

CITY OF MONTCLAIR

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

AGENDA

Monday, November 20, 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, November 20, 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 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. Introduction of New Police Officers

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 — November 6, 2023 [CC/SA/MHC/MHA/MCF] 76

B. Administrative Reports

- 1. Consider Receiving and Filing of Treasurer’s Report [CC] 4
- 2. Consider Approval of Warrant Register & Payroll Documentation [CC] 5
- 3. Consider Receiving and Filing of Treasurer’s Report [SA] 6
- 4. Consider Approval of Warrant Register [SA] 7
- 5. Consider Receiving and Filing of Treasurer’s Report [MHC] 8
- 6. Consider Approval of Warrant Register [MHC] 9
- 7. Consider Receiving and Filing of Treasurer’s Report [MHA] 10
- 8. Consider Approval of Warrant Register [MHA] 11
- 9. Consider Confirming the Mayor’s Recommendation to Reappoint Carolyn Raft to a Four-Year Term on the West Valley Mosquito and Vector Control District Board [CC] 12
- 10. Consider Authorization to Advertise for Bid Proposals for the Alleyway Improvements Project [CC]
Consider Authorizing a \$2,000,000 Appropriation from 2021 Lease Revenue Bond Proceeds for Construction Costs Related to the Alleyway Improvements Project [CC] 15

C. Agreements

- 1. Consider Authorizing a \$719,800 Appropriation from the Redevelopment Project Area No. III Tax Allocation Bond Fund for Costs Related to Construction of the Arrow Highway and Fremont Avenue Improvement Project [CC]
Consider Award of Contract to Gentry Brothers, Inc. in the Amount of \$1,588,920 for Construction of the Arrow Highway and Fremont Avenue Improvement Project [CC]
Consider Approval of Agreement No. 23-75 with Gentry Brothers, Inc. for Construction of the Arrow Highway and Fremont Avenue Improvement Project, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]
Consider Authorizing a \$158,892 Construction Contingency for the Arrow Highway and Fremont Avenue Improvement Project [CC] 17
- 2. Consider Approval of Agreement No. 23-87 Amending Agreement No. 22-118 with Securitas Security Services USA, Inc. for Security Guard Services at the Montclair Transcenter [CC] 28
- 3. Consider Approval of Agreement No. 23-88 with Incremental Movement Consulting, LLC to Provide Homeless Outreach Consulting Services on an As-Need Basis, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 30

- 4. Consider Amending the 2019-2024 Capital Improvement Program to Include the Silicon Avenue and Third Street Improvements Project [CC]

Consider Approval of Agreement No. 23-89 with Rick Engineering Company for Design Services for the Silicon Avenue and Third Street Improvements Project, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]

Consider Authorizing a \$144,520 Appropriation from Sb1 Funding for Costs Related to Agreement No. 23-89 [CC]

Consider Authorizing a \$15,480 Design Services Contingency for the Silicon Avenue and Third Street Improvements Project [CC]

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D. Resolutions — None

IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

A. Department Reports

- 1. Human Services — Holly Jolly Holiday Event
- 2. Police — Dashing Through Montclair and Costco Food & Toy Drives

B. City Attorney

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

Properties: APN 1008-011-14-0-000, APN 1008-011-15-0-000
Negotiating Parties: City of Montclair and Mu-Wang Liu
City Negotiator: Edward C. Starr, City Manager
Under Negotiation: Recommendations Regarding Purchase Price

C. City Manager/Executive Director

D. Mayor/Chairperson

- 1. Notice of Cancellation of December 4, 2023 Regular Joint Meeting [CC/SA/MHC/MHA/MCF]

E. Council Members/Directors

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

- 1. Personnel Committee Meeting — November 6, 2023 [CC]

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XI. CLOSED SESSION

XII. CLOSED SESSION ANNOUNCEMENTS

XIII. ADJOURNMENT

The regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board scheduled for Monday, December 4, 2023, has been cancelled due to a lack of pressing business. The next regular joint meeting will be held on Monday, December 18, 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 to request documents via e-mail.

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

I, Andrea M. Myrick, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at <https://www.cityofmontclair.org/agendas/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, November 16, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 20, 2023	FILE I.D.:	FIN520
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	1	PREPARER:	J. KULBECK
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending October 31, 2023.

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

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

RECOMMENDATION: Staff recommends the City Council receive and file the Treasurer's Report for the month ending October 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 20, 2023	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	2	PREPARER:	A. VONG/V. FLORES
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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

BACKGROUND: Mayor Pro Tem Johnson has examined the Warrant Register dated November 20, 2023, and the Payroll Documentation dated October 22, 2023, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated November 20, 2023, totals \$2,351,680.45. The Payroll Documentation dated October 22, 2023, totals \$823,070.55 gross, with \$581,371.35 net being the total cash disbursement.

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



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 20, 2023	FILE I.D.:	FIN510
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	3	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The City Council acting as Successor to the Redevelopment Agency Board of Directors (Successor Agency Board) is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending October 31, 2023, pursuant to state law.

BACKGROUND: Included in the Successor Agency Board's agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending October 31, 2023.

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

RECOMMENDATION: Staff recommends the Successor Agency Board receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending October 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 20, 2023	FILE I.D.:	FIN530
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	4	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending October 31, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Successor to the Redevelopment Agency Warrant Register dated 10.01.23-10.31.23 in the amounts of \$4,414.47 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds, and finds it to be in order.

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

RECOMMENDATION: Vice Chair Johnson recommends the City Council as Successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending October 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 20, 2023	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	5	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending October 31, 2023, pursuant to state law.

BACKGROUND: Included in the Montclair Housing Corporation Board agenda packet is a copy of the Treasurer's Report for the period ending October 31, 2023.

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

RECOMMENDATION: Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending October 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 20, 2023	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	6	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending October 31, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Warrant Register dated 10.01.23-10.31.23 in the amount of \$175,320.63 for the Montclair Housing Corporation and finds it to be in order.

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

RECOMMENDATION: Vice Chair Johnson recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending October 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 20, 2023	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	7	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The Montclair Housing Authority Commission is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending October 31, 2023, pursuant to state law.

BACKGROUND: Included in the Montclair Housing Authority Commission's agenda packet is a copy of the Treasurer's Report for the period ending October 31, 2023.

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

RECOMMENDATION: Staff recommends the Montclair Housing Authority Commission receive and file the Treasurer's Report for the month ending October 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 20, 2023	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	8	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The Montclair Housing Authority Commission is requested to consider receiving and filing the Warrant Register for the month ending October 31, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Warrant Register dated 10.01.23-10.31.23 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

RECOMMENDATION: Vice Chair Johnson recommends the Montclair Housing Authority Commission approve the Warrant Register for the period ending October 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 20, 2023	FILE I.D.:	CYC265
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	CITY MGR.
ITEM NO.:	9	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER CONFIRMING THE MAYOR'S RECOMMENDATION TO REAPPOINT CAROLYN RAFT TO A FOUR-YEAR TERM ON THE WEST VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT BOARD		

REASON FOR CONSIDERATION: Currently, Carolyn Raft represents the City on the West Valley Mosquito and Vector Control District (West Valley MVCD) Board; however, Carolyn Raft's term of office is due to expire on January 2, 2024. As such, West Valley MVCD is requesting the City reappoint Carolyn Raft to serve as a representative on the West Valley MVCD Board for a two- or four-year term.

Pursuant to Government Code §40605, the Mayor, with the approval of the City Council, shall make all appointments to boards, commissions, and committees.

The City Council is requested to consider confirming the Mayor's recommendation to reappoint Carolyn Raft to a four-year term on the West Valley MVCD Board.

BACKGROUND: The West Valley Mosquito and Vector Control District (West Valley MVCD) is a special district that was formed in 1983 in response to the needs of the residents of the West Valley area for the reduction of mosquitoes plaguing the community. Vector control districts have existed in California for decades and are integral to the safety, health, and well-being of residents throughout the state.

West Valley MVCD's mission is to support public health through the suppression of vector populations, reduce outbreaks of human diseases, abate public nuisances, and increase the quality of life for the residents of the West Valley. To accomplish this mission, West Valley MVCD employs integrated vector management techniques including public education and outreach, surveillance, biological control, physical control and/or habitat modification, chemical control, research, partnering with other agencies, and legal action where necessary and as governed by federal and state law.

West Valley MVCD's boundaries include the cities of Chino, Chino Hills, Montclair, Ontario, Rancho Cucamonga, and unincorporated areas of west San Bernardino County. West Valley MVCD serves over 520,000 residents in 200 square miles of the West Valley. Governing power is vested in a six-member Board of Trustees. One member each is appointed by the City Councils of Chino, Chino Hills, Montclair, Ontario, Upland, and Rancho Cucamonga with the remaining board member being appointed by the San Bernardino County Board of Supervisors. Terms of office may be served for either two or four years.

Pursuant to Government Code §40605, the Mayor, with the approval of the City Council, shall make all appointments to boards, commissions, and committees. As the current term of office for Trustee Raft ends on January 2, 2024, Mayor Dutrey is recommending reappointing Carolyn Raft to serve a four-year term on the West Valley MVCD Board of Trustees.

FISCAL IMPACT: Confirming Mayor Dutrey’s recommendation to reappoint Carolyn Raft to a four-year on the West Valley MVCD Board would have no direct fiscal impact on the City.

RECOMMENDATION: Staff recommends the City Council confirm the Mayor's recommendation to reappoint Carolyn Raft to a four-year term on the West Valley Mosquito and Vector Control District Board.



WEST VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT

1295 E. LOCUST STREET, ONTARIO, CA 91761 TELEPHONE (909)-635-0307
www.wvmvcd.org

BOARD OF TRUSTEES

CHINO

Christopher Flores

CHINO HILLS

Brian Johsz

COUNTY AT-LARGE

Gary George

MONTCLAIR

Carolyn Raft

ONTARIO

Paul Leon

RANCHO CUCAMONGA

Elisa Cox

UPLAND

Carlos Garcia

DISTRICT MANAGER

Michelle Brown, Ph.D.

Edward Starr
City Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763

October 20, 2023

Dear Mr. Starr,

The current term for your city's representative to this Board, former Councilmember Carolyn Raft, expires January 2, 2024. In that Mrs. Raft has been a conscientious Board member, it is requested that she be reappointed to a two- or four-year term.

It is further requested that this matter be brought before the City Council.

Sincerely,

Michelle Brown, PhD
District Manager



CITY COUNCIL AGENDA REPORT

DATE: NOVEMBER 20, 2023 **FILE I.D.:** STA050/GRT050-D
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 10 **PREPARER:** M. HEREDIA

SUBJECT: CONSIDER AUTHORIZATION TO ADVERTISE FOR BID PROPOSALS FOR THE ALLEYWAY IMPROVEMENTS PROJECT

CONSIDER AUTHORIZING A \$2,000,000 APPROPRIATION FROM 2021 LEASE REVENUE BOND PROCEEDS FOR CONSTRUCTION COSTS RELATED TO THE ALLEYWAY IMPROVEMENTS PROJECT

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing staff to advertise for bid proposals for the Alleyway Improvements Project. Amendments to the CIP, non-budgeted appropriations, and authorization to advertise for bid proposals are subject to City Council approval.

BACKGROUND: On October 18, and November 10, 2021, the City Council held workshops to discuss infrastructure projects to be supported with 2021 Lease Revenue Bond (LRB) proceeds. The workshops outlined several citywide alleyway improvements.

There are 38 alleyways in the City, 16 of which are located in Community Development Block Grant (CDBG) areas. To date, ten alleyways have been reconstructed, including five in the CDBG area that were completed last year.

This project consists of 16 alleyways, three of which are located in the CDBG area that will be rehabilitated when CDBG funds are available. A map identifying locations of the subject alleyways is attached to this report.

Improvements to be completed include the full removal and replacement of existing concrete asphalt, construction of a new longitudinal concrete drainage gutter, replacement of non-compliant Americans with Disabilities Act (ADA) pedestrian ramps, and new traffic legends as needed.





FISCAL IMPACT: The total project cost is estimated to be \$2,000,000 for 13 alleyways, which will be funded with 2021 Lease Revenue Bond funds. The remaining three CDBG area alleyways will use CDBG funds when available. The cost of advertising this project should not exceed \$3,500.

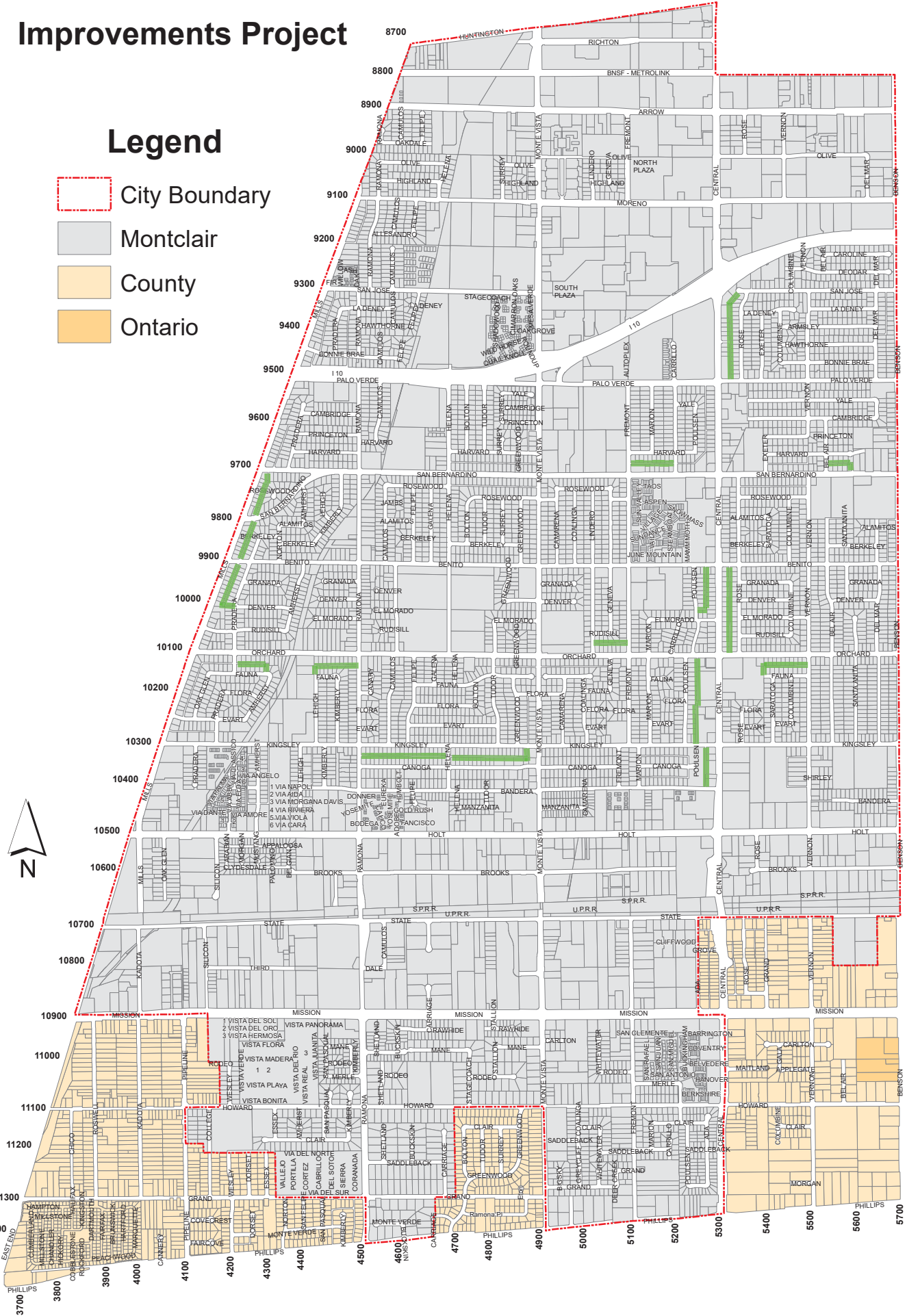
RECOMMENDATION: Staff recommends that the City Council take the following actions in relation to the Alleyway Improvements Project:

1. Authorize staff to advertise for bid proposals for the Project.
2. Authorize a \$2,000,000 appropriation from 2021 Lease Revenue Bond funds for costs related to the Project.

Alleyway Improvements Project

Legend

-  City Boundary
-  Montclair
-  County
-  Ontario





CITY COUNCIL AGENDA REPORT

DATE: NOVEMBER 20, 2023 **FILE I.D.:** STA919A

SECTION: CONSENT - AGREEMENTS **DEPT.:** PUBLIC WORKS

ITEM NO.: 1 **PREPARER:** R. HOERNING

SUBJECT: CONSIDER AUTHORIZING A \$719,800 APPROPRIATION FROM THE REDEVELOPMENT PROJECT AREA NO. III TAX ALLOCATION BOND FUND FOR COSTS RELATED TO CONSTRUCTION OF THE ARROW HIGHWAY AND FREMONT AVENUE IMPROVEMENT PROJECT

CONSIDER AWARD OF CONTRACT TO GENTRY BROTHERS, INC. IN THE AMOUNT OF \$1,588,920 FOR CONSTRUCTION OF THE ARROW HIGHWAY AND FREMONT AVENUE IMPROVEMENT PROJECT

CONSIDER APPROVAL OF AGREEMENT NO. 23-75 WITH GENTRY BROTHERS, INC. FOR CONSTRUCTION OF THE ARROW HIGHWAY AND FREMONT AVENUE IMPROVEMENT PROJECT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A \$158,892 CONSTRUCTION CONTINGENCY FOR THE ARROW HIGHWAY AND FREMONT AVENUE IMPROVEMENT PROJECT

REASON FOR CONSIDERATION: The City Council is requested to consider awarding a contract to Gentry Brothers, Inc., in the amount of \$1,588,920, authorize a \$158,892 contingency, and approve Agreement No. 23-75 related to the construction of street, traffic signal upgrades, and storm drain improvements for Arrow Highway and Fremont Avenue.

A copy of proposed Agreement No. 23-75 with Gentry Brothers, Inc. is attached for City Council review and consideration.

BACKGROUND: On December 2, 2019, the City Council approved the City of Montclair Capital Improvement Program for Fiscal Years 2019-20 through 2023-24 to assure that long-range capital project objectives will receive proper consideration.

Arrow Highway is part of the North Montclair revitalization effort, which includes incorporating complete streets concepts and street beautification elements. In advance of the planned Arrow Highway street improvements, a number of underground utilities need to be constructed such as a new Edison circuit system, sewer main line capacity upgrades, and storm drain pipeline improvements, delaying the full Arrow Highway street improvements. These proposed street, traffic signal, and storm drain improvements are necessary in advance of the full Arrow Highway street improvements to coordinate with the Village Partners Development project that is currently under construction and located on the north side of Arrow Highway at its intersection with Fremont Avenue.

LD King, Inc. and AGA Engineering have prepared the plans and specifications to request construction bid proposals for these improvements. On July 17, 2023, the City Council approved the plans and specifications and authorized permission to advertise this project. The Village Partner Developer was performing potholing to confirm there were no significant obstructions that could change the design. This effort was recently completed and no substantial modifications were required, allowing the project to proceed with advertisement.

On November 6, 2023, the City received and opened two (2) bid proposals for the Arrow Highway and Fremont Improvement Project. The bid results are shown in the following table:

Arrow Highway and Fremont Improvement Project

<i>Bidder</i>	<i>Bid Amount</i>
<i>Engineer's Estimate</i>	\$795,000
Gentry Brothers, Inc.	\$1,588,920
GCI Construction, Inc.	\$1,788,641

Following the bid opening, the proposals were reviewed for completeness and accuracy. Gentry Brothers Inc. (Gentry) provided all the required documents. As a result of the significant difference between the Engineer's estimate and the bids received, staff contacted neighboring jurisdictions to determine whether the price bid is reasonable. A review of bid summary data from these agencies indicates construction cost have recently risen significantly. Based upon this review, staff believes the price bid by Gentry to be the current market cost for these proposed improvements. Gentry has successfully completed projects for the City and other local agencies.

The City Council could elect to re-bid this project, but based on the evaluation performed by staff to validate the reasonableness of the bids received, re-bidding is unlikely to yield lower project cost results. Also, additional project advertisement costs would be incurred and the construction would be delayed. Staff recommends the City Council award the project to Gentry Brother, Inc.

The estimated construction cost for the project is as follows:

	Amount
Construction	\$ 1,588,920
Contingency	\$ 158,892
Material Testing	\$ 21,988
Total	\$ 1,769,800

Funding for this project is as follows:

	Amount
Previous Appropriation for Construction	\$ 1,050,000
Current Appropriation Request	\$ 719,800
Total	\$ 1,769,800

The anticipated project start date is January 8, 2024. The work period is broken into two segments: 70 calendar days for the base construction and 14 additional calendar days to install the traffic signal poles (a special long-lead item).

FISCAL IMPACT: The City Council previously approved a \$1,050,000 appropriation for construction. Due to the high bids, staff is requesting an additional appropriation of \$719,800 to complete the Arrow Highway and Fremont Avenue Improvements using Redevelopment Project Area No. III Tax Allocation Bond Fund Account 1251-0000-60020-400-19036.

RECOMMENDATION: Staff recommends that the City Council take the following actions in relation to the Arrow Highway and Fremont Avenue Improvement Project:

1. Authorize a \$719,800 appropriation from the Redevelopment Project Area No. III Tax Allocation Bond Fund for costs related to the construction of the Project;
2. Award a contract to Gentry Brothers, Inc. in the amount of \$1,588,920 for the Project;
3. Approve Agreement No. 23-75 with Gentry Brothers, Inc. for the construction of the Project, subject to any revisions deemed necessary by the City Attorney; and
4. Authorize a \$158,892 Construction Contingency for the Project.

Infrastructure Fund Capital Project Funding Information

Project Name: Arrow Hwy & Fremont Ave Improvement Project
 Project Details: Storm Drain Extension & Street Improvements to coordinate with Village Partners Development

Preparation Date: November 7, 2023 Department: Public Works
 Project No. (Assigned by Finance): 19036 Contact/Ext.: Rosemary Hoerning, x-446

Phase	Fiscal Years					Total	Fund/Program
	Prior Years	2019/2020	2020/2021	2021/2022	2022/2023		
Environmental							
Design				89,000.00		89,000.00	Successor Agency
KOA	481,200.00					481,200.00	Successor Agency
LD King & AGA					349,000.00	349,000.00	Successor Agency
RW Acquisition					14,000.00	14,000.00	Sewer
Construction					1,050,000.00	1,050,000.00	Successor Agency
Total	481,200.00	0.00	0.00	89,000.00	1,413,000.00	2,703,000.00	

Approvals: _____ Date: _____
 Department: _____ By: _____
 Finance By: _____ Date: _____
 City Council Date: November 20, 2023
 Revision Number: _____

Total Project Cost: 2,703,000.00

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

A. Recitals.

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

ARROW HIGHWAY AND FREMONT AVENUE IMPROVEMENT PROJECT

"PROJECT" hereinafter.

B. Agreement.

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

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

for each calendar day PROJECT remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due the CONTRACTOR under this contract. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

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

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

(a) **Types of Required Coverages**

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

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

(b) Endorsements

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

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

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

Additional Insured Endorsements shall not:

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

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

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

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

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

(e) Evidence of Insurance

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

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

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

(k) Insurance for Subcontractors

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

6. CONTRACTOR'S LIABILITY/INDEMNIFICATION:

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

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

- a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.

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

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

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

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

9. CONTRACT PRICE AND PAYMENT: CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **November 3, 2023**.

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

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

CONTRACTOR

CITY

Gentry Brothers, Inc.
384 Live Oak Ave.
Irwindale, CA. 91706

CITY OF MONTLAIR, CALIFORNIA

By: _____

Javier "John" Dutrey
Mayor

Title

ATTEST:

By: _____

Name

Andrea M. Myrick
City Clerk

Title

APPROVED AS TO FORM:

City Attorney



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 20, 2023	FILE I.D.:	PDT175/PDT545
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	2	PREPARER:	M. BUTLER
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-87 AMENDING AGREEMENT NO. 22-118 WITH SECURITAS SECURITY SERVICES USA, INC. FOR SECURITY GUARD SERVICES AT THE MONTCLAIR TRANSCENTER		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-87 with Securitas Security Services USA, Inc., for security guard services at the Montclair Transcenter. Said Agreement would amend prior Agreement No. 22-118 to incorporate a rate increase imposed by the company.

A copy of proposed Agreement No. 23-87 is attached for the City Council's review and consideration.

BACKGROUND: The City currently provides security services for the Montclair Transcenter as specified in its agreement with the San Bernardino County Transportation Authority. The City began utilizing the services of Securitas Security Services USA, Inc. to provide these services in January 2018 under the initial contract, Agreement No. 17-92. Since then, the agreement has been amended four times (Agreement Nos. 18-85, 20-85, 21-68, and 22-118) to incorporate increases in the hourly rate for security guard services. The term of the contract is open until terminated by either party.

Securitas Security Services USA, Inc. has notified Police Department staff of its intent to increase the hourly rate again by \$0.93 effective January 1, 2024. The adjustment would result in an hourly billing rate of \$31.12. The City would be billed the same hourly rate for straight hours as well as premium hours.

The company has indicated that in order to maintain its workforce, it must stay ahead of the state-mandated minimum wage rate to effectively compete against other part-time employers for recruitment and retention of qualified guards.

FISCAL IMPACT: Included in the Fiscal Year 2023-24 Budget is \$225,000 in Special Contract Services Account No. 1001-4426-52450-400 for security guard services at the Montclair Transcenter. Staff intends to address any shortfalls in this account at midyear due to the hourly rate increase.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 23-87 amending Agreement No. 22-118 with Securitas Security Services USA, Inc. for security guard services at the Montclair Transcenter.

AMENDMENT
Modifying Contract Between
City of Montclair
and Securitas Security Services USA, Inc. (“Company”)

Amendment Effective Date: 1/01/2024

The Contract, and anything attached to, incorporated into, or otherwise made a part of it (collectively, the Agreement”), is modified as follows as of the Amendment Effective Date, and in case of any conflict between the Agreement and this Amendment, this Amendment will control. Except as modified in this Amendment, all remaining provisions of the Contract remain in full force and effect.

2024 Standing Guard Services to take effect on 1/1/2024 until otherwise modified.

Security Officer \$31.12

City of Montclair

Securitas Security Services USA, Inc.

By/Date: _____

By/Date: _____

Name: Javier John Dutrey

Name: Diana Van Allen

Title: Mayor

Title: Branch Manager

Attest: _____

Andrea Myrick, City Clerk



CITY COUNCIL AGENDA REPORT

DATE:	NOVEMBER 20, 2023	FILE I.D.:	EDD100/CDE083
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ECONOMIC DEV.
ITEM NO.:	3	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-88 WITH INCREMENTAL MOVEMENT CONSULTING, LLC TO PROVIDE HOMELESS OUTREACH CONSULTING SERVICES ON AN AS-NEED BASIS, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-88 with Incremental Movement Consulting, LLC (IMC) to provide homeless outreach consulting services on an as-needed basis, subject to any revisions deemed necessary by the City Attorney.

A copy of proposed Agreement No. 23-88 with IMC is attached for City Council review and consideration.

BACKGROUND: Homelessness remains a serious issue in Montclair, the region, and throughout California. The Economic Development Agency (EDA), along with the Montclair Code Enforcement Special Enforcement Team, has been tasked with developing grant funding to facilitate programs aimed at providing homeless individuals with behavioral health, supportive services, interim housing, and housing placement.

Working collaboratively with the EDA, the City's Code Enforcement Special Unit has been engaging with local organizations to promote programs designed to address Montclair's homelessness issues and assist unhoused individuals.

In order to further facilitate the development of the City of Montclair's programs related to addressing homelessness, staff is proposing to retain the services of IMC to provide homeless outreach consulting services on an as-need basis. The services covered by proposed Agreement No. 23-88 may include the following:

- Provide Assistance in the Gathering of Relevant Data Points for the Submission of a ProForma to the County of San Bernardino for available Homeless Grants
- Provide Need Assessment of the City's current homeless outreach services
- Assist in Strategic Planning
- Assist in Policy Development
- Assist in Program Development
- Assist in the Creation and Establishment of Enhanced Community Engagement Initiatives
- Assist in Communication Plan Development and Execution
- Assist in Organizational Change Management
- Perform Evaluation and Monitoring Services
- Perform Research and Collaboration Tasks

FISCAL IMPACT: All fees associated with Agreement No. 23-88 with IMC would be paid from the Homeless Advocacy/Housing/Outreach Assistance Fund established by the Montclair City Council in the Fiscal Year 2023-24 Budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 23-88 with Incremental Movement Consulting, LLC to provide homeless outreach consulting services on an as-need basis, subject to any revisions deemed necessary by the City Attorney.

CITY OF MONTCLAIR
AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and effective as of November 21, 2023 between the City of Montclair, a California Municipal Corporation ("City") and Incremental Movement, LLC, a 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 November 21, 2023 and shall remain and continue in effect until modified by the parties or terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

The parties intend Consultant to assist the City with developing strategies related to homeless outreach 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, and the review and approval of all products submitted by Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services to be Performed or change Consultant's compensation as provided in Section 5(b) below.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment Schedule of Fees set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the tasks detailed in Exhibit A.

(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.

(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. Consultant also may terminate this Agreement by serving upon the City at least thirty (10) days prior written notice.

(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 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 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. Notwithstanding the above, computer software (including without limitation financial models, compilations of formulas and spreadsheet models), prepared by Consultant are Instruments of Service of Consultant and shall remain the property of Consultant. Consultant shall likewise retain all common law, statutory and other reserved rights, including the copyright thereto.

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

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

way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

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

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

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

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

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

10. INSURANCE

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

(a) Types of Required Coverages

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

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

(b) Endorsements

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

- (1) Commercial General Liability

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

Additional Insured Endorsements shall not:

1. Be limited to “Ongoing Operations”

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

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

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

(2) Auto Liability

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

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

(3) Workers' Compensation

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

(c) Notice of Cancellation.

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

(d) Waiver of Subrogation

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

(e) Evidence of Insurance

All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. The City reserves the

right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable

provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City.

(j) Claims Made Policies

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

(k) Insurance for Subcontractors

Consultant shall be responsible for causing Subcontractors/Subconsultants to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractors'/Subconsultant's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as 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: Mikey Fuentes, Dir. of Economic Development
City of Montclair
5111 Benito Street
Montclair, CA 91763

To Consultant: Ken Gominsky
Incremental Movement, LLC
6191 Jacaranda Lane
Yorba Linda, CA 92887

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. PRIORITY OF AGREEMENT

To the extent any provision of Consultant's Proposal attached hereto as Exhibit "A" conflicts with the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control and shall take precedence over those contained in Consultant's Proposal.

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

29. 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.

[Signatures on Following Page]

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

CITY

CONSULTANT

By: _____
Javier John Dutrey, Mayor

By: _____
Ken Gominsky, Manager
Incremental Movement, LLC

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

Exhibit A

Scope of Work**DESCRIPTION OF SERVICES:****I. Introduction****a. Background:**

- The City of Montclair has worked diligently to reduce homelessness within the community. Although these efforts have produced successes, numbers of homeless individuals continue to rise and the City's responses to this issue continue to gain complexity. Currently the City is pursuing a grant opportunity through the County of San Bernardino to establish a full service homeless shelter within the City, and is desirous of securing assistance from a consultant experienced in homeless matters to assist the City in addressing the grant submission as well as other increasingly complex matters.

b. Purpose:

- This Scope of Work (SOW) outlines possible tasks the City may request of the consultant to further homeless services related needs. The parties acknowledge that these efforts are in their beginning stages, and the City's needs will undoubtedly alter and shift during the term of this agreement.

II. Description of Work Performed by Consultant**a. Services to be Provided Generally:**

- At the direction of the City Manager (CM) or his/her designee, Consultant shall provide services to assist the City in identifying, addressing and mitigating homeless related issues within the City. Additionally, Consultant shall work with City staff to complete and submit a proforma to the County of San Bernardino, to acquire, rehabilitate, staff, program and transition a 36-unit motel into a homeless shelter. Due to the changing nature of the engagement, the parties understand that the tasks assigned, the priorities of the City, and deliverables, shall change as directed by the CM or his/her designee. For each assignment provided by the CM or his/her designee, Consultant shall provide a good faith estimate of the schedule to complete the assignment, the inputs and assistance required from City of Montclair staff and third parties, any additional personnel required, any other dependencies, and shall provide a consolidated progress report for all assignments on a monthly basis (or as otherwise directed by the CM), and such other reporting as the CM or his/her designee requests.
- Contractor support personnel shall only be added to this arrangement upon written agreement by the CM or his/her designee.
- The parties shall agree on a reasonable schedule to complete each assignment and Consultant shall track progress against that schedule in its reports to CM, and shall promptly escalate matters to ensure that all assignments remain on schedule. Consultant shall escalate problems/issues as directed by CM to CM or his/her designee to ensure that CM is promptly informed of any likely slip in the schedule for any assignment, or the schedule for activities.

Exhibit A

b. Initial Scope of Assignment:

- Subject to direction from CM and or his/her designee, Contractor may
 - Provide Assistance in the Gathering of Relevant Data Points for the Submission of a ProForma to the County of San Bernardino
 - Provide Needs Assessments
 - Assist in Strategic Planning
 - Assist in Policy Development
 - Assist in Program Development
 - Assist in the Creation and Establishment of Enhanced Community Engagement Initiatives
 - Assist in Capacity Building
 - Assist in Communication Plan Development and Execution
 - Assist in Organizational Change Management
 - Perform Evaluation and Monitoring Services
 - Perform Research and Collaboration Tasks
 - Perform Other Services as Requested or Agreed to by CM or his/her Designee to Assist City with Homeless Related Activities

III. Location:

- a. Services shall be performed at Consultant’s office or at locations designated by the CM.

IV. Customer Responsibilities

a. Deliverables:

- CM and City Staff shall provide guidance and direction to Consultant as appropriate for the provision of Services.

V. Performance Criteria

a. Deliverable Acceptance Criteria:

- Deliverables must be delivered timely, comprehensively and professionally.

VI. Non-Performance and Rejection:

- a. Consultant shall be excused for a failure or delay in performance of obligations under this SOW to the extent non-performance is caused by act or omission of City of Montclair staff, so long as Consultant promptly provides written notice to the CM and or his/her designee of any expected failure or delay and uses all reasonable efforts to avoid and minimize the impact of any such failure or delay.

VII. Pricing and Payment

a. Professional Fees and Expenses:

- Consultant shall be paid \$150.00 an hour. Travel to and from work sites, other than the Consultant’s Office, shall be considered billable hours, incidental phone conversations lasting less than 15 minutes shall not be billed.
- All billable hours shall be authorized by City of Montclair CM.

VIII. Invoice Schedule:

- a. Services for Contractor will be billed on a monthly basis for services provided.



CITY COUNCIL AGENDA REPORT

DATE: NOVEMBER 20, 2023 **FILE I.D.:** STA670S-1

SECTION: CONSENT - AGREEMENTS **DEPT.:** PUBLIC WORKS

ITEM NO.: 4 **PREPARER:** M. HEREDIA

SUBJECT: CONSIDER AMENDING THE 2019-2024 CAPITAL IMPROVEMENT PROGRAM TO INCLUDE THE SILICON AVENUE AND THIRD STREET IMPROVEMENTS PROJECT

CONSIDER APPROVAL OF AGREEMENT NO. 23-89 WITH RICK ENGINEERING COMPANY FOR DESIGN SERVICES FOR THE SILICON AVENUE AND THIRD STREET IMPROVEMENTS PROJECT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A \$144,520 APPROPRIATION FROM SB1 FUNDING FOR COSTS RELATED TO AGREEMENT NO. 23-89

CONSIDER AUTHORIZING A \$15,480 DESIGN SERVICES CONTINGENCY FOR THE SILICON AVENUE AND THIRD STREET IMPROVEMENTS PROJECT

REASON FOR CONSIDERATION: The City Council is requested to consider taking actions related to the Silicon Avenue and Third Street Improvements Project (Project) including amending the Capital Improvement Program to include the Project, approving Agreement No. 23-89 with Rick Engineering Company to provide design services for the Project, and appropriating funds for the Project. Amendments to the Capital Improvement Program, approval of agreements for professional services with the City, and appropriation of unbudgeted funds require City Council approval.

A copy of proposed Agreement No. 23-89 with Rick Engineering Company is attached for City Council review and consideration.

BACKGROUND: On June 5, 2023, the City Council adopted Resolution No. 23-3406 allocating Senate Bill 1 (SB1) funding in Fiscal Year 2023-24 for design and construction of the Silicon Avenue Street Rehabilitation Project.

The Road Repair and Accountability Act of 2017 (the title of SB1) provides funding to cities and counties for basic road maintenance, rehabilitation, and critical safety projects on the local streets and roads system through the creation of a Road Maintenance and Repair Account (RMRA). SB1 increased the per-gallon fuel excise taxes, diesel fuel sales taxes, vehicle registration and taxes, and provides inflationary adjustments to fuel tax rates in future years.

Collected tax revenue is deposited into the RMRA and some of this funding is apportioned by formula to eligible cities and counties. It is important to note that new RMRA allocations may not be used to supplant local agency general fund spending for street maintenance and rehabilitation efforts. Therefore, in addition to meeting the transparency and reporting requirements, local agencies are required to sustain existing maintenance of effort (MOE) levels by continuing general fund street expenditures as specified in the legislation. The City's estimated MOE is \$1,251,522.

For FY 2023–2024, it is estimated that the City of Montclair will receive approximately \$942,426 in RMRA funding. Pursuant to Streets and Highways Code Section 2030, RMRA funds must be used for projects that include but are not limited to the following:

- Road maintenance and rehabilitation
- Safety projects
- Railroad grade separations
- Traffic control devices
- Complete street components, including active transportation (bicycle and pedestrian) projects, transit facilities, and storm-water capture projects.

Staff solicited proposals from engineering firms for design services for the Silicon Avenue and Third Street Improvements Project. Staff received two proposals from L.D. King and Associates and Rick Engineering Company. Staff recommends Rick Engineering because their proposal is very comprehensive and the cost is reasonable. The scope of services include the following:

- Site Survey
- Pavement Evaluation
- Utility Coordination
- Concept Development
- Public Outreach
- Plans, Specifications and Estimate
- Bid Support
- Construction Support
- As-built Drawings

Rick Engineering has performed engineering services for many public agencies. They have offices in Orange, Las Vegas, Riverside, Sacramento, Santa Clarita, San Diego, and San Luis Obispo. They understand the work to be performed and have availability to perform the desired services.

FISCAL IMPACT: The cost associated with Agreement No. 23–89 with Rick Engineering is \$144,520. Staff is requesting an additional \$15,480 appropriation as a contingency if additional work is required beyond the scope of services for a total request of \$160,000. These services would be funded by SB1 funds.

RECOMMENDATION: Staff recommends that the City Council take the following actions in relation to the Silicon Avenue and Third Street Improvements Project:

1. Amend the 2019–2024 Capital Improvement Program to include the Project;
2. Approve Agreement No. 23–89 with Rick Engineering, Inc. for design services for the Project, subject to any revisions necessary by the City Attorney;
3. Authorize a \$160,000 appropriation from SB1 funding for costs related to Agreement No. 23–89; and
4. Authorize a \$15,480 design services contingency for the Project.

Infrastructure Fund Capital Project Funding Information

Project Name: Silicon Avenue and Third Street Improvements
 Project Details: Street Design for Silicon Avenue from State Street to Mission Boulevard
 Paving plans for Third Street from Silicon Avenue to end of Third Street

Preparation Date: November 15, 2023 Department: Public Works
 Project No. (Assigned by Finance): Contact/Ext.: Monica Heredia x441

Phase	Fiscal Years					Total	Fund/Program
	Prior Years	2019/2020	2020/2021	2021/2022	2022/2023		
Environmental							
Design						160,000.00	SB1
R/W Acquisition							
Construction							
Total	0.00	0.00	0.00	0.00	0.00	160,000.00	

Approvals: _____ Date: _____
 Department: _____ By: _____
 Finance By: _____ Date: _____
 City Council Date: November 20, 2023
 Revision Number: _____

Total Project Cost: 160,000.00

CITY OF MONTCLAIR
AGREEMENT FOR CONSULTANT SERVICES
DESIGN SERVICES FOR CIVIC CENTER MASTER PLAN

THIS AGREEMENT is made and effective as of November 20, 2023, between the City of Montclair, a municipal corporation ("City") and Rick Engineering Company, a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on November 20, 2023 and shall remain and continue in effect for a period of 24 months until tasks described herein are completed, but in no event later than November 20, 2025, 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, based upon actual time spent on the above tasks. **This amount shall not exceed \$144,520** 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 Fifteen Thousand Four Hundred Eighty Dollars (\$15,480.00). 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 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 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 without fault or negligence of the Consultant, it shall not be considered a default.

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

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Consultant shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other

matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Consultant herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Consultant, including its 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 Consultants, 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 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) 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 SubConsultant, Sub consultant, or other person or entity involved by, for, with, or on behalf of Consultant in the performance of any aspect of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible for each and every SubConsultant, 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 Consultants, 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 \$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 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 SubConsultants

Consultant shall be responsible for causing 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 SubConsultants' 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 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: Rick Engineering Company
 24501 Town Center Drive, Suite 103
 Santa Clarita, CA 91355

17. ASSIGNMENT AND SUBCONTRACTING

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF PROPOSAL

Consultant is bound by the contents of the proposal submitted by the Consultant, Exhibit "A" hereto. In the event of conflict, the requirements of this Agreement shall take precedence over those contained in the Consultant's proposals.

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

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

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

CITY OF MONTCLAIR

CONSULTANT / EPT DESIGN

By: _____
Javier "John" Dutrey, Mayor

By: _____
Name/Title:

Attest:

By: _____
Andrea M. Myrick, City Clerk

By: _____
Name/Title:

Approved as to Form:

By: _____
Diane Robbins, City Attorney



September 14, 2023
November 13, 2023 (revised)

Ms. Monica Heredia, PE
Director of Public Works
5111 Benito St
Montclair, CA 91763

**SUBJECT: PROPOSAL FOR STREET IMPROVEMENT PLAN, INCLUDING PAVING, FOR SILICON AVE FROM STATE ST. TO MISSION BLVD, AND STREET PAVING PLAN FOR 3RD STREET FROM SILICON AVE TO EAST END OF THE 3RD STREET.
RICK ENGINEERING COMPANY PROPOSAL NUMBER 2023.01**

Dear Ms. Heredia,

Thank you for the opportunity to propose on the street improvement design for Silicon Ave from State St. to Mission Blvd, and 3rd St. from Silicon Ave. to the east end of 3rd Street. The proposal describes our scope of work for preparing the plans, specifications, and estimates (PS&E) for the said street improvement plans.

Project Understanding:

The City wishes to repave Silicon Ave. from State St. to Mission Blvd, and 3rd St. from Silicon Ave. to the east end of 3rd St. In addition to the paving work, the city wishes to construct new sidewalks, curb and gutter, access ramps, and driveways, along the sections of Silicon Ave as shown on Exhibit A.

I. PROJECT SCOPE:

Prepare Plans, Specifications, and Estimates (PS&E) for Silicon Ave. from State St. to Mission Blvd. Prepare base map for 3rd St. from Silicon Ave. to the east end of 3rd St. for future project. Provide public outreach service to the residents for the area.

A. Site Survey/Base Map (subconsultant)

- Topographic survey of Silicon Ave from State St to Mission Blvd, and 3rd Street from Silicon Ave to East End located in the City of Montclair, San Bernardino County, California. The purpose of the topographic survey for 3rd Street from Silicon Ave to East end is to create a base map for future design project.
- A combination of Trimble R8-4 GPS and Trimble SX12 Robotic Total Station equipment will be used to collect 25' cross sections within the project right-of-way. The topographic survey will capture all existing site features and surface utilities within the project area and extend into all cross street approximately 50' past the BCR.
- The survey will be tied horizontally to the California State Plan coordinate system NAD83 (2017.50 Epoch). Vertically, the survey will be tied to NAVD 88 (1995 Adjustment) based upon observed San Bernardino County public works benchmarks.

- The topographic survey will be delivered in AutoCAD 2022 Civil3D format with contours generated at 1-foot intervals.

B. Pavement Evaluation – (subconsultant)

- Coordinate locations for exploratory work (RICK)
- Roadway Testing (sub)
 - The field-testing portion of our work consists of deflection testing and coring the pavement to determine the asphalt layer thickness. Deflection tests will be performed at 100-foot maximum intervals in each lane. Coring will be performed at 500-foot maximum intervals over the street segment. The deflection analysis will be performed in general accordance with CTM 356. Moving traffic control will be provided by a follow vehicle with flashing lights. Flagging will be provided as necessary. Our work excludes marking core locations and coordinating with USA.
 - To assist us with the evaluation, we will measure the full structural section (AC & AB) at each core location. We will also collect native soil samples that will be used to determine the R-value using California Test CT 301.
- Testing Summary and Engineering Report (sub)
 - The engineering report summarizes our deflection analysis and contains rehabilitation and reconstruction options for each street segment tested. Rick Engineering will be responsible for providing PEI with the traffic indexes. We will explore all possible rehabilitation options, including pulverization and resurfacing, milling and filling, conventional HMA overlay and RHMA overlays, as well as recycling options such as FDR and CIR. Additionally, we will evaluate reconstruction alternatives of full depth HMA replacement and HMA over aggregate base. Included with the report are deflection summary sheets, photos and a visual description of the street segment.

C. Utility Coordination

- Assist the City with reviewing franchise utility ownership, potential conflicts and coordinating with utility representatives to discuss potential relocations and cost responsibilities
- Prepare site exhibits showing locations, rights-of-way, easements, and ownership

D. Concept Development

- Prepare two alternative concept studies to illustrate the proposed roadway section improvements, the alternatives will evaluate roadway lane configuration (including striping), parking, parkway, curb design, pavement design and potential water quality facilities
- Prepare Rough Order of Magnitude (ROM) cost comparison
- Meet with City staff to review concepts
- Prepare revisions and refinements to the based City review comments

E. Public Outreach

- Meet with City staff to outline program outreach strategy
- Prepare materials to present to the community stakeholders, coordinate with City staff
- Assist with meeting preparation and notifications
- Attend one in person and one virtual community outreach meetings
- Consolidate community feedback and document finding
- Attend one City Council meetings, if necessary

F. 65% PS&E

- Prepare demolition plan
- Prepare alignments and profiles for centerline, left & right top of curb lines
- Prepare parkway improvements, including driveways, sidewalks, private lot drainage connections, fencing, mailbox adjustments, and hardscape adjustments
- Prepare street sections at 25-foot intervals
- Prepare drainage analysis and letter report
- Prepare title sheet, notes, and typical sections
- Prepare plan and profile sheet set (scale at 1" = 20')
- Prepare curb return and cross gutter enlargement plans (scale at 1" = 5')
- Prepare project detail sheets
- Prepare signing and striping plan set (scale at 1" = 40') based on California Manual on Uniform Traffic Control Devices (CA MUTCD) and City of Montclair requirements
- Prepare erosion control plans
- Prepare Storm Water Pollution Prevention Plan (SWPPP) – Risk determination only
- Prepare quantity estimates
- Prepare opinion of probable construction costs
- Prepare specifications (anticipate Caltrans Standards Specifications)
- Site walk to confirm design elements conform to existing conditions
- Perform QA/QC review
- Compile submittal package for agency review

G. 95% PS&E

- Meeting with agency to review 65% PS&E plan check comments
- Prepare plan review matrix to track and address comments
- Prepare refinements to the 65% plans
- Meet with utility agencies to review proposed adjustments
- Prepare refinements to the quantity estimates
- Prepare refinements to the opinion of probable construction costs
- Prepare refinements to the specifications
- Perform QA/QC review
- Compile submittal package for agency review

H. Final PS&E

- Meet with agency to review 95% PS&E plan check comments
- Revise plan review matrix to track and address comments
- Prepare refinements to the 95% plans
- Finalize quantity estimates
- Finalize opinion of probable construction costs
- Finalize specifications
- Perform QA/QC review and sign documents
- Compile submittal package for agency approval

I. Bid Support

- Assist the City with preparing bid documents for publication
- Attend pre-bid meeting to support City staff
- Assist with responding to prospective bidders and preparing bid document addenda as needed
- Assist with bid reviews

J. Engineering Support During Construction

- Provide support to the project contractor regarding document interpretation during construction and provide supplemental exhibits to clarify design intent
- Respond to Request for Information (RFIs) during the construction phases
- Review and approve project related materials submittals as they pertain to the civil engineering design
- Attend site visits during construction, this task is budgeted to include up to six site visits
- Participate in weekly construction phase meetings with the city, utility agencies and contractors
- Assist with tracking field changes and potential cost adjustments

K. As-Built Drawings

Obtain and review the contractor set of as-constructed redline plans, which will serve as the basis for which the as-built edits are based upon.

- Perform an as-built site walk to confirm the validity of the contractors redlines.
- Document any discrepancies, publish findings, and communicate during a punch list that will be provided to the client for their use/reference.
- Prepare modifications to the approved plan set to document final conditions

L. Project Kick Off Meeting

This proposal includes approximately 5 hours for project kick off meeting.

M. Miscellaneous Services

We have included a separate item for additional requests for work and have budgeted approximately 20 hours for this item. Due to the proximity of the mobile home park on the west side of Silicon Ave. construction for this area may be challenging. Additional exhibits, cost breakdowns, and engineering analyses may be required that are not otherwise specifically addressed in this proposal to mitigate the construction impacts to the community. This budget is for the purpose of starting any extra services in a timely manner. Each miscellaneous task will be scoped and budgeted separately.

II. FEES

The following fee estimate is based on the services outlined above:

A. Site Survey/Base Map (Subconsultant)	\$8,320
B. Pavement Evaluation – (Subconsultant)	\$28,000
C. Utility Coordination	\$7,700
D. Concept Development.....	\$7,000
E. Public Outreach	\$17,500
F. 65% PS&E.....	\$31,500
G. 95% PS&E.....	\$18,000
H. Final PS&E.....	\$6,100
I. Bid Support.....	\$5,100
J. Engineering Support During Construction.....	\$6,200
K. As-Built Drawings	\$3,700
L. Project Kick Off Meeting	\$1,000
M. Miscellaneous Services	<u>\$4,400</u>
	Total \$144,520

III. ASSUMPTIONS & EXCLUSIONS

The following assumptions and exclusions apply to this proposal:

1. Any items not specifically mentioned in this document are not part of this proposal effort. Additional professional services can be provided under a separate authorization.
2. This proposal does not include preparation of agreements or easements.
3. This proposal does not include environmental clearance.
4. Geotechnical report to be provided by others (including infiltration testing, if required).
5. Client shall provide payment for public agency fees.
6. All coordination and design of dry utilities (electric, gas, telecom, etc.) is excluded from this proposal effort and assumed to be provided by others.

7. Infiltration and percolation testing is excluded from this proposal effort and assumed to be performed by others.
8. Plans and profile of any site features is not anticipated to be a condition of permit approval and, as such, is not included as part of this proposal effort.
9. All research and coordination pertaining to franchise utilities is excluded from this proposal effort.
10. Offsite drainage analysis is not included as part of this proposal effort.
11. Traffic Control Plans are not included as part of this proposal effort.
12. Potholing is not included, nor anticipated for paving projects.
13. Electrical design, if applicable.
14. Sewer and water utility design.

IV. MISCELLANEOUS PROVISIONS

The Standard Provisions, set forth upon the Rick Engineering Form, are incorporated herein and made a part of this agreement. If notice to proceed and/or start of work is delayed for any reason beyond sixty (60) days, it is understood by the parties that the terms and conditions contained herein are subject to change.

V. AUTHORIZATION

If you would like for us to proceed on this work as outlined above, we ask that you please sign and return this agreement as our written authorization. For any questions concerning this agreement please contact us at (661) 855-4001 or via email at hhahn@rickengineering.com.

Thank you for requesting the continued services of Rick Engineering Company.

Sincerely,

RICK ENGINEERING COMPANY



Hoon Hahn, PE
Engineering Manager



Donald A. Druse, PE
Principal

HH::sd:C:RICK\Departments\Civil\SC_Pursuits\2023.01 City of Montclair\Silicon - Street Improvement\Final

Authorized By:

Signature: _____

Date: _____

Name: _____

Title: _____

Exhibit A



3RD ST.

REMOVE & REPLACE EX. CROSS GUTTER

PROPOSE NEW CRUB RAMP

EX. POWER POLE TO RELOCATE by other

EX. POWER POLE & GUY WIRE TO RELOCATE by other

EX. POWER POLE & GUY WIRE TO RELOCATE by other

PROPOSE SIDEWALK FROM 3RD AVE TO MISSION BLVD

PROPOSE CURB & GUTTER AND DRIVEWAY FROM 3RD AVE TO MISSION BLVD

EX. POWER POLE & GUY WIRE TO RELOCATE by other

PROPOSE REMOVE & REPLACE EX. ASPHALT PENDING PAVEMENT ANALYSIS

EX. POWER POLE & GUY WIRE TO RELOCATE by other

PROPOSE REMOVE & REPLACE CURB RAMP

MISSION BLVD

PROPOSE REMOVE & REPLACE EX. DRIVEWAY

EX. BLOCK WALL FROM 3RD AVE TO MISSION BLVD TO REMAIN

EX. CURB & GUTTER FROM 3RD AVE TO MISSION BLVD TO REMAIN

PROPOSE GRIND & OVERLAY EX. ASPHALT PENDING PAVEMENT ANALYSIS

EX. STORM DRAIN INLET TO REMAIN

PROPOSE REMOVE & REPLACE STRIPING

PROPOSE REMOVE & REPLACE CURB RAMP



Scale in Feet

0 75 150

SILICON AVE (3RD TO MISSION BLVD)

Exhibit A



E STATE ST.

PROPOSE NEW CURB RAMP

PROPOSE NEW CURB RAMP

PROPOSE SIDEWALK, CURB & GUTTER

EX. CURB & GUTTER FROM 3RD AVE TO MISSION BLVD TO REMAIN

PROPOSE REMOVE & REPLACE EX. ASPHALT PENDING PAVEMENT ANALYSIS

EX. BLOCK WALL FROM E STATE ST. TO 3RD AVE TO REMAIN

EX. SIDEWALK, CURB & GUTTER

EX. DRIVEWAYS FROM E STATE ST. TO 3RD AVE TO REMOVE & REPLACE TO MEET ADA

PROPOSE GRIND & OVERLAY EX. ASPHALT PENDING PAVEMENT ANALYSIS

PROPOSE REMOVE & REPLACE EX. ASPHALT PENDING PAVEMENT ANALYSIS

EX. CURB & GUTTER FROM 3RD AVE TO MISSION BLVD TO REMAIN

PROPOSE NEW CRUB RAMP

3RD ST.

SILICON AVE (E STATE ST. TO 3RD ST.)



Scale in Feet

0 75 150

Exhibit A



3RD ST.



Exhibit A

PROPOSE REMOVE &
REPLACE EX. ASPHALT
PENDING PAVEMENT
ANALYSIS

EX CURB &
GUTTER TO
REMAIN

3RD ST.

SILICON AVE



**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
NOVEMBER 6, 2023, AT 6:02 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Johnson called the meeting to order at 6:02 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Johnson, Council Member Ruh, and
Assistant City Manager/Director of Human Services
Richter

III. APPROVAL OF MINUTES

**A. Minutes of the Regular Personnel Committee Meeting of October
16, 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 October 16, 2023.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION


At 6:03 p.m., the Personnel Committee went into Closed Session
regarding personnel matters related to appointments, resignations/
terminations, and evaluations of employee performance.

At 6:30 p.m., the Personnel Committee returned from Closed Session.
Mayor Pro Tem Johnson stated that no announcements would be made
at this time.

VI. ADJOURNMENT

At 6:30 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, NOVEMBER 6, 2023, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor/Chair Dutrey called the meeting to order at 7:00 p.m.

II. INVOCATION

Reverend Maggie Burbank Yenoki, Monte Vista Unitarian Universalist Congregation, gave the invocation.

III. PLEDGE OF ALLEGIANCE

Mayor Pro Tem/Vice Chair Johnson led meeting participants in the Pledge.

IV. ROLL CALL

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

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

V. PRESENTATIONS

A. **Legislative Update from State Senator Susan Rubio**

Mayor Dutrey announced this presentation would be delayed until Senator Rubio arrives later this evening.

VI. PUBLIC COMMENT

- **Chino Basin Water Conservation District (CBWCD)** program educators **Monica Curiel** and **Azucena Quiñones** invited the City Council and the community to the Waterwise Lotería Gallery Evening event on Thursday, November 16, from 5:30 to 7:30 p.m. at the Waterwise Community Center, located at 4594 San Bernardino Street.

CBWCD Board Vice Chair **Kati Parker** invited the City Council to a time capsule burial event to celebrate **CBWCD's** 75th anniversary to take place on Thursday, January 18, 2024, from 11:00 a.m. to 1:00 p.m. at the Waterwise Community Center. She invited the City to provide an item for the capsule that represents the community at this point in time. She added the capsule would be dug up in 75 years.

- **Ruby Long**, Field Representative for **San Bernardino County Fourth District Supervisor Curt Hagman**, announced the District will host a Veteran Claims Event on Wednesday, November 8, from 10:00 a.m. to 2:00 p.m. at the District office located at 14010 City Center Drive in Chino Hills.
- **Kaliah Redwood**, Event Coordinator for the **Montclair Chamber of Commerce**, announced the following upcoming Chamber programs and events:
 - Holiday Food & Toy Drive — Donations are accepted through November 29 at various businesses throughout the community including City Hall, the Chamber office, and the **CBWCD** Waterwise Community Center.

- o Free E-Waste Drop-Off Event on Saturday and Sunday, November 18 and 19, 2023, at Alma Hofman Park.
- o **Gourmet Gourmet Catering**, 42 N. Benson Avenue, Upland, is hosting a public Toast to the Most Reception Event on Tuesday, November 7, from 5:00 to 8:00 p.m.
- o **Paradise Nutrition**, 9559 Central Avenue, is celebrating its third year anniversary by hosting a kickboxing class on Saturday, November 18, at 8:00 a.m. for \$25 per person, which includes a free protein shake.
- **Jordan Arciaga**, resident, voiced concerns regarding student safety due to illicit and underage drug use at **Montclair High School**, citing cannabis delivery services and a lack of police officer presence at the school as contributing factors.
- **Carolyn Raft**, Board Trustee representing Montclair, **West Valley Mosquito and Vector Control District**, advised that no diseased mosquitoes have been identified in Montclair, but they are in the surrounding communities.

V. PRESENTATIONS

A. Legislative Update from State Senator Susan Rubio

State Senator Susan Rubio introduced herself, noting the district she represents—California’s 22nd Senate District—was expanded to cover Montclair this year, and discussed the legislation, programs, and grants she sponsored to improve the lives of her constituents. Some of the areas she advocates include domestic violence and child abuse protections, cancer treatments, health insurance access, transportation, and education.

She also shared that she has just opened a second district office in Ontario at 1520E N. Mountain Avenue, Suite 201.

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

ACTION - Consent Calendar	
ACTING:	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
DISCUSSION:	Items C-1, C-6, and C-7
MOTION:	Minor correction to the minutes (Item A-1); and approve the remainder of the Consent Calendar as presented.
MADE BY: SECOND BY:	Council Member/Director Lopez Council Member/Director Ruh
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
RESULT:	Motion carried 5-0.

A. Approval of Minutes

1. Regular Joint Meeting — October 16, 2023

Council Member/Director Lopez noted **Donald Kurth's** name is misspelled on page 5 of the minutes.

ACTION - Consent Calendar - Item A-1	
ACTING:	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
MOTION:	Approve with a correction on page 5 — Donald Kurth <u>Kurth</u> .
RESULT:	Approved on Consent Calendar; motion carried 5-0.

B. Administrative Reports

1. Consider Approval of City Warrant Register and Payroll Documentation

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

C. Agreements

1. Consider Approval of Amendment No. 1 to Agreement No. 23-63 with Golden Girls Softball League for Use of Additional Ball Field Facilities at Saratoga Park

Council Member Lopez received clarification that the term of the contract coincides with the end of the softball season.

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

2. Consider Authorizing the Receipt of \$800,000 from the Bureau of Justice Assistance (BJA) FY 2023 Byrne Discretionary Community Project Funding/Grants Program to Implement a Body-Worn Camera Program

Consider Authorizing an \$800,000 Appropriation from the BJA Fund to Purchase Body-Worn Cameras and Associated Equipment

Consider Approval of Agreement No. 23-78 with Motorola Solutions, Inc. to Purchase Camera Systems, Evidence Management Systems, and Associated Equipment to Implement a Body-Worn Camera Program

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

3. **Consider Approval of Agreement No. 23-80 with Lexipol, LLC for Continued Maintenance of the Fire Department’s Policy and Procedures Manual, Fire Service Daily Training Bulletins (DTB), and DTB Management Services**

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

4. **Consider Approval of Agreement No. 23-81 with Lexipol, LLC for Continued Maintenance of the Police Department’s Policy and Procedures Manual, Law Enforcement Daily Training Bulletins (DTB), and DTB Management Services**

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

5. **Consider Approval of Agreement No. 23-82 with Graffiti Tracker Inc. for Continued Use of its Database to Track and Analyze Graffiti, Subject to Any Revisions Deemed Necessary by the City Attorney**

Consider Authorizing a \$3,300 Appropriation from the Prop 30/AB 109 Fund for Costs Associated with Agreement No. 23-82

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

6. **Consider Approval of Agreement No. 23-83 with Moule & Polyzoides Architects and Urbanists to Develop a Master Project Site Plan for the Montclair Transcenter, Subject to Any Revisions Deemed Necessary by the City Attorney**

Consider Authorizing an Allocation of up to \$350,300 in 2021 Lease Revenue Bond Funds for Development of a Master Project Site Plan for the Montclair Transcenter

Council Member Ruh emphasized his expectation that parking at the Transcenter will remain free for transit riders regardless of who owns or maintains the property.

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

7. **Consider Approval of Agreement No. 23-84 with Rymax Electric to Install Parking Lot Lighting at Fire Station 151**

Consider Approval of Agreement No. 23-85 with Grigolla and Sons Construction Company, Inc. to Replace the Parking Lot Asphalt Surface at Fire Station 151

Council Member Lopez stated he is glad the fire station parking lot issues are being addressed.

ACTION - Consent Calendar - Item C-7	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

D. Resolutions

- 1. Consider Adoption of Resolution No. 23-3423 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges**

ACTION - Consent Calendar - Item D-1	
ACTING:	City Council
RESULT:	Approved on Consent Calendar; motion carried 5-0.

- 2. Consider Adoption of Resolution No. 23-3424 Rescinding and Superseding Resolution No. 21-3294 Identifying and Correcting Updated Terms and Conditions for a Fire Department Response Away from its Official Duty Station when Assigned to a State or Federal Declared Emergency Incident**

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

IX. PULLED CONSENT CALENDAR ITEMS — None

X. BUSINESS ITEMS

- A. Consider Approval of Agreement No. 23-68 with Edward C. Starr for Professional City Manager and Executive Director Services for the City of Montclair, the Montclair Successor Redevelopment Agency, the Montclair Housing Authority, the Montclair Housing Corporation, and the Montclair Community Foundation for the Period of January 2, 2023, to December 31, 2026**

Bruce Culp, resident, spoke in support of renewal of City Manager/Executive Director Starr’s contract due to his past five years of service where he led the City through a pandemic, improved the city’s revenues, and investigated the misconduct of a Council Member.

Ginger Eaton, resident, spoke in support of renewing City Manager/Executive Director Starr’s contract as the former appointed Mayor completing her husband **Paul Eaton’s** unexpired term in 2018. She stated she does not believe the City will find anyone more dedicated, talented, or qualified than him.

Carolyn Raft, resident, stated of the three City Managers who served Montclair during her 28-year tenure on the City Council, City Manager/Executive Director Starr was the best one.

Council Member/Director Lopez asked if there is an Exhibit “C” missing from the contract, which is referenced in the agenda report.

City Attorney Robbins advised the Exhibit “C” referenced in the agenda report was to a prior contract with. The exhibit was the independent auditor’s report that was completed to confirm that City Manager/Executive Director Starr did not take a pay increase for two years for his 2010 contract.

Mayor Pro Tem/Vice Chair Johnson and Council Member/Director Martinez spoke in support of City Manager/Executive Director Starr's contract citing his responsiveness, dedication, intelligence, work ethic, and qualifications.

ACTION - Business Items - Item A	
ACTING:	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
MOTION:	Approve Agreement No. 23-68 with Edward C. Starr for professional City Manager and Executive Director services for the period of January 2, 2023, to December 31, 2026.
MADE BY: SECOND BY:	Mayor/Chair Dutrey Mayor Pro Tem/Vice Chair Johnson
AYES: NOES: ABSTAIN: ABSENT:	Martinez, Johnson, Dutrey None Lopez, Ruh None
RESULT:	Motion carried 3-0-2 (Lopez & Ruh abstained).

XI. COMMUNICATIONS

A. Department Reports

1. Human Services — Upcoming Events and Programs

Assistant City Manager/Director of Human Services Richter reported the following:

- Montclair Halloween Spooktacular — The event, held this year at **Montclair Place**, was a huge success with attendance estimated at 10,000.
- Veterans Day Dance — The Senior Center will recognize over 25 veterans at this event on Wednesday, November 8, from 2:00 to 5:00 p.m. in the Montclair Community Center.
- Holiday Food & Toy Basket Program — Donation bins are available through December 13 at City Hall, the Senior and Recreation Centers, Fire Station 1, and the Police Department. Monetary donations are also accepted at the Recreation Center front desk. Those who would like to volunteer for the distributions can fill out an application on the City's website. Distributions will take place on the following schedule:
 - Monday, December 18, from 9:00 a.m. to noon
 - Tuesday, December 19, from 9:00 to 11:00 a.m.
- Holly Jolly Holiday— Thursday, November 30, from 6:00 to 8:30 p.m. at the Youth Center. The event includes a tree-lighting ceremony, complimentary photos with Santa, a letter-to-Santa writing station, and free refreshments while supplies last. Gift Lights in honor or memory of a loved one may also be purchased at the event.
- Food & Toy Drives — The Police and Fire Departments are hosting food and toy drives in support of the Holiday Food & Toy Basket Program at Costco in Montclair on Friday, December 1, and Friday, December 8, from 10:00 a.m. to 2:00 p.m. both days.

- Holiday Home Decoration Contest — Applications are available on the City’s website and entries are due by Friday, December 1, at 6:00 p.m. The Community Activities Commission will select the winners and present them at an upcoming City Council meeting.
- Dashing Through Montclair — Saturday, December 2, from 2:00 p.m. to 6:00 p.m. Santa and Mrs. Claus will be dashing through the streets of Montclair on their sleigh to greet residents and spread holiday cheer. The route is available on the City’s website.

B. City Attorney

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

1. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation

Cities of Ontario, Montclair, Chino v. Inland Empire Utilities Agency (IEUA)

2. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation

Dow/Alvarran v. City of Montclair, et al.

3. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation

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

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

C. City Manager/Executive Director

City Manager/Executive Director Starr announced he anticipates the Gold Line’s extension to Montclair will soon be fully funded, with **San Bernardino County Transportation Authority** having allocated \$80 million and agreeing to pick up the \$20 million shortfall to get it from Claremont to Montclair.

D. Mayor/Chair

Mayor/Chair Dutrey wished everyone a happy upcoming Veterans Day and recognized November as Native American Heritage Month. He stated he appreciates staff providing a memo to Council discussing ball field use by various ball leagues.

E. Council Members/Directors

1. Council Member/Director Martinez wished everyone a happy Veterans Day.
2. Mayor Pro Tem/Vice Chair Johnson stated she looks forward to the upcoming Chamber events.
3. Council Member/Director Lopez noted his attendance at **La Carnecería’s** grand opening event, several trunk-or-treat events hosted by churches throughout the community, and **Hasco’s** Second Annual Fall Festival. He thanked resident **Vincent Urbina** for his comments at the last meeting and requested **Mr. Urbina** contact him. He noted November 10th is the 248th birthday of the U.S. Marine Corps and thanked all veterans for serving. He requested tonight’s meeting be adjourned in memory of longtime resident **Helen Rodriguez**.
4. Council Member/Director Ruh noted his attendance on October 27th at a Halloween Carnival at **Buena Vista Arts-Integrated Magnet School** and the joint event with **Golden Girls Softball and Little Leagues**. He urged parents to teach their children to be safe pedestrians and not let their children run into the street.

He commended **Senator Rubio** for a water workshop she hosted on October 28th and advised the **Metropolitan Water District** opened a water recycling facility on November 1st. He noted the recent passing of **Robert Jauregui**, a longtime resident of Montclair. In closing, he discussed the history of Veterans Day, which was known as Armistice Day until 1946.

F. Committee Meeting Minutes

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

1. Real Estate Committee - July 17, 2023
2. Personnel Committee - October 16, 2023

XII. CLOSED SESSION

At 8:59 p.m., the City Council went into closed session to discuss the IEUA and Dow/Alvarran pending litigation matters.

Council Member/Director Lopez left the meeting at 9:25 p.m.

The City Council resumed discussion of pending litigation on the Garcia/Fuentes pending litigation matters.

XIII. CLOSED SESSION ANNOUNCEMENTS

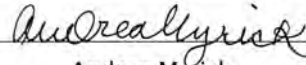
At 9:45 p.m., the City Council returned from closed session.

Mayor Dutrey announced that the City Council met in closed session to discuss four matters of pending litigation; information was received on all matters; direction was given to staff on the Fuentes/Garcia, and Dow/Alvarran matters; and no further announcements would be made at this time.

XIV. ADJOURNMENT

At 9:45 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

*The meeting was adjourned in memory of longtime Montclair residents
Helen Rodriguez and Robert Jauregui.*

CITY OF MONTCLAIR
TREASURER'S REPORT
FOR THE MONTH ENDING

October 31, 2023

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STATEMENT OF CASH AND INVESTMENT ACCOUNTS

GRAPH

CASH AND INVESTMENTS BY TYPE

**CITY OF MONTCLAIR
STATEMENTS OF COMPLIANCE WITH THE INVESTMENT POLICY
AND INVESTMENT STRATEGY**

October 31, 2023

COMPLIANCE STATEMENT

The City has the following amount invested in various financial instruments. This conforms with the investment policy approved by the City Council.

Total Investments

\$ 48,997,052

During the current month the City was in compliance with the internal control procedures set forth in the Investment Policy.

INVESTMENT STRATEGY FOR THE UPCOMING MONTH

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund and other investments authorized in the Investment Policy. The City has sufficient monies available to meet expenditures during the next six month period.

CITY OF MONTCLAIR
STATEMENT OF CASH AND INVESTMENTS BY FUND
AS OF October 31, 2023

<u>Fund</u>	<u>Beginning Balance</u>	<u>Receipts</u>	<u>Disbursements</u>	<u>Interfund Transfers</u>	<u>Ending Balance</u>	
General Fund	\$ (3,098,683.62)	\$ 1,085,367.87	\$ 2,943,790.77	\$ (479,285.21)	\$ (5,436,391.73)	(1)
Gas Tax Fund	(235,111.30)	222,909.92	52,151.58	293,751.45	229,398.49	(2)
Road Maintenance - Section 2032	2,288,030.56	80,693.45	-	(35,282.15)	2,333,441.86	
Measure I Fund	5,928,213.15	77,816.08	-	-	6,006,029.23	
Traffic Safety	126,276.56	-	-	-	126,276.56	
Disability Access Fund - Bus. License	55,534.90	888.00	-	4.00	56,426.90	
Park Maintenance	5,671.30	6,536.45	9,362.80	-	2,844.95	
Park Development	1,541,207.06	700.00	-	-	1,541,907.06	
CDBG	(34,876.83)	-	10,470.59	-	(45,347.42)	(2)
SB2 Planning Grant	(56,875.00)	-	-	1,450.00	(55,425.00)	(2)
Air Quality Improvement Trust	71,105.49	-	57,783.13	-	13,322.36	
Senior Nutrition Program	(72,525.58)	5,601.18	20,827.26	24,367.37	(63,384.29)	(2)
American Resue Plan	-	-	-	-	-	
Forfeiture Fund - State	103,002.70	-	348.00	-	102,654.70	
Proposition 30/SB 109	83,683.54	-	-	-	83,683.54	
SB 509 Public Safety	135,306.39	43,990.00	19,192.04	-	160,104.35	
Forfeiture Fund-Federal/DOJ	651,276.97	-	14,972.55	-	636,304.42	
Asset Seizure Fund	2.75	0.26	-	-	3.01	
Section 11489 Subfund	29,580.09	-	302.99	-	29,277.10	
Fed Asset Forfeiture-Treasury	120,449.59	7,551.53	-	-	128,001.12	
School District Grant Fund	71,496.00	-	-	-	71,496.00	
State Supplemental Law Enforce	283,342.06	102,775.42	-	-	386,117.48	
Local Law Enforcement Block Gr	260.51	-	-	-	260.51	
PC 1202.5 Crime Prevention	2,472.80	-	-	-	2,472.80	
Recycling Grant Fund	119,239.18	-	5,902.22	-	113,336.96	
Statewide Park Dev Grant	(0.32)	-	-	-	(0.32)	(2)
Homeless Housing Assist Preven	(3,760.57)	-	3,443.75	-	(7,204.32)	(2)
LEAP Grant	(82,236.25)	-	-	-	(82,236.25)	(2)
After School Program Fund	(1,016,184.12)	19,033.00	231,263.17	315,792.14	(912,622.15)	(2)
City of Hope	1,290.78	-	-	-	1,290.78	
Safety Dept. Grants	59,205.72	-	23,200.09	-	36,005.63	
OSMD Immunization Grant	1,370.50	-	-	-	1,370.50	(2)
Kaiser Permanente Grant	2,304.71	-	-	-	2,304.71	
Resource Center Grant - OMSD	18,531.21	-	-	-	18,531.21	
Title IIIB Sr Support Services	(20,758.64)	1,306.46	2,901.97	7,469.95	(14,884.20)	(2)
Healthy Community Strategic Plan	7,785.58	-	-	-	7,785.58	
ASES Supplemental Grant	204,056.44	-	-	(155,617.44)	48,439.00	
E.M.S. - Paramedic Fund	(5,394.18)	3,730.23	5,304.01	-	(6,967.96)	(3)
Economic Development	2,884,766.74	-	57,537.33	102,657.60	2,929,887.01	
City Contributions/Donations Fund	500.00	1,150.00	-	-	1,650.00	
Sewer Operating Fund	2,557,342.77	499,588.54	101,552.65	(149,999.00)	2,805,379.66	
Sewer Replacement Fund	2,675,540.73	-	-	-	2,675,540.73	
CFD 2011-1 (Paseos)	61,354.78	-	1,634.51	-	59,720.27	
CFD 2011-2 (Arrow Station)	79,150.10	-	-	-	79,150.10	
Inland Empire Utility Agency	5,084,502.08	82,880.80	-	-	5,167,382.88	
Sewer Expansion Fee Fund	995,998.21	7,221.45	-	-	1,003,219.66	
Developer Impact Fees - Local	1,347,774.12	224,474.87	-	-	1,572,248.99	
Developer Impact Fees - Regional	426,093.82	509,556.97	-	(2,787.02)	932,863.77	
Burrtec Pavement Impact Fees	268,046.51	26,077.66	-	-	294,124.17	
PUC Reimbursement Fund-MVGS	262,502.41	-	-	(42,782.26)	219,720.15	
Utility Underground In-Lieu	383,396.52	-	-	-	383,396.52	
General Plan Update Fee	106,888.85	741.14	-	-	107,629.99	
Housing Fund	879,108.20	-	-	-	879,108.20	
Public Education/Govt. PEG Fee Fund	129,911.64	-	-	-	129,911.64	
Infrastructure Fund	(669,878.63)	-	814,226.85	80,851.43	(1,403,254.05)	(4)
COVID-19	(92,796.74)	-	-	92,796.74	-	
Successor Agency Bonds-Taxable	4,924,216.63	39,135.21	-	-	4,963,351.84	
Successor Agency Bonds-Tax Exempt	8,061,553.91	64,607.63	5,625.00	11,220.00	8,131,756.54	
2021 Lease Revenue Bond Proceeds	(963,262.50)	956,959.00	189,948.48	(113,877.60)	(310,129.58)	
2014 Lease Revenue Bond Debt Svc	(1,641,226.47)	204,565.54	-	32,712.05	(1,403,948.88)	(5)
2021 Lease Revenue Bond Debt Svc	61,997.97	812,048.89	-	9,263.96	883,310.82	
Pension Obligation Bond Debt Svc	1,156,811.96	1,133,968.11	-	7,293.99	2,298,074.06	
Contingency Fund	0.96	-	-	-	0.96	(1)
Assigned General Fund Reserves	33,276,749.23	23,571.60	229,838.95	-	33,070,481.88	(1)
TOTALS	\$ 69,541,333.93	\$ 6,245,447.26	\$ 4,801,580.69	\$ -	\$ 70,985,200.50	

Negative Cash Notes follow this presentation.

Notes on Negative Cash Balances

- (1)** The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this negative, the City is not utilizing restricted resources.
- (2)** These are reimbursable grant funds that utilize general pool monies initially to cover expenditures pending reimbursement from the granting agencies. Therefore, it is not uncommon for these to be negative until that reimbursement is received.
- (3)** This fund has operational deficits annually. At the end of the fiscal year it is restored by a General Fund Transfer.
- (4)** The Infrastructure Fund receives transfers from other funds to accomplish infrastructure projects. Those transfers are usually recorded when the projects nears completion or prior to mid-year budget preparation. Any negative in that fund will be eliminated at those times. Transfers from these funds (C.D.B.G., Gas Tax, Measure I, etc.) may go negative on cash pending collections of these revenues. In this way we can determine if obligations for projects are exceeding current resources.
- (5)** This debt service operation utilizes transaction and use taxes which are part of the sales tax and Successor Agency property taxes. These have been sufficient in prior fiscal years to cover the necessary debt service; however, they are not completely received until fiscal year-end. Once debt service is covered the excess will be transferred to the General Fund.

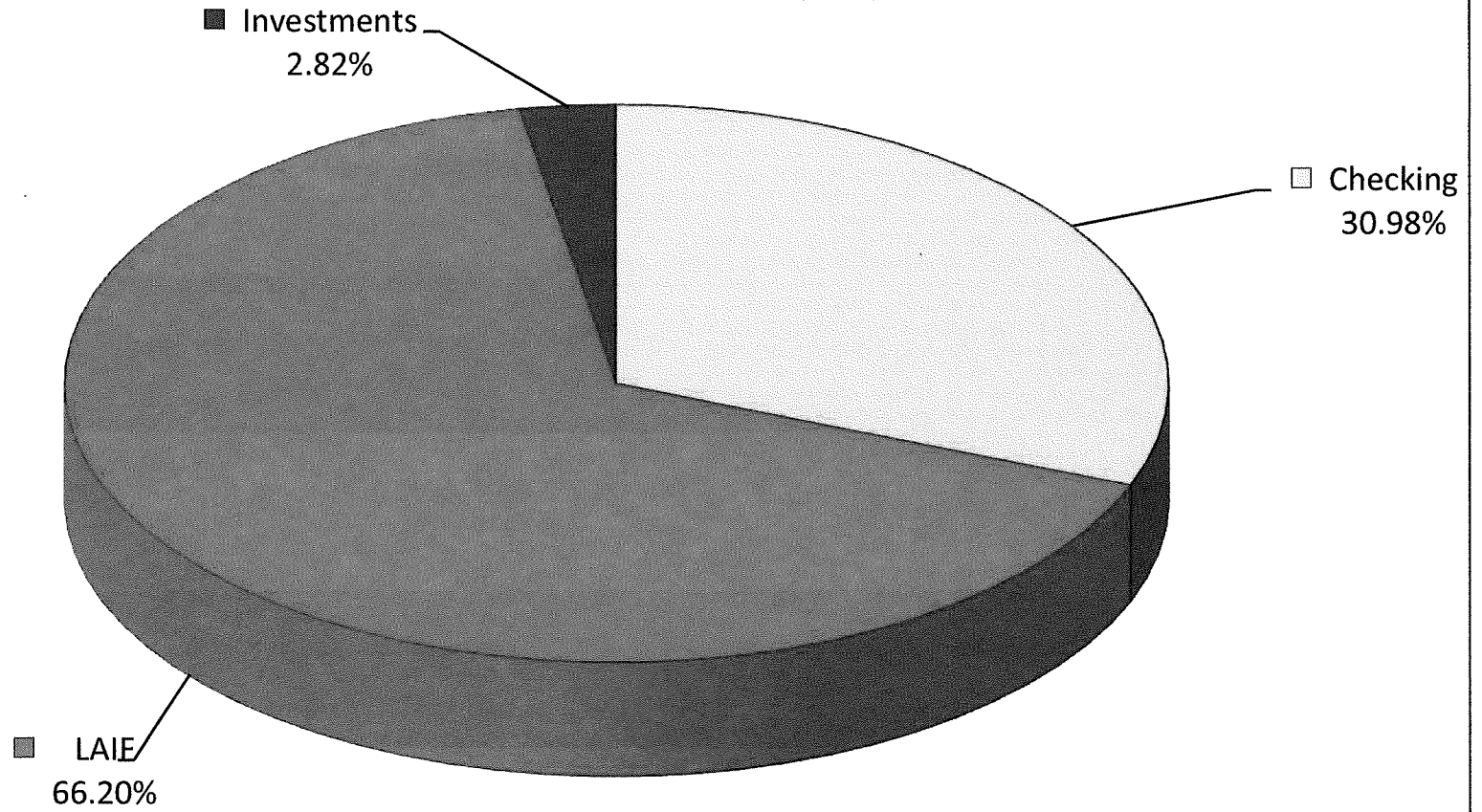
**CITY OF MONTCLAIR
STATEMENT OF CASH AND INVESTMENT ACCOUNTS
AS OF October 31, 2023**

	<u>Par Value</u>	<u>Purchase Date</u>	<u>Maturity Date</u>	<u>Coupon Interest Rate</u>	<u>Current Market Value</u>	<u>Balance at Cost</u>	<u>Totals</u>
CHECKING ACCOUNT							
Checking Account							\$ 21,985,676.92
Asset Seizure Account							\$ 2,471.66
CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES							
Local Agency Investment Fund (LAIF)				3.750%	46,092,873.76	46,997,051.92	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 48,092,873.76</u>	<u>48,997,051.92</u>	\$ 48,997,051.92
U.S. AGENCY SECURITIES							
					<u>\$ -</u>		<u>\$ -</u>
TOTAL							<u>\$ 70,985,200.50</u>

Current market values obtained from US Bank.

**CITY OF MONTCLAIR
CASH AND INVESTMENTS BY TYPE
October 31, 2023**

Total Cash & Investments \$70,985,201



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

October 31, 2023

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH BY FUND
October 31, 2023**

COMBINED OPERATING FUND

Operating	<u>(29,360.09)</u>	\$ (29,360.09)
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LRPRP Fund

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

	1,104,927.34	
RORF Area I	0.00	
RORF Area II	0.00	
RORF Area III	0.00	
RORF Area IV	0.00	
RORF Area V	0.00	
RORF Area VI	0.00	\$ 1,104,927.34

TOTAL CASH

\$ 1,075,567.25

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH
October 31, 2023**

Checking Account

US Bank

1,075,567.25

TOTAL CASH

1,075,567.25

NOTE:

In accordance with State law, the Successor Agency receives the monies necessary to cover its obligations for the upcoming six month period. The monies are received in January and June of each year.

The Successor Agency has sufficient funds available to meet expenditures during the upcoming six-month period.

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
WARRANT REGISTER**

FOR THE MONTH ENDING

October 31, 2023

City of Montclair
 Final Warrant Register
 Council Date 11/20/2023
 Regular Warrants
 Checking Account: Successor to the RDA

	Warrants	US Bank transfers	Area Totals
SRDA Combined Operating Fund	0.00	4,414.47	4,414.47
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	0.00
	0.00	4,414.47	
October 2023 Total			4,414.47

Note: Reimburse City for 10/12 payrolls
 Reimburse City for 10/26 payrolls

Vice Chair Johnson

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 10/02/2023 To 10/31/2023

Printed on 11/07/2023 at 5:53 PM PST



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
10/26/2023	\$1981.43	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimb City for 10/26/23 Payroll
Initiate Date 10/26/2023
Initiate Time 02:35PM CDT
Initiated By JKULBECK
Completed Date 10/26/2023
Completed Time 02:35PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
10/12/2023	\$2433.04	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimburse City for 10/12/23 Payroll
Initiate Date 10/12/2023
Initiate Time 11:12AM CDT
Initiated By JKULBECK
Completed Date 10/12/2023
Completed Time 11:12AM CDT

Total Number of Book Transfers: 2
Total Amount of Book Transfers: \$4,414.47

--- End of Report ---

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

October 31, 2023

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SCHEDULE 1 - STATEMENT OF CASH AND INVESTMENTS

CASH AND INVESTMENTS GRAPH

Schedule 1

CITY OF MONTCLAIR
HOUSING CORPORATION
STATEMENT OF CASH AND INVESTMENTS
October 31, 2023

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
Checking Account			
US Bank			371,093.88
Investments			
LAIF	3.75%	1,054,155.92	<u>1,070,395.42</u>
TOTAL CASH & INVESTMENTS			<u><u>1,441,489.30</u></u>

NOTE:

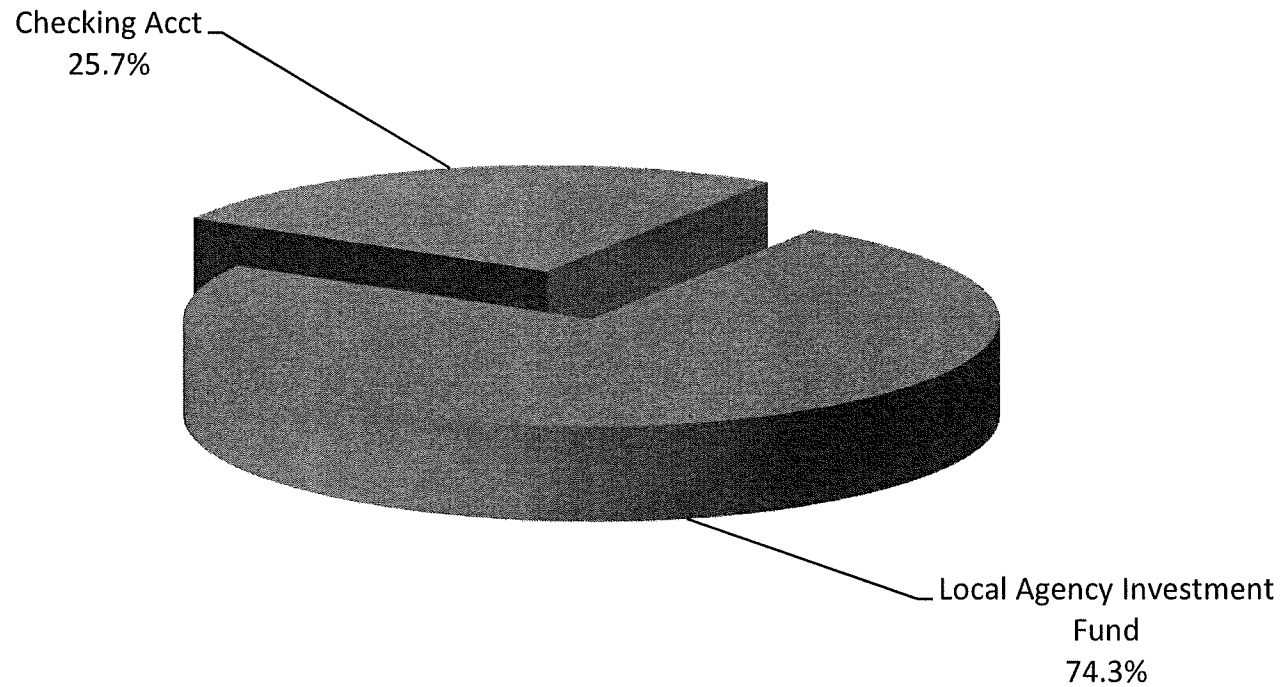
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

The Corporation has sufficient funds available to meet expenditures during the upcoming six-month period.

The Corporation is in compliance with the internal control procedures set forth in its Investment Policy.

**CITY OF MONTCLAIR
HOUSING CORPORATION
CASH AND INVESTMENTS GRAPH
October 31, 2023**

Total Cash & Investments - \$1,441,489



**CITY OF MONTCLAIR
HOUSING CORPORATION
WARRANT REGISTER
FOR THE MONTH ENDING**

October 31, 2023

City of Montclair
Final Warrant Register
Council Date 11/20/2023
Regular Warrants
Checking Account: MHC

<u>Warrants</u>	<u>ACH Transfers</u>	<u>Voided Checks</u>	<u>US Bank transfers</u>	<u>Totals</u>
174,365.63	0.00	0.00	955.00	175,320.63

October 2023 Total

175,320.63

US Bank transfers:

Vice Chair Johnson

Accounts Payable

Checks by Date - Summary by Check Number

User: cramirez
Printed: 11/7/2023 5:42 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5548	ACI0001	ACI Flooring, Inc.	10/12/2023	5,060.68
5549	Doj002	Department of Justice	10/12/2023	200.00
5550	Hugo001	Hugo Jaramillo	10/12/2023	9,500.00
5551	mont002	City of Montclair	10/12/2023	11,695.08
5552	mont074	Monte Vista Water District	10/12/2023	5,790.24
5553	Perf003	Performance Construction & Remodeling I	10/12/2023	114,125.00
5554	Sout018	Southern California Edison Co	10/12/2023	307.06
5555	Arti005	Artic Plumbing And Drain Cleaning	10/26/2023	4,712.00
5556	Hugo001	Hugo Jaramillo	10/26/2023	10,820.00
5557	land012	Landscape Maintenance Unlimited	10/26/2023	4,570.00
5558	Nati050	National Community Renaissance of Califo	10/26/2023	5,878.00
5559	Sout018	Southern California Edison Co	10/26/2023	1,057.45
5560	Sout021	Southern California Gas Co	10/26/2023	650.12
Report Total (13 checks):				174,365.63

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 10/02/2023 To 10/31/2023

Printed on 11/07/2023 at 5:52 PM PST



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
10/26/2023	\$850.00	153499275821	153499275805	Completed

Debit Account Name MONTCLAIR HOUSING CORPORATION
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimb City for MHC Tax Return Cost
Initiate Date 10/26/2023
Initiate Time 07:00PM CDT
Initiated By JKULBECK
Completed Date 10/26/2023
Completed Time 07:00PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
10/03/2023	\$105.00	153499275821	153499275805	Completed

Debit Account Name MONTCLAIR HOUSING CORPORATION
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimb City for CalCard Purchase
Initiate Date 10/03/2023
Initiate Time 06:13PM CDT
Initiated By JKULBECK
Completed Date 10/03/2023
Completed Time 06:13PM CDT

Total Number of Book Transfers: 2
Total Amount of Book Transfers: \$955.00

--- End of Report ---

**CITY OF MONTCLAIR
HOUSING AUTHORITY
TREASURER'S REPORT
FOR THE MONTH ENDING
October 31, 2023**

Schedule 1

**CITY OF MONTCLAIR
HOUSING AUTHORITY
STATEMENT OF CASH
October 31, 2023**

	<u>Amount</u>
Checking Account	
US Bank	3,183,037.57
TOTAL CASH	\$ <u>3,183,037.57</u>

NOTE:

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund. The MHA has sufficient monies available to meet expenditures during the next six month period.

**CITY OF MONTCLAIR
HOUSING AUTHORITY
WARRANT REGISTER**

FOR THE MONTH ENDING

October 31, 2023

City of Montclair
Final Warrant Register
Council Date 11/20/2023
Regular Warrants
Checking Account: MHA

<u>Warrants</u>	<u>Voided Checks</u>	<u>US Bank transfers - out.</u>	<u>Totals</u>
0.00	0.00	0.00	0.00
October 2023 Total			<u><u>0.00</u></u>

Vice Chair Johnson