the performance by Lessee of any acts, including, but not limited to, the performance of any act required by this Lease, and (3) the performance by the Authority of any act required to be performed by the Lessee under this Lease. Lessee’s obligations under this Section 11.3 shall survive the expiration of this Lease.

Authority shall save, protect, defend, indemnify and hold harmless Lessee and its officers, directors, shareholders, employees and agents from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants’ fees, investigation and laboratory fees, reasonable attorneys’ fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as “Liabilities”) which may now or in the future be incurred or suffered by Lessees and its officers, directors, shareholders, employees or agents by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (1) the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Authority of any Hazardous Materials or Hazardous Materials Contamination prior to the commencement of this Lease, including any Liabilities incurred under any Governmental Requirements relating to such Hazardous Materials or Hazardous Materials Contamination, (2) the performance by Authority of any acts, including, but not limited to, the performance of any act required by this Lease, and (3) the performance by the Lessee of any act required to be performed by the Authority under this Lease. Authority’s obligations under this Section 11.3 shall survive the expiration of this Lease.

11.4 Duty to Prevent Hazardous Material Contamination. Lessee shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Lessee shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the highest standards generally applied by residential developments as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

11.5 Obligation of Tenant to Remediate Premises. Notwithstanding the obligation of Lessee to indemnify Authority pursuant to Section 11.3 of this Lease, Lessee shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state or local governmental agency or political subdivision or any Governmental Requirements and (ii) all actions necessary to make full economic use of the Properties for the purposes contemplated by this Lease and the Agreement, which requirements or necessity arise from the presence upon, about or beneath the Properties of any Hazardous Materials or Hazardous Materials Contamination no matter when occurring. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Properties, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. Lessee shall take all actions necessary to promptly restore the Properties to an environmentally sound condition for the uses contemplated by this Lease and the Agreement notwithstanding any lesser standard of remediation allowable under applicable Governmental Requirements. Lessee shall nevertheless obtain the Authority's written approval prior to undertaking any activities required by this Section 11.5 during the Term of this Lease, which approval shall not be unreasonably withheld so long as such actions would not adversely affect the Property or be harmful to any other person or property. The Authority's obligations under this Section 11.5 shall survive the expiration of this Lease.

11.6 Right of Entry. Notwithstanding any other term or provision of this Lease, Lessee shall permit the Authority or its agents or employees to enter the Properties at any time during normal business hours (except in the event of an emergency), without prior notice in the event of an emergency, and with not less than forty-eight hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency or long-term remedial action with respect to Hazardous Materials and Hazardous Materials Contamination on or affecting the Properties, or to discharge Lessee's obligations hereunder with respect to such Hazardous Materials and Hazardous Materials Contamination when Lessee has failed to do so. All costs and expenses incurred by the Authority in connection with performing Lessee's obligations hereunder shall be reimbursed by Lessee to the Authority within ten (10) days of Lessee's receipt of written request therefor.

11.7 Storage or Handling of Hazardous Materials. Lessee, at its sole cost and expense, shall comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials. In the event Lessee does store, use, transport, handle or dispose of any Hazardous Materials, Lessee shall notify Authority in writing at least ten (10) days prior to their first appearance on the Properties and Lessee's failure to do so shall constitute a material default under this Lease. Lessee shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by the Authority in its reasonable judgment, the Authority may require Lessee, at Lessee's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Properties. Lessee's monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials

on the Properties, shall be satisfactory to Authority, in Authority's reasonable discretion. Lessee shall further be solely responsible, and shall reimburse Authority, for all costs and expenses incurred by Authority arising out of or connected with the removal, clean-up and/or restoration work and materials necessary to return the Properties and any property adjacent to the Properties affected by Hazardous Materials emanating from the Properties to their condition existing at the time of the Commencement Date. Lessee's obligations hereunder shall survive the termination of this Lease.

11.8 Environmental Inquiries. Lessee shall notify Authority, and provide to Authority a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Properties: Notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Lessee shall report to the Authority, as soon as possible after each incident, any unusual, potentially important incidents, including but not limited to, the following:

- (A) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Requirement;
- (B) All fires;
- (C) All instances where asbestos has been or may be disturbed by repair work, tenant improvements or other activities in buildings containing asbestos;
- (D) All notices of suspension of any permits;
- (E) All notices of violation from Federal, State or local environmental authorities;
- (F) All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding federal statutes, concerning investigation, compliance schedules, clean up, or other remedial actions;
- (G) All orders under the Porter-Cologne Act, including corrective action orders, cease and desist orders, and clean-up and abatement orders;
- (H) Any notices of violation from OSHA or Cal-OSHA concerning employees' exposure to Hazardous Materials;
- (I) All complaints and other pleadings filed against Lessee and/or Authority relating to Lessee's storage, use, transportation, handling or disposal of Hazardous Materials on the Properties.

In the event of a release of any Hazardous Materials into the environment, Lessee shall, as soon as possible after the release, furnish to the Authority a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Authority, Lessee shall furnish to the Authority a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Properties including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

SECTION 12. ALTERATION OF IMPROVEMENTS.

Lessee shall not make or permit to be made any structural alteration of, addition to or change in the Properties, nor demolish all or any part of the Properties without the prior written consent of Authority; provided, however, that the foregoing shall not prohibit or restrict the repair and/or replacement of the Properties by Lessee. In requesting such consent Lessee shall submit to Authority detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. This provision shall not limit or set aside any obligation of Lessee under this Lease to maintain the Properties in a clean and safe condition, including structural repair and restoration of damaged Properties. Authority shall not be obligated by this Lease to make any improvements to the Properties or to assume any expense therefor. Lessee shall not commit or suffer to be committed any waste or impairment of the Properties, or any part thereof, except as otherwise permitted pursuant to this Lease.

SECTION 13. DAMAGE OR DESTRUCTION.

Lessee agrees to give notice to Authority of any fire or other damage (collectively “casualty”) that may occur on the Properties within ten (10) days of such fire or damage. In the event of such casualty Lessee agrees, to the extent of any insurance proceeds available therefor, to make or cause to be made full repair of such casualty, or Lessee agrees, to the extent of any insurance proceeds available therefor, to clear and remove from the Properties all debris resulting from such casualty and rebuild the Properties in accordance with plans and specifications previously submitted to Authority and approved in writing in order to replace in kind and scope the Properties which existed prior to such damage. In the event of a casualty in which the Properties are not required to be repaired, restored or rebuilt by Lessee pursuant to the terms of this Section 13, and provided Lessee does not nevertheless elect to repair, restore or rebuild the Properties although Lessee has no obligations to do so, Authority may terminate this Lease.

SECTION 14. SALE, ASSIGNMENT, SUBLEASE OR OTHER TRANSFER.

Except for (a) the lease of the Properties to a tenant, and (b) transfers made pursuant to Section 6.4 of the Agreement, Lessee shall not sell, assign, sublease or otherwise transfer this Lease or any right therein, nor make any total or partial sale, assignment, sublease or transfer in any other mode or form of the whole or any part of the Properties (each of which events is referred to in this Lease as an “Assignment”), without prior written approval of Authority, which approval shall not be unreasonably withheld as more particularly set forth below in this Section 14.2. Notwithstanding anything else herein contained, the term “Assignment” shall not be deemed to include the obtaining of any “Capital Improvement Loan(s)” (all as hereinafter defined), but shall be deemed to include all refinancing thereof and any other loans approved by Authority. Any purported assignment without the prior written consent of Authority shall render this Lease absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee. The approval of Authority to any Assignment shall not be unreasonably withheld if the proposed purchaser, assignee, sublessee or transferee has reasonably demonstrated to the Authority, at least sixty (60) days prior to the effective date of such Assignment, such proposed purchaser’s, assignee’s, sublessee’s or transferee’s financial capability and overall competence and experience to construct and operate the Properties. Review of experience in operating similar projects shall not be required with respect to institutional lenders providing financing pursuant to Section 15 hereof so long as the original Lessee (or a successor that has been expressly approved in writing by the Authority) remains responsible for operating the Properties and performing as Lessee pursuant to this Lease. Approval by Authority of any sale,

assignment, sublease or transfer shall be conditioned upon such purchaser, assignee, sublessee or transferee agreeing in writing to assume the rights and obligations thereby sold, assigned, subleased or transferred, and to keep and perform all covenants, conditions and provisions of this Lease which are applicable to the rights acquired. In the absence of specific written agreement by Authority, no such sale, assignment, sublease or transfer of this Lease or the Properties (or any portion thereof), or approval by Authority of any such sale, assignment, sublease or transfer shall be deemed to relieve Lessee or any other party from any obligation under this Lease.

Notwithstanding anything else contained in this Section 14, this Lease may be assigned, without the consent of Authority, to the purchaser at any foreclosure sale, whether judicial or non-judicial, or to the beneficiary or mortgagee under any Permitted Encumbrance (as defined in Section 15), pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of this Lease to such beneficiary or mortgagee in lieu thereof, and may thereafter be assigned by such beneficiary or mortgagee without Authority's consent, and any such purchaser, beneficiary, mortgagee or assignee shall be liable to perform the obligations herein imposed on Lessee, other than as set forth in Sections 15 of this Lease, only for and during the period that such purchaser, beneficiary, mortgagee or assignee is in possession or ownership of the leasehold estate created hereby.

SECTION 15. FINANCING.

Lessee may, at any time and from time to time during the Term, upon prior written notice to the Authority and subject to the requirements of Sections 5.3 and 14 hereof, request that the Authority authorize Lessee to mortgage, pledge, hypothecate or otherwise encumber to a federally or state chartered bank or savings and loan, a life insurance company, a mortgage company, a pension fund, investment trust or similar institutional lender (herein called "Lender") by deed of trust or mortgage or other security instrument all or any portion of Lessee's right, title and interest pursuant to this Lease and the leasehold estate hereby, following thirty (30) days prior written notice to Authority (which notice shall include an itemization of and budget for the capital improvements to be financed), to secure financing of capital improvements to the Properties ("Capital Improvement Loan(s)"). The Authority shall consider such request in good faith, and may approve, disapprove or conditionally approve in Authority's reasonable discretion. The encumbrances securing the Capital Improvement Loan(s), together with refinancing of the Capital Improvement Loan(s) approved by the Authority pursuant to Section 14, and any other loan or encumbrance approved by the Authority pursuant to this Lease shall be deemed to be "Permitted Encumbrances."

The proceeds of any Capital Improvement Loan(s) shall be used solely to pay (i) the costs of construction of capital improvements to the Property, and (ii) the costs of obtaining the Capital Improvement Loan(s).

Authority and Lessee acknowledge and agree that neither Authority's interest or fee ownership of the Properties nor Authority's right to receive Rent hereunder shall be subordinate to any Permitted Encumbrance or any other lien, mortgage, deed of trust, pledge or other encumbrance of Lessee's leasehold interest hereunder.

SECTION 16. INDEMNITY.

During the Term, Lessee agrees that Authority and City, their agents, officers, representatives and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Lessee, its sublessees or representatives, agents, employees, guests,

licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether caused by or resulting from any act or omission of Lessee or its sublessees or any other person on or about the Properties, or in connection with the operation thereof, or from any defect in the Properties. Lessee agrees to indemnify and save free and harmless Authority and City and their authorized agents, officers, representatives and employees against any of the foregoing liabilities and any costs and expenses incurred by Authority or City on account of any claim or claims therefor. Lessee shall not be responsible for (and such indemnity shall not apply to) any acts, errors or omissions of Authority, City, or their respective agents, officers, representatives or employees.

SECTION 17. INSURANCE.

17.1 Insurance to be Provided by Lessee. During the Term, Lessee, at its sole cost and expense, shall:

(A) Maintain or cause to be maintained a policy or policies of insurance against loss or damage to the Properties of all property of an insurable nature located upon the Properties, resulting from fire, lightning, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage fire insurance policies. Such policy or policies shall be required to provide coverage against loss or damage resulting from flood and/or earthquake only to the extent such coverage is available at commercially reasonable rates and is required by any lender making a loan to Lessee which is secured by the Properties. Such insurance policy shall name Authority as an additional insured and shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Properties, as defined herein in this Section 17.

(B) Maintain or cause to be maintained public liability insurance issued by a company with a Best's rating of not less than A, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Properties, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Lessee or its sublessees, or any person acting for Lessee, or under their respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Properties, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Lessee or its sublessees, or any person acting for Lessee, or under their respective control or direction. Such property damage and personal injury insurance shall also provide for and protect against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the entire term of this Lease in the amount of at least One Million Dollars (\$1,000,000) combined single limit, naming Authority and City as additional insured. If the operation under this Lease results in an increased or decreased risk in the reasonable determination of Authority, then Lessee agrees that the minimum limit hereinabove designated shall be changed accordingly upon request by Authority. Lessee agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, activities of its sublessees or the activities of any other person or persons for which Lessee is otherwise responsible. Pollution liability insurance provided in compliance with the indemnification provision required by Section 11.3 hereof shall be required only to the extent such coverage is available at commercially reasonable rates.

(C) Maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Lessee in connection with the Properties and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Lessee.

17.2 Definition of "Full Insurable Value". The term "full insurable value" as used in this Section 17 shall mean the actual replacement cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of the Properties, including the cost of construction of the Properties, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Lessee shall cause the full insurable value to be determined from time to time by appraisal by the insurer or, if no such appraisal is available, by an appraiser mutually acceptable to Authority and Lessee, not less often than once every three (3) years.

17.3 General Insurance Provisions. All liability policies of insurance provided for in this Section 17 shall name Lessee as the insured and Authority as an additional insured, as their respective interests may appear. All property casualty insurance policies shall include the interest of any Lessee's Mortgagee, and may provide that any loss is payable jointly to Lessee and Lessee's Mortgagee in which event such policies shall contain standard mortgage loss payable clauses. Lessee agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance.

Lessee agrees to submit policies of all insurance required by this Section 17 of this Lease, or certificates evidencing the existence thereof, to Authority on or before the effective date of this Lease, indicating full coverage of the contractual liability imposed by this Lease. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Authority.

All insurance provided for under this Section 17 shall be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California, approved by Authority.

All policies or certificates of insurance shall: (i) provide that such policies shall not be cancelled or limited in any manner without at least thirty (30) days prior written notice to Authority; (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by the Authority and shall contain a waiver of subrogation for the benefit of the City and the Authority; and (iii) name the City, Authority, and their respective officers, agents, and employees as additional insured under such policies.

17.4 Failure to Maintain Insurance. If Lessee fails or refuses to procure or maintain insurance as required by this Lease, Authority shall have the right, at Authority's election, and upon ten (10) days prior notice to Lessee, to procure and maintain such insurance. The premiums paid by Authority shall be treated as added rent due from Lessee, to be paid on the first day of the month following the date on which the premiums were paid. Authority shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

17.5 Insurance Proceeds Resulting from Loss or Damage to Properties. All proceeds of insurance with respect to loss or damage to the Properties during the term of this Lease shall be payable, under the provisions of the policy of insurance, to Lessee, and said proceeds shall constitute a trust fund to be used for the restoration, repair and rebuilding of the Properties in accordance with plans and specifications approved in writing by Authority. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, then such additional proceeds shall be distributed to the Authority. Notwithstanding the foregoing, within the period during which there is an outstanding mortgage upon the Properties, such proceeds shall be payable in accordance with Section 17.3 of this Lease.

In the event this Lease is terminated by mutual agreement of Authority and Lessee and said Properties are not restored, repaired or rebuilt, the insurance proceeds shall be jointly retained by the Authority and Lessee and shall be applied first to any payments due under this Lease from Lessee to Authority, second to restore the Properties to its original condition and to a neat and clean condition, and finally any excess shall be apportioned between Lessee and Authority as their interests may appear; provided, however, that within any period when there is an outstanding mortgage upon the Properties, such proceeds shall be applied first to discharge the debt secured by the mortgage and then for the purposes and in the order set forth above in this paragraph. The value of each interest for the purpose of apportioning excess proceeds under this Section 17.5 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

SECTION 18. EMINENT DOMAIN.

In the event that the Properties or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then, as between Authority and Lessee (or mortgagee, if a mortgage is then in effect), the interests of Authority and Lessee (or mortgagee) in the award and the effect of the taking upon this Lease shall be as follows:

(A) In the event of such taking of only a part of the Properties, leaving the remainder of the Properties in such location and in such form, shape and size as to be used effectively and practicably for the conduct thereon of the uses permitted hereunder, this Lease shall terminate and end as to the portion of the Properties so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Properties not so taken.

(B) In the event of taking of only a part of the Properties, leaving the remainder of the Properties in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, for the conduct thereon of the uses permitted hereunder, this Lease and all right, title and interest thereunder shall cease on the date title to the Properties or the portion thereof so taken vests in the condemning authority.

(C) In the event the Properties is so taken, this Lease and all of the right, title and interest thereunder, shall cease on the date title to the Properties vests in the condemning authority.

(D) Promptly after a partial taking, at Lessee's expense and in the manner specified in provisions of this Lease related to maintenance, repairs, alterations, Lessee shall restore the Properties, to the extent of condemnation proceeds received by Lessee, so as to place them in a condition suitable for the uses and purposes for which the Properties was leased.

(E) In the event of any taking under subparagraphs (a), (b) or (c) hereinabove, that portion of any award of compensation attributable to the fair market value of the Properties or portion thereof taken, valued as subject to this Lease, shall belong to Authority. That portion of any award attributable to the fair market value of Lessee's leasehold interest in the Properties pursuant to this Lease shall belong to Lessee. That portion of any award attributable to the fair market value of the Properties or portion thereof taken shall belong to Authority and Lessee, as their interests may appear, except that in the event of a partial taking, where the Lease remains in effect and Lessee is obligated to restore or repair the Properties, then Lessee shall be entitled to any portion of the award attributable to severance damages to the remaining Properties. Said award shall be used for the restoration, repair or rebuilding of the Properties in accordance with plans and specifications approved in writing by Authority. To the extent that said award for severance damages exceeds the cost of such restoration, repair or rebuilding, then such award shall be apportioned between Lessee and Authority as their interests may appear. The value of each interest for the purpose of apportionment under this Section shall be the fair market value of such interests at the time of the taking.

(F) Provided, however, that within the period during which there is an outstanding mortgage on the Properties, the mortgagee shall be entitled to any portion of the award attributable to the Properties, to the extent of its interest therein. The mortgagee may at its option apply said portions of the award to restoration of the Properties or to reduction of the mortgage. Any excess portion of the award attributable to the condemnation of the Properties shall be apportioned between Lessee and Authority as their interests may appear.

(G) Notwithstanding the foregoing provisions of this Section, Authority may, in its discretion and without affecting the validity and existence of this Lease, transfer Authority's interests in the Properties in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by Authority, Lessee (or mortgagee if a mortgage is then in effect) and Authority shall retain whatever rights they may have to recover from said authority the fair market value of their respective interests in the Properties taken by the authority.

(H) All valuations to be made pursuant to this Section 18 shall be made by mutual agreement of Authority and Lessee.

SECTION 19. OBLIGATION TO REFRAIN FROM DISCRIMINATION.

There shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Properties, and Lessee itself or any person claiming under or through it shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees thereof or any portion thereof, or in the providing of goods, services, facilities, privileges, advantages and accommodation.

Lessee shall refrain from restricting the rental, sale or lease of the Properties, or any portion thereof, on the basis of sex, marital status, race, color, creed, religion, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(A) In Leases: “The lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, religion, disability, familial status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(B) In Contracts:

“There shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, creed, religion, disability, familial status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

SECTION 20. NONDISCRIMINATION IN EMPLOYMENT.

Lessee, for itself and its successors and assigns, agrees that during the operation of the Properties provided for in this Lease, and during any work of repair or replacement, Lessee will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, physical or mental disability, sexual orientation, ancestry or national origin.

SECTION 21. LABOR STANDARDS.

Lessee shall comply, and require all contractors and subcontractors employed pursuant to this Lease to comply with all applicable labor standards provisions of the California Labor Code and federal law, including payment of prevailing wages for off-site work. Lessee shall comply with all bidding requirements applicable pursuant to the California Public Contracts Code or other applicable law.

SECTION 22. COMPLIANCE WITH LAW.

Lessee agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Properties, as well as operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Properties, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees, if any, assessor levied upon Lessee or the Properties, including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the Properties. The judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee in any action or proceeding against them, or any of them, whether Authority be a party thereto or not, that Lessee,

sublessee or permittee has violated any such ordinance or statute in the use of the Properties shall be conclusive of that fact as between Authority and Lessee, or such sublessee or permittee.

SECTION 23. ENTRY AND INSPECTION.

Authority reserves and shall have the right during reasonable business hours (except in cases of emergency), upon forty-eight (48) hours prior notice (except in cases of emergency) to Lessee by the Executive Director of Authority, to enter the Properties for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Properties or to inspect the operations conducted thereon.

SECTION 24. RIGHT TO MAINTAIN.

In the event that the entry or inspection by Authority pursuant to Section 23 hereof discloses that the Properties are not in a decent, safe, and sanitary condition, Authority shall have the right, after thirty (30) days written notice to Lessee (except in case of emergency, in which event no notice shall be necessary), to have any necessary maintenance work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and all costs incurred by Authority in having such necessary maintenance work done in order to keep the Properties in a decent, safe and sanitary condition. The rights reserved in this Section shall not create any obligations or Authority or increase obligations elsewhere in this Lease imposed on Authority.

SECTION 25. EVENTS OF DEFAULT AND REMEDIES.

25.1 Events of Default by Lessee.

- (A) Lessee shall abandon or surrender the Properties; or
- (B) Lessee shall fail or refuse to pay, within ten (10) days of notice from Authority that the same is due, any installment of rent or any other sum required by this Lease to be paid by Lessee; or
- (C) Lessee shall fail to perform any covenant or condition of the Agreement and/or this Lease other than as set forth in subparagraphs (a) or (b) above, and any such failure shall not be cured within thirty (30) days following the service on Lessee of a written notice from Authority specifying the failure complained of, or if it is not practicable to cure or remedy such failure within such thirty (30) day period, within such longer period as shall be reasonable under the circumstances; or
- (D) Lessee shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the same shall not be dismissed within sixty (60) days thereafter; or
- (E) Lessee shall be adjudicated a bankrupt; or
- (F) Lessee shall make a general assignment for the benefit of creditors in violation of the terms of this Lease; then such event shall constitute an event of default under this Lease.

25.2 Remedies of Authority. In the event of any such default as described in Section 25.1, Authority may, at its option:

(1) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by Authority in enforcing this provision) to the account of Lessee, which charge shall be due and payable within fifteen (15) days after presentation by Authority of a statement of all or part of said costs;

(2) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by Authority in enforcing this provision) from the proceeds of any insurance; or in the event that Lessee has obtained a faithful performance bond indemnifying Authority, Authority may call upon the bonding agent to correct said default or to pay the costs of such correction performed by or at the direction of Authority;

(3) Exercise its right to maintain any and all actions at law or suits in equity to compel Lessee to correct or cause to be corrected said default;

(4) Have a receiver appointed to take possession of Lessee's interest in the Property, with power in said receiver to administer Lessee's interest in the Properties, to collect all funds available to Lessee in connection with its operation and maintenance of the Properties; and to perform all other consistent with Lessee's obligation under this Lease as the court deems proper;

(5) Maintain and operate the Properties, without terminating this Lease;

(6) With respect to a monetary default or material non-monetary default, terminate this Lease by written notice to Lessee of its intention to do so.

25.3 Right of Authority in the Event of Termination of Lease. Upon termination of this Lease pursuant to Section 25.2, it shall be lawful for Authority to re-enter and repossess the Properties and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Properties peaceably to Authority immediately upon such termination in good order, condition and repair, except for reasonable wear and tear. Lessee agrees that upon such termination, title to all the Properties on the Properties shall vest in Authority. Even though Lessee has breached the Lease and abandoned the Properties, this Lease shall continue in effect for so long as Authority does not terminate Lessee's right to possession, and Authority may enforce all of its right and remedies under this Lease, including, but not limited to, the right to recover the rent as it becomes due under this Lease. No ejectment, re-entry or other act by or on behalf of Authority shall constitute a termination unless Authority gives Lessee notice of termination in writing. Termination of this Lease shall not relieve or release Lessee from any obligation incurred pursuant to this Lease prior to the date of such termination. Termination of this Lease shall not relieve Lessee from the obligation to pay any sum due to Authority or from any claim for damages against Lessee.

25.4 Damages. Damages which Authority recovers in the event of default under this Lease shall be those which are then available under applicable California case and statutory law to lessors for leases in the State of California including, but not limited to, any accrued but unpaid rent and the worth at the time of award of the amount by which the unpaid rent for the balance of the term of this Lease after the date of award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

25.5 Rights and Remedies are Cumulative. The remedies provided by this Section 25 are not exclusive and shall be cumulative to all other rights and remedies possessed by Authority. The exercise by Authority of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Lessee.

25.6 Limitation of Lessee's Liability. Notwithstanding anything to the contrary herein contained, following completion of the construction of the Properties, (i) the liability of Lessee shall be limited to its interest in the Properties, and any rents, issues and profits arising from any subleases of the Properties which are misapplied, or which have accrued but are not yet due and payable, at the time of any default hereunder and which are misapplied by Lessee when collected, and, in addition, with respect to any obligation to hold and apply insurance proceeds, proceeds of condemnation or other monies hereunder, any such monies received by it to the extent not so applied; (ii) no other assets of Lessee shall be affected by or subject to being applied to the satisfaction of any liability which Lessee may have to Authority or to another person by reason of this Lease; and (iii) any judgment, order, decree or other award in favor of Authority shall be collectible only out of, or enforceable in accordance with, the terms of this Lease by termination or other extinguishment of Lessee's interest in the Properties. As a condition to protection under the provisions of this Section 25.6, Lessee covenants not to collect more than one (1) month's rent in advance, exclusive of reasonable security deposits, under the terms of any subleases of the Properties that Lessee may enter into.

Notwithstanding the foregoing, it is expressly understood and agreed that the aforesaid limitation on liability shall in no way restrict or abridge Lessee's continued personal liability for:

- (1) fraud or willful or grossly negligent misrepresentation made by Lessee in connection with this Lease;
- (2) misapplication of (i) proceeds of insurance and condemnation or (ii) rentals received by Lessee under subleases subsequent to the date Authority is entitled to re-enter the Properties by reason of Lessee's default pursuant to the terms hereof and applicable law;
- (3) the retention by Lessee of all advance rentals and security deposits of sublessees not refunded to or forfeited by such sublessees;
- (4) the indemnification undertakings of Lessee under Section 16; and
- (5) Material waste by Lessee with respect to the Properties.

25.7 Events of Default by Authority. If the Authority shall fail to perform any covenant or condition of the Agreement and/or this Lease, and any such failure shall not be cured within thirty (30) days following the service on Authority of a written notice from Lessee specifying the failure complained of, or if it is not practicable to cure or remedy such failure within such thirty (30) day period, within such longer period as shall be reasonable under the circumstances, the such event shall constitute an event of default under this Lease.

25.8 Remedies of Lessee. In the event of any such default as described in Section 25.6, Authority may, at its option:

(1) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by Lessee in enforcing this provision) as an operating expense for the current year;

(2) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by Lessee in enforcing this provision) from the proceeds of any insurance; or in the event that Authority has obtained a faithful performance bond indemnifying Lessee, Lessee may call upon the bonding agent to correct said default or to pay the costs of such correction performed by or at the direction of Lessee;

(3) Exercise its right to maintain any and all actions at law or suits in equity compel Authority to correct or cause to be corrected said default;

(4) Maintain and operate the Properties, without terminating this Lease;

(5) With respect to a monetary default or material non-monetary default, terminate this Lease by written notice to Authority of its intention to do so.

SECTION 26. MISCELLANEOUS.

26.1 Governing Law. The laws of the State of California shall govern the interpretation and enforcement of this Lease.

26.2 Legal Actions. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted in the Superior Court of San Bernardino County, State of California, in any other appropriate court in that County, or in the Federal District Court in the Central District of California.

26.3 Acceptance of Service of Process. In the event that any legal action is commenced by Lessee against Authority, service of process on Authority shall be made by personal service upon the Chairman or Executive Director of Authority, or in such other manner as may be provided by law.

In the event that any legal action is commenced by Authority against Lessee, service of process on Lessee shall be made by personal service upon any officer of Lessee or in such other manner as may be provided by law, whether made within or without the State of California.

26.4 Attorneys' Fees And Court Costs. In the event that either Authority or Lessee shall bring or commence an action to enforce the terms and conditions of this Lease or to obtain damages against the other party arising from any default under or violation of this Lease, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

26.5 Inspection of Books And Records. Authority has the right (at Lessee's office, upon not less than forty-eight (48) hours' notice, and during normal business hours) to inspect the books and records of Lessee pertaining to the Property as pertinent to the purposes of this Lease. Lessee also has the right (at Authority's office, upon not less than forty-eight (48) hours' notice, and at all reasonable

times) to inspect the books and records of Authority pertaining to the Property as pertinent to the purposes of this Lease.

26.6 Interest. Any amount due Authority that is not paid when due shall bear interest from the date such amount becomes due until it is paid. Interest shall be at a rate equal to the lesser of the discount rate established by the San Francisco office of the Federal Reserve Bank, plus two percent (2%), on the first day of the month such amount becomes due, and the maximum rate permitted by applicable law.

26.7 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, upon personal delivery or five (5) days after deposit within California in the United States mail, certified or registered mail, return receipt requested, postage prepaid and addressed as follows:

Authority: Montclair Housing Authority
5111 Benito Street
Montclair, California 91763
Attention: Executive Director

Lessee: Montclair Housing Corporation
5111 Benito Street
Montclair, California 91763
Attention: Executive Director

or to such other address as either party shall later designate for such purposes by written notice to the other party.

26.8 Time is of the Essence. Time is of the essence in the performance of the terms and conditions of this Lease.

26.9 Non-Merger of Fee And Leasehold Estates. If both Authority's and Lessee's estates in the Properties or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except at the express election of Authority and Lessee's Mortgagee. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work as a merger and shall, at the option of Authority, terminate all or any existing sublease or subtenancies or may, at the option of Authority, operate as an assignment to Authority of any or all such existing subleases or subtenancies.

26.10 Holding Over. The occupancy of the Properties after the expiration of the Term of this Lease shall be construed to be a tenancy from month to month, and all other terms and conditions of this Lease shall continue in full force and effect.

26.11 Conflict of Interest. No member, official or employee of Authority shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to the Lease which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

Lessee warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

26.12 Non-Liability of Authority Officials And Employees. No member, official or employee of Authority shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by Authority or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

26.13 Relationship. The relationship between the parties hereto shall at all times be deemed to be that of landlord and tenant. The parties do not intend nor shall this Lease be deemed to create a partnership or joint venture.

26.14 Transactions with Affiliates. Lessee shall have the right to enter into transactions with subsidiaries, affiliates and other related entities for the purpose of leasing space, providing cleaning, maintenance and repair services, insurance policies and other purposes related to the use and development of the Properties, provided that all such costs, charges and rents are competitive with the costs, charges, rent and other sums which would be paid by or to, as the case may be, an unrelated third party.

26.15 Waivers And Amendments. All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of Authority or Lessee.

The waiver by Authority of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Authority shall not be deemed to be a waiver of any preceding breach of Lessee of any term, covenant or condition of this Lease, regardless of Authority's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of Authority to require or exact full and complete compliance with any of the covenants or conditions of this Lease shall not be construed as in any manner changing the terms hereof and shall not prevent Authority from enforcing any provision hereof. All amendments hereto must be in writing and signed by the appropriate authorities of Authority and Lessee. The Lessee's Mortgagee permitted by this Lease shall not be bound by any waiver or amendment to this Lease without Lessee's Mortgagee giving its prior written consent.

26.16 Non-Merger With Agreement. None of the terms, covenants or conditions agreed upon in writing in the Agreement and other instruments between the parties to this Lease with respect to obligations to be performed, kept or observed by Lessee or Authority in respect to the Properties or any part thereof, shall be deemed to be merged with this Lease.

26.17 Duplicate Originals. This Lease is executed in three (3) duplicate originals, each of which is deemed to be an original.

26.18 Severability. If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

26.19 Terminology. All personal pronouns used in this Lease, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the

plural, and vice versa. Titles of sections are for convenience only, and neither limit nor amplify the provisions of the Lease itself. Except for terms expressly defined in this Lease, all terms shall have the same meaning as set forth in the Agreement.

26.20 Binding Effect. This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

26.21 Estoppel Certificate. Each of the parties shall at any time and from time to time upon not less than twenty (20) days' prior notice by the other, execute, acknowledge and deliver to such other party a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there shall have been modifications that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid, and stating whether or not to the best knowledge of the signer of such certificate such other party is in default in performing or observing any provision of this Lease, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other party may reasonably request, it being intended that any such statement delivered by Lessee may be relied upon by Authority or any successor in interest to Authority or any prospective mortgagee or encumbrancer thereof, and it being further intended that any such statement delivered by Authority may be relied upon by any prospective assignee of Lessee's interest in this Lease or any prospective mortgagee or encumbrancer thereof. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge.

26.22 Force Majeure. The time within which Authority or Lessee is obligated herein to perform any obligation hereunder, other than an obligation that may be performed by the payment of money, shall be extended and the performance excused when the delay is caused by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot, insurrection or other cause beyond the control of the applicable party.

26.23 Quiet Enjoyment. Landlord does hereby covenant, promise and agree to and with Tenant that Tenant, for so long as it is not in default hereof, shall and may at all times peaceable and quietly have, hold, use, occupy and possess the Properties throughout the Term.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their lawfully authorized officers.

AUTHORITY:

MONTCLAIR HOUSING AUTHORITY, a public body corporate and politic

By: _____
Its: _____

LESSEE:

MONTCLAIR HOUSING CORPORATION, a California nonprofit public benefit corporation

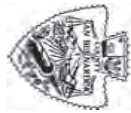
By: _____
Its: _____

EXHIBIT A TO ATTACHMENT NO. 2

PROPERTY MAP

[To Be Attached]

THIS MAP IS FOR THE PURPOSE
OF AD VALOREM TAXATION ONLY.



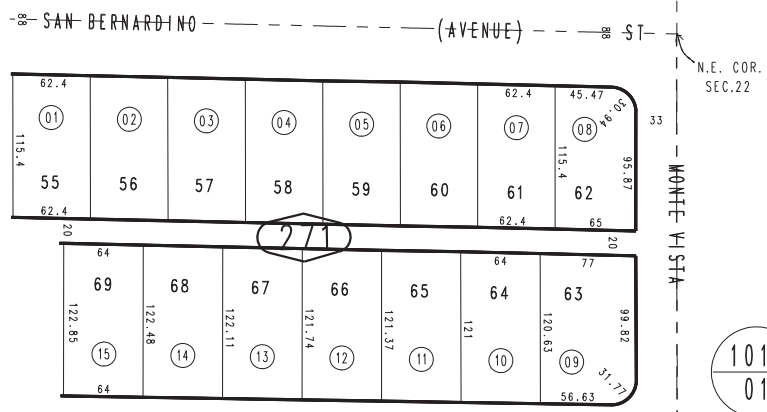
Ptn. Tract No. 5156, M.B. 68/82-86

City of Montclair
Tax Rate Area
11008
1009 - 27

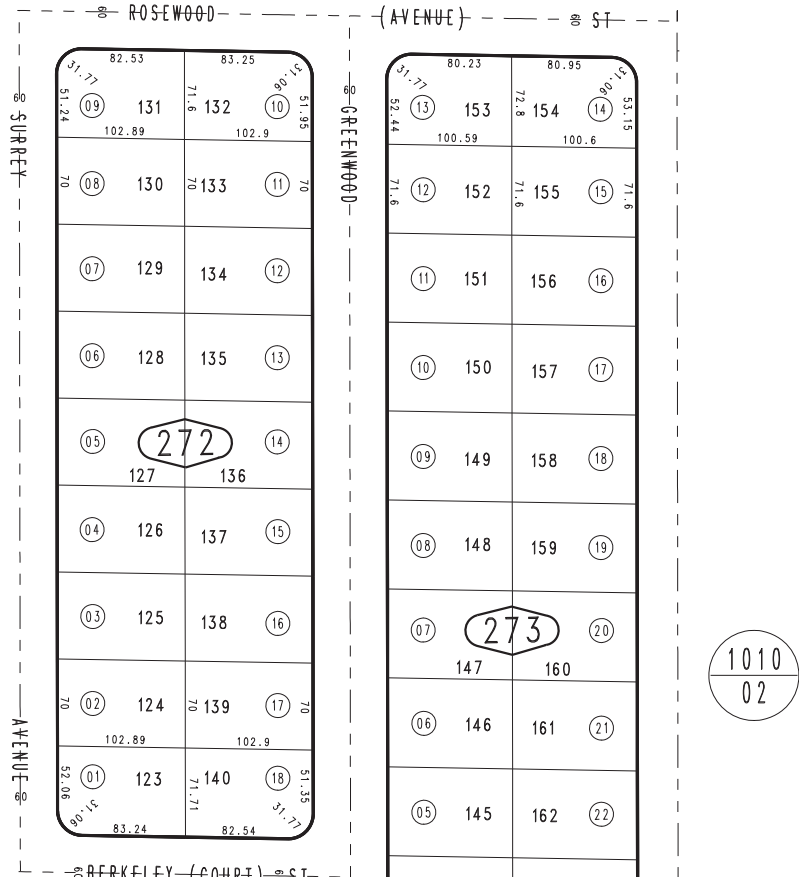
APNS:
1009-273-19-0000
Tract 5156 Lot 159

1009-273-25-0000
Tract 5156 Lot 165

(15)

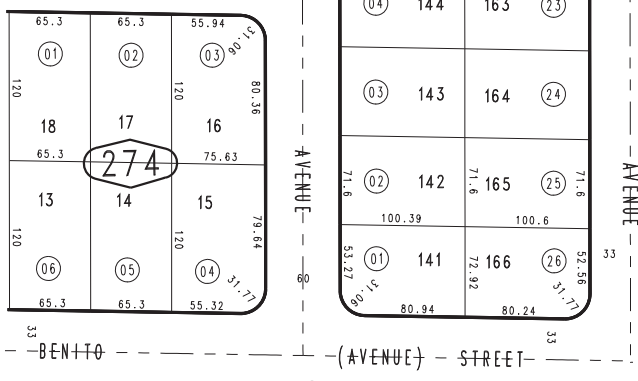


1010
01

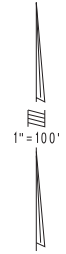


1010
02

(26)



(28)



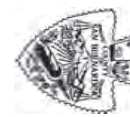
February 2004

Ptn. N.E.1/4, Sec.22
T.1S.,R.8W.

Assessor's Map
Book 1009 Page 27
San Bernardino County

REVISED

THIS MAP IS FOR THE PURPOSE
OF AD VALOREM TAXATION ONLY.

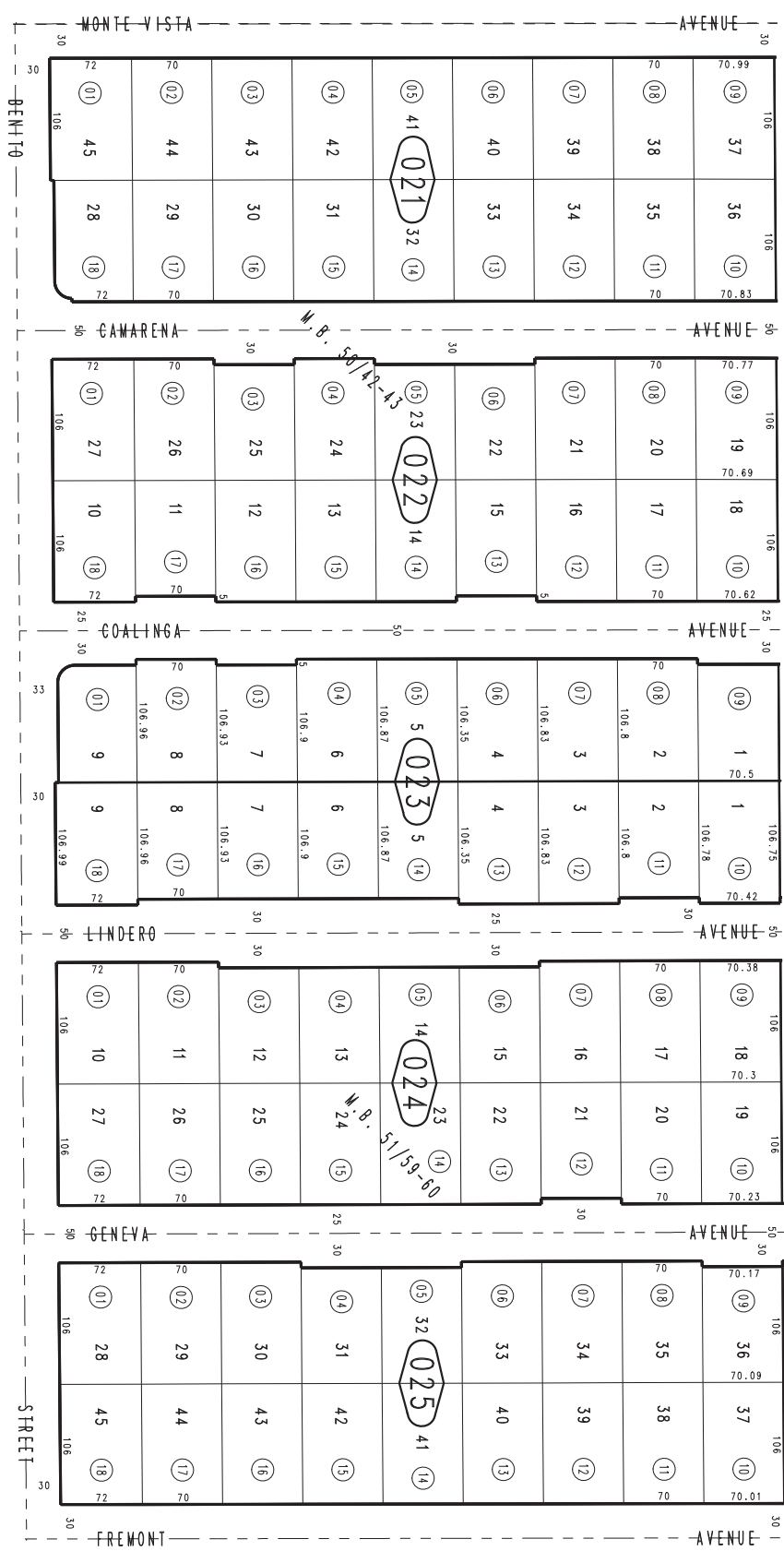


Tract No. 3932, M.B. 50/42-43
Tract No. 3862, M.B. 51/59-60

City of Montclair 1010 - 02
Tax Rate Area 11008

APN:
1010-021-03-0000
Tract 3932 Lot 43

1009
27



October 2004

Ptn. N.W.1/4, Sec.23
T.1S.,R.8W.

Assessor's Map
Book 1010 Page 02
San Bernardino County

EXHIBIT B TO ATTACHMENT NO. 2

LEGAL DESCRIPTION

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APNS:

1009-273-19-0000
Tract 5156 Lot 159

1010-021-03-0000
Tract 3932 Lot 43

1009-273-25-0000
Tract 5156 Lot 165

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
 COUNTY OF _____)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

 Title(s)

 Title Or Type Of Document

- Partner(s) Limited General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

 Number Of Pages

Signer is representing:
 Name Of Person(s) Or Entity(ies)

 Date Of Documents

 Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
 COUNTY OF _____)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

 Title(s)

 Title Or Type Of Document

- Partner(s) Limited General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

 Number Of Pages

Signer is representing:
 Name Of Person(s) Or Entity(ies)

 Date Of Documents

 Signer(s) Other Than Named Above

ATTACHMENT NO. 3

CITY DEED

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Montclair Housing Authority
5111 Benito Street
Montclair, California 91763
Attn: Executive Director

APN: _____

[Space above for recorder.]

Exempt from recording fee and documentary transfer tax pursuant to Government Code Section 27383 and Revenue and Taxation Code Section 11928.

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF MONTCLAIR, a municipal corporation (“Grantor”), hereby grants to the MONTCLAIR HOUSING AUTHORITY, a public body, corporate and politic, that certain real properties located in the County of San Bernardino, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

CITY OF MONTCLAIR,
a municipal corporation

By: _____
City Manager

EXHIBIT A TO ATTACHMENT NO. 3

LEGAL DESCRIPTION

The land referred to herein below is situated in the City of Montclair, County of San Bernardino, State of California and is described as follows:

APNS:

1009-273-19-0000
Tract 5156 Lot 159

1010-021-03-0000
Tract 3932 Lot 43

1009-273-25-0000
Tract 5156 Lot 165

CERTIFICATE OF ACCEPTANCE

This is to certify that the fee interest in real property conveyed under the foregoing Grant Deed by the City of Montclair, a municipal corporation, as to the following properties:

Real property in the City of Montclair, County of San Bernardino, State of California, described as follows:

APNS:

1009-273-19-0000
Tract 5156 Lot 159

1010-021-03-0000
Tract 3932 Lot 43

1009-273-25-0000
Tract 5156 Lot 165

is hereby accepted by the Executive Director of the Montclair Housing Authority (“Authority” and “Grantee”) on behalf of the governing board of the Authority pursuant to authority conferred by action of the governing board of the Authority on _____, _____, and the Grantee consents to recordation thereof by its duly authorized officer.

MONTCLAIR HOUSING AUTHORITY,
a public body, corporate and politic

By: _____
Executive Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
 COUNTY OF _____)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

 Title(s)

 Title Or Type Of Document

- Partner(s) Limited General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

 Number Of Pages

Signer is representing:
 Name Of Person(s) Or Entity(ies)

 Date Of Documents

 Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
 COUNTY OF _____)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

 Title(s)

 Title Or Type Of Document

- Partner(s) Limited General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

 Number Of Pages

Signer is representing:
 Name Of Person(s) Or Entity(ies)

 Date Of Documents

 Signer(s) Other Than Named Above

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
APRIL 3, 2023, AT 8:35 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Johnson called the meeting to order at 8:35 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Johnson, Council Member Ruh, City Manager Starr, and Assistant City Manager/Director of Human Services Richter

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of March 20, 2023.

Moved by Council Member Ruh, seconded by Mayor Pro Tem Johnson, and carried unanimously to approve the minutes of the Personnel Committee meeting on March 20, 2023.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION


At 8:36 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 8:55 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Johnson stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 8:55 p.m., Mayor Pro Tem Johnson adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager

MINUTES OF THE ADJOURNED MEETING OF THE MONTCLAIR
CITY COUNCIL HELD ON MONDAY, APRIL 3, 2023, AT 5:45 P.M.
IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor Dutrey called the meeting to order at 5:45 p.m.

II. ROLL CALL

Present: Mayor Dutrey; Mayor Pro Tem Johnson; Council Members Ruh,
Lopez and Martinez

City Manager Starr; Assistant City Manager/Director of Human
Services Richter; Director of Finance Kulbeck; Executive Director
of Public Safety/Police Chief Avels; Director of Public Works/City
Engineer Heredia; City Clerk/Human Resources Manager Myrick

III. COUNCIL WORKSHOP

A. Parks and Recreation Master Plan Update by KTUA

Jacob Leon of KTUA, presented an update on the development of a
Parks and Recreation Master Plan. He explained the processes that
KTUA used to seek input from residents regarding desired
amenities and changes for parks in the community. This included
holding community workshops, participating in public events, and
inviting residents to participate in a poll.

Mayor Dutrey asked if this plan includes upgrading baseball fields
at Saratoga Park.

City Manager Starr stated the Parks and Recreation Master Plan is a
general analysis of current and future needs for park development,
and specific park recommendations will come later.

Mayor Dutrey expressed his disappointment that the plan did not
specifically address anticipated improvements to Saratoga Park.

Council Member Ruh proposed expanding the use of shared spaces
in order to increase aggregate park space, such as using space at
schools, private communities, and organizations. He also spoke in
favor of updating existing parks as opposed to developing new parks.

Council Member Lopez mentioned that adding an amphitheater and
designated soccer fields would be beneficial for residents. He
further stated his concern about an increase in crime in parks.

Mayor Pro Tem Johnson advised residents whose homes abut the
San Antonio Channel have reported increased burglaries and would
prefer the City not provide amenities such as exercise stations near
residential homes to deter loitering.

Council Member Martinez thanked the community for their
engagement and stated adding and improving parks will give youth
positive outlets for recreation purposes. She further stated she does
not believe that crime will increase but perhaps will decrease.

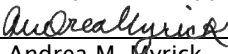
IV. PUBLIC COMMENT

- Annette Brunske suggested the plan should be to focus on improving
parks that currently exist in the City. She stated she would like a walking
path around MacArthur Park.

V. ADJOURNMENT

At 6:42 p.m., the City Council was adjourned.

Submitted for City Council approval,



Andrea M. Myrick
City Clerk

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, MARCH 20, 2023, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor/Chair Dutrey called the meeting to order at 7:00 p.m.

II. INVOCATION

Pastor Donald Rucker, Christian Development Center, gave the invocation.

III. PLEDGE OF ALLEGIANCE

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

IV. ROLL CALL

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

City Manager/Executive Director Starr; Assistant City Manager/Director of Human Services Richter; Director of Finance Kulbeck; Executive Director of Public Safety/Police Chief Avels; Director of Public Works/City Engineer Heredia; City Attorney Robbins; City Clerk/Human Services Manager Myrick

V. PRESENTATIONS

A. **Community Activities Commission Presentation of 2023 Volunteer Recognition Awards**

Commissioner Ferraro recognized the following volunteers for their volunteerism with the City:

- **Morgan Rucker** for helping those in need.
- **Mitchell Tran** for commitment to Montclair youth programs.
- **Cherul Sackett** for commitment to Foothill Family Shelter.
- **Irma Sanchez** for commitment to Montclair Chamber of Commerce.
- **Mariza Hernandez** for commitment to Montclair Little League.
- **Ester Vargas Pipersky** for commitment to Meals on Wheels Program.
- **Sharon Johnson** for commitment to Montclair Senior Nutrition Program.
- **Tom Padilla** for commitment to serving senior citizens of Montclair.
- **Judith Gomez** for commitment to Vernon Middle School.
- **Sue Yoakum** for dedication to Women's Club of Montclair.

All volunteers were presented with plaques from the City and Certificates of Recognition from the offices of **San Bernardino County Fourth District Supervisor Curt Hagman, California Assembly Member Freddie Rodriguez, California Senator Susan Rubio, and U.S. Representative Norma Torres.**

B. **Proclamation Declaring April 2023 as "Child Abuse Prevention Month" in the City of Montclair**

Mayor Dutrey presented a proclamation declaring April 2023 as *Child Abuse Prevention Month* to **Wendy Alvarez**, Interim Network Officer, **Children's Network of San Bernardino County.**

C. **Proclamation Declaring April 2023 as "DMV/Donate Life California Month" in the City of Montclair**

Maribel Galvan accepted a proclamation from Mayor Dutrey declaring April as *DMV/Donate Life California Month.*

D. Proclamation Declaring April 22, 2023 as “Arbor Day” in the City of Montclair

Public Works Director Monica Heredia was presented a proclamation from Mayor Dutrey declaring April 22nd as *Arbor Day*. She stated that on this day the City would be holding tree-planting events at both Sunset and MacArthur Parks.

E. Proclamation Declaring April 29, 2023 as “World Wish Day” in the City of Montclair

Ronnie Medrano, Volunteer Services Coordinator for **Make-a-Wish OC and IE**, accepted the *World Wish Day* proclamation presented by Mayor Dutrey.

VI. PUBLIC COMMENT

- **Carolyn Raft, West Valley Mosquito and Vector Control District Board Secretary and Representative for Montclair**, gave an update on what the agency is doing to eradicate mosquitoes in the area, including being the first district in California to release sterile males to lower the population of mosquitoes. She also stated the new director has been able to bring in the City of Upland, which has helped to increase revenues.
- **Jordi Ubaldo, Event Coordinator, Montclair Chamber of Commerce**, announced that the Chamber will be hosting a Networking Breakfast on April 13, 2023, at 8:30 a.m. at the Montclair Police Department.

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

ACTION - Consent Calendar	
ACTING:	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
MOTION:	Approve the Consent Calendar as presented.
MADE BY: SECOND BY:	Council Member/Director Lopez Mayor Pro Tem/Vice Chair Johnson
AYES: NOES: ABSTAIN: ABSENT:	Martinez, Ruh, Johnson, Dutrey, Lopez None None None
RESULT:	Motion carried 5-0.

A. Approval of Minutes

1. Regular Joint Meeting — March 20, 2023

ACTION - Consent Calendar - Item A-1	
ACTING:	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

B. Administrative Reports

1. Consider Approval of City Warrant Register and Payroll Documentation

ACTION - Consent Calendar - Item B-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

2. Consider Authorizing the Destruction of Certain Obsolete Public Records Pursuant to the City of Montclair Records Retention Schedule

ACTION - Consent Calendar - Item B-2	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

3. Consider Authorizing the Establishment of an Executive Director of Engineering and Major Projects Manager Classification in the Public Works Department

Consider Authorizing a \$50,000 Allocation from the Unanticipated Personnel Adjustments Special Purpose Reserve Fund to Provide for Wages and Benefits for the Candidate Appointed to the Executive Director of Engineering and Major Projects Manager Position for the Balance of Fiscal Year 2022-23

ACTION - Consent Calendar - Item B-3	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

C. Agreements

1. Consider Award of Contract to Superior Pavement Markings in the Amount of \$460,900 for the Flashing Stop Sign Replacement Program

Consider Approval of Agreement No. 23-17 with Superior Pavement Markings for the Flashing Stop Sign Replacement Program, Subject to Any Revisions Deemed Necessary by the City Attorney

Consider Authorizing the Purchase of 40 Additional Flashing Stop Signs in the Amount of \$64,256.60

Consider Authorizing a \$23,045 Construction Contingency for the Project

Council Member Lopez received clarification regarding the number of intersections that would receive flashing stop signs.

ACTION - Consent Calendar - Item C-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

2. Consider Approval of Agreement No. 23-30 with LD King, Inc. for Engineering Design Services for Street, Sewer, and Storm Drain Improvements for the Arrow Highway Improvement Project, Subject to Any Revisions Deemed Necessary by the City Attorney

Consider Approval of Agreement No. 23-21 with AGA Engineers, Inc. for Engineering Traffic Signal Upgrades at Four Intersections in Support of the Arrow Highway Improvement Project, Subject to Any Revisions Deemed Necessary by the City Attorney

Consider Authorizing a \$79,470 Engineering Design Services Contingency for Agreement Nos. 23-21 and 23-30

Consider Authorizing a \$296,000 Appropriation from the Redevelopment Project Area No. III Tax Allocation Bond Fund and a \$14,000 Appropriation from the Sewer Fund for Costs Related to Agreement Nos. 23-21 and 23-30

ACTION - Consent Calendar - Item C-2	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

D. Resolutions

- 1. Consider Adoption of Resolution No. 23-3401 Rescinding and Replacing Resolution No. 17-3145 Designating Restricted Parking on Public Streets and Alleys to Include Restricted Parking on the South Side of Orchard Street Fronting Sunset Park**

Mayor Pro Tem Johnson received clarification that the new parking restriction would not allow for residential permit parking.

ACTION - Consent Calendar - Item D-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

- 2. Consider Adoption of Resolution No. 23-3402 Approving the Tree City USA Application for 2023 and Authorizing the Director of Public Works to Sign the Application**

ACTION - Consent Calendar - Item D-2	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

IX. PULLED CONSENT CALENDAR ITEMS — None

X. COUNCIL WORKSHOP

- A. Proposed Ordinance Regulating the Parking of Oversized and Recreational Vehicles on Public Streets**

The City Council continued this presentation to an adjourned meeting to be held on Monday, May 1, 2023, at 5:45p.m. in the City Council Chambers.

XI. COMMUNICATIONS

- A. Department Reports**

- 1. Human Services Department — Upcoming Events & Programs**

Assistant City Manager/Director of Human Services Richter provided information on upcoming programs and events including the Summer Day Camp that will be held at the Youth Center, with pre-registration starting on May 1st. She gave a reminder that the Easter Eggstravaganza that will be on April 8th at Alma Hofman Park and the Montclair Community Center,

and also announced the Youth Center will be opening April 17th, and is free to all youth grades 7-12 who live in Montclair or attend a Montclair school during the 2022-23 school year.

B. City Attorney

City Attorney Robbins pulled from the agenda the following item and stated the City Council is no longer requested to hold a closed session:

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

Gavilanes v. City of Montclair

C. City Manager/Executive Director — None

D. Mayor/Chair

1. Notice – Cancellation of April 17, 2023 Regular Joint Meeting

Mayor/Chair Dutrey announced the April 17, 2023 regular joint meeting is cancelled due to the anticipated lack of a quorum.

2. Mayor Dutrey recognized the following that will occur in the Month of April: Passover, Administrative Professionals Day, Easter/Good Friday, Arab American Heritage Month and Cancer Control Month. He also commented on the success of **Golden Girls Softball League's** opening day event.

E. Council Members/Directors

1. Council Member/Director Ruh attended opening day of the **Golden Girls Softball League** and commented on the great turnout. He also attended a recent **Metropolitan Transit Authority** meeting, which is making the Gold Line its number one priority. He mentioned his friend who is a teacher gave a generous gift of books to the Montclair After-School Program. He further recognized Community Activities Commissioner Diane Wells for being named Montclair's Woman of the Year for **California's 22nd Senate District** by **Senator Rubio** and acknowledged all volunteers for their contributions to the City.

2. Council Member/Director Lopez congratulated **Carolyn Raft** for serving ten years on the **West Valley Mosquito and Vector Control District** Board. He announced that **Tokyo Kitchen**, would be offering 20 percent off in celebration of their one-year reopening anniversary. He further encouraged residents to watch their driving speed after a horrific 5-car accident occurred in the City over the weekend.

3. Mayor Pro Tem/Vice Chair Johnson stated she attended the **Golden Girls Softball League** opening day and was proud to wear a T-shirt from the 1999 All-Stars Team. She commended Economic Development and Housing staff for providing a tour of low-income multifamily properties within the City and the services and resources they provide for residents. She noted **Monte Vista Water District** held a successful water wise event and she appreciated City Staff for providing fun resources for young attendees.

F. Committee Meeting Minutes

The following committee minutes were received and filed for informational purposes:

1. Public Works Committee Meeting – October 20, 2022
2. Public Works Committee Meeting – November 17, 2022
3. Public Works Committee Meeting – February 16, 2023

4. Personnel Committee – March 20, 2023

XII. CLOSED SESSION — None

XIII. CLOSED SESSION ANNOUNCEMENTS — None

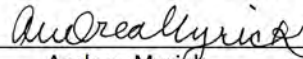
XIV. ADJOURNMENT

At 8:26 p.m., the Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board were adjourned.

At 8:26 p.m., the City Council was adjourned to Monday, May 1, 2023 at 5:45 p.m. in the City Council Chambers for a workshop on the proposed Ordinance regulating the parking of oversized and recreational vehicles on public streets.

The meeting was adjourned in memory of **Mary Teresa Bianco-Dufour** whose son **Gary Dufour** started his career in the Montclair Police Department.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/ Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



Andrea Myriek,
City Clerk

CITY OF MONTCLAIR

TREASURER'S REPORT

FOR THE MONTH ENDING

MARCH 31, 2023

TABLE OF CONTENTS

SCHEDULE 1

STATEMENTS OF COMPLIANCE WITH INVESTMENT POLICY AND INVESTMENT STRATEGY FOR MARCH 31, 2023

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**

MARCH 31, 2023

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 \$ 33,170,030

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 MARCH 31, 2023

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance
General Fund	\$ 5,821,926.42	\$ 3,301,254.00	\$ 3,185,534.28	\$ 6,686.65	\$ 5,944,332.79 (1)
Gas Tax Fund	(17,835.76)	74,398.10	138,551.70	-	(81,989.36) (2)
Road Maintenance - Section 2032	1,706,348.51	124,913.82	-	-	1,831,262.33
Measure I Fund	5,321,255.89	76,919.36	-	-	5,398,175.25
Traffic Safety	63,270.00	14,066.07	-	-	77,336.07
Disability Access Fund - Bus. License	50,385.30	904.00	-	-	51,289.30
Park Maintenance	24,611.15	-	3,803.12	-	20,808.03
Park Development	1,155,507.06	700.00	-	-	1,156,207.06
CDBG	(664,662.97)	546,354.69	64,736.15	-	(183,044.43) (2)
SB2 Planning Grant	(58,642.50)	-	-	-	(58,642.50) (2)
Air Quality Improvement Trust	105,629.94	11,712.68	-	-	117,342.62
Senior Nutrition Program	(55,314.76)	11,557.91	19,790.50	-	(63,547.35) (2)
American Rescue Plan	113,953.63	-	-	-	113,953.63
Forfeiture Fund - State	88,596.62	-	566.67	-	88,029.95
Proposition 30/SB 109	326,173.47	60,421.00	26,476.29	-	360,118.18
SB 509 Public Safety	514,187.58	84,104.33	21,599.60	-	576,692.31
Forfeiture Fund-Federal/DOJ	0.73	0.20	-	-	0.93
Asset Seizure Fund	35,448.75	-	-	-	35,448.75
Section 11489 Subfund	126,897.52	-	-	-	126,897.52
Fed Asset Forfeiture-Treasury	529,966.05	-	199,972.00	-	329,994.05
School District Grant Fund	18.67	-	-	-	18.67
State Supplemental Law Enforce	2,342.86	10.86	-	-	2,353.72
Local Law Enforcement Block Gr	124,098.51	6,123.00	-	-	130,221.51
PC 1202.5 Crime Prevention	174,976.00	-	-	-	174,976.00
Recycling Grant Fund	2,384.43	20,000.00	2,800.00	-	19,584.43
Statewide Park Dev Grant	(109,186.50)	50,210.25	-	-	(58,976.25) (2)
Homeless Housing Assist Preven	(501,799.02)	159,368.19	227,900.46	-	(570,331.29) (2)
LEAP Grant	1,290.78	-	-	-	1,290.78
After School Program Fund	513,164.36	-	419.00	-	512,745.36
City of Hope	1,370.50	-	-	-	1,370.50 (2)
Safety Dept. Grants	2,886.87	-	-	-	2,886.87
OSMD Immunization Grant	28,994.24	-	2,354.70	-	26,639.54
Kaiser Permanente Grant	(7,017.03)	2,402.61	4,687.81	-	(9,302.23) (2)
Resource Center Grant - OMSD	14,823.19	-	-	-	14,823.19
Title IIIB Sr Support Services	70,528.20	14,105.64	1,995.55	-	84,633.84
Healthy Community Strategic Plan	4,230.12	1,973.47	-	-	6,203.59
ASES Supplemental Grant	3,801,102.89	6.56	1,448,314.44	-	2,352,795.01 (3)
E.M.S. - Paramedic Fund	500.00	-	-	-	500.00
Economic Development	2,638,309.49	641,999.45	802,706.95	-	2,477,601.99
City Contributions/Donations Fund	2,439,666.85	-	-	-	2,439,666.85
Sewer Operating Fund	177,677.73	25,173.27	4,445.30	-	198,405.70
Sewer Replacement Fund	108,400.18	1,413.14	899.88	-	108,913.44
CFD 2011-1 (Passes)	869,951.34	-	-	-	869,951.34
Inland Empire Utility Agency	1,282,118.12	149.00	-	-	1,282,267.12
Sewer Expansion Fee Fund	278,054.82	335.00	-	-	278,389.82
Developer Impact Fees - Local	216,595.38	-	-	-	216,595.38
Developer Impact Fees - Regional	262,502.41	-	-	-	262,502.41
Burrtec Pavement Impact Fees	383,396.52	-	-	-	383,396.52
PUC Reimbursement Fund-MVGS	109,457.75	665.64	-	-	110,123.39
Utility Underground In-Lieu	555,708.20	-	-	-	555,708.20
General Plan Update Fee	113,981.64	-	-	-	113,981.64
Housing Fund	(611,779.32)	59,938.26	-	-	(551,841.06) (4)
Public Education/Govt. PEG Fee Fund	(92,796.74)	0.01	-	-	(92,796.73)
Infrastructure Fund	4,853,146.40	-	-	-	4,853,146.40
COVID-19	8,006,107.60	-	17,175.63	-	7,988,931.97
Successor Agency Bonds-Taxable	(1,031,365.13)	-	823,989.25	-	(1,855,354.38)
Successor Agency Bonds-Tax Exempt	(326,779.82)	192,101.21	794,193.75	-	(928,872.36) (5)
2021 Lease Revenue Bond Proceeds	1,641,440.63	1.66	1,647,206.25	-	(5,763.96)
2021 Lease Revenue Bond Debt Svc	3,664,452.49	-	-	-	3,664,452.49
Pension Obligation Bond Debt Svc	0.96	-	-	-	0.96 (1)
Contingency Fund	19,577,048.42	-	17,678.99	(23,283.00)	19,536,066.83 (1)
Assigned General Fund Reserves	\$ 73,273,683.46	\$ 5,483,283.38	\$ 9,457,797.87	\$ (16,596.35)	\$ 69,282,572.62
TOTALS					

Negative Cash Notes follow this presentation.

Notes on Negative Cash Balances

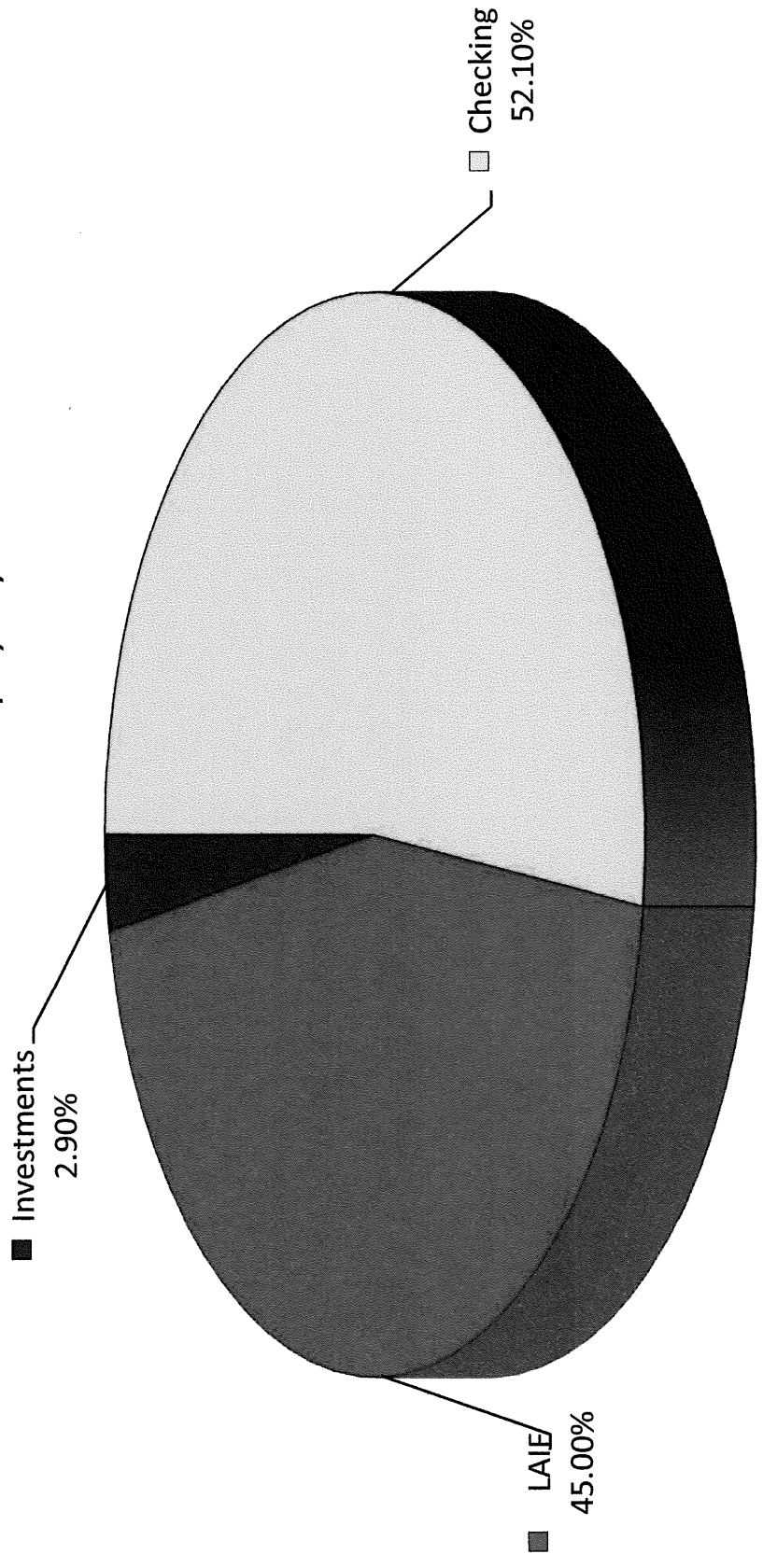
- (1) The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this negative, the City is not utilizing restricted resources.
- (2) These are reimbursable grant funds that utilize general pool monies initially to cover expenditures pending reimbursement from the granting agencies. Therefore, it is not uncommon for these to be negative until that reimbursement is received.
- (3) This fund has operational deficits annually. At the end of the fiscal year it is restored by a General Fund Transfer.
- (4) The Infrastructure Fund receives transfers from other funds to accomplish infrastructure projects. Those transfers are usually recorded when the projects nears completion or prior to mid-year budget preparation. Any negative in that fund will be eliminated at those times. Transfers from these funds (C.D.B.G., Gas Tax, Measure I, etc.) may go negative on cash pending collections of these revenues. In this way we can determine if obligations for projects are exceeding current resources.
- (5) This debt service operation utilizes transaction and use taxes which are part of the sales tax and Successor Agency property taxes. These have been sufficient in prior fiscal years to cover the necessary debt service; however, they are not completely received until fiscal year-end. Once debt service is covered the excess will be transferred to the General Fund.

**CITY OF MONTCLAIR
STATEMENT OF CASH AND INVESTMENT ACCOUNTS
AS OF MARCH 31, 2023**

	Par Value	Purchase Date	Maturity Date	Coupon Interest Rate	Current Market Value	Balance at Cost	Totals
CHECKING ACCOUNT							
Checking Account							\$ 36,110,073.46
Asset Seizure Account							\$ 2,469.58
CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES							
Local Agency Investment Fund (LAIF)				2.870%	30,570,348.13	31,170,029.58	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 32,570,348.13</u>		\$ 33,170,029.58
U.S. AGENCY SECURITIES							
							\$ -
TOTAL							<u>\$ 69,282,572.62</u>

Current market values obtained from US Bank.

CITY OF MONTCLAIR
CASH AND INVESTMENTS BY TYPE
March 31, 2023
Total Cash & Investments \$69,282,573



**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
TREASURER'S REPORT**

FOR THE MONTH ENDING

March 31, 2023

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH BY FUND
March 31, 2023**

COMBINED OPERATING FUND

Operating	<u>(2,891.04)</u>	\$ (2,891.04)
-----------	-------------------	---------------

LRPRP Fund

Operating	<u>0.00</u>	\$ 0.00
-----------	-------------	---------

RORF

	632,875.34	
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	\$ 632,875.34

TOTAL CASH **\$ 629,984.30**

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH
March 31, 2023**

Checking Account

US Bank

629,984.30

TOTAL CASH

629,984.30

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

March 31, 2023

City of Montclair
 Final Warrant Register
 Council Date 05/01/2023
 Regular Warrants
 Checking Account: Successor to the RDA

	Warrants	US Bank transfers	Area Totals
SRDA Combined Operating Fund	0.00	9,211.19	9,211.19
RORF (Redevelopment Obligation Retirement Funds)	0.00	2,579,009.50	2,579,009.50
	0.00	2,588,220.69	

March 2023 Total

2,588,220.69

Note: Reimburse City for 03/02 payrolls
 Reimburse City for 03/16 payrolls
 Reimburse City for 03/30 payrolls
 RORF-2019 Series A&B Bond Payment

Vice Chair Johnson

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 03/01/2023 To 03/31/2023

Printed on 04/10/2023 at 5:17 PM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
03/30/2023	\$2891.04	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 Reimb City for 03/30/23 Payroll
Initiate Date 03/30/2023
Initiate Time 08:03PM CDT
Initiated By JKULBECK
Completed Date 03/30/2023
Completed Time 08:03PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
03/15/2023	\$3458.81	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 Reimb City for 03/16/23 Payroll
Initiate Date 03/15/2023
Initiate Time 07:43PM CDT
Initiated By JKULBECK
Completed Date 03/15/2023
Completed Time 07:43PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
03/02/2023	\$2861.34	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 Reimb City for 03/02/23 Payroll
Initiate Date 03/02/2023
Initiate Time 10:03AM CDT
Initiated By JKULBECK
Completed Date 03/02/2023
Completed Time 10:03AM CDT

Total Number of Book Transfers: 3
Total Amount of Book Transfers: \$9,211.19

--- End of Report ---

Wire Transfer Daily Activity Summary

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 03/01/2023 To 03/30/2023

Printed on 04/10/2023 at 5:23 PM PDT

Debit Account Number: 153499275813

Total Transactions Listed: 2



Send Date	Amount	Control No	Repetitive ID	Type	Beneficiary Account Number/ Beneficiary Name	PAR No	Fed Ref/ SWIFT Ref	Status
03/13/2023	\$793,653.96	137355777	USBank SRDAB	FED	180121167365 U.S. Bank Trust N.A.	230313015773	.	Completed
03/13/2023	\$1,785,455.54	137355759	USBank SRDAA	FED	180121167365 U.S. Bank Trust N.A.	230313015644	.	Completed

**CITY OF MONTCLAIR
HOUSING CORPORATION
TREASURER'S REPORT
FOR THE MONTH ENDING**

March 31, 2023

TABLE OF CONTENTS

SCHEDULE 1 - STATEMENT OF CASH AND INVESTMENTS

CASH AND INVESTMENTS GRAPH

Schedule 1

**CITY OF MONTCLAIR
HOUSING CORPORATION
STATEMENT OF CASH AND INVESTMENTS
March 31, 2023**

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
Checking Account			
US Bank			246,871.62
Investments			
LAIF	2.87%	1,700,952.08	<u>1,733,208.37</u>
TOTAL CASH & INVESTMENTS			<u><u>1,980,079.99</u></u>

NOTE:

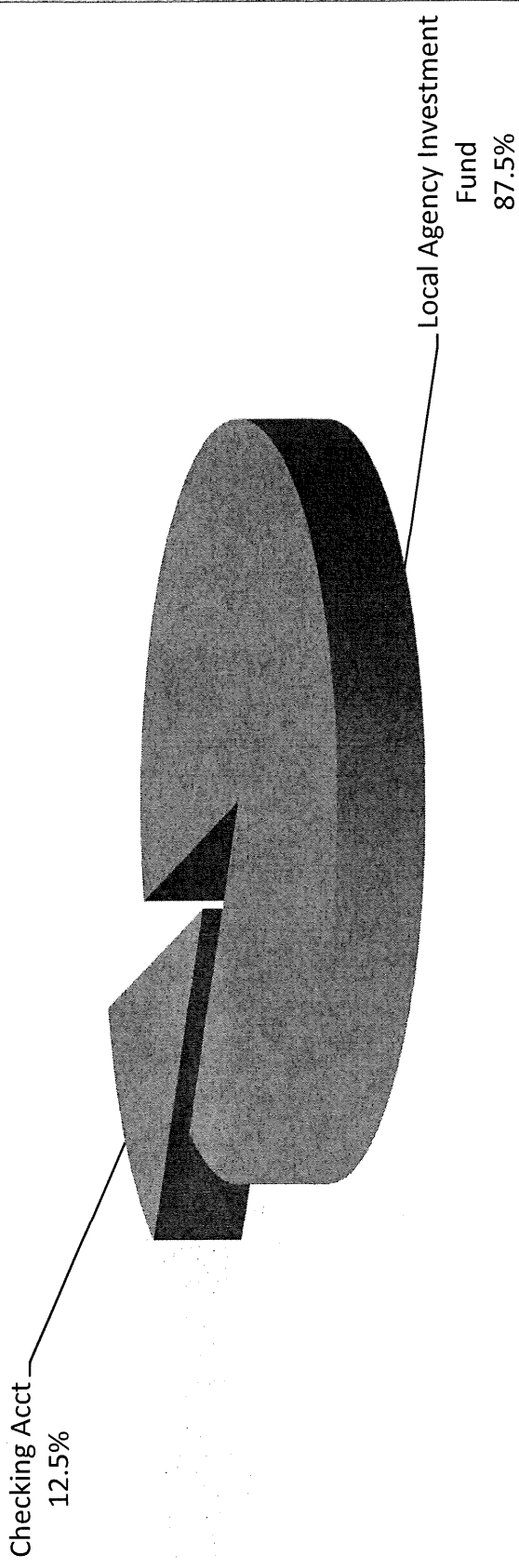
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

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
March 31, 2023**

Total Cash & Investments - \$1,980,080



**CITY OF MONTCLAIR
HOUSING CORPORATION
WARRANT REGISTER**

FOR THE MONTH ENDING

March 31, 2023

City of Montclair
Final Warrant Register
Council Date 05/01/2023
Regular Warrants
Checking Account: MHC

<u>Warrants</u>	<u>ACH Transfers</u>	<u>Voided Checks</u>	<u>US Bank transfers</u>	<u>Totals</u>
0.00	0.00	0.00	39,608.67	39,608.67

March 2023 Total

39,608.67

US Bank transfers:

Vice Chair Johnson

Accounts Payable

Checks by Date - Summary by Check Number

User: cramirez
Printed: 4/10/2023 5:26 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5444	Hugo001	Hugo Jaramillo	03/02/2023	10,550.00
5445	Land012	Landscape Maintenance Unlimited	03/02/2023	4,710.00
5446	mont002	City of Montclair	03/02/2023	11,079.84
5447	Perf003	Performance Construction & Remodeling I	03/02/2023	10,195.00
5448	Sout018	Southern California Edison Co	03/02/2023	14.18
5449	Mont002	City of Montclair	03/16/2023	2,063.40
5450	Mont074	Monte Vista Water District	03/16/2023	741.20
5451	Sout018	Southern California Edison Co	03/16/2023	255.05
Report Total (8 checks):				39,608.67

**CITY OF MONTCLAIR
HOUSING AUTHORITY
TREASURER'S REPORT**

FOR THE MONTH ENDING

March 31, 2023

Schedule 1

**CITY OF MONTCLAIR
HOUSING AUTHORITY
STATEMENT OF CASH
March 31, 2023**

	<u>Amount</u>
Checking Account	
US Bank	3,179,582.44
TOTAL CASH	\$ <u>3,179,582.44</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
March 31, 2023**

City of Montclair
Final Warrant Register
Council Date 05/01/2023
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
March 2023 Total			<u><u>0.00</u></u>

Vice Chair Johnson