

# CITY OF MONTCLAIR

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

### AGENDA

Monday, October 2, 2023  
7:00 p.m.



#### **Mayor**

Javier "John" Dutrey

#### **Mayor Pro Tem**

Tenice Johnson

#### **Council Members**

Bill Ruh

Corysa Martinez

Benjamin "Ben" Lopez

#### **City Manager**

Edward C. Starr

#### **City Attorney**

Diane E. Robbins

#### **City Clerk**

Andrea M. Myrick

#### Location

Council Chamber  
5111 Benito Street  
Montclair, CA 91763

#### Webinar Link

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

#### Dial #

1-669-900-6833

#### Meeting ID

937-1715-0550



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

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

Monday, October 2, 2023  
7:00 p.m.

*Remote Participation Information:*

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

*Please be advised that those participating via Zoom do so at their own risk. The meeting will not be suspended or cancelled if any technical issues occur during the meeting.*

*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](mailto:cityclerk@cityofmontclair.org) at least one hour before the meeting begins.*

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

## **AGENDA**

- I. CALL TO ORDER** City Council [CC], Successor Agency Board [SA],  
Montclair Housing Corporation Board [MHC],  
Montclair Housing Authority Commission [MHA],  
Montclair Community Foundation Board [MCF]

**II. INVOCATION**

*In keeping with our long-standing tradition of opening our Council meetings with an invocation, this meeting may include a nonsectarian invocation. Such invocations are not intended to proselytize or advance any faith or belief or to disparage any faith or belief. Neither the City nor the City Council endorses any particular religious belief or form of invocation.*

**III. PLEDGE OF ALLEGIANCE**

**IV. ROLL CALL**

**V. PRESENTATIONS**

- A. Presentation by Montclair Police Chaplain Joe McTarsney on Behalf of Maui County Council Member Thomas Cook of Official County Pins to the Montclair City Council in Gratitude for City's Wildfire Relief Efforts
- B. Proclamation Declaring the Week of October 9, 2023, as Code Enforcement Officer Appreciation Week in the City of Montclair
- C. Background of Community Choice Energy Presented by EES Consulting

**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 — September 18, 2023 [CC/SA/MHC/MHA/MCF] 75

**B. Administrative Reports**

- 1. Consider Approval of Warrant Register & Payroll Documentation [CC] 4
- 2. Consider Authorizing the Receipt of \$32,295.80 from the California Board of State and Community Corrections (BSCC) Officer Wellness and Mental Health Grant 2022 for the Purpose of Improving Officer Wellness and Expanding Mental Health Sources [CC] 5
- 3. Consider Authorizing the Purchase of a JLG ET500J Towable Electric Boom Lift from United Rentals in the Total Amount of \$60,591.51 [CC] 7
- 4. Consider Authorizing the Purchase of a 2023 Ford F-150 4x4 SuperCrew Vehicle for the Fire Department from Montebello Ford in the Total Amount of \$54,799.10 [CC] 9
- 5. Consider Approving the Purchase of Shopping Carts, Whole Turkeys, and Assorted Items for the Montclair Holiday Food and Toy Basket Program [MCF] 10

**C. Agreements**

- 1. Consider Approval of Agreement No. 23-73 with Blais & Associates, Inc. for Grant Writing Services, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 11
- 2. Consider Approval of Agreement No. 23-74 with the San Bernardino County Office of Emergency Services Authorizing the Receipt of \$17,776 from the FY 2022 Emergency Management Performance Grant, and Authorizing the Chief of Police to Sign Said Agreement [CC]
  - Consider Authorizing a \$17,776 Appropriation from the Public Safety Grant Fund for the Purchase of Equipment to Upgrade the Emergency Operations Center (EOC) [CC]
  - Consider Authorizing Appropriations from the Contingency Fund in the Amounts of \$17,776 as a Dollar-for-Dollar Match to Receive the Grant Funds and \$25,052 to Cover the Remaining Balance of the EOC Upgrade Costs [CC] 31

- 3. Consider Approval of Agreement No. 23-76 with CASC Engineering, Inc. for Water Quality and Stormwater Compliance Services, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 46

D. Resolutions

- 1. Consider Adoption of Resolution No. 23-3419 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges [CC] 68

**IX. PULLED CONSENT CALENDAR ITEMS**

**X. COUNCIL WORKSHOP**

- A. David Turch & Associates, Federal Legislative Advocate Presentation  
*(The City Council may consider continuing this item to an adjourned meeting on Monday, October 16, 2023, at 5:45 p.m. in the City Council Chambers)*

**XI. COMMUNICATIONS**

A. Department Reports

- 1. Human Services — Upcoming Events and Programs

B. City Attorney

- 1. Request for City Council to Meet in Closed Session Pursuant to Government Code §54957.6 Regarding Conference with Designated Labor Negotiator Diane E. Robbins [CC]

*Employee: City Manager*

C. City Manager/Executive Director

D. Mayor/Chairperson

E. Council Members/Directors

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

- 1. Personnel Committee Meeting — September 18, 2023 [CC] 74

**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, October 16, 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 the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. Please call the City Clerk's Office at (909) 625-9416 or send an e-mail to [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) to request documents via e-mail.*

*If you need special assistance to participate in this meeting, please contact the City Clerk's Office at (909) 625-9416 or e-mail [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org). Notification prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)*

*I, Andrea M. Myrick, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at <https://www.cityofmontclair.org/agendas/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, September 28, 2023.*



# CITY COUNCIL AGENDA REPORT

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

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

**BACKGROUND:** Mayor Pro Tem Johnson has examined the Warrant Register dated October 2, 2023, and the Payroll Documentation dated August 13, 2023, and the Payroll Documentation dated August 27, 2023, and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated October 2, 2023, totals \$1,793,638.65.

The Payroll Documentation dated August 13, 2023, totals \$867,075.85 gross, with \$609,072.70 net being the total cash disbursement.

The Payroll Documentation dated August 27, 2023, totals \$809,736.19 gross, with \$577,407.96 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

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<b>DATE:</b>	OCTOBER 2, 2023	<b>FILE I.D.:</b>	PDT362
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	M. BUTLER
<b>SUBJECT:</b>	CONSIDER AUTHORIZING THE RECEIPT OF \$32,295.80 FROM THE CALIFORNIA BOARD OF STATE AND COMMUNITY CORRECTIONS (BSCC) OFFICER WELLNESS AND MENTAL HEALTH GRANT 2022 FOR THE PURPOSE OF IMPROVING OFFICER WELLNESS AND EXPANDING MENTAL HEALTH SOURCES		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider authorizing the receipt of \$32,295.80 from the California Board of State and Community Corrections (BSCC) Officer Wellness and Mental Health Grant 2022 for the purpose of improving officer wellness and expanding mental health sources.

**BACKGROUND:** The BSCC Officer Wellness and Mental Health Grant was included in the Budget Act of 2022. All eligible law enforcement agencies received payment from this grant in February 2023—the Montclair Police Department’s award amount was \$32,295.80. All grant funds must be spent by December 1, 2025. The purpose of this grant is to improve officer wellness and expand mental health sources by establishing or expanding existing officer wellness units and peer support units; by providing services from a licensed mental health professional and/or other programs and services to enhance officer wellness; by establishing fitness or nutrition programs; by purchasing exercise equipment; or by providing coping skills education and mindfulness training. This grant is restricted to programs and services to support peace officers as defined by Penal Code Section 830.1 and cannot be used to supplant funds for an existing program or services. All purchases and programs must be evidence-based or have a successful track record of enhancing officer wellness. Pre- and post-assessments (surveys) would be used to measure and evaluate programs established with these grant funds. Annual reports and a final impact report are required to demonstrate these funds’ impact on improving officer wellness, including physical and mental, and/or emotional health.

The criteria for the use of grant funds is very broad so that each grantee can determine how to utilize the funds to best meet the needs of the peace officers within their respective agency. Police Department staff has identified areas such as encouraging physical fitness, improving mental or physical decompression following a critical incident or mitigating the cumulative effects of stress, and team-building with mentor officers to improve mental wellness, to name a few.

Staff would implement programs to encourage physical fitness goals amongst peers, monitor the effects of stress through anonymous surveys, and facilitate rest and relaxation following critical incidents. Various methods would be introduced in an effort to reduce officer stress levels and anxiety as a result of work-related factors, including massage, quiet or music-based relaxation, and peer support.

**FISCAL IMPACT:** If approved by the City Council, BSCC Officer Wellness and Mental Health Grant funds in the amount of \$32,295.80 would be used toward the establishment of programs intended to support and improve the physical, emotional, and mental condition or well-being of the Department’s officers.

**RECOMMENDATION:** Staff recommends the City Council authorize the receipt of \$32,295.80 from the BSCC Officer Wellness and Mental Health Grant 2022 for the purpose of improving officer wellness and expanding mental health sources.



# CITY COUNCIL AGENDA REPORT

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**DATE:** OCTOBER 2, 2023                      **FILE I.D.:** VEH450  
**SECTION:** CONSENT - ADMIN. REPORTS                      **DEPT.:** PUBLIC WORKS  
**ITEM NO.:** 3    **PREPARER:** M. PARADIS  
**SUBJECT:** CONSIDER AUTHORIZING THE PURCHASE OF A JLG ET500J TOWABLE ELECTRIC BOOM LIFT FROM UNITED RENTALS IN THE TOTAL AMOUNT OF \$60,591.51

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**REASON FOR CONSIDERATION:** The City Council is requested to consider authorizing the purchase of a JLG towable electric boom lift. Purchases over \$15,000 require City Council approval.

**BACKGROUND:** The City owns a 1993 GMC C700 TopKick (Unit 308), which was used to trim trees, change ball field lighting, and reach elevations up to 45 feet. Unit 308 is no longer compliant with emission requirements by the South Coast Air Quality Management District. Additionally, Unit 308 cannot legally be driven on any California roadway after January 1, 2023.

Staff received quotes for comparable boom lifts as shown below:

<i>Bid Quotations for Boom Lift</i>		
<i>Company</i>	<i>Vehicle</i>	<i>Quote</i>
Quinn CAT Rental	Genie 50' Knuckle Boom Towable Electric	\$60,851.07
Quinn CAT Rental	JLG 50' Knuckle Boom Towable Electric	\$66,089.12
United Rentals	JLG 50' Towable Gas Boom Lift	\$58,156.44
<b>United Rentals</b>	<b>JLG 50' Towable Electric Boom Lift</b>	<b>\$60,591.51</b>

The City's Public Works Facilities/Maintenance Assistant Manager determined that the quote from United Rentals for the JLG ET500J towable electric boom lift is the best value for the City.

The new JLG towable electric boom lift will be used to change ball field lighting, trim trees, and make repairs to city-owned facilities up to 50 feet in height.

**FISCAL IMPACT:** Building Maintenance Funds in the amount of \$65,000 was approved in the Fiscal Year 2023-24 Budget for Public Works, which covers the cost of purchasing the new towable boom lift.

**RECOMMENDATION:** Staff recommends the City Council authorize staff to purchase a JLG ET500J towable electric boom lift from United Rentals in the total amount of \$60,591.51.





BRANCH 509  
10632 MONTE VISTA AVE  
MONTCLAIR CA 91763-4719  
909-624-9615

# **224873531**

**Job Site**

PHILLIPS  
10825 MONTE VISTA AVE  
MONTCLAIR CA 91763-6113

**Office:** 909-625-9404 **Cell:** 626-260-1265

Customer #	: 112201
Quote Date	: 09/20/23
UR Job Loc	: 10825 MONTE VISTA AV
UR Job #	: 25
Customer Job ID:	
P.O. #	: QUOTE
Ordered By	: MATTHEW PARADIS
Written By	: NELSON BLANCO
Salesperson	: HOUSE ACCOUNT

MONTCLAIR CITY OF  
5111 BENITO  
MONTCLAIR CA 91763

**This is not an invoice  
Please do not pay from this document**

Qty	Equipment #		Price		Amount	
1	3105024	CC: 310-5024	50278.54		50278.54	
	BOOM 46-50' TOWABLE ELECTRIC					
SALES ITEMS:						
Qty	Item number		Stock class	Unit	Price	
1	FREIGHT		MCI	EA	5310.00	
	FREIGHT					
	UM: (EA) EACH					
					Sub-total:	55588.54
					Tax:	5002.97
					Total:	60591.51
CONTACT: ALEX CARDONA CELL#: 626-260-1265						

Note: This proposal may be withdrawn if not accepted within 30 days.

WHERE PERMITTED BY LAW, UNITED RENTALS MAY IMPOSE A SURCHARGE OF 1.8% FOR CREDIT CARD PAYMENTS ON CHARGE ACCOUNTS. THIS SURCHARGE IS NOT GREATER THAN OUR MERCHANT DISCOUNT RATE FOR CREDIT CARD TRANSACTIONS AND IS SUBJECT TO SALES TAX IN SOME JURISDICTIONS. THIS IS NOT A SALE AGREEMENT/INVOICE. THE ITEMS LISTED ABOVE ARE SUBJECT TO AVAILABILITY AND ACCEPTANCE OF THE TERMS AND CONDITIONS OF UNITED'S SALE AGREEMENT/INVOICE WHICH ARE AMENDED FROM TIME TO TIME AND POSTED ONLINE AT <https://www.unitedrentals.com/legal/sale-agreement> AND INCORPORATED HEREIN BY REFERENCE. A PAPER COPY OF THE SALE AGREEMENT/INVOICE TERMS IS AVAILABLE UPON REQUEST.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	OCTOBER 2, 2023	<b>FILE I.D.:</b>	VEH450
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FIRE
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	D. POHL
<b>SUBJECT:</b>	CONSIDER AUTHORIZING THE PURCHASE OF A 2023 FORD F-150 4X4 SUPERCREW VEHICLE FOR THE FIRE DEPARTMENT FROM MONTEBELLO FORD IN THE TOTAL AMOUNT OF \$54,799.10		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider authorizing the purchase of a 2023 Ford F-150 4x4 SuperCrew vehicle to replace the current vehicle used by the Fire Chief.

**BACKGROUND:** The purchase of a 2023 Ford F-150 4x4 SuperCrew vehicle for use by the Fire Chief in Department operations was approved in the Fiscal Year 2023-24 Budget. The Ford F-150 would replace a 2006 Ford Crown Victoria (Unit 76-06) that is 17 years old and does not meet the Fire Chief's requirements. The current vehicle does not have the space or equipment needed to serve an incident commander on a large-scale incident, nor does it provide adequate room to store the proper personal protective equipment required.

Vendors were contacted to obtain quotes for the Department budget, but after the budget's approval, the vehicle that was initially quoted was unavailable due to supply chain issues. The decision was made to wait for the release of the 2024 models. After the release of the 2024 models in early September, it was found that the "race red" color that closely matches current Department vehicles was discontinued in the new model, and a slightly different 2023 model in "race red" was located with a different vendor. Montebello Ford is currently holding the vehicle for the Department. The 2006 Crown Victoria (Unit 76-06) would be shifted into service of the Assistant Fire Chief's position.

**FISCAL IMPACT:** If authorized by the City Council, funding for the purchase of a 2023 Ford F-150 4x4 SuperCrew vehicle would result in an expenditure of \$54,799.10 from the Equipment Replacement Fund.

**RECOMMENDATION:** Staff recommends the City Council authorize the purchase of a 2023 Ford F-150 4x4 SuperCrew vehicle for the Fire Department from Montebello Ford in the total amount of \$54,799.10.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	OCTOBER 2, 2023	<b>FILE I.D.:</b>	MCF100
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	HUMAN SVCS./MCF
<b>ITEM NO.:</b>	5	<b>PREPARER:</b>	A. COLUNGA
<b>SUBJECT:</b>	CONSIDER APPROVING THE PURCHASE OF SHOPPING CARTS, WHOLE TURKEYS, AND ASSORTED ITEMS FOR THE MONTCLAIR HOLIDAY FOOD AND TOY BASKET PROGRAM		

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**REASON FOR CONSIDERATION:** The Montclair Community Foundation (MCF) Board of Directors is requested to consider approving the use funds donated to MCF to purchase turkeys and other assorted items for the Holiday Food and Toy Basket Program.

**BACKGROUND:** The Montclair City Council also serves in its capacity as the MCF Board of Directors. The vision of MCF is to work collectively and collaboratively to strengthen services and enhance the quality of life for residents by promoting health, wellness, and economic stability for all, including the most vulnerable in our community. The mission of MCF is to guarantee a quality community for all by working together as diverse, committed individuals and organizations to make an impact that improves the overall well-being of the community.

For 38 years, the City has coordinated the Holiday Food and Toy Basket Program to serve families in Montclair who have low-income with a basket of food to prepare a holiday meal and toys for children. Since 2015, MCF has partnered with the City to provide turkeys and assorted food items that are given to each of the qualified food basket recipients. Funded entirely through the generous food, toy, and monetary donations to MCF from businesses, organizations and individuals throughout the community, the Holiday Food and Toy Basket Program was able to supply 530 disadvantaged Montclair children, their family members, and senior citizens with a holiday meal last year.

To ensure those in need in our community receive the provisions they need during the holiday season, staff recommends the purchase of whole turkeys and assorted food items to provide each Holiday Food and Toy Basket recipient with ingredients for a complete holiday meal. The costs of the program will be paid for with donations to MCF.

Staff recommends using \$20,000 of funds donated to MCF to purchase whole turkeys and assorted food and toys for the Holiday Food & Toy Basket Program.

**FISCAL IMPACT:** Should the MCF Board approve the purchase of turkeys and assorted items, the City will make the purchase for the Holiday Food and Toy Basket Program, and MCF will reimburse the City through funds donated.

**RECOMMENDATION:** Staff recommends the Montclair Community Foundation Board approve the purchase of turkeys and assorted items for the Montclair Holiday Food and Toy Basket Program.



**CITY OF MONTCLAIR**

**AGREEMENT FOR CONSULTANT SERVICES**

**GRANT WRITING**

THIS AGREEMENT is made and effective as of October 2, 2023, between the City of Montclair, a municipal corporation ("City") and Blais & Associates, a Texas limited liability company ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on October 2, 2023 and shall remain and continue in effect for a period of 9 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 City Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 6 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full. This amount shall not exceed \$100,000 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, 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. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 6(c).

## 7. DEFAULT OF CONSULTANT

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

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

## 8. OWNERSHIP OF DOCUMENTS

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

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

## 9. INDEMNIFICATION

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

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

(c) Subcontractors and Indemnification. Contractor agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subcontractor, Sub consultant, or other person or entity involved by, for, with, or on behalf of Contractor in the performance of any aspect of this Agreement. In the event Contractor fails to obtain such indemnity



obligations, Contractor shall be fully responsible for each and every Subcontractor, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set forth above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns, or heirs of Contractor and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Contractor further agrees to pay or cause to be paid to the Indemnified Parties’ benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Contractor or of Contractor’s officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Contractor further agrees to waive all rights of subrogation against the Indemnified Parties.

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

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

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

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

10. INSURANCE

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

(a) Types of Required Coverages

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

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$3,000,000 per occurrence, and \$5,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$5,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers’ Compensation: Workers’ Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$3,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

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

(1) Commercial General Liability

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

Additional Insured Endorsements shall not:

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

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

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

(2) Auto Liability

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

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

(3) Workers' Compensation

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

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

(e) Evidence of Insurance

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

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Contract. In addition, the City may either immediately terminate this

Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon.

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

(k) Insurance for Subcontractors

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

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

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

16. NOTICES

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

To City:	Alyssa Colunga Assistant Director of Human Services & Grants Manager City of Montclair 5111 Benito Montclair, CA 91763
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To Consultant: Blais & Associates  
Attn: Jordan P. Carter  
2807 Allen Street, Suite 2050  
Dallas, TX 75204

17. ASSIGNMENT AND SUBCONTRACTING

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF REQUEST FOR PROPOSALS

Deleted.



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

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

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**

**Blais & Associates**

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

By: \_\_\_\_\_  
President & CEO

Attest:

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

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

Approved as to Form:

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

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

EXHIBIT A

May 9, 2023

Ms. Alyssa Colunga, DrPH  
Assistant Director of Human Services & Grants Manager  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

Subject: B&A Proposal for Provision of Grant Services to the City of Montclair

Dear Ms. Colunga:

Blais & Associates, LLC (B&A) is pleased to provide the City of Montclair with the following grant services proposal for your consideration.

B&A has been honored to work with the City for the past 6 years. As you know, we can provide the City with a variety of grant-funding services including conducting timely and relevant research, writing grant applications, and post-award grant management administration.

Founded in 2000, B&A is a full-service dedicated grant services firm that provides strategic grant research, grant writing, and grant management support to municipal government agencies. Comprised of more than 25 staff members – all working remotely since founding – B&A has served local municipal clients for more than 20 years. Throughout this time, we have achieved a consistent history of delivering a positive Return on Investment (ROI) for our clients of between \$25 and \$70 for every \$1 spent on B&A consulting services. Specifically, for the City of Montclair, we have returned \$105 in grant funding for every \$1 spent.

The primary location of services is our California office with oversight from our Texas headquarters.

Office	Address	Telephone
California HQ	7545 Irvine Center Dr., Ste 200, Irvine, CA 92618	949-589-6338
Headquarters	2807 Allen St., Ste 2050, Dallas, TX 75204	949-589-6338

The information presented in this proposal is true and correct. I will serve as your primary point of contact with respect to this proposal. All statements in this proposal, including proposal price, remain valid for 90 calendar days from the submission date.

For budgeting purposes, we have developed this proposal to reflect one 12-month period. The City can engage B&A to help with any set of services and support as contained in this proposal. The development of grant applications and/or management of awarded grants can be approved on a project-by-project basis – for each of which B&A will provide a fixed-fee, not-to-exceed quote.

We look forward to the opportunity to serve and support the City. Our goal is to assist you to bring funding to key projects – to be your most efficient and effective option as a team. Should you have any questions about the proposal, please contact me at (949) 589-6338, or [wguajardo@blaisassoc.com](mailto:wguajardo@blaisassoc.com). We look forward to working together with you.

Respectfully yours,



Whitten Guajardo  
Director of Operations

**COST PROPOSAL**

B&A provides services on a customized basis, tailored to specifically meet your needs. This means the City will only pay for desired services as requested. Below provides B&A's proposed compensation by task for a 12-month period.

*Task 1: Grant Research and Support Services (Ongoing).* B&A can also provide grant intelligence and monitoring services for all applicable federal, state, regional, and foundation (project-specific) grant funding opportunities and we will alert staff when an announcement is released. This effort includes notification of open grant solicitations utilizing our proprietary Fact Sheets. B&A will also maintain a Grant Activity Report (GAR) and organize monthly grant coordination conference calls. The GAR ensures that all are aware of the specifics of each prospective grant program. B&A will provide key decision-making guidance regarding the “go” or “no-go” determinations on specific grant programs, as well as respond to various questions from staff. Direct consultation time with B&A supports your ability to achieve a high return on investment for grant program efforts.

*Task 2: Grant Application Development (Quoted upon request).* Grant application development activity levels are based on the availability of applicable grant programs, status, and availability of competitive projects for those programs, and independent determination of the grant agencies. B&A will submit grant applications in a timely manner and in accordance with all program guidelines. *B&A will only charge as grant writing projects are requested and approved to proceed.*

*Task 3: Grant Reporting and Management Services (Quoted upon request).* B&A has a dedicated and experienced grant management team standing ready to administer all requirements and deadlines for any grants that you have been awarded. A scope of work is defined, and an estimate is provided and reviewed before receiving authorization to proceed. B&A reviews the draft grant contract/agreement to ensure it aligns with the grant application (no major deviations in scope of work, schedule, and budget), helps identify rules and regulations that may warrant increased attention and focus, and assists with progress reporting and reimbursement requests. B&A proactively ensures the grant agreement is successfully executed on-time, that you can successfully administer and utilize a grant (given the conditions and requirements of the award), and the agreement correctly articulates the scope of work, budget, and schedule. *B&A will only charge as grant management projects are requested and approved to proceed.*

*Task 4: Grant and Project Management Software (Quoted upon request).* B&A developed a proprietary grant and project management software system to significantly improve and make more efficient the entire project management, coordination, reporting, and administration process from beginning-to-closeout of managing the full life of a grant award. This allows our clients the option to manage your own grants in a more efficient manner or to collaboratively work with B&A as desired on awarded grants. Please see [www.bgapstech.com](http://www.bgapstech.com) or request a demo to discuss your needs and how BGAPS can help. *B&A will offer a FREE 6-month trial period (with a small fee to upload up to three current grant agreements).*



SCHEDULE OF ESTIMATED FEES – 12-MONTH PROGRAM

Task	Description	Frequency	Estimated Total Cost
1 Grant Monitoring, Intelligence, Fact Sheets, and Grant Activity Reports  Grant Research Consultation Requests	Monitor/send targeted grant opportunities using our proprietary and proactive grant research methodologies; Develop summaries; Pros/cons; Attend workshops/webinars; Develop Monthly Grant Activity Reports (GARs); Monthly calls to review opportunities and grants in-progress.  Go/no-go consultation; Liaison with funding agencies; Participate in coordination calls with client; Develop Year-End Grant Roll-Up Reports.	Monthly Fixed Fee	\$35,250
2 Grant Proposal Development	Full turnkey or collaborative grant writing development to include submission (cost will vary by application complexity and client involvement).	Estimate of two grant applications at \$7,000 each.*	\$14,000
3 Grant Reporting & Mgmt. Services	Grant Reporting and Management Services.	Quoted upon request**	TBD
4 Grant Reporting & Mgmt. Services	B&A BGAPS Grant and Project Management Software (6-month FREE trial).	6-month FREE trial	TBD
<b>TOTAL</b>			<b>\$49,250</b>

\*All grant proposal development projects are quoted upon request based on specific project requirements (costs typically range between \$5,000 – \$18,000 per grant application). Budget optional.

\*\*All grant reporting and management projects are quoted upon request based on specific project requirements. Budget optional.



STANDARD FEE SCHEDULE

Description	Fee
Professional Services	Fixed Fee based on \$125/hour blended rate
External Consultants (e.g., BCA analysis)	Cost – no markup
Mileage	Prevailing standard IRS rate
Travel (tolls, taxi, airfare, hotel)	Cost – no markup
Printing, Copying, Binding, etc.	Cost – no markup
Shipping, Express Mail, or Courier	Cost – no markup

B&A performs work on a fixed-fee, not-to-exceed basis. Each project is independently and carefully analyzed to determine a projected scope of work. B&A then provides a fixed-fee, not-to-exceed quote for client review and approval prior to beginning work. Any additional one-off requests or activities that fall outside of the scope of work are performed and billed at a blended billing rate of \$125 per hour. This streamlined approach enables B&A to serve as a good steward of the City’s capital resources and be the most efficient and effective grant services provider possible. B&A reserves the right to adjust rates annually to align with the cost of doing business. All external consultant fees and direct out-of-pocket direct expenses are billed at cost (no markup).

Our proposed rates shall remain firm for a period of 90 calendar days from the date of submission of this fee schedule. Invoices are provided monthly, payable within 30 days after receipt.

B&A actively integrates the following “cost saving” practices into its operational procedures:

- All out-of-pocket expenses are billed at cost, with zero markup to our clients.
- B&A utilizes company discounted commercially available printing services (e.g., Staples), as needed, for bulk printing, copying, and binding support, which significantly reduces required direct costs.
- B&A utilizes company discounted commercially available shipping and delivery services (e.g., FedEx, UPS, or USPS), as needed, for delivery of hard copy materials, which significantly reduces required direct costs.
- B&A can, at your request, provide receipts for all direct expenses.





# CITY COUNCIL AGENDA REPORT

**DATE:** OCTOBER 2, 2023

**FILE I.D.:** PDT362

**SECTION:** CONSENT - AGREEMENTS

**DEPT.:** POLICE

**ITEM NO.:** 2

**PREPARER:** M. BUTLER

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 23-74 WITH THE SAN BERNARDINO COUNTY OFFICE OF EMERGENCY SERVICES AUTHORIZING THE RECEIPT OF \$17,776 FROM THE FY 2022 EMERGENCY MANAGEMENT PERFORMANCE GRANT, AND AUTHORIZING THE CHIEF OF POLICE TO SIGN SAID AGREEMENT

CONSIDER AUTHORIZING A \$17,776 APPROPRIATION FROM THE PUBLIC SAFETY GRANT FUND FOR THE PURCHASE OF EQUIPMENT TO UPGRADE THE EMERGENCY OPERATIONS CENTER (EOC)

CONSIDER AUTHORIZING APPROPRIATIONS FROM THE CONTINGENCY FUND IN THE AMOUNTS OF \$17,776 AS A DOLLAR-FOR-DOLLAR MATCH TO RECEIVE THE GRANT FUNDS AND \$25,052 TO COVER THE REMAINING BALANCE OF THE EOC UPGRADE COSTS

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 23-74 with the San Bernardino County Office of Emergency Services (County OES) authorizing the receipt of \$17,776 from the FY 2022 Emergency Management Performance Grant (EMPG) Program. The City Council is also requested to authorize a \$17,776 appropriation from the Public Safety Grant Fund to purchase equipment to upgrade the Emergency Operations Center (EOC), authorize a dollar-for-dollar match to receive funding, and authorize an additional appropriation of \$25,052 from the Contingency Fund to complete the purchase.

A copy of proposed Agreement No. 23-74 is attached for the City Council's review and consideration. This agreement had to be signed and submitted to the County as part of the grant application when it was submitted in November 2022.

**BACKGROUND:** The U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) issues the EMPG Program focusing on all-hazards emergency preparedness and the goals of addressing the increasing range and complexity of disasters, supporting the diversity of communities, and complementing the nation's growing expectations of the emergency management community. The purpose of the FY 2022 EMPG is to support comprehensive emergency management programs at the local level and to encourage the improvement of prevention, protection, mitigation, response, and recovery capabilities for all hazards and disasters, whether natural or man-made. The City of Montclair is an active signatory on the County's Operational Area Coordinating Council (OACC) Agreement and is a subrecipient of the EMPG. Each subrecipient is allocated a \$13,000 base, with the remainder of the grant distributed on a per capita basis—the City's total allocation is \$17,776.

As a subrecipient of the EMPG, staff submitted an application in November 2022 to the San Bernardino County Office of Emergency Services (County OES) requesting grant funding to upgrade and enhance the EOC. The EMPG application included a subrecipient agreement with the County, match certification (this grant requires a dollar-for-dollar match to receive grant funds), budget, narrative, and work plan. EMPG 2021 grant funds



were used to upgrade some equipment in the EOC—with funds from the EMPG 2022, staff would be able to continue its efforts of updating the EOC to effectively manage, organize, and effect crucial emergency responses in times of crisis. The aging equipment in the EOC is over 16 years old, making most of the equipment obsolete and hindering the City’s ability to prepare for and respond to emergencies and disasters.

Grant funding would be used to procure high-definition video cameras that would be used for various purposes, such as administrative and officer training, news outlets, and other digital platforms, including social media. The cameras and videos would enhance communication between the City and the public during an emergency. Along with the video camera upgrades, teleconference capabilities must be purchased to communicate remotely and securely. The combination of the video and audio upgrades in the EOC would require an additional upgrade to the main technology rack that houses all the equipment. The technology rack requires network switches to interconnect the audiovisual equipment, including computers, laptops, and other smart devices, to patch, upgrade, and control the equipment in the EOC. A digital signal-processing unit would be needed to control the audio and video source within the EOC. Additionally, a streaming digital encoder/decoder would be purchased to live broadcast video and audio stream to the Internet, providing the public with critical information during crises. These upgrades and enhancements are crucial for the City to effectively support emergency response, business continuity, and crisis communication activities during an activation of the EOC.

In August 2023, staff received authorization from County OES to proceed with the submitted project. Since then, staff has also submitted and received approval of an Environmental and Historical Preservation Screening Form and a Request for Noncompetitive Procurement Authorization, both of which were required prior to the purchase and installation of equipment.

After soliciting vendors to purchase equipment for the EOC with approved funding from the FY 2021 EMPG, staff selected Matrix Audio Visual Designs (Matrix) for the project. This vendor was the best suited to meet the challenges of upgrading the audiovisual system in the EOC and once again proved to be a trusted, reliable resource. Matrix has provided a quote of \$60,604 for phase two of modernizing and enhancing the aging equipment in the EOC.

The purchase of essential equipment represents a continuation and a critical juncture within the ongoing EOC existing upgrade project. Originally, the project scope necessitated supplementary equipment to culminate the comprehensive audio and visual enhancements within the EOC. Matrix, industry experts in the cutting-edge field of audio/video systems, designed a comprehensive solution for the EOC using its exclusive custom programming and coding. These intricacies encapsulate the proprietary intellectual property unique to Matrix and the equipment configuration in the EOC. This equipment is necessary to continue the programming that is required to finish the scope of the work for the EOC audiovisual design.

Furthermore, any additional equipment procured requires understanding existing A/V codes—expertise confined to Matrix Audio Visual Systems. In light of this exclusivity, the procurement and utilization of equipment naturally take the form of a singular, noncompetitive procurement approach. This strategic choice acknowledges the distinctive merits of the custom programming offered by the vendor.

**FISCAL IMPACT:** If approved by the City Council, the purchase of equipment for the EOC would result in an appropriation from the Public Safety Grant Fund (1163) in the amount of \$17,776. The City would receive full reimbursement from the FY 2022 EMPG. The funding match of \$17,776 and the remaining balance of \$25,052 for all other project-related costs would result in an appropriation from the Contingency Fund.

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

1. Approve Agreement No. 23-74 with the San Bernardino County Office of Emergency Services authorizing the receipt of \$17,776 from the FY 2022 EMPG and authorize the Chief of Police to sign said agreement; and
2. Authorize a \$17,776 appropriation from the Public Safety Grant Fund for the purchase of equipment to upgrade the EOC; and
3. Authorize appropriations from the Contingency Fund in the amounts of \$17,776 as a dollar-for-dollar match to receive the grant funds and \$25,052 to cover the remaining balance of the EOC upgrade costs.

**Attachment A**

**County of San Bernardino  
FY2022 Emergency Management Performance Grant Program  
CFDA 97.042**

**Subrecipient Agreement/Assurances  
Grant No. 2022-0005**

Name of Applicant: City of Montclair (hereafter "Applicant" or "Subrecipient")  
Address: 5111 Benito Street  
City: Montclair State: CA Zip Code: 91763  
Telephone Number: 909-448-3609 Fax Number: 909-626-4892  
E-Mail Address: mbutler@cityofmontclair.org

\*\*\*The Applicant becomes the Subrecipient after obtaining award authorization and approval of these assurances by both Applicant and the County of San Bernardino (hereafter "County") \*\*\*

As the duly authorized representative of the Applicant, I hereby certify that the Applicant has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application, within prescribed timelines.

The requirements outlined in these assurances apply to Applicant and any of its subrecipients.

I further acknowledge that the Applicant is responsible for reviewing and adhering to all requirements within the:

- (a) Applicable Federal Regulations (see below);
- (b) Federal Program Notice of Funding Opportunity (NOFO);
- (c) Federal Preparedness Grants Manual;
- (d) California Supplement to the NOFO; and
- (e) Federal and State Grant Program Guidelines.

Federal Regulations  
Government cost principles, uniform administrative requirements, and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (C.F.R.). Updates are issued by the [Office of Management and Budget \(OMB\)](http://www.whitehouse.gov/omb/) and can be found at <http://www.whitehouse.gov/omb/>.

State and federal grant award requirements are set forth below. The Applicant hereby agrees to comply with the following:

1. Proof of Authority

The Applicant will obtain proof of authority from the city council, governing board, or authorized body in support of this project. This written authorization must specify that the Applicant and the city council, governing board, or authorized body agree:

- (a) To provide all matching funds required for the grant project and that any cash match will be appropriated as required;

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- (b) Any liability arising out of the performance of this agreement shall be the responsibility of the Applicant and the city council, governing board, or authorized body;
- (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board, or authorized body;
- (d) The Applicant is authorized by the city council, governing board, or authorized body to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost, if any) to ensure proper planning, management and completion of the project described in this application; and
- (e) Official executing this agreement is authorized by the Applicant.

This Proof of Authority must be maintained on file and readily available upon request.

### 2. Period of Performance

The period of performance is specified in the Award. The Applicant is only authorized to perform allowable activities approved under the award, within the period of performance.

### 3. Lobbying and Political Activities

As required by Section 1352, Title 31 of the United States Code (U.S.C.), for persons entering into a contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, the Applicant certifies that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, **"Disclosure Form to Report Lobbying"**, in accordance with its instructions.
- (c) The Applicant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

The Applicant will also comply with provisions of the Hatch Act (5 U.S.C. §§ 1501- 1508 and §§ 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

Finally, the Applicant agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from the **California Governor's Office** of Emergency Services (Cal OES) or the federal awarding agency.

### 4. Debarment and Suspension

As required by Executive Orders 12549 and 12689, and 2 C.F.R. § 200.214 and codified in 2 C.F.R. Part 180, Debarment and Suspension, the Applicant will provide protection against waste, fraud, and abuse by debarment or suspending those persons deemed irresponsible in their dealings with the federal government. The Applicant certifies that it and its subrecipients:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where the Applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

#### 5. Non-Discrimination and Equal Employment Opportunity

The Applicant will comply with all state and federal statutes relating to non-discrimination, including:

- (a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. § 2000d et. seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
- (b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in any federally funded educational program or activity;
- (c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794), which prohibits discrimination against those with disabilities or access and functional needs;
- (d) Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. §§ 12101- 12213), which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs;
- (e) Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (f) Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd—2), relating to confidentiality of patient records regarding substance abuse treatment;
- (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)— be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);
- (h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification or national origin;

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- (i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
- (j) California Public Contract Code § 10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;
- (k) DHS policy to ensure the equal treatment of faith-based organizations, under which the Applicant must comply with equal treatment policies and requirements contained in 6 C.F.R. Part 19;
- (l) **The Applicant will comply with California's Fair Employment and Housing Act (FEHA) (California Government Code §§12940, 12945, 12945.2), as applicable.** FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave, military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions;
- (m) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
- (n) The requirements of any other nondiscrimination statute(s) that may apply to this application.

### 6. Drug-Free Workplace

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), the Applicant certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

### 7. Environmental Standards

The Applicant will comply with state and federal environmental standards, including:

- (a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000-21177), to include coordination with the city or county planning agency;
- (b) CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000-15387);
- (c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;
- (d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;
- (e) Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
- (f) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
- (g) Executive Order 11514 which sets forth national environmental standards;
- (h) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;
- (i) The Safe Drinking Water Act of 1974, (P.L. 93-523);

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- (j) The Endangered Species Act of 1973, (P.L. 93-205);
- (k) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- (l) Conformity of Federal Actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- (m) Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

The Applicant shall not be: 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.

### 8. Audits

For subrecipients expending \$750,000 or more in federal grant funds annually, the Applicant will perform the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

### 9. Cooperation and Access to Records

The Applicant must cooperate with any compliance reviews or investigations conducted by DHS. In accordance with 2 C.F.R. § 200.337, the Applicant will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. The Applicant will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.

### 10. Conflict of Interest

**The Applicant will establish safeguards to prohibit the Applicant's employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.**

### 11. Financial Management

False Claims for Payment - The Applicant will comply with 31 U.S.C §§ 3729-3733 which provides that Applicant shall not submit a false claim for payment, reimbursement, or advance.

### 12. Reporting - Accountability

The Applicant agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), including but not limited to (a) the reporting of subawards obligating \$30,000 or more in federal funds, and (b) executive compensation data for first-tier subawards as set forth in 2 C.F.R. Part 170, Appendix A. The Applicant also agrees to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A.

### 13. Whistleblower Protections

The Applicant must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.

### 14. Human Trafficking

The Applicant will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits the Applicant or its subrecipients from: (1) engaging in trafficking in

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persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; or (3) using forced labor in the performance of the award or subawards under the award.

**15. Labor Standards**

The Applicant will comply with the following federal labor standards:

- (a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts, and
- (b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

**16. Worker's Compensation**

The Applicant must comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

**17. Property-Related**

If applicable to the type of project funded by this federal award, the Applicant will:

- (a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchase;
- (b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires federal award subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;
- (c) Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1 et seq.); and
- (d) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

**18. Certifications Applicable Only to Federally-Funded Construction Projects**

For all construction projects, the Applicant will:

- (a) Not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;
- (b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and
- (c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.



19. Use of Cellular Device While Driving is Prohibited

The Applicant is required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.

20. California Public Records Act and Freedom of Information Act

The Applicant acknowledges that all information submitted in the course of applying for funding under this program, **or provided in the course of an entity's grant** management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Act, California Government Code section 6250 et seq. The Applicant should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

EMERGENCY MANAGEMENT PERFORMANCE GRANT PROGRAM (EMPG) –  
PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS

21. Acknowledgment of Federal Funding from DHS

The Applicant must acknowledge its use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

22. Activities Conducted Abroad

The Applicant must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

23. Best Practices for Collection and Use of Personally Identifiable Information (PII)

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. If the Applicant collects PII, the Applicant is required to have a publicly-available privacy policy that describes standards on the usage and maintenance of PII they collect. The Applicant may refer to the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template as a useful resource.

24. Copyright

The Applicant must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

25. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude the Applicant from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

26. Energy Policy and Conservation Act

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The Applicant must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

### 27. Federal Debt Status

The Applicant is required to be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

### 28. Fly America Act of 1974

The Applicant must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B- 138942.

### 29. Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, the Applicant must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.

### 30. Non-supplanting Requirement

If the Applicant receives federal financial assistance awards made under programs that prohibit supplanting by law, the Applicant must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non- federal sources.

### 31. Patents and Intellectual Property Rights

Unless otherwise provided by law, the Applicant is subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. The Applicant is subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

### 32. SAFECOM

If the Applicant receives federal financial assistance awards made under programs that provide emergency communication equipment and its related activities, the Applicant must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

### 33. Terrorist Financing

The Applicant must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. The Applicant is legally responsible for ensuring compliance with the Order and laws.

### 34. Reporting of Matters Related to Recipient Integrity and Performance

**If the total value of the Applicant's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, the Applicant must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.**

35. USA Patriot Act of 2001

The Applicant must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

36. Use of DHS Seal, Logo, and Flags

The Applicant must obtain permission from their DHS Financial Assistance Office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

37. Applicability of DHS Standard Terms and Conditions to Tribes

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon the Applicant and flow down to any of its subrecipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

38. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

**The Applicant must comply with the “Build America, Buy America” Act (BABAA), enacted as part of the Infrastructure Investment and Jobs Act and Executive Order 14005.** Applicants receiving a federal award subject to BABAA requirements may not use federal financial assistance funds for infrastructure projects unless:

- (a) All iron and steel used in the project are produced in the United States – this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (b) All manufactured products used in the project are produced in the United States – this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (c) All construction materials are manufactured in the United States – this means that all manufacturing processes for the construction material occurred in the United States.

**The “Buy America” preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project.** It does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Per section 70914(c) of BABAA, FEMA may waive the application of a Buy America preference under an infrastructure program in certain cases.

**On July 1, 2022, OMB approved FEMA's General Applicability Public Interest Waiver of the BABAA**

requirements to be effective for a period of six months, through January 1, 2023. Applicants will not be required to follow the BABAA requirements for FEMA awards made, and any other funding FEMA obligates, during this waiver period. For any new awards FEMA makes after January 1, 2023, as well as new funding FEMA obligates to existing awards or through renewal awards where the new funding is obligated after January 1, 2023, Applicants will be required to follow the BABAA requirements unless another waiver is requested and approved.

**IMPORTANT**

The purpose of these assurances is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. Applicant recognizes and agrees that state financial assistance will be extended based on the representations made in these assurances. These assurances are binding on Applicant, its successors, transferees, assignees, etc. as well as any of its subrecipients. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

All appropriate documentation, as outlined above, must be maintained on file by the Applicant and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the Applicant may be ineligible for award of any future grants if Cal OES determines that the Applicant: (1) has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of the language contained within this document must be included in the award documents for all subawards at all tiers. Applicants are bound by the Department of Homeland Security Standard Terms and Conditions 2022, Version 3, hereby incorporated by reference, which can be found at: <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

ASSURANCES REGARDING SAN BERNARDINO COUNTY FOR POST AWARD

39. Subrecipient shall submit (to OES/Grants Administration) a copy of their procurement policies with their application. Subrecipient shall adhere to its own documented procurement procedures provided that the procurements conform to applicable federal law and standards identified in 2 CFR. 200.318 through 200.326. *If the subrecipient's procurement procedures overlap local, state and federal policies, the subrecipient must follow procedures that allows them to be in compliance with all applicable layers (often referred to as the most restrictive standard).*
40. Subrecipient shall attach Request for Proposals, bid advertisements, and/or photocopies of valid quotes from qualified vendors, etc. to Reimbursement Requests when procurement policies require such procedures in the purchasing of grant equipment. Valid quotes must be obtained prior to the purchase date. Quotes obtained after the date of purchase will not be considered valid. Subrecipient shall take and keep on file color photographs of each equipment item/lot purchased with EMPG funds at the time of acquisition and make available upon notice during any said OES inventories. Subrecipient is also required to attach color copies to the Reimbursement Request of the color photographs of each equipment item/lot purchased with EMPG funds.
41. Subrecipient will not make any award or permit any award (sub-grant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension". Suspended or debarred suppliers can be located on [SAM.gov](https://www.sam.gov) | [Home](#)

FY2022 Emergency Management Performance Grant Program Assurances

Updated 10/18/22

42. A copy of the search results must be included with applicable reimbursement requests. *Please note that the **absence of a party's name at the above website does not mean that the party has been debarred.*** Many suppliers are not registered in the SAM system. Subrecipient need only to verify that suppliers receiving grant funds are not debarred or suspended. **Subrecipient should search for the company name and the owner's name to ensure that no supplier participants are debarred.**
43. Subrecipient must maintain all payment documents and procurement records for grant purchases/expenditures for three (3) years after the close of the grant, which occurs when the California Office of Emergency Services (CalOES) has filed the final report. Subrecipient must notify County Grants Administration prior to purging or destroying any and all supporting documentation for the EMPG grant program, including expense related documents.
44. Subrecipient shall immediately report to (OES/Grants Administration) all damaged, lost or stolen equipment/property that is purchased with grant funds per 2 CFR § 200.313. Subrecipient must be complete and return the attached **"Damaged, Lost, or Stolen Report (DLSR) Form"** to OES/Grants Administration for reporting to CalOES.
45. It shall be the responsibility of the Subrecipient to track and maintain all equipment on a generally accepted accounting system. Subrecipient shall record equipment at the time of acquisition and/or print equipment records upon request should OES/Grants Administration request periodic progress reports on the location and condition of grant purchased equipment to forward to Cal OES when necessary.
46. **Contract provisions: A subrecipient's contract must contain provisions as** noted in Appendix II to Part 200, Title 2 of the Code of Federal Regulations – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
47. **Subrecipient is expected to submit "Functional Timesheets" and a Personnel Activity Report (PAR) for any** employee funded by federal grants which reflects all hours worked for the pay period charged to the grant with grant hours reflected separately. Subrecipient must maintain time and effort reporting, and document the time they spend working on the grant's objectives. **Documentation must reflect "actual" time spent on the grant by the employee with the acknowledgement of supervision (2 CFR 200.430).**
48. PARs and Functional Timesheets must display all hours worked by the employee being charged to the grant, not just the hours charged to the grant activity. Grant hours must be separated from other hours in accordance with 2 CFR. 200.430. Salaries and wages used in meeting cost sharing or matching requirements must be supported in the same manner as those claimed as allowable costs under federal awards.
49. Signing the certification means that the employee DID NOT spend any time on any other grant (direct or indirect) or on agency activities unrelated to the grant. Note that it is our understanding that anyone who is 100% funded is automatically audited. Salary costs that are not accurately and properly documented are **"unallowable costs" and will not be reimbursed.** If you have been reimbursed for salary that was not properly recorded and supported, the State or Federal Governments may require your agency to pay back any **"unallowable costs."**
50. Subrecipient will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

The undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the Applicant:

Applicant: City of Montclair

Signature of Authorized Agent: \_\_\_\_\_

Printed Name of Authorized Agent: \_\_\_\_\_

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

The Undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the County. The undersigned is the appropriate contact for all notices and documents to be provided under this agreement.

San Bernardino County

Signature of Authorized Agent: \_\_\_\_\_

Printed Name of Authorized Agent: Daniel Muñoz

Title: Deputy Executive Officer Date: \_\_\_\_\_



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	OCTOBER 2, 2023	<b>FILE I.D.:</b>	PUB115A
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	M. HEREDIA
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 23-76 WITH CASC ENGINEERING, INC. FOR WATER QUALITY AND STORMWATER COMPLIANCE SERVICES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 23-76 with CASC Engineering to continue assisting the City with the Water Quality Management Program (WQMP) and stormwater compliance services. A copy of proposed Agreement No. 23-76 with CASC Engineering, Inc. is attached for City Council review and consideration.

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

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

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

The City anticipates the adoption of a new General Stormwater Permit in 2023. The new permit will be a multi-regional permit where the Counties of San Bernardino, Riverside, and Orange will be required to adopt and enforce the same permit policies. This new permit will significantly change the Inland Empire agencies, as the coastal cities have historically had more stringent stormwater requirements. Approval of Agreement No. 23-76 will allow the City to request assistance from CASC Engineering to ensure a smooth transition to the new permit.

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

**FISCAL IMPACT:** The cost for these services was approved as part of the Fiscal Year 2023-24 budget. Additionally, the City Council has established plan check fees for WQMP review. Developers pay for the cost of reviewing their WQMPs. This review process is self-supporting with plan-check fees collected to pay for the work performed by the City's consultant.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 23-76 with CASC Engineering, Inc. for water quality and stormwater compliance services, subject to any revisions deemed necessary by the City Attorney.



# CITY OF MONTCLAIR

## AGREEMENT FOR CONSULTANT SERVICES

### NPDES PROGRAM ASSISTANCE

THIS AGREEMENT is made and effective as of October 2, 2023, between the City of Montclair, a municipal corporation ("City") and CASC Engineering, Inc., 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 October 14, 2023 and shall remain and continue in effect for a period of 36 months until tasks described herein are completed, but in no event later than October 14, 2026, 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:

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

17. ASSIGNMENT AND SUBCONTRACTING

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONFIDENTIALITY

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

22. DISCRIMINATION

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

23. EFFECT OF PARTIAL INVALIDITY

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

24. CLAIMS AGAINST CITY

Consultant must comply with the claim procedures set forth in Government Code sections 900, *et. seq.*, and/or Montclair Municipal Code, Chapter 1.16, as applicable, prior to filing any lawsuit against the City. Such claims and any subsequent lawsuit based upon the claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by 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.

25. AUTHORITY TO EXECUTE THIS AGREEMENT

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

26. NO THIRD PARTY BENEFICIARIES

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

27. COST OF LITIGATION

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

28. AUTHORITY TO EXECUTE THIS AGREEMENT

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

29. COUNTERPARTS

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

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

**CITY OF MONTCLAIR**

**CONSULTANT**

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

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

Attest:

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

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

Approved as to Form:

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

## Exhibit A

### NPDES Consulting Services

#### Scope of Services

##### Task 1 – NPDES Program Management Support

Consultant shall provide NPDES on-call services as requested by the City representative. Services may include but are not limited to coordination with the Tri-County MS4 Permit Group; attending for and representing the City on the San Bernardino County MS4 Permit Management Committee and any of its subcommittees or workgroups; reviewing, preparing comments, and contributing to the development of documents, annual reporting, database management, programs, procedures, and policies associated with the MS4 Permit and its implementation, amendment, renewal, or interpretation at the City or areawide level; assisting the City to prepare for, participate in, and follow up to audits or inspections by the Regional Board or USEPA; and serve as the MS4 Program Manager on either a short-term or long-term basis.

Services may also include researching and evaluating alternative funding sources, coordinating with both Chino Basin Water conservation and Monte Vista Water Districts, and other services deemed necessary by the City to comply with its MS4 Permit effectively and to develop and implement its NPDES program.

##### Task 2 – Construction General Permit and MS4 Permit Services (Public and Private Projects)

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

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

The Consultant shall also provide services to assist the City in meeting its obligations under the Construction General Permit (CGP) and its MS4 Stormwater Permit. Services may include but are not limited to coordination review of Storm Water Pollution Prevention Plans (SWPPPs);

conducting periodic inspections of construction sites as required; preparing written reports; entering inspection data into the regional MS4 database; meeting with applicants or construction site operators to review the results of construction site inspections; inspection of WQMP BMPs as they are constructed; and advising City staff regarding the status of inspections, including the need to take enforcement actions. A certified QSP or QSD shall conduct the inspections.

**Task 3 – Commercial, Industrial, and Residential Compliance Services (Private Projects)**

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

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

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

Additional services may also include assisting the City’s Business License Department in continually implementing the City’s plan to comply with SB205 and as amended. CASC will provide requested support to the Business License Department to confirm applicable facilities are reported to the Regional Board.

**Task 4 – IC/ID Program Support**

The Consultant shall provide on-call services to assist the City with the response to, and investigation of, incidents of illicit connections and illegal discharges and dumping (IC/ID). The inspections, responses, and investigations shall be conducted by trained staff under the general supervision of a Qualified Industrial Stormwater Practitioner (QISP)

**Task 5 – Municipal Facilities Program Support**

The Consultant shall provide services to assist the City in meeting its obligations under its MS4 Stormwater Permit in regard to its municipal facilities. Services may include but are not limited to review of Facility Pollution Prevention Plans (FPPPs); conducting annual inspections of city

facilities; preparing written reports; meeting with facility managers or operators to review the results of site inspections; and advising City staff regarding the status of inspections, including the need to make corrective actions.

### **Task 6 – Land Development - WQMP Reviews and Coordination**

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

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

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

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

Consultant shall maintain a log showing:

- The status of WQMPs submitted for review.
- The date the WQMP was received.
- The date red line comments were returned.
- The City’s project tracking number.
- The status of the WQMP (e.g., approved, revise/resubmit).

The WQMP log shall be transmitted to the City when requested.

Services may also include meeting and conferring with the City to discuss WQMPs as needed (e.g. when a WQMP proposes BMPs in the public right-of-way). The Consultant shall meet with development Applicants and WQMP preparers when requested by an Applicant/Preparer and approved by the City. The purpose of these meetings shall be to provide general guidance on WQMP preparation or to clarify WQMP redline comments. The meetings may be in-person or

via teleconference: in-person meetings shall occur at the City, at the Consultant's office in Colton, or at another mutually agreeable location approved by the City.

**Task 7 – Trash Amendment Services**

The Consultant shall provide services to assist the City in meeting its obligations related to the Statewide Trash Amendments and future language anticipated to be included in the regional MS4 Permit. Consultant shall conduct On-Land Visual Trash Assessments, assist the City with identifying required locations for full capture device installation, and provide database/GIS support as needed to comply with permit requirements.

**Task 8 – Project Management**

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

**Terms**

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

**Information and Materials to be Provided by the City**

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

**Service Statement**

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

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

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

- Not accept assignments that pose a direct conflict of interest.



- Advise clients of such known specific occurrences when we have coincident compliance interests.
- Assign separate staff to each client when we have coincident compliance interests.

###



**CASC ENGINEERING AND CONSULTING RATE SCHEDULE (7/2022 through 6/2027)\***

**Civil and Environmental Engineering/Consulting**

President/Principal Engineer	\$265
Sr. Director	\$235
Director	\$220
Program Manager/ Technical Specialist	\$210
Senior Project Manager/ Senior Engineer IV/Senior Scientist IV	\$195
Project Manager III/Senior Engineer III/ Senior Scientist III	\$180
Project Manager II/Senior Engineer II/ Senior Scientist II	\$170
Project Manager I/Senior Engineer I/ Senior Scientist I	\$165
Assistant Project Manager/ Senior Environmental Analyst	\$160
Project Engineer/ Environmental Analyst III/ Scientist III	\$155
Senior Designer II/ Environmental Analyst II/ Scientist II	\$150
Senior Designer I /Environmental Analyst I/ Scientist I	\$145
Design Engineer II	\$135
Design Engineer I	\$125
Designer II/ Staff Analyst II	\$120
Designer I/ Staff Analyst I	\$115
CADD Drafter/Project Analyst III	\$102
Staff Assistant II/Project Analyst II	\$96
Staff Assistant I/Project Analyst I	\$90

**Planning and Environmental**

Planning Director	\$210
Senior Project Manager	\$182
Senior Biologist	\$175
Project Manager II	\$170
Project Manager I	\$165
Senior Planner II/Biologist II	\$140
Senior Planner I/Biologist I	\$127
Associate Planner II/GIS Specialist II	\$116
Associate Planner I/GIS Specialist I	\$106
Construction Monitor	\$94-116

**Clerical**

Project Coordinator/Clerical III	\$95
Project Coordinator/Clerical II	\$90
Project Coordinator/Clerical I	\$85

**REIMBURSABLE EXPENSES:**

The following expenses will be billed at cost plus 15% unless otherwise noted:

**Outside Services:** Includes fees paid to sub-consultants, consultants, analytical laboratories, and other providers of services required for execution of the project.

**Permits, Applications, and Fees:** Includes fees for Notices of Intent (NOI), Notices of Termination (NOT), application fees, submittal fees, permit fees, and other fees required as part of the project and not paid directly by Client.

**Reproduction Services:** Includes blueprinting, copying, printing, and plotting. In-house plots will be billed at \$6.00 per sheet for each client set and for a final in-house review set. B&W / Color copies: \$0.08 / \$0.90 for 8.5 X 11 and \$0.20 / \$1.20 for 11 X 17.

**Rental Fees:** Includes rental fees paid by the firm, including required vehicles, equipment, and tools required to complete the work.

**Commercial Delivery Services:** Including Express Mail, Federal Express, UPS and independent courier services.

**In-House Pick-Up and Delivery Services:** When provided by the firm, these services will be billed at \$50.00 per hour plus current IRS mileage reimbursement rates per mile round trip, with no additional markup.

**Travel Expenses:** Includes travel expenses incidental to performance of the work, including airfare, parking, tolls, taxi, lodging, etc. Vehicle mileage will be billed at a rate of current IRS mileage reimbursement rate per mile with no additional markup. Travel time for professional and administrative staff will be billed per the hourly fee rate schedule with no additional markup and survey crews will be billed at **\$60 per hour, per 2-man crew.**

**Per Diem:** Per diem for meals for overnight stays will be billed at Caltrans current state rates.

**NOTES:**

**Prevailing Wage:** Projects and/or portions thereof designated by Client to be subject to Prevailing Wage shall be billed at the regular staff rate or the Prevailing Wage rate, whichever is higher plus a multiplier of approximately 2.3 to 2.8 for overhead and profit. The Prevailing Wage rate shall be based upon the Wage Rate Determination issued by California's Director of Industrial Relations for the locality and employee classification at the time the work is performed. Please contact CASC for specific project prevailing wage rates.

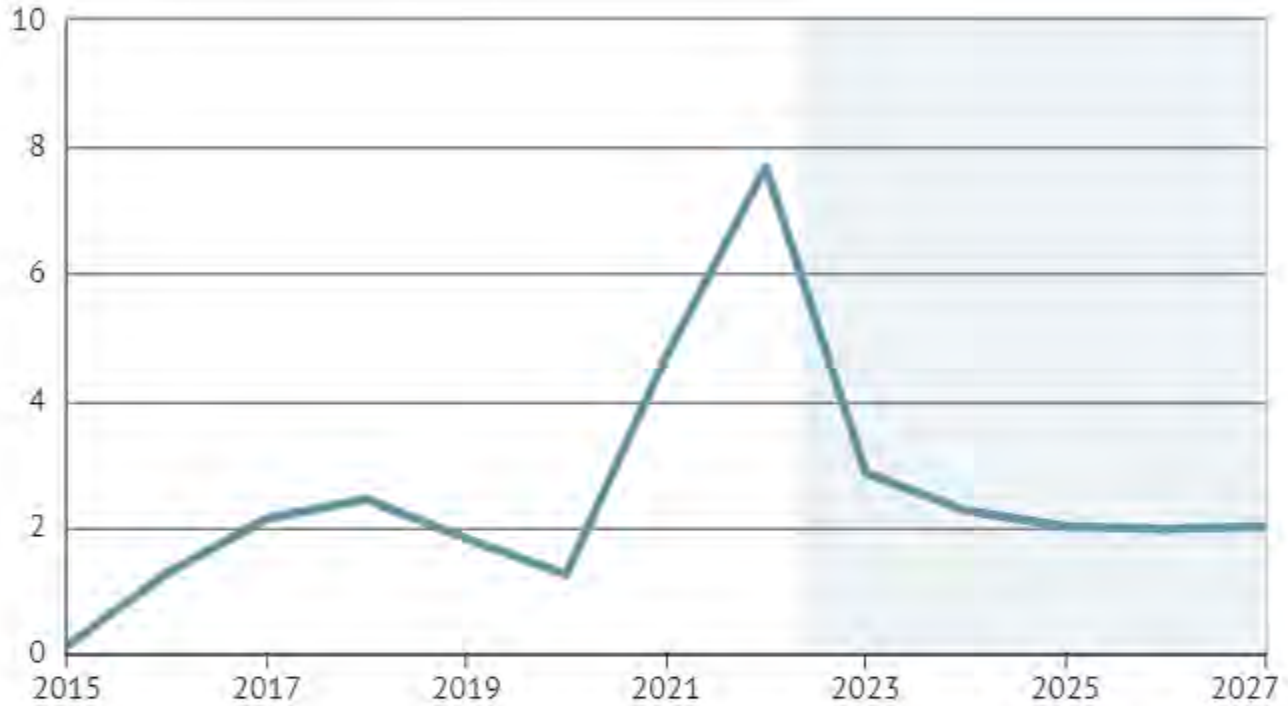
**Waiver of Subrogation:** When a Waiver of Subrogation for Workman's Compensation Insurance is required by the Client, the Client will be required to pay the additional insurance premium. **The approximate amount for the waiver is \$250 per year.**

**Litigation Support** and Expert Witness shall be at 2.0 times the above noted hourly rates.

**\*Annual Increase in rate:** Effective July 1, 2023, CASC rates will increase by the Consumer Price Index (CPI) forecast prepared by the International Monetary Fund (see next page).

## IMF US Inflation Forecast

CPI, % change



Year	19	2020	2021	2022	2023	2024	2025	2026	2027
%	1.8	1.2	4.7	7.7	2.9	2.3	2.0	2.0	2.0

Source: <https://knoema.com/kyaewad/us-inflation-forecast-2022-2023-and-long-term-to-2030-data-and-charts> (Data pulled May 25, 2022).



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	OCTOBER 2, 2023	<b>FILE I.D.:</b>	STB300-17
<b>SECTION:</b>	CONSENT - RESOLUTIONS	<b>DEPT.:</b>	CITY MGR.
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	C. GRAVES
<b>SUBJECT:</b>	CONSIDER ADOPTION OF RESOLUTION NO. 23-3419 AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH CHARGES		

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**REASON FOR CONSIDERATION:** Staff has identified 151 sewer and trash accounts in the even-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien.

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

**FISCAL IMPACT:** Recoverable amount is \$50,478.52, plus \$3,020.00 for release of lien fees, plus \$7,550.00 in lien fees, for a total of \$61,048.52.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 23-3419 authorizing placement of liens on certain properties for delinquent sewer and trash charges as listed on Exhibit A of said Resolution.

RESOLUTION NO. 23-3419

**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 151 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 September 7, 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, October 2, 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 - October 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. 23-3419 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. 23-3419  
Report of Delinquent Civil Debts – October 2023

Street No	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
11225	Ada Avenue	Residential	312.70	20.00	50.00	382.70
10159	Amherst Avenue	Residential	288.88	20.00	50.00	358.88
11141	Amherst Avenue	Residential	322.20	20.00	50.00	392.20
11151	Amherst Avenue	Residential	322.20	20.00	50.00	392.20
4306	Appaloosa Way	Residential	322.64	20.00	50.00	392.64
5512	Arrow Hwy #F	Commercial	289.05	20.00	50.00	359.05
5071	Bandera Street	Residential	332.06	20.00	50.00	402.06
5663	Bandera Street	Residential	288.88	20.00	50.00	358.88
10133	Bel Air Avenue	Residential	288.88	20.00	50.00	358.88
10145	Bel Air Avenue	Residential	322.20	20.00	50.00	392.20
10283	Bel Air Avenue	Residential	376.79	20.00	50.00	446.79
10545	Belgian Place	Residential	344.04	20.00	50.00	414.04
10551	Belgian Place	Residential	378.29	20.00	50.00	448.29
5206	Benito Street	Commercial	328.38	20.00	50.00	398.38
10448	Benson Avenue	Residential	257.72	20.00	50.00	327.72
5011	Birch Street	Residential	312.76	20.00	50.00	382.76
11339	Brunswick Lane	Residential	332.54	20.00	50.00	402.54
10401	Camarena Avenue	Residential	308.00	20.00	50.00	378.00
10234	Camulos Avenue	Residential	322.21	20.00	50.00	392.21
10259	Camulos Avenue	Residential	344.04	20.00	50.00	414.04
10280	Camulos Avenue	Residential	446.92	20.00	50.00	516.92
4732	Canoga Street	Multifamily	315.60	20.00	50.00	385.60
4741	Canoga Street	Multifamily	313.56	20.00	50.00	383.56
4851	Canoga Street	Multifamily	435.96	20.00	50.00	505.96
4912	Canoga Street	Residential	288.88	20.00	50.00	358.88
4924	Canoga Street	Residential	322.20	20.00	50.00	392.20
5034	Canoga Street	Residential	491.32	20.00	50.00	561.32
5068	Canoga Street	Residential	207.38	20.00	50.00	277.38
4825-31	Canoga Street	Multifamily	249.12	20.00	50.00	319.12
4945	Carlton Street	Residential	242.16	20.00	50.00	312.16
11132	Carriage Avenue	Residential	472.76	20.00	50.00	542.76
11178	Carrillo Avenue	Residential	322.20	20.00	50.00	392.20
9645	Central Avenue	Commercial	698.76	20.00	50.00	768.76
11352	Chandler Lane	Residential	222.79	20.00	50.00	292.79
4337	Clair Street	Residential	355.49	20.00	50.00	425.49
5216	Clair Street	Residential	249.15	20.00	50.00	319.15
4241	Clydesdale Way	Residential	261.02	20.00	50.00	331.02
10164	Coalinga Avenue	Residential	322.20	20.00	50.00	392.20
10231	Coalinga Avenue	Residential	315.84	20.00	50.00	385.84
10247	Coalinga Avenue	Residential	260.68	20.00	50.00	330.68
10995	Coalinga Avenue	Residential	288.88	20.00	50.00	358.88
11148	Coalinga Avenue	Residential	322.20	20.00	50.00	392.20
11362	Cumberland Lane	Residential	330.64	20.00	50.00	400.64
11370	Cumberland Lane	Residential	331.93	20.00	50.00	401.93
11373	Cumberland Lane	Residential	332.88	20.00	50.00	402.88
11469	Cumberland Lane	Residential	332.56	20.00	50.00	402.56

Exhibit A to Resolution No. 23-3419  
Report of Delinquent Civil Debts – October 2023

Street No	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
11323	Dartmouth Lane	Residential	206.15	20.00	50.00	276.15
11333	Dartmouth Lane	Residential	330.64	20.00	50.00	400.64
10187	Del Mar Avenue	Residential	500.86	20.00	50.00	570.86
10190	Del Mar Avenue	Residential	322.20	20.00	50.00	392.20
10236	Del Mar Avenue	Residential	322.14	20.00	50.00	392.14
4506	Donner Court	Residential	448.31	20.00	50.00	518.31
4512	Donner Court	Residential	241.61	20.00	50.00	311.61
11159	Essex Avenue	Residential	322.20	20.00	50.00	392.20
4705	Evert Street	Residential	322.25	20.00	50.00	392.25
4771	Evert Street	Residential	312.67	20.00	50.00	382.67
11460	Fairfax Lane	Residential	366.54	20.00	50.00	436.54
4219	Fauna Street	Residential	322.18	20.00	50.00	392.18
4244	Fauna Street	Residential	322.16	20.00	50.00	392.16
4267	Fauna Street	Residential	309.63	20.00	50.00	379.63
4291	Fauna Street	Residential	322.20	20.00	50.00	392.20
4432	Fauna Street	Residential	288.88	20.00	50.00	358.88
4456	Fauna Street	Senior	287.14	20.00	50.00	357.14
4703	Fauna Street	Residential	322.20	20.00	50.00	392.20
4852	Fauna Street	Residential	322.20	20.00	50.00	392.20
5420	Fauna Street	Residential	288.88	20.00	50.00	358.88
10260	Felipe Avenue	Residential	310.58	20.00	50.00	380.58
8919-21	Felipe Avenue	Multifamily	644.39	20.00	50.00	714.39
4642	Flora Street	Residential	241.23	20.00	50.00	311.23
4660	Flora Street	Senior	322.20	20.00	50.00	392.20
4704	Flora Street	Residential	262.16	20.00	50.00	332.16
4932	Flora Street	Residential	548.15	20.00	50.00	618.15
5029	Flora Street	Residential	211.34	20.00	50.00	281.34
5083	Flora Street	Senior	324.29	20.00	50.00	394.29
5382	Flora Street	Residential	294.61	20.00	50.00	364.61
10253	Fremont Avenue	Residential	322.20	20.00	50.00	392.20
10287	Fremont Avenue	Residential	353.01	20.00	50.00	423.01
11049	Fremont Avenue	Residential	367.36	20.00	50.00	437.36
10365-67	Fremont Avenue	Multifamily	274.62	20.00	50.00	344.62
10111	Galena Avenue	Residential	494.02	20.00	50.00	564.02
4155	Grand Avenue	Residential	327.00	20.00	50.00	397.00
10198	Greenwood Avenue	Residential	207.10	20.00	50.00	277.10
11250	Greycliff Avenue	Residential	288.88	20.00	50.00	358.88
3792	Hampton Drive	Residential	332.54	20.00	50.00	402.54
11418	Hartford Lane	Residential	333.44	20.00	50.00	403.44
11353	Hickory Lane	Residential	250.00	20.00	50.00	320.00
4103	Howard Street	Residential	322.20	20.00	50.00	392.20
4341	Howard Street	Residential	336.65	20.00	50.00	406.65
4705	Howard Street	Residential	332.54	20.00	50.00	402.54
4910	Howard Street	Residential	353.04	20.00	50.00	423.04
4556	Humboldt Court	Residential	288.88	20.00	50.00	358.88
4558	Humboldt Court	Residential	287.84	20.00	50.00	357.84



Exhibit A to Resolution No. 23-3419  
Report of Delinquent Civil Debts – October 2023

Street No	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
10170	Kimberly Avenue	Senior	401.11	20.00	50.00	471.11
10236	Kimberly Avenue	Residential	322.20	20.00	50.00	392.20
10244	Kimberly Avenue	Residential	342.24	20.00	50.00	412.24
11065	Kimberly Avenue	Residential	322.20	20.00	50.00	392.20
4671	Kingsley Street	Multifamily	638.69	20.00	50.00	708.69
4762	Kingsley Street	Residential	228.25	20.00	50.00	298.25
4909	Kingsley Street	Residential	335.37	20.00	50.00	405.37
5476	Kingsley Street	Residential	413.39	20.00	50.00	483.39
5141-43	Kingsley Street	Multifamily	245.25	20.00	50.00	315.25
5173-75	Kingsley Street	Multifamily	577.75	20.00	50.00	647.75
5015	Laurel Street	Residential	345.72	20.00	50.00	415.72
10360-62	Lehigh Avenue	Multifamily	644.39	20.00	50.00	714.39
4414	Mane Street	Residential	282.41	20.00	50.00	352.41
4595	Mane Street	Residential	322.15	20.00	50.00	392.15
4696	Mane Street	Residential	285.58	20.00	50.00	355.58
4839	Mane Street	Residential	322.20	20.00	50.00	392.20
4846	Mane Street	Residential	352.95	20.00	50.00	422.95
8875	Maple Avenue	Residential	341.96	20.00	50.00	411.96
11154	Marion Avenue	Residential	347.04	20.00	50.00	417.04
4444	Merle Street	Residential	449.07	20.00	50.00	519.07
10231	Mills Avenue	Residential	322.20	20.00	50.00	392.20
10279	Mills Avenue	Residential	409.40	20.00	50.00	479.40
5239	Monte Verde Street	Residential	322.15	20.00	50.00	392.15
10290	Monte Vista Avenue	Senior	327.28	20.00	50.00	397.28
10163	Oak Glen Avenue	Senior	287.14	20.00	50.00	357.14
10594	Oak Glen Avenue	Residential	335.37	20.00	50.00	405.37
4595	Oakdale Street	Residential	322.16	20.00	50.00	392.16
5171	Orchard Street	Senior	315.97	20.00	50.00	385.97
5422	Orchard Street	Residential	322.20	20.00	50.00	392.20
10563	Palomino Circle	Residential	329.39	20.00	50.00	399.39
10225	Poulsen Avenue	Residential	303.11	20.00	50.00	373.11
10206	Pradera Avenue	Residential	322.20	20.00	50.00	392.20
10833	Ramona Avenue	Residential	242.78	20.00	50.00	312.78
10973	San Juan Way	Residential	206.32	20.00	50.00	276.32
11020	San Pasqual Avenue	Residential	322.20	20.00	50.00	392.20
11083	San Pasqual Avenue	Residential	352.81	20.00	50.00	422.81
11143	San Pasqual Avenue	Residential	207.59	20.00	50.00	277.59
10148	Santa Anita Avenue	Residential	280.36	20.00	50.00	350.36
10183	Santa Anita Avenue	Residential	354.59	20.00	50.00	424.59
10204	Santa Anita Avenue	Residential	335.37	20.00	50.00	405.37
10221	Santa Anita Avenue	Residential	324.04	20.00	50.00	394.04
10298	Santa Anita Avenue	Residential	340.69	20.00	50.00	410.69
10170	Saratoga Avenue	Residential	321.56	20.00	50.00	391.56
11011	Stallion Avenue	Residential	326.43	20.00	50.00	396.43
10289	Tudor Avenue	Residential	322.20	20.00	50.00	392.20
10115	Vernon Avenue	Residential	322.35	20.00	50.00	392.35

Exhibit A to Resolution No. 23-3419  
Report of Delinquent Civil Debts - October 2023

Street No	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
10192	Vernon Avenue	Residential	402.95	20.00	50.00	472.95
10236	Vernon Avenue	Residential	322.35	20.00	50.00	392.35
10241	Vernon Avenue	Residential	448.31	20.00	50.00	518.31
5533	Vernon Court	Residential	318.61	20.00	50.00	388.61
5555	Vernon Court	Residential	448.31	20.00	50.00	518.31
4191	Via Napoli	Residential	288.88	20.00	50.00	358.88
10373	Via Palma	Residential	325.03	20.00	50.00	395.03
11053	Wesley Avenue	Residential	322.20	20.00	50.00	392.20
11024	Whitewater Avenue	Senior	399.87	20.00	50.00	469.87
11178	Whitewater Avenue	Residential	322.20	20.00	50.00	392.20
11263	Whitewater Avenue	Residential	288.88	20.00	50.00	358.88
4515	Yosemite Drive	Residential	354.30	20.00	50.00	424.30
10472	Yosemite Drive	Residential	300.00	20.00	50.00	370.00
			50,478.52	3,020.00	7,550.00	61,048.52

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
SEPTEMBER 18, 2023, AT 5:20 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Mayor Pro Tem Johnson called the meeting to order at 5:20 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 August 21, 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 August 21, 2023.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**


At 5:21 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 5:45 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 5:45 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, SEPTEMBER 18, 2023, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

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I. CALL TO ORDER

Mayor/Chair Dutrey called the meeting to order at 7:01 p.m.

II. INVOCATION

**Pastor Donald Rucker, Christian Development Center**, gave the invocation.

III. PLEDGE OF ALLEGIANCE

Acting Police Chief Reed led meeting participants in the Pledge.

IV. ROLL CALL

Present: Mayor/Chair Dutrey; 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 Public Works/City Engineer Heredia; Acting Police Chief Reed; City Attorney Robbins; Deputy City Clerk Walker

V. PRESENTATIONS

A. **Recognition of Montclair Little League and Golden Girls Softball League for Resilience, Perseverance, and Rebuilding After the COVID-19 Pandemic**

Mayor Dutrey presented **David Flores**, President of **Montclair Little League**, and **George Tellez**, President of **Golden Girls Softball League**, with Certificates of Recognition.

B. **Introduction of New Police Officers**

Acting Police Chief Reed provided brief introductions of two new Police Officers, **Isaac Mendez** and **Luis Calvillo**. Mayor Dutrey and the City Council welcomed Officer Mendez and Officer Calvillo to the Montclair City family.

VI. PUBLIC COMMENT

- **Bruce Culp**, resident, reiterated a prior request he made for a summary of legal costs incurred by the City as a result of sexual harassment allegations made against Council Member Lopez by two City employees in 2021, and an update on whether Council Member Lopez participated in additional sexual harassment prevention training.
- **Bill Kaufman** stated his anticipation for the City Council's decision on this evening's resolution related to cannabis licensing, noting he is still hoping to open a recreational cannabis dispensary in Montclair.
- **Stella Mejia**, resident, requested the City install better fencing around the Chino Basin because vandals are cutting the fence and trespassing into the basin.
- **Gustavo Valdez**, a former **El Camino Elementary School** student representing **Safe Routes to School**, invited the City Council to a walk-to-school event at **El Camino Elementary School** to promote pedestrian safety for students on October 4, 2023, at 7:00 a.m.

- **Carolyn Raft**, Board Trustee representing Montclair, **West Valley Mosquito and Vector Control District**, advised she provided Council Members with information related to the District's recent efforts to reduce the mosquito population by releasing sterilized males. She advised misinformation is being expressed online and asked that they reach out to her if they have any concerns.

**VII. PUBLIC HEARINGS**

**A. Second Reading — Consider Adoption of Ordinance No. 23-1004 Amending Section 3.08.010 of the Montclair Municipal Code to Provide Informal Bidding Procedures Under the Uniform Public Construction Cost Accounting Act [CC]**

Mayor Dutrey opened the public hearing.

Deputy City Clerk Walker stated no written comments were received in relation to this item, and no members of the public requested to speak on the item.

Mayor Dutrey closed the public hearing and returned the matter to the City Council for consideration.

Public Hearings - Item A	
<b>ACTING:</b>	City Council
<b>MOTION:</b>	Conduct the second reading of Ordinance No. 23-1004 by number and title only, waive further reading, and adopt Ordinance No. 23-1004.
<b>MADE BY:</b> <b>SECOND BY:</b>	Council Member Lopez Council Member Ruh
<b>AYES:</b> <b>NOES:</b> <b>ABSTAIN:</b> <b>ABSENT:</b>	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
<b>RESULT:</b>	Motion carried 5-0.

**VIII. CONSENT CALENDAR**

ACTION - Consent Calendar	
<b>ACTING:</b>	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
<b>DISCUSSION:</b>	Items B-9, C-1, C-4, C-6, D-1, and D-2
<b>MOTION:</b>	For Item D-1, revise Resolution No. 23-3414; and approve the remainder of the Consent Calendar as presented.
<b>MADE BY:</b> <b>SECOND BY:</b>	Mayor Pro Tem/Vice Chair Johnson Council Member/Director Lopez
<b>AYES:</b> <b>NOES:</b> <b>ABSTAIN:</b> <b>ABSENT:</b>	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
<b>RESULT:</b>	Motion carried 5-0.

**A. Approval of Minutes**

**1. Regular Joint Meeting — August 21, 2023**

<b>ACTION – Consent Calendar – Item A-1</b>	
<b>ACTING:</b>	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**B. Administrative Reports**

**1. Consider Receiving and Filing City Treasurer’s Report – July 2024**

<b>ACTION – Consent Calendar – Item B-1</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**2. Consider Approval of City Warrant Register and Payroll Documentation**

<b>ACTION – Consent Calendar – Item B-2</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**3. Consider Receiving and Filing SA Treasurer’s Report – July 2024**

<b>ACTION – Consent Calendar – Item B-3</b>	
<b>ACTING:</b>	Successor Agency Board
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**4. Consider Approval of SA Warrant Register – July 2024**

<b>ACTION – Consent Calendar – Item B-4</b>	
<b>ACTING:</b>	Successor Agency Board
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**5. Consider Receiving and Filing MHC Treasurer’s Report – July 2024**

<b>ACTION – Consent Calendar – Item B-5</b>	
<b>ACTING:</b>	Montclair Housing Corporation Board
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**6. Consider Approval of MHC Warrant Register – July 2024**

<b>ACTION – Consent Calendar – Item B-6</b>	
<b>ACTING:</b>	Montclair Housing Corporation Board

<b>ACTION – Consent Calendar – Item B-6</b>	
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**7. Consider Receiving and Filing of MHA Treasurer’s Report – July 2024**

<b>ACTION – Consent Calendar – Item B-7</b>	
<b>ACTING:</b>	Montclair Housing Authority Commissioners
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**8. Consider Approval of MHA Warrant Register – July 2024**

<b>ACTION – Consent Calendar – Item B-8</b>	
<b>ACTING:</b>	Montclair Housing Authority Commissioners
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**9. Consider Approval of the Filing of a Notice of Completion with the San Bernardino County Recorder’s Office for the Flashing STOP Sign Replacement Program**

**Consider Authorizing Release of Retention 30 Days After Recordation of the Notice of Completion**

Council Member Lopez asked when the grant-funded signs would be installed.

Public Works Director/City Engineer Heredia advised they would be installed by the end of the current Fiscal Year.

<b>ACTION – Consent Calendar – Item B-9</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**10. Consider Authorizing the Sale of Certain Police Department Legacy Duty Firearms to ProForce Law Enforcement for \$21,750**

**Consider Authorizing Use of the Proceeds from the Sale of Said Firearms Toward the Purchase of 75 Ballistic Helmets from ProForce Law Enforcement for \$62,094**

**Consider Authorizing a \$41,000 Appropriation from the Federal Asset Forfeiture Fund to Cover the Remaining Balance of the Helmets and Potential Additional Shipping Costs**

Mayor Pro Tem Johnson received clarification from Acting Police Chief Reed that the weapons being sold were not currently assigned to any officers.

<b>ACTION – Consent Calendar – Item B-10</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**11. Consider Declaring Used Fire Hose as Surplus and Available for Donation to the Fire Department of Huatabampo, Sonora in Mexico**

<b>ACTION - Consent Calendar - Item B-11</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**12. Consider Authorizing the Destruction of Certain Obsolete Public Records Pursuant to the City of Montclair Records Retention Schedule**

<b>ACTION - Consent Calendar - Item B-12</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**C. Agreements**

**1. Consider Waiving a Minor Bid Irregularity and Award of Contract to PUB Construction, Inc. in the Amount of \$6,495,030.92 for Construction of the Sunset Park Beautification Project**

**Consider Approval of Agreement No. 23-64 with PUB Construction, Inc. for Construction of the Sunset Park Beautification Project, Subject to Any Revisions Deemed Necessary by the City Attorney**

**Consider Approval of Agreement No. 23-65 with LD King, Inc. in the Amount of \$68,290 for Supplemental Engineering and Material Testing Services, Subject to Any Revisions Deemed Necessary by the City Attorney**

**Consider Authorizing a \$650,000 Construction Contingency for the Sunset Park Beautification Project**

City Manager Starr clarified for Mayor Pro Tem Johnson that the bid irregularity was that the contractor used the engineer's project estimate for the bid bond, which could be easily corrected.

Council Member Lopez received clarification about fund sources for the project and other aspects of the park's improvements.

<b>ACTION - Consent Calendar - Item C-1</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**2. Consider Approval of Agreement No. 23-66 with STI Firearms LLC for the Purchase of Staccato P 2011 Platform Steel-Frame Weapon Systems and Associated Services and Equipment, Subject to Any Revisions Deemed Necessary by the City Attorney**

**Consider Authorizing City Manager Edward C. Starr to Sign Said Agreement**

**Consider Authorizing a \$200,214 Appropriation from the Federal Asset Forfeiture Fund for Costs Associated with Agreement No. 23-66**

**Consider Authorizing a \$3,185 Appropriation from the Federal Asset Forfeiture Fund for the Purchase of Leather Magazine Pouches from All State Police Equipment**



<b>ACTION – Consent Calendar – Item C-2</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**3. Consider Approval of Agreement No. 23-69 with Crash Data Group for the Purchase of One Bosch Crash Data Retrieval Pro Tool Package and a One-Year Software Subscription**

**Consider Authorizing an \$8,289 Appropriation from the Federal Asset Forfeiture Fund to Pay the Costs Associated with Agreement No. 23-69**

<b>ACTION – Consent Calendar – Item C-3</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**4. Consider Amending the 2019-2024 Capital Improvement Program Adding the Civic Center Master Plan**

**Consider Approval of Agreement No. 23-70 with EPTDESIGN for Design Services for the Civic Center Master Plan, Subject to Any Revisions Deemed Necessary by the City Attorney**

**Consider Authorizing a \$42,000 Appropriation from 2021 Lease Revenue Bond Funds to Cover the Contract Amount and Reimbursable Expenses Related to Agreement No. 23-70**

Mayor Pro Tem Johnson requested the current basketball courts not be closed while constructing the new one, and received clarification that a permanent stage would be constructed where the current basketball courts are located.

Council Member Lopez received clarification that the current memorial wall would not be relocated, but a new one would be established. He requested Freedom Plaza Park improvements include something to commemorate the home of “the old lady on the corner” whose house was located there, as well as the caboose that used to be located there.

Mayor Pro Tem Johnson was informed that this is the design aspect, and the project should be in the construction phase in late 2024 or early 2025.

<b>ACTION – Consent Calendar – Item C-4</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

**5. Consider Approval of Agreement No. 23-71 with the County of San Bernardino Related to Distribution of 2023 Justice Assistance Grant Program Award Funds**

**Consider Authorizing City Manager Edward C. Starr to Sign Said Agreement**

<b>ACTION – Consent Calendar – Item C-5</b>	
<b>ACTING:</b>	City Council
<b>RESULT:</b>	Approved on Consent Calendar; motion carried 5-0.

6. **Consider Approval of Agreement No. 23-72 with the San Bernardino County Community Revitalization Office of Homeless Services to Accept an Award for the Homeless Housing, Assistance and Prevention Program Round 3 (HHAP-3), Subject to Any Revisions Deemed Necessary by the City Attorney**

**Consider Authorizing the City Manager to Sign Agreement No. 23-72 and Any Other Related Documents to Effectuate Programs**

Council Members Lopez and Ruh advocated using grant funds to house homeless veterans within the City's boundaries.

City Manager Starr advised the County has not provided much support for homeless initiatives, and their grant dictates how the City can use the funds. He further noted that homeless veterans are eligible for the City's programs.

ACTION – Consent Calendar – Item C-6	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

**D. Resolutions**

1. **Consider Adoption of Resolution No. 23-3414 Reaffirming the City of Montclair's Commitment to the Well-Being and Safety of All Individuals Regardless of Race, Religion, Ethnicity, National Origin, Disability, Sex, Gender, Gender Expression, Sexual Orientation, Age, or Military/Veteran Status; and Condemning Hate Crimes and Any Other Form of Racism, Religious or Ethnic Bias, Discrimination, Incitement of Violence, or Targeting of Minorities**

**Bruce Culp**, resident, stated he finds Council Member Lopez's advocacy for this issue ironic, considering his past support of anti-LGBT legislation and allegations against him of sexual harassment. He insisted Council Member Lopez apologize for his actions or resign from his position.

Council Member Lopez requested language be added to the recitals at the request of **Jason Moss** of the **Jewish Federation of the Greater San Gabriel and Pomona Valleys**. He also stated he feels political persuasion should be included.

Council Member Martinez expressed concerns about individuals using their political and religious views to shield themselves from criticism for hateful or violent messages and actions, which she feels this resolution does not stand for.

Council Member Ruh emphasized the City has never had discriminatory policies in housing, elections, or employment.

Mayor Dutrey stated he is satisfied with the drafted resolution and agreed to adding the language requested by **Mr. Moss**.

ACTION – Consent Calendar – Item D-1	
MOTION:	Adopt Resolution No. 23-3414, as amended to include the following recital: <i>Whereas, the City of Montclair ensures its commitment to work with community-based organizations, advocacy groups and officials, and agencies across local, county and state governmental agencies to develop relationships and partnerships between groups that are targeted by hate.</i>
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

2. **Consider Adoption of Resolution No. 23-3420 Authorizing the City of Montclair to Enter Into an Agreement with the California Department of Cannabis Control for a Local Jurisdiction Cannabis Retail Access Grant for Development and Implementation of a Commercial Cannabis Licensing Program**

Council Member Lopez asked when the City Council would be presented with a draft ordinance for consideration of licensing commercial cannabis businesses to operate in the City.

City Manager Starr stated it would likely come to the City Council in the first quarter of 2024.

ACTION - Consent Calendar - Item D-2	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

3. **Consider Adoption of Resolution No. 23-3421 Adopting a Five-Year Capital Project Needs Analysis for Fiscal Years 2025-26 through 2029-30**

**Consider Adoption of Resolution No. 23-3422 Adopting the Five-Year Local Street Capital Improvement Program for Fiscal Years 2024-25 through 2028-29**

ACTION - Consent Calendar - Item D-3	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

IX. **PULLED CONSENT CALENDAR ITEMS** — None

X. **COMMUNICATIONS**

A. **Department Reports**

1. **Public Works — Groundbreaking Ceremony for Renovations at Sunset Park**

Executive Director of Engineering/Major Projects Manager Hoerning invited the City Council to a groundbreaking ceremony that will be taking place at Sunset Park on Wednesday, September 27, 2023, at 9:00 a.m.

B. **City Attorney**

City Attorney Robbins requested the City Council meet in closed session concerning the following:

1. **Closed Session Pursuant to Government Code Section 54956.9(d)(4) Regarding Potential Litigation**

*1 Potential Case*

2. **Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with Designated Labor Negotiator Diane E. Robbins**

*Employee: City Manager*

3. **Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations**

*Property: APN 1010-061-10-0000*

*Negotiating Parties: City of Montclair and Jose Flores*

*Agency Negotiator: Edward C. Starr, City Manager*

*Under Negotiations: Recommendations Regarding Purchase Price*

**C. City Manager/Executive Director — None**

**D. Mayor/Chair**

Mayor/Chair Dutrey recognized the following occurring in September: Labor Day, National Grandparents Day, Mexican Independence Day, Hispanic Heritage Month, Constitution Day, POW/MIA Recognition Day, Native American Indian day, and Rosh Hashanah. He advised on October 12, at 10:30 a.m. there will be a ceremony at the Montclair Post Office naming it in Mayor Paul M. Eaton's honor; and at 1:00 p.m. a West Valley Connector groundbreaking ceremony will take place at the **Ontario Convention Center**.

**E. Council Members/Directors**

1. Council Member/Director Ruh stated last week he attended the **Chaffey College Foundation** Alumni Awards and a **Metro Gold Line Foothill Extension Joint Powers Authority** meeting, where the Gold Line received tremendous support from participating cities. He acknowledged the 50th anniversary of the senseless 16th Street Baptist Church bombing in Birmingham, Alabama on September 15, 1963.
2. Council Member/Director Lopez reported residents are pleased with a property clean-up by staff; urged the community to continue supporting Montclair High School Football, who recently defeated Ontario High School 42-0; and expressed concerns over an increasing number of serious car accidents along Monte Vista Avenue.
3. Mayor Pro Tem/Vice Chair Johnson noted she is pleased with the new blue play surface under the shark at Alma Hofman Park, and that the Splash Pad is finally operational and should be ready for next summer without technical issues experienced this year. She also reported upcoming **Montclair Chamber of Commerce** events including its quarterly 2-day E-Waste recycling event this weekend at the Chamber office from 9:00 a.m. to 2:00 p.m. each day; the monthly networking breakfast at **OPARC** on October 12; a college fair at Montclair Place on October 19 from 4:00 to 6:00 p.m.; an upcoming Firefighter Recognition Event to be held in November at the **Chino Basin Water Conservation District**; and the grand opening of **SED Cocina** on Thursday, September 28.
4. Council Member/Director Martinez stated she also attended the **Chaffey College Foundation** Alumni Awards event, and wished everyone a happy Hispanic Heritage month.

**F. Committee Meeting Minutes**

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

1. Personnel Committee - August 21, 2023

**XI. CLOSED SESSION**

At 8:37 p.m., the City Council went into closed session to discuss pending litigation and real property negotiations.

At 9:05 p.m., City Manager Starr left closed session and the City Council discussed labor negotiations concerning the City Manager.

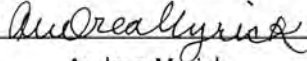
**XII. CLOSED SESSION ANNOUNCEMENTS**

At 9:36 p.m., the City Council returned from closed session. Mayor Dutrey announced that the City Council met in closed session to discuss potential litigation, real property negotiations, and labor negotiations concerning City Manager; information was received and direction given to staff on the items; and no further announcements would be made at this time.

**XIII. ADJOURNMENT**

At 9:36 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

PENDING APPROVAL