



**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, July 17, 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

*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. Recognition of Outgoing Planning Commissioner Ginger Eaton
B. Community Activities Commission Presentation of 2023 Home Beautification Awards

VI. PUBLIC COMMENT

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

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

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

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

A. Approval of Minutes

1. Regular Joint Meeting — June 19, 2023 [CC/SA/MHC/MHA/MCF] 197

B. Administrative Reports

1. Consider Receiving and Filing of Treasurer’s Report [CC] 6
2. Consider Approval of Warrant Registers & Payroll Documentation [CC] 7
3. Consider Receiving and Filing of Treasurer’s Report [SA] 8
4. Consider Approval of Warrant Register [SA] 9
5. Consider Receiving and Filing of Treasurer’s Report [MHC] 10
6. Consider Approval of Warrant Register [MHC] 11
7. Consider Receiving and Filing of Treasurer’s Report [MHA] 12
8. Consider Approval of Warrant Register [MHA] 13

9. Consider Authorizing a \$151,164 Appropriation from California Department of Parks and Recreation Per Capita Grant Funds and a \$3,174,739 Appropriation from 2021 Lease Revenue Bond Funds for Costs Related to Construction of the Sunset Park Beautification Project [CC]
Consider Approving the Plans and Specifications and Authorizing Staff to Advertise for Bid Proposals for construction of the Sunset Park Beautification Project [CC] 14

10. Consider Authorizing the Use of 2018 and 2019 Justice Assistance Grant Funds Totaling \$29,884 Toward the Cost of Transitioning to a Records Management System Compliant with the National Incident-Based Reporting System [CC] 21

11. Consider Authorizing the Receipt of \$15,717 from the FY 2021 State Homeland Security Grant Program to Purchase Eleven AccuRad Personal Radiation Detectors [CC]
Consider Authorizing a \$15,717 Appropriation from the Public Safety Grant Capital Outlay Machinery and Tools Account to Purchase Eleven AccuRad Personal Radiation Detectors from Mirion Technologies [CC] 23

12. Consider Authorizing the Destruction of Certain Obsolete Public Records Pursuant to the City of Montclair Records Retention Schedule [CC] 28

C. Agreements

1. Consider Approval of Agreement No. 23–42 with Liebert Cassidy Whitmore for Participation in the East Inland Empire Employment Relations Consortium and Premium Liebert Library Subscription, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 31

2. Consider Approval of Agreement No. 23–43 with Civic Publications, Inc., for Public Education and Community Outreach Services, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 38

	<u>Page No.</u>
3. Consider Ratifying Agreement No. 23-44 with Colts Landscape, Inc. for Landscape Maintenance Services [CC] Consider Authority City Manager Edward C. Starr to Sign Said Agreement [CC]	42
4. Consider Awarding a Contract to Hyper Electric in the Amount of \$154,350 for the Electric Vehicle Charging Stations Project [CC] Consider Authorizing a \$15,500 Construction Contingency for the Project [CC] Consider Approval of Agreement No. 23-45 with Hyper Electric for Construction of the Project, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	57
5. Consider Approval of Agreement No. 23-46 with BFK Architecture + Planning for Engineering Design Services for the Montclair Branch Public Library Restrooms, Courtyard, and Fire Stations Remodel Project, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] Consider Authorizing a \$185,000 Appropriation from 2021 Lease Revenue Bond Proceeds for Costs Related to Agreement No. 23-46 [CC] Consider Authorizing a \$16,760 Design Services Contingency for the Project [CC]	66
6. Consider Approval of Agreement No. 23-47 With Nutrition Ink to Provide Nutrition Education Services for the City's Senior Citizen Nutrition Program, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	79
7. Consider Approval of Agreement No. 23-48 with Suzanne Yoakum to Provide Case Management Services for the Senior Center, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	86
8. Consider Approval of Agreement No. 23-49 with Misha L. Penn to Provide Grant Management and Fiscal Compliance Services for the Human Services Department, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	100
9. Consider Approval of Agreement No. 23-52 with ZPR's House of Car Wash for Car Wash Services for City Vehicles [CC]	114
10. Consider Approval of Agreement No. 23-53 with the Montclair Chamber of Commerce to Provide Services to Promote Local Economic Development, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]	118
11. Consider Approval of Agreement No. 23-55 with TOC Public Relations to Develop a Recruitment Website Exclusively for the Police Department, Including a Photo and Video Recruitment Package and a Social Media Ad Campaign for the Purpose of Attracting and Recruiting Police Officer Candidates, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] Consider Authorizing Acting Police Chief Jason Reed to Sign Said Agreement [CC] Consider Authorizing a \$40,000 Appropriation from the Federal Asset Forfeiture Fund for Costs Associated with Agreement No. 23-55 [CC]	124

A. Resolutions

1. Consider Adoption of Resolution No. 23-3409 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges [CC] 130

2. Consider Adoption of Resolution No. 23-3415 Approving Agreement No. 23-54, an Affordable Housing Agreement with the Montclair Housing Authority and the Montclair Housing Corporation; Authorizing the Transfer of 10053 Central Avenue, Montclair, to the Montclair Housing Authority for use as Affordable Housing; and Declaring Such Real Property to be Exempt Surplus Land [CC]

Consider Adoption of MHC Resolution No. 23-03 Approving Agreement No. 23-54, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Authority [MHC]

Consider Adoption of MHA Resolution No. 23-02 Approving Agreement No. 23-54, 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] 136

IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

A. Department Reports

1. Police Department — National Night Out

B. City Attorney

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

Agency: City of Montclair

Employee Management

*Associations: Montclair City Confidential Employees Association
Montclair General Employees Association
Montclair Fire Fighters Association
Montclair Police Officers Association*

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

Property: APN 1009-241-43-0-000

Negotiating Parties: City of Montclair, Chen Sandy Living Trust

City Negotiator: Edward C. Starr, City Manager

Under Negotiation: Recommendations Regarding Purchase Price

C. City Manager/Executive Director

D. Mayor/Chairperson

E. Council Members/Directors

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

1. Public Works Committee Meeting — May 18, 2023 [CC] 194

2. Personnel Committee Meeting — June 19, 2023 [CC] 196

- 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, August 7, 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, July 13, 2023.



CITY COUNCIL AGENDA REPORT

DATE: JULY 17, 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 June 30, 2023.

BACKGROUND: Included in the City Council's agenda packet is a copy of the Treasurer's Report for the period ending June 30, 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 June 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 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 July 3, 2023, and July 17, 2023; and the Payroll Documentation dated May 21, 2023, and June 4, 2023, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated July 3, 2023, totals \$1,490,394.85. The Warrant Register dated July 17, 2023, totals \$2,880,048.38.

The Payroll Documentation dated May 21, 2023 totals \$738,699.06 gross, with \$525,108.86 net being the total cash disbursement. The Payroll Documentation dated June 4, 2023 totals \$752,349.17 gross, with \$536,146.26 net being the total cash disbursement.

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



CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 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 June 30, 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 June 30, 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 June 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 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 June 30, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Successor to the Redevelopment Agency Warrant Register dated 06.01.23-06.30.23 in the amounts of \$19,636.55 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds, and finds it to be in order.

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

RECOMMENDATION: Vice Chair 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 June 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE: JULY 17, 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 June 30, 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 June 30, 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 June 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 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 June 30, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Warrant Register dated 06.01.23-06.30.23 in the amount of \$139,914.91 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 June 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE: JULY 17, 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 June 30, 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 June 30, 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 June 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 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 June 30, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Warrant Register dated 06.01.23-06.30.23 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 June 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE: JULY 17, 2023

FILE I.D.: GRT225/PRK650

SECTION: CONSENT - ADMIN. REPORTS

DEPT.: PUBLIC WORKS

ITEM NO.: 9

PREPARER: R. HOERNING

SUBJECT: CONSIDER AUTHORIZING A \$151,164 APPROPRIATION FROM CALIFORNIA DEPARTMENT OF PARKS AND RECREATION PER CAPITA GRANT FUNDS AND A \$3,174,739 APPROPRIATION FROM 2021 LEASE REVENUE BOND FUNDS FOR COSTS RELATED TO CONSTRUCTION OF THE SUNSET PARK BEAUTIFICATION PROJECT

CONSIDER APPROVING THE PLANS AND SPECIFICATIONS AND AUTHORIZING STAFF TO ADVERTISE FOR BID PROPOSALS FOR CONSTRUCTION OF THE SUNSET PARK BEAUTIFICATION PROJECT

REASON FOR CONSIDERATION: The City Council is requested to consider approval of non-budgeted appropriations and the plans and specifications for the Sunset Park Beautification Project, and to consider authorization for staff to advertise for bid proposals for construction of the Project.

BACKGROUND: The City obtained two separate grants associated with improvements to Sunset Park. On September 20, 2021, the City Council authorized staff to prepare an application for the California Department of Parks and Recreation, Per Capita Grant Program. Staff received notice that the application was successful and the City was awarded a total of \$201,552 for design and construction of the Sunset Park playground improvements. The project is identified by the California Department of Parks and Recreation as the Revitalization of Recreation Elements at Sunset Park.

On January 31, 2022, staff prepared and submitted an application for grant funding through the Clean California Local Grant (CCLG) Program, sponsored by the California Department of Transportation (Caltrans). On March 4, 2022, the City was notified of a grant award totaling \$4,174,097. The awarded funds are for the construction costs associated with the Sunset Park Beautification Project. The two Sunset Park improvement grants total \$4,375,649.

The Sunset Park Improvement Project will construct a bicycle trail, walking pathways, exercise stations, playground equipment, restrooms, shade structures, picnic tables, fencing, parking lot improvements, lighting, a new landscape irrigation system, and landscape improvements.

On June 6, 2022, the City Council approved Agreement No. 22-52 with LD King, Inc. to perform engineering design services to prepare the construction documents for the Sunset Park Beautification Project Improvements.

On May 15, 2023, the City Council approved the purchase of two prefabricated Exeloo Company self-cleaning restroom units for the Sunset Park Beautification Project. Fabrication and delivery of the restroom units are long-lead items.

The City is nearing completion of securing the United State Army Corp of Engineers (USACE) permit to construct and maintain the trail and park improvements within the USACE right-of-way. It is anticipated the permit will be issued shortly. All of the items have been provided and staff is waiting final permit signature from the USACE

Commander. This is a permit between the USACE and the City for construction, operations, and maintenance of the maintenance road/trail and recreation improvements. This permit does not affect the construction specifications.

FISCAL IMPACT: The estimated construction cost for Sunset Park improvements exceeds the awarded California Department of Parks and Recreation per Capita Grant Program (\$151,154 for playground equipment and support facilities) and Clean California Reimbursement Grant (\$4,174,097 Sunset Park Improvements). Funds to complete the improvements would be provided from the 2021 Lease Revenue Bond funds.

RECOMMENDATION: Staff recommends that the City Council take the following actions in relation to the Sunset Park Improvement Project:

1. Authorize a \$151,164 appropriation from California Department of Parks and Recreation Per Capita grant funds and a \$3,174,739 appropriation from 2021 Lease Revenue Bond funds for costs related to construction of Project; and
2. Approve the plans and specifications and authorize staff to advertise for bid proposals for construction of the Project.

CITY OF MONTCLAIR SUNSET PARK BEAUTIFICATION PROJECT

SITE PLAN OVERVIEW

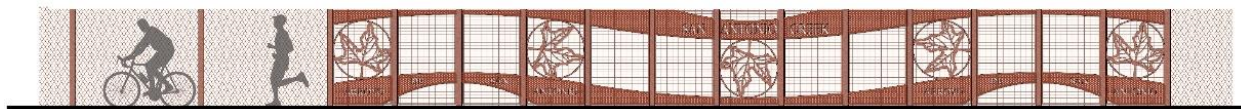
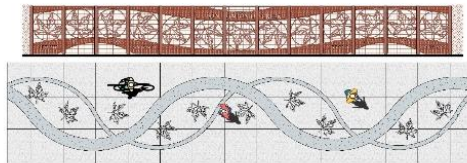
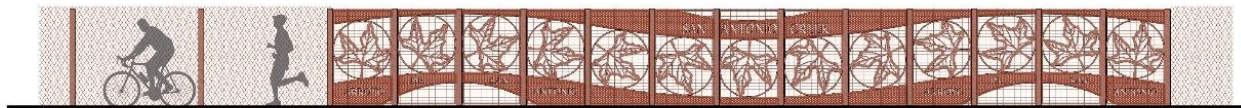


CONCEPTS FOR SUNSET PARK

SUNSET PARK MONUMENT SIGN



ARTISTIC FENCING ALONG SAN ANTONIO CREEK TRAIL



CONCEPTS FOR SUNSET PARK

ARTISTIC SHADE STRUCTURE PICNIC AREA



RAIN GARDEN



CONCEPTS FOR SUNSET PARK

RIVER & CREEK THEMED PLAYGROUND



RIVER & CREEK THEMED PLAYGROUND





CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 2023	FILE I.D.:	PDT362
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	POLICE
ITEM NO.:	10	PREPARER:	M. BUTLER
SUBJECT:	CONSIDER AUTHORIZING THE USE OF 2018 AND 2019 JUSTICE ASSISTANCE GRANT FUNDS TOTALING \$29,884 TOWARD THE COST OF TRANSITIONING TO A RECORDS MANAGEMENT SYSTEM COMPLIANT WITH THE NATIONAL INCIDENT-BASED REPORTING SYSTEM		

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the use of 2018 and 2019 Justice Assistance Grant (JAG) funds toward the cost of purchasing a new records management system that is compliant with the National Incident-Based Reporting System (NIBRS).

BACKGROUND: In June 2023, the Department received \$15,175 from the 2018 Edward Byrne Memorial JAG Program and \$14,709 from the 2019 JAG Program. JAG Program awards are for the exclusive use of law enforcement services and programs and are designed to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice.

Due to lawsuits against the federal government over new conditions that state and local governments were required to satisfy in order to receive Byrne grants, the County of San Bernardino Board of Supervisors did not accept the JAG 2018 or JAG 2019 awards from the U.S. Department of Justice (DOJ) until June 2020. The County is the JAG Program Administrator and disburses appropriate grant allocations to eligible jurisdictions. The City entered into Agreement Nos. 20-73 and 20-74 with the County in September 2020 to provide for the receipt of grant funds. At that time, staff was informed that the County would begin transitioning to a new grants management system, which caused more delays in receiving grant funds.

In May 2023, staff was given three days to submit a budget and narrative modification request for both JAG 2018 and 2019, and was informed that the grant funds had to be spent by September 30, 2023. During the delay in receiving grant funds, the Department has reprioritized the original projects for both grants. With only three months to spend the grant funds, the County suggested using grant funds toward NIBRS compliance, since DOJ had given prior approval to any agency that would be submitting a budget modification request to use funds toward NIBRS compliance.

In June 2016, the Federal Bureau of Investigation (FBI) informed all states that it would be transitioning to a NIBRS-only data collection by January 1, 2021—the FBI’s NIBRS has become the national standard for law enforcement crime data reporting in the United States. All federal, state, local, and tribal agencies are now required to use NIBRS for data reporting; however, prior to this date, the Department’s record management system used the Uniform Crime Reporting (UCR) system. Thus, in December 2019, the City entered into Agreement No. 19-103 with the City of West Covina/West Covina Service Group (WCSG) and Mark43 for upgrades to the Department’s computer-aided dispatch and records management software and service (CAD/RMS). These upgrades were necessary because the Department’s legacy system was reaching its end of lifecycle, and the Department needed a system that was NIBRS-compliant.

In FY 2020–21, the cost for the newly upgraded records management system (Mark43), which included full NIBRS compliance, was \$107,454. JAG 2017 funds (\$15,005) have already been successfully applied to this cost. With the short timeframe, staff submitted budget modification requests to the County to modify its JAG 2018 and 2019 budgets by spending its allocations toward the cost of transitioning to a NIBRS-compliant records management system.

FISCAL IMPACT: If authorized by the City Council, the \$15,175 from JAG 2018 and \$14,709 from JAG 2019 would be used to reimburse the SB 509 Public Safety Fund 1143 toward the cost of the Department’s new NIBRS-compliant records management system.

RECOMMENDATION: Staff recommends the City Council authorize the use of 2018 and 2019 JAG funds totaling \$29,884 toward the cost of transitioning to a records management system compliant with NIBRS.



CITY COUNCIL AGENDA REPORT

DATE: JULY 10, 2023 **FILE I.D.:** FRD220
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** FIRE
ITEM NO.: 11 **PREPARER:** D. POHL

SUBJECT: CONSIDER AUTHORIZING THE RECEIPT OF \$15,717 FROM THE FY 2021 STATE HOMELAND SECURITY GRANT PROGRAM TO PURCHASE ELEVEN ACCURAD PERSONAL RADIATION DETECTORS

CONSIDER AUTHORIZING A \$15,717 APPROPRIATION FROM THE PUBLIC SAFETY GRANT CAPITAL OUTLAY MACHINERY AND TOOLS ACCOUNT TO PURCHASE ELEVEN ACCURAD PERSONAL RADIATION DETECTORS FROM MIRION TECHNOLOGIES

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the receipt of \$15,717 from the FY 2021 State Homeland Security Grant Program (HSGP) and to authorize a \$15,717 appropriation from the Public Safety Grant Capital Outlay Machinery and Tools account to purchase eleven AccuRad Personal Radiation Detectors (PRDs).

BACKGROUND: The FY 2021 HSGP is responsible for distributing non-matching grant funds to local responders to provide financial assistance for the purpose of purchasing equipment and supplies to improve emergency response capabilities. All eligible applicants are required to purchase equipment or supplies in advance and are entitled to 100 percent reimbursement through the grant program. The distribution of grant funds is coordinated by each Operational Area (OA). The coordinating agency for the City of Montclair is the San Bernardino County Fire Protection District.

Through the FY 2021 HSGP, the Fire Department has been authorized to receive \$15,717 in non-matching grant funds to purchase eleven AccuRad PRD. HSGP funds are distributed to fire jurisdictions within San Bernardino County. Each jurisdiction is allocated a \$10,000 base, with the remainder of the grant distributed on a per-capita basis to each eligible jurisdiction. The total grant allocation for San Bernardino County for FY 2021 is approximately \$578,459; the Montclair Fire Department's allocation is \$15,717.

The Fire Department's current supply of personal radiation detectors are over 20 years old making them obsolete. Radiological material is transported daily in a variety of settings in which the Department may respond. Procuring these devices would allow for personnel to be alerted to radiation exposure, which would in turn allow them to respond effectively and efficiently. These devices can be utilized in response to vehicle accidents, building collapse, and any other radiological incidents.

Staff received three quotes, which are listed below, for AccuRad PRDs.

<u>Vendor</u>	<u>Bid Amount</u>
Mirion Technologies	\$15,717.00
Hazmat Resource, Inc.	\$18,833.62
LAURUS Systems Inc.	\$15,389.00

While LARUS Systems Inc. offers a lower quote up front, it does not include the cost of taxes for the devices; therefore, Mirion Technologies is the selected vendor for this purchase. This vendor offers the exact amount that has been allocated to the Montclair Fire Department and they offer the latest and most up to date technology needed for these devices.

FISCAL IMPACT: If approved by the City Council, the purchase of Mirion Technologies AccuRad PRD would result in a \$15,717 appropriation from the Public Safety Grant Fund (1163) Capital Outlay Machinery and Tools Account. The City would be reimbursed the \$15,717 from the FY 2021 HSGP.

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

1. Authorize the receipt of \$15,717 from the FY 2021 State Homeland Security Grant Program to purchase eleven Mirion Technologies AccuRad PRDs.
2. Authorize a \$15,717 appropriation from the Public Safety Grant Capital Outlay Machinery and Tools Account to purchase eleven AccuRad PRDs from Mirion Technologies.

Mirion Technologies
(Canberra), Inc.
800 Research Parkway,
Meriden CT 06450 – USA

Fax: 203–235–1347
Service: 800–255–6370

Quote Number – Q–23423
Opportunity Number – AM–US–HMW–22223272

Customer Information

Customer	Montclair Fire Dept	Issue Date	6/21/2023
Contact	Michael Matheson	Expiration Date	7/21/2023
Phone Number		Est. Shipment ARO	TBD
Email	mmatheson@cityofmontclair.org	Incoterm:	FOB – origin
Address	8901 Monte Vista Ave. Montclair, 91763	Shipping Method	
		Freight Terms	Prepay and Add
		Payment Terms	

Item	Product Code	Product Name	Description	Qty	Unit Price	Total Price
	ACCURAD	AccuRad PRC)	AccuRad PRD, individual packaging Equipped with belt clip and screen protector. The box also contains 2xAA alkaline batteries, a quick start guide, a quick card, and a spare clip, Note: also available in bulk packaging for large orders (>50). Please inquire.	11.00	\$1,302.00	\$14,322.00
2	TAX	Estimated Taxes		1.00	\$1,360.59	\$1,360.59
3	PACKING–HP	& freight charges		1.00	\$34.41	\$34.41
						Subtotal: USD 15,717.00
						Total Price: USD 15,717.00

Please authorize partial shipments in your purchase order.

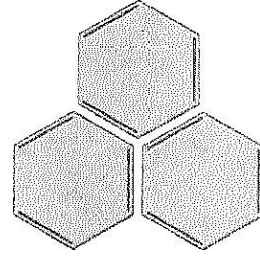
Contact Information

Account Manager	Carol McGowan	Prepared By	Carol McGowan
Phone Number	470 795 9046	Phone Number	470 795 9046
Email	cmcgowan@mirion.com		cmcgowan@mirion.com

If you would like to move forward with an order, please provide your purchase order/payment information to meriden-orders@mirion.com or feel free to call us at (203) 639–2630.

Hazmat Resource, Inc.

2425 Golden Hill Rd Ste 106-143
Paso Robles, CA 93446 US
+1 8056170987 safes@hazmatresource.com hazmatresource.com



HAZMAT
RESOURCE
QUOTE
221222

ADDRESS

Mike Matheson
City of Montclair Fire Department

Mike Matheson
City of Montclair Fire Department

Montclair, CA USA
DATE

Montclair, CA USA
05/24/2023

PRODUCT #	DESCRIPTION	PRODUCT #	DESCRIPTION	QTY	RATE	AMOUNT
AR_PRD	AccuRad PRC)	SEL				
43.3	11	1,589.00			17,479.00	

SUBTOTAL	17,479.00
TAX	1,354.62

\$18,833.62

LAURUS Systems Inc.

3460 Ellicott Center Drive
 Suite 101 Ellicott City, MD 210434164
 p H : 410-465-5558

FEIN: 52-2326481
 DEI: R393G7785KHR
 DUNS: 027861462
 CAGE: IUZ18

Certified Business Designations: WOSB-WBE-DBE

Quote Number: Q23-0497REV1 Quote Date: Jun 21, 2023 Page:

To Place an order—please fax orders to 41 e-mail to Laurus.Orders@LaurusSystems.com	or
--	----

Quoted To:	Ship To:
Montclair Fire Department 8901 Monte Vista Ave. Montclair, CA 91 763 USA	Mike Matheson 8901 Monte Vista Ave. Montclair, CA 91763 USA

Customer ID	Godd Thru'	Payment TermS	Sales Rep
CA Montclair FD	7/21/23	Net 30	Laura Lynch

Quantity		Description	Unit Price	"Amount
11.00	AccuRad	Accurad PRC) Inc. 2 AA Batteries-Spare Belt Clip-Quick Guide and Storage Box PRICE INCLUDES SHIPPING UNITS ARE IN STOCK LAURUS SYSTEMS DOES NOT COLLECT OR REMIT SALES TAX IN THE STATE OF CA. PLEASE DO INCLUDE SALES TAX ON PURCHASE ORDERS. THAT IS THE RESPONSIBILITY OF THE PROCUREMENT AGENCY.	1,399.00	15,389.00

Subtotal	15,389.00
Sales Tax	
Freight	
	15,389.00

Sales Rep Email: laura.lynch@laurussystems.com Freight Terms-FOB Origin
 (prepay and add) For up to date product information-news-manuals and
 support-Vist us on the Web at www.LaurusSystems.com



CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 2023	FILE I.D.:	CCK280
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	CITY MGR./CITY CLERK
ITEM NO.:	12	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER AUTHORIZING THE DESTRUCTION OF CERTAIN OBSOLETE PUBLIC RECORDS PURSUANT TO THE CITY OF MONTCLAIR RECORDS RETENTION SCHEDULE		

REASON FOR CONSIDERATION: The City Council is requested to authorize the destruction of certain obsolete public records pursuant to the City of Montclair Records Retention Schedule.

The subject records requested for destruction are listed on the attached *City of Montclair Destruction of Public Records Form*. The current list consist of on-site records from the Human Services Department.

BACKGROUND: On November 19, 2012, the City Council adopted Resolution No. 12-2973 establishing the Montclair Records Retention Schedule as the City of Montclair's Official Records Management Program.

The current procedure requires City Departments to submit a form to request destruction of records, which is reviewed by the City Clerk and the City Attorney for conformance with the retention schedule. The form is then submitted to the City Council for authorization to destroy the records.

FISCAL IMPACT: There would be no fiscal impact directly related to authorizing destruction of the subject records. The records are currently stored on-site, and staff time and the City's monthly on-site shred service will be used to destroy the records once approved.

RECOMMENDATION: Staff recommends the City Council authorize the destruction of certain obsolete public records pursuant to the Montclair Records Retention Schedule.



CITY OF MONTCLAIR

DESTRUCTION OF PUBLIC RECORDS FORM

Please refer to the City of Montclair Records Retention Schedule for record retention guidelines for each department.

The retention period has expired for the records listed below pursuant to the City of Montclair's Records Retention Schedule.

Department: Human Services

Page 1 of 2

<i>Record type & Retention Period</i>	<i>Description of Records</i>	<i>Period covered</i>	<i>Additional Notes</i>
Agreements for Contractors CL+5	Signed contract class instructor agreements	7/2009 - 8/2015	
Class Rosters CU+2	Recreation Class Rosters - various classes; logs detailing participant info	6/06 - 8/06, 1/11 - 5/17	
Agreement for Contractors CL+5	2010, 2013, 2014 Winter/Spring contracts, 2014 Summer contracts, 2015 Fall contracts	11/2012 - 7/2015	
Activity/Project Files CU+2	Proposed Class Information Forms	12/11, 1/15 - 1/18	
Agreement for Contractors CL+5	Winter/Spring & Summer Class Contracts (January - July 2016)	1/2016 - 7/2016	
City Council Committees CU+2	CAC CBF Invitations, Applications, Check Receipts & Check Copies	10/2008 - 2/2009	
City Council Committees CU+2	CAC CBF Invitations & Applications	10/2008 - 9/2009	
City Council Committees CU+2	CAC CBF Invitations, Applications & Check Copies	10/2010 - 1/2011	
Activity/Project Files CU+2	CAC CBF Program Applications received from agencies	10/2008, 10/2011	
Activity/Project Files CU+2	CAC Volunteer of the Year Nominations	3/2008 & 3/2012	
Activity/Project Files CU+2	CAC Home Beautification & Holiday Home Decoration Contest Score Tally Sheets	6/2008 - 6/2010	
Activity/Project Files CU+2	CAC Volunteer of the Year Judges Score Sheets	4/2009	

Approval for destruction of listed records:

Dept. Records Manager: *Alyssa Colangelo* Date: 6/21/23
 Department Head: *M. Rubino* Date: _____
 City Clerk: _____ Date: _____
 City Attorney: _____ Date: _____

<i>Record type & Retention Period</i>	<i>Description of Records</i>	<i>Period covered</i>	<i>Additional Notes</i>
Agendas CU+2	"Certificate of Posting" signed by staff member after CAC agenda was poste	8/08 - 1/09, 5/14	
Facility Rentals/Use CU+2	Facility Rental customer information/setup diagrams/receipts/check copies/contracts	1/2007 - 9/2015	
Activity/Project Files CU+2	Activities and Programs Draft/Proof Documents-Unofficial files of HS brochure	1/2015 - 8/2016	
Registration CU+4, Liability Forms CU+2	Class Registration Cards/Liability Waivers	1/2002 - 10/2016	
Receipt Copies AU+4	Medical Clinic Receipt Copies	1/04 - 5/04, 2/07 - 10/15	
Class Rosters CU+2	Weight Room Memberships	7/1990 - 4/2011	
Activity/Project Files CU+2	Recreation Building Key Logs	12/2011 - 11/2013	
Activity/Project Files CU+2	Vehicle Key Logs	4/2012 - 8/2012	
Liability Forms CU+2	Weight Room/Sauna/Shower Sign-In Sheet	7/2014 - 12/2014	

Dept. Records Manager: Alyssa Colunga Date: 6/21/23



CITY COUNCIL AGENDA REPORT

DATE: JULY 17, 2022

FILE I.D.: PER250

SECTION: CONSENT - AGREEMENTS

DEPT.: ADMIN. SVCS.

ITEM NO.: 1

PREPARER: M. RICHTER

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 23-42 WITH LIEBERT CASSIDY WHITMORE FOR PARTICIPATION IN THE EAST INLAND EMPIRE EMPLOYMENT RELATIONS CONSORTIUM AND PREMIUM LIEBERT LIBRARY SUBSCRIPTION, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: The City's current Agreement with Liebert Cassidy Whitmore (LCW) for participation in the East Inland Empire Employment Relations Consortium (ERC) is scheduled for renewal on July 1, 2023. The City Council is requested to consider approval of proposed Agreement No. 23-42 with LCW, a copy of which is attached for the City Council's review and consideration.

BACKGROUND: For over 30 years, the City of Montclair has participated in LCW's East Inland Empire ERC. The City's participation entitles officials and employees to receive five one-day group training sessions, unlimited free telephone consultations with the law firm's attorneys, and a monthly employment-relations newsletter. Participating agencies may also receive specialized training for an added cost. As laws related to employment relations are constantly evolving, participating in this consortium is crucial to keeping City employees abreast of such changes.

The contract's renewal adds the Premium Liebert Library Subscription, which includes unlimited access to LCW workbooks in digital format and over 200 sample forms, model policies, and checklists that can be downloaded and used by staff as templates.

The term of the proposed Agreement is for July 1, 2023 to June 30, 2024.

FISCAL IMPACT: The annual fee for participating in the Consortium is \$4,255. Funds to cover the cost are included in the Fiscal Year 2023-2024 Budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 23-42 with Liebert Cassidy Whitmore for participation in the East Inland Empire Employment Relations Consortium and Premium Liebert Library Subscription, subject to any revisions deemed necessary by the City Attorney.

AGREEMENT FOR SPECIAL SERVICES

This Agreement is entered into between the City of Montclair, A Municipal Corporation, hereinafter referred to as "Agency," and the law firm of LIEBERT CASSIDY WHITMORE, A Professional Corporation, hereinafter referred to as "Attorney."

WHEREAS Agency has the need to secure expert training and consulting services to assist Agency in its workforce management and employee relations; and

WHEREAS Agency has determined that no less than twenty-nine (29) public agencies in the East Inland Empire Public area have the same need and have agreed to enter into identical agreements with Attorney; and

WHEREAS Attorney is specially experienced and qualified to perform the special services desired by the Agency and is willing to perform such services;

NOW, THEREFORE, Agency and Attorney agree as follows:

Attorney's Services:

During the year beginning July 1, 2023, Attorney will provide the following services to Agency (and the other aforesaid public agencies):

1. Five (5) days of group training workshops covering such employment relations subjects as management rights and obligations, negotiation strategies, employment discrimination and affirmative action, employment relations from the perspective of elected officials, performance evaluation (administering evaluations), grievance and discipline administration for supervisors and managers, planning for and responding to concerted job actions, current court, administrative and legislative developments in personnel administration and employment relations, etc., with the specific subjects covered and lengths of individual workshop presentations to be determined by Agency and the other said local agencies.

It is expressly understood that the material used during these presentations, including written handouts and projected power points are provided solely for the contracted workshops. This agreement warrants there will be no future use of Liebert Cassidy Whitmore material in other trainings or formats without the expressed written permission of Liebert Cassidy Whitmore. Any such use will constitute a violation of this agreement and copyright provisions.

2. Availability of Attorney for Agency to consult by telephone. Consortium calls cover questions that the attorney can answer quickly with little research. They do not include the review of documents, in depth research, written responses (like an opinion letter) or advice on on-going legal matters. The caller will be informed if the question exceeds the scope of consortium calls. Should the caller request, the attorney can assist on items that fall outside the service, but these matters will be billed at the attorney's hourly rate. (See additional services section.)
3. Providing of a monthly newsletter covering employment relations developments.

Fee:

Attorney will provide these special services to Agency for a fee of Three Thousand Three Hundred Fifty Five Dollars (\$3,355.00) payable in one payment prior to August 1, 2023. The fee, if paid after August 1, 2023 will be \$3,455.00.

Said fee will cover Attorney's time in providing said training and consultative services and the development and printing of written materials provided to attendees at the training programs.

Additional Services:

Attorney shall, as and when requested by Agency, make itself available to Agency to provide representational, litigation, and other employment relations services. The Agency will be billed for the actual time such representation services are rendered, including reasonable travel time, plus any necessary costs and expenses authorized by the Agency.

The range of hourly rates for Attorney time is from Two Hundred Sixty to Four Hundred Thirty-Five Dollars (\$260.00 - \$435.00) per hour for attorney staff, Two Hundred Eighty Dollars (\$280.00) per hour for Labor Relations/HR Consultant and from One Hundred Forty-Five to One Hundred Eighty-Five Dollars (\$145.00 - \$185.00) per hour for services provided by paraprofessional and litigation support staff. Attorneys, paraprofessional and litigation support staff bill their time in minimum units of one-tenth of an hour. Attorney reviews its hourly rates on an annual basis and if appropriate, adjusts them effective July 1.

Independent Contractor:

It is understood and agreed that Attorney is and shall remain an independent contractor under this Agreement.

Term:

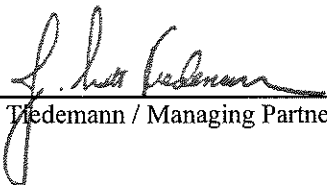
The term of this Agreement is twelve (12) months commencing July 1, 2023. The term may be extended for additional periods of time by the written consent of the parties.

Condition Precedent:

It is understood and agreed that the parties' aforesaid rights and obligations are contingent on no less than twenty-nine (29) local agency employers entering into a substantially identical Agreement with Attorney on or about July 1, 2023.

LIEBERT CASSIDY WHITMORE
A Professional Corporation

CITY OF MONTCLAIR
A Municipal Corporation

By: 
J. Scott Fiedemann / Managing Partner

By: _____

Name: Javier John Dutrey

Date: 6/13/2023

Title: Mayor

Date: 7/17/2023

ATTEST

By: _____
Andrea M. Myrick, City Clerk

6033 WEST CENTURY BOULEVARD, 5TH FLOOR
 LOS ANGELES, CALIFORNIA 90045
 T: 310.981.2000 F: 310.337.0837

stiedemann@lcwlegal.com
 310.981.2022

INVOICE

June 7, 2023

Jon Hamilton
 Director - Administrative Services & Human Resources
 City of Montclair
 5111 Benito Street
 Montclair, CA 91763

(MO060-10000)
 INVOICE NUMBER: 242358

EAST INLAND EMPIRE EMPLOYMENT RELATIONS CONSORTIUM

Membership: 07/01/2023 through 6/30/2024

Please make your check out for one of the following amounts:

ERC Membership	\$3,355.00	<input type="checkbox"/>
ERC Membership w/ Basic Liebert Library Subscription (optional) <i>Basic Subscription provides access to LCW workbooks in digital format. You can search all workbooks, but cannot print or download the books.</i>	\$3,760.00	<input type="checkbox"/>
ERC Membership w/ Premium Liebert Library Subscription (optional) <i>Premium Subscription provides unlimited access to LCW workbooks in digital format, as well as over 200 sample forms, model policies and checklists that can be downloaded and used as templates.</i>	\$4,255.00	<input checked="" type="checkbox"/>

Note: Please send us a copy of this invoice along with your payment.

For more information about the Liebert Library, please visit www.liebertlibrary.com, or email library@lcwlegal.com.

If ERC Membership paid after August 1, 2023 amount due is \$3,455.00 (Includes \$100.00 late fee)

East Inland Empire ERC

1) Comments

- The group likes the Sierra Lakes Golf Course for workshops. At the time of the meeting we did not know the costs to remain at the Course for 2023-2024. The group agreed to go as high as \$90/person. Anything higher, they would look for another workshop location (with the City of Fontana noting it had possible options).
 - Sierra Lakes has since let us know that there will be no increase in rate (\$81/person/per day) so the group will remain here for the 2023-2024 in – person workshops
 - The group will also continue to have some workshops presented as webinars.
- Members report that Presentations contain good information. Many meet with their employees to provide agency specific follow up .
- Kathy is timely and responsive
- Consortium calls are being responded to in a timely manner.
- Liebert Library has been updated and is viewed as a great resource.
- LCW has an On Demand Library that is growing. It currently includes Preventing Harassment, Ethics, and Understanding the Roles and Responsibilities of Public Employee. It will be getting the Maximizing Performance Through Documentation, Evaluation and Corrective Action workshop in May.
 - The group noted that they would like to see a Leaves of Absence type workshop added to the offerings.

2) Services Explained

- Complimentary Telephone Consultation: ERC members are able to consult with an attorney on select matters. The service covers items that the attorney knows off the top of their head. It does not cover writing/reviewing documents; advice on on-going legal matters, or advice requiring extensive research. Items that fall outside the realm of this service are noted as such and members have the option to ask for LCW to proceed as a billable matter. For this reason, agencies should choose carefully who is permitted to


Employment Relations Consortium

place these types of inquiries. Inquiries can be made by calling any of our offices, any of our attorneys by emailing: AskLCW@lcwlegal.com.

- **Consortium Workshops across the State:** ERC members are able to attend other Consortiums' workshops. If you are interested in attending, you must contact Kathy King (kking@lcwlegal.com) 7 days prior the scheduled workshop. Once all the registration sheets are received from the host Consortium, if space is available, members from other consortiums are able to attend. There is no cost to attend another Consortiums' workshop, *unless* they require a per person/refreshment fee. This is true of in-person presentations as well as webinars.
- **Consortium Webinars:** Each registrant will receive instructions on how to log in to the webinar. Agencies will receive a report following the webinar on who logged in and how long they remained on the line. Each member agency will receive a recording of the webinar for their internal use.
- **Workshop Attendance:** LCW reminds agencies that they are responsible for monitoring who is registering for the workshops. LCW provides a guide as to who should attend the workshops and requests that the agency use its best discretion when registering employees as the composition of the audience can impact the message and tone of the workshop. This recommendation is also true when sharing the webinar recording.
- **Public Sector Employment Relations Certificate Program:** This is a complimentary program. Participants are required to complete 8 specific workshops within a three year period. Participants must present proof of attendance through paperwork distributed at the workshop. LCW does not track attendance.
- **Individual/Customized Training:**
 - LCW conducts customized training in-person, via webinar and through our on demand platform.
 - Includes the incorporation of your policies and procedures, as well as an original set of materials for your reproduction.
 - Any of the workshops listed on the Master Workshop Topics List can be presented outside of the consortium to one specific agency or a group of agencies to share the cost.
 - LCW would be happy to send an e-mail to other agencies if a request for an individual workshop has been made and the agency requesting the workshop wishes to combine with other agencies. For more information, contact Anna Sanzone-Ortiz at (310) 981-2051 or asanzone-ortiz@lcwlegal.com.
- **Liebert Library:** The Library has been updated to include additional features. Subscription is optional and Consortium members receive a discount.
- **Social Media:** follow us on LinkedIn (<https://www.linkedin.com/company/liebert-cassidy-whitmore/>) and read our Labor and Employment blog (<http://www.calpublicagencylaboremploymentblog.com>)

3) Workshops (5 full days of training. 2nd Thursdays of the month)

- Maximizing Supervisory Skills for the First Line Supervisor (Certificate Class) - Full Day (in person)
- Maximizing Performance Through Documentation, Evaluation and Corrective Action (Certificate Class) - Half Day
- The Future is Now – Embracing Generational Diversity and Succession Planning - Half
- The Art of Writing the Performance Evaluation - Half Day
- Finding the Facts: Employee Misconduct & Disciplinary Investigations - Half Day (to be presented in person)
- (NEW) Public Service Customer Service - Two Hours
- Supervisor's Guide to Understanding and Managing Employees' Rights: Labor, Leaves and Accommodations (Certificate Class) - Half Day
- Issues and Challenges Regarding Drugs and Alcohol in the Workplace - Half Day
- Distinguishing Between Discipline and Disability Accommodation - Half Day

4) Workshop Hosting

- The group elected to conduct the trainings for the 2022-23 year as a hybrid (in-person and webinar-based model). Workshops that are presented via webinar will be recorded. In-person presentations will not be recorded.

5) ERC Membership Fee

- The 2023-2024 annual membership fee is: \$3,355, \$3,875 OR \$4,270 (DEPENDING ON DATE JOINED)
- \$100 late fee to be paid after August 1, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 2023	FILE I.D.:	ADM110-05
SECTION:	CONSENT - AGREEMENTS	DEPT.:	CITY MGR.
ITEM NO.:	2	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-43 WITH CIVIC PUBLICATIONS, INC., FOR PUBLIC EDUCATION AND COMMUNITY OUTREACH SERVICES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-43 with Civic Publications, Inc., to provide public education and community outreach services. The City Council approves agreements for professional services.

A copy of proposed Agreement No. 23-43 with Civic Publications is attached for City Council review and consideration.

BACKGROUND: The City of Montclair periodically provides outreach services to the community through the publication of printed mailers that provide factual content directed at bringing public awareness to civic issues and community events.

However in recent years, progressive and routine changes in technology have produced a population increasingly sophisticated and diverse in the way it consumes and accesses information. Today, these information sources have grown beyond traditional printed media to encompass and embrace digital formats that include the internet, social media, e-mail, texting, and smartphone application-based programs.

Civic Publications, Inc. (Civic) is a multimedia company located in La Verne that specializes in media, content development, and public outreach for public agencies. Civic Publications, Inc. works with public agencies to create, coordinate, and distribute public information to help bring awareness and understanding to complex issues on matters of civic importance. Civic Publications, Inc. prides itself in its ability to articulate city services, projects, and issues with facts, clarity, and transparency to achieve community awareness.

Civic Publications, Inc. is owned and operated by Chris Lancaster. Mr. Lancaster founded Civic Publications, Inc. to extend public affairs services to a wide range of government agencies, with expertise in transit, environmental, and public benefit messaging.

Prior to starting Civic Publications, Inc., Mr. Lancaster worked as Director of Government Relations and New Business Development for the Los Angeles Newspaper Group, comprising eight daily newspapers in the Los Angeles and San Bernardino Counties with a daily readership of more than 1.6 million.

Mr. Lancaster has more than 15 years of experience managing public affairs content and media for Southern California public agencies, including municipalities, environmental agencies, transit agencies, and public safety agencies. Mr. Lancaster has also held public office, including election to the Covina City Council, and has been a candidate for state office. His years of public service provide a unique approach toward understanding how best to communicate to the public complex issues on matters of civic importance.

Publication Format

Civic has developed public education and awareness campaigns for numerous public agencies including the Sanitation Districts of Los Angeles County; Bureau of Sanitation of the City of Los Angeles; the cities of Vernon and Industry, municipal water districts; Los Angeles Metropolitan Transportation Authority; Los Angeles County Department of Public Works; Los Angeles County Sheriff's Department, and solid waste disposal companies. Civic Publications, Inc. has been engaged by the City in prior years to produce public educational and outreach materials.

Under proposed Agreement No. 23-43, public education and outreach may include updating the public on proposed development and public works projects, upcoming attractions and events, important advisory messages, public safety services, progress on transit development, City finances, grant applications, and any other relevant and important general government services information.

In order to fully achieve communications outreach with City residents and the business community, staff recommends utilizing services offered by Civic to include newsletter, e-mail, and digital display ad media formats and City website maintenance for related public outreach pages.

The scope of services included in proposed Agreement No. 23-43 includes the following: production, printing, and delivery of a 16-page newsletter; distribution of the newsletter by direct mail to every household in the City; provision of English and Spanish language electronic versions of the newsletter; and distribution of electronic versions of the newsletter to businesses and community members.

FISCAL IMPACT: Approval of Agreement No. 23-43 with Civic Publications, Inc., for public education and community outreach would result in a cost to the City of \$29,950. The costs associated with Agreement No. 23-43 were incorporated in the Fiscal Year 2023-2024 Budget in the Administrative Services Department Budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 23-43 with Civic Publications, Inc., for public education and community outreach services, subject to any revisions deemed necessary by the City Attorney.



CIVIC Publications, Inc.

Christopher W. Lancaster
Publisher

June 6, 2023

Edward C. Starr
City Manager
City of Montclair
5111 Benito St.
Montclair, CA 91763

Re: Agreement to produce newsletter

Dear Mr. Starr,

Pursuant to conversation with city staff, submitted for your consideration is this agreement for Civic Publications Inc. to assist the City of Montclair with the development of its annual newsletter to be distributed to the residents of Montclair.

Civic Publications, Inc. provides communications outreach solutions for public agencies, providing factual content and bringing clarity to community and civic issues without advocating for or against any position. Our goal is to inform the public without persuasion.

The task of the newsletter is to explain city services, in a clear fashion, and build awareness of projects, decisions and funding so that Montclair residents can be informed. Effective communications solutions will cut through the complexity of city hall decisions and issues in the context of planning, specific projects, benefits and cost for decades to come.

The cost to develop a 16-page newsletter and distribute to the residents of Montclair is \$29,950. ***See the attached agreement for a complete listing of the scope of services.***

Thank you for the opportunity to submit this agreement and I look forward to developing a cost-effective newsletter that meet the needs of the City and which serve the highest standards of the public interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Chris Lancaster', is written over a white background.

Christopher W. Lancaster



CIVIC Publications, Inc.

Christopher W. Lancaster
Publisher

PUBLIC OUTREACH AGREEMENT

This agreement is between the City of Montclair and Civic Publications Inc.

This agreement confirms that the city of Montclair has acquired the services of Civic Publications Inc. to assist the City of Montclair with the development of a newsletter

Scope of services include:

1. Write, design, layout, print and deliver a 16-page newsletter.
2. Newsletter to be distributed by direct mail to every household, business and P.O. Box in the City of Montclair.
3. Provide an English and Spanish electronic version for the city website.
4. Distribute English electronic version of the newsletter to 22,000 email addresses within the city of Montclair.

Total cost for services \$29,950.00

Civic Publications, Inc. agrees to provide all services listed in this agreement, and the City of Montclair agrees to pay Civic Publications, Inc. a total of \$29,950.00

All terms of this agreement to be fulfilled by November 30,2023.

June 6, 2023

Civic Publications, Inc. Date

Javier John Dutrey, Mayor Date

Attest:

Andrea Myrick, City Clerk Date



CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 2023	FILE I.D.:	STA500
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	3	PREPARER:	M. PARADIS
SUBJECT:	CONSIDER RATIFYING AGREEMENT NO. 23-44 WITH COLTS LANDSCAPE, INC. FOR LANDSCAPE MAINTENANCE SERVICES		
	CONSIDER AUTHORIZING CITY MANAGER EDWARD C. STARR TO SIGN SAID AGREEMENT		

REASON FOR CONSIDERATION: City Council approval is required for all agreements, however, this contract was entered into by the City Manager on an emergency basis on June 29, 2023, due to the cancellation of the July 3rd City Council meeting. Therefore, the City Council is requested to consider ratifying Agreement No. 23-44 with Colts Landscape, Inc. (Colts) for landscape maintenance services.

Because City Manager Edward C. Starr signed the contract on June 29, 2023, authorization is also sought to authorize him as the signing authority for this contract. City Attorney Diane Robbins reviewed and approved Agreement No. 23-44 prior to the City Manager's signature.

A copy of Agreement No. 23-44 is attached for the City Council's consideration.

BACKGROUND: The term of Agreement No. 22-54 with Mariposa Landscapes, Inc. (Mariposa) concluded on June 30, 2023. Mariposa declined a one-month extension of their contract and discontinued services as of June 30, 2023. A copy of Mariposa's letter dated June 29, 2023, is attached.

Last year, staff sent a Request for Bid Proposals for landscaping maintenance services. The City received three proposals, including one from Colts but decided to continue landscaping services with Mariposa. Staff reached out to Colts to submit a proposal for landscape maintenance services. Based on their proposal, Colts was able to provide immediate landscape services to the City starting July 1, 2023. The area manager of Colts is familiar with the City of Montclair. He previously worked for eight years under Mariposa's contract. He is knowledgeable of the various locations and landscaping requirements throughout the City.

FISCAL IMPACT: The cost to provide landscape services for Fiscal Year (FY) 2023-24 is estimated at \$432,116.52 and is included in the FY 2023-24 Public Works budget.

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

1. Ratify Agreement No. 23-44 with Colts Landscape, Inc. for landscape maintenance services.
2. Authorize City Manager Edward C. Starr to sign said agreement.

CITY OF MONTCLAIR
AGREEMENT FOR CONTRACTOR SERVICES
LANDSCAPING SERVICES

THIS AGREEMENT is made and effective as of July 1, 2023, between the CITY OF MONTCLAIR, a municipal corporation (the "City") and COLTS LANDSCAPE, INC., a California corporation (the "Contractor"). The City and the Contractor are sometimes referred to herein collectively as the "Parties" and singularly as "Party." In consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

1. **TERM**

This Agreement shall commence on July 1, 2023 and shall remain and continue in effect for a period of approximately three years, expiring on June 30, 2026, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

Contractor shall at all times faithfully, competently and to the best of its 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 its obligations under this Agreement. If the work performed by Contractor is not satisfactory, the City's Public Works Superintendent or his designated representative may suspend the Agreement for any period of time or terminate the Agreement as set forth herein. No sums shall be due or payable to the Contractor for or during any time of such suspension or after termination.

4. **CITY MANAGEMENT**

City's Public Works Superintendent or his/her designee shall represent City in all matters pertaining to the administration of this Agreement, and the review and approval of all work to be performed by Contractor.

5. **PAYMENT**

(a) City agrees to pay Contractor monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, for work completed.

(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's Public Works Superintendent. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by City's Public Works Superintendent and Contractor at the time City's written authorization is given to Contractor for the performance of said services.

(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) Prior written approval from the City shall be required prior to any and all work performed by Contractor. If prior written approval is not obtained by the Contractor, no payment will be approved.

6. TERMINATION OF AGREEMENT

(a) The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor not less than thirty (30) calendar days' prior written notice. The Contractor may only terminate this Agreement for cause, and by giving the City prior notice in writing with a reasonable opportunity to cure any purported default. If the Agreement is terminated by the City, and provided Contractor is not then in breach, the Contractor shall be paid for services satisfactorily rendered to the last working day the Agreement is in effect, and the Contractor shall have no other claim against the City by reason of such termination. This Agreement may be extended beyond the term only by the written agreement of both Parties prior to the expiration of the term of the Agreement.

(b) Upon termination of the Agreement pursuant to this Section, Contractor shall submit an invoice to the City for all unpaid work completed.

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's Public Works Superintendent or his/her designee 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) Defense, Indemnity and Hold Harmless. Contractor shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Contractor herein, caused by or arising out of the negligent acts or omissions, or intentional

misconduct of Contractor, including its subcontractors, employees, agents, and other persons or entities performing work for Contractor.

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

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

(d) City Lost or Damaged Property – Theft. Contractor further agrees to pay or cause to be paid to the Indemnified Parties' benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Contractor or of Contractor's officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such

actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Contractor further agrees to waive all rights of subrogation against the Indemnified Parties.

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

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

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

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

10. INSURANCE

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

(a) Types of Required Coverages

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

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office

“occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$20,000,000 per occurrence, and \$25,000,000 in the aggregate.

- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$10,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers’ Compensation: Workers’ Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$10,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

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

(1) Commercial General Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

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

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

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

(2) Auto Liability

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

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

(3) Workers' Compensation

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

Required insurance coverages shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

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

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

insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

(k) Insurance for Subcontractors

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

11. INDEPENDENT CONTRACTOR

(a) 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. Contractor shall be solely responsible and hold the City harmless for all matters relating to the payment of Contractor's employees, including compliance with Social Security withholdings and all other regulations governing such matters.

(b) No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in 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, including compliance with CAL/OSHA requirements as may be applicable. 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 shall comply with all applicable federal, state and local Conflict of Interest laws, including the Political Reform Act (California Government Code, Section 81000, *et. seq.*) and California Government Code, Section 1090, *et. seq.* 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. Contractor further covenants that Contractor has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or

partnership(s) owning property in the City or the study area and further covenants and agrees that Contractor and/or its subContractors shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement. Further, Contractor covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to the City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by the Contractor. The Contractor's covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

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

To City: City of Montclair
Attn: Monica Heredia
5111 Benito Street
Montclair, CA 91763

To Contractor: Colts Landscape, Inc.
Attn: Alfredo Jose Jimenez, President
11672 Brookshire Avenue
Garden Grove, CA 92840

17. ASSIGNMENT AND SUBCONTRACTING

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

18. LICENSES

At all times during the term of this Agreement, 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. CONTENTS OF REQUEST FOR PROPOSALS – Not applicable.

22. 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. Contractor's covenant under this Section shall survive the expiration or termination of this Agreement.

23. 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.

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

26. EXHIBITS; PRECEDENCE

All documents reference as exhibits in this Agreement are hereby incorporated into this Agreement by this reference. In the event of any inconsistency between the express provisions of this Agreement and any provision of an exhibit, the provisions of this Agreement, then the City's request for proposals, if any, shall prevail.

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

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

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

CITY

City of Montclair
A Municipal Corporation

CONTRACTOR

Colts Landscape, Inc.
A California Corporation

By: _____
Edward C. Starr, City Manager

By: _____
Alfredo Jose Jimenez, President

Date: _____

Date: _____

Attest:

By: _____
Andrea M. Myrick, City Clerk

By: _____

Date: _____

Date: _____

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

Date: _____



CITY COUNCIL AGENDA REPORT

DATE: JULY 17, 2023

FILE I.D.: STA816

SECTION: CONSENT - AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 4

PREPARER: R. ORTEGA

SUBJECT: CONSIDER AWARDING A CONTRACT TO HYPER ELECTRIC IN THE AMOUNT OF \$154,350 FOR CONSTRUCTION OF THE ELECTRIC VEHICLE CHARGING STATIONS PROJECT

CONSIDER AUTHORIZING A \$15,500 CONSTRUCTION CONTINGENCY FOR THE PROJECT

CONSIDER APPROVAL OF AGREEMENT NO. 23-45 WITH HYPER ELECTRIC FOR CONSTRUCTION OF THE PROJECT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: The City Council is requested to consider awarding a contract to Hyper Electric for \$154,350 and approving a contingency of \$15,500 for the Electric Vehicle Charging Stations Project (Project). A copy of proposed Agreement No. 23-45 is attached for the City Council's review and consideration.

BACKGROUND: The City Council has demonstrated a commitment to the adopted 2019-2024 Capital Improvement Program, which included the Electric Vehicle (EV) Charging Stations Project. The Project will be funded by AQMD Clean Transportation Funding grant funds and future funds authorized under AB2766. The City was awarded \$80,000 for the design and installation of EV charging stations at City facilities including City Hall, the City Yard, and the Police Department.

Staff evaluated and identified three locations to install one charger with a dual purpose to serve two cars at a time. The design includes infrastructure that allows for future expansion of EV charging stations. The charging station at City Hall will be available for public use, while the charging stations at the City Yard and Police Department will only be available for City and employee vehicles.

This Project will contribute to the City's ongoing concern for cleaner air and better health. Electric vehicles are one of the best ways to reduce planet-warming greenhouse gas emissions, the largest source of emissions in the United States, most of which come from cars and trucks. Drivers are not only less likely to use gas-powered vehicles because of the availability of electric vehicle chargers near their homes, but it can pave the way to other forms of clean transportation in the future. Promoting the use of electric vehicles by installing these chargers will also contribute to reducing greenhouse gas emissions, which have negatively impacted global warming.

The Project was advertised on Planet Bids from June 5, 2023 to June 28, 2023. On June 28, 2023, the City received and opened twelve bids as follows:

Bidder	Bid Amount
Engineer's Estimate	\$174,915.00
Hyper Electric	\$154,350.00
Amazing Electric Inc.	\$159,894.00
Industrial Pro Power Services Inc.	\$172,194.00
ISSA Electric Inc	\$181,994.00
PAR Western Line Contractor	\$198,459.00
Faith Electric	\$223,722.00
PUB Construction Inc.	\$237,413.58
Alliance Facility Services	\$237,948.66
MC Electric	\$251,400.00
Endelos Energy	\$253,792.00
Yunex Traffic	\$315,750.20
MBE Construction	\$355,700.00

Following the bid opening, the proposals were reviewed for completeness and accuracy. The bid proposal from the apparent low bidder, Hyper Electric, provided all required documents and was deemed the lowest responsible, responsive bidder for the Project. Hyper Electric has the experience necessary to complete this contract in accordance with the project specifications. The anticipated start of construction is in September 2023.

FISCAL IMPACT: The City was awarded \$80,000 of AQMD Clean Transportation Funding and will use future AB2766 funds to cover the cost of construction.

RECOMMENDATION: Staff recommends that the City Council take the following actions relating to the Electric Vehicle Charging Stations Project:

1. Award a contract to Hyper Electric in the amount of \$154,350 for construction of the Project.
2. Authorize a \$15,500 construction contingency for the Project.
3. Approve Agreement No. 23-45 with Hyper Electric for construction of the Project, subject to any revisions deemed necessary by the City Attorney.

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

A. Recitals.

- (i) Pursuant to Notice Inviting Sealed Bids or Proposals, bids were received, publicly 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)

Electric Vehicle Charging Stations

"PROJECT" hereinafter.

B. Agreement.

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 CONTRACTOR 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 its subcontract until all insurance required of the subcontractor has been obtained. The CONTRACTOR shall take out and maintain at all times during the life of this contract the following policies of insurance:

(a) Types of Required Coverages

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

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

(b) Endorsements

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

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

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

Additional Insured Endorsements shall not:

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

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

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

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

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

(e) Evidence of Insurance

The Contractor, concurrently with the execution of the contract, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

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

(k) Insurance for Subcontractors

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

6. CONTRACTOR'S LIABILITY/INDEMNIFICATION:

The City of Montclair & CALTRANS, 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 workers, employees of the CONTRACTOR or its 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 &/or CALTRANS, its employees, servants, or independent contractors who are directly responsible to CITY &/or CALTRANS during the progress of the project or at any time before its completion and final acceptance.

The CONTRACTOR will indemnify CITY & CALTRANS against and will hold and save CITY & CALTRANS 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, its agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY &/or CALTRANS, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of CITY &/or CALTRANS, its employees, servants, or independent contractors who are directly responsible to CITY &/or CALTRANS, 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.

AGREEMENT

Agreement No. 23-45

- 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 &/or CALTRANS 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 &/or CALTRANS 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 &/or CALTRANS, may be retained by CITY &/or CALTRANS 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 **06/28/2023**.
- 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.

[Signatures on Following Page]

AGREEMENT

Agreement No. 23-45

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

Hyper Electric
9021 Terhune Ave
Sun Valley, CA. 91352

CITY OF MONTLAIR, CALIFORNIA

By: _____
Vigen Hovanesian
Owner

Javier "John" Dutrey
Mayor

ATTEST:

By: _____
Name:

Title

Andrea M. Myrick
City Clerk

APPROVED AS TO FORM:

Diane E. Robbins
City Attorney



CITY COUNCIL AGENDA REPORT

DATE: JULY 17, 2023

FILE I.D.: CVC025/CVC050

SECTION: CONSENT - AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 5

PREPARER: R.ORTEGA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 23-46 WITH BFK ARCHITECTURE + PLANNING FOR ENGINEERING DESIGN SERVICES FOR THE MONTCLAIR BRANCH PUBLIC LIBRARY RESTROOMS, COURTYARD, AND FIRE STATIONS REMODEL PROJECT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A \$185,000 APPROPRIATION FROM 2021 LEASE REVENUE BOND PROCEEDS FOR COSTS RELATED TO AGREEMENT NO. 23-46

CONSIDER AUTHORIZING A \$16,760 DESIGN SERVICES CONTINGENCY FOR THE PROJECT

REASON FOR CONSIDERATION: Engineering design services are required for the Montclair Branch Public Library Restrooms, Courtyard and Fire Stations Remodel Project. Agreements for professional services with the City, and appropriations of unbudgeted funds require City Council approval.

The City Council is requested to consider approval of Agreement No. 23-46 with BFK Architecture + Planning for engineering design services for the Project.

Proposed Agreement No. 23-46 with BFK Architecture + Planning is attached for City Council review and consideration.

BACKGROUND: On March 26, 2021, the City Council approved an allocation of additional Lease Revenue Bond funds for adequate construction of the Montclair Branch Public Library Restrooms, Courtyard and Fire Stations Remodel Project. Staff joined in on job walks and outlined several potential improvements.

The improvements outlined propose reconstruction of the fire stations to incorporate female locker rooms and showers, and expansion of the library building by adding additional restrooms in the courtyard alongside its newly remodeled outdoor reading area. Staff released a Request for Proposals via Planet Bids to solicit proposals for engineering design services. The City received two proposals as follows:

1. BFK Architecture + Planning
2. ONYX Architects

A panel of three staff members from the Public Works Department reviewed all proposals based on the criteria of qualifications, experience with similar projects, completeness, and clarity of proposal. The evaluating panel selected BFK Architecture + Planning as the successful applicant. BFK Architecture + Planning has extensive experience with state and federally-funded design projects, such as the Paso Robles Police Station, Lancaster Public Safety Building, Dallas South Central Police Station, and Polytechnic Heights Public Services Building.

FISCAL IMPACT: The cost associated with Agreement No. 23-46 with BFK Architecture + Planning is \$168,240. Staff is requesting a \$185,000 appropriation, consisting of \$168,240 for engineering design services and a \$16,760 contingency if additional work is required beyond the scope of work. Funds for this contract would be provided by 2021 Lease Revenue Bond Proceeds.

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

1. Approve Agreement No. 23-46 with BFK Architecture + Planning for engineering design services for the Montclair Branch Public Library Restrooms, Courtyard and Fire Stations Remodel Project, subject to any revisions deemed necessary by the City Attorney.
2. Authorize a \$185,000 appropriation from 2021 Leave Revenue Bond proceeds for costs related to Agreement No. 23-46; and
3. Authorize a \$16,760 design services contingency for the Project.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

Montclair Branch Public Library Restrooms and Courtyard Remodel Project

THIS AGREEMENT is made and effective as of July 17, 2023, between the City of Montclair, a municipal corporation ("City") and BFK Architecture + Planning, a California corporation/a partnership/a sole proprietor ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on July 17, 2023 and shall remain and continue in effect for a period of 12 months until tasks described herein are completed, but in no event later than December 17, 2023, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

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

3. PERFORMANCE

Consultant shall at all times faithfully, and competently perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement. Consultant shall have the duty to prepare any design documents free from defects.

4. CITY MANAGEMENT

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement and shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 5 hereof.

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed \$168,240 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

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

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

7. DEFAULT OF CONSULTANT

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

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

8. OWNERSHIP OF DOCUMENTS

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

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, claims, applications, computer files, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. Any reuse or modification of the work product without the prior written consent of Consultant will be at the

sole risk of the City. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Consultant shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Consultant herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Consultant, including its subcontractors, subconsultants, employees, agents, and other persons or entities performing work for Consultant.

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

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

(d) City Lost or Damaged Property – Theft. Consultant further agrees to pay or cause to be paid to the Indemnified Parties' benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Consultant or of Consultant's officers, agents, representatives, employees, independent contractors, subcontractors/subconsultants or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was

authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Consultant further agrees to waive all rights of subrogation against the Indemnified Parties.

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

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

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

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

10. INSURANCE

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

(a) Types of Required Coverages

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

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence, and \$4,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$2,000,000 for bodily injury and property damage, each accident. If Consultant owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

- (3) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$3,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

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

(1) Commercial General Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

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

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

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

(2) Auto Liability

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

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

(3) Workers' Compensation

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

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

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

(k) Insurance for Subcontractors/Sunconsultants

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

11. INDEPENDENT CONSULTANT

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

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

Agreement, or the services that may be procured by the City as a result of the recommendations made by the Consultant. The Consultant's covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

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

To City:

City Engineer
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant:

BKF Architecture + Planning
1337 Lida St
Pasadena, CA 91103

17. ASSIGNMENT AND SUBCONTRACTING

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF REQUEST FOR PROPOSALS

Consultant is bound by the contents of City's Request for Proposal, Exhibit "C" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Consultant, Exhibit

"D" hereto. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Consultant's proposals.

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Javier "John" Dutrey, Mayor

By: _____
Name:
Title:

Attest:

By: _____
Andrea M. Myrick, City Clerk

By: _____
Name:
Title:

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney



CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 2023	FILE I.D.:	HSV105
SECTION:	CONSENT - AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	6	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-47 WITH NUTRITION INK TO PROVIDE NUTRITION EDUCATION SERVICES FOR THE CITY'S SENIOR CITIZEN NUTRITION PROGRAM, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-47 with Nutrition Ink to provide nutrition education services for the City's Senior Citizen Nutrition Program, subject to any revisions deemed necessary by the City Attorney.

BACKGROUND: On June 6, 2022, the City Council approved Agreement No. 22-57 with the San Bernardino County Department of Aging and Adult Services – Public Guardian (DAAS-PG) to provide a three-year *Elderly Nutrition Program* (ENP) for participants aged 60 and over. The ENP requires the delivery of nutrition education from a registered dietician for participants, volunteers, and staff.

If approved, Nutrition Ink will be responsible for providing nutrition education services, including: monitoring the site for safe food handling and sanitation practices of facilities; providing input, reviewing, and approving the Nutrition Education Plan for staff and participants; providing nutrition education a minimum of four (4) times per year for food service staff (paid and volunteers) and participants; and providing technical support and assistance as needed.

FISCAL IMPACT: There will be no cost to the General Fund as a result of this agreement to provide nutrition education services. The cost of nutrition education services, \$3,000, will be grant-funded under Agreement No. 22-57 with DAAS. The term of Agreement No. 23-47 is July 1, 2023, to June 30, 2024.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 23-47 with Nutrition Ink to provide nutrition education services for the City's Senior Citizen Nutrition Program, subject to any revisions deemed necessary by the City Attorney.

NUTRITION INK AGREEMENT

I. OBJECTIVE:

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

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

PROGRAM DESCRIPTION:

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

2. TERMS OF AGREEMENT:

This is to certify that the City of Montclair’s Senior Nutrition Program has engaged the services of *NUTRITION INK* (Sub-Contractor) for its nutrition consultation to one (1) site, Montclair Senior Center. This service is effective July 1, 2023 through June 30, 2024.

3. RESPONSIBILITIES OF SUB-CONTRACTOR:

- A. At a minimum, quarterly monitor site for safe food handling and sanitation practices of facilities.
- B. Provide input, review, and approve the Nutrition Education Plan for staff and participants prior to presentation.
- C. Develop, or review and approve the cycle menus unless provided and signed by RD of approved caterer.
- D. Provide technical support and assistance as needed.
- E. Plans, organizes and conducts Nutrition Education a minimum of four (4) times per year for food service staff (paid and volunteers) and participants in congregate meal programs. Nutrition Education for congregate sites is defined as demonstrations, presentations, lectures or small group discussions, all of which may be augmented with printed materials. Training sessions shall be evaluated by those receiving the training.
- F. Nutrition Education shall be based on the particular need of congregate meal participants. An annual Needs Assessment shall be performed by the ENP Provider to make this determination.
- G. Since the Staff Training/Nutrition Education Plan and annual Needs Assessment must be submitted by the City of Montclair to DAAS by mid-July 2022, Sub-Contractor shall be required to support that timeline accordingly.
- H. Nutrition Education sessions must be reported monthly to DAAS using the Nutrition Education Monthly Service Unit Report.

Nutrition Education Units of Service:

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

4. RESPONSIBILITIES OF AGENCY/CONTRACTOR

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

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

6. The Sub-Contractor shall provide the following:

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

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

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

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

10. HIPAA Law:

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

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

Costs:

Nutrition Education and materials plus yearly plan	\$1000
Site Monitoring quarterly.....	\$1000
Staff Training quarterly.....	\$1000
Total.....	<u>\$3000</u>

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

SUB-CONTRACTOR:

CONTRACTOR:

NUTRITION INK

CITY OF MONTCLAIR

 Leslie Roos, RDN
 Leslie@nutritionink.com
 Manager of Operations

 Javier John Dutrey, Mayor

Date: _____

Date: _____

ATTEST:

 Andrea Myrick, City Clerk

Date: _____

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

NOTE: RETAIN IN EMPLOYEE/ VOLUNTEER FILE

NAME

POSITION

FACILITY

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

PERSONS WHO ARE REQUIRED TO REPORT ABUSE

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

PERSONS WHO ARE THE SUBJECT OF THE REPORT

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

REPORTING RESPONSIBILITIES AND TIME FRAMES

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

Reporting shall be completed as follows:

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

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

PENALTY FOR FAILURE TO REPORT ABUSE

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

CONFIDENTIALITY OF REPORTER AND OF ABUSE REPORTS

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

DEFINITIONS OF ABUSE

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

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

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

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

ATTACHMENT A

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

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

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

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

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

SIGNATURE	DATE
-----------	------



CITY COUNCIL AGENDA REPORT

DATE: JULY 17, 2023

FILE I.D.: HSV043

SECTION: CONSENT - AGREEMENTS

DEPT.: HUMAN SVCS.

ITEM NO.: 7

PREPARER: A. COLUNGA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 23-48 WITH SUZANNE YOAKUM TO PROVIDE CASE MANAGEMENT SERVICES FOR THE SENIOR CENTER, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-48 with Suzanne Yoakum to provide case management services for the Senior Center.

BACKGROUND: Case Management is a component of the Healthy Montclair initiative. Healthy Montclair is part of a countywide effort to improve the health and well-being of all county residents by creating healthy environments and promoting healthy life choices. The purpose of the Healthy Montclair Initiative is to achieve an excellence in quality of life for those who live, work, learn, play, eat, and shop in Montclair. Healthy Montclair defines health as a state of complete physical, mental, and social flourishing and not merely the absence of disease or infirmity.

The Human Services Department provides senior case management services at the Montclair Senior Center. Suzanne Yoakum has performed these case management services at the Senior Center for many years. Ms. Yoakum has extensive experience working in the social services field as well as being an educator in gerontology and a board member of local senior-serving non-profits. Under this proposed contract services agreement, in her role as case manager for the Senior Center, she will assist in guiding individuals and families to attain financial stability, including basic needs, sustaining safe housing, and moving toward more self-sufficient circumstances.

FISCAL IMPACT: Should the City Council approve Agreement No. 23-48, the City's contractual obligation for senior case management will be \$3,000. The funding for proposed Agreement No. 23-48 was allocated and approved within the Fiscal Year 2023-24 Human Services Department budget. The term of proposed Agreement No. 23-48 is July 1, 2023, through June 30, 2024.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 23-48 with Suzanne Yoakum to provide case management services for the Senior Center, subject to any revisions deemed necessary by the City Attorney.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

HUMAN SERVICES - PROGRAM FISCAL AND CONTRACT COMPLIANCE

THIS AGREEMENT is made and effective as of July 1, 2023 between the City of Montclair, a municipal corporation (“City”) and Suzanne Yoakum, a California sole proprietor (“Consultant”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on July 1, 2023 and shall remain and continue in effect for a period of 12 months until tasks described herein are completed, but in no event later than June 30, 2024 unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

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

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full. This amount is subject to receipt of grant funding and shall not exceed \$3,000 for the

total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

7. DEFAULT OF CONSULTANT

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

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure

the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Consultant shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Consultant herein, caused by or arising out of the negligent acts or omissions, or intentional

misconduct of Consultant, including its subcontractors, employees, agents, and other persons or entities performing work for Consultant.

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

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

(d) City Lost or Damaged Property – Theft. Consultant further agrees to pay or cause to be paid to the Indemnified Parties' benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Consultant or of Consultant's officers, agents, representatives, employees, independent contractors, subconsultants or affiliated or related entities and/or its or their employees, agents and representatives, whether such

actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Consultant further agrees to waive all rights of subrogation against the Indemnified Parties.

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

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

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

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

10. INSURANCE

(a) **Types of Required Coverages**

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

- (1) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$100,000 for bodily injury and property damage, each accident. If Consultant owns no vehicles, auto liability coverage may be

provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

- (2) **Workers' Compensation:** If applicable, Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.

(b) Endorsements

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

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

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

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
 2. Exclude "Contractual Liability"
 3. Restrict coverage to the "Sole" liability of consultant
 4. Exclude "Third-Party-Over Actions"
 5. Contain any other exclusion contrary to the Contract)
- (2) The policy or policies of insurance required by Section (a)(2) Workers' Compensation shall be endorsed, as follows:

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

(c) Notice of Cancellation

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

11. INDEPENDENT CONTRACTOR

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

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

(c) In regard to the professional services provided by Consultant and defined in Exhibit "A," City and Consultant specifically agree as follows:

- (1) While Consultant may perform certain services at the premises of City, Consultant is not required to do so and may perform services at her separate business location.
- (2) With the exception of agreed upon project completion dates and the agreement the Consultant will be available at reasonable business hours, the Consultant shall have the ability to set his/her own hours of operation.
- (3) Consultant represents that the services he/she performs under this Agreement are the same services Consultant is customarily engaged in his/her business. City acknowledges that Consultant does not perform services exclusively for City and that Consultant performs or is available to perform these same services to other clients.
- (4) Consultant will use his/her own discretion and independent judgment in the performance of the services rendered for City under the terms of this Agreement.

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) Consultant covenants that neither he/she nor any office or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

16. NOTICES

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

To City:	Marcia Richter Human Services Director City of Montclair 5111 Benito Street Montclair, CA 91763
----------	---

To Consultant:	Sue Yoakum 1400 W. Francis Avenue Ontario, CA 91762
----------------	---

17. ASSIGNMENT

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

Consultant's responsible employee may use assistants, under his direct supervision, to perform some of the services under this Agreement. Consultant shall

provide City fourteen (14) days' notice prior to the departure of the responsible employee from Consultant's employ. Should he leave Consultant's employ, the City shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONFIDENTIALITY

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

22. DISCRIMINATION

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

23. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Javier John Dutrey, Mayor

By: _____
Suzanne Yoakum, Consultant

Attest:

By: _____
Andrea Myrick, City Clerk

Approved as to Form:

By: _____
City Attorney

EXHIBIT A

During the term of this Agreement and in accordance with Section 2, **CONSULTANT** shall provide the services described below:

- a) Share technical expertise and provide guidance to the Human Services staff on senior needs.
- b) Provide case management to assist seniors and individuals and families in attaining financial stability including basic needs, sustaining safe housing, and moving toward more self-sufficient circumstances. In addition, provide case management to those with more complex needs referred by Human Services Department Staff.
- c) Service at least 50 case management clients
- d) Collect and maintain required paperwork, as determined by Human Services Department Staff.
- e) Assist with compiling information and reporting case management information as required.
- f) Provide monthly invoices by the 5th of the following month to Alyssa Colunga, Assistant Director of Human Services acolunga@cityofmontclair.org along with a written accounting and confirmation of tasks performed each month.

EXHIBIT B

Payment Schedule

<u>Month</u>	<u>Amount</u>
July	\$250.00
August	\$250.00
September	\$250.00
October	\$250.00
November	\$250.00
December	\$250.00
January	\$250.00
February	\$250.00
March	\$250.00
April	\$250.00
May	\$250.00
June	\$250.00
Total	\$3,000.00



CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 2023	FILE I.D.:	HSV020
SECTION:	CONSENT - AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	8	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-49 WITH MISHA L. PENN TO PROVIDE GRANT MANAGEMENT AND FISCAL COMPLIANCE SERVICES FOR THE HUMAN SERVICES DEPARTMENT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-49 with Misha L. Penn to provide grant management and fiscal compliance services for the Human Services Department.

BACKGROUND: Healthy Montclair is part of a countywide effort to improve the health and well-being of all county residents by creating healthy environments and promoting healthy life choices. The purpose of the Healthy Montclair Initiative is to achieve an excellence in quality of life for those who live, work, learn, play, eat, and shop in Montclair. Healthy Montclair defines health as a state of complete physical, mental, and social flourishing and not merely the absence of disease or infirmity.

As part of the Healthy Montclair Initiative, the Human Services Department applies for and receives grant funding for various programs from private foundations, San Bernardino County, and the State of California—some of which include Federal Funding. For the past ten years, Misha L. Penn has supported the Human Services Department in grant management and fiscal compliance. Ms. Penn has a bachelor's degree in Business Administration and a combined thirty-four years of experience in contract management, grant compliance, program finance, and project implementation covering public, private, and non-profit sectors. Under this proposed contract services agreement, Misha L. Penn will continue to support the Human Services Department as an independent contractor.

FISCAL IMPACT: This contractual obligation of \$30,000 will be funded with existing Human Services Department grant budget funds allocated and approved within the Fiscal Year 2023-24 Human Services Department budget. Should the City Council approve Agreement No. 23-49, there would be no adverse impact to the City's General Fund. The term of proposed Agreement No. 23-49 is July 1, 2023, through June 30, 2024.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 23-49 with Misha L. Penn to provide grant management and fiscal compliance for the Human Services Department, subject to any revisions deemed necessary by the City Attorney.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

HUMAN SERVICES - PROGRAM FISCAL AND CONTRACT COMPLIANCE

THIS AGREEMENT is made and effective as of July 1, 2023 between the City of Montclair, a municipal corporation (“City”) and Misha L. Penn, a California sole proprietor (“Consultant”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on July 1, 2023 and shall remain and continue in effect for a period of 12 months until tasks described herein are completed, but in no event later than June 30, 2024 unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

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

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full. This amount is subject to receipt of grant funding and shall not exceed \$30,000 for the

total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

7. DEFAULT OF CONSULTANT

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

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure

the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Consultant shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Consultant herein, caused by or arising out of the negligent acts or omissions, or intentional

misconduct of Consultant, including its subcontractors, employees, agents, and other persons or entities performing work for Consultant.

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

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

(d) City Lost or Damaged Property – Theft. Consultant further agrees to pay or cause to be paid to the Indemnified Parties' benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Consultant or of Consultant's officers, agents, representatives, employees, independent contractors, subconsultants or affiliated or related entities and/or its or their employees, agents and representatives, whether such

actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Consultant further agrees to waive all rights of subrogation against the Indemnified Parties.

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

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

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

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

10. INSURANCE

(a) **Types of Required Coverages**

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

- (1) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$100,000 for bodily injury and property damage, each accident. If Consultant owns no vehicles, auto liability coverage may be

provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

- (2) **Workers' Compensation:** If applicable, Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.

(b) Endorsements

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

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

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

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
 2. Exclude "Contractual Liability"
 3. Restrict coverage to the "Sole" liability of consultant
 4. Exclude "Third-Party-Over Actions"
 5. Contain any other exclusion contrary to the Contract)
- (2) The policy or policies of insurance required by Section (a)(2) Workers' Compensation shall be endorsed, as follows:

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

(c) Notice of Cancellation

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

11. INDEPENDENT CONTRACTOR

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

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

(c) In regard to the professional services provided by Consultant and defined in Exhibit "A," City and Consultant specifically agree as follows:

- (1) While Consultant may perform certain services at the premises of City, Consultant is not required to do so and may perform services at her separate business location.
- (2) With the exception of agreed upon project completion dates and the agreement the Consultant will be available at reasonable business hours, the Consultant shall have the ability to set his/her own hours of operation.
- (3) Consultant represents that the services he/she performs under this Agreement are the same services Consultant is customarily engaged in his/her business. City acknowledges that Consultant does not perform services exclusively for City and that Consultant performs or is available to perform these same services to other clients.
- (4) Consultant will use his/her own discretion and independent judgment in the performance of the services rendered for City under the terms of this Agreement.

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) Consultant covenants that neither he/she nor any office or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

16. NOTICES

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

To City:	Marcia Richter Human Services Director City of Montclair 5111 Benito Street Montclair, CA 91763
----------	---

To Consultant:	Misha L. Penn 808 Cloverview Drive Glendora, CA 91741
----------------	---

17. ASSIGNMENT

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

Consultant's responsible employee may use assistants, under his direct supervision, to perform some of the services under this Agreement. Consultant shall

provide City fourteen (14) days' notice prior to the departure of the responsible employee from Consultant's employ. Should he leave Consultant's employ, the City shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONFIDENTIALITY

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

22. DISCRIMINATION

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

23. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Javier John Dutrey, Mayor

By: _____
Misha L. Penn, Consultant

Attest:

By: _____
Andrea Myrick, City Clerk

Approved as to Form:

By: _____
City Attorney

EXHIBIT A

During the term of this Agreement and in accordance with Section 2, **CONSULTANT** shall provide the services described below:

- a) Share technical expertise and provide guidance to the Human Services staff on the basics of public and private contracting, contract administration, project management, cost control, and project scheduling.
- b) Support and advise Human Services staff on action planning including prioritization and identification of best practices to consider for department activities, projects, and grant-funded programs.
- c) Provide guidance and technical assistance for grant contract and subcontract compliance including requirements unique to state and federally-funded fixed price and cost reimbursement contract types, which may include but are not limited to the County of San Bernardino's Department of Aging and Adult Services, the California Office of Traffic Safety, the Southern California Association of Governments, as well as other private foundations.
- d) Provide guidance and technical assistance in drafting agreements/subcontracts and proper flowdown of contract requirements.
- e) Provide guidance and technical assistance for grant proposals/applications and grant fiscal reporting.
- f) Support preparation for grant contract administrative and fiscal compliance monitoring.
- g) Support and advise on short-term capacity building priorities for Human Services' staff.
- h) Support and advise on mid-term capacity building priorities for marketing, communications, training, adaptability to change, and basic infrastructure issues.

EXHIBIT B

Payment Schedule

<u>Month</u>	<u>Amount</u>
July	\$2,500.00
August	\$2,500.00
September	\$2,500.00
October	\$2,500.00
November	\$2,500.00
December	\$2,500.00
January	\$2,500.00
February	\$2,500.00
March	\$2,500.00
April	\$2,500.00
May	\$2,500.00
June	<u>\$2,500.00</u>
Total	\$30,000.00



CITY COUNCIL AGENDA REPORT

DATE: JULY 17, 2023 **FILE I.D.:** VEH350
SECTION: CONSENT - AGREEMENTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 9 **PREPARER:** M. PARADIS
SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 23-52 WITH ZPR'S HOUSE OF CAR WASH FOR CAR WASH SERVICES FOR CITY VEHICLES

REASON FOR CONSIDERATION: The City currently contracts with Tommy's Express Car Wash for self-service car wash services for City vehicles. The City would like to contract with an additional vendor, ZPR's House of Car Wash (House of Car Wash), for full-service hand car wash services. Agreements with the City require City Council approval.

A copy of proposed Agreement No. 23-52 with House of Car Wash is attached for City Council review. City Attorney Robbins has reviewed the contract.

BACKGROUND: Regular vehicle cleaning services are necessary as preventative maintenance for all City vehicles. House of Car Wash on Holt Boulevard was used by the City for hand car washes since at least 2010 up until 2020, when the service closed.

Staff currently take vehicles to Tommy's Express Wash or Metro Express for vehicle cleaning, which are drive-through, self-service car washes. These businesses do not offer hand washing or detailing services, and all interior cleaning is done by City staff using the provided vacuums. When more detailed car washing services are needed, a mobile detailing service is used.

House of Car Wash has recently reopened under new management, and still offers hand washing and detailing services. The basic wash service from House of Car Wash includes a hand wash, vacuuming, cleaning the interior and exterior windows, tire dressing, air freshener, dashboard and cup holder cleaning, and dusting.

The cost for car wash services from House of Car Wash are listed below. Because these washes are not self-service, tips are included for the car wash employees who perform the services.

Service	Price	Tip	Total
Basic Wash	\$20.00	\$5.00	\$25.00
VIP Service	\$40.00	\$10.00	\$50.00

The City will begin to use House of Car Wash periodically when needed, and will continue to use Tommy's Express Wash and Metro Express for routine vehicle cleaning services.

FISCAL IMPACT: Adding House of Car Wash as an approved car wash vendor will cause no additional fiscal impact to the City. The same amount of car wash services will still be utilized annually, but the cost will be split between House of Car Wash and Tommy's Express Wash.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 23-52 with ZPR's House of Car Wash for car wash services.

AGREEMENT NO. 23-52
BY AND BETWEEN
THE CITY OF MONTCLAIR
AND ZPR'S HOUSE OF CAR WASH

THIS AGREEMENT is made and entered into this 17th day of July, 2023, by and between the CITY OF MONTCLAIR, a Municipal Corporation, County of San Bernardino, State of California, hereinafter referred to as "CITY," and ZPR'S HOUSE OF CAR WASH, Corporation hereinafter referred to as "VENDOR."

WITNESSETH:

SECTION I

The VENDOR, in consideration of the promises of the CITY hereinafter set forth, hereby agrees to furnish all tools, equipment, materials, labor, and transportation necessary to perform and complete the terms of this Agreement and to faithfully perform and maintain in a good and workmanlike manner the maintenance services on the areas as set forth and listed in this Agreement.

SECTION II

This Agreement is for a period of one (1) year from the date hereinabove set forth and can be renewed annually up to five (5) years with the consent of the CITY and the VENDOR, subject to the right of either party to cancel without cause by giving a minimum of thirty (30) days' written notice to the other of such cancellation.

SECTION III

All of the work and services to be performed pursuant to this Agreement shall be performed in a good and workmanlike manner. VENDOR shall pay prevailing wages in accordance with the laws of the State of California. Payment for work completed will be based on the following schedule:

Service	Price	Tip	Total
Basic Wash	\$20.00	\$5.00	\$25.00
VIP Service	\$40.00	\$10.00	\$50.00

Payment will be made no later than on the 30th day of each and every calendar month during the term of this Agreement, which will be paid to the VENDOR for all work and services to be performed pursuant to the Agreement. Payment of additional services requested, in writing, by CITY and not included in the Scope of Services as set forth in this Agreement, shall be negotiated on an item- by-item basis. Any additional service cost will include labor, equipment, overhead, and profit. Charges for additional services shall be invoiced on a monthly basis and shall be paid by the CITY within a reasonable time after said invoices are received by the CITY.

SECTION IV

The VENDOR shall defend, indemnify, and save harmless the CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, including the payment by the VENDOR of any and all legal costs and attorneys' fees, in any manner arising out of any negligent or intentional or willful acts or omissions of the VENDOR or any of its agents, servants, employees, or licensees in the performance of this Agreement including, but not be limited to, all consequential damages to the maximum extent permitted by law.

SECTION V

The Public Works Operations Assistant Manager, or his designated representative, shall be the judge of all work performed by the VENDOR. If the work is not satisfactory, the Public Works Operations Assistant Manager, or his designated representative may suspend the Agreement for any period of time or terminate the Agreement as set forth herein. No sums shall be due or payable to the VENDOR for or during any time of such suspension or after termination.

SECTION VI : SPECIFIC

A. Scope of Work

The work shall consist of furnishing all materials, labor, equipment, and incidentals necessary for cleaning of the exterior of each vehicle.

1. WORKING HOURS: All work shall be performed between the hours of 8:00 a.m. and 6:00 p.m., weekdays and weekends.
2. INSPECTION BY THE CITY: The CITY shall inspect all work performed under this contract for compliance to the specifications and report any deficiencies to the VENDOR.
4. DAMAGE TO PROPERTY: The VENDOR shall not damage any CITY property as a result of the work specified. Any damage resulting from the VENDOR's work shall be repaired, restored or replaced in kind within a timely manner at the expense of VENDOR.
5. WORKMANSHIP: All work shall be completed in a timely and workmanlike manner. The VENDOR shall provide qualified workers trained according to ZPR's House of Car Wash standards.
6. MEASUREMENT AND PAYMENT: The unit prices called for in the Agreement shall be full compensation for all labor, materials, and equipment necessary to complete the work as specified. A Standard Carwash shall mean any vehicle able to go through Carwash tunnel.

No further compensation shall be made unless authorized by the Public Works Operations Assistant Manager or his designated representative.

SECTION VII : MISCELLANEOUS PROVISIONS

- A. Assignment. No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by the VENDOR without the written consent of the CITY.
- B. Discrimination. The VENDOR 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 VENDOR agrees to comply with all County, State, and Federal laws relating to equal employment opportunity rights.
- C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- D. Attorneys' Fees. In the event that any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount to be determined by the Court to be reasonable.
- E. Entire Agreement. This Agreement supersedes any and all other agreements either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any other party that is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing, signed by all parties.

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

VENDOR:

**ZPR'S HOUSE OF CAR WASH
5064 Holt Blvd., Montclair, CA 91763**

CITY:

**City of Montclair
5111 Benito Street, Montclair, CA 91763**

William Zendejas, Managing Partner

Javier John Dutrey, Mayor

ATTEST:

Andrea M. Myrick, City Clerk

APPROVED AS TO FORM:

Diane E. Robbins, City Attorney



CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 2023	FILE I.D.:	COC050
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ECONOMIC DEV.
ITEM NO.:	10	PREPARER:	T. MARTIN
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-53 WITH THE MONTCLAIR CHAMBER OF COMMERCE TO PROVIDE SERVICES TO PROMOTE LOCAL ECONOMIC DEVELOPMENT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-53 with the Montclair Chamber of Commerce to provide services to strengthen and enhance local economic development activities.

A copy of proposed Agreement No. 23-53 is attached for review and consideration.

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

Agreement No. 23-53 would provide funding to the Montclair Chamber of Commerce, a partner agency, for the following services to support economic development in the City of Montclair:

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

The term of Agreement No. 23-53 is July 1, 2023 through June 30, 2024.

FISCAL IMPACT: If approved by the City Council, the Montclair Chamber of Commerce would receive \$20,000 for the 2023-24 Fiscal Year, payable in equal quarterly payments of \$5,000. This amount was approved in the Fiscal Year 2023-24 Budget in the Economic Development Fund.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 23-53 with the Montclair Chamber of Commerce to provide services to promote local economic development, subject to any revisions deemed necessary by the City Attorney.

**ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF MONTCLAIR
AND THE MONTCLAIR CHAMBER OF COMMERCE**

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 1st day of July, 2023, by the City of Montclair, hereinafter referred to as the "CITY," and the Montclair Chamber of Commerce, hereinafter referred to as the "CHAMBER."

1. RECITALS

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

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

2. AGREEMENT

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

ARTICLE 1 – RECITALS

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

ARTICLE 2 – SERVICES

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

- a. Employ a President/CEO who is an economic development professional with the requisite knowledge, skills, expertise necessary to lead the economic development efforts.
- b. Advise private business concerns located within the **CITY**, existing business and the business community of the available opportunities within the **CITY** and within its utilities service area of which they may take advantage and counsel them regarding their suitability to participate in available county, state, and federal economic development programs and grants.
- c. Monitor and aid in the retention, expansion and development of existing businesses.

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

ARTICLE 3 - PLACE OF WORK

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

ARTICLE 4 - PAYMENT

The **CITY** will pay the **CHAMBER** the total sum of \$20,000 annually payable in equal quarterly payments of \$5,000 on or before the 30th day of the beginning of each quarter.

ARTICLE 5 - REPORTING

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

ARTICLE 6 – RELATIONSHIP OF PARTIES

- a. The **CHAMBER** is an independent entity and not a department, agency or subdivision of the **CITY**. The **CITY** and the **CHAMBER** are two separate and autonomous entities.
- b. **CHAMBER** is and shall at all times remain as to the **CITY** a wholly independent contractor. The personnel performing the services under this Agreement on behalf of **CHAMBER** shall at all times be under **CHAMBER's** exclusive direction and control and shall not be construed to be employees of **CITY** for any purpose, including eligibility under Public Employees Retirement Law. Neither **CITY** nor any of its officers, employees, or agents shall have control over the conduct of **CHAMBER** or any of **CHAMBER's** officers, employees, or agents, except as set forth in this Agreement. **CHAMBER** shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the **CITY**. **CHAMBER** shall not incur or have the power to incur any debt, obligation, or liability whatever against **CITY**, or bind **CITY** in any manner. No employee benefits shall be available to **CHAMBER** in connection with the performance of this Agreement. Except for the fees paid to **CHAMBER** as provided in the Agreement **CITY** shall not pay salaries, wages, or other compensation to **CHAMBER** for performing services hereunder for **CITY**. **CITY** shall not be liable for compensation or indemnification to **CHAMBER** for injury or sickness arising out of performing services hereunder.
- c. The **CITY** and the **CHAMBER** acknowledge that this Agreement is not a delegation of any public function of the **CITY** and that neither party will play an integral part in either party's decision-making process by reason of this Agreement.

ARTICLE 7 – DURATION

- a. The initial term of this Agreement shall be for a period of one (1) year commencing July 1, 2023, and continuing through June 30, 2024; this **AGREEMENT** may be renewed annually.
- b. Either party may terminate this Agreement upon ninety (90) days written notice to the other party.
- c. Any notice required or allowed hereunder shall be in writing and sent by certified mail, return receipt requested, or in person with proof of delivery, to the address first listed above, or such other addresses as either party shall have specified by written notice to the other party delivered in accordance herewith.

ARTICLE 8 – NONDISCRIMINATION

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

ARTICLE 9 – MISCELLANEOUS

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

- j. Each person executing this Agreement warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind the parties hereto.
- k. The **CHAMBER** shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. The **CHAMBER** shall at all times observe and comply with all such laws and regulations. The **CITY** and its officers and employees, shall not be liable at law or in equity occasioned by failure of the **CHAMBER** to comply with this Section.
- l. No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the economic development activities during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or subagreement, or the proceeds thereof, for work to be performed in connection with the activities performed under this Agreement.
- m. **CHAMBER** agrees to defend, indemnify, and hold harmless the **CITY**, its officers, employees, agents, and volunteers from any and all liabilities for injury to persons and damage to property arising out of any act or omission of **CHAMBER**, its officers, employees, agents, or volunteers in connection with **CHAMBER's** performance of its obligations under this Agreement.

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

"CITY"

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

"CHAMBER"

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

By: _____
Javier John Dutrey
Mayor

By: _____
Steve Hammitt
President/CEO

Date: _____

Date: _____

ATTEST:

Andrea M. Myrick
City Clerk



CITY COUNCIL AGENDA REPORT

DATE: JULY 17, 2023

FILE I.D.: PDT360

SECTION: CONSENT - AGREEMENTS

DEPT.: POLICE

ITEM NO.: 11

PREPARER: J. REED

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 23-55 WITH TOC PUBLIC RELATIONS TO DEVELOP A RECRUITMENT WEBSITE EXCLUSIVELY FOR THE POLICE DEPARTMENT, INCLUDING A PHOTO AND VIDEO RECRUITMENT PACKAGE AND A SOCIAL MEDIA AD CAMPAIGN FOR THE PURPOSE OF ATTRACTING AND RECRUITING POLICE OFFICER CANDIDATES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING ACTING POLICE CHIEF JASON REED TO SIGN SAID AGREEMENT

CONSIDER AUTHORIZING A \$40,000 APPROPRIATION FROM THE FEDERAL ASSET FORFEITURE FUND FOR COSTS ASSOCIATED WITH AGREEMENT NO. 23-55

REASON FOR CONSIDERATION: The City Council is requested to consider approving Agreement No. 23-55 with TOC Public Relations for the development of a recruitment website, including a photo and video recruitment package and a targeted social media ad campaign, for the purpose of attracting and recruiting police officer candidates to fill multiple vacancies in the Police Department. The City Council is also requested to authorize a \$40,000 appropriation from the Federal Asset Forfeiture Fund for costs related to the contract.

A copy of proposed Agreement No. 23-55 is attached for City Council review and consideration.

BACKGROUND: In the ever-competitive job market for the position of a full-time police officer, the Police Department is exploring several different avenues to recruit and retain qualified candidates for the position of full-time, sworn police officer. Command and recruitment staff at the Police Department are constantly and vigorously recruiting for police officers, and have identified a successful and modern tool utilized by other agencies throughout the State as it pertains to stand-alone recruitment websites, recruitment videos, and targeted social media ad campaigns.

The Police Department, including members of its Social Media Team, has discovered successful outside agencies' recruitment websites and other digital media, and has conducted research into companies that create the content for these websites. TOC Public Relations out of Chino Hills has been identified as a creator of such websites that specializes in digital marketing, including professional recruitment videos and photography. TOC Public Relations also assists with paid advertisement placement on social media platforms, which reach out to a high volume of interested candidates.

The websites created by TOC Public Relations are highly polished, organized, interactive, and professionally constructed to work on all platforms including smartphones and desktop computers. They include a homepage, which is simple yet information-packed with the goal of drawing visitors into the recruitment website even further. They also contain highlighted points of their respective police department and call-to-actions to

get prospective candidates to engage with the site. The websites highlight department leaders, mission statements, and general information about the police department as well as list available job opportunities with benefits, resources, and requirements to obtain the positions. Also included are links to the department's social media platforms and an easy-to-use contact form for visitors to easily contact the department's recruiters.

Along with the development of a recruitment website, TOC Public Relations would also provide a photo and video recruitment package, included in the purchase price, which would be conducted at the Montclair Police Department and in the community to produce over 75 edited photos and up to three recruitment videos. These photos and videos would not only highlight the job and duties of a police officer, but would also display the personal side of the officers—what drove them to become an officer and what drives them to continue serving with the Montclair Police Department.

TOC Public Relations would also publish and manage a recruitment social media ad campaign, which would utilize the Department's current Facebook and Instagram media platforms. This campaign would reach out to members of the community and abroad to attract new and lateral police officers to the website and ultimately provide a convenient conduit for them to contact recruiters at the Montclair Police Department.

Included in the cost is an annual accessibility and translation software plug-in subscription and installation fee and an annual website maintenance package fee, which provides software updates, security scans, hosting, backups, and multiple content edits per year on an as-needed basis.

TOC Public Relations has been utilized by multiple other law enforcement agencies of multiple different sizes including; Azusa, Carlsbad, Bakersfield, Santa Maria, and Coronado Police Departments; and large sheriff's departments such as Kern County and San Joaquin County. Staff reached out to some of these agencies, all of which spoke highly of the experience with TOC Public Relations and to the success of the websites along with the associated media content. They mentioned analytics are provided by TOC Public Relations that highlight website traffic and measure the success, clicks, and views of the stand-alone recruitment websites. In addition, many of the listed agencies utilize QR-coded bumper stickers, signage, business cards, and other media, which have measured a high success rate as a quick portal into their recruitment websites. Of the contacted listed agencies, all praised the response time, adaptability, flexibility, and ease of working with TOC Public Relations, and complimented its broad capabilities and areas of expertise as compared to other similar companies providing similar services.

FISCAL IMPACT: If authorized by the City Council, funding for Agreement No. 23-55 with TOC Public Relations would result in an appropriation from the Federal Asset Forfeiture Fund 1144 in the amount of \$40,000. A 50 percent deposit would be due prior to starting the website build or booking the photo/video shoot. The balance would be due upon initial delivery of the completed projects. The social media campaign must be pre-paid in full.

Additional years of service, if authorized by the City Council, would result in an expenditure of \$6,500 for each year thereafter from the City's General Fund for an annual accessibility and translation software plug-in subscription fee and an annual website maintenance fee.

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

1. Approve of Agreement No. 23-55 with TOC Public relations to develop a recruitment website exclusively for the police department, including a photo and video recruitment package and a social media ad campaign for the purpose of attracting and recruiting police officer candidates, subject to any revisions deemed necessary by the City Attorney;
2. Authorize Acting Police Chief Jason Reed to sign said Agreement; and
3. Authorize a \$40,000 appropriation from the Federal Asset Forfeiture Fund for costs associated with Agreement No. 23-55.



AGREEMENT NO. 23-55

TOC Public Relations
9092919199
4195 Chino Hills Parkway #561
Chino Hills, CA 91709

Prepared For

Jason Reed
Montclair Police Department

Proposal Date

06/15/2023

Proposal Number

0000214

Overview

TOC Public Relations is a PR firm that specializes in digital marketing, strategic communications, and all aspects of public relations, with a specialty in public safety agencies, associations, and organizations. Find out more about who we are and what we do at tocpublicrelations.com.

Recruitment Website

We will design a highly polished, interactive, and professional website that properly works on all platforms, regardless of on a smartphone or a desktop computer. Having developed several law enforcement agencies, associations, non-profits, and related websites, we know what you need and what you don't need to accomplish your recruiting goals.

The website will include the following pages and content:

Homepage: A simple yet information-packed page with the goal of drawing visitors into your website even further. It will have the highlighted points of your department and call-to-actions to get prospective candidates to engage with the site.

About: This page will highlight your department leaders, mission statement, and general information about the department.

Join: Available job opportunities will be listed along with the benefits, resources, and requirements to obtain the positions.

Social Media Integration: Along with links to your social media platforms, we will embed your most popular social media feed into your website to improve your social media engagement.

Contact Form: We will provide a way for website visitors to contact your recruiters.

Accessibility and Translation: Your website will be in compliance with current accessibility laws and will also have a translation module to meet the needs of any website visitor.

Photo and Video Package

A photo and video shoot will be conducted over two days to produce a minimum of 75 edited photos and three videos (60-90 seconds in length).

Each video will be formatted for use on various platforms.

Samples of Work

Photos and Video:

- <https://tocpublicrelations.com/content-creation>
- <https://www.instagram.com/tocpublicrelations/>
- <https://www.youtube.com/@tocpublicrelations/videos>

Websites:

- <https://kcsojobs.org/>
- <https://joinsantamariapd.com/>
- <https://joinbpd.us/>
- <https://sjsheriff.org/>
- <https://covinapd.org/>

Client References

- Tracy PD: Chief Millington | 209.814. 5373 or sekou.millington@tracypd.com | Scope of work: website and videography
- Kern County Sheriff: Lori Meza | 661.391.7566 or meza@kernsheriff.org
- Santa Maria PD: Gina Avalos | 805.928.3781 ext.1620 or gavalos@cityofsantamaria.org | Scope of work: website and photography
- San Joaquin County Sheriff: Lt Seto | 209.468.5507 or kseto@sjgov.org | Scope of work: website, communications consulting, graphic design, social media ads, photography, and videography
- Coronado PD: Lea Corbin | 619.522.7370 or lcorbin@coronado.ca.us | Scope of work: photography and videography
- Azusa Police Department: Jennifer Wu | 626.812.3262 or jwu@azusaca.gov | Scope of work: videography
- Carlsbad PD: Sgt Zavala | 442.339.5683 or melissa.cobian@carlsbadca.gov | Scope of work: photography and videography

Social Media Ad Campaign

Three social media ads (Facebook and IG) using media created by TOC Public Relations. Includes publishing, ad management, and monitoring.

Pricing

Description	Rate	Qty	Line Total
Recruitment Website Development Design and development of website.	\$16,000.00	1	\$16,000.00
Annual Website Maintenance Website maintenance package for software updates, security scans, hosting, back-ups, and content edits (up to 15 hours per year).	\$5,000.00	1	\$5,000.00
Annual Accessibility and Translation Software Plug-in Software subscription and installation.	\$1,500.00	1	\$1,500.00
Photography and Videography Package 75 photos and three videos (two day shoot).	\$15,000.00	1	\$15,000.00
Social Media Ad Campaign Three social media ads.	\$2,500.00	1	\$2,500.00

Subtotal	40,000.00
----------	-----------

Tax	0.00
-----	------

Proposal Total (USD)	\$40,000.00
-----------------------------	--------------------

Terms

A 50% deposit is due prior to starting the website build or booking the photo/video shoot; the balance is due upon initial delivery of the completed projects. Social media campaign must be pre-paid in full. Once the website and videos are delivered, there will be two rounds of revisions. You will incur additional charges in the event there are significant changes to the website build and/or after revisions have been made and approved by you.

Annual fees in the amount of \$6,500.00 will be due one year from the initial website delivery date.

Jason Reed, Montclair Police Department



CITY COUNCIL AGENDA REPORT

DATE:	JULY 17, 2023	FILE I.D.:	STB300-17
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	CITY MGR.
ITEM NO.:	1	PREPARER:	C. GRAVES
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 23-3409 AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH CHARGES		

REASON FOR CONSIDERATION: Staff has identified 165 sewer and trash accounts in the odd-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien.

BACKGROUND: Ordinance No. 02-815 authorizes the placement of liens on properties on which delinquent civil debts have accrued and makes property owners responsible for delinquent sewer and trash charges accrued after the effective date of the Ordinance (March 1, 2002) for accounts in tenants' names. Prior to the City Council's adoption of Ordinance No. 02-815, property owners were responsible for only those accounts in their own names.

FISCAL IMPACT: Recoverable amount is \$54,625.27, plus \$3,300.00 for release of lien fees, plus \$8,250.00 in lien fees, for a total of \$66,175.27.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 23-3409 authorizing placement of liens on certain properties for delinquent sewer and trash charges as listed on Exhibit A of said Resolution.

RESOLUTION NO. 23-3409

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH ACCOUNTS

WHEREAS, Chapter 1.12 of the Montclair Municipal Code authorizes the City to place liens on properties on which delinquent civil debts have accrued; and

WHEREAS, all owners of property in the City of Montclair were notified about the adoption of Ordinance No. 02-815 authorizing placement of liens on properties on which delinquent civil debts have accrued; and

WHEREAS, it has been determined that there are 165 sewer and/or trash accounts on which there are delinquencies in excess of 90 days; and

WHEREAS, the owners of these properties have received regular billing statements and late notices since the onset of such delinquencies; and

WHEREAS, the owners of these properties were notified on June 8, 2023, that their delinquent accounts are subject to causing a lien to be placed on their properties for settlement of such delinquencies; and that such liens would be considered for approval by the Montclair City Council on Monday, July 17, 2023.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair approves the placement of liens on the properties and in the amounts specified in Exhibit A, entitled Report of Delinquent Civil Debts - July 2023, attached hereto.

BE IT FURTHER RESOLVED that the City Clerk is authorized to provide the San Bernardino County Auditor/Controller-Recorder with the documents required to cause such liens to be placed.

APPROVED AND ADOPTED this XX day of XX, 2023.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 23-3409 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 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

Exhibit A to Resolution No. 23-3409
Report of Delinquent Civil Debts - July 2023

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
5356	Alamitos Street	Residential	308.78	20.00	50.00	378.78
9757	Amherst Avenue	Residential	308.78	20.00	50.00	378.78
9910	Amherst Avenue	Residential	308.78	20.00	50.00	378.78
9960	Amherst Avenue	Residential	314.37	20.00	50.00	384.37
10085	Amherst Avenue	Residential	289.98	20.00	50.00	359.98
5460	Armsley Street	Residential	238.53	20.00	50.00	308.53
5102	Aspen Drive	Residential	394.52	20.00	50.00	464.52
5105	Aspen Drive	Residential	321.81	20.00	50.00	391.81
9824	Bel Air Avenue	Residential	289.25	20.00	50.00	359.25
9909	Bel Air Avenue	Residential	310.21	20.00	50.00	380.21
9910	Bel Air Avenue	Residential	249.12	20.00	50.00	319.12
10024	Bel Air Avenue	Residential	302.92	20.00	50.00	372.92
10045	Bel Air Avenue	Residential	317.23	20.00	50.00	387.23
10087	Bel Air Avenue	Residential	254.02	20.00	50.00	324.02
4435	Benito Street	Residential	306.21	20.00	50.00	376.21
4460	Benito Street	Residential	308.78	20.00	50.00	378.78
4814	Benito Street	Senior	384.04	20.00	50.00	454.04
5233	Benito Street	Senior	276.40	20.00	50.00	346.40
5429	Benito Street	Residential	308.78	20.00	50.00	378.78
5598	Benito Street	Residential	338.81	20.00	50.00	408.81
4843	Berkeley Street	Residential	308.79	20.00	50.00	378.79
5392	Berkeley Street	Residential	498.18	20.00	50.00	568.18
9598	Bolton Avenue	Residential	308.78	20.00	50.00	378.78
9768	Bolton Avenue	Residential	428.53	20.00	50.00	498.53
9778	Bolton Avenue	Residential	276.12	20.00	50.00	346.12
4541	Bonnie Brae Street	Residential	308.78	20.00	50.00	378.78
4599	Bonnie Brae Street	Residential	320.41	20.00	50.00	390.41
5051	Brooks Street	Residential	289.05	20.00	50.00	359.05
11322	Butterfield Avenue	Residential	258.98	20.00	50.00	328.98
9851	Camarena Avenue	Residential	308.78	20.00	50.00	378.78
4443	Cambridge Street	Residential	309.05	20.00	50.00	379.05
4853	Cambridge Street	Residential	308.79	20.00	50.00	378.79
5470	Cambridge Street	Residential	308.79	20.00	50.00	378.79
5471	Cambridge Street	Residential	308.78	20.00	50.00	378.78
5490	Cambridge Street	Residential	443.78	20.00	50.00	513.78
5561	Cambridge Street	Residential	514.01	20.00	50.00	584.01
5570	Cambridge Street	Residential	252.62	20.00	50.00	322.62
9242	Camulos Avenue	Residential	310.32	20.00	50.00	380.32
9243	Camulos Avenue	Residential	308.78	20.00	50.00	378.78
9426	Camulos Avenue	Residential	338.77	20.00	50.00	408.77
9511	Camulos Avenue	Residential	338.81	20.00	50.00	408.81
9540	Camulos Avenue	Residential	340.40	20.00	50.00	410.40
9558	Camulos Avenue	Residential	276.12	20.00	50.00	346.12
9737	Camulos Avenue	Residential	305.21	20.00	50.00	375.21
9877	Camulos Avenue	Residential	338.81	20.00	50.00	408.81

Exhibit A to Resolution No. 23-3409
Report of Delinquent Civil Debts - July 2023

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
10060	Camulos Avenue	Residential	276.12	20.00	50.00	346.12
5666	Caroline Street	Residential	308.79	20.00	50.00	378.79
9921	Central Avenue	Senior	247.04	20.00	50.00	317.04
9795	Coalinga Avenue	Residential	308.78	20.00	50.00	378.78
9824	Coalinga Avenue	Senior	284.16	20.00	50.00	354.16
9477	Del Mar Avenue	Residential	340.13	20.00	50.00	410.13
4405	Denver Street	Residential	338.81	20.00	50.00	408.81
4455	Denver Street	Residential	310.21	20.00	50.00	380.21
4976	Denver Street	Senior	247.04	20.00	50.00	317.04
4986	Denver Street	Residential	331.29	20.00	50.00	401.29
5381	Denver Street	Residential	276.12	20.00	50.00	346.12
5579	Denver Street	Residential	211.22	20.00	50.00	281.22
5616	Denver Street	Residential	308.78	20.00	50.00	378.78
5626	Denver Street	Residential	338.81	20.00	50.00	408.81
5562	Deodar Street	Residential	237.56	20.00	50.00	307.56
5168	El Morado Street	Residential	345.62	20.00	50.00	415.62
5357	El Morado Street	Senior	325.30	20.00	50.00	395.30
5429	El Morado Street	Residential	308.78	20.00	50.00	378.78
9463	Exeter Avenue	Residential	325.47	20.00	50.00	395.47
9367	Felipe Avenue	Residential	321.81	20.00	50.00	391.81
9793	Felipe Avenue	Senior	276.39	20.00	50.00	346.39
9020	Fremont Avenue	Senior	306.43	20.00	50.00	376.43
9823	Fremont Avenue	Residential	308.78	20.00	50.00	378.78
10037	Fremont Avenue	Residential	705.55	20.00	50.00	775.55
9023	Geneva Avenue	Residential	215.21	20.00	50.00	285.21
9985	Geneva Avenue	Residential	308.78	20.00	50.00	378.78
4328	Granada Street	Residential	308.78	20.00	50.00	378.78
5391	Granada Street	Residential	257.19	20.00	50.00	327.19
5635	Granada Street	Residential	321.18	20.00	50.00	391.18
9772	Greenwood Avenue	Residential	246.09	20.00	50.00	316.09
4376	Harvard Street	Residential	308.78	20.00	50.00	378.78
4418	Harvard Street	Residential	308.78	20.00	50.00	378.78
4430	Harvard Street	Residential	393.53	20.00	50.00	463.53
4825	Harvard Street	Residential	428.53	20.00	50.00	498.53
5505	Harvard Street	Residential	212.53	20.00	50.00	282.53
5141-43	Harvard Street	Multifamily	617.55	20.00	50.00	687.55
9607	Helena Avenue	Residential	284.25	20.00	50.00	354.25
9761	Helena Avenue	Residential	319.10	20.00	50.00	389.10
5190	Howard Street A & B	Multifamily	684.41	20.00	50.00	754.41
4585	James Street	Residential	338.81	20.00	50.00	408.81
9860	Kimberly Avenue	Residential	276.12	20.00	50.00	346.12
9877	Kimberly Avenue	Residential	344.80	20.00	50.00	414.80
5400	La Deney Street	Senior	274.04	20.00	50.00	344.04
5430	La Deney Street	Residential	428.53	20.00	50.00	498.53
9744	Lehigh Avenue	Residential	308.38	20.00	50.00	378.38

Exhibit A to Resolution No. 23-3409
Report of Delinquent Civil Debts - July 2023

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
10007	Lindero Avenue	Senior	247.44	20.00	50.00	317.44
10042	Lindero Avenue	Residential	210.21	20.00	50.00	280.21
9527	Marion Avenue	Residential	308.78	20.00	50.00	378.78
9547	Marion Avenue	Residential	308.78	20.00	50.00	378.78
9595	Mills Avenue	Residential	338.81	20.00	50.00	408.81
9985	Mills Avenue	Residential	464.12	20.00	50.00	534.12
9795	Monte Vista Avenue	Residential	428.53	20.00	50.00	498.53
9858	Monte Vista Avenue	Residential	245.68	20.00	50.00	315.68
10082	Monte Vista Avenue	Residential	268.53	20.00	50.00	338.53
4620	Moreno Street	Residential	428.53	20.00	50.00	498.53
4644	Olive Street	Residential	358.07	20.00	50.00	428.07
4771	Orchard Street	Residential	334.41	20.00	50.00	404.41
5032	Orchard Street	Residential	338.91	20.00	50.00	408.91
5690	Orchard Street	Residential	308.78	20.00	50.00	378.78
5557	Palo Verde Street	Residential	240.43	20.00	50.00	310.43
9633	Poulsen Avenue	Residential	323.52	20.00	50.00	393.52
9925	Poulsen Avenue	Residential	308.78	20.00	50.00	378.78
9935	Poulsen Avenue	Residential	334.89	20.00	50.00	404.89
9375	Pradera Avenue	Multifamily	1,338.58	20.00	50.00	1,408.58
9648	Pradera Avenue	Residential	208.91	20.00	50.00	278.91
10074	Pradera Avenue	Residential	451.06	20.00	50.00	521.06
4426	Princeton Street	Residential	308.95	20.00	50.00	378.95
4467	Princeton Street	Residential	308.79	20.00	50.00	378.79
9060	Ramona Avenue	Residential	308.76	20.00	50.00	378.76
9109	Ramona Avenue	Residential	272.40	20.00	50.00	342.40
9136	Ramona Avenue	Residential	428.53	20.00	50.00	498.53
9587	Ramona Avenue	Residential	308.79	20.00	50.00	378.79
9706	Ramona Avenue	Residential	355.37	20.00	50.00	425.37
9801	Ramona Avenue	Senior	293.60	20.00	50.00	363.60
9413	Rose Avenue	Residential	368.84	20.00	50.00	438.84
9434	Rose Avenue	Residential	308.78	20.00	50.00	378.78
9441	Rose Avenue	Residential	488.96	20.00	50.00	558.96
9482	Rose Avenue	Residential	276.12	20.00	50.00	346.12
9866	Rose Avenue	Senior	276.40	20.00	50.00	346.40
4669	Rosewood Street	Residential	275.39	20.00	50.00	345.39
4683	Rosewood Street	Residential	308.79	20.00	50.00	378.79
5361	Rosewood Street	Residential	308.78	20.00	50.00	378.78
4164	Rudisill Street	Residential	308.78	20.00	50.00	378.78
4245	Rudisill Street	Residential	308.78	20.00	50.00	378.78
4246	Rudisill Street	Residential	411.70	20.00	50.00	481.70
4300	Rudisill Street	Residential	261.59	20.00	50.00	331.59
5432	Rudisill Street	Residential	467.65	20.00	50.00	537.65
5442	Rudisill Street	Residential	276.12	20.00	50.00	346.12
4438	San Bernardino Street	Residential	460.37	20.00	50.00	530.37
4448	San Bernardino Street	Residential	277.74	20.00	50.00	347.74

Exhibit A to Resolution No. 23-3409
Report of Delinquent Civil Debts - July 2023

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
4686	San Bernardino Street	Residential	316.88	20.00	50.00	386.88
4711	San Bernardino Street	Residential	308.78	20.00	50.00	378.78
4749	San Bernardino Street	Residential	453.32	20.00	50.00	523.32
4844	San Bernardino Street	Residential	338.81	20.00	50.00	408.81
5216	San Bernardino Street	Residential	308.78	20.00	50.00	378.78
5418	San Bernardino Street	Residential	276.12	20.00	50.00	346.12
5489	San Bernardino Street	Residential	336.79	20.00	50.00	406.79
5528	San Bernardino Street	Residential	313.10	20.00	50.00	383.10
4463	San Jose Street	Multifamily	581.92	20.00	50.00	651.92
5412	San Jose Street	Residential	311.29	20.00	50.00	381.29
5422	San Jose Street	Residential	338.81	20.00	50.00	408.81
5636	San Jose Street	Residential	228.53	20.00	50.00	298.53
4424	San Jose Street #05	Residential	308.78	20.00	50.00	378.78
4424	San Jose Street #18	Residential	321.18	20.00	50.00	391.18
4424	San Jose Street #24	Residential	321.81	20.00	50.00	391.81
4424	San Jose Street #27	Residential	308.78	20.00	50.00	378.78
4630	San Jose Street M	Residential	206.15	20.00	50.00	276.15
4622	San Jose Street U	Residential	206.15	20.00	50.00	276.15
4593	State Street	Residential	222.38	20.00	50.00	292.38
4781	State Street	Residential	324.94	20.00	50.00	394.94
9817	Sun Valley Drive	Residential	357.66	20.00	50.00	427.66
5130	Sundance Drive	Residential	428.53	20.00	50.00	498.53
5134	Sundance Drive	Residential	325.15	20.00	50.00	395.15
9617	Surrey Avenue	Residential	308.78	20.00	50.00	378.78
9793	Surrey Avenue	Residential	306.72	20.00	50.00	376.72
9531	Tudor Avenue	Residential	226.69	20.00	50.00	296.69
9829	Vail Drive	Residential	429.25	20.00	50.00	499.25
10008	Vernon Avenue	Residential	299.18	20.00	50.00	369.18
4878	Yale Street	Residential	320.19	20.00	50.00	390.19
5405	Yale Street	Residential	308.97	20.00	50.00	378.97
		Totals:	\$54,625.27	\$3,300.00	\$8,250.00	\$66,175.27

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. 23-54 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 property be operated as a rental unit made available to low- to moderate-income persons. As such, staff has prepared Agreement No. 23-54, an affordable housing agreement by and between the City, MHA, and MHC.

Proposed Agreement No. 23-54 contains language related to the conveyance of the property, compliance with applicable laws, use of the properties, remedies, and general provisions. The more salient points of proposed Agreement No. 23-54 relate to the conveyance of fee title of the property from the City to the MHA and leasing of the property from the MHA to the MHC for the day-to-day operation of the property, as well as the rehabilitation and rental of the property to low- to moderate-income persons.

10053 Central Avenue

The subject property is located on a highly visible and desirable portion of Central Avenue, 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 property was built in 1956, and the lot sizes is 7,400 square feet. The dwelling unit is 1,185 square feet, with three bedrooms and two bathrooms. The property was recently renovated prior to its purchase. As such, staff will not be requesting an appropriation of funds from the Housing Trust Fund to fund the repairs to the property.

FISCAL IMPACT: Approval of Agreement No. 23-54 would produce no fiscal impact to the City's General Fund.

RECOMMENDATION: Staff recommends that the City Council adopt Resolution No. 23-3415 approving Agreement No. 23-54, an Affordable Housing Agreement with the Montclair Housing Authority and the Montclair Housing Corporation; authorizing the transfer of 10053 Central Avenue, Montclair, to the Montclair Housing Authority for use affordable housing; and declaring such real property to be exempt surplus land.

Staff recommends that the Montclair Housing Corporation Board of Directors adopt MHC Resolution No. 23-03 approving Agreement No. 23-54, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Authority.

Staff recommends that the Montclair Housing Authority Commissioners adopt MHA Resolution No. 23-02 approving Agreement No. 23-54, 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.

AFFORDABLE HOUSING AGREEMENT

by and among the

CITY OF MONTCLAIR

and the

MONTCLAIR HOUSING AUTHORITY

and the

MONTCLAIR HOUSING CORPORATION

TABLE OF CONTENTS

- 1. DEFINITIONS 1
- 2. CONVEYANCE OF THE PROPERTY **Error! Bookmark not defined.**
 - 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 3
 - 4.1 Use In Conformance with Agreement 3
 - 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 July 17, 2023 (the “Date of Agreement”), by and among the **CITY OF MONTCLAIR**, a California municipal corporation (the “City”), 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 property located within the corporate limits of the City of Montclair, located at 10053 Central Avenue, Montclair, California (the “Property” or “House”). The Property is further described in the Legal Description which is attached hereto as Attachment No. 1.

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

D. Upon acquiring the Property, Authority intends to lease the Property to the Operator for the operation of the Property as an 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 Housing Authority 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 home which is located on and constitutes part of the Property.

“**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 Property, 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 Property. 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.

“**Property**” means the single family house in the City of Montclair located at 10053 Central Avenue, Montclair, California, and described in the Legal Descriptions.

“**Property Value**” means the amount of Six Hundred and Sixty Thousand Dollars (\$660,000). The Property’s Value is mutually believed to be by each of the Parties to represent the fair market value of the Property as of the Date of Agreement.

2. CONVEYANCE OF THE PROPERTY.

2.1 Conveyance of Fee Title. City agrees to convey to Authority the Property by City Deed. The purchase price payable by Authority to City in consideration of the conveyance of the Property shall be One Dollar (\$1.00) (the “Authority Purchase Price”); provided that City may waive receipt of Authority Purchase Price. Upon request therefor by Authority, City will, in connection with the conveyance of the Property, provide to Authority an owner’s standard ALTA policy of title insurance as to the Property 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 Property 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 Property to the Operator for a fifteen (15) year term at a base rental amount of One Dollar (\$1.00) per year 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 Property 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 Property 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 Property 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 Property 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 Property or any part thereof that, during the term of this Agreement, the Operator, such successors and such assignees, shall use,

operate and maintain the Property in conformity with this Agreement and shall devote the Property 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 House to Low Income Households, at an Affordable Rent.

(b) Lease Requirements. Prior to rental of the House within the Property, 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 House.

(c) Duration of Affordability Requirements. The House 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 House 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 House may be raised to a market rate rent at the end of the Affordability Period.

(d) Selection of Tenants. The House 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 House by providing to the Operator names of persons who have expressed interest in renting the House. 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 House to tenants, and annually thereafter, the Operator shall obtain an income certification from each tenant of the Property. 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 House and shall be given a written notice which requires such tenant to vacate the House 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 House 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 House shall be rented at an "Affordable Rent" to be established by the Authority as provided herein. The maximum monthly rental amount for the House 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 House 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 House 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 House shall be limited to five (5) persons.

4.4 Management and Maintenance. The Operator shall manage and maintain the Property 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 Property 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 Property 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 Property 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 Property 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 Property 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. 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 Property 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 Property without the prior written approval of the Authority, 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 Property 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:

APN:
1010-281-11-0000
Tract 4524 Lot 160

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 16, 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 16, 2023 (the “Agreement”), by providing for the lease of the “Properties” (as hereinafter defined) within the City of Montclair to Lessee and the sublease of the Property 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.

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 house in the City of Montclair (the “City”) located at 10053 Central Avenue (the “House”), 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 Property is to the described land, inclusive of any improvements now or hereafter located on the land.

SECTION 3. LEASE TERM.

Lessee shall lease the Property from Authority and Authority shall lease the Property to Lessee for a term commencing on July 17, 2023 (the “Commencement Date”) and continuing until [July 17, 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 Property shall be devoted to those uses as set forth in the Agreement.

4.2 Management. Lessee shall manage or cause the Property 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 Property 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 Property 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 Property 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 Property 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 House 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 House.

6.3 Duration of Affordability Requirements. The Property 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 House 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 Property may be raised to a market rate rent at the end of the Affordability Period.

6.4 Selection of Tenants. The Property 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 House by providing to the Lessee names of persons who have expressed interest in renting the House. 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 House 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 Property and shall be given a written notice which requires such tenant to vacate the Property 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 House 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 Property. The House shall be rented at an "Affordable Rent" to be established by the Authority as provided herein. The maximum monthly rental amount for the Property 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 Property may be increased once per year, regardless of when particular tenants commenced occupancy of the House. The maximum monthly rental amount for the House 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 House.

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 House, municipal or county water and sewer rates and charges which shall be levied against the House, or any interest therein, and which become a lien thereon and accrues during the Term.

(B) The Property 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 Property 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 Property 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 Property, 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 Property, 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 Property, 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 Property or any part thereof. Prior to commencement of any repair or alteration to the Property, 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 Property throughout the Term without expense to Authority, and to perform all repairs and replacements necessary to maintain and preserve the Property 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 Property. 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 Property 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 Property 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 Property 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 Property. 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 Property 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 Property.

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 Property 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 Property for the purposes contemplated by this Lease and the Agreement, which requirements or necessity arise from the presence upon, about or beneath the Property 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 Property, 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 Property 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 Property 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 Property, 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 Property 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 Property. 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 Property, 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 Property and any property adjacent to the Property affected by Hazardous Materials emanating from the Property 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 Property: 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 Property.

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 Property 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 Property, nor demolish all or any part of the Property without the prior written consent of Authority; provided, however, that the foregoing shall not prohibit or restrict the repair and/or replacement of the Property 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 Property in a clean and safe condition, including structural repair and restoration of damaged Property. Authority shall not be obligated by this Lease to make any improvements to the Property or to assume any expense therefor. Lessee shall not commit or suffer to be committed any

waste or impairment of the Property, 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 Property 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 Property all debris resulting from such casualty and rebuild the Property in accordance with plans and specifications previously submitted to Authority and approved in writing in order to replace in kind and scope the Property which existed prior to such damage. In the event of a casualty in which the Property 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 Property 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 Property 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 Property (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 Property. 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 Property 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 Property (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 Property ("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 Property 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, Property 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 Property, or in connection with the operation thereof, or from any defect in the Property. 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 Property of all property of an insurable nature located upon the Property, 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 Property. 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 Property, 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 Property, 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 Property, 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 Property 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 Property, including the cost of construction of the Property, 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 Property. All proceeds of insurance with respect to loss or damage to the Property 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 Property 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 Property, 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 Property 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 Property 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 Property, 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 Property 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 Property, leaving the remainder of the Property 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 Property 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 Property not so taken.

(B) In the event of taking of only a part of the Property, leaving the remainder of the Property 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 Property or the portion thereof so taken vests in the condemning authority.

(C) In the event the Property is so taken, this Lease and all of the right, title and interest thereunder, shall cease on the date title to the Property 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 Property, 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 Property 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 Property 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 Property pursuant to this Lease shall belong to Lessee. That portion of any award attributable to the fair market value of the Property 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 Property, then Lessee shall be entitled to any portion of the award attributable to severance damages to the remaining Property. Said award shall be used for the restoration, repair or rebuilding of the Property 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 Property, the mortgagee shall be entitled to any portion of the award attributable to the Property, to the extent of its interest therein. The mortgagee may at its option apply said portions of the award to restoration of the Property or to reduction of the mortgage. Any excess portion of the award attributable to the condemnation of the Property 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 Property 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 Property 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 Property, 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 Property, 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 Property 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 Property, as well as operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Property, 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 Property, 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 Property. 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 Property 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 Property for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Property 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 Property 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 Property 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 Property; 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 Property, to collect all funds available to Lessee in connection with its operation and maintenance of the Property; and to perform all other consistent with Lessee's obligation under this Lease as the court deems proper;

(5) Maintain and operate the Property, 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 Property and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Property 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 Property on the Property shall vest in Authority. Even though Lessee has breached the Lease and abandoned the Property, 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 Property, (i) the liability of Lessee shall be limited to its interest in the Property, and any rents, issues and profits arising from any subleases of the Property 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 Property. 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 Property 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 Property 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 Property.

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 Property, 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 Property 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 Property 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 Property, 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 Property 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 Property 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]

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:

APN:
1010-281-11-0000
Tract 4524 Lot 160

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)

- Partner(s) Limited General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

Title Or Type Of Document

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

APNS: 1010-281-11-0000

[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 property 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:

APN:
1010-281-11-0000
Tract 4524 Lot 160

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 property:

Real property in the City of Montclair, County of San Bernardino, State of California, described as follows:

APN:
1010-281-11-0000
Tract 4524 Lot 160

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

RESOLUTION NO. 23-3415

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING AGREEMENT NO. 23-54, AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR HOUSING CORPORATION; AUTHORIZING TRANSFER OF CERTAIN REAL PROPERTY LOCATED AT 10053 CENTRAL AVENUE, MONTCLAIR, CALIFORNIA, 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 property located at 10053 Central Avenue (the "Property") 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 Property 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 Property and the Housing Authority desires to acquire the Property from the City; and

WHEREAS, no development of the Property is contemplated; and

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

WHEREAS, Agreement No. 23-54, 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 Property meets the definition of "surplus land," as it is no longer necessary for the City's use and the City seeks to dispose of the Property; and

Whereas, even if the SLA were to apply, the Property 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 Property 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 23-54, 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 Property 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 Property to the Montclair Housing Authority.

SECTION 5: The City of Montclair hereby finds and declares that the Property is 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 Property without regard to the SLA pursuant to Government Code section 54221(f)(1)(D), so long as the transfer is to another government agency, the Montclair Housing Authority, 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. 23-3415 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. 23-03

A RESOLUTION OF THE MONTCLAIR HOUSING CORPORATION APPROVING AGREEMENT NO. 23-54, 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 10053 Central Avenue (the "Property") 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 Property 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 Property and the Housing Authority desires to acquire the Property from the City; and

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

WHEREAS, Agreement No. 23-54, 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 Property 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 23-54, 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. 23-02 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

RESOLUTION NO. 23-02

A RESOLUTION OF THE MONTCLAIR HOUSING AUTHORITY APPROVING AGREEMENT NO. 23-54, 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 LOCATED AT 10053 CENTRAL AVENUE, MONTCLAIR, CALIFORNIA, FROM THE CITY OF MONTCLAIR

WHEREAS, the City of Montclair (the "City") acquired property located at 10053 Central Avenue (the "Property") 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 Property 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 Property and the Housing Authority desires to acquire the Property from the City; and

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

WHEREAS, Agreement No. 23-54, 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 Property 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 23-54, 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 Property 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 Property 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. 23-02 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

MINUTES OF THE REGULAR MEETING OF THE PUBLIC WORKS COMMITTEE HELD ON THURSDAY, MAY 18, 2023, AT 4 P.M. IN THE THEATER CONFERENCE ROOM 9955 FREMONT AVENUE, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Chair Johnson called the meeting to order at 4:00 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Johnson (Chair); Council Member Martinez (Committee Member); Executive Director of Engineering/Major Projects Manager Hoerning; Senior Public Works Inspector Diaz

Absent: City Manager Starr; Acting Chief of Police Reed; Director of Economic Development Agency Fuentes; Director of Public Works/City Engineer Heredia, Director of Community Development Diaz

III. APPROVAL OF MINUTES

The Committee approved the minutes of the meeting of March 16, 2023.

IV. PUBLIC COMMENT — None

V. PUBLIC WORKS DEPARTMENT UPDATES/ITEMS

A. OPERATIONS

1. MAINTENANCE ACTIVITIES

An Operations Activities Report for March and April 2023 were included with the agenda. There were no questions or issues with the report.

2. ADDITIONAL ITEMS — None

B. FACILITIES

1. MAINTENANCE ACTIVITIES

A Facilities Activities Report for March and April 2023 was included with the agenda. There were no questions or issues with the report.

2. SPLASH PAD UPDATE

Executive Director of Engineering/Major Projects Manager Hoerning reported that the Splash Pad would not be functioning until late June. It has been difficult to obtain the parts to make the repairs. It is an integrated system that will not function if the bleach disinfectant and the UV disinfectant are not pH-balanced preventing the Splash Pad from operating.

C. ENGINEERING DIVISION

1. Executive Director of Engineering/Major Projects Manager

Executive Director of Engineering/Major Projects Manager Hoerning expressed appreciation for being hired by the City of Montclair.

2. Tree City USA Recognition

Executive Director of Engineering/Major Projects Manager Hoerning explained that **Tree City USA Recognition** requires agencies to dedicate a certain amount of funding to their tree maintenance programs and fulfill other requirements.

VI. POLICE DEPARTMENT UPDATE/ITEMS — None

VII. COMMUNITY DEVELOPMENT DEPARTMENT PROJECT UPDATES/ITEMS — None

VIII. CAPITAL PROJECT UPDATES

A. LOCAL PROJECTS

1. Reeder Ranch Park

Senior Public Works Inspector Diaz reported that the rough grading has begun on the project.

2. Flashing Stop Sign Replacement Program

Executive Director of Engineering/Major Projects Manager Hoerning reported that the kick-off meeting was on May 1st. The materials were ordered to install flashing stop signs at 40 intersections, but they have yet to arrive.

B. REGIONAL PROJECTS

1. I-10 Corridor Project

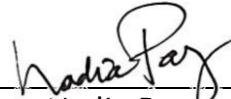
Senior Public Works Inspector Diaz reported that **Caltrans** continues with their work on Monte Vista Avenue and Benson Avenue.

IX. COMMITTEE AND CITY MANAGER ITEMS – None

X. ADJOURNMENT

At 4:18 p.m., Chair Johnson adjourned the meeting of the Public Works Committee. The next meeting of the Public Works Committee is scheduled to be held at 4:00 p.m. on Thursday, June 15, 2023.

Submitted for Public Works Committee approval,



Nadia Paz

Transcribing Secretary

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
JUNE 19, 2023, AT 6:04 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 6:04 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 June 5, 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 June 5, 2023.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION


At 6:05 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:27 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 6:27 p.m., Mayor Pro Tem Johnson adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, JUNE 19, 2023, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor Pro Tem/Vice Chair Johnson called the meeting to order at 7:00 p.m.

II. INVOCATION

Pastor Robert Edwards, Set Free Ministry, gave the invocation.

III. PLEDGE OF ALLEGIANCE

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

IV. ROLL CALL

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

City Manager/Executive Director Starr; Assistant City Manager/Director of Human Services Richter; Director of Finance Kulbeck; Director of Community Development Diaz; Director of Public Works/City Engineer Heredia; Acting Police Chief Reed; City Attorney Robbins; City Clerk Myrick

Absent: Mayor Dutrey (excused)

V. PRESENTATIONS — None

VI. PUBLIC COMMENT

- **Bill Kaufman** stated he will be submitting an application for a business license for a commercial cannabis business he wishes to open in the City.
- **Thuan Nguyen** commended the City for creating a safe place for LGBTQIA+ community members by posting on social media and having rainbow lights projected on the Council Chambers.

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 Ruh Council Member/Director Martinez
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Martinez, Ruh, Johnson None None Dutrey
RESULT:	Motion carried 4-0-1.

A. Approval of Minutes

1. Regular Joint Meeting — June 5, 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 4-0-1 (Dutrey absent).

B. Administrative Reports

1. Consider Receiving and Filing City Treasurer's Report – May 2023

ACTION – Consent Calendar – Item B-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

2. Consider Approval of City Warrant Register and Payroll Documentation

ACTION – Consent Calendar – Item B-2	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

3. Consider Receiving and Filing SA Treasurer's Report – May 2023

ACTION – Consent Calendar – Item B-3	
ACTING:	Successor Agency Board
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

4. Consider Approval of SA Warrant Register – May 2023

ACTION – Consent Calendar – Item B-4	
ACTING:	Successor Agency Board
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

5. Consider Receiving and Filing MHC Treasurer's Report – May 2023

ACTION – Consent Calendar – Item B-5	
ACTING:	Montclair Housing Corporation Board
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

6. Consider Approval of MHC Warrant Register – May 2023

ACTION – Consent Calendar – Item B-6	
ACTING:	Montclair Housing Corporation Board
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

7. Consider Receiving and Filing of MHA Treasurer's Report – May 2023

ACTION – Consent Calendar – Item B-7	
ACTING:	Montclair Housing Authority Commissioners
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

8. Consider Approval of MHA Warrant Register – May 2023

ACTION – Consent Calendar – Item B-8	
ACTING:	Montclair Housing Authority Commissioners
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

9. Consider Authorizing a \$1,050,000 Appropriation from the Redevelopment Project Area No. III Tax Allocation Bond Fund for Costs Related to the Construction of Arrow Highway and Fremont Avenue Improvement Project

Consider Approving the Plans and Specifications and Authorizing Staff to Advertise for Bid Proposals for the Arrow Highway and Fremont Avenue Improvement Project

ACTION – Consent Calendar – Item B-9	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

10. Consider Approval of the Payment for a One-Year Subscription Renewal of Zengine Application Software Through WiseHive, Inc. for the Montclair to College Program

ACTION – Consent Calendar – Item B-10	
ACTING:	Montclair Community Foundation
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

C. Agreements

1. Consider Approval of Agreement No. 23-37 with Econolite Systems for Traffic Signal Maintenance Services, Subject to Any Revisions Deemed Necessary by the City Attorney

ACTION – Consent Calendar – Item C-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

2. **Consider Approval of Agreement No. 23-40 with the San Bernardino County District Attorney’s Office, a Memorandum of Agreement to Conduct an Independent Review of All Officer-Involved Shootings, In-Custody Deaths, and Lethal Use of Force Encounters**

Consider Authorizing Acting Police Chief Jason Reed to Sign Agreement No. 23-40

ACTION – Consent Calendar – Item C-2	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

3. **Consider Approval of Agreement No. 23-41 with Consolidated Fire Agencies of San Bernardino County (CONFIRE) for Continued Dispatch and Communication Services, Subject to Any Revisions Deemed Necessary by the City Attorney**

ACTION – Consent Calendar – Item C-3	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 4-0-1 (Dutrey absent).

D. Resolutions — None

IX. PULLED CONSENT CALENDAR ITEMS — None

X. COUNCIL/MHC WORKSHOP

A. Fiscal Year 2023-24 Preliminary Budget Review [CC/MHC]

The City Council and Montclair Housing Corporation Board continued this workshop to an adjourned meeting to be held on Thursday, June 22, 2023, at 6:00 p.m. in the City Council Chambers.

XI. COMMUNICATIONS

A. Department Reports

1. Human Services Department — Upcoming Events & Programs

Director of Human Services Richter provided information on upcoming programs and events including Montclair’s 62nd Annual Summer Concert and Movies Series, which will be held Tuesday evenings at Alma Hofman Park. The Vendor Fair will take place on July 11, 2023, during the concert in the park. Food distribution will be occurring courtesy of **Feeding America** on June 22, 2023 at the Community Center starting at 12:00 p.m. The Montclair Afterschool Program (MAP) will be sharing upcoming activities on June 23, 2023, at 1:00 p.m. at **Serrano Middle School** and the 2nd session of the MAP summer program will be held from July 6-26, 2023 at **Kingsley Elementary** and **Serrano Middle Schools**.

B. City Attorney — None

C. City Manager/Executive Director— None

D. Mayor/Chair

1. Notice – Cancellation of July 3, 2023 Regular Joint Meeting

Mayor Pro Tem/Vice Chair Johnson announced the July 3, 2023 regular joint meeting is cancelled due to the anticipated lack of a quorum.

2. Notice – Special Meeting of the City Council and Montclair Housing Corporation on July 29, 2023

Mayor Pro Tem/Vice Chair Johnson announced a special meeting will be taking place on Thursday, July 29, 2023, to consider adoption of the Fiscal Year 2023-24 City and MHC Budgets. They will also consider three Planning Commission appointments for terms ending June 30, 2027.

E. Council Members/Directors

1. Council Member/Director Ruh spoke regarding the history of Juneteenth, his optimism for the Gold Line, and concerns about losing free parking at the transit center. He further reminded the community that all fireworks are prohibited in the City.

2. Council Member/Director Lopez recognized that the mother of **Ontario's Mayor Pro Tem Debra Porada** passed away and offered his condolences. He thanked City staff for the lawn signs reminding the community of the firework ban in the City. He also attended the Montclair Little League all-stars game on Saturday June 17th and commended their win.

He expressed his disappointment that the City was not observing Juneteenth as a holiday.

Mayor Pro Tem/Vice Chair Johnson requested City Manager Starr look into establishing Juneteenth as an official City holiday.

3. Council Member/Director Martinez wished City Attorney Robbins a belated happy birthday and all fathers a happy Father's Day. She also thanked speaker **Thuan Nguyen** for his comments.

F. Committee Meeting Minutes

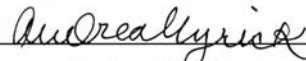
The following committee minutes were received and filed for informational purposes:

1. Personnel Committee – June 5, 2023

XII. ADJOURNMENT

At 7:39 p.m., the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board were adjourned.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/ Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



Andrea Myrick,
City Clerk

CITY OF MONTCLAIR

TREASURER'S REPORT

FOR THE MONTH ENDING

JUNE 30, 2023

TABLE OF CONTENTS

SCHEDULE 1

STATEMENTS OF COMPLIANCE WITH INVESTMENT POLICY AND INVESTMENT STRATEGY FOR JUNE 30, 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**

JUNE 30, 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 \$ 33,380,111

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 JUNE 30, 2023

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance
General Fund	\$ 3,373,379.10	\$ 2,586,576.72	\$ 2,783,146.95	\$ -	\$ 3,176,808.87 (1)
Gas Tax Fund	(165,063.98)	88,506.79	52,995.06	-	(129,552.25) (2)
Road Maintenance - Section 2032	1,965,478.57	77,146.20	-	-	2,042,624.77
Measure I Fund	5,561,518.11	74,023.28	-	-	5,635,541.39
Traffic Safety	91,455.73	3,856.56	-	-	95,312.29
Disability Access Fund - Bus. License	52,929.30	936.00	344.00	-	53,521.30
Park Maintenance	22,676.41	-	6,303.72	-	16,372.69
Park Development	1,156,207.06	700.00	-	-	1,156,907.06
CDBG	(173,381.81)	17,931.57	3,263.06	146,615.18	(12,098.12) (2)
SB2 Planning Grant	(56,875.00)	12,920.11	-	-	(66,794.89) (2)
Air Quality Improvement Trust	117,342.62	31,267.69	29,904.01	-	130,262.73
Senior Nutrition Program	(85,512.64)	-	-	-	(84,148.96) (2)
American Rescue Plan	-	946.88	15.00	-	102,176.36
Forfeiture Fund - State	86,896.61	51,085.00	2,249.56	-	84,647.05
Proposition 30/SB 109	318,957.75	22,466.53	29,195.81	-	340,846.94
SB 509 Public Safety	570,224.18	0.30	1,670.80	-	591,019.91
Forfeiture Fund-Federal/DOJ	1.53	167.10	-	-	1.83
Asset Seizure Fund	35,991.77	-	561.15	-	36,158.87
Section 11489 Subfund	125,829.86	-	-	-	125,268.71
Fed Asset Forfeiture-Treasury	-	-	-	-	-
School District Grant Fund	288,576.43	29,884.00	7,507.49	-	281,068.94
State Supplemental Law Enforce	18.67	31.15	-	-	29,902.67
Local Law Enforcement Block Gr	2,377.68	-	-	-	2,408.83
PC 1202.5 Crime Prevention	124,226.46	-	-	-	124,226.46
Recycling Grant Fund	174,976.00	-	-	-	174,976.00
Statewide Park Dev Grant	10,824.43	-	2,800.00	-	8,024.43 (2)
Homeless Housing Assist Preven	(79,681.25)	-	-	-	(79,681.25) (2)
LEAP Grant	(674,929.21)	318,433.88	151,429.44	-	(507,924.77) (2)
After School Program Fund	1,290.78	-	-	76,928.72	1,290.78
City of Hope	515,536.00	33,461.00	295,587.90	-	330,337.82
Safety Dept. Grants	1,370.50	-	-	-	1,370.50 (2)
OSMD Immunization Grant	2,684.24	-	-	-	2,684.24
Kaiser Permanente Grant	21,684.84	-	2,131.62	-	19,553.22
Resource Center Grant - OMSD	(13,755.64)	8,884.64	9,722.89	-	(14,593.89) (2)
Title IIB Sr Support Services	7,823.62	-	-	-	7,823.62
Healthy Community Strategic Plan	113,072.82	42,544.62	-	-	155,617.44
ASES Supplemental Grant	11,897.80	4,652.25	2,932.05	-	13,618.00
E.M.S. - Paramedic Fund	4,189,698.99	-	682,775.67	-	3,506,923.32
Economic Development	500.00	-	-	-	500.00
City Contributions/Donations Fund	2,616,687.24	469,657.62	373,947.32	-	2,712,397.54
Sewer Operating Fund	2,439,666.85	-	-	-	2,439,666.85
Sewer Replacement Fund	247,068.23	-	3,754.94	-	243,313.29
CFD 2011-1 (Paseos)	125,461.13	-	-	-	125,461.13
CFD 2011-2 (Arrow Station)	4,052,297.72	185.55	-	-	4,052,483.27
Inland Empire Utility Agency	870,018.83	-	-	-	870,018.83
Sewer Expansion Fee Fund	1,282,267.12	149.00	-	-	1,282,416.12
Developer Impact Fees - Local	278,389.82	335.00	-	-	278,724.82
Developer Impact Fees - Regional	242,122.06	-	-	-	242,122.06
Burtec Pavement Impact Fees	262,502.41	-	-	-	262,502.41
PUC Reimbursement Fund-MVGS	383,396.52	-	-	-	383,396.52
Utility Underground In-Lieu	111,129.36	1,414.33	-	-	112,543.69
General Plan Update Fee	555,708.20	-	-	-	555,708.20
Housing Fund	122,059.21	-	-	-	122,059.21
Public Education/Govt. PEG Fee Fund	(556,216.49)	295,587.90	16,384.80	5,702.15	(271,311.24) (4)
Infrastructure Fund	(92,796.74)	-	-	-	(92,796.74)
COVID-19	4,885,855.82	-	-	-	4,885,855.82
Successor Agency Bonds-Taxable	8,025,751.79	-	13,398.00	-	8,012,353.79
Successor Agency Bonds-Tax Exempt	(2,577,262.62)	-	171,231.88	(229,246.05)	(2,977,740.55) (5)
2021 Lease Revenue Bond Proceeds	(492,667.69)	202,666.07	-	-	(290,001.62) (5)
2014 Lease Revenue Bond Debt Svc	(9,263.96)	-	-	-	(9,263.96)
2021 Lease Revenue Bond Debt Svc	(7,293.99)	-	-	-	(7,293.99)
Pension Obligation Bond Debt Svc	0.96	-	-	-	0.96 (1)
Contingency Fund	30,381,192.31	-	-	-	30,381,192.31 (1)
Assigned General Fund Reserves	\$ 70,943,566.90	\$ 4,376,423.74	\$ 4,643,253.12	\$ -	\$ 70,676,737.52
TOTALS					

Negative Cash Notes follow this presentation.

Notes on Negative Cash Balances

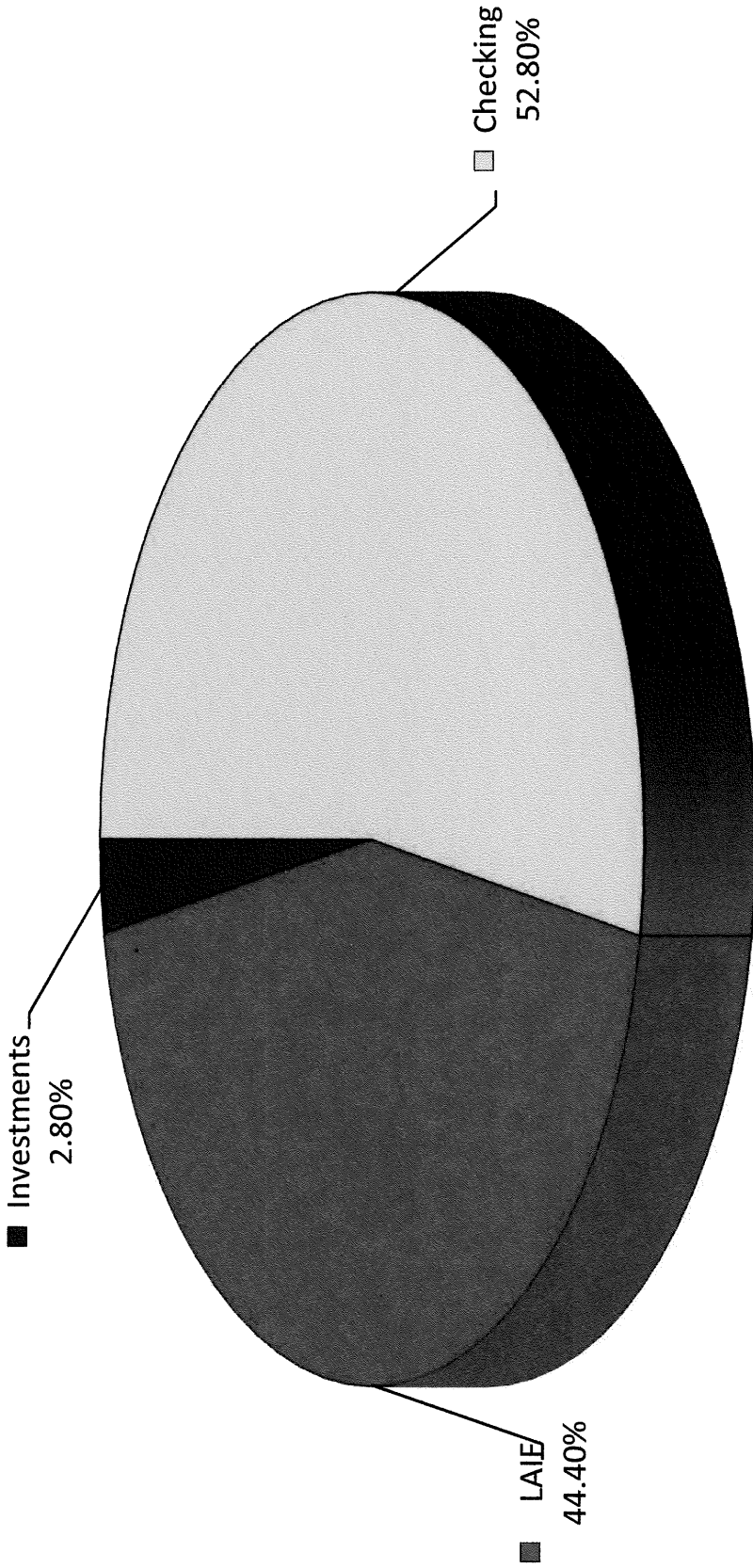
- (1)** The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this 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 near completion or prior to mid-year budget preparation. Any negative in that fund will be eliminated at those times. Transfers from these funds (C.D.B.G., Gas Tax, Measure 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 JUNE 30, 2023**

	Par Value	Purchase Date	Maturity Date	Coupon Interest Rate	Current Market Value	Balance at Cost	Totals
CHECKING ACCOUNT							
Checking Account							\$ 37,294,156.50
Asset Seizure Account							\$ 2,470.48
CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES							
Local Agency Investment Fund (LAIF)				3.250%	30,776,387.34	31,380,110.54	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 32,776,387.34</u>		\$ 33,380,110.54
U.S. AGENCY SECURITIES							
					\$ -		\$ -
TOTAL							<u>\$ 70,676,737.52</u>

Current market values obtained from US Bank.

CITY OF MONTCLAIR
CASH AND INVESTMENTS BY TYPE
June 30, 2023
Total Cash & Investments \$70,676,738



**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
TREASURER'S REPORT
FOR THE MONTH ENDING**

June 30, 2023

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH BY FUND
June 30, 2023**

COMBINED OPERATING FUND

Operating	<u>(36,514.56)</u>	\$ (36,514.56)
-----------	--------------------	----------------

LRPRP Fund

Operating	<u>0.00</u>	\$ 0.00
-----------	-------------	---------

RORF

	1,135,227.34	
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	
		\$ 1,135,227.34

TOTAL CASH

\$ 1,098,712.78

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH
June 30, 2023**

Checking Account

US Bank

1,098,712.78

TOTAL CASH

1,098,712.78

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

June 30, 2023

City of Montclair
 Final Warrant Register
 Council Date 07/17/2023
 Regular Warrants
 Checking Account: Successor to the RDA

	Warrants	US Bank transfers	Area Totals
SRDA Combined Operating Fund	13,000.00	6,636.55	19,636.55
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	0.00
	13,000.00	6,636.55	
June 2023 Total			19,636.55

Note: Reimburse City for 06/08 payrolls
 Reimburse City for 06/22 payrolls

Vice Chair Johnson

Accounts Payable

Checks by Date - Summary by Check Number

User: cramirez
Printed: 7/6/2023 7:19 AM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
8182	BLXGr001	BLX Group LLC	06/01/2023	6,000.00
8183	VanLa001	Van Lant & Fankhanel, LLP	06/29/2023	7,000.00
Report Total (2 checks):				13,000.00

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 06/01/2023 To 06/30/2023

Printed on 07/10/2023 at 8:22 AM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
06/26/2023	\$3168.39	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimburse City for 06/22/23 Payroll
Initiate Date 06/26/2023
Initiate Time 10:15AM CDT
Initiated By JKULBECK
Completed Date 06/26/2023
Completed Time 10:15AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
06/08/2023	\$3468.16	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 06/08/23 Payroll
Initiate Date 06/08/2023
Initiate Time 07:12PM CDT
Initiated By JKULBECK
Completed Date 06/08/2023
Completed Time 07:12PM CDT

Total Number of Book Transfers: 2
Total Amount of Book Transfers: \$6,636.55

--- End of Report ---

**CITY OF MONTCLAIR
HOUSING CORPORATION
TREASURER'S REPORT
FOR THE MONTH ENDING**

June 30, 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
June 30, 2023**

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
Checking Account			
US Bank			40,725.39
 Investments			
LAIF	3.26%	1,721,351.92	1,744,889.91
TOTAL CASH & INVESTMENTS			1,785,615.30

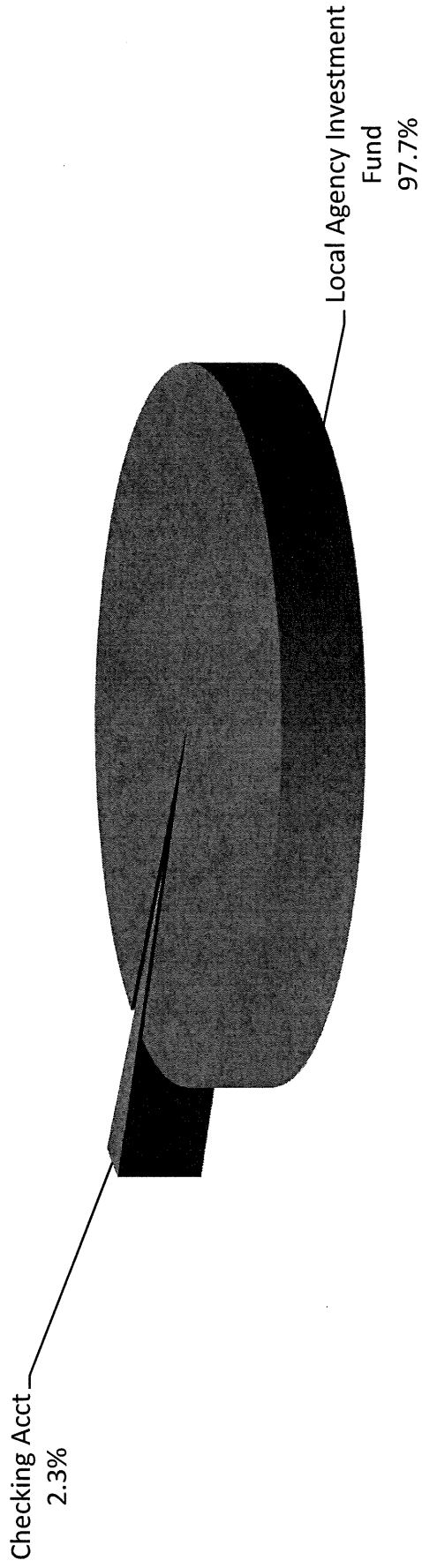
NOTE:
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

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
June 30, 2023**

Total Cash & Investments - \$1,785,615



**CITY OF MONTCLAIR
HOUSING CORPORATION
WARRANT REGISTER**

FOR THE MONTH ENDING

June 30, 2023

City of Montclair
Final Warrant Register
Council Date 07/17/2023
Regular Warrants
Checking Account: MHC

<u>Warrants</u>	<u>ACH Transfers</u>	<u>Voided Checks</u>	<u>US Bank transfers</u>	<u>Totals</u>
139,914.91	0.00	0.00	0.00	139,914.91

June 2023 Total

139,914.91

US Bank transfers:

Vice Chair Johnson

Accounts Payable

Checks by Date - Summary by Check Number

User: cramirez
Printed: 7/6/2023 7:20 AM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5486	ACI0001	ACI Flooring, Inc.	06/08/2023	7,342.50
5487	Arti005	Artic Plumbing And Drain Cleaning	06/08/2023	4,450.00
5488	land012	Landscape Maintenance Unlimited	06/08/2023	5,160.00
5489	mont074	Monte Vista Water District	06/08/2023	962.62
5490	Nagc006	NAGCO GLASS	06/08/2023	152.49
5491	Nati050	National Community Renaissance of Califo	06/08/2023	5,860.00
5492	Perf003	Performance Construction & Remodeling I	06/08/2023	76,147.50
5493	Sout018	Southern California Edison Co	06/08/2023	861.45
5494	Sout021	Southern California Gas Co	06/08/2023	765.71
5495	Chic006	Chicken Little Services Inc	06/22/2023	460.00
5496	Coof001	CO of San Bernardino Environmental Heal	06/22/2023	1,016.00
5497	Gash001	Gash Chimney Sweep	06/22/2023	2,134.00
5498	Hele001	Helena Gardens Owners Association	06/22/2023	2,439.12
5499	LirLa001	Lira Lawns	06/22/2023	600.00
5500	mont002	City of Montclair	06/22/2023	11,331.60
5501	mont043	Montclair Meadows Owners Assoc	06/22/2023	1,800.00
5502	mont074	Monte Vista Water District	06/22/2023	682.30
5503	Perf003	Performance Construction & Remodeling I	06/22/2023	16,020.00
5504	Sout018	Southern California Edison Co	06/22/2023	999.21
5505	Sout021	Southern California Gas Co	06/22/2023	730.41

Report Total (20 checks):

139,914.91

**CITY OF MONTCLAIR
HOUSING AUTHORITY
TREASURER'S REPORT
FOR THE MONTH ENDING**

June 30, 2023

Schedule 1

**CITY OF MONTCLAIR
HOUSING AUTHORITY
STATEMENT OF CASH
June 30, 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
June 30, 2023**

City of Montclair
Final Warrant Register
Council Date 07/17/2023
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
June 2023 Total			<u><u>0.00</u></u>

Vice Chair Johnson