

CITY OF MONTCLAIR

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

AGENDA

**Monday, December 18, 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, December 18, 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. Community Activities Commission Presentation of 2023 Holiday Home Decoration Contest Winners
- B. 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 20, 2023 [CC/SA/MHC/MHA/MCF] 182

B. Administrative Reports

1. Consider Receiving and Filing of Treasurer's Report [CC] 5
2. Consider Approval of Warrant Register & Payroll Documentation [CC] 6
3. Consider Receiving and Filing of Treasurer's Report [SA] 7
4. Consider Approval of Warrant Register [SA] 8
5. Consider Receiving and Filing of Treasurer's Report [MHC] 9
6. Consider Approval of Warrant Register [MHC] 10
7. Consider Receiving and Filing of Treasurer's Report [MHA] 11
8. Consider Approval of Warrant Register [MHA] 12
9. Consider Authorizing the Receipt of \$17,605 from the 2022 Justice Assistance Grant to Purchase Spike Strips and Breaching Tools [CC] 13
10. Consider Declaring Three Noncompliant Vehicles as Surplus and Available for Donation to the City of Huatabampo, Sonora in Mexico [CC] 18
11. Consider Approval of the Montclair Housing Authority Annual Report Prepared Pursuant to Section 3416.1(f) of the Health and Safety Code (SB 341) for Fiscal Year 2022-23 [CC/MHA] 19
12. Consider Review and Acceptance of the Montclair Housing Authority Annual Report for Fiscal Year 2022-23 [MHA] 28

C. Agreements

1. Consider Approval of Agreement No. 23-90, the Labor Agreement for Management (Nonsafety & Safety) Employees Regarding the Terms and Conditions of Employment for the Period of July 1, 2023, to June 30, 2024 [CC]
- Consider Approval of Agreement No. 23-91, the Labor Agreement for Executive Management Employees Regarding the Terms and Conditions of Employment for the Period of July 1, 2023, to June 30, 2024 [CC]
- Consider Authorizing the Transfer of the Appropriate Additional Compensation from the Personnel Adjustment Reserve Fund to the General Operating Fund [CC] 32
2. Consider Approval of Agreement No. 23-92 with Abound Food Care to Provide Edible Food Recovery Services, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 34

3. Consider Approval of Agreement No. 23-93 with Flock Group Inc. for a 5-Year Lease for 60 Automated License Plate Reader Cameras [CC]
Consider Authorizing a \$63,500 Appropriation from the Federal Asset Forfeiture Fund to Pay Costs Associated with Agreement No. 23-93 [CC] 65
4. Consider Approval of Agreement No. 23-94 with University Enterprises Corporation at California State University San Bernardino (Inland Empire Small Business Development Center) for the Lease of a City-Owned Facility, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 120
5. Consider Approval of Agreement No. 23-95 with NextRequest for the Use of its Online Public Records Request Management System, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 140
6. Consider Approval of Agreement No. 23-96 with Biggs Cardosa Associates, Inc., for Design Services Associated with the Holt Boulevard and Pacific Electric Trail Bridge Project [CC] 157
7. Consider Approval of Agreement No. 23-97 Amending Agreement No. 20-23 with Biggs Cardosa Associates, Inc., for Design Services Associated with the Central Avenue Bridge Project, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 177

D. Resolutions — None

IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

A. Department Reports — None

B. City Attorney

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

Rivera v. Montclair

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

Properties: APN 1010-054-01-0-000

Negotiating Parties: City of Montclair and Nelson Hugo Flores & Roxana Vasquez

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 January 2, 2024 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 20, 2023 [CC] 181

- 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 Tuesday, January 2, 2024, has been cancelled due to a lack of pressing business. The next regular joint meeting will be held on Tuesday, January 16, 2024 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, December 14, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 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 November 30, 2023.

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

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

RECOMMENDATION: Staff recommends the City Council receive and file the Treasurer's Report for the month ending November 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 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 Registers dated December 4, 2023, and December 18, 2023; and the Payroll Documentation dated November 5, 2023, and November 19, 2023, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated December 4, 2023, totals \$2,561,720.62.

The Warrant Register dated December 18, 2023, totals \$2,009,246.44.

The Payroll Documentation dated November 5, 2023, totals \$883,884.68 gross, with \$626,621.59 net being the total cash disbursement.

The Payroll Documentation dated November 19, 2023, totals \$866,135.59 gross, with \$611,318.09 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:	DECEMBER 18, 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 November 30, 2023, pursuant to state law.

BACKGROUND: Included in the Successor Agency Board's agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending November 30, 2023.

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

RECOMMENDATION: Staff recommends the Successor Agency Board receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending November 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 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 November 30, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Successor to the Redevelopment Agency Warrant Register dated 11.01.23-11.30.23 in the amounts of \$4,769.92 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 November 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 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 November 30, 2023, pursuant to state law.

BACKGROUND: Included in the Montclair Housing Corporation Board agenda packet is a copy of the Treasurer's Report for the period ending November 30, 2023.

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

RECOMMENDATION: Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending November 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 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 November 30, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Warrant Register dated 11.01.23–11.30.23 in the amount of \$73,733.12 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 November 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 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 November 30, 2023, pursuant to state law.

BACKGROUND: Included in the Montclair Housing Authority Commission's agenda packet is a copy of the Treasurer's Report for the period ending November 30, 2023.

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

RECOMMENDATION: Staff recommends the Montclair Housing Authority Commission receive and file the Treasurer's Report for the month ending November 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 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 November 30, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Warrant Register dated 11.01.23–11.30.23 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

RECOMMENDATION: Vice Chair Johnson recommends the Montclair Housing Authority Commission approve the Warrant Register for the period ending November 30, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 2023	FILE I.D.:	PDT362
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	POLICE
ITEM NO.:	9	PREPARER:	M. BUTLER
SUBJECT:	CONSIDER AUTHORIZING THE RECEIPT OF \$17,605 FROM THE 2022 JUSTICE ASSISTANCE GRANT TO PURCHASE SPIKE STRIPS AND BREACHING TOOLS		

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the receipt of \$17,605 from the 2022 Justice Assistance Grant (JAG) to purchase spike strips and breaching tools.

BACKGROUND: The Police Department received \$17,605 from the 2022 Edward Byrne Memorial JAG Program in November 2023. The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA) awards JAG Program funds to eligible units of local government. JAG Program awards are designed to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice agencies.

San Bernardino County submits a joint application for all local subrecipient jurisdictions, including the City of Montclair, and is the primary recipient for all local JAG funds. As the JAG Program Administrator, the County disburses appropriate grant allocations to eligible jurisdictions less a five percent administrative fee, as allowable under JAG guidelines. The City entered into Agreement Nos. 23-01 and 23-02 with the County in January 2023 to provide for the receipt of grant funds.

In August 2022, staff submitted a proposed project to the County requesting to use JAG 2022 funds toward the purchase of tire deflation devices, or spike strips, to use as intervention tactics during vehicle pursuits and to purchase breaching tools in the event of an active shooter event at one of Montclair's local schools or businesses. The County received a grant award from BJA in September 2022 for all disparate jurisdictions' JAG 2022 projects. Thus, the Department is requesting to use grant funds toward the purchase of spike strips and breaching tools.

There are many risks associated with vehicle pursuits, which are initiated in the attempt to apprehend a suspect who is unlawfully fleeing from law enforcement. A spike strip can be utilized in such situations to stop the suspect's ability to continue to flee in a vehicle. When a vehicle drives over a spike strip, its tires are punctured causing them to deflate, which impedes or stops the movement of the vehicle. Officers use spike strips to effectively and safely slow down a crime suspect fleeing in a vehicle. They can be stored folded up in a patrol car, and when deployed, they expand like an accordion across the road.

Compact or mini spike strips also work as tire deflators. Officers place this type of covert tire-deflation device under the tire of a stationary vehicle to prevent suspects from fleeing, thus preventing a pursuit before it happens. If a vehicle drives over one of these compact spike strips, the tire will immediately deflate, eliminating the possibility of a high-speed getaway attempt. These devices are pocket-sized and can be stored in the glove box of a patrol vehicle. The goal is to fully outfit each patrol vehicle, including some detective vehicles, with spike strips, which are an invaluable tool for officers out

in the field when pursuing a suspect. Immobilizing a fleeing suspect's vehicle is crucial to reduce the risk of injury and damage that often occurs during a pursuit in order to apprehend a suspect.

Staff is requesting to purchase 20 Stop Sticks (spike strips) and 20 Piranha tire-deflation devices from Stop Stick LTD for \$13,885.20. The Department currently utilizes tire-deflation devices from Stop Stick. Officers are trained on the proper and safe use of these devices and are familiar with how to deploy them. Stop Stick products are used worldwide by law enforcement to safely and quickly end or prevent high-speed automotive pursuits. Its tire-deflation devices are effective, reliable, and have a reputation of being the lightest, easiest-to-deploy, and safest-to-handle. Stop Stick has provided dependable, professional service in the past and is the preferred sole-source vendor for this purchase.

A crisis situation, such as an active shooter, calls for rapid response and deployment of law enforcement and equipment to reduce, prevent, or eliminate the threat. The purchase of breaching tools would include a forcible entry rescue tool, an entry ram tool, and an entry bolt-master for gaining entry into buildings by prying, twisting, striking, digging, pulling, puncturing, and/or cutting locked or fastened doors. The speed and versatility of these tools would allow officers the ability to gain access to otherwise locked and/or barricaded areas where an active shooter or innocent victims in need of rescue may be. These tools would be used by officers during tactical law enforcement operations and enhance their ability to effectively respond to imminent threats.

Bid quotations for the purchase of breaching tools, including special operations Hallagan tools, MonoShock ram tools, and Super BoltMaster tools, along with tool bags, were received from the following vendors:

<u>Vendor</u>	<u>Bid Amount</u>
ProForce Law Enforcement	\$3,320.17
Galls	\$3,661.03
9-1-1 Network	\$4,906.36

ProForce Law Enforcement is the selected vendor for the purchase of breaching tools. This vendor has the lowest bid offering competitive pricing and quality tools. ProForce has been a responsive vendor that offers the Department a significant discount on its products. Due to this discount, the Department would be able to purchase one additional breaching tool with the remaining \$400 from the grant.

FISCAL IMPACT: The City of Montclair's 2022 JAG allocation is \$18,532—the San Bernardino County Board of Supervisors would retain a five percent administrative fee of \$927. If authorized by the City Council, the remaining JAG 2022 funds in the amount of \$17,605 would be used to purchase spike strips and breaching tools.

RECOMMENDATION: Staff recommends the City Council authorize the receipt of \$17,605 from the 2022 JAG to purchase spike strips and breaching tools.

PROFORCE LAW ENFORCEMENT

2625 Stearman Drive, Prescott AZ, 86301
Tel: 928-776-7192 Fax: 928-445-3468
email: sales@proforceonline.com www.proforceonline.com

ORDER

QUOTE

QUOTE#	PAGE
610399	1
SHIP DATE	
A.S.A.P.	

SOLD
TO

CITY OF MONTCLAIR
ACCOUNTS PAYABLE
5111 BENITO STREET
MONTCLAIR CA 91763

SHIP
TO

MONTCLAIR POLICE DEPARTMENT
4870 ARROW HWY
MONTCLAIR CA 91763

909-621-1584

JOB #	ORD. DATE	CUST.#	LOC.	SALESMAN	SHIP VIA	FRT.
N/A	12/06/23	002451	A	CHRIS BRAZZILL	FX G-FOB ORIGIN	Ppd
QTY. ORDER	ITEM NO./DESC.			UNIT PRICE	UOM DISC.	NET PRICE
3	60ME00BK BHP DYNET MANUAL ENRY TOOL BAG (NO TOOLS PACK ONLY)			98.47	EA .00	295.41
3	DE-SOHT BHP SPECIAL OPS HALLAGAN TOOL			201.83	EA .00	605.49
3	DE-MS BHP DE MONOSHOCK RAM			362.17	EA .00	1,086.51
3	NON-STOCK DE-SBM BLACKHAWK DYNENT SUPER BOLTMASTER			352.87	EA .00	1,058.61
<p>This quote is valid for 45 days from date of issue, pending credit approval, and is subject to manufacturer's availability and price change. Please call (800) 367-5855 if this bid is still pending on the expiration date for updated pricing.</p> <p>Standard Terms are Net 30 days. If department policy does not allow for partial shipments and payments, separate purchase orders for each item will be necessary. Standard manufacturer's warranty applies to all department</p> <p>ProForce Law Enforcement agrees to defend, indemnify and hold harmless its customers from claims for personal</p>						
<div>COMMENT</div> <div>TERMS</div>						

PROFORCE LAW ENFORCEMENT

2625 Stearman Drive, Prescott AZ, 86301
Tel: 928-776-7192 Fax: 928-445-3468
email: sales@proforceonline.com www.proforceonline.com

ORDER

QUOTE

QUOTE#	PAGE
610399	2
SHIP DATE	
A.S.A.P.	

SOLD
TO

CITY OF MONTCLAIR
ACCOUNTS PAYABLE
5111 BENITO STREET
MONTCLAIR CA 91763

SHIP
TO

MONTCLAIR POLICE DEPARTMENT
4870 ARROW HWY
MONTCLAIR CA 91763

909-621-1584

JOB #	ORD. DATE	CUST.#	LOC.	SALESMAN	SHIP VIA	FRT.
N/A	12/06/23	002451	A	CHRIS BRAZZILL	FX G-FOB ORIGIN	Ppd
QTY. ORDER	ITEM NO./DESC.			UNIT PRICE	UOM DISC.	NET PRICE
	injury or property damages, to the extent arising from the negligent acts or omissions of ProForce Law Enforcement or its employees, agents or independent contractors.					
	ORDERING INSTRUCTIONS: Please reply to your sales representative in writing to process this order or send an email to john.gall@proforceonline.com . For orders over \$5,000, a PO or signed quote is required to process the order.					
	Returned items are subject to 20% restocking fee. All sales are final on non-stocked/special order items					
	IMPORTANT: To order from this quotation, please sign below.					
	Printed Name: _____					
	Date: _____			P.O.: _____		
	Signature: _____					
	COMMENT FOR ANDREW GRAZIANO/MONTCLAIR PD PREPARED BY JOHN G FOR RYAN S			SALES AMOUNT		3,046.02
	TERMS DUE NET 30 DAYS			9.000% SALES TAX		274.15
				SUB TOTAL		3,320.17



Quotation

Ship To

Andy Graziano
Montclair Police Department
[CA]
4870 Arrow Hwy
Montclair, CA 91763
United States
909-448-3637
agraziano@cityofmontclair.org

Bill To

Marci Butler
Montclair Police Department
[CA]
4870 Arrow Hwy
Montclair, CA 91763
United States
909-621-5873
mbutler@cityofmontclair.org

Quote Number 2023-28263
Terms Net 30 Days
Date 12/06/2023
Sales Person Spencer Gingras
Valid Until 01/31/2024
Shipping Fedex
Contract Number
Cooperative

#	Qty.	Product	Item Code	Unit Price	Ext. Price
1	20	12' Stop Stick Kit w/Tray - Red-Blk	S3511K	\$ 585.00	\$ 11,700.00
2	20	Piranha	S6001K	\$ 39.00	\$ 780.00
3	1	CA State Tax (9%)		\$ 1,123.20	\$ 1,123.20

Quotation Totals

Currency: US Dollar
Subtotal: \$ 13,603.20
Shipping Provider: Fedex
Shipping: \$ 282.00
Total: \$ 13,885.20

Quotation Accepted By

Quote Number 2023-28263

P.O. Number

Tax Exempt #

Print Name _____

Title _____

Signature _____

Date _____

Stop Stick LTD • 365 Industrial Drive • Harrison, Ohio 45030 • United States
Phone: 513-202-5500 • Fax: 513-202-0240
<http://stopstick.com>

1 / 1

Unless otherwise stated, sales are U.S. Dollars, EXW Harrison, OH. Payment Net 30 Days from ship date.



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 18, 2023 **FILE I.D.:** VEH125
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 10 **PREPARER:** M.HEREDIA
SUBJECT: CONSIDER DECLARING THREE NONCOMPLIANT VEHICLES AS SURPLUS AND AVAILABLE FOR DONATION TO THE CITY OF HUATABAMPO, SONORA IN MEXICO

REASON FOR CONSIDERATION: The City Council is requested to consider declaring City vehicles no longer compliant with the South Coast Air Quality Management District emission requirements as surplus and available for donation to the City of Huatabampo, Sonora in Mexico.

BACKGROUND: The following vehicles have reached the end of their service life and are no longer compliant with emission requirements by the South Coast Air Quality Management District. Additionally, these vehicles cannot be driven on any California roadway after January 1, 2023 and cannot be registered with the Department of Motor Vehicles.

Unit #	Year/Model	Serial/VIN #	Mileage	Est. Current Value
306 PW	1990 International Water Truck	1HTSCZVN7LH686734	14,079	\$ 4,000
310 PW	2002 International 4700 Dump Truck	1HTSCABN22H545767	12,574	\$ 2,500
314 PW	2004 International Vac-Con Sewer/Storm Drain Truck	1HTWDADR94J088899	66,981	\$ 5,500

Representatives from the City of Huatabampo will pick up and transport the trucks to their agency in Sonora. They will also obtain insurance to transport the equipment across the border into Mexico.

FISCAL IMPACT: Donating the listed items would have no fiscal impact.

RECOMMENDATION: Staff recommends the City Council declare the above listed three vehicles as surplus and available for donation to the City of Huatabampo, Sonora in Mexico.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 2023	FILE I.D.:	MHA030
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE/MHA
ITEM NO.:	11	PREPARER:	J. KULBECK
SUBJECT:	CONSIDER APPROVAL OF THE MONTCLAIR HOUSING AUTHORITY ANNUAL REPORT PREPARED PURSUANT TO SECTION 3416.1(F) OF THE HEALTH AND SAFETY CODE (SB 341) FOR FISCAL YEAR 2022-23		

REASON FOR CONSIDERATION: Senate Bill 341 became effective on January 1, 2014. The bill amended Section 34176 of the Health and Safety Code and added Section 34176.1. Health and Safety Code Section 34176 revised redevelopment law related to certain expenditure requirements of Low and Moderate Housing Funds of former redevelopment agencies. In general, Section 34176.1 limited future expenditures of administrative funds used for the monitoring and preservation of affordability covenants, directed that certain funds remaining in the Low and Moderate Income Housing Fund be directed to extremely low income households, and added certain audit and reporting requirements.

The report labeled "SB 341 Compliance Report" is attached for consideration by the City Council and Montclair Housing Authority Commission pursuant to Health and Safety Code Section 34176.1 (f). This report indicates that the financial data applicable to the Montclair Housing Authority will be included in the City of Montclair's annual independent financial audit. That process is currently being completed and that report will be provided to the City Council and Montclair Housing Authority Commission upon its receipt from the independent audit firm of Van Lant & Fankhanel, LLC. The City Council and Montclair Housing Authority Commission are requested to consider approval of the SB 341 Compliance Report.

BACKGROUND: As the City Council and Montclair Housing Authority Commissioners will recall, the California Supreme Court's decision in California Redevelopment Association, et. al. v. Matosantos upheld AB X1 26, The Dissolution Act. The Dissolution Act caused the dissolution of all California redevelopment agencies. On January 12, 2012, the City of Montclair City Council elected to become and serve as the Successor Agency to the City's dissolved redevelopment agency. The City is performing its functions as the Successor Agency to the former Redevelopment Agency under the Dissolution Act to administer the enforceable obligations of the Agency and otherwise unwind the Agency's affairs, all subject to review and approval by the County Oversight Board.

On January 12, 2012, pursuant to Section 34176 of the Dissolution Act, the City Council selected the Montclair Housing Authority to assume all housing assets and functions of the former City of Montclair Redevelopment Agency. Therefore, on February 1, 2012, the Montclair Housing Authority became the "Housing Successor" of the former Redevelopment Agency pursuant to the Dissolution Act. The actions of the Housing Successor are not subject to the review and approval of the County Oversight Board.

As indicated, certain provisions of SB 341 require that the Housing Successor prepare a Compliance Report and have an audit completed. The SB 341 Compliance Report responds to the requirements of Section 34176.1 (f) of the Health and Safety Code. The

SB 341 Compliance Report also includes financial data for the Montclair Housing Corporation which operates the properties owned by the Montclair Housing Authority. Primarily, the Report indicates the following:

The Montclair Housing Authority received \$623 from loan payments revenue during Fiscal Year 2022-23. The Montclair Housing Corporation received \$41,120 of interest earnings and \$993,581 from rents.

The assets of the Montclair Housing Authority chiefly include real estate composed of the 105 residential units operated by the Montclair Housing Corporation and residual receipts loans.

For Fiscal Year 2022-23, the Montclair Housing Authority had no expenditures. The expenditures shown for the Montclair Housing Corporation include minor administrative costs, management company costs that include charges for minor repairs and maintenance, major repairs and maintenance and costs for health permits. The excess of revenue for the year is accumulated so that long-term maintenance items can be accomplished in the future.

The report indicates that the carrying value of the housing units owned by the Montclair Housing Authority is \$9.01 million. In Fiscal Year 2021-22 the Montclair Housing Authority received payment in full in the amount of \$3,171,900 from residual receipts loans to Augusta Homes (loans for rehabilitation of mobile home parks). These funds will be utilized for future low-income housing projects. The remaining Neighborhood Partnership Housing Services (loans to home owners for housing rehabilitation), and National Community Renaissance (loans for acquisition and construction of new affordable housing) residual receipts loans are considered uncollectible, however the Housing Authority did receive \$623 in loan payments for Fiscal Year 2022-23.

The Montclair Housing Authority currently exceeds its Section 33413 inclusionary housing requirements. The income of the Montclair Housing Authority is non-reoccurring. Without a permanent source of revenue, the Montclair Housing Authority will no longer be able to provide additional affordable housing units.

Within the last 10 years, the City of Montclair Redevelopment Agency Low and Moderate Income Housing Fund provided financing for 228 deed restricted affordable rental housing units. Thirty eight percent of the units were for senior housing.

FISCAL IMPACT: Approval of the Annual Report by the City Council and Montclair Housing Authority Commission will create no fiscal impact for the City or Montclair Housing Authority. With no permanent source of the funding, the Montclair Housing Authority has extremely limited resources for the purpose of providing low and moderate housing.

As indicated, the Audit Report will be supplied to the City Council and Montclair Housing Authority Commission upon receipt from Van Lant & Frankhanel, LLC which should occur in early 2024.

RECOMMENDATION: Staff recommends that the City Council and Montclair Housing Authority Commissioners approve the Montclair Housing Authority Annual Report prepared pursuant to Section 34176.1 (f) of the Health and Safety Code (SB 341) for Fiscal Year 2022-23.

Successor Housing Entity – Montclair Housing Authority

Health and Safety Code Section 34176.1 (f) and Section 33080.1 as well as Section 12463.3 of the Government Code shall not apply. Instead, the housing successor shall conduct, and shall provide to its governing body, an independent financial audit of the Low and Moderate Income Housing Asset Fund within six months after the end of each fiscal year, which may be included in the independent financial audit of the host jurisdiction. If the housing successor is a city or county, it shall also include in its report pursuant to Section 65400 of the Government Code and post on its Internet Web site all of the following information for the previous fiscal year. If the housing successor is not a city or county, it shall also provide to its governing body and post on its Internet Web site all of the following information for the previous fiscal year:

Response:

The Montclair Housing Authority's and Montclair Housing Corporation's financial information is part of the annual financial audit report prepared for the City of Montclair and therefore it meets the requirement by being included "in the independent financial audit of the host jurisdiction".

- (1) The amount deposited to the Low and Moderate Income Housing Asset Fund, distinguishing any amounts deposited for items listed on the Recognized Obligation Payment Schedule from other amounts deposited.

Response:

The operations of Low and Moderate Income Housing are separated and reported by two entities. The Montclair Housing Authority (Housing Authority) is the Successor Housing Entity, which under the redevelopment dissolution law took over housing assets from the City of Montclair Redevelopment Agency Low and Moderate Income Housing Funds upon its dissolution. Those housing assets included single and multifamily residential housing units which are operated and maintained by the Montclair Housing Corporation (Housing Corporation) which is a separate 501(c)(3) non-profit California Corporation. The rents and other income from the housing operations belong to the Housing Authority; however, they are granted to the Housing Corporation for use in covering expenses of operating the various housing units. Below is a summary of the deposits of both of these entities for fiscal year 2022-23:

	<u>Housing Authority</u>	<u>Housing Corporation</u>	<u>Total</u>
Deposits for fiscal year 2022-23	<u>\$1,852,879.00</u>	<u>\$ 1,034,701.01</u>	<u>\$ 2,887,580.01</u>
Deposit detail:			
Grant from Housing Authority - Rental income	\$ -	\$ 993,580.75	\$ 993,580.75
Loan Payments Received	\$ 623.00		
Interest earnings	-	41,120.26	41,120.26
Contribution from other governments	1,852,256.00	-	1,852,256.00
	<u>\$1,852,879.00</u>	<u>\$ 1,034,701.01</u>	<u>\$ 2,886,957.01</u>

- (2) A statement of the balance in the fund as of the close of the fiscal year, distinguishing any amounts held for items listed on the Recognized Obligation Payment Schedule from other amounts.

Response:

Since this section does not define what "balance" is required, the fund balances present in the Low and Moderate Income Housing Asset Fund of the Montclair Housing Authority and the fund balance of the Montclair Housing Corporation are presented and detailed into their component amounts. Those balance and amounts are as follows as of June 30, 2023:

	Housing Authority	Housing Corporation	Total
Fund Balance	<u>\$ 12,190,122.33</u>	<u>\$ 1,785,615.30</u>	<u>\$ 13,975,737.63</u>
Components of Fund Balance:			
Nonspendable - Land and Real Estate	\$ 9,010,539.89	\$ -	\$ 9,010,539.89
Nonspendable - Loans Receivable		-	-
Restricted for Housing	<u>3,179,582.44</u>	<u>1,785,615.30</u>	<u>4,965,197.74</u>
	<u>\$ 12,190,122.33</u>	<u>\$ 1,785,615.30</u>	<u>\$ 13,975,737.63</u>

- (3) A description of expenditures from the fund by category, including, but not limited to, expenditures (A) for monitoring and preserving the long-term affordability of units subject to affordability restrictions or covenants entered into by the redevelopment agency or the housing successor and administering the activities described in paragraphs (2) and (3) of subdivision (a), (B) for homeless prevention and rapid rehousing services for the development of housing described in paragraph (2) of subdivision (a), and (C) for the development of housing pursuant to paragraph (3) of subdivision (a).

Response:

Total expenditures for fiscal year 2022-23 by category were as follows:

	Housing Authority	Housing Corporation	Total
Expenditures:			
Administrative costs	\$ -	\$ 57.19	\$ 57.19
Professional services	-	4,701.85	4,701.85
Management service company costs	-	668,062.32	668,062.32
Repairs and maintenance	-	572,372.45	572,372.45
Permits	-	1,016.00	1,016.00
Total	<u>\$ -</u>	<u>\$ 1,246,209.81</u>	<u>\$ 1,246,209.81</u>

Operations of the multifamily residential units owned by the Montclair Housing Authority (Successor Housing Entity) are done through the Montclair Housing Corporation a separate 501(c)(3) nonprofit corporation. As such, the Montclair Housing Authority has not directly incurred any expenditures for monitoring or administering affordability restrictions or covenants as these are done by the Montclair Housing Corporation as part of administering and preserving those properties. All properties owned by the Housing Authority have 55 year deed restrictions present for low and moderate income housing purposes.

- (4) As described in paragraph (1) of subdivision (a), the statutory value of real property owned by the housing successor, the value of loans and grants receivable, and the sum of these two amounts.

Response:

The statutory values of real property, loans and grants receivable at June 30, 2023 were as follows:

	Housing Authority
Real property	\$ 9,010,539.89
Loans receivable (net of allowance for uncollectible)	-
Total Real Property and Receivables	<u>\$ 9,010,539.89</u>

- (5) A description of any transfers made pursuant to paragraph (2) of subdivision (c) in the previous fiscal year and, if still unencumbered, in earlier fiscal years and a description of and status update on any project for which transferred funds have been or will be expended if that project has not yet been placed in service.

Response:

During Fiscal Year 2019-20 transfers of operating monies in the amount of \$160,000 occurred from the Housing Authority to the Housing Corporation. These monies were to provide resources to further maintain the housing units administered by the Housing Corporation and to assist in providing housing for extremely low-income households. No additional transfers of monies have been done by the Montclair Housing Authority or from the Montclair Housing Corporation from June 30, 2022 through June 30, 2023.

- (6) A description of any project for which the housing successor receives or holds property tax revenue pursuant to the Recognized Obligation Payment Schedule and the status of that project.

Response:

The Montclair Housing Authority and the Montclair Housing Corporation receive no property tax revenues. Neither of these entities has received nor currently holds any tax revenues pursuant to a Recognized Obligation Payment Schedule.

- (7) For interests in real property acquired by the former redevelopment agency prior to February 1, 2012, a status update on compliance with Section 33334.16. For interests in real property acquired on or after February 1, 2012, a status update on the project.

Response:

Section 33334.16 of the Health and Safety Code generally requires that for each interest in real property acquired by a redevelopment agency with Low to Moderate Income Housing Fund monies, a redevelopment agency must begin the development or rehabilitation of the property within five years from the date of acquisition. In the case of the former City of Montclair Redevelopment Agency, all properties acquired by the former Redevelopment Agency have been (or are in process of being) rehabilitated or sold for new housing development. The narrative below provides an update on the status of the units and/or property owned by the former City of Montclair Redevelopment Agency upon redevelopment agency dissolution in February 2012.

The former City of Montclair Redevelopment Agency was the owner of 98 units of affordable housing. The housing units were purchased and rehabilitated by the former Redevelopment Agency with Low- and Moderate-Income Housing Funds. The 98 units contain 55 year deed restrictions for affordability; approximately 80 percent of the units are deed restricted for very low income families; and over 300 people currently reside in these units.

On April 4, 2011, the Redevelopment Agency Board of Directors and the Montclair Housing Corporation Board of Directors approved the sale of 98 housing units to the Montclair Housing Corporation with the approval of Redevelopment Agency Special Counsel. The properties were sold by the Redevelopment Agency to the Montclair Housing Corporation for approximately \$12 million with the provision that all loan payments would be forgiven as long as the properties remained affordable housing subject to 55-year affordability covenants. The Montclair Housing Corporation was established in June 1994 to maintain and manage certain rental properties that the former Redevelopment Agency purchased and rehabilitated for the purpose of providing affordable housing with Low- and Moderate-Income Housing Funds to meet Health and Safety Code Inclusionary requirements. The City Council acts as the Board of Directors for the Montclair Housing Corporation.

While auditing the former City of Montclair Redevelopment Agency, the State Controller never questioned the validity of the asset transfer to the Montclair Housing Corporation. However, upon issuance of its draft Report in November 2012, the Controller's Office indicated that the housing units transferred to the Montclair Corporation should be returned to the Successor Agency. Successor Agency staff responded to the State Controller's conclusion indicating that the 98 units were existing units of affordable housing containing over 300 tenants. In addition, all the units contain 55 year affordability covenants. The State Controller's staff verbally communicated to Successor Agency staff saying that the units could be retained by the Montclair Housing Corporation upon adoption of a Resolution affirming such action by the Oversight Board. The Oversight Board approved Resolution No. 13-02 approving the transfer of the housing units to the Montclair Housing Corporation on January 23, 2013. The Final Report issued by the State Controller's Office dated March 6, 2013 indicated the Oversight Board had authorized the property transfer and no further action was necessary.

After receipt and review of Resolution No. 13-02 by the Department of Finance (DOF) a letter was received from DOF on May 15, 2013 disallowing the transfer of the 98 housing units to the Montclair Housing Corporation. The action by DOF indicated no "Meet and Confer" on this action was authorized. The letter from DOF did remand the action back to the Oversight Board for consideration. Successor Agency staff verbally communicated with DOF where it was indicated that the housing assets in question should be placed on the Long Range Property Management Plan. It should be noted that DOF did not question the placement of these 98 housing units as assets on the Housing Asset Transfer list submitted by the Successor Agency and Oversight Board in July 2012. As directed by DOF, staff included the housing units in the first draft of the Long Range Property Management Plan.

After conference with legal counsel, Successor Agency staff submitted Resolution No. 13-10 to the Oversight Board for consideration. This resolution directed the Successor Agency to transfer the 98 units of rental housing to the Montclair Housing Authority (Successor Housing Agency) as housing assets. On September 11, 2013, the Oversight Board adopted Resolution No. 13-10 directing the Successor Agency to transfer the 98 low--and moderate-income housing units to the Montclair Housing Authority. On September 18, 2013, DOF Analyst Hanzhao Meng pulled Resolution No. 13-10 for review.

The Successor Agency to the City of Montclair Redevelopment Agency was finally allowed to delete the 98 units of low-to moderate-income housing (**Housing Assets**) in the Long- Range Property Management Plan that were held by the Montclair Housing Corporation. Per direction from DOF, pursuant to DOF Determination on OB Resolution No. 13-10 dated December 13, 2013, the transfer of the 98 units to the Montclair Housing Authority was approved.

Of the 98 units, the only unit requiring rehabilitation at the time of dissolution was the property at 5444 Palo Verde Street purchased prior to dissolution in 2011. Since its acquisition, this property has undergone extensive rehabilitation to clear trees and overgrown vegetation and to correct a variety of building code violations. The remaining items to be performed on the unit included replacement of broken windows and painting the exterior of the house. The house is currently rented to an income qualifying family.

The Montclair Housing Corporation continues to rent these 98 units along with the newly purchased property to income qualifying families. The majority of units are deed restricted for rental to very low-income families.

The other property owned by the former Redevelopment Agency upon dissolution was located at 4113 Kingsley Street. The .47-acre property was acquired by the former Redevelopment Agency on January 20, 2009. The purchase price for the property was \$330,000. The property was acquired with Low to Moderate Income Housing Funds. At the time the property was acquired, staff held preliminary discussions with National CORE to determine its interest in considering the site for special needs housing. Development of a Special Needs Housing project was of interest to National CORE. National CORE developed similar projects in the past and has partnered with nonprofit social service providers regarding tenancy and social service needs. The proposed location for the National CORE Special Needs project lies directly east of Vista Del Cielo on the southwest corner of Kingsley Street and Pradera Avenue. This site also serves as an entry corner for the Montclair Meadows Foundation Area and the San Antonio Vista Apartments. On September 8, 2009, the Redevelopment Agency Board of Directors approved an Exclusive Right to Negotiate Agreement between the City of Montclair Redevelopment Agency and National CORE regarding the 4113 Kingsley Street site. Through the Exclusive Right to Negotiate Agreement, the Redevelopment Agency Low and Moderate Income Housing Fund provided National CORE with a predevelopment loan of approximately \$252,000. These funds were used to develop building plans for the property and to gain City entitlements. The project was entitled by the Planning Commission on March 14, 2011.

An Option Agreement regarding purchase of 4113 Kingsley Street was approved by the Redevelopment Agency Board of Directors and National CORE on October 19, 2009. The Option Agreement provided National CORE with the ability to apply for United States Department of Housing and Urban Development (HUD) Section 811 funding to finance the development of affordable housing for developmentally disabled persons. The Option Agreement also committed that the Redevelopment Agency Board of Directors would consider providing National CORE with a residual receipts loan of at least \$1.6 million. National CORE received a commitment for funding from the Section 811 program in 2010. However, National CORE still found itself in need of additional funding for the project and sought to apply for the California 9 Percent Low--Income Housing Tax Credit (LIHTC) program. Therefore, on December 30, 2010, the Option Agreement with National CORE was extended until December 30, 2012.

National CORE was successful at receiving 9 Percent LIHTC and with the HUD Section 811 funding, National CORE was ready to finance the 18-unit Special Needs Housing Project for persons with developmental disabilities for several months. National CORE wrote a letter to the Successor Agency

seeking to exercise the option for acquisition of the property. In addition, without an open escrow for the site, National CORE would be in danger of losing its commitment for HUD financing.

A public hearing to consider the Disposition and Development Agreement (DDA) with National CORE regarding the Special Needs Housing Project at 4113 Kingsley Street was set to be considered by the Redevelopment Agency Board of Directors and City Council on July 5, 2011. Unfortunately, Governor Brown signed the redevelopment dissolution legislation, AB 1X 26, on June 27, 2011. Therefore, the Redevelopment Agency Board of Directors and City Council were not able to approve the DDA with National CORE and the 4113 Kingsley Street property returned to its state as an unimproved asset of the redevelopment agency.

With the official dissolution of redevelopment agencies on February 1, 2012, the City of Montclair formed the Montclair Housing Authority to assume responsibility for former redevelopment agency housing assets. The City became the successor agency for former redevelopment agency's nonhousing assets. Successor Agency Special Counsel opined that housing assets should be transferred to the housing successor agency by matter of law so a grant deed was not recorded to commemorate the transfer.

With the adoption of AB 1484 on June 27, 2012, the housing assets of each former redevelopment agency were to be listed on a Housing Asset Transfer form and submitted to the Department of Finance (DOF) for approval. The submittal of the Housing Asset Transfer form to DOF had to be completed by August 1, 2012. The Housing Asset Transfer form for the former City of Montclair Redevelopment Agency included the property located at 4113 Kingsley Street. The Housing Asset Transfer form listed this property as a site to be used for an affordable Special Needs Housing project having a valid Option to Purchase Agreement by National CORE. In addition, the Oversight Board approved the Housing Asset Transfer form on July 25, 2012 and adopted Resolution No. 12-11 approving the transfer of housing assets to the Montclair Housing Authority.

On August 25, 2012, the DOF made the determination that the 4113 Kingsley Street property was not a housing asset. Successor Agency staff submitted a Request to "Meet and Confer" regarding this matter on September 13, 2012. The "Meet and Confer" with DOF was conducted on November 21, 2012. Representatives from National CORE and the Successor Agency staff presented the background regarding the property and discussed the lawsuit that would ensue if DOF maintained its position that 4113 Kingsley Street was not a housing asset. Finally, on December 21, 2012 DOF issued a letter reversing the determination that 4113 Kingsley Street was a nonhousing asset.

The Successor Agency Board of Directors approved the transfer of the 4113 Kingsley Street property to the Montclair Housing Authority with a grant deed on January 22, 2013. The Montclair Housing Authority also approved a Purchase and Sale Agreement to National CORE on January 22, 2013 so that National CORE's grant of HUD 811 financing could be preserved. The Montclair Housing Authority approved a Disposition and Development Agreement with National CORE on February 2, 2013, more fully detailing the terms of the purchase agreement between the Montclair Housing Authority and National CORE. The Montclair Housing Authority was not able to provide the \$1.6 million in assistance previously committed by the Redevelopment Agency. National CORE took possession of the property in early 2013. The 18-unit project was completed and occupied by spring of 2014. National CORE named the Montclair Special Needs Housing Project "San Emi." Subsequent to financing the San Emi Special Needs Housing Project, HUD discontinued the HUD 811 program. San Emi may be the last HUD project constructed with this funding source.

Adults residing in the San Emi Special Needs Housing project need to have the capacity and ability for independent living. However, these residents have the need for special services. Therefore, the Special Needs Housing project is operated slightly differently than the other National CORE Housing Projects (the San Marino Senior Apartments, the San Antonio Vista Apartment Project, or the Vista Del Cielo Apartment Project). The difference in operation is reflected in social service delivery. While all the other National CORE projects have community, recreational, or educational programs, the San Emi Special Needs Housing project has a social service provider that monitors and follows up on the needs of the resident population.

The nonprofit social service provider for the San Emi Project is United Cerebral Palsy of Los Angeles. United Cerebral Palsy of Los Angeles is experienced in operating special needs housing for the developmentally disabled. This organization currently services 11 independent living apartments and 25 community based homes to help address affordable and accessible housing in Los Angeles, Orange, and Santa Barbara counties. The Montclair Special Needs Housing project is the first project served by United Cerebral Palsy of Los Angeles in San Bernardino County.

- (8) A description of any outstanding obligations pursuant to Section 33413 that remained to transfer to the housing successor on February 1, 2012, of the housing successor's progress in meeting those obligations, and of the housing successor's plans to meet unmet obligations. In addition, the housing successor shall include in the report posted on its Internet Web site the implementation plans of the former redevelopment agency.

Response:

The only obligations which remained to be transferred to the housing successor as of February 1, 2012 pursuant to Section 33413 were those units and property detailed in Question 7 above. As stated, all units and property have been transferred and land at 4113 Kingsley Street has been developed for affordable housing. All units transferred or developed are used to satisfy Section 33413 requirements.

As of February 1, 2012 all of the Redevelopment Agency's 33413 objectives were satisfied and an excess of 56 affordable units were produced.

With the completion of the San Emi Special Needs Housing Project in 2014, the Housing Successor Entity (Housing Authority) currently has 73 units of deed restricted affordable housing in excess of current Section 33413 production requirements.

Implementation Plans shall be posted on the Internet Web site.

- (9) The information required by subparagraph (B) of paragraph (3) of subdivision (a).

Response:

The Housing Authority interprets this requirement as follows:

(B) If the housing successor fails to comply with the extremely low income requirement in any five-year report, then the housing successor shall ensure that at least 50 percent of these remaining funds expended in each fiscal year following the latest fiscal year following the report are expended for the development of rental housing affordable to, and occupied by, households earning 30 percent or less of the area median income until the housing successor demonstrates compliance with the extremely low income requirement in an annual report described in subdivision (f).

Section 34176.1 of the Health and Safety Code became effective January 1, 2014. The Successor Housing Authority, at June 30, 2023, has \$3,179,582.44 in cash. This source of income is non-reoccurring. The only additional source of funding for the Montclair Housing Authority is made available through the repayment of residual receipts loans. Residual receipts loans were made to National CORE and Augusta Homes. The residual receipts loans made to August Homes were paid in full in FY 2021-22. Residual receipts income is only derived when income exceeds expenses from maintenance, operations, and payment to creditors in a first position. However, residual receipts loans do not constitute a steady income stream and in the past several years, the recipients of the residual receipts loans have been unable to make payments on the loans because operating expenses have just met or exceeded revenue. Therefore, as indicated in Question 8 above, future project revenue to advance new affordable housing projects will not be forthcoming.

To comply with requirements to provide housing for extremely low income, staff typically will recommend that the Housing Authority Board of Directors transfer most of the cash balance in the Housing Authority fund to the Housing Corporation to secure deed restrictions for extremely low income persons for one-or two-units for this income category. However, due to the nature of the restrictions on the Augusta Homes residual receipt loan repayment the funds must remain in the Housing Authority.

The San Emi Special Needs Housing Project was completed in the 2013-14 fiscal year, 17 units of affordable deed restricted housing were created. Eight of the 17 units (47 percent) are provided to persons or families earning 30 percent or less of the area median income. Presuming the provisions of Section 34176.1 (a)(3)(A) begin on January 1, 2014, the Montclair Housing Authority complies with this Section.

- (10) The percentage of units of deed-restricted rental housing restricted to seniors and assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the previous 10 years in relation to the aggregate number of units of deed-restricted rental housing assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the same time period.

Response:

The following affordable deed restricted rental housing units have been assisted by the City of Montclair Redevelopment Agency or Montclair Housing Authority within the last 10 years:

San Antonio Vista Family Apartments-74 units
San Marino Senior Apartments-84 units
Vista del Cielo Family Apartments-49 units
Montclair Housing Corporation-2 units
San Emi Special Needs Apartments-17 units

The City of Montclair Redevelopment Agency or the Montclair Housing Authority assisted 228 affordable deed restricted rental housing projects in the last 10 years. Eighty four of the 228 rental units or approximately 38 percent of the units were, therefore, deed restricted for use by qualifying senior renters. The percentage of restricted senior units falls below 50 percent of the deed restricted units.

- (11) The amount of any excess surplus, the amount of time that the successor agency has had excess surplus, and the housing successor's plan for eliminating the excess surplus.

Response:

When the City of Montclair Redevelopment Agency was eliminated there was no excess surplus. Because all available amounts, since that point in time, have been distributed to the taxing entities through the Low and Moderate Housing Due Diligence Review and subsequent payment by the Successor Agency, there presently exists no carryover of excess surplus. Because the Montclair Housing Authority (Successor Housing Entity) receives no property taxes, excess surplus provisions do not apply.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 2023	FILE I.D.:	MHA050
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	12	PREPARER:	M FUENTES
SUBJECT:	CONSIDER REVIEW AND ACCEPTANCE OF THE MONTCLAIR HOUSING AUTHORITY ANNUAL REPORT FOR FISCAL YEAR 2022-23		

REASON FOR CONSIDERATION: The Montclair Housing Authority (MHA) Commission is required to conduct an annual meeting in December to report the Authority's activities for the preceding fiscal year.

A copy of the MHA Annual Report for Fiscal Year 2022-23 is attached for the MHA Commissioners' consideration.

BACKGROUND: The MHA was created by the City Council on July 18, 2011. The City Council designated itself Commissioners of the MHA and designated certain City officials to serve as officers of the MHA. The City Manager is the Executive Director of the MHA.

The MHA financial statements for the Fiscal Year ending June 30, 2023, are included in the MHA Annual Report for Fiscal Year 2022-23. Total assets for MHA are \$12,190,122. The balance includes the value of the real property owned by the MHA and Residual Loan Receivables. A residual receipt is the repayment of monies borrowed from the former Montclair Redevelopment Agency to carry out a variety of housing programs.

FISCAL IMPACT: There would be no cost associated with the MHA Commissioners' review and acceptance of the Annual Report.

RECOMMENDATION: Staff recommends the Montclair Housing Authority Commissioners review and accept the Montclair Housing Authority Annual Report for Fiscal Year 2022-23.

**Montclair Housing Authority
Annual Report
Fiscal Year 2022-23**

Montclair Housing Authority

Javier John Dutrey, Chair
Tenice Johnson, Vice Chair
Bill Ruh, Commissioner
Corysa Martinez, Commissioner
Benjamin Lopez, Commissioner

Officers

Edward C. Starr, Executive Director
Janet L. Kulbeck, Finance Officer
Andrea M. Myrick, Housing Authority Secretary

In accordance with Section 34328 of the Health and Safety Code of the State of California, below are financial statements for the Montclair Housing Authority (Successor Housing Entity for the City of Montclair Redevelopment Agency) for the Fiscal Year Ended June 30, 2023:

Montclair Housing Authority

Balance Sheet

June 30, 2023

Assets	
Cash in Bank	\$ 3,179,582
Residual Receipt Loan Receivable	
Land and Multifamily Housings Units	9,010,540
	<hr/>
Total Assets	\$ 12,190,122
	<hr/>
Fund Balance	
<u>Liabilities</u>	
Accounts Payable	\$ -
	<hr/>
<u>Fund Balance</u>	
Nonspendable - Unavailable	\$ -
Restricted for Housing	12,190,122
	<hr/>
Total Fund Balance	\$ 12,190,122
	<hr/>
Total Liabilities and Fund Balance	\$ 12,190,122
	<hr/>

Montclair Housing Authority

Statement of Revenues, Expenditures and Changes in Fund Balance

For the Year Ended June 30, 2023

<u>Revenues</u>	
Interest	\$ -
Loan Payments Received	\$ 623
Contribution from Other Governments	1,852,256
	<hr/>
Total Revenues	1,852,879
	<hr/>
<u>Expenditures</u>	
Transfers Out - Housing Operations/Maintenance	-
	<hr/>
Total Expenditures	-
	<hr/>
Excess of Revenues Over (Under) Expenditures	1,852,879
	<hr/>
<u>Fund Balances</u>	
Beginning of Fiscal Year	\$ 10,337,243
	<hr/>
End of Fiscal Year	\$ 12,190,122
	<hr/>



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 2023	FILE I.D.:	MAN500/EXM500
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	1	PREPARER:	A. MYRICK

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 23-90, THE LABOR AGREEMENT FOR MANAGEMENT (NONSAFETY AND SAFETY) EMPLOYEES REGARDING THE TERMS AND CONDITIONS OF EMPLOYMENT FOR THE PERIOD OF JULY 1, 2023, TO JUNE 30, 2024

CONSIDER APPROVAL OF AGREEMENT NO. 23-91, THE LABOR AGREEMENT FOR EXECUTIVE MANAGEMENT EMPLOYEES REGARDING THE TERMS AND CONDITIONS OF EMPLOYMENT FOR THE PERIOD OF JULY 1, 2023, TO JUNE 30, 2024

CONSIDER AUTHORIZING THE TRANSFER OF THE APPROPRIATE ADDITIONAL COMPENSATION FROM THE PERSONNEL ADJUSTMENT RESERVE FUND TO THE GENERAL OPERATING FUND

REASON FOR CONSIDERATION: The City Council is requested to consider approval of the following:

1. Agreement No. 23-90, a Labor Agreement for Management (Nonsafety and Safety) employees regarding the terms and conditions of employment for the period of July 1, 2023, to June 30, 2024;
2. Agreement No. 23-91, a Labor Agreement for Executive Management employees regarding the terms and conditions of employment for the period of July 1, 2023, to June 30, 2024; and
3. Authorize the Transfer of the appropriate additional compensation from the Personnel Adjustment Reserve Fund to the General Operating Fund.

A copy of each of the above-identified labor agreements are available for the City Council's review and consideration.

BACKGROUND: Typically, on an annual basis, the City of Montclair considers the terms and conditions of employment for unrepresented employees, which include Executive Managers and Managers (Nonsafety and Safety). After some input from the unrepresented employees, the City will memorialize the new terms in a signature agreement, which is presented to the Personnel Committee for approval of pay and benefit increases. The labor agreements are also updated and presented to City Council for approval.

The City has concluded its considerations for the unrepresented employees for the period of July 1, 2023 to June 30, 2024, and the following is a summary of each agreement related to the terms and conditions of employment:

Management (Nonsafety and Safety) Employees

Agreement No. 23-90 affects the terms of conditions of employment for those employees identified as Management (Nonsafety and Safety) employees for the period of July 1, 2023 to June 30, 2024, with the Personnel Committee having approved the following terms and conditions of employment on June 19, 2023:

- Article 4 (Management/Exempt Employees): The list of Management Employees was updated to ensure that all affected classifications are added.
- Article 6 (Section 6.01): This change relates to a salary increase of 4 percent to all classifications identified as Management effective July 3, 2023.
- Article 7 (Section 7.01): This change provides for the increase in the benefit fund contribution from \$1,500 per month to \$1,550 per month, per Management (Nonsafety and Safety) Employee, effective July 2023.
- Article 13 (Section 13.02): This change relates to the use of bereavement leave. The requirement for time off to be consecutive is removed and certain restrictions and conditions are added for its use.
- Article 43: This change describes the term of the Agreement to be from July 1, 2023 to June 30, 2024.

Executive Management Employees

Agreement No. 23-91 affects the terms of conditions of employment for those employees identified as Executive Management employees for the period of July 1, 2023 to June 30, 2024, with the Personnel Committee having approved the following terms and conditions of employment on June 19, 2023:

- Article 4 (Executive Management/Exempt Employees): The list of Executive Management Employees was updated to ensure that all affected classifications are added.
- Article 6 (Section 6.01): This change relates to a salary increase of 4 percent to all classifications identified as Executive Management effective July 3, 2023.
- Article 7 (Section 7.01): This change provides for the increase in the benefit fund contribution from \$1,500 per month to \$1,550 per month, per Executive Management Employee, effective July 2023.
- Article 13 (Section 13.02): This change relates to the use of bereavement leave. The requirement for time off to be consecutive is removed and certain restrictions and conditions are added for its use.
- Article 41: This change describes the term of the Agreement to be from July 1, 2023 to June 30, 2024.

FISCAL IMPACT: The fiscal impact due to additional compensation associated with ratifying proposed Agreement Nos. 23-90 and 23-91 will be funded from the Personnel Adjustment Reserve of the General Fund, as these increases were not included in the original Fiscal Year 2023-2024 Budget.

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

1. Approve Agreement No. 23-90, a Labor Agreement for Management (Nonsafety and Safety) employees regarding the terms and conditions of employment for the period of July 1, 2022, to June 30, 2023;
2. Approve Agreement No. 23-91, a Labor Agreement for Executive Management Employees regarding the terms and conditions of employment for the period of July 1, 2022, to June 30, 2023; and
3. Authorize the Transfer of the appropriate additional compensation from the Personnel Adjustment Reserve Fund to the General Operating Fund.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 2023	FILE I.D.:	REF020
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ECONOMIC DEV.
ITEM NO.:	2	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-92 WITH ABOUND FOOD CARE TO PROVIDE EDIBLE FOOD RECOVERY SERVICES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-92 with Abound Food Care to provide edible food recovery services.

A copy of proposed Agreement No. 23-92 is attached for the City Council's review and consideration.

BACKGROUND: In September 2016, Governor Brown signed into law SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, directing public agencies to reduce organic waste disposal by 75 percent and increase edible food recovery by 25 percent, by 2025. SB 1383 is the most significant waste reduction mandate to be adopted in California in the last 30 years.

SB 1383 was enacted to reduce greenhouse gas emissions by diverting organic waste from landfills as the decomposition of such materials emit methane—a climate pollutant 72 times more potent than carbon dioxide. Studies demonstrate that landfills are the third largest producer of methane, and responsible for 21 percent of the state's anthropogenic (caused by humans) methane emissions.

In accordance with SB 1383, all jurisdictions must adopt a mandatory organic waste disposal reduction ordinance. CalRecycle provided model language for the mandatory ordinance, and cities were advised to adjust the language in the model ordinance based on their respective needs. A draft of the proposed ordinance was shared with the City's franchise waste hauler, Burrtec. Additionally, SB 1383 mandates that all businesses and residents, as well as multifamily housing developments, have access to recycling programs that capture food scraps, landscaping debris, and other organic waste items.

As defined by SB 1383, organic waste refers to green waste, wood waste, food waste, and fibers such as paper or cardboard. SB 1383 regulations outline specific requirements related to organic collection, edible food recovery, and compliance tracking and monitoring. SB 1383 also mandates significant action by local jurisdictions, residential and commercial organics generators, haulers, and facilities to significantly reduce organics landfill disposal.

The City of Montclair is responsible for implementing the following practices to maintain compliance with SB 1383:

- Provide organic waste collection services to all residents and businesses;
- Adopt an ordinance to inspect and enforce compliance with SB 1383;
- Establish an edible food recovery program for local food generators;
- Conduct annual education and outreach to all generators;

- Procure certain levels of recovered organic waste products such as compost, mulch, and renewable natural gas; and
- Maintain records for SB 1383 compliance for annual reporting requirements.

On June 6, 2022, the Montclair City Council adopted Ordinance No. 22-1001 establishing a Mandatory Organic Waste Disposal Reduction Program.

In addition to adoption of an organic waste recycling and food recovery ordinance, SB 1383 requires that the City have ordinances or other enforceable mechanisms in place for compliance with the CALGreen Building Standards Code ("CALGreen") and a Model Water Efficient Landscaping Ordinance ("MWELO"). The City is already compliant with the aforementioned programs through MMC Chapters 10.30 and 11.60, respectively.

Annual education and outreach to all generators is a requirement of SB 1383. This requirement is being accomplished by utilizing inserts in the City's sewer and trash billings, as well as Burrtec involvement in distributing information at the City's Country Fair Jamboree and National Night Out events. Information regarding compliance for residents and businesses is also posted on the City's website with links to CalRecycle's web page for more in-depth information.

Recordkeeping and reporting to CalRecycle are additional requirements of SB 1383. The City must keep records of all aspects of this program including organic collection services, hauler program, contamination minimization, waivers, education and outreach, edible food recovery program, recycled organic waste procurement, recycled paper procurement, commercial edible food generators, and jurisdiction inspection and enforcement. Burrtec and City staff will utilize a robust database software system designed specifically for tracking efforts as they relate to solid waste services, program compliance, and organics diversion.

Beginning January 1, 2024, the City must begin enforcing SB 1383 regulations, develop an edible food recovery and compliance program, and take action against non-compliant entities. Cities are also subject to penalties if found by CalRecycle to be non-compliant

SB 1383 Food Recovery Programs Request for Quotes

City staff submitted Requests for Quotes (RFQs) to several firms that specialize in the development and administration of edible food recovery programs. The City received quotes from two firms: SCS Engineers and Abound Food Care.

It should be noted that the firms contacted provide a wide array of services and emphasize different modes of developing and administering edible food recovery programs. As such, a direct comparison of the scope of services provided is slightly nuanced. Below is a summary of the scope of services to be provided by the above-mentioned firms.

SCS Engineers

Stearns, Conrad and Schmidt, Consulting Engineers, Inc. (SCS) was established in Southern California as a partnership in April 1970. It is now a Virginia S-corporation formed in 1972. SCS is 100-percent owned by its employees, with all of the firm's shares held by the SCS Engineers Employee Stock Ownership Plan (ESOP).

Headquartered in Long Beach, CA, SCS employs 1,300 professional and support staff located in 58 offices nationwide and over 365 staff in 15 offices in California.

SCS tracked the development of SB 1383 since its inception and has devoted extensive staff time and resources to understanding the requirements and nuances of the legislation. SCS has developed an SB 1383 Roadmap for jurisdictions to use when planning and scheduling their activities to comply with the mandates and have completed capacity studies for edible food generation and edible food recovery. SCS is presently conducting inspections of edible food generators and food recovery organizations to provide technical assistance and outreach on the regulatory requirements.

The scope of services proposed by SCS Engineers is summarized as follows:

- Edible Food Generator and Food Recovery Organizations Compliance
 - Conduct Education and Outreach to Tier 2 Generators
 - Assist Tier 2 Generators in Establishing Recovery Programs & Agreements
 - Inspect and Confirm Agreements and Records are Acceptable
 - Identify Potential Partnership Opportunities to Improve and Expand Food Recovery
 - Research and Compile List of Food Recovery Services and Organizations
 - Research and Compile List of Commercial Generators that have Agreements with Food Recovery Organizations
- Tier 1 And Tier 2 Edible Food Generators Compliance Assessment
- Food Recovery Organization and Services Capacity Assessment
- Conduct Education and Outreach
 - Prepare and Provide Outreach Materials for Generators and Food Rescue Organizations
- Data And Program Results, Monthly Reports
 - Donation Tracking to Include Food Donated, Recovery Organization Recipient, Pounds of Food Recovered and Frequency of Donations

Abound Food Care

Abound Food Care is a registered 501(c)3 corporation which is focused on building a national movement bringing together nonprofit, public, and private partners to eliminate food waste and food insecurity. As Food Care experts recognized for optimizing large-scale food ecosystems, Abound Food Care is dedicated to guiding communities, businesses, and nonprofit organizations to not only combat food waste, but to reduce hunger and improve the health of our communities.

Originally founded as Waste Not OC, the Abound Food Care model was designed to mitigate the gaps in the food supply chain that led to food waste and the gaps in the healthcare industry that fail to identify insecure individuals and provide them with access to nutritious food.

Abound Food Care works collaboratively with the public, private, and nonprofit sectors to facilitate the recovery of excess edible food effectively and efficiently. Abound Food Care provides innovative and highly effective solutions to optimize the food chain, build capacity, and bring stakeholders and resources together to optimize food systems nationally, reducing food waste and food insecurity.

The scope of services proposed by Abound Food Care is summarized as follows:

- Conduct Education and Outreach To Tier 2 Generators
- Assist Tier 2 Generators In Establishing Recovery Programs & Agreements
- Research and Compile List Of Commercial Generators that have agreements with Food Recovery Organizations
- Inspect and Confirm Agreements and Records are Acceptable
- Research and Compile List of Food Recovery Services and Organizations
- Assist in Edible Food Capacity Expansion
- Identify Potential Partnership Opportunities to Improve and Expand Food Recovery
- Prepare and Provide Outreach Materials for Generators and Food Rescue Organizations
- Donation Tracking to Include Food Donated, Recovery Organization Recipient, Pounds of Food Recovered and Frequency Of Donations
- Data and Program Results, Monthly Reports

SB 1383 Food Recovery Programs

As indicated in the above summaries, each firm provides a wide array of services and emphasize slightly different modes of developing and administering edible food recovery programs.

Following are estimates quoted by each of the above-mentioned firms for development and administration of edible food recovery programs in the City of Montclair.

<u>Name of Firm</u>	<u>Quote</u>
SCS	\$40,750.00
Abound Food Care	\$20,715.92

After careful evaluation and consideration of each proposal, City staff is recommending utilizing the services of Abound Food Care as the most professional, responsive option. Abound Food Care's qualifications, scope of services, estimated price point, and history set the firm apart from the other respondent.

FISCAL IMPACT: Proposed Agreement No. 23-92 would authorize staff to retain the services of Abound Food Care to provide edible food recovery services and to develop and administer edible food recovery programs for the City of Montclair. The cost of services related to proposed Agreement No. 23-92 is estimated not to exceed \$30,715.92, inclusive of a \$10,000 contingency. Costs associated with proposed Agreement No. 23-92 would be covered by the SB 1383 Local Assistance Grant that the City of Montclair received from CalRecycle.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 23-92 with Abound Food Care to provide edible food recovery services.

CITY OF MONTCLAIR
AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and effective as of December 18, 2023, between the City of Montclair, a California Municipal Corporation ("City") and Abound Found Care ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on December 18, 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 food recovery servicers. 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 board as CG 20 38 04 13.

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall

not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

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

16. NOTICES

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

To City:	Mikey Fuentes, Dir. of Economic Development City of Montclair 5111 Benito Street Montclair, CA 91763
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To Consultant:	Rachel Parris Abound Food Care 200 N. Tustin Ave, Suite 110 Santa Ana, CA 92705
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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: _____
Tenice Johnson, Mayor Pro Tem

By: _____
Mike Learakos, Chief Executive
Officer

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

CITY OF MONTCLAIR

SB 1383 EDIBLE FOOD RECOVERY SERVICES



PREPARED BY ABOUND FOOD CARE
NOVEMBER 2023

Mikey Fuentes, Director of Economic Development
City of Montclair
Email mfuentes@cityofmontclair.org

RE: City of Montclair Request for Quote for Development and Implementation of Edible Food Recovery Services

Abound Food Care and Edgar & Associates, Inc. (Edgar Inc.) are happy to partner with the City of Montclair (City) to complete the tasks necessary to ensure compliance with SB 1383, and to bring our expertise to the existing food recovery network, for which we are uniquely qualified. Abound Food Care and Edgar Inc. provide expertise and ancillary services that help to activate resources and build resilient communities. Abound Food Care arose from the success of Waste Not OC, which has delivered award winning, nationally recognized, and unmatched programs. Our team recognizes that people and organizations naturally want to waste less food and feed more people. We are equipped to provide innovative and proven solutions that place regions in a position to make lasting change and develop a successful program. While there are no widely adopted programs in place to effectively reduce food waste and feed those in need, Abound Food Care and Edgar Inc. have addressed these challenges through regional approaches to food recovery. We provide a deep understanding of all food recovery, food safety, logistics, data, health impacts, environmental issues, and regulatory policies. Real success demands a constant, collaborative relationship and understanding of the food-industry and healthcare players, and the ability to unite these partners with a single-minded purpose. Abound Food Care and Edgar Inc.'s unique perspective, network of resources, expertise and experience is a key ingredient to creating a successful food care ecosystem.

Abound Food Care's work in Orange County has been expanding throughout the State and the Nation. Edgar Inc. has decades of experience in analyzing and projecting waste diversion scenarios against disposal targets and goals. SB1383 requires several important compliance requirements that can present challenges without cohesion among the stakeholders. However, our model identifies gaps within the food supply chain and provides solutions that mitigate the complexities associated with effective food recovery to comply with SB 1383. Our team is consulting with multiple jurisdictions to develop regional and national solutions to food recovery and waste diversion, that are fully compliant with SB1383. Our collaborative and comprehensive model provides us with extensive familiarity of non-profit operations needed to gather the information required to perform capacity studies. We have direct experience on-boarding new donors into food recovery programs, with specific experience in outreach, training and program optimization. Abound Food Care and Edgar Inc. are best positioned to provide long-term solutions for the City that will be cost effective and implement important change.

We look forward to a partnership with the City to develop and implement an edible food recovery program.

Best regards,





Mike Learakos, CEO
mike@aboundfoodcare.org
714. 292.8077

Qualifications

Abound Food Care looks forward to bringing our expertise to the City of Montclair to ensure compliance for SB1383 Edible Food Recovery and setting the stage for a comprehensive edible food recovery solution. SB1383, signed in 2016, is a landmark climate change bill which looks to strategically reduce methane emissions as a bold step to change the trajectory of climate change. Since organic materials discarded in landfills are a major contributor to methane emissions, particularly food waste, lawmakers took a unique leadership role of mandating the diversion of food to feed people. When the bill was signed, Abound Food Care had already been building a regional program of stakeholders with the singular mission of ending hunger by utilizing food that would otherwise be discarded for four years. Our team members, and program, became the model example of how SB1383 regulations could catalyze broader change.

Abound Food Care is qualified to not only ensure the city complies with the edible food recovery requirements of SB1383 but is also ready to expand programs in an effective way to combat food insecurity. We will ensure that our team of experts will complete each task in a timely manner, using our range of expertise in the food industry, non-profits, logistics, and deep understanding of SB1383 compliance requirements.

	<h3>OUR MISSION</h3> <p>We provide solutions and facilitate collaboration with public, private, and non-profit sectors to guide and support the implementation of regional food care programs that optimize the supply chain to end hunger and food waste.</p>	
<h3>OUR VISION</h3> <p>A world in which hunger and food waste are eliminated.</p>		<h3>OUR IMPACT</h3> <p>Over 170 million pounds of food recovered, repurposed into nutritious meals, and distributed to food insecure communities.</p>

About Us

Abound Food Care is a registered 501(c)3 corporation which is focused on building a national movement bringing together non-profit, public, and private partners to eliminate food waste and food insecurity. As Food Care experts recognized for optimizing large-scale food ecosystems, Abound Food Care is dedicated to guiding communities, businesses, and nonprofit organizations to not only combat food waste, but to reduce hunger and improve the health of our communities. Originally founded as Waste Not OC, the Abound Food Care model was designed to mitigate the gaps in the food supply chain that led to food waste and the gaps in the healthcare industry that fail to identify insecure individuals and provide them with access to nutritious food. Today, Abound Food Care has recovered over 170 million pounds of excess edible food for distribution to those suffering from food insecurity.

Unmatched Experience



Abound Food Care works collaboratively with the public, private, and nonprofit sectors to facilitate the recovery of excess edible food effectively and efficiently. Abound Food Care provides innovative and highly effective solutions to optimize the food chain, build capacity, and bring stakeholders and resources together to optimize food systems nationally, reducing food waste and food insecurity.

We provide consulting services and food recovery program development and/or oversight utilizing our decades long relationships in the food, healthcare, and waste management industries. Our accomplished and engaged Board of Directors works on our behalf to leverage

longstanding partnerships that result in an effective regional solution to a national problem using local resources. Abound Food Care headquarters is located in Santa Ana, CA with 10 staff members working in the areas of outreach, logistics, data collection/analytics and strategic development.

Projects in California

- Abound Food Care has worked with Yolo County to provide a detailed capacity study, providing funding options, operational recommendations, as well as a strategic roadmap towards SB1383 compliance and development of a successful food recovery program.

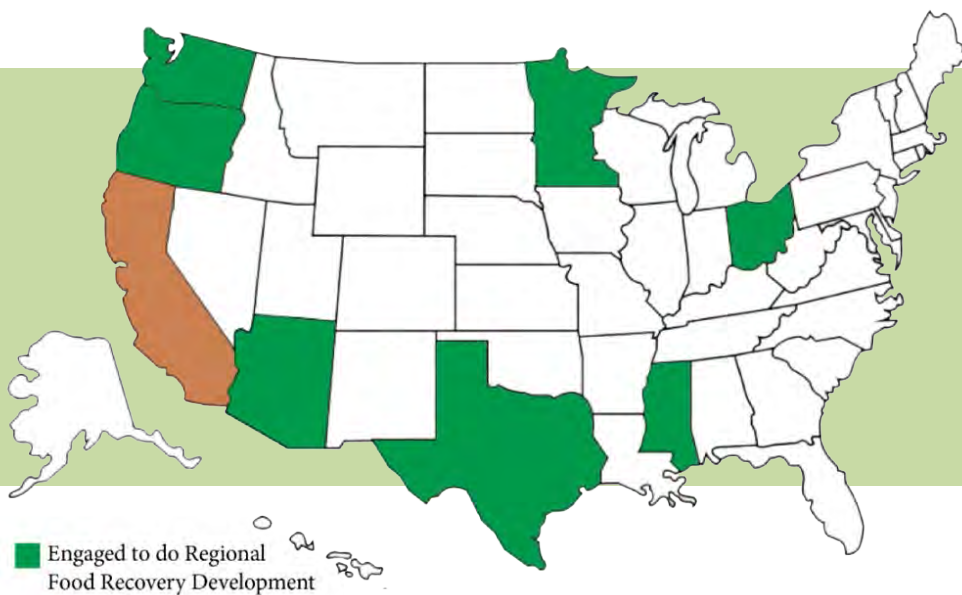
- Additionally, we have contracts with multiple haulers and cities working collaboratively to provide effective food recovery management and oversight services which ensures SB1383 compliance and effective food recovery. Some of these cities include Huntington Beach, Seal Beach, Fountain Valley, Orange, La Habra, San Clemente, Laguna Woods, Diamond Bar, Villa Park and Garden Grove.

- In Ventura County, we prepared a preliminary need assessment and situation analysis which served as a precursor to the CalRecycle capacity study.

- We completed capacity studies for Ventura County, Humboldt County, Napa County, and Sonoma County, and Burrtec Waste Inc in San Bernardino County.



As pioneers in the development of edible food recovery nationally, Abound Food Care has provided informal guidance and advice to counties within California: LA, San Bernardino, Riverside, San Diego, El Dorado, Alameda as well as efforts in other states such as Mississippi, Arizona, Ohio, Texas, Minnesota, Washington, Oregon, and Nevada.



Statement of Understanding

Abound Food Care is uniquely positioned to complete this scope of work. We have the technical expertise of SB1383 compliance requirements, a ground-level knowledge of operational aspects of the foodservice industry and a strong understanding of food recovery agencies that are integral to the food recovery process. Paramount to our scope is the objective of completing the compliance requirements of SB1383. We will work with the City to define expectations, goals, and objectives of the program long-term, and define success beyond regulatory requirements. In our experience, jurisdictions recognize how important a collaborative solution to regional food recovery results in measurable success for a community across health, economic, social, and environmental metrics.



Task 1: Conduct Education and Outreach to Tier 2 Generators

Abound Food Care (Abound) will use our food industry experience and expertise to educate Tier 2 food waste generators on a peer-to-peer level ensuring clear outreach is provided to the generators on their requirements to comply with the regulation. Abound will document this outreach and education and ensure our outreach associates receive complete and accurate information from the generators on their compliance activities. We will identify which Tier 2 generators are donating their excess edible food and who have a contract or written agreement with a food recovery service or organization. We will also identify any barriers or obstacles identified by the Tier 2 food waste generators deterring them from participation in a food recovery program.

Task 2: Assist Tier 2 Generators in Establishing Recovery Programs & Agreements

Abound will work with Food Recovery Organizations and generators to foster trust and promote the safe recovery of excess edible food. Based on existing experience, Tier 2 compliance takes multiple outreach efforts, consistent communication, and training. Abound will ensure that

relationships are built to support food recovery as a long-term activity with a focus on food safety. As necessary Abound will assist in coordinating agreements between the Food Recovery Organizations and the Tier 2 generators to ensure full compliance with the regulation.

Task 3: Research and Compile List of Commercial Generators that have Agreements with Food Recovery Organizations

As necessary, Abound will utilize the City's list of Tier 1 and 2 generators as a basis for ensuring that the list is complete and accurate. Review of NAICS codes and other publicly available documentation, such as Health Permits, will assist in identifying any Tier 1 or Tier 2 businesses that have not been included. Our team will survey the Tier 1 and Tier 2 generators for their participation in edible food recovery and if they have the necessary agreements required for compliance.

Task 4: Inspect and Confirm Agreements and Records are Acceptable

The development of a site visit checklist and site visits to Tier 1 and Tier 2 generators will be an important way to evaluate the compliance of the program and to ensure onboarding of generators. Site visits will include inspection of records and agreements in addition to reviewing food donation programs. To ensure that the City is in compliance with SB1383, each Tier 1 and Tier 2 generator should be visited. Abound will also work with CalRecycle to determine if alternative solutions to in-person visits could be utilized to evaluate the compliance levels of the generators. In addition, CalRecycle has provided clarification guidance indicating that not all schools must be visited, where a school district site visit would provide the required compliance with the requirements of SB1383.

Task 5: Research and Compile List of Food Recovery Services and Organizations

Abound will identify food recovery agencies and organizations in the City through research and outreach to known food recovery organization partners for referrals. Once the Food Recovery Organizations are identified, Abound will conduct outreach in the form of phone calls and emails, to engage with those Food Recovery Organizations and conduct a detailed survey to understand the current landscape of the food recovery network. Abound has the skill set and experience to conduct this task as many of the food recovery agencies are uneasy about the discussion of their operations to avoid any negative feedback. Abound has developed a methodology to encourage effective communication with Food Recovery Organizations. Through outreach calls and touch points we are able to cultivate conversations in which we confirm current capacities of these agencies and the possibility of increasing their capacity. Abound will complete this task by making phone calls, working with various partners, and engaging in roundtable discussions and meetings.

Abound will provide recommendations to the City on scheduling Food Recovery Organizations site visits that prioritizes the most likely that would benefit from expanded capacity. Abound will ensure that the site visit schedule will be compliant with SB1383 regulatory requirements.

Task 6: Assist in Edible Food Capacity Expansion

Abound will work with Food Recovery Organizations and generators to foster trust and promote the safe recovery of edible food. Based on existing experience, Tier 2 compliance takes multiple outreach efforts, consistent communication, and training. Abound will ensure that relationships are built to support food recovery as a long-term activity with a focus on food safety.

Task 7: Identify Potential Partnership Opportunities to Improve and Expand Food Recovery

Abound will evaluate the existing throughput and capacity of existing Food Recovery Organizations and the needs required to effectively recover and distribute excess edible food. Through Abound's knowledge and expertise we are able to identify the necessary capacity amount of food recovery services and edible food generators to adequately support food recovery efforts. Our experience will assist in guiding food recovery agencies in identifying their potential needs to expand infrastructure and understand the current landscape of the organizations.

Task 8: Prepare and Provide Outreach Materials for Generators and Food Rescue Organizations

Using our exemplary experience implementing outreach and education programs related to edible food recovery, Abound will create a specific plan in a detailed report that will outline specific strategies and tasks to ensure a comprehensive understanding of the requirements of SB1383. Paramount to the education program will be the understanding of food safety requirements, best practices, benefits of participation, common questions and easy ways for generators to gather more information. An implementation strategy will be developed to provide specific information to each generator as necessary to ensure the information is relevant to their operations. This will include developing and distributing outreach materials to both compliant and non-compliant generators and non-profit organizations while also supporting outreach efforts to retail food donors, school districts, and future partners.

Task 9: Donation Tracking to Include Food Donated, Recovery Organization Recipient, Pounds of Food Recovered and Frequency of Donations

Abound will work with Food Recovery Organizations and generators to ensure a clear and reliable tracking program is in place to record types of food donated, total pounds of food recovered, and the frequency in donations. In order to facilitate this tracking, the City could consider assisting with the purchase of software. Abound works with multiple software platforms and can provide guidance for the City to utilize an affordable program that fits the City's needs.

Task 10: Data and Program Results, Monthly Reports

Abound will provide regular updates, no less than monthly, to the City and to demonstrate progress of this scope of services in accordance with the agreed timelines. Information will be gathered and reported to ensure the City can meet full compliance with the requirements of SB1383.

Proposed Budget

Based on our current understanding of the scope of services Abound is prepared to deliver these services to the City of Montclair for \$20,715.92 per year, billed as a fixed monthly rate of \$1,726.33 for twelve months.

Abound would be happy to provide more information regarding our scope of services and a multi-year cost, should that be desired by the City.

Attachment A. Full Resumes of Staff



CONTACT



(714) 292-8077



mike@aboundfoodcare.org



1774 N. Greengrove St.,
Orange, CA 92865

EDUCATION

Fullerton College (9/80 - 12/82)
Fullerton, California

WORK EXPERIENCE

Abound Food Care |
2013 – Present

TJM, INC. | 1993 - Present

Zacky Foods, Inc. | 1989 - 1993



MIKE LEARAKOS

Mike is currently the Executive Director of Abound Food Care, formerly Waste Not OC, and developed the nationally recognized Waste Not OC Model for Food Recovery. that optimizes the food supply chain in support of public, private and non-profit organizations working to reduce food waste and food insecurity through innovative solutions. He is also the chair of the CRRRA's Edible Food Recovery Technical Council. Mark also implemented and developed the Food Repurposing Kitchen Network to further reduce waste and food insecurity utilizing decades of food industry experience. Led the implementation of logistics solutions in communities, activating existing resources to optimize the food supply chain across the state of California. Mark also developed and implemented a strategic plan for operational procedures including all TJM, Inc., Katella Grill and Catering, and KG Angel Stadium concessions. In 2001, he was City of Orange's Citizen of the Year.

HIGHLIGHTS

- TJM Facility design
- Assisted in the development of the world's first fully sustainable solar powered freezer container.
- Led the transition of the WasteNot OC Food Recovery Model from a regional program to a national model.
- Full-line foodservice Distributor supply chain specialist for Keeler Foods, Inc.



CONTACT



(714) 307-8200



Rparris@aboundfoodcare.org



3211 E. Ridgeway Rd.,
Orange, CA 92867

EDUCATION

Fullerton College (2014), BA
Fullerton, California

Santiago Canyon College, AA-T
Orange, California

WORK EXPERIENCE

Abound Food Care |
2016 – Present

YMCA | 2014 - 2016

Katella Family Grill | 2008 -
2016

Power Alley | 2010-2014



RACHEL OTAIR

Rachel is currently the Director of Operations at Abound Food Care which include duties such as oversee administrative activities for presentations and meetings, and provide solutions and guidance in outreach, logistics and administrations in accordance with Abound's strategic plan. When it came ot working with others, Rachel executed growth directives from Executive Director, monitor day-to-day operations to ensure smooth progress, and supervise staff from different departments, as well as provide contstructive feedback and guidance. She started as a Program Manager in November of 2016 and some of her responsibilites include providing administrative support, updating metrics and reporting, overseeing pantry needs, overseeing logistics coordination, budgeting accounting and finance, and assisting with marketing and outreach strategies.

HIGHLIGHTS

- Coordinate volunteers, interns and partner participation for Abound Food Care
- Administrative Director on Executive Committee of CRRRA Edible Food Recovery Techinal Council
- Comprehensive Grant writing and reporting



CONTACT



(714) 400-5351



calbrecht@aboundfoodcare.org



2450 N Glassell St.
Orange, CA 92865

EDUCATION

Creighton University (2012),
Omaha, Nebraska

WORK EXPERIENCE

Abound Food Care |
2018 – Present

Katella Grill | 2017-2018

Creighton University |
2012-2013



CAIT ALBRECHT

Currently serves as Program Manager for Abound Food Care providing administration and leadership support to the team in areas of data tracking, task management, scheduling, outreach, and content creation. Helps partners maintain compliance with food recovery legislation and assists in grant reporting. She also manages the corporate, finance, and personnel information including distribution controls, secure filing and disposal, and records retention and storage. In 2017, she managed floor and fellow employees at the Katella Grill taking on the role as Shift Lead.


HIGHLIGHTS


- Provided administrative support for leadership, staff, meetings, and presentations.
- Provided updated metrics and reporting for all coalition activities.





Monica White

CONTACT

 (916) 739 - 1200 Ext. 105

 monica@edgarinc.org

 1822 21st Street
Sacramento, CA 95811

 www.edgarinc.org

EDUCATION

Bachelor of Science in
Environmental Biology, Saint
Mary's College, 2006

WORK EXPERIENCE

Edgar & Associates, Inc.
Sustainability Manager
2010-Present

Cameron Cole, LLC
GHG Emissions Verifier
2006-2010



Monica White is the Sustainability Manager at Edgar and Associates. Monica has over 10 years of experience working in the sustainability arena where she has led teams in developing sustainability programs for a range of companies including waste haulers and processors, aerospace and manufacturing. Monica has played a leadership role in assisting companies to develop strong sustainability and environmental programs, securing grant funding and strategically achieve desired goals, including how to incorporate carbon projects into their businesses to meet their carbon reduction targets. Notably she is assisting the development of zero waste programs, SB 1383 compliance plans, and cutting-edge approaches to the management of edible food.

She is proficient in leading multi-company and multi-disciplinary teams through projects, ensuring schedules and budgets are maintained, tasks are completed resulting in exemplary work products. In addition, Monica has advocated for zero waste initiatives, compost market development, greenhouse gas reductions policies, and the integration of sustainable programs at local jurisdictions with waste management franchise procurement programs and aligning local and state policies around sustainability. Monica has advised local government, advocacy groups and private enterprise on issues relating to greenhouse gas management, sustainability, climate adaptation strategies, and zero waste programs.

HIGHLIGHTS

- Project Manager on sustainable funding strategies and coalition development for Waste not Our Communities (WNOC).
- Key Team Member on several projects including transforming food scraps to hydrogen using wet anaerobic digestion, building and permitting composting operations and programs to enhance biochar production throughout the State.
- Published Sustainability Reports for South San Francisco Scavenger, Rainbow Environmental, Greenwaste Recovery, etc.
- Assisted South San Francisco Scavenger with application and successful reception of the GEELA Award 2015, California's highest environmental honor, the California Governor's Environmental and Economic Leadership Award
- Executive Member of the Edible Food Recovery Technical Committee, California Resource Recycling Association



CONTACT



(916) 739 - 1200 Ext. 100



Julie@edgarinc.org



1822 21st Street
Sacramento, CA 95811



www.edgarinc.org

EDUCATION

BA in Environmental Studies
and BA in Politics, University
of California Santa Cruz, 2013

WORK EXPERIENCE

Edgar & Associates, Inc.
Graphics and Marketing
Specialist
2017 – Present

CleanFleets.net
Graphics and Marketing Intern
2013 – 2017



Julie Arenz

Julie Arenz is the Graphics Design and Marketing Specialist at Edgar and Associates. Julie has over 8 years of experience working in graphic design relating to sustainability, GHG mitigation, recycling, and edible food recovery. Julie not only possesses the technical skills to operate and utilize design programs, but also understands how to relay information and market specifically relating to the solid waste industry. Julie is a dedicated, versatile, and technically adept business professional with a diverse skill set developed through experience in communications, outreach, marketing, graphic design, and video design. Julie was trained one-on-one with Rita Athenacio, Co-Owner of R&R Designs.

She is proficient in the full Adobe Suite, including InDesign, PhotoShop, Illustrator, Acrobat, and PremierePro. Julie is also proficient in the Microsoft Suite, including Word and Excel. Her duties include meeting with clients to establish their needs, using design software to complete projects, and revising projects based on client feedback. Julie works on developing concepts, graphics and layouts for product illustrations, company logos and websites, determining size and arrangement of copy and illustrative material, as well as font style and size. Additionally, Julie has worked on multiple education and outreach campaigns with marketing strategy and designing outreach materials.

HIGHLIGHTS

- Graphic design for multiple response to proposals. The work includes strategizing document themes, designing cover pages, organizing information, designing material flow diagrams, and design of resumes and organization charts.
- Rebranding and logo design for American Refuse and Tule Trash. Marketing materials include design of refuse truck signs, brochures, facility fact sheets.
- Design of Cart and bin labels, required by SB 1383, for E.J. Harrison and Sons
- Website design for California Compost Coalition. The new website will launch this year.
- Video editing for the CRRC Edible Food Technical Council's Open Discussing Series.
- Producing and editing and designing the California Compost Coalition Newsletter each month.
- Developing and editing the CRRC Edible Food Technical Council's Guidance Document on Food Recovery Funding Models

Attachment B. Letters of Support



Dr. Robert Levin | Ventura County Public Health Officer |
Robert.Levin@ventura.org | (805) 652-6556

Personal Statement: "Abound Food Care demonstrated through their initial needs assessment provided on behalf of Ventura County that they are reliable, knowledgeable and extremely experienced in the area of edible food recovery and food waste reduction."



Brett Berglund | Sysco Los Angeles Region President
Berglund.Brett@la.sysco.com | (800) 800- 1199

Personal Statement: "Abound Food Care has been a valued partner of Sysco for many years working collaboratively to help create regional food recovery solutions for our organization and our customers. These solutions not only support and enhance our industry but serves to strengthen our communities as well. We support Abound Food Care's regional approach and look forward to continuing to partner in their efforts that will not only increase food rescue and reduce hunger, but also assist in meeting SB1383 requirements."



Maria Lazaruk | Senior Community Relations Sustainability Manager | CR&R Incorporated |
MariaL@crrmail.com | (949) 463-5808

Personal Statement: "Abound Food Care has been our food recovery partner providing support for compliance with AB 1826 and SB 1383. CR&R and Abound Food Care have partnered to identify food generators to initiate edible food recovery programs. Abound is a vital component to reducing food waste and minimizing food insecurity."



John Stephen | Former Commissioner of NH Department of Health and Human Services (2003 to 2007) | currently Managing Partner of The Stephen Group, LLC |
jstephen@stephengroupinc.com | (603) 625-8825

Personal Statement: "When my team was working with the State of Mississippi to develop a statewide food recovery program, through their state Human Services, we looked at national best practices and found Abound Food Care (formerly Waste Not OC) was not only a best practice but the national standard for any state or locality to follow. Mike Learakos and his staff assisted us in developing a pilot program that started through the Family Resource Center network and is operating today with great success. Based on my prior Health and Human Service Experience, I can honestly say that there is no Food Recovery program in the nation that is better prepared, coordinated and focused on meeting the critical needs of food security and food safety than Abound Food Care. I would highly recommend their model for any City in America. They are the future of food safety and security in the US."



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 2023	FILE I.D.:	PDT175
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	3	PREPARER:	B. VENTURA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-93 WITH FLOCK GROUP INC. FOR A 5-YEAR LEASE FOR 60 AUTOMATED LICENSE PLATE READER CAMERAS		

CONSIDER AUTHORIZING A \$63,500 APPROPRIATION FROM THE FEDERAL ASSET FORFEITURE FUND TO PAY COSTS ASSOCIATED WITH AGREEMENT NO. 23-93

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-93 with Flock Group Inc. for a 5-year lease for 60 automated license plate reader (ALPR) cameras, and to authorize a \$63,500 appropriation from the Federal Asset Forfeiture Fund to pay costs associated with Agreement No. 23-93.

Proposed Agreement No. 23-93 has been reviewed by the City Attorney and is attached for City Council's review and consideration.

BACKGROUND: In December 2021, the City entered into Agreement No. 21-80 with Flock Group Inc. to lease 40 ALPR cameras, which have been installed throughout the City. Since its implementation, Flock ALPR cameras have been instrumental in solving serious and violent, felonious crimes and recovering stolen vehicles in the City. ALPR cameras have assisted in solving and apprehending six murder suspects, five assault-with-a-deadly-weapon suspects, eight robbery suspects, and one rape suspect. In 2023, ALPR cameras have assisted the Montclair Police Department in recovering 57 stolen vehicles.

Auto theft not only deprives owners of the use of their vehicles, but also provides criminals with a means to commit more crimes in a vehicle that does not belong to them. For this reason, gang-related crimes are often committed with the use of stolen automobiles. Focusing proactive enforcement efforts on auto theft often uncovers other criminal activities and prevents other serious crimes.

ALPR technology has been used by police agencies to locate stolen vehicles and solve other crimes where an automobile has been used. ALPR technology has continued to evolve and become less cost-prohibitive. Traditional ALPR systems included expensive fixed camera locations or mobile devices mounted in patrol cars. The Montclair Police Department has deployed mobile ALPRs in the past; however, these devices have reached their end-of-life and are no longer serviceable.

The Flock Safety ALPR operating system is a deployment of cameras throughout an area to provide greater coverage and more detailed information for law enforcement. The Flock lease proposal includes 60 cameras, which can be spread throughout the City in high-crime areas. Flock cameras capture date, time, location, license plate (state, partial, paper, and no plate), vehicle details (type and color), as well as objects (bicycle, animals, and people). Whereas, other ALPR companies capture license plates only.

Unlike other fixed or mobile ALPR devices, the Flock system provides the ability to cover more area of the City with system maintenance provided by the vendor rather than City staff. The Flock program is an all-inclusive model for deploying the ALPR cameras. Flock Group Inc. is the sole manufacturer and developer of the Flock Safety camera. There are several other differences between Flock and other ALPR companies. Most notably, Flock is the only manufacturer and service provider that leases ALPR services. Other companies require the purchase of equipment and the cameras. Staff researched other companies to compare capabilities and costs. Competing agencies, such as Vigilant, only have the capability of reading license plates and do not have machine learning technology. Vigilant and other companies require extensive infrastructure needs such as power and fiber optics, which would increase costs by hundreds of thousands of dollars more than Flock with fewer capabilities.

The key benefits of Flock include an annual flat-rate lease of \$2,500 per camera, which is wireless, free of infrastructure setup, and is solar powered. Included is a lifetime warranty, Criminal Justice Information Services (CJIS) compliant cloud-based hosting, unlimited user licenses, ongoing software enhancements, camera setup, mounting, shipping, handling, and a cellular connection. With the Flock lease program, the City avoids maintaining costly equipment at the end of the agreement period, which could require replacement.

Effective January 1, 2024, Flock Group Inc. will be increasing its cost by \$500 per camera. Recently, Flock Group Inc. presented staff with an opportunity to maintain the \$2,500 per camera cost for a 5-year lease should an agreement be reached before December 31, 2023. Additionally, the City could lease additional ALPR cameras at the rate of \$2,500 per camera for a 5-year lease. There will be a one-time setup fee for each additional camera, which could range from \$150 to \$650 depending on existing infrastructure.

Adding 20 more ALPR cameras, totaling 60 in all, would result in a cost savings of \$150,000 over the 5-year contract. The addition of 20 ALPR cameras would make it extremely difficult for crimes to go undetected that are committed in a vehicle within the City limits of Montclair. To date, ALPR cameras have a proven record of successfully locating vehicles that have been involved in criminal activity, which has led to several high-profile arrests, and the recovery of more than 50 stolen vehicles this year alone that have been returned to their rightful owners.

Along with the addition of 20 ALPR cameras, staff would purchase the Flock OS advanced search tool, which would cost \$7,500 annually. This search tool would allow investigators to utilize several different search features, including convoy searches, Geo fencing, and visual searches. These search tools are currently unavailable to investigators and not included the current contract.

The Flock camera system is being utilized by 8,000 law enforcement agencies across the U.S. and over 220 just in California. Other local communities including Pomona, Ontario, Chino, Upland, and San Dimas have chosen the Flock system. At the end of the five-year lease period, staff will assess the benefits of the program and determine whether to recommend continuing the Flock camera program.

FISCAL IMPACT: Included in the Police Department's Fiscal Year 2023-24 Budget is \$100,000 for the current 40 ALPR cameras. If authorized by the City Council, the additional funding for Agreement No. 23-93 would result in an appropriation from Asset Forfeiture Federal Fund 1144 in the amount of \$63,500. Subsequent annual fees of

\$157,500 for the Flock Camera System would be budgeted for in the Police Department's Budget starting with Fiscal Year 2024-25.

PURCHASE	LEASE FEE 2023-24 Year 1	LEASE FEE 2024-25 Year 2	LEASE FEE 2025-26 Year 3	LEASE FEE 2026-27 Year 4	LEASE FEE 2027-28 Year 5	TOTAL LEASE FEE 5 YEARS
Flock Group Inc.	\$163,500	\$157,500	\$157,500	\$157,500	\$157,500	\$793,500

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

1. Approve Agreement No. 23-93 with Flock Group Inc. for 60 automated license plate reader cameras; and
2. Authorize a \$63,500 appropriation from the Federal Asset Forfeiture Fund to pay costs associated with Agreement No. 23-93.

Flock Safety + CA - Montclair PD

Flock Group Inc.
1170 Howell Mill Rd, Suite 210
Atlanta, GA 30318

MAIN CONTACT:
Antouan Benbalit
anton.benbalit@flocksafety.com
2064321524

Company Overview

At Flock Safety, technology unites law enforcement and the communities they serve to eliminate crime and shape a safer future, together. We created the first public safety operating system to enable neighborhoods, schools, businesses, and law enforcement to work together to collect visual, audio, and situational evidence across an entire city to solve and prevent crime.

Our connected platform, comprised of License Plate Recognition (LPR), live video, audio detection, and a suite of integrations (AVL, CAD & more), alerts law enforcement when an incident occurs and turns unbiased data into objective answers that increase case clearance, maximize resources, and reduce crime -- all without compromising transparency or human privacy.

Join thousands of agencies reducing crime with Flock Safety's public safety operating system

2000+	120	1B+	<60%*
communities with private-public partnerships	incident alerts / minute	1B+ vehicles detected / month	<60% local crime reduction in Flock cities

*According to a 2019 study conducted by Cobb County Police Department

Introduction

Layer Intelligence to Solve More Crime

The pathway to a safer future looks different for every community. As such, this proposal presents a combination of products that specifically addresses your public safety needs, geographical layout, sworn officer count, and budget. These components make up your custom public safety operating system, a connected device network and software platform designed to transform real-time data into a panoramic view of your jurisdiction and help you zero in on the leads that solve more cases, prevent future crimes, and foster trust in the communities you serve.

Software Platform

Flock Safety's out-of-box software platform collects and makes sense of visual, audio, and situational evidence across your entire network of devices.

Out-of-Box Software Features	
Simplified Search	<p>Get a complete view of all activity tied to one vehicle in your network of privately and publicly owned cameras.</p> <p>The user-friendly search experience allows officers to filter hours of footage in seconds based on time, location, and detailed vehicle criteria using patented Vehicle Fingerprint™ technology. Search filters include:</p> <ul style="list-style-type: none"> • Vehicle make • Body type • Color • License plates <ul style="list-style-type: none"> ○ Partial tags ○ Missing tags ○ Temporary tags ○ State recognition • Decals • Bumper stickers • Back racks • Top racks
National and Local Sharing	<p>Access 1B+ additional plate reads each month without purchasing more cameras. Solve cross-jurisdiction crimes by opting into Flock Safety's sharing networks, including one-to-one, national, and statewide search networks. Users can also receive alerts from several external LPR databases:</p> <p><i>California SVS</i> <i>FDLE</i> <i>FL Expired Licenses</i> <i>FL Expired Tags</i> <i>FL Sanctioned Drivers</i> <i>FL Sex Offenders</i> <i>Georgia DOR</i> <i>IL SOS</i> <i>Illinois Leads</i> <i>NCIC</i> <i>NCMEC Amber Alert</i> <i>REJIS</i> <i>CCIC</i> <i>FBI</i></p>
Real-time Alerts	<p>Receive SMS, email, and in-app notifications for custom Hot Lists, NCIC wanted lists, AMBER alerts, Silver alerts, Vehicle Fingerprint matches, and more.</p>
Interactive ESRI Map	<p>View your AVL, CAD, traffic, and LPR alerts alongside live on-scene video from a single interactive map for a birdseye view of activity in your jurisdiction.</p>
Vehicle Location Analysis	<p>Visualize sequential Hot List alerts and the direction of travel to guide officers to find suspect vehicles faster.</p>

Out-of-Box Software Features (Continued)	
Transparency Portal	Establish community trust with a public-facing dashboard that shares policies, usage, and public safety outcomes related to your policing technology.
Insights Dashboard	Access at-a-glance reporting to easily prove ROI, discover crime and traffic patterns and prioritize changes to your public safety strategy by using data to determine the most significant impact.
Native MDT Application	Download FlockOS to your MDTs to ensure officers never miss a Hot List alert while out on patrol.
Hot List Attachments	Attach relevant information to Custom Hot List alerts. Give simple, digestible context to Dispatchers and Patrol Officers responding to Hot List alerts so they can act confidently and drive better outcomes. When you create a custom Hot List Alert, add case notes, photos, reports, and other relevant case information.
Single Sign On (SSO)	Increase your login speed and information security with Okta or Azure Single Sign On (SSO). Quickly access critical information you need to do your job by eliminating the need for password resets and steps in the log-in process.

License Plate Recognition

The Flock Safety Falcon® LPR camera uses Vehicle Fingerprint™ technology to transform hours of footage into actionable evidence, even when a license plate isn't visible, and sends Hot List alerts to law enforcement users when a suspect vehicle is detected. The Falcon has fixed and location-flexible deployment options with 30% more accurate reads than leading LPR.*

*Results from the 2019 side-by-side comparison test conducted by LA County Sheriff's Department

Flock Safety Falcon® LPR Camera	Flock Safety Falcon® Flex	Flock Safety Falcon® LR
<p>Fixed, infrastructure-free LPR camera designed for permanent placement.</p> <p>✓ 1 Standard LPR Camera</p> <p>✓ Unlimited LTE data service + Flock OS platform licenses</p> <p>✓ 1 DOT breakaway pole</p> <p>✓ Dual solar panels</p> <p>✓ Permitting, installation, and ongoing maintenance</p>	<p>Location-flexible LPR camera designed for fast, easy self-installation, which is ideal for your ever-changing investigative needs.</p> <p>✓ 1 LPR Camera</p> <p>✓ Unlimited LTE data service + software licenses</p> <p>✓ 1 portable mount with varying-sized band clamps</p> <p>✓ 1 Charger for internal battery</p> <p>✓ 1 hardshell carrying case</p>	<p>Long-range, high-speed LPR camera that captures license plates and Vehicle Fingerprint data for increasing investigative leads on high-volume roadways like highways and interstates.</p> <p>✓ 1 Long-Range LPR Camera</p> <p>✓ Computing device in protective poly case</p> <p>✓ AC Power</p> <p>✓ Permitting, installation, and ongoing maintenance</p>

Your Flock Safety Team	
<p>Flock Safety is more than a technology vendor; we are a partner in your mission to build a safer future. We work with thousands of law enforcement agencies across the US to build stronger, safer communities that celebrate the hard work of those who serve and protect. We don't disappear after contracts are signed; we pride ourselves on becoming an extension of your hard-working team as part of our subscription service.</p>	
Implementation	<p>Meet with a Solutions Consultant (former LEO) to build a deployment plan based on your needs. Our Permitting Team and Installation Technicians will work to get your device network approved, installed, and activated.</p>
User Training + Support	<p>Your designated Customer Success Manager will help train your power users and ensure you maximize the platform, while our customer support team will assist with needs as they arise.</p>
Maintenance	<p>We proactively monitor the health of your device network. If we detect that a device is offline, a full-time technician will service your device for no extra charge.</p> <p><i>Note: Ongoing maintenance does not apply to Falcon Flex devices.</i></p>
Public Relations	<p>Government Affairs</p> <p>Get support educating your stakeholders, including city councils and other governing bodies.</p> <p>Media Relations</p> <p>Share crimes solved in the local media with the help of our Public Relations team.</p>

Master Services Agreement

This Master Services Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Road NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the entity identified in the signature block (“**Customer**”) (each a “**Party**,” and together, the “**Parties**”) on this the 17 day of November 2023. This Agreement is effective on the date of mutual execution (“**Effective Date**”). Parties will sign an Order Form (“**Order Form**”) which will describe the Flock Services to be performed and the period for performance, attached hereto as **Exhibit A**. The Parties agree as follows:

RECITALS

WHEREAS, Flock offers a software and hardware situational awareness solution through Flock’s technology platform that upon detection is capable of capturing audio, video, image, and recording data and provide notifications to Customer (“**Notifications**”);

WHEREAS, Customer desires access to the Flock Services (defined below) on existing devices, provided by Customer, or Flock provided Flock Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, via the Flock Services;

WHEREAS, Customer shall have access to the Footage in Flock Services. Pursuant to Flock’s standard Retention Period (defined below) Flock deletes all Footage on a rolling thirty (30) day basis, except as otherwise stated on the **Order Form**. Customer shall be responsible for extracting, downloading and archiving Footage from the Flock Services on its own storage devices; and

AGREEMENT

NOW, THEREFORE, Flock and Customer agree that this Agreement, and any Order Form, purchase orders, statements of work, product addenda, or the like, attached hereto as

exhibits and incorporated by reference, constitute the complete and exclusive statement of the Agreement of the Parties with respect to the subject matter of this Agreement, and replace and supersede all prior agreements, term sheets, purchase orders, correspondence, oral or written communications and negotiations by and between the Parties.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “**Anonymized Data**” means Customer Data permanently stripped of identifying details and any potential personally identifiable information, by commercially available standards which irreversibly alters data in such a way that a data subject (i.e., individual person or entity) can no longer be identified directly or indirectly.

1.2 “**Authorized End User(s)**” means any individual employees, agents, or contractors of Customer accessing or using the Services, under the rights granted to Customer pursuant to this Agreement.

1.3 “**Customer Data**” means the data, media and content provided by Customer through the Services. For the avoidance of doubt, the Customer Data will include the Footage.

1.4. “**Customer Hardware**” means the third-party camera owned or provided by Customer and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.

1.5 “**Embedded Software**” means the Flock proprietary software and/or firmware integrated with or installed on the Flock Hardware or Customer Hardware.

1.6 “**Flock Hardware**” means the Flock device(s), which may include the pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface, to provide the Flock Services as specifically set forth in the applicable product addenda.

1.7 “**Flock IP**” means the Services, the Embedded Software, and any intellectual property or proprietary information therein or otherwise provided to Customer and/or its Authorized End Users. Flock IP does not include Footage (as defined below).

1.8 “**Flock Network End User(s)**” means any user of the Flock Services that Customer authorizes access to or receives data from, pursuant to the licenses granted herein.

1.9 “**Flock Services**” means the provision of Flock’s software and hardware situational awareness solution, via the Web Interface, for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.

1.10 “**Footage**” means still images, video, audio and other data captured by the Flock Hardware or Customer Hardware in the course of and provided via the Flock Services.

1.11 “**Hotlist(s)**” means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e., NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts, and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.

1.12 “**Installation Services**” means the services provided by Flock for installation of Flock Services.

1.13 “**Retention Period**” means the time period that the Customer Data is stored within the cloud storage, as specified in the product addenda.

1.14 “**Vehicle Fingerprint™**” means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

1.15 “**Web Interface**” means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services.

2. SERVICES AND SUPPORT

2.1 Provision of Access. Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Authorized End Users to access and download via the Web Interface for the data retention time defined on the Order Form (“**Retention Period**”). Authorized End Users will be required to sign up for an account and select a password and username (“**User ID**”). Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, including any acts or omissions of authorized End user which would constitute a breach of this agreement if undertaken by customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of all applicable provisions of this Agreement and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage).

2.2 Embedded Software License. Flock grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as it pertains to Flock Services, solely as necessary for Customer to use the Flock Services.

2.3 Support Services. Flock shall monitor the Flock Services, and any applicable device health, in order to improve performance and functionality. Flock will use commercially reasonable efforts to respond to requests for support within seventy-two (72) hours. Flock will provide Customer with reasonable technical and on-site support and maintenance services in-person, via phone or by email at support@flocksafety.com (such services collectively referred to as “**Support Services**”).

2.4 Upgrades to Platform. Flock may make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Flock’s products or services to its agencies, the competitive strength of, or market for, Flock’s products or services, such platform or system’s cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not diminish the quality of the services or materially change any terms or conditions within this Agreement.

2.5 Service Interruption. Services may be interrupted in the event that: (a) Flock’s provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Flock reasonably believe Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance (“***Service Interruption***”). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Customer, to provide updates, and to resume providing access to Flock Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Customer’s direct actions or by the actions of parties associated with the Customer, the time will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day). For example, in the event of a Service Interruption lasting five (5) continuous days, Customer will receive a credit for five (5) free days at the end of the Term.

2.6 Service Suspension. Flock may temporarily suspend Customer’s and any Authorized End User’s access to any portion or all of the Flock IP or Flock Service if (a) there is a threat or attack on any of the Flock IP by Customer; (b) Customer’s or any Authorized End User’s use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Customer has violated any term of this provision, including, but not limited to, utilizing Flock Services for anything other than the Permitted Purpose; or (e) any unauthorized access to Flock Services through Customer’s account (“***Service Suspension***”). Customer shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit. If the Service Suspension was not caused by Customer, the Term will be tolled by the duration of the Service Suspension.

2.7 Hazardous Conditions. Flock Services do not contemplate hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately.

3. CUSTOMER OBLIGATIONS

3.1 Customer Obligations. Flock will assist Customer Authorized End Users in the creation of a User ID. Authorized End Users agree to provide Flock with accurate, complete, and updated registration information. Authorized End Users may not select as their User ID, a name that they do not have the right to use, or any other name with the intent of impersonation. Customer and Authorized End Users may not transfer their account to anyone else without prior written permission of Flock. Authorized End Users shall not share their account username or password information and must protect the security of the username and password. Unless otherwise stated and defined in this Agreement, Customer shall not designate Authorized End Users for persons who are not officers, employees, or agents of Customer. Authorized End Users shall only use Customer-issued email addresses for the creation of their User ID. Customer is responsible for any Authorized End User activity associated with its account. Customer shall ensure that Customer provides Flock with up to date contact information at all times during the Term of this agreement. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Flock Services. Customer shall (at its own expense) provide Flock with reasonable access and use of Customer facilities and Customer personnel in order to enable Flock to perform Services (such obligations of Customer are collectively defined as “*Customer Obligations*”).

3.2 Customer Representations and Warranties. Customer represents, covenants, and warrants that Customer shall use Flock Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of data, video, photo, or audio content.

4. DATA USE AND LICENSING

4.1 Customer Data. As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use the Customer Data and perform all acts as may be necessary for Flock to provide the Flock Services to Customer. Flock does not own and shall not sell Customer Data.

4.2 Customer Generated Data. Flock may provide Customer with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available, messages,

text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Customer (***“Customer Generated Data”***). Customer shall retain whatever legally cognizable right, title, and interest in Customer Generated Data. Customer understands and acknowledges that Flock has no obligation to monitor or enforce Customer’s intellectual property rights of Customer Generated Data. Customer grants Flock a non-exclusive, irrevocable, worldwide, royalty-free, license to use the Customer Generated Data for the purpose of providing Flock Services. Flock does not own and shall not sell Customer Generated Data.

4.3 Anonymized Data. Flock shall have the right to collect, analyze, and anonymize Customer Data and Customer Generated Data to the extent such anonymization renders the data non-identifiable to create Anonymized Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right to use and distribute such Anonymized Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, and other Flock offerings. Parties understand that the aforementioned license is required for continuity of Services. Flock does not own and shall not sell Anonymized Data.

5. CONFIDENTIALITY; DISCLOSURES

5.1 Confidentiality. To the extent required by any applicable public records requests, each Party (the ***“Receiving Party”***) understands that the other Party (the ***“Disclosing Party”***) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as ***“Proprietary Information”*** of the Disclosing Party).

Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via Flock Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own proprietary information, but in no event less than commercially reasonable precautions, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any

such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. At the termination of this Agreement, all Proprietary Information will be returned to the Disclosing Party, destroyed or erased (if recorded on an erasable storage medium), together with any copies thereof, when no longer needed for the purposes above, or upon request from the Disclosing Party, and in any case upon termination of the Agreement. Notwithstanding any termination, all confidentiality obligations of Proprietary Information that is trade secret shall continue in perpetuity or until such information is no longer trade secret.

5.2 Usage Restrictions on Flock IP. Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. Customer and Authorized End Users shall not: (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within the Flock Services or Flock IP; (vi) use the Flock Services for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Customer's rights. There are no implied rights.

5.3 Disclosure of Footage. Subject to and during the Retention Period, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to comply with a legal process, enforce this Agreement, or detect, prevent or otherwise address security, privacy, fraud or technical issues, or emergency situations.

6. PAYMENT OF FEES

6.1 Billing and Payment of Fees. Customer shall pay the fees set forth in the applicable Order Form based on the billing structure and payment terms as indicated in the Order Form. If Customer believes that Flock has billed Customer incorrectly, Customer must contact Flock no later than thirty (30) days after the closing date on the first invoice in which the error or problem appeared to receive an adjustment or credit. Customer acknowledges and agrees that a failure to contact Flock within this period will serve as a waiver of any claim. If any undisputed fee is more than thirty (30) days overdue, Flock may, without limiting its other rights and remedies, suspend delivery of its service until such undisputed invoice is paid in full. Flock shall provide at least thirty (30) days' prior written notice to Customer of the payment delinquency before exercising any suspension right.

6.2 Notice of Changes to Fees. Flock reserves the right to change the fees for subsequent Renewal Terms by providing sixty (60) days' notice (which may be sent by email) prior to the end of the Initial Term or Renewal Term (as applicable).

6.3 Late Fees. If payment is not issued to Flock by the due date of the invoice, an interest penalty of 1.0% of any unpaid amount may be added for each month or fraction thereafter, until final payment is made.

6.4 Taxes. Customer is responsible for all taxes, levies, or duties, excluding only taxes based on Flock's net income, imposed by taxing authorities associated with the order. If Flock has the legal obligation to pay or collect taxes, including amount subsequently assessed by a taxing authority, for which Customer is responsible, the appropriate amount shall be invoice to and paid by Customer unless Customer provides Flock a legally sufficient tax exemption certificate and Flock shall not charge customer any taxes from which it is exempt. If any deduction or

withholding is required by law, Customer shall notify Flock and shall pay Flock any additional amounts necessary to ensure that the net amount that Flock receives, after any deduction and withholding, equals the amount Flock would have received if no deduction or withholding had been required.

7. TERM AND TERMINATION

7.1 Term. The initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Term**”). Following the Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a “**Renewal Term**”) unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

7.2 Termination. Upon termination or expiration of this Agreement, Flock will remove any applicable Flock Hardware at a commercially reasonable time period. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period (“**Cure Period**”). Either Party may terminate this Agreement (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. In the event of a material breach by Flock, and Flock is unable to cure within the **Cure Period**, Flock will refund Customer a pro-rata portion of the pre-paid fees for Services not received due to such termination.

7.3 Survival. The following Sections will survive termination: 1, 3, 5, 6, 7, 8.3, 8.4, 9, 11.1 and 11.6.

8. REMEDY FOR DEFECT; WARRANTY AND DISCLAIMER

8.1 Manufacturer Defect. Upon a malfunction or failure of Flock Hardware or Embedded Software (a “*Defect*”), Customer must notify Flock’s technical support team. In the event of a Defect, Flock shall make a commercially reasonable attempt to repair or replace the defective Flock Hardware at no additional cost to the Customer. Flock reserves the right, in its sole discretion, to repair or replace such Defect, provided that Flock shall conduct inspection or testing within a commercially reasonable time, but no longer than seven (7) business days after Customer gives notice to Flock.

8.2 Replacements. In the event that Flock Hardware is lost, stolen, or damaged, Customer may request a replacement of Flock Hardware at a fee according to the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>). In the event that Customer chooses not to replace lost, damaged, or stolen Flock Hardware, Customer understands and agrees that (1) Flock Services will be materially affected, and (2) that Flock shall have no liability to Customer regarding such affected Flock Services, nor shall Customer receive a refund for the lost, damaged, or stolen Flock Hardware.

8.3 Warranty. Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock’s reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

8.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 8.1 ABOVE IS CUSTOMER’S SOLE REMEDY, AND FLOCK’S SOLE LIABILITY, WITH RESPECT TO DEFECTS. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED “AS IS” AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 11.6.

8.5 Insurance. Flock will maintain commercial general liability policies as stated in Exhibit B.

8.6 Force Majeure. Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions.

9. LIMITATION OF LIABILITY; INDEMNITY

9.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK, ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR LOSS OF REVENUE, BUSINESS OR BUSINESS INTERRUPTION; (B) INCOMPLETE, CORRUPT, OR INACCURATE DATA; (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (D) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (E) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF

LIABILITY OF SECTION ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE REFERENCED IN SECTION 10.6.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (I) IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) INDEMNIFICATION OBLIGATIONS.

9.2 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable for the torts of its own officers, agents, or employees.

9.3 Flock Indemnity. Flock shall indemnify and hold harmless Customer, its agents and employees, from liability of any kind, including claims, costs (including defense) and expenses, on account of: (i) any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Agreement; or (ii) any damage or injury to property or person directly caused by Flock's installation of Flock Hardware, except for where such damage or injury was caused solely by the negligence of the Customer or its agents, officers or employees. Flock's performance of this indemnity obligation shall not exceed the fees paid and/or payable for the services rendered under this Agreement in the preceding twelve (12) months.

10. INSTALLATION SERVICES AND OBLIGATIONS

10.1 Ownership of Hardware. Flock Hardware is owned and shall remain the exclusive property of Flock. Title to any Flock Hardware shall not pass to Customer upon execution of this Agreement, except as otherwise specifically set forth in this Agreement. Except as otherwise expressly stated in this Agreement, Customer is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Customer agrees and understands that in the event Customer is found to engage in any of the foregoing restricted actions, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination for material breach by Customer. Customer shall not perform any acts which would interfere with the retention of title of the Flock Hardware by Flock. Should Customer default on any payment of the Flock Services, Flock may remove Flock Hardware at

Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

10.2 Deployment Plan. Flock shall advise Customer on the location and positioning of the Flock Hardware for optimal product functionality, as conditions and locations allow. Flock will collaborate with Customer to design the strategic geographic mapping of the location(s) and implementation of Flock Hardware to create a deployment plan ("***Deployment Plan***"). In the event that Flock determines that Flock Hardware will not achieve optimal functionality at a designated location, Flock shall have final discretion to veto a specific location, and will provide alternative options to Customer.

10.3 Changes to Deployment Plan. After installation of Flock Hardware, any subsequent requested changes to the Deployment Plan, including, but not limited to, relocating, re-positioning, adjusting of the mounting, removing foliage, replacement, changes to heights of poles will incur a fee according to the reinstall fee schedule located at (<https://www.flocksafety.com/reinstall-fee-schedule>). Customer will receive prior notice and confirm approval of any such fees.

10.4 Customer Installation Obligations. Customer is responsible for any applicable supplementary cost as described in the Customer Implementation Guide, attached hereto as Exhibit C ("***Customer Obligations***"). Customer represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the designated locations and to make any necessary inspections or maintenance in connection with such installation.

10.5 Flock's Obligations. Installation of any Flock Hardware shall be installed in a professional manner within a commercially reasonable time from the Effective Date of this Agreement. Upon removal of Flock Hardware, Flock shall restore the location to its original condition, ordinary wear and tear excepted. Flock will continue to monitor the performance of Flock Hardware for the length of the Term. Flock may use a subcontractor or third party to perform certain obligations under this agreement, provided that Flock's use of such subcontractor or third party shall not release Flock from any duty or liability to fulfill Flock's obligations under this Agreement.

11. MISCELLANEOUS

11.1 Compliance With Laws. Parties shall comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s).

11.2 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

11.3 Assignment. This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

11.4 Entire Agreement. This Agreement, together with the Order Form(s), the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>), and any attached exhibits are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous or contemporaneous negotiations, discussions or agreements, whether written and oral , communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Customer's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. Any mutually agreed upon future purchase order is subject to these legal terms and does not alter the rights and obligations under this Agreement, except that future purchase orders may outline additional products, services, quantities and billing terms to be mutually accepted by Parties. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail. Customer agrees that Customer's purchase is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Flock with respect to future functionality or feature.

11.5 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Parties do not have any authority of any kind to bind each other in any respect whatsoever. Flock shall at all times be and act as an independent contractor to Customer.

11.6 Governing Law; Venue. This Agreement shall be governed by the laws of the state in which the Customer is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Customer is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

11.7 Special Terms. Flock may offer certain special terms which are indicated in the proposal and will become part of this Agreement, upon Customer's prior written consent and the mutual execution by authorized representatives ("**Special Terms**"). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

11.8 Publicity. Flock has the right to reference and use Customer's name and trademarks and disclose the nature of the Services in business and development and marketing efforts.

11.9 Feedback. If Customer or Authorized End User provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency or Authorized End User hereby assigns to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

11.10 Export. Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Customer or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Flock Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11.11 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

11.12 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

11.13 **Conflict.** In the event there is a conflict between this Agreement and any applicable statement of work, or Customer purchase order, this Agreement controls unless explicitly stated otherwise.

11.14 **Morality.** In the event Customer or its agents become the subject of an indictment, contempt, scandal, crime of moral turpitude or similar event that would negatively impact or tarnish Flock's reputation, Flock shall have the option to terminate this Agreement upon prior written notice to Customer.

11.15 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt to the address listed on the Order Form (or, if different, below), if sent by certified or registered mail, return receipt requested.

11.16 **Non-Appropriation.** Notwithstanding any other provision of this Agreement, all obligations of the Customer under this Agreement which require the expenditure of funds are conditioned on the availability of funds appropriated for that purpose. Customer shall have the right to terminate this Agreement for non appropriation with thirty (30) days written notice without penalty or other cost.

FLOCK NOTICES ADDRESS:

1170 HOWELL MILL ROAD, NW SUITE 210

ATLANTA, GA 30318

ATTN: LEGAL DEPARTMENT

EMAIL: legal@flocksafety.com

Customer NOTICES ADDRESS:

ADDRESS: 4870 Arrow Highway, Montclair, CA 91763

ATTN: Brian Ventura

EMAIL: bventura@cityofmontclair.org

EXHIBIT A

**ORDER FORM**

Customer: CA - Montclair PD
 Legal Entity Name: CA - Montclair PD
 Accounts Payable Email: bventura@cityofmontclair.org
 Address: 4870 Arrow Hwy Montclair, California 91763

Initial Term: 60 Months
 Renewal Term: 24 Months
 Payment Terms: Net 30
 Billing Frequency: Annual Plan - First Year Invoiced at Signing.
 Retention Period: 30 Days

Hardware and Software Products

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
Flock Safety Platform			\$157,500.00
Flock Safety Flock OS			
FlockOS™	Included	1	Included
Flock Safety LPR Products			
Flock Safety Falcon®	Included	60	Included

Professional Services and One Time Purchases

Item	Cost	Quantity	Total
One Time Fees			
Flock Safety Professional Services			
Professional Services - Standard Implementation Fee	\$650.00	6	\$3,900.00
Professional Services - Existing Infrastructure Implementation Fee	\$150.00	14	\$2,100.00

Subtotal Year 1:	\$163,500.00
Annual Recurring Subtotal:	\$157,500.00
Discounts:	\$150,000.00
Estimated Tax:	\$0.00
Contract Total:	\$793,500.00

Billing Schedule

Billing Schedule	Amount (USD)
Year 1	
At Contract Signing	\$163,500.00
Annual Recurring after Year 1	\$157,500.00
Contract Total	\$793,500.00

*Tax not included

Discounts

Discounts Applied	Amount (USD)
Flock Safety Platform	\$150,000.00
Flock Safety Add-ons	\$0.00
Flock Safety Professional Services	\$0.00

Product and Services Description

Flock Safety Platform Items	Product Description	Terms
Flock Safety Falcon ®	An infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint® technology to capture vehicular attributes.	The Term shall commence upon first installation and validation of Flock Hardware.

One-Time Fees	Service Description
Installation on existing infrastructure	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.
Professional Services - Standard Implementation Fee	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief.
Professional Services - Advanced Implementation Fee	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.

FlockOS Features & Description

Package: Advanced

FlockOS Features	Description
Community Cameras (Full Access)	Access to all privately owned Flock devices within your jurisdiction that have been shared with you.
Unlimited Users	Unlimited users for FlockOS
State Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the statewide Flock network.
Nationwide Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the nationwide Flock network.
Time & Location Based Search	Search full, partial, and temporary plates by time at particular device locations
License Plate Lookup	Look up specific license plate location history captured on Flock devices
Vehicle Fingerprint Search	Search footage using Vehicle Fingerprint™ technology. Access vehicle type, make, color, license plate state, missing / covered plates, and other unique features like bumper stickers, decals, and roof racks.
Flock Insights/Analytics page	Reporting tool to help administrators manage their LPR program with device performance data, user and network audits, plate read reports, hot list alert reports, event logs, and outcome reports.
ESRI Based Map Interface	Flock Safety's maps are powered by ESRI, which offers the ability for 3D visualization, viewing of floor plans, and layering of external GIS data, such as City infrastructure (i.e., public facilities, transit systems, utilities), Boundary mapping (i.e., precincts, county lines, beat maps), and Interior floor plans (i.e., hospitals, corporate campuses, universities)
Real-Time NCIC Alerts on Flock ALPR Cameras	Alert sent when a vehicle entered into the NCIC crime database passes by a Flock camera
Unlimited Custom Hot Lists	Ability to add a suspect's license plate to a custom list and get alerted when it passes by a Flock camera
Direct Share - Surrounding Jurisdiction (Full Access)	Access to all Flock devices owned by law enforcement that have been directly shared with you. Have ability to search by vehicle fingerprint, receive hot list alerts, and view devices on the map.
Convoy Search	Identify vehicles that have been seen together so you can verify a potential accomplice and getaway car used during a string of vehicle thefts; Show me vehicles that were seen near this specific car multiple times.
Visual Search	Upload a suspect vehicle photo from and alternative source (i.e. CCTV, doorbell camera, mobile phone), and machine learning will match it to vehicles recorded by Flock Safety cameras in the past 30 days
Multi Geo Search	Perform single and multi-location-based searches to link a suspect vehicle to one, or multiple crime scenes
Custom Hot List Deconfliction Portal	Allows Flock users to identify overlapping investigations and provide the contact information of opted-in parties to facilitate collaboration.
Hot List Attachments	The ability to add case notes, photos, reports, and other relevant case information to Custom Hot List Alerts
Unlimited Vehicle Description Alerts	Users can set up and receive notifications for suspect vehicles based on body type, make, color, location and timeframe. Notifications are sent via app, SMS or email when a vehicle matching the predetermined criteria passes a camera in your organization's network.
Wing Gateway, Wing Cloud, Wing VMS	Unlocks access to purchase Wing.
Custom Map Layers	Ability for customers (and Flock Admins) to add & view public and proprietary ESRI map layers to FlockOS' Map experience.
SSO	Ability to sign into the Flock Safety platform via Okta Single Sign On (SSO). This increases login speed and information security.

By executing this Order Form, Customer represents and warrants that it has read and agrees to all of the terms and conditions contained in the Master Services Agreement attached. The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

Customer: CA - Montclair PD

By: _____

By: _____

Name: _____

Name: Tenice Johnson

Title: _____

Title: Mayor Pro Tem

Date: _____

Date: December 18, 2023

PO Number: _____

Attest:

Andrea Myrick, City Clerk

EXHIBIT B
INSURANCE

Required Coverage. Flock shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services under this Agreement and the results of that work by Flock or its agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A. M. Best rating of no less than “A” and “VII”. Flock shall obtain and, during the term of this Agreement, shall maintain policies of professional liability (errors and omissions), automobile liability, and general liability insurance for insurable amounts of not less than the limits listed herein. The insurance policies shall provide that the policies shall remain in full force during the life of the Agreement. Flock shall procure and shall maintain during the life of this Agreement Worker's Compensation insurance as required by applicable State law for all Flock employees.

Types and Amounts Required. Flock shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

- (i) **Commercial General Liability** insurance written on an occurrence basis with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and product and completed operations coverage;
- (ii) **Umbrella or Excess Liability** insurance written on an occurrence basis with minimum limits of Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate;
- (iii) **Professional Liability/Errors and Omissions** insurance with minimum limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate;
- (iv) **Commercial Automobile Liability** insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, death, and property coverage, including owned and non-owned and hired automobile coverage; and
- (v) **Cyber Liability** insurance written on an occurrence basis with minimum limits of Five Million Dollars (\$5,000,000).

Exhibit C

Customer Implementation Guide

Law Enforcement



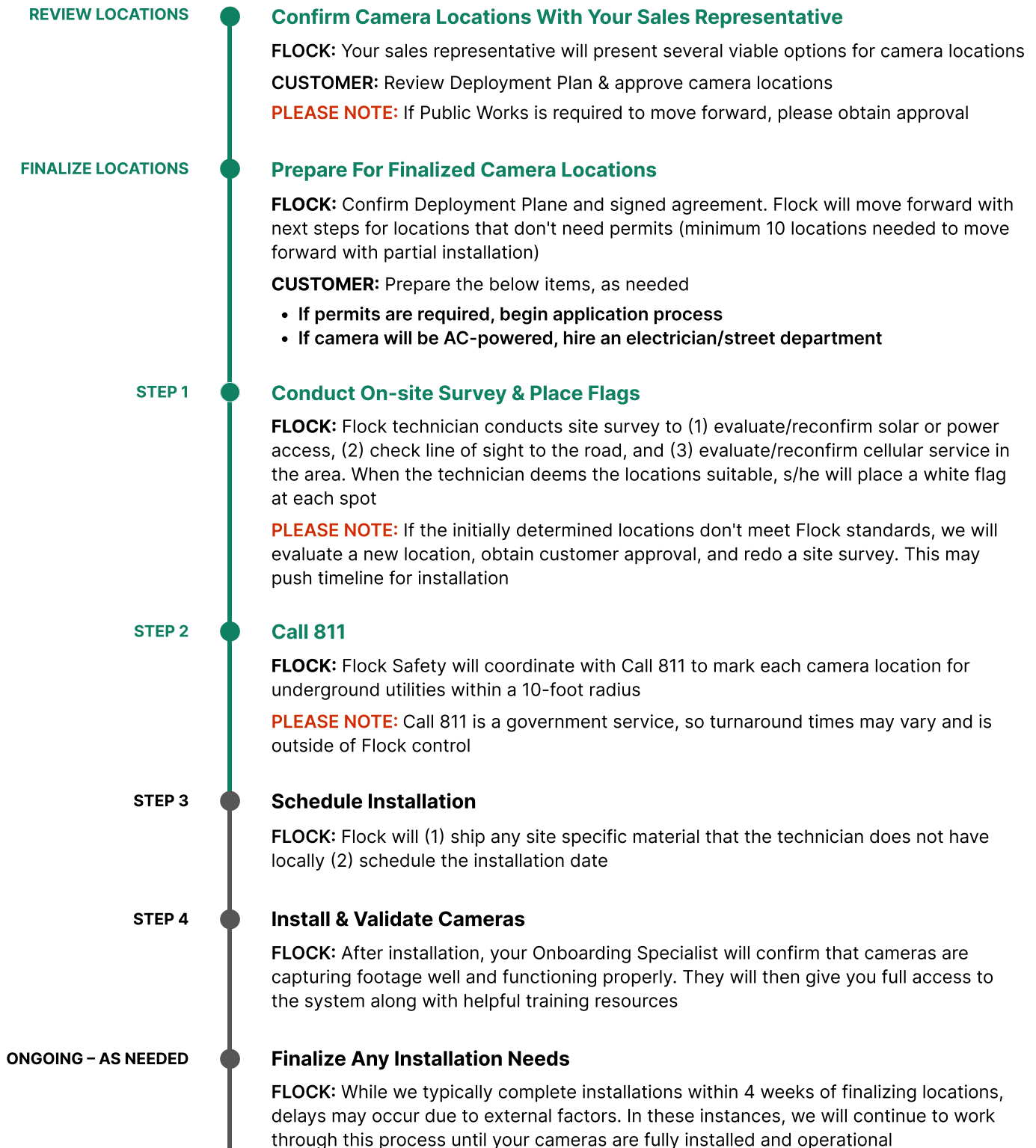
flock safety

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Implementation Timeline

This timeline provides general guidance and understanding of your installation process. While we typically complete installations 6-8 weeks after locations have been finalized, delays can occur as noted in the timeline below:



Flock Safety Team

Implementation Team	How They Will Support You
 Project Manager	<p>Your Project Manager is your primary contact during camera installation.</p> <p>Your project manager will guide you through the entire installation process, keeping you apprised of all implementation updates as well as answering any questions you have during this time. They will ensure that all the cameras are on the ground and operating for at least 48 hours before transitioning you to your Customer Success Manager.</p>
 Field Operations Team	<ul style="list-style-type: none">• The Field Operations team is responsible for the physical installation and maintenance of cameras and associated equipment provided by Flock. This includes a large team of technicians, schedulers, and many others involved in ensuring the delivery of the product.• They take the technical plan you finalized with Product Implementation and work closely with other teams at Flock to make sure that the cameras are installed quickly and safely and in a way that maximizes the opportunity to solve crime at a specific location.• *Note*: For all Installation questions or concerns, please always direct them to your Customer Success Manager and not the technician.

Relationship Team	How They Will Support You
 <p data-bbox="199 674 513 758">Customer Success Manager</p>	<p data-bbox="609 373 1403 457">Your Customer Success Manager is your strategic partner for your lifetime as a Flock customer.</p> <p data-bbox="609 495 1403 625">While the cameras are getting installed, your CSM will help get your account set up and get all key users trained on the system.</p> <p data-bbox="609 663 1403 793">Post-Camera-Installation, your CSM will be your go-to for most account-related needs: You should reach out to them to:</p> <ul data-bbox="630 814 1414 1182" style="list-style-type: none"> • Set up Account Training • Understand benefits of features • Learning best practices for getting relevant data • Identifying opportunities to expand the security network in your area • Provide feedback on your partnership with Flock
 <p data-bbox="253 1644 459 1728">Flock Safety Support</p>	<p data-bbox="609 1339 1414 1570">The Flock Safety Support team is committed to answering all your day-to-day questions as quickly as possible. To get in touch with support, simply email support@flocksafety.com or call 866-901-1781 Mon-Fri 8am-8pm EST.</p> <p data-bbox="609 1581 959 1619">Support can help you:</p> <ul data-bbox="630 1640 1414 1913" style="list-style-type: none"> • Request camera maintenance • Troubleshoot online platform • Contract / Billing questions • Update account information • Camera Sharing questions • Quick “How to” questions in your Flock Account

Outside Party	When They May Be Involved
Electrician/Street Department	If the Flock cameras need to be AC powered, you (customer) are responsible for providing an electrician to ensure power connectivity
Public Works (LE)	To weigh in on the use of public Rights of Way or property
Department of Transportation (DOT), City, or County agencies	If installation in your area requires permitting

PLEASE NOTE: On some occasions, third parties outside of Flock Safety may be (or need to be) involved in your implementation.

Implementation Service Briefs: Existing Infrastructure vs Standard vs Advanced

	Existing Infrastructure Install	Standard Install	Advanced Install
Pole	None	Flock	NCHRP 350 / MASH
Timeline	Short	Medium	Longest
Cost	Lowest	Mid	Highest

Existing Infrastructure Implementation

COST: \$150 per camera (one time cost)

Included In Scope:

Once designated locations are approved by the customer, as part of the **Existing Infrastructure Implementation Service** Flock will perform the following:

- An in-person site survey to confirm the installation feasibility of a location (location assessment, solar assessment, visibility review, etc.)
 - Cameras need sufficient power. Since a solar panel is required per camera, it can prevent adequate solar power if two cameras and two solar panels are on a single pole (blocking visibility). Therefore if relying on solar power, only one camera can be installed per pole.
- Confirm that a location is safe for work by following State utility locating procedures.
- Each installation may include the following:
 - Installation of camera and solar panel or AC adapter box on a suitable existing pole

- Types of existing infrastructure such as existing utility, light, and traffic signal poles.
- Pole no higher than 8'-12' (approval at Flock Safety's discretion)
- Flock will provide and mount an AC adapter unit that a qualified electrician can connect to AC power following our [electrical wiring requirements](#). Flock is unable to make any AC connections or boreholes in any material other than dirt, grass, loose gravel (or other non-diggable material). Electrical work requiring a licensed electrician and associated costs, not included in the scope.
- Access requiring up to a 14' using an A-frame ladder
- Standard MUTCD traffic control procedures performed by a Flock technician
- Obtain a business license to operate in the city and state of camera location

Out Of Scope:

By default, Flock does **not** include the following as part of the **Existing Infrastructure Implementation Service** but can provide a quote for sourcing at an additional cost:

- Mounting on mast arms (always require bucket truck and traffic control)
- Call 811 'Call-before-you-Dig' system
- Installation of any poles including but not limited to
 - Standard, 12' above grade [Flock breakaway pole](#)
 - NCHRP 350 or MASH approved pole (as may be required for locations in DOT right of way)
- A Bucket Truck for accessing horizontal/cross-beams and/or height above 14'
- Special equipment rentals for site access
- Site-specific engineered traffic plans
- Third-party provided traffic control
- State or city-specific specialty contractor licenses or unique attachment/connection requirements
- Custom engineered drawings
- Electrical work requires a licensed electrician.

- Flock will provide and mount an AC adapter that a qualified electrician can connect to AC power but cannot make any AC connections or boreholes in any material other than dirt, grass, loose gravel (or other non-diggable material).
- Concrete cutting
- Private utility search for privately owned items not included in standard 811 procedures (communication, networking, sprinklers, etc.)
- Upgrades to power sources to ready them for Flock power (additional fuses, switches, breakers, etc.)
- Any fees or costs associated with filing for required city, county, or state permits
- Licensing or attachment agreements with asset / infrastructure owners
- Utility contracts and billing
- Customer requested relocations (see fee schedule)

Standard Implementation

COST: \$650 per camera (one time cost)

Included In Scope:

Once designated locations are approved by the customer, as part of the **Standard Implementation Service** Flock will perform the following:

- An in-person site survey to confirm the installation feasibility of a location (location assessment, solar assessment, visibility review, etc.)
- Confirm that a location is safe for work by following state utility locating procedures. Work with local utilities to prevent service interruptions during the installation
 - Engage 811 'Call-before-you-Dig' system to receive legal dig date
 - Apply approved markings Coordinate with 811 regarding any necessary high-risk dig clearances or required vendor meets
- Each installation may include the following:
 - Installation of camera and solar panel with standard, 12' above grade Flock breakaway pole

- Installation of camera and AC adapter that a qualified electrician can connect to AC power on a suitable existing pole, no higher than 8-12' (approval at Flock Safety's discretion)
 - Flock will provide and mount an AC adapter that a qualified electrician can connect to AC power following our [electrical wiring requirements](#). Flock is unable to make any AC connections or boreholes in any material other than dirt, grass, loose gravel (or other non-diggable material). Electrical work requiring a licensed electrician and associated costs, not included in the scope.
- Access requiring up to a 14' A-frame ladder
- Standard MUTCD traffic control procedures performed by a Flock technician
- Obtain a business license to operate in the City and State of camera location

Out Of Scope:

By default, Flock does **not** include the following as part of the Standard Implementation Service but can provide a quote for sourcing at an additional cost:

- Use and/or mounting to existing infrastructure.
- NCHRP 350 or MASH approved pole (as may be required for locations in DOT right of way)
- A Bucket Truck for accessing horizontal/cross-beams and/or height above 14'
- Special equipment rentals for site access
- Site-specific engineered traffic plans
- Third-party provided traffic control
- State or city-specific specialty contractor licenses
- Custom engineered drawings
- Electrical work requires a licensed electrician.
 - Flock will provide and mount an AC adapter that a qualified electrician can connect to AC power but cannot make any AC connections or boreholes in any material other than dirt, grass, loose gravel (or other non-diggable material).
- Concrete cutting
- Private utility search for privately owned items not included in standard 811 procedures (communication, networking, sprinklers, etc.)

- Upgrades to power sources to ready them for Flock power (additional fuses, switches, breakers, etc.)
- Any fees or costs associated with filing for required city, county, or state permits
- Licensing or attachment agreements with asset / infrastructure owners
- Utility contracts and billing
- Customer requested relocations (see fee schedule)

Advanced Implementation

COST: \$1,900 per camera (one time cost)

Included In Scope:

Once Designated Locations are confirmed, as part of the **Advanced Implementation Service**, Flock will perform the following:

- An in-person site survey to confirm the installation feasibility of a location (location assessment, solar assessment, visibility review, etc.)
- Confirm that a location is safe for work by following State utility locating procedures. Work with local utilities to prevent service interruptions during the installation
 - Engage 811 'Call-before-you-Dig' system to receive legal dig date
 - Apply approved markings Coordinate with 811 regarding any necessary high-risk dig clearances or required vendor meets
- Each installation may include the following:
 - Installation of camera and solar panel on a suitable **NCHRP 350 or MASH** approved pole.
 - Installation of camera and AC adapter that a qualified electrician can connect to AC power.
 - Flock will provide and mount an AC adapter that a qualified electrician can connect to AC power following our [electrical wiring requirements](#). Flock cannot make any AC connections or boreholes in any material other than dirt, grass, loose gravel (or other non-diggable material).

Electrical work requiring a licensed electrician and associated costs, not included in the scope.

- Access requiring up to a 14' A-frame ladder
- Standard MUTCD traffic control procedures performed by a Flock technician
- Obtain a business license to operate in the City and State of camera location

Out Of Scope:

By default, Flock does not include the following as part of the **Advanced Implementation Service** but can optionally provide a quote for sourcing (additional cost):

- Installation on **Standard, 12' above grade Flock breakaway pole** or existing infrastructure.
- A Bucket Truck for accessing horizontal/cross-beams and/or height above 14'
- Special equipment rentals for site access
- Site-specific engineered traffic plans
- Third-party provided traffic control
- State or City-specific specialty contractor licenses
- Custom engineered drawings
- Electrical work requires a licensed electrician. Flock will provide and mount an AC adapter that a qualified electrician can connect to AC power but cannot make any AC connections or boreholes in any material other than dirt, grass, loose gravel (or other non-diggable material).
- Concrete cutting
- Private utility search for privately owned items not included in standard 811 procedures (communication, networking, sprinklers, etc.)
- Upgrades to power sources to ready them for Flock power (additional fuses, switches, breakers, etc.)
- Fees or costs associated with filing for required City, County, or State permits

Things to Consider When Selecting Locations

Falcon Cameras



- Use Cases
 - Flock LPRs are designed to capture images of rear license plates aimed in the direction of traffic.
 - Flock LPRs are not designed to capture pedestrians, sidewalks, dumpsters, gates, other areas of non-vehicle traffic, intersections.
- Placement
 - They capture vehicles driving away from an intersection.
 - They cannot point into the middle of an intersection.
 - They should be placed after the intersection to prevent stop and go motion activation or “stop and go” traffic.
- Mounting
 - They can be mounted on existing utility, light, traffic signal poles, or 12 foot Flock poles.*
 - They should be mounted one per pole.** If using AC power, they can be mounted 2 per pole.
- They can be powered with solar panels or direct wire-in AC Power (no outlets).***
- They will require adequate cellular service using AT&T or T-Mobile to be able to process & send images.

* Permitting (or permission from pole owner) may be required to use existing infrastructure or install in specific areas, depending on local regulations & policies.

** Cameras need sufficient power. Since a solar panel is required per camera, it can prevent adequate solar power if two cameras and two solar panels are on a single pole (blocking visibility). Therefore if relying on solar power, only one camera can be installed per pole.

*** Flock does not provide Electrical services. Once installed, the agency or community must work with an electrician to wire the cameras. Electrician services should be completed within two days of installation to prevent the camera from dying.

Solar Panels

Solar panels need unobstructed southern-facing views.



Pole

If a location requires a "DOT Pole" (i.e., Advanced Pole, **not** Flock standard pole), the implementation cost will be \$5,000/camera.



Customer Responsibilities: AC-Powered Cams

If the Flock cameras need to be AC-powered, the **customer is responsible** for acquiring an electrician and ensuring they connect the camera to power. **See steps 2 and 6 below.**

How to Get Started with a Powered Install



1. Create a Deployment Plan

Work with us to select the best location(s) for Flock Safety cameras and power sources



2. Acquire an Electric Quote

Contact an electrician to receive a quote to run 120volt AC power to the camera



3. Sign Flock Safety Agreement

Sign the Flock Safety purchase order to begin the installation of cameras



4. Conduct Site Survey

Flock will mark camera locations, locate underground utilities and mark if present



5. Install Camera

Flock will install the camera and AC power kit at the specified camera location



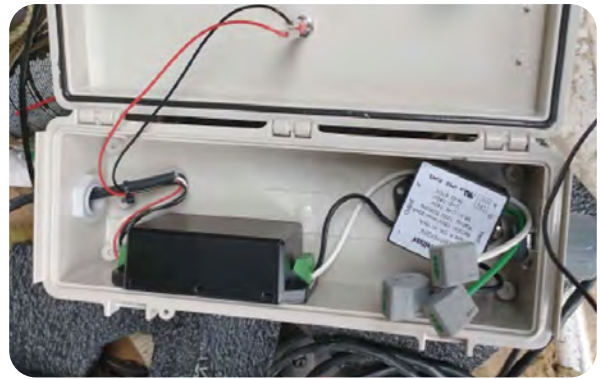
6. Connect Camera to Power

Notify the electrician that the camera is ready for the power connection installation

Electrician Handout

Electrician Installation Steps

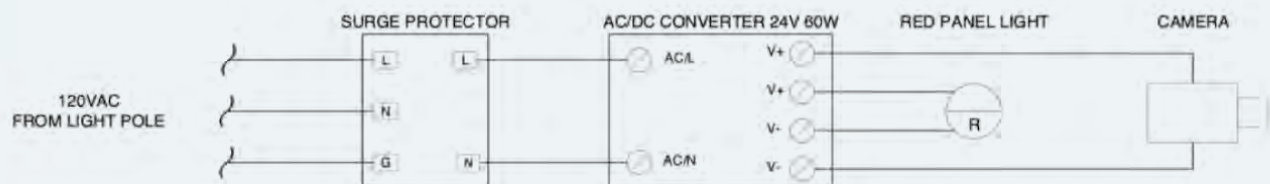
1. Run AC cable and conduit to the box according to NEC Article 300 and any applicable local codes. The gland accepts ½" conduit.
2. Open the box using hinges.
3. Connect AC Mains per wiring diagram below:
 - a. Connect AC Neutral wire to the Surge Protector white Neutral wire using the open position on the lever nut.
 - b. Connect AC Line wire to the Surge Protector black Line wire using the open position on the lever nut.
 - c. Connect AC Ground wire to the Surge Protector green ground wire using the open position on the lever nut.
4. Verify that both the RED LED is lit on the front of the box
5. Close box and zip tie the box shut with the provided zip tie
6. While still on-site, call Flock, who will remotely verify that power is working correctly:



Southeast Region - (678) 562-8766

West-Region - (804) 607-9213

Central & NE Region - (470) 868-4027



FAQs about AC-Powered Flock Cameras

What voltage is supported?

The AC kit is designed to work with 120VAC Infrastructure by default. A 240VAC version is available on request.

How much power does this consume?

Peak current draw is 1.5 A at 120VAC. The average power draw is roughly 30W in high traffic conditions but maybe lower when fewer vehicles are present.

Who is responsible for contracting the electrician?

The customer is responsible for contracting an electrician. We can help answer questions, but the customer is responsible for identifying and contracting an electrician.

Who is responsible for maintenance?

Flock will handle all maintenance related to Flock's camera and power equipment. However, any problems with the electrical supply are the customer's responsibility. The AC junction box has two lights to indicate the presence of power and make it easy for quick diagnosis if there is a problem related to the AC power source.

- If the camera indicates to Flock that there is a power supply problem, Flock will notify the customer and request that the customer verifies the lights on the AC junction box. If the AC Source light is illuminated, Flock will send a technician to investigate. If the AC source light is not illuminated, the customer should check any GFCI's or breakers in the supply circuit or call the electrician who installed the power supply.

How much does it cost?

Work required to bring AC power to each location will be different, so exact pricing is unavailable. Primary cost drivers include arrow boards and the distance from the camera location to the AC power source.

What information do I need to provide my electrician?

The Flock deployment plan and these work instructions should be sufficient to secure a quote. It will be helpful if you know the location of the existing power infrastructure before creating the deployment plan.

Can you plug it into my existing power outlet? The Flock AC power adapter does not use a standard outlet plug but must be directly wired into the power mains. While using outlet plugs may be convenient, they can easily be unplugged, presenting a tampering risk to this critical safety infrastructure. The electrician can route power directly to the camera with a direct wire-in connection if an outlet is close to the camera.

How long does this process typically take?

The installation process typically takes 6-8 weeks. To accelerate the process, be sure to have the electrician perform his work shortly after the Flock technician finishes installing the camera.

What kind of electrician should I look for?

Any licensed electrician should perform this work, though we have found that those who advertise working with landscape lighting are most suited for this work.

What happens if the electrician damages the equipment?

The customer is responsible for contracting the electrician. Any liability associated with this work would be assumed by the customer. If any future work is required at this site due to the electrical infrastructure or the work performed by the electrician would be the responsibility of the customer.

When should the electrician perform his work?

Once Flock installs the camera, you will receive an email alert letting you know that this has been completed. After this, you will need to schedule the electrician to route power to the pole.

What if my electrician has questions about Flock's AC Kit?

You should share the [AC-Power Kit Details](#) packet with the electrician if they have questions.

What if the AC power is on a timer?

Sometimes the AC power will be on a timer (like used for exterior lighting). Flock requires that the AC power provided to the camera be constant. The source that the electrician uses must not be on a timing circuit.

Installation Service Brief Summary

Below outlines the statement of work for the Flock Camera Installation:

What Is Covered By Flock	What Is NOT Covered By Flock	Special Note
Flock Cameras & Online Platform	Traffic Control And Any Associated Costs	
Mounting Poles	*DOT Approved Pole Cost Electrician & Ongoing Electrical Costs	
AC Power Kit (As Needed)	Engineering Drawings	
Solar Panels (As Needed)	Relocation Fees	<i>Excluding Changes During Initial Installation</i>
Site Surveys And Call 811 Scheduling	Contractor Licensing Fees	
Installation Labor Costs	Permit Application Processing Fees	
Customer Support / Training	Specialist Mounting Equipment	<i>Including, But Not Limited To, **MASH Poles Or Adapters</i>
Cellular Data Coverage	Bucket Trucks	
Maintenance Fees (Review Fees Sheet For More Details)	Loss, Theft, Damage To Flock Equipment	
Data Storage For 30 Days	Camera Downtime Due To Power Outage	<i>Only Applicable For AC-Powered Cameras</i>
	***Field Technician Maintenance For Falcon™ Flex	

*If a location requires a "DOT pole" (i.e., not our standard), the implementation cost will be \$5,000/camera; This cost is applicable for installations in GA, IL, SC, TN, and CA.

**MASH poles: Manual for Assessing Safety Hardware (MASH) presents uniform guidelines for crash testing permanent and temporary highway safety features and recommends evaluation criteria to assess test results

***If a camera is lost, stolen, or damaged, a replacement device can be purchased at a discounted price of \$800

Permitting: Pre-Install Questionnaire

1. Timeline

- In Flock Safety's experience, in-depth permitting requirements can **add 2+ months to the installation timeline**.
- The SLA for permit document submission is within 15 days from contract signature date (contract Closed-Won)

2. Right of Way

- Will any Flock Safety cameras be installed on the city, state, or power company-owned poles or in the city, county, or state Right of Way (RoW)?
 - What is the RoW buffer?
 - Will additional permits or written permission be required from third-party entities (such as DOT, power companies, public works, etc.)?
- Will any cameras be installed on city-owned traffic signal poles (vertical mass)?
 - If yes, please provide heights/photos to determine if a bucket truck is needed for the installation.
 - Note: A bucket truck is required if the height exceeds 15 feet tall.

3. AC Power vs. Solar

- If AC powered, is there a 120V power source available, and is there access to an electrician who can connect the existing wire to the Flock Safety powered **installation kit**?
- If solar-powered, consider the size of the solar panel and potential to impact the visibility of DOT signs/signals:
 - Single Panel: 21.25" x 14" x 2" (Length x Width x Depth)
 - Double Panel: 21.25" x 28" x 2" (LxWxD)

4. Traffic Control & Installation Methods

- **If a bucket truck is required**, this typically necessitates an entire lane to be blocked in the direction of travel. **Can you provide a patrol car escort, or will full traffic control be required?***

PLEASE NOTE: If traffic control is required, you may incur additional costs due to city/state requirements; Fees will be determined by quotes received.

- **If full traffic control is required (cones, arrow boards, etc.):**
 - Will standard plans suffice, or are custom plans needed? Custom plans can double the cost, while standard plans can be pulled from the Manual of Uniform Traffic Control Devices (**MUTCD**).
 - Will a non-sealed copy of the traffic plan suffice? Or does the traffic plan need to be sealed and/or submitted by a professional engineer?
 - Are there state-specific special versions/variances that must be followed?
- **If a bucket truck is not required**, the shoulder or sidewalk should suffice and enable Flock Safety to proceed without traffic control systems in place.
 - Note: In some states (i.e., arrow boards), sidewalks may require signage. If signage is mandatory, Will your Public Works department be able to assist?

5. Paperwork & Required Forms

- Flock Safety will need copies of paperwork to complete before proceeding (ex., business license applications, encroachment permit applications). We can save critical time by gathering these documents upfront. We appreciate your assistance in procuring these.

6. Contacts

- If Flock Safety needs to interface directly with the departments, please share the contact information of the following departments:
 - Permitting
 - Public Works
 - Traffic Department

***Fee Schedule**

After a deployment plan with Designated Locations and equipment has been agreed upon by both Flock and the Customer, any subsequent changes to the deployment plan ("Reinstalls") driven by a Customer's request will incur a fee per the table below.

What Services Incur Fees:

- Requested relocations post-approval by customer
- Relocations due to poor performance will be the responsibility of Flock
 - If a customer requests a location against the advisement of Flock, performance issues and any requested relocations will be the responsibility of the customer.
- Per the contract and absent a defect, in the event that Flock Hardware is lost, stolen, or damaged, Customer may request that Flock replace the Flock Hardware at a fee according to the then-current Reinstall policy
<https://www.flocksafety.com/reinstall-fee-schedule>
- Misc billables for out of scope items for each implementation

Incurred Fees:

- Camera relocation
 - Existing infrastructure (non-AC powered)..... **\$350**
 - Flock pole (non-AC powered)..... **\$750**
 - Advanced pole (non-AC powered)..... **\$5000**
- Replacements
 - Camera only as a result of vandalism, theft, or damage **\$800**
 - Pole replacement only as a result of vandalism, theft, or damage
 - Flock pole **\$500**
 - Advanced pole **\$5000**
 - Full replacement as a result of vandalism, theft, or damage
 - Flock pole, camera, and solar (non-AC Powered)..... **\$1300**
 - Advanced pole, camera, and solar (non-AC Powered)..... **\$5800**

- Trip charge\$350
 - Examples:
 - Angle adjustment (elective)
 - Install additional Flock signage

All fees are per reinstall or required visit (in the case that a reinstall is attempted but not completed) and include labor and materials. If you have any questions, please email support@flocksafety.com.

Help Center

Our Help Center is filled with many resources to help you navigate through the online platform. Below you will find some common questions and their relevant help article:

[How do I search camera footage?](#)

[How do I add a user?](#)

[How do I add a vehicle to my own Hot List?](#)

[How do I enable browser notifications for Hot List alerts?](#)

[How do I get text alerts for Hot List?](#)

[How do I request camera access from other nearby agencies?](#)

[How do I use the National Lookup to search for a plate?](#)

(National Lookup - network of law enforcement agencies that have opted to allow their network of Flock cameras to be used for searches)

[How do I reset my / another user's password?](#)

Customer Support

You can reach our customer support team anytime by emailing support@flocksafety.com. They can help answer any “How-To” questions you may have.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 2023	FILE I.D.:	EDD100
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ECONOMIC DEV.
ITEM NO.:	4	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-94 WITH UNIVERSITY ENTERPRISES CORPORATION AT CALIFORNIA STATE UNIVERSITY SAN BERNARDINO (INLAND EMPIRE SMALL BUSINESS DEVELOPMENT CENTER) FOR THE LEASE OF A CITY-OWNED FACILITY, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-94 with the University Enterprises Corporation at California State University San Bernardino, commonly known as the Inland Empire Small Business Development Center (IESBDC), for the lease of office space in a City-owned facility, to serve as a satellite office for IESBDC.

A copy of proposed Agreement No. 23-94 with University Enterprises Corporation is attached for the City Council's review and consideration.

BACKGROUND: In 2006, the former Montclair Redevelopment Agency purchased the property located at 9916 Central Avenue (the property), which served as the former Neighborhood Partnership Housing Services (NPHS) administrative office, with the intent of using the property to serve as administrative offices for several Human Services programs. After an extensive rehabilitation of the property, the City of Montclair entered into a lease agreement with Ontario-Montclair School District (OMSD) for lease of the property as a Family Resource Center to provide for case management and counseling services.

OMSD staff recently notified the City of their intent to terminate the lease agreement, as they plan to relocate the Family Resource Center to their central campus offices.

As such, City staff reached out to the Montclair Chamber of Commerce to see if the Chamber was interested in leasing the property to serve as their main office. On October 16, 2023, the City Council approved Agreement No. 23-77 with the Montclair Chamber of Commerce for lease of the 9916 Central Avenue Property.

In addition, staff reached out to IESBDC to see if they were also interested in leasing office space in the property to serve as a satellite office. Last year, the City entered into Agreement No. 22-95 with the IESBDC to provide technical assistance and outreach services to small businesses in the City of Montclair.

By having both the Montclair Chamber of Commerce and the Inland Empire Small Business Development Center located at the same location, the property would serve as a one-stop shop for the small business community to access resources to help their businesses grow and thrive.

Proposed Lease Agreement No. 23-94

Proposed Agreement No. 23-94 would be a lease agreement between the City of Montclair and the Inland Empire Small Business Development Center (IESBDC) for lease of the City-owned facility located at 9916 Central Avenue to serve as a satellite office.

The more salient terms of Proposed Agreement No. 23-94 include the following:

- The term of the lease shall be for one year, with the option to extend the lease for four additional successive one-year terms under terms that are mutually satisfactory to both the City of Montclair and the IESBDC
- The IESBDC shall pay \$1.00 rent per year to the City of Montclair.
- The IESBDC agrees to use the property only for a professional office and instructional activities in connection with the mission of the IESBDC and for no other purposes.
- The IESBDC would lease one 144 sq. ft. room to serve as their satellite office and shall have the non-exclusive right to use the living room, hallway, kitchen, restrooms, and front yard and backyard areas of the property in addition to the their leased space of one 144 sq. ft. room.

FISCAL IMPACT: Adoption of proposed Agreement No. 23-94 would allow for the Inland Empire Small Business Development Center to lease the City-owned facility at 9916 Central Avenue at the rate of \$1.00 annually. The City of Montclair would continue to be responsible for all maintenance of the property including the grounds and facilities and utilities costs.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 23-94 with the University Enterprises Corporation at California State University San Bernardino (Inland Empire Small Business Development Center) for the lease of a City-owned facility, subject to any revisions deemed necessary by the City Attorney.

CITY OF MONTCLAIR

LEASE AGREEMENT

This City of Montclair Lease Agreement ("Lease"), is made and entered into as of December 18, 2023 (the "Commencement Date"), by and between the City of Montclair, a California Municipal Corporation, with its principal place of business located at 5111 Benito Street, Montclair, California, 91763 ("Landlord" or "City"), and University Enterprises Corporation ("CSUSB"), a 501(c)(3) non-profit corporation for itself and on behalf of Inland Empire Center for Entrepreneurship/Inland Empire Small Business Development Center, with its principal place of business located at 5500 University Parkway, Jack Brown Hall, Room 284, San Bernardino, California, 92407 ("Tenant"). Landlord and Tenant are each sometimes referred to herein individually as a "Party," and collectively as the "Parties."

RECITALS

This Lease is made with reference to the following facts:

A. Landlord is the owner of that certain real property consisting of an approximately 1,311 square foot single-story building that is located at 9916 Central Avenue, Montclair, California, 91763 including fixtures and furniture therein, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property"). Except as expressly provided to the contrary in this Lease, reference to the Property is to the described land, together with all fixtures, furniture and improvements.

B. Landlord desires to lease a portion of the Property to Tenant and Tenant desires to lease a portion of the Property from Landlord, as more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference ("Leased Space") on the terms and conditions set forth in this Lease.

C. Landlord's entry into this Lease will benefit the health, safety, welfare and morals of the citizens of the City because Tenant's business operations at the Property will bring valuable technical assistance services including, but not limited to, free one-on-one consulting and low cost employment training, to small businesses in the City on a full-time basis. Employment and life skills resources are critical to the community's health, safety and welfare during the current economic conditions. In this way, Tenant will attract and improve the quality of small businesses within the City and thereby contribute to the City's economic base ("Tenant's Mission").

D. Landlord's entry into this Lease will also help the City Council of the City (the "City Council") achieve its goals of creating quality jobs and employing the local workforce, which the City Council believes will foster a desirable and complete community by enhancing life for current residents, and attracting new residents and investment. In addition to creating quality jobs and employing the local work force, this Lease will also help the City Council achieve its goals of: investing in the growth and evolution of the City's economy; operating in a businesslike manner; focusing resources in Montclair's commercial and residential neighborhoods; and encouraging, providing or supporting enhanced recreational, educational, cultural

and healthy City programs, policies and activities. All of these goals are intended to improve and revitalize the City and benefit current and future local residents and businesses.

LEASE

NOW, THEREFORE, in consideration of the above recited facts, the mutual covenants set forth in this Lease and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF RECITALS

The foregoing recited facts are true and correct and are incorporated into this Lease by this reference, as if restated in full.

2. LEASE

For and in consideration of the Rent (as defined below), and the conditions, covenants and agreements set forth in this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Leased Space on the terms and conditions set forth in this Lease.

3. TERM

3.1 **Term of the Lease.** Unless earlier terminated or extended, the term of this Lease ("Term") shall be one (1) year commencing on the Commencement Date and expiring on June 30, 2024 ("Expiration Date"). If Tenant fails to vacate the Leased Space on the Expiration Date, or whatever later date is agreed to upon Tenant's exercise of the Option (defined in Section 3.2 below), or within the required time frame after this Lease is earlier terminated by Tenant, without Landlord's written consent, Tenant's holdover tenancy shall be a month-to-month tenancy, for a rental amount equal to the fair market rent for the Lease Space as determined by an appraiser to be designated by City, on all other terms and conditions of this Lease, until either Party terminates Tenant's holdover tenancy.

3.2 **Option to Extend.** If Tenant is not in default under this Lease at the Expiration Date, and the Lease has not been earlier terminated, Tenant shall have the option to request that Landlord extend this Lease for four (4) additional, successive one (1)-year terms under terms that are mutually satisfactory to both Parties ("Option"). If Tenant wishes to exercise this Option, Tenant shall, as to each option to extend by one year, not less than ninety (90) days prior to the Expiration Date of this Lease, provide Landlord with a written 90-day notice of Tenant's interest in negotiating the terms for extension of this Lease. Landlord shall have the right to grant or deny Tenant's request in its sole discretion.

4. RENT

4.1 **Rent.** Tenant shall pay rent to Landlord annually, without notice, demand or offset, in the sum of one (\$1.00) dollar per year ("Rent"). Rent shall be

paid by Tenant on the Commencement Date and thereafter annually on the anniversary of the Commencement Date for each year that the Lease continues.

4.2 **Dishonored Check.** In the event that any check or other instrument of payment given by Tenant to Landlord is dishonored for any reason, Landlord may charge a fee of twenty-five dollars (\$25.00) for each such check or other instrument that is dishonored.

5. USE OF THE PROPERTY

5.1 **Use of the Property.** Tenant shall have the right and Tenant covenants and agrees to use the Property only for professional office and instructional activities in connection with Tenant's Mission and for no other purposes, without the express, prior written approval of Landlord. Tenant shall not occupy or use, or permit all or any part of the Property required to be occupied or used, for any unlawful or illegal business, use or purpose, nor for any business, use or purpose that is disreputable or extra-hazardous. Tenant shall immediately upon discovery of any such unlawful, illegal, disreputable or extra-hazardous use, take all necessary steps, legal and equitable, to compel the discontinuance of such use and immediately remove occupants or other persons guilty of such unlawful, illegal, disreputable or extra-hazardous use from the Property.

5.2 **Management of Common Areas.** Tenant shall have the non-exclusive right to use living room, hallway, kitchen, restrooms, and front yard and backyard areas ("Common Areas") of the Property in addition to the Leased Space.

5.3 **Parking.** Tenant shall be provided with one designated parking spot on the Property and may not use any other designated parking spot on the Property. The designated parking space shall be deemed to constitute part of the Leased Space for purposes of this Lease.

5.4 **Management of the Property.** The Property shall be managed or caused to be managed by the Landlord, excepting that Tenant shall be responsible for maintenance and the conduct of operations on the Leased Space..

5.5 **Waste and Nuisance.** Tenant shall not commit or allow any waste on or about the Property, nor commit, allow or maintain any public or private nuisance on or about the Property, or impairment of the Property, or any part thereof.

5.6 **Compliance with Laws. Rules. Regulations.** Tenant shall at all times comply with all requirements of local, state and federal laws, rules, orders and regulations now in force or which may be in force and such rules as may be established from time to time by Landlord in relation to the Leased Space ("Regulations") at any time during the Term. As part of complying with the Regulations, Tenant shall obtain, at Tenant's sole cost and expense, all licenses, permits and approvals that the Regulations require for the use or operation of the Property. Tenant shall maintain all required licenses, permits and approvals throughout the Term of this Lease

5.7 **Obligation to Refrain from Discrimination.** Tenant shall not discriminate against any person, or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property.

5.8 **Condition of Property.** Tenant acknowledges that it intends to and will occupy the Property on the Effective Date in its AS-IS condition, as of the Effective Date. Tenant acknowledges and agrees that Landlord has made absolutely no representations, guarantees or warranties regarding the Property, nor has Landlord made representations, guarantees or warranties regarding whether the Property and Improvements (as defined in Section 8.1) comply with applicable covenants and restrictions of record, building codes, ordinances or statutes in effect on the Effective Date.

5.9 **Assumption of Risk, Waiver, and Landlord's Non-liability.** To the maximum extent allowed by law, except for Landlord's willful misconduct or grossly negligent acts, Tenant assumes any and all risk of loss, damage or injury of any kind to any person or property that is on or about the Property. Tenant's assumption of risk shall include, without limitation, loss or damage caused by defects within the Property or any Improvements (as defined in Section 8.1), accident, fire or other casualty on or about the Property. To the maximum extent allowed by law, except for Landlord's willful misconduct or grossly negligent acts, Tenant hereby waives all claims and demands against Landlord, its elected officials, officers, employees, volunteers, consultants and agents for injury to persons, damage to property or any other interest of Tenant sustained by Tenant or any other person claiming through Tenant and resulting from any occurrence on or about the Property.

Tenant has been advised by its legal counsel concerning the content and effect of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In reference to the waivers set forth in this Section, Tenant hereby waives the benefits of Civil Code Section 1542 and all other state or federal statutes, legal principles, or judicial decisions of the same or similar effect. The provisions of this Section shall survive the expiration or termination of this Lease.

5.10 **Hazardous Materials Prohibited.** The use, generation, storage or disposal of "Hazardous Materials" (defined below) on the Property is strictly prohibited, and any such use, generation, storage, or disposal shall result in a default and termination of this Lease. For the purpose of this section, "Hazardous Materials" means substances defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "extremely hazardous wastes," or "restricted hazardous wastes," or stated to be known to cause cancer or reproductive toxicity, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. sections 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. sections 6901, et seq.; the Federal Water Pollution Control

Act, 33 U.S.C. sections 1317, et seq.; sections 25115, 25117, 25122.7, 25140, 25249.5, 25249.8, 25281, 25316 or 25501 of the California Health & Safety Code; or any substance so defined or stated in any of the regulations adopted and publications promulgated pursuant to said laws as they may be amended from time to time.

5.11 **Taxable Possessory Interests.** If the County of San Bernardino determines that this Lease creates a taxable possessory interest pursuant to Revenue Taxation Code Section 107, Tenant shall be solely responsible for the payment of property taxes (with respect to such possessory interest).

5.12 **Quiet Enjoyment.** The Parties hereto mutually covenant and agree that Tenant, by keeping and performing the covenants herein contained, shall at all times during the Term of this Lease peaceably and quietly have, hold and enjoy the Leased Space.

6. RIGHTS OF ACCESS; PUBLIC IMPROVEMENTS AND FACILITIES

Landlord at its sole risk and expense, reserves the right to enter or authorize its agents to enter the Property or any part thereof at all reasonable times and with as little interference as possible, for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Property. Any such entry shall be made only after reasonable notice to Tenant, and Landlord or such other agent shall indemnify, defend and hold Tenant harmless from any claims or liabilities by their respective agents that arise out of Landlord's entrance on the Property and not caused by Tenant's sole willful misconduct or gross negligence. Landlord and such other agent shall make all reasonable efforts to keep any inconvenience, annoyance, disturbance or loss of business to a minimum. Ninety (90) days prior to the end of the Term of this Lease, Landlord shall have the right to show the Property to prospective lessees in its discretion.

7. UTILITIES, LIENS AND OTHER CHARGES

7.1 **Utilities.** Landlord agrees to pay or cause to be paid, as and when they become due and payable, all charges for water, gas, light, heat, telephone, electricity and other utility and communication services rendered or used on or about the Property at all times during the Term of this Lease.

7.2 **Other Liens.** Tenant shall not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any mortgage, lien, encumbrance or charge on or pledge of the Property or any part thereof, or Tenant's interest therein, or the rent, additional rent or other sums payable by Tenant under this Lease. Tenant shall notify Landlord promptly of any lien or encumbrance which has been created on or attached to the Property, or to Tenant's leasehold estate therein, whether by act of Tenant or otherwise. The existence of any mechanic's, laborer's, materialmen's, supplier's or vendor's lien, or any right in respect thereof, shall not constitute a violation of this Section if payment is not yet due upon the contract or for the goods or services in respect of which any such lien has arisen.

8. OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS

8.1 **Ownership during Term and at Termination.** All improvements on the Property, whether existing thereon at the Commencement Date or constructed or installed by Tenant or Landlord as permitted or required by this Lease ("Improvements"), shall, during the Term of this Lease, be and remain the property of Landlord. Tenant shall have no right at any time to waste, destroy, demolish or remove any of the Improvements. Tenant shall not engage in any improvements to or demolition of improvements to the Property. Tenant's rights and powers with respect to the Improvements are subject to the terms and limitations of this Lease. Landlord and Tenant covenant for themselves and all persons claiming under or through them that the improvements are real property.

8.2 **Ownership of Fixtures and Furnishings at Termination.** On the Expiration Date or sooner termination of this Lease, Landlord may, at Landlord's election, demand the removal from the Leased Space or the Property of all of Tenant's fixtures, equipment and furnishings, or of certain fixtures, equipment or furnishings, as specified in the notice provided for below at Tenant's sole cost and expense. A demand to take effect on the Expiration Date shall be effectuated by notice given at least three (3) months before the Expiration Date. A demand to take effect on any other termination date of the Lease shall be effectuated by notice given concurrently with the notice of termination or within a reasonable period after such termination.

Any of Tenant's fixtures, equipment and furnishings not specified by Landlord to be removed, and, at Landlord's election, any fixtures, equipment and furnishings specified for removal by Landlord that are not removed by Tenant within thirty (30) days following the Expiration Date or other termination date shall be deemed abandoned by Tenant and shall, without compensation to Tenant, then become Landlord's property, free and clear of any and all claims to or against them by Tenant or any third person, and may be retained, removed, sold, destroyed or otherwise disposed of by Landlord in Landlord's sole discretion.

Tenant shall defend, indemnify and hold harmless Landlord from and against any and all liability and loss arising from any such claims or from Landlord's exercise of the rights conferred by this Section.

8.3 **Alteration of Improvements.** Tenant shall not make or permit to be made any alteration or addition to the Property, nor demolish all or any part of the Property or Improvements.

8.4 **Damage or Destruction.** Tenant agrees to give notice to Landlord of any fire or other damage that occurs on the Property or the Improvements within five (5) days after such fire or damage. Except as otherwise provided in Section 13.3, if the Improvements shall be damaged or destroyed by any cause which puts the Improvements into a condition which is not decent, safe and sanitary, Tenant agrees to make or cause to be made full repair of said damage and to restore the Improvements to the condition which existed prior to said damage, or Tenant agrees to clear and remove from the Property all debris resulting from said damage and rebuild the Improvements in accordance with plans and specifications previously

submitted to Landlord and approved in writing in order to replace in kind and scope the Improvements which existed prior to such damage; provided, however, that Tenant's liability pursuant to this Section shall be limited to the extent of available proceeds from Tenant's insurance coverage maintained pursuant to Section 12.1.

8.5 **Indemnification: Notice of Non-responsibility.** Tenant agrees to hold Landlord, its elected officials, officers, employees, volunteers or agents free and harmless, and indemnify Landlord against all claims, liabilities, costs and expenses, for labor and materials in connection with all construction, repairs or alterations on the Property and the Improvements performed by Tenant, Tenant's agent or at Tenant's direction pursuant to this Section 8 and the cost of defending against such claims, including reasonable attorneys' fees.

Landlord shall have the right to post and maintain on the Property and the Improvements any notice of non-responsibility provided for under applicable law.

9. MAINTENANCE

9.1 **Maintenance and Repair of the Property.** Landlord shall assume full responsibility for the operation and maintenance of the Leased Space and the Improvements throughout the Term of the Lease without expense to Tenant unless otherwise specified herein, and shall keep the Leased Space and Improvements, and perform all maintenance and repairs necessary to maintain and preserve the Leased Space and Improvements, in good and clean condition and repair and in a clean, safe and sanitary manner and in compliance with all applicable laws, rules and regulations. Landlord agrees that Tenant shall not be required to perform any maintenance, repairs, or services or to assume any expense not specifically assumed herein in connection with the Property and the Improvements.

9.2 **Capital Improvements.** Notwithstanding anything contained in this Lease to the contrary, Landlord shall be responsible for all capital replacements and improvements deemed necessary by Landlord to maintain and preserve the Leased Space and Improvements in Landlord's sole discretion, provided, however, this obligation shall not relieve Tenant of the obligation to make such replacements or improvements if they are necessitated by damage caused by Tenant. For the purposes of this Lease, a capital replacement or improvement shall mean a replacement or improvement that has a useful life of longer than ten (10) years. That notwithstanding, Landlord shall have the right, in lieu of making any such capital replacement or improvement, to terminate this Lease on ninety (90) days notice to Tenant.

10. ASSIGNMENT, SUBLETTING, TRANSFER

Tenant shall not assign or attempt to assign this Lease or any right herein, nor make any total or partial conveyance, assignment, sublease or transfer in any other mode or form of the whole or any part of the Leased Space or the Improvements, without prior written approval of Landlord. Such approval may only be given by Landlord if: (a) such conveyance, assignment, sublease or transfer is deemed by Landlord to be in Landlord's best interests; (b) the proposed conveyee, assignee,

sublessee or transferee has, in the opinion of Landlord, the financial capability and overa11 competence to develop and operate the conveyed, assigned, subleased or transferred obligations and premises; and (c) all rent or other consideration that Tenant charges or receives from the proposed conveyee, assignee, sublessee or transferee or as a result of the conveyance, assignment, sublease or transfer of this Lease, that is greater than the Rent paid by Tenant to Landlord under this Lease, shall be immediately remitted to Landlord. Approval by Landlord of any conveyance, assignment, sublease or transfer shall be conditioned upon such conveyee, assignee, sublessee or transferee agreeing in writing to assume the rights and obligations thereby conveyed, assigned, subleased or transferred and to keep and perform all covenants, conditions and provisions of this Lease which are applicable to the rights acquired.

In the absence of specific written agreement by Landlord, no such conveyance, assignment, sublease or transfer of this Lease or the Leased Space or the Improvements (or portion thereof), or approval by Landlord of any such conveyance, assignment, sublease or transfer shall be deemed to relieve Tenant or any other party from any obligations under this Lease.

11. MORTGAGES

Tenant shall have no right to mortgage, pledge, deed in trust or otherwise encumber this Lease, or the interest of Tenant hereunder, and to assign or pledge the same as security for any debt.

12. INDEMNIFICATION

With the exception of any default on behalf of the Landlord under this Lease (including but not limited to a breach of Quiet Enjoyment, willful misconduct or gross negligence), Tenant shall defend, indemnify and hold harmless Landlord, its elected officials, officers, employees, volunteers and agents (each an "Indemnified Party") from and against any and all claims or demands for loss or damage, including, without limitation, property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of the Property by Tenant, officers, officials, agents, contractors, employees, guests or invitees; any willful or negligent act (whether active or passive) or omission of Tenant, officers, officials, agents, contractors, employees, guests or invitees; any accident or fire on the Property; any nuisance made or suffered thereon; and any failure by Tenant to keep the Property in a safe condition; and the breach, default, violation or nonperformance of this Agreement by Tenant. Tenant shall pay, satisfy and discharge any and all money judgments that may be recovered against any Indemnified Party, including attorney's fees and costs of litigation, in connection with the foregoing. Tenant's obligations under this Section shall survive termination of this Lease, and shall not be restricted to insurance proceeds, if any, received by Tenant or any Indemnified Party. Tenant shall not be obligated to defend, indemnify or hold harmless any Indemnified Party to the extent any claim, loss, action, damage, liability, or expense (including attorneys' fees) is ultimately determined to be the result of the gross negligence or willful misconduct of such Indemnified Party.

13. INSURANCE

From the Commencement Date and for the duration of the Term of this Lease and any holding over by Tenant, Tenant shall secure and maintain, at its own expense, insurance against claims for injuries to persons or damages to property that may arise out of or in connection with the possession, use, occupancy, management, operation, repair, maintenance or control of the Leased Space by Tenant and/or its officers, officials, agents, contractors, employees, guests or invitees as follows:

13.1 Minimum Scope and Limits of Coverage: (1) "All Risk" property insurance covering the full replacement value of the Property but not less than \$750,000; (2) Comprehensive General Liability insurance using Insurance Services Office Commercial General Liability occurrence form number CG 0001 or exact equivalent in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage including contractual liability and (\$4,000,000) aggregate total bodily injury, personal injury, and property damage; (3) Automobile Liability insurance using Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto) or exact equivalent in an amount not less than one million dollars (\$1,000,000) per accident for bodily injury and property damage; and (4) Workers' Compensation and Employer's Liability as required by the State of California and Employer's Liability Insurance, with workers compensation limits as required by California law and Employers Liability Limits of one million dollars (\$1,000,000) per accident for bodily injury or disease.

13.2 Insurance Endorsements. The insurance policies shall contain the following provisions, or Tenant shall provide endorsements on forms supplied or approved by Landlord to add the following provisions to the insurance policies:

13.3 General and Automobile Liability. Each general liability and automobile liability policy shall be endorsed to state that: (A) Landlord, its elected officials, officers, employees, volunteers and agents shall be covered as additional insureds with respect to the possession, use, occupancy, management, operation, repair, maintenance or control of the Property by Tenant and its officers, officials, agents, representatives, volunteers, employees, guests or invitees; and (B) the insurance coverage shall be primary insurance with respect to Landlord, its elected officials, officers, employees, volunteers and agents, or if excess, shall stand in an unbroken chain of coverage excess of Tenant's scheduled underlying coverage. Any insurance or self-insurance maintained by Landlord, its elected officials, officers, employees, volunteers and agents shall be excess of Tenant's insurance and shall not be called upon to contribute with it.

13.4 Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against Landlord, its elected officials, officers, employees, volunteers and agents for losses paid under the terms of the insurance policy that arise from work performed by Tenant.

13.5 All Coverage. Each insurance policy required by this Lease shall not be canceled or materially changed without first giving thirty (30) days prior written notice to Landlord.

13.6 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating no less than A: VII, licensed and admitted to do business in California, and satisfactory to Landlord.

13.7 **Verification of Coverage.** Tenant shall furnish Landlord with original certificates of insurance and endorsements affecting coverage required by this Lease on forms satisfactory to Landlord. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by Landlord, if requested. All certificates and endorsements must be received and approved by Landlord. Landlord reserves the right to require complete, certified copies of all required insurance policies, at any time.

14. DEFAULTS, REMEDIES AND TERMINATION

14.1 **Defaults - General.** Failure or delay by either Party to perform or comply with any condition or provision of this Lease constitutes a default under this Lease, and grounds for termination. Upon the occurrence of a default, the injured Party shall give written notice of default to the Party in default, specifying the default complained of by the injured Party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement to the non-defaulting Party's satisfaction, the non-defaulting Party may thereafter terminate this Lease and/or commence an action for damages, specific performance or any other remedy available in law or equity against the defaulting Party with respect to such default, without liability for any reason or under any theory in connection with such termination, and without creating any right to recovery of damages of any kind or nature in the non-defaulting Party.

14.2 **Enforced Delay in Performance for Causes Beyond Control of Party.** Performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor or supplier; acts of the other Party; acts or failure to act of any public or governmental agency or entity (other than any act or failure to act of Landlord, which shall not excuse performance by Landlord) or any other cause beyond the control or without the fault of the party claiming an extension of the time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Lease may also be extended in writing by Tenant and Landlord. Notwithstanding the foregoing, there shall be no extensions by virtue of enforced delay in relation to payment of Rent.

14.3 **Damage or Destruction of Property.** If during the Term of this Lease, any portion of the Property is damaged by fire or other catastrophic cause, so as to render such portion of the Property untenable, the obligations under this Lease may be suspended while such portion of the Property remains untenable. In the event of such damage, Tenant shall give Landlord notice of such untenable condition and the Landlord shall elect in its sole discretion, whether to repair the Property (if damaged by Tenant or an invitee of Tenant) or to cancel this Lease with respect thereto. Landlord shall notify Tenant in writing of its election within thirty (30) days after service of notice by Tenant. In the event that Landlord elects not to repair the Property or portion thereof, this Lease shall be deemed cancelled as of the date the damage occurred with respect to the untenable portion(s) of the Property. If this Lease is cancelled pursuant to this Section, Landlord shall not be liable to Tenant for any reason or under any theory and Tenant shall not be entitled to recover damages of any kind or nature from Landlord.

Additionally, if during the Term, any portion of the Property is damaged by fire or other catastrophic cause, so as to render such portion of the Property untenable, then Tenant can elect in writing to cancel this Lease with respect to the untenable portion(s) of the Property by providing written notice of its election to Landlord within thirty (30) days of the damage.

14.4 **Additional Remedies of Landlord.** In addition to the foregoing, if Tenant defaults with regard to any of the provisions of this Lease, and fails to cure such default to Landlord's satisfaction as provided in Landlord's notice to Tenant, Landlord, at its option, may thereafter (but not before), to the extent permitted by law: correct or cause to be corrected said default and charge the costs therefor to the account of Tenant; and/or correct or cause to be corrected said default and pay the costs thereof from the proceeds of any insurance.

14.5 **Landlord's Re-Possession of Property.** In the event that Landlord terminates this Lease, Landlord shall have the right to re-enter and repossess the Property without process of law, and Tenant, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Property peaceably to Landlord immediately upon such termination in good order, condition and repair, except for reasonable wear and tear.

No ejectment, re-entry or other act by or on behalf of Landlord shall constitute a termination unless Landlord gives Tenant notice of termination in writing. Such termination shall not relieve or release Tenant from any obligation incurred pursuant to this Lease prior to the date of such termination.

Termination of the Lease under this Section shall not relieve Tenant from the obligation to pay any sum due to Landlord or from any claim for damages against Tenant.

The right of termination provided by this Section is not exclusive and shall be cumulative to all other rights and remedies possessed by Landlord, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which Landlord may be entitled.

14.6 **Acknowledgment of Adequacy of Relocation Benefits Paid.** If either Party terminates this Lease for any reason contemplated or authorized by this Section 14 or any other Section of the Lease, Tenant hereby expressly, knowingly and voluntarily waives any and all rights, benefits and/or assistance it may be entitled to receive from Landlord due to such termination, including, without limitation, loss of goodwill, inverse condemnation, or relocation assistance as provided for in California Government Code sections 7260, et seq. and 42 U.S.C. section 4601, et seq.

Tenant has been advised by its legal counsel concerning the content and effect of California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In reference to the waiver set forth in this Section, by its initials below, Tenant waives the benefits of Civil Code Section 1542 and all other state or federal statutes, legal principles, or judicial decisions of similar effect. This provision shall survive the expiration or termination of this Lease.

15. LEGAL ACTIONS

Institution of Legal Actions. In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal action must be instituted in the Superior Court of the County of San Bernardino, State of California, or in the Federal District Court in the Central District of California.

15.1 **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Lease.

15.2 **Acceptance of Service of Process.** In the event that any legal action is commenced by Tenant against Landlord, service of process on Landlord shall be made by personal service upon the City Clerk, or in such other manner as may be provided by law.

In the event that any legal action is commenced by Landlord against Tenant, service of process on Tenant shall be made by personal service upon an officer and/or member of Tenant and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

15.3 **Attorneys' Fees and Court Costs.** In the event that either Landlord or Tenant shall bring or commence an action arising out of or in connection with this Lease the prevailing Party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

16. GENERAL PROVISIONS

16.1 **Notice.** All notices, demands and communications between Landlord and Tenant under this Lease 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 Landlord: Mikey Fuentes, Dir. of Economic Development
City of Montclair
5111 Benito Street
Montclair, CA 91763

To Tenant: Dina Trujillo
University Enterprise Corporation at CSUSB
5500 University Parkway
Jack Brown Hall, Room 284
San Bernardino, California 92407

16.2 **Time of Essence.** Time is of the essence with respect to the performance of each and every provision of this Lease.

16.3 **Conflict of Interests.** No elected official, officer, contractor, agent or employee of Landlord shall have any personal interest, direct or indirect, in this Lease, nor shall any such elected official, officer, contractor, agent or employee participate in any decision relating to the Lease which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. Tenant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

16.4 **Non-liability of Landlord Officials and Employees.** No elected official, officer, contractor, agent or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or successor or on any other obligation under the terms of this Lease.

16.5 **Inspection of Books and Records.** Landlord has the right at all reasonable times to inspect the books and records of Tenant pertaining to its operations on the Property as pertinent to the purposes of this Lease. Tenant also has the right at all reasonable times to inspect the books and records of Landlord pertaining to the Property as pertinent to the purposes of this Lease.

16.6 **Entry and Inspection of Property.** Landlord shall have the right at all reasonable times to enter the Property for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Property and the Improvements or to inspect the operations conducted thereon. Any such entry shall

be made only after reasonable notice to Tenant. In the event that such entry or inspection by Landlord discloses that the Property or the Improvements are not in a decent, safe, and sanitary condition, are damaged, or in disrepair, Landlord shall have the right, after thirty (30) days written notice to Tenant, to have any necessary maintenance or repair work done for and at the expense of Tenant and Tenant hereby agrees to pay promptly any and all costs incurred by Landlord in having such necessary maintenance or repair work done in order to keep the Property and the Improvements in a decent, safe and sanitary condition. The rights reserved in this Section shall not create any obligations on Landlord or increase any obligations imposed on Landlord elsewhere in this Lease.

16.7 **No Partnership.** Neither anything in this Lease contained, nor any acts of Landlord or Tenant shall be deemed or construed by any person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between Landlord and Tenant.

16.8 **No Third-Party Beneficiaries.** There are no intended third-party beneficiaries of any right or obligation assumed by the Parties under this Lease.

16.9 **Compliance with Law.** Tenant agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force of all municipal, county, state and federal authorities, pertaining to the Property, as well as operations conducted thereon; and to faithfully observe and secure compliance with, in the use of the Property, all applicable city, county and municipal ordinances, rules and regulations and all state and federal statutes, rules, orders and regulations now in force or which may hereafter be in force, including all laws prohibiting discrimination or segregation in the use, sale, lease or occupancy of the property. The judgment of any court of competent jurisdiction, or the admission of Tenant or any sublessee or permittee in any action or proceeding against them, or any of them, whether Landlord be a party thereto or not, that Tenant, sublessee or permittee has violated any such law, rule, order or regulation in the use of the Property shall be conclusive of that fact as between Landlord and Tenant.

16.10 **Waiver.** Any failure or delay by either Party in asserting any of its rights and remedies under this Lease shall not operate as a waiver of any default or of any such rights or remedies. Delays by either Party in asserting any of its rights and remedies shall not deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

16.11 **Rights and Remedies Are Cumulative.** The rights and remedies of the Parties under this Lease are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

16.12 **Severability.** If any provision of this Lease shall be adjudged invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Lease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

16.13 **Binding Effect.** This Lease, and the Terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

16.14 **Counterparts.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the fully executed Lease.

16.15 **Authority to Enter Lease.** Each Party warrants that the individual who has signed this Lease on its behalf has the legal power, right, and authority to make this Lease and bind each respective Party thereto.

16.16 **Entire Agreement: Modifications.** This Lease constitutes the entire agreement between the Parties regarding the subject matter of this Lease, superseding all other agreements or understandings, whether written or oral. This Lease may not be modified or amended except in writing signed by the Parties. This Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, beneficiaries, successors and assigns.

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

LANDLORD

City of Montclair

By: _____
Tenice Johnson, Mayor Pro Tem

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

TENANT

University Enterprises Corporation at CSUB

By: _____
Diane Trujillo, Director

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

The following described real property, together with all improvements thereon:

TRACT 4212 LOT 1

APN: 1010-302-12-0000

EXHIBIT B
LEASE SPACE DESCRIPTION

Lease Space - A 144 square foot room, located at 9916 Central Avenue, Montclair, California, 91763, and depicted on the schematic immediately following this page. The Leased Space shall be deemed to include one parking space as designated by Landlord; the particular parking space available may be changed from time to time by Landlord with Landlord giving notice of any such changes to Tenant.

9916 Central Avenue
Property Layout





CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 2023	FILE I.D.:	CCK080
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	5	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-95 WITH NEXTREQUEST FOR THE USE OF ITS ONLINE PUBLIC RECORDS REQUEST MANAGEMENT SYSTEM, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-95 with NextRequest for the use of its online public records request management system.

BACKGROUND: The City Clerk's Office daily receives and responds to requests for public records. Since 2020, the City has experienced a 70 percent increase in the number of annual public records requests received, with an average in the past three years of over 200 requests per year. The current process for receiving, routing, tracking, and responding to requests for public records is partially decentralized and consists of the following steps:

1. The City Clerk's Office receives requests in the following ways: Public Records Request Form submitted via web form, email, mail, or at the counter; written request via email or letter; and verbally over the phone or at the counter.
2. The City Clerk's Office assigns each request a number and manually logs them into an Excel spreadsheet for tracking, in which the date of receipt, initial response deadline, requester's contact information, and notes are recorded.
3. If the request seeks records that are kept with one department, the City Clerk's Office routes the requests via email to the appropriate department to respond directly.
If multiple departments are involved in a single request, the City Clerk's Office collects all records and coordinates the response.
4. The City Attorney may review responsive records for redactions and exemptions.
5. The City Clerk's Office follows up with staff periodically via e-mail, phone, or in person, until receiving confirmation that each request has been fulfilled.

The number of requests the City receives annually has consistently increased over the past decade and requests are becoming more complex. Since 2020 alone, the City has experienced a 70 percent increase in the number of annual public records requests.

In recent years, the current decentralized process for tracking, routing, and responding to requests using a variety of different tools and software has proven to be inadequate for ensuring timely responses, especially with more frequent occurrences of staff being out of the office for unanticipated or long periods, and of those who manage their department's records retiring or leaving for other agencies. Due to these reasons, the City Clerk's Office has been exploring various public records request management solutions to facilitate better staff coordination and faster responses. Many cities have adopted the use of these platforms and state it has proven to increase the efficiency, reliability, and security of their response process.

Having such a system in place would facilitate continuity when experiencing staff turnover and unanticipated time off, both within the City Clerk's Office and among staff who manage each department's records. These systems provide a public-facing portal that's easy for the public to use; identify similar or common requests to prevent the redundancy of searching for the same records already provided through the system; and provide workflow tools to track and manage responses.

The City Clerk's Office researched companies that provide public records management solutions. Staff viewed demonstrations and received quotes for a one-year contract from three of the top public records management solution companies used by California cities: GovQA (by Granicus), NextRequest (by Civic Plus), and JustFOIA.

After reviewing cost proposals as well as feedback from other cities that use the platforms, staff determined that NextRequest was the most cost-effective, user-friendly option. The City already uses other services provided by Civic Plus like ArchiveSocial and Municode, so staff is familiar with the quality of service and support provided for its other platforms. Other nearby cities that use NextRequest are Chino and Chino Hills.

NextRequest has many features that will improve the process and save time, not only for staff but also for the public. Requests submitted through NextRequest are automatically routed to the correct department, and the form uses a live keyword search as the requester types their request that would direct them to the sought records that already exist on the City's website or were provided for a previous request. The Information Technology Department is also working on creating a public portal for certain documents through Laserfiche, which integrates with the NextRequest system and can reduce the number of requests for commonly requested documents like building permits.

FISCAL IMPACT: The cost of a one-year contract with NextRequest for a license to use its standard public records request management solution is \$10,788, plus a one-time setup fee of \$1,500, for a total cost of \$12,288. However, NextRequest is currently running a special for new customers through the end of the year. If approved before December 31, 2023, a 50 percent discount will be applied to the annual cost for a savings of \$6,144, and a total cost of \$6,144. The term of the contract would be from January 1, 2024, to December 31, 2024. If satisfied with the system after using it for a year, staff may seek a multi-year contract with the vendor to reduce the cost of annual increases.

Therefore, the City Council's approval of Agreement No. 23-95 would result in an expenditure of \$9,216 from the Special Contract Services Fund of the City Clerk's Office budget (Account No. 1001-4314-52450-400-00000). The account contains excess funds not anticipated to be fully utilized by the end of the fiscal year, which were budgeted for the records management system and retention schedule update, due to delays with the project.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 23-95 with NextRequest for the use of its online public records request management system, subject to any revisions deemed necessary by the City Attorney.

**NextRequest
Master Service Agreement**

This Master Service Agreement ("MSA"), together with the order form ("Order Form") executed between NextRequest and Customer, which is incorporated herein by reference, constitute a legally binding contract between NextRequest and Customer. The Order Form, together with this MSA is referred to as the "Agreement" or "Service Agreement".

"NextRequest" means NextRequest, LLC., a Delaware Corporation with principal offices at 212 W. Main St., Suite #500, Durham, NC 27701 and "Customer" means the entity or person identified as such in the Order Form. Each of NextRequest and Customer may each be referred to as a "Party" and together as the "Parties".

1. Defined Terms

- 1.1. "Business Day" or "Business Hours" means 9:00 a.m. – 6:00 p.m. Monday through Friday, U.S. Pacific time, excluding public holidays in the United States.
- 1.2. "Confidential Information" means all information disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party"), whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential, including information that is marked or otherwise conspicuously designated as confidential, and for NextRequest only, scripts and other tools used in the Service. Information that is (i) independently developed by either Party, without reference to the other's Confidential Information, (ii) is or becomes publicly available (through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee of the Receiving Party), (iii) was in its possession or known by it without restriction prior to receipt from the Disclosing Party, or (iv) becomes available to either Party without restriction other than through breach of the Agreement or applicable law, will not be "Confidential Information" of the other Party. The Receiving Party may make disclosures required by law or court order provided the Receiving Party uses diligent reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows the Disclosing Party to participate in the proceeding to the extent permitted by law.
- 1.3. "Customer Content" means any content (including without limitation data, text, audio, video, or images) that Customer provides or transfers to NextRequest for processing, storage or transmission in connection with Customer's use of the Service, including without limitation, public records requests Customer receives directly from Requesters and submits to the Service, as well as any public records results (including redacted versions of documents) that Customer provides, uploads, publishes, displays, transfers or otherwise makes available to NextRequest through its use of the Services. Customer Content does not include Usage Data collected from Customer or Requesters.
- 1.4. "Customer User" means a person authorized by Customer, such as a Customer employee, to use the Service on Customer's behalf. Customer User does not include Requesters.
- 1.5. "Hourly Services" means hourly support or training services to be provided by NextRequest under an applicable Order Form.
- 1.6. "Intellectual Property" or "IP" means all rights in, to, or arising out of: (i) any U.S., international or foreign patent or any application therefor and any and all reissues, divisions, continuations, renewals, extensions, continuations-in-part, utility models and supplementary protection certificates thereof; (ii) inventions (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information or materials, know-how, technology and technical data; (iii) copyrights, copyright registrations, mask works, mask work registrations, and applications therefor in the U.S. or any foreign country, and all other rights corresponding thereto throughout the world; (iv) trademarks, service marks, trade names, domain names, logos, trade dress, and all goodwill associated therewith; and (v) any other proprietary rights or a similar nature anywhere in the world.
- 1.7. "Prohibited Content" means content (i) that violates any third party's rights, including privacy or Intellectual Property rights; (ii) that is libelous, harassing, abusive, fraudulent, defamatory, excessively profane, obscene, abusive, hate related, violent, harmful to minors; (iii) that advocates racial or ethnic intolerance; (iv) intended to advocate or advance computer hacking or cracking;

(v) gambling; (vi) other illegal activity; (vii) drug paraphernalia; (viii) phishing; (ix) malicious content; and (x) other material, products or services that violate or encourage conduct that would violate any laws or third-party rights.

- 1.8. "Requester" means a person that uses the Service to make a public records request or to access or download publicly-available records.
- 1.9. "Requester Content" means information provided directly to NextRequest by a Requester. Requester Content does not include Usage Data collected from Requesters.
- 1.10. "Sensitive Information" means Confidential Information such as financial data, personal data, individually identifiable information about children, individually identifiable health information, geolocation information about specific people, Social Security numbers, driver's license numbers, other confidential ID numbers, financial account numbers, credit or debit card numbers, personal identification numbers (PINs) or passwords, street addresses, phone numbers or other personal information.
- 1.11. "Service" means NextRequest's integrated web-based service, which assists customers in responding to public records requests. The Service consists of a core web-based application and any optional modules which may be purchased by Customer. The details of the Service subject to this Agreement are set forth in the Order Form.
- 1.12. "Service Level Agreement" or "SLA" means the NextRequest Service Level Agreement attached as Exhibit A to this Agreement and incorporated by reference.
- 1.13. "Service Providers" means third-party providers of services that are part of the Service.
- 1.14. "Usage Data" means information other than Customer Content or Requester Content that is collected, directly or indirectly, from Customer or Requesters by or through the Service that specifically tracks the usage or performance of the Service, including information that incorporates or is derived from the processing, storage or transmission of information, data or content by or through the Service as well as any information, data or other content derived from NextRequest's or its Service Providers' monitoring of Customer's access to or use of the Service such as information reflecting the access or use of the Service by or on behalf of Customer or any Requester. All right, title, and interest in and to the Usage Data shall remain exclusively with NextRequest. Usage Data shall be considered the Confidential Information of NextRequest. NextRequest will employ commercially reasonable measures to ensure that access to Usage Data is not provided to any third party unless such entity has a need to know in order for NextRequest to perform its obligations under this Agreement. Notwithstanding anything else, Customer acknowledges and agrees that NextRequest may: (a) use Usage Data as necessary to provide Services under this Agreement, including for purposes of billing and providing reports to Customer; and (b) use and disclose Usage Data provided that it is aggregated in a manner that does not identify Customer, Customer's Users, or Requesters, and cannot be used to determine which portion of the aggregated data is related or attributable to Customer.

2. Services

- 2.1. **NextRequest Service.** During the term of this agreement, NextRequest will use commercially reasonable efforts to deploy, host, and maintain for Customer the Service further described in the Order Form.
- 2.2. **Service Level Agreement.** NextRequest will provide support for the Service according to the terms of the Service Level Agreement attached hereto as Exhibit A and incorporated by reference.
- 2.3. **Other Services.** If provided in the Order Form, NextRequest will provide Additional Services consistent with industry standards and according to the terms in the Order Form. Services such as setup or customer support will be provided during Business Hours, online, or by telephone, unless otherwise agreed to by the Parties.
- 2.4. **Excluded Services.** Unless expressly provided in the Order Form, NextRequest is not responsible for registering or maintaining domain names or DNS; hardware or software not provided as part of the Service; integration between the Service and any other software or system (except for issues originating with the Service or its interfaces); or providing direct support to Requesters.
- 2.5. **Security.** The Service is hosted by third-party Service Providers pursuant to agreements between NextRequest and such Service Providers. NextRequest maintains the level of security outlined in NextRequest's Security Policy ("Security Policy"), which is available at <https://www.nextrequest.com/compliance/security-policy>.

3. Intellectual Property and Licenses.

- 3.1. **Service.** The Service is protected by copyright, trademark, trade secret, and other intellectual property laws of both the United States and foreign countries. Except for the express licenses granted in this Section 3.1, NextRequest reserves all rights in the Service. As between Customer and NextRequest, NextRequest retains all and exclusive rights, title, and interest in and to the Service, including all Intellectual Property rights or moral rights in the Service related thereto or created, used, or provided by NextRequest for the purposes of this Agreement, and any products, works, software used to provide the Service to Customer. During the Term and conditioned upon Customer's compliance with all provisions of this Agreement, NextRequest hereby authorizes Customer to access and use the Service for purpose of accepting, responding to and managing public records requests and publishing responsive documents ("**Purpose**"), and grants to Customer a personal, limited, royalty-free, non-exclusive, non-assignable, non-sublicensable and non-transferable right and license to use the Service only for the Purpose. Customer shall not (and shall not permit any third party to) directly or indirectly (a) copy, modify, translate or create derivative works or improvements of the Service; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Service or any part or derivative thereof to any person; (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code, underlying ideas, algorithms, structure or organization of the Service, in whole or in part; or (d) defeat, bypass, breach, deactivate, or otherwise circumvent any security device or protection used by the Service or access or use the Service other than through the use of its own then valid access credentials.
- 3.2. **Customer Content.** As between Customer and NextRequest, Customer retains ownership of all Intellectual Property in Customer Content. Customer grants to NextRequest, its Service Providers and each of NextRequest's respective subsidiaries, affiliates, and successors a worldwide, non-exclusive, royalty-free, fully-paid-up, transferable, irrevocable, perpetual, unlimited, and sub-licensable right and license to use, host, store, cache, reproduce, publish, publicly display, perform, distribute, transmit, translate, publicly perform, adapt, modify, and otherwise fully use and exploit Customer Content, in all media now known or later developed, for the purpose of providing the Services.
- 3.3. **Requester Content.** Requester Content submitted directly by a Requester to NextRequest is governed by the NextRequest [Terms of Service](#). As set forth in the Terms of Service, Requester grants to Customer a worldwide, non-exclusive, royalty-free, fully-paid-up, non-assignable, non-transferrable, irrevocable, perpetual, and non-sublicensable right to use Requester Content solely for the Purpose.
- 3.4. **Feedback and improvements.** Any suggestions provided by Customer in any form or medium to NextRequest with respect to NextRequest's products or services shall be collectively deemed "Feedback." NextRequest will be free to use Feedback without any obligation to Customer and Customer hereby assigns to NextRequest all rights, title, and interest in and to any Feedback. NextRequest will be considered the sole author of all modifications or improvements to the Service. NextRequest may use Customer Content to improve the Service and shall be the sole owner of any such improvements, so long as such use protects the confidentiality of Customer Content.
4. **Customer Obligations and Restrictions**
- 4.1. **Security.** Customer will protect the accounts, passwords, and other authentication information Customer uses to access the Service and any NextRequest system, and is responsible for the use of the Service by any Customer User, employee of Customer, any person Customer authorizes to use the Service, any person to whom Customer has given access to the Service, and any person who gains access to Customer Content or the Service as a result of Customer's failure to use reasonable security precautions, even if such use was not authorized by Customer. Customer's user names, passwords, other login information or personal information may be stored by NextRequest or its Service Providers in the course of providing Service and may be available to the Service and Service Providers.
- 4.2. **Compliance with Laws.** Customer is solely responsible for Customer Content and will comply with all laws applicable to Customer's use of the Service, including without limitation, all local, state, and federal public records law and privacy and security laws. NextRequest shall not be liable for any damages that arise due to Customer's use of the Services or publication, processing, storage or transmission of any information in violation of any law. Customer represents and warrants that it has reviewed the Security Policy carefully and has made its own, independent determination whether the levels of privacy and security set forth in the Security Policy are sufficient for Customer's use of the Service. Customer acknowledges and agrees that the Service,

including without limitation the degree of privacy and security provided by the Service, may not comply with special privacy and security requirements relating to the processing, storage or transmission of Sensitive Information. Customer will not use the Service to process any information subject to the Health Insurance Portability and Accountability Act ("HIPAA") without signing a Business Associations Agreement with NextRequest. Customer agrees that if Customer uses the Service to process Sensitive Information, any such use is at Customer's own risk and NextRequest will have no liability to Customer or any third party arising out of or relating to such use. Customer will indemnify NextRequest and its Service Providers against any and all damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to such use. Customer will not disclose to NextRequest or the Service any information that Customer is prohibited by any law or regulation from disclosing.

- 4.3. **Acceptable Use Policy.** Customer shall not use the Service (i) to send or facilitate the sending of unsolicited bulk commercial email (spam) or inundating a target with communications requests so the target cannot effectively respond to legitimate traffic; (ii) to send, upload, distribute, or transmit or store Prohibited Content (iii) to distribute malware, including viruses, worms, Trojan horses, corrupted files, hoaxes, or other items of a destructive or deceptive nature; (iv) to alter, disable, interfere with, disrupt, circumvent or exploit vulnerabilities in any aspect of the Service or NextRequest's or third parties' other services or systems; (v) monitor data or traffic on the Service without permission; (vi) forge TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route; (vii) to infringe or misappropriate the Intellectual Property or privacy rights of any person; (viii) to otherwise violate, or promote the violation of, any law or the legal rights of any person; (ix) for any high risk use where failure of the Service could lead to death or serious bodily injury or any person or to physical or environmental damages, such as applications controlling transportation, medical systems or weaponry systems; or (x) to otherwise access or use the Service beyond the scope of the authorization granted under Section 2.1. If Customer becomes aware of any actual or threatened activity prohibited under this section, Customer shall immediately take all reasonable measures to stop the activity, to mitigate its effects, and to notify NextRequest. Customer is responsible for any act or omission of any Customer User. NextRequest and its Service Providers may report any activity, including disclosing appropriate information, if they suspect such activity violates any law or regulation.
- 4.4. **Service Policies and Privacy.** Customer acknowledges that NextRequest is required by law to provide a Privacy Policy for all users of the Service and visitors to NextRequest.com. Customer acknowledges that all users of the Service are subject to the NextRequest Privacy Policy available at <https://www.nextrequest.com/privacypolicy>, which applies to information and data collected with respect to Requesters and Customers, including Requester Content, Usage Data and email correspondence handled by the Service. The NextRequest privacy policy applies to Usage Data relating to Customer Content, but does not apply to Customer Content itself. Customer acknowledges that, in order to use the Service, all users of the Service are subject to the NextRequest Terms of Service available at <https://www.nextrequest.com/termsofservice> which may be updated from time to time.
- 4.5. **Deletion of Customer Content.** The Service enables Customer to delete Customer Content for purposes of adhering to Customer's document retention or other policies, or any applicable law. When Customer deletes Customer Content ("**Deleted Content**"), such Customer Content is removed from databases accessible to Customer, Requester and/or the general public so that Customer no longer has access to Deleted Content. However, copies and backups of Deleted Content may continue to be stored on NextRequest's or its Service Providers' servers. Customer acknowledges and agrees that after deletion, under no circumstances will NextRequest provide Customer with copies of Deleted Content. NextRequest may provide Deleted Content to third parties as required by law or a court order, and will notify Customer to the extent allowed by applicable law.
- 4.6. **Removal of Customer Content, Suspension of Service**
 - 4.6.1. NextRequest reserves the right to remove or prohibit any Customer Content or Requester Content that NextRequest determines in its sole discretion violates applicable law or the Acceptable Use Policy.
 - 4.6.2. NextRequest may suspend or terminate Customer's use of the Services if NextRequest reasonably believes in its sole discretion that: (a) it is required to do so by law or a regulatory or government body, or doing so is necessary to protect the rights of NextRequest, its Service

Providers, a Requester, or its other Customers; (b) Customer has failed to comply with any material term of this Agreement, including the Acceptable Use Policy; (c) Customer's use violates applicable law or third-party rights; or (d) this Agreement expires or is terminated. In the event of that Customer's use of the Services is suspended or terminated pursuant to this Section 4.6.2, Customer shall be entitled as its sole remedy (and NextRequest's sole obligation) to a proportionate refund of any prepaid unused Fees from the date of suspension or termination.

4.6.3. Notwithstanding the foregoing and for the avoidance of doubt, NextRequest shall have no obligation to monitor, filter, or disable access to any Customer Content or Requester Content.

4.6.4. If NextRequest or a Service Provider elects to remove Customer Content or suspend the Services, to the extent possible and permitted by applicable law, NextRequest will give Customer advance notice of at least one (1) Business Day and will use commercially reasonable efforts to provide removed Customer Content to Customer to maintain Customer's business process continuity.

4.6.5. If Customer Content is removed as part of the notice-and-takedown procedure provided by the Digital Millennium Copyright Act ("DMCA"), and Customer believes such Customer Content was wrongly removed as a result of a copyright infringement notice, Customer may notify NextRequest as provided in section 6.3 of the Terms of Service.

5. **Customer Representations and Warranties.** Customer represents, warrants, and covenants that:

5.1. It is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation;

5.2. It has the legal right and authority to enter into and perform its obligations under this Agreement;

5.3. The execution and performance of this Agreement will not conflict with or violate any provision of any applicable federal, state, or municipal law, regulation, or ordinance;

5.4. This Agreement, when executed and delivered, will constitute a valid and binding obligation will be enforceable against Customer in accordance with its terms;

5.5. It has all necessary rights in the Customer Content to permit Customer's use of the Service and to grant the licenses contained in this Agreement without infringing the Intellectual Property or other rights of any third parties, violating any applicable laws, or violating the terms of any license or agreement to which it is bound;

5.6. Customer has the legal right and authority to provide Customer Content to NextRequest, and to make such Customer Content and Requester Content publicly available through the Service.

5.7. Customer's disclosure to the Services of any Customer Content or Requester Content will not violate any third-party Intellectual Property Rights or privacy rights.

6. **Fees and Invoicing.**

6.1. **Fees, Invoicing.** Customer will pay all fees stated in the Order Form within 30 days of receiving an invoice from NextRequest.

6.2. **Payments Processing.** This section applies to Customers who use NextRequest's online payment tools and integrations (the "Payments Module"). The Payments Module and related integrations is made available through agreement(s) with Stripe, Inc., the terms of which are available at <https://stripe.com/us/legal>. By electing to use the Payments Module, Customer agrees to abide by the relevant terms of NextRequest's agreements with Stripe, Inc., including without limitation terms relating to compliance with applicable laws, data privacy, and permitted and prohibited uses. Transactions processed using the Payments Module are handled directly between Requesters, Customer and Customer's Payment processor (for example, Stripe). NextRequest does not receive sensitive financial information (such as credit card or bank numbers) relating to the transactions. The only data made available to NextRequest is a record of the transaction including invoice information and the amount of the transaction.

6.3. **Expenses.** If Customer purchases Hourly Services, Customer will reimburse NextRequest for all ordinary and necessary expenses incurred in connection with the performance of the Hourly Services, including travel-related expenses. All travel will be pre-approved by Customer.

6.4. **Taxes.** Customer is responsible for any taxes that may be due as a result of this Agreement, except for taxes on NextRequest's net income. Taxes payable by Customer will be billed as separate items on NextRequest's invoices and will not be included in NextRequest's fees. If Customer claims a tax exemption, Customer must provide documentation of the exemption to NextRequest at the time of Customer order.

7. **Confidential Information**

- 7.1. **Duty to Protect Confidential Information.** Each Party will exercise the same degree of care and protection with respect to the Confidential Information of the other Party that it exercises with respect to its own Confidential Information, at least a reasonable degree of care. A Party will not use the Confidential Information of the other Party except as permitted by this Agreement. Notwithstanding the foregoing either Party may disclose the other's Confidential Information to its employees and agents who have a need to know for the Purpose, provided that any agent to which Confidential Information is disclosed is bound by non-disclosure terms at least as protective as those in this Agreement.
- 7.2. **Return of Confidential Information.** Unless otherwise authorized, upon the earlier of termination of this Agreement or request by the other Party, each Party will promptly return or, subject to Section 4.5 and any applicable law, destroy all Confidential Information disclosed to it by the other Party and provide certification that all such Confidential Information has been returned or destroyed.
- 7.3. **Notification Obligation.** If a Party becomes aware of any unauthorized use or disclosure of the Confidential Information of the other Party, it will make commercially reasonable efforts to notify the other Party of the unauthorized use or disclosure and assist in seeking a protective order or other appropriate remedy.
8. **Publicity. In the event that customer has indicated a Publicity Contact on the Order Form,** NextRequest will request Customer's consent to use Customer's name and logo in NextRequest promotional or marketing materials by contacting the Customer Publicity Contact. If Customer does not respond to NextRequest's request within fourteen (14) days, or declines to identify a Publicity Contact, Customer agrees that NextRequest may publicly disclose Customer's use of the Service and may use Customer's name and logo to identify Customer as its customer in promotional or marketing materials, including press releases.
9. **Term and Termination**
 - 9.1. **Term.** The term of this agreement begins on the earlier of (1) acceptance of this Agreement by Customer or (2) the first date on which NextRequest begins providing Services to Customer and ends on the later of (a) the last day of the Initial Term as set forth in the Order Form, (b) the last date of any renewal term, or (c) the last date on which NextRequest provides Services to Customer. Unless NextRequest receives notice of termination from Customer 60 days or more before the expiration of the initial term (or any renewal term), the Agreement will renew automatically on the terms set forth herein for an additional term of one year at NextRequest's then-current rates.
 - 9.2. **Termination for Convenience.** Customer may terminate for convenience at any time upon 30 days' written notice to NextRequest but will not be entitled to any refund of fees for any unused portion of the Service or unused Hourly Services.
 - 9.3. **Termination for Breach.** Either Party may terminate the Agreement for breach if the other Party materially fails to meet any obligation stated in the Agreement and does not remedy that failure within thirty (30) days of written notice from the nonbreaching Party describing the failure.
 - 9.4. **Effect of Termination.** Upon expiration or termination of this Agreement for any reason, all licenses and rights to use the Service granted to Customer shall terminate immediately, and Customer shall immediately cease all use of the Service. If Customer has paid in advance for Service, and this Agreement terminates due to material breach of this Agreement by NextRequest, NextRequest shall refund Customer a prorated amount of any amount already paid. Upon termination by Customer for convenience or due to material breach by Customer, in addition to any remedy provided in this Agreement or provided in law or equity, NextRequest shall be entitled to retain any amounts already paid. The following terms will survive expiration or termination of the Agreement: Sections 3, 4, 6, 7, 8, 11, 12, and 13 as well as all other provisions of the Agreement that by their nature are intended to survive expiration or termination of the Agreement.
10. **Changes to Services.** In order to improve the Service, NextRequest may change, upgrade, patch, enhance, or fix any or all of the Service ("Updates") from time to time in order to provide the Service, and such Updates will become part of the Service and subject to this Agreement; provided that Next Request shall have no obligation under this Agreement or otherwise to provide any such Updates. Customer understands that NextRequest may cease supporting old versions or releases of the Service

at any time; provided that NextRequest will make commercially reasonable efforts to give Customer prior notice of any major changes to the Service.

11. Intellectual Property Infringement and Indemnification

11.1. NextRequest's Obligations for IP Infringement. If any action is instituted by a third party against Customer based upon a claim that any part of the Service (an "Infringing Item"), infringes any Intellectual Property right, NextRequest's sole obligation will be at its option and expense to (a) procure for Customer the right to continue using the Infringing Item, (b) replace or modify the Infringing Item so that it is no longer infringing but continues to provide comparable functionality, or (c) terminate this Agreement and Customer's access to the Service, in which case NextRequest shall refund a prorated amount of any amounts paid for which Service have not yet been received. NextRequest shall have no liability to Customer for any infringement action to the extent such action arises out of a breach of the terms and conditions of this Agreement by Customer or of the use of the Service (or any component part thereof) after it has been modified by Customer without NextRequest's prior written consent. This Section 11.1 states NextRequest's sole liability to Customer, and Customer's exclusive remedy against NextRequest for infringement claims.

11.2. Customer's Indemnification of NextRequest. Unless prohibited under applicable law given Customer's status as a public entity, Customer agrees to defend, indemnify and hold harmless NextRequest and its affiliates and their respective directors, officers, employees, and agents from and any and all damages, liabilities, costs, and expenses (including reasonable attorneys' fees) incurred as a result of any claim, judgment, or proceeding relating to or arising out of: (a) Customer's breach of this Agreement, including without limitation of any of Customer's warranties or representations or NextRequest's Acceptable Use Policy or (b) any claim alleging that NextRequest has infringed or secondarily infringed on the intellectual property or proprietary right of a third party as a result of Customer Content or Customer's use of the Service, whether or not Customer was aware of the allegedly infringing conduct and whether or not the conduct is actually infringing.

12. Disclaimers and Limitations on NextRequest's Liability

12.1. NextRequest is not responsible to Customer or any third party for unauthorized access to Customer Content or the unauthorized use of the Service unless the unauthorized access or use results from NextRequest's failure to meet its security obligations under this Agreement.

12.2. Disclaimer of Warranty. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" AND NEXTREQUEST MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEXTREQUEST MAKES NO REPRESENTATION OR WARRANTY (A) USE OF THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, (B) THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR (C) REGARDING THE ACCURACY OR RELIABILITY OF ANY CONTENT.

12.3. Limitation of Liability. EXCEPT AS OTHERWISE PROVIDED IN SECTION 12.4, IN NO EVENT WILL NEXTREQUEST OR ANY OF ITS SUCCESSORS, LICENSORS, OR SERVICE PROVIDERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE FOR (a) LOSS OF GOODWILL OR REPUTATION; (b) EXCEPT AS EXPRESSLY PROVIDED IN THE SERVICE LEVEL AGREEMENT, USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF THE SERVICE; (c) COST OF REPLACEMENT GOODS OR SERVICES; OR (d) LOST REVENUES OR PROFITS OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, ENHANCED OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF NEXTREQUEST AND ITS SUCCESSORS, LICENSORS, OR SERVICE PROVIDERS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY EXCEED THE TOTAL

AMOUNT ACTUALLY PAID BY CUSTOMER TO NEXTREQUEST UNDER THIS AGREEMENT. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. TO THE EXTENT APPLICABLE LAW PROHIBITS THE FOREGOING LIMITATION OF LIABILITY, NEXTREQUEST'S LIABILITY IS LIMITED TO THE GREATEST EXTENT ALLOWED BY APPLICABLE LAW.

- 12.4. Nothing in this Agreement limits or excludes either Party's liability for its gross negligence or willful misconduct.

13. General

- 13.1. **State Agency Piggybacking.** NextRequest agrees to allow Customer and other public agencies in the State of California to purchase additional items, at the same terms and conditions as this Agreement, excluding pricing and term length, and services to be provided, which will be separately agreed upon by NextRequest in a mutually executed Order Form.
- 13.2. **Governing Law.** Unless otherwise mutually agreed by the Parties in an Order Form, this Agreement will in all respects be governed by and construed and enforced in accordance with the laws of the State of California, without respect to conflict-of-laws principles.
- 13.3. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled by binding arbitration by a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association in San Francisco, California. Upon receipt of notice of any dispute to be settled by binding arbitration, the American Arbitration Association will use its best efforts to appoint a single arbitrator within 30 days after receipt of such notice.
- 13.4. **Arbitration Award.** The arbitrator will not have the authority to award exemplary or punitive damages to any injured party. A decision by the arbitrator will be final and binding. Judgment may be entered on the arbitrator's award in any court having jurisdiction, and such award will not be appealable.
- 13.5. **Notice.** Written notice by either Party to the other may be given: (i) in person, and such notice will be deemed valid on the date of delivery in person; or (ii) by email to the Party contact identified in the Order Form, and such notice will be deemed valid as of the proof of mailing date.
- 13.6. **Assignment.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety, without consent of the other Party, to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns. NextRequest may use Service Providers to perform all or any part of the Service, but NextRequest remains responsible to Customer under this Agreement for Service performed by its Service Providers to the same extent as if NextRequest performed the Service itself.
- 13.7. **Force Majeure.** Neither Party will be in breach of the Agreement if the failure to perform the obligation is due to an event beyond either Party's control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.
- 13.8. **Modifications.** Unless otherwise expressly permitted in this Agreement, the Agreement may be amended only by a formal written agreement signed by both Parties. An Order Form may be amended to modify, add, or remove services by mutual written agreement of the Parties, agreement by email being sufficient. Any terms on Customer's purchase order or other business forms by which Customer orders or pays for Service will not become part of this Agreement.
- 13.9. **Entire Agreement.** The Agreement, together with the Order Form, Terms of Use and Privacy Policy, constitutes the complete and exclusive agreement between the Parties regarding the Service and supersedes and replaces any prior understanding or communication, written or oral. Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of NextRequest which is not set out in the Agreement.
- 13.10. **Precedence.** If there is a conflict between the Order Form and this Agreement, then this Agreement will control.
- 13.11. **Unenforceable Provisions.** If any part of the Agreement is found unenforceable by a court, the rest of the Agreement will nonetheless continue in effect, and the unenforceable part will

be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the Parties underlying the Agreement.

- 13.12. **No Waiver.** Each Party may enforce its respective rights under the Agreement even if it has waived the right or failed to enforce the same or other rights in the past.
- 13.13. **No Partnership.** The relationship between the Parties is that of independent contractors and not business partners. Neither Party is the agent for the other, and neither Party has the right to bind the other to any agreement with a third party.
- 13.14. **No Third-party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 13.15. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be considered a legal original for all purposes.

CITY OF MONTCLAIR

BY: _____
Tenice Johnson, Mayor Pro Tem

DATE: _____

ATTEST:

Andrea Myrick, City Clerk

APPROVED AS TO FORM:

Diane E. Robbins, City Attorney

NextRequest Service Level Agreement

This Service Level Agreement ("SLA") defines the support obligations of NextRequest, LLC, a Delaware corporation ("NextRequest") to Customer, a purchaser of NextRequest's service. The terms of this SLA are incorporated into and subject to the terms of the NextRequest Master Service Agreement. Capitalized terms not defined in this SLA shall have the meanings given to them in the NextRequest Master Service Agreement.

1. Service Guarantees

1.1 Availability. NextRequest provides hosting for the NextRequest service through a Service Provider ("Hosting Provider"), which does not make guarantees about uptime. Based on past performance, NextRequest anticipates 99.9% uptime of the application, with the exception of planned outages for maintenance and upgrades for which NextRequest notifies the Customer 24 hours in advance ("Uptime"). If NextRequest fails to meet the Uptime, the Customer will be eligible for credits as described in section 3.2.

1.2 Security. NextRequest takes the security of the Customer's data seriously and protects it according to the rigorous security practices described in our System Security Plan. The Hosting Provider utilizes certified data centers managed by Amazon, which implements industry-leading physical, technical, and operational security measures and has received ISO 27001 certification and Federal Information Security Management Act (FISMA) Moderate Authorization and Accreditation from the U.S. General Services Administration. If NextRequest becomes aware of any unauthorized access to its systems that poses any threat to the Service or the Customer's data, NextRequest will notify the Customer in writing of the issue no later than the close of the next Business Day after NextRequest learns of it.

1.3 Data Integrity. The Hosting Provider makes daily backups of Customers' systems and data. Seven (7) daily backups and five (5) weekly backups are retained.

1.4 Location of Service. Service and Customer's data is hosted in the United States.

2. Service Request Process

2.1 Service Request Definition. A Service Request is any email, phone call, or in-app chat ticket sent to NextRequest by the Customer indicating support action is necessary or desired. This includes Bug reporting and Customer Support.

2.2 Severity Levels and Response Times. Each Service Request will be assigned a Severity Level by the party initiating the request. If NextRequest reasonably determines that the Customer has assigned an incorrect Severity Level to a ticket, NextRequest may assign a different Severity Level. The Severity Levels are defined below, along with the corresponding Initial Response Time within which NextRequest (or, in the case of Critical requests, our Hosting Partner) will respond to the Customer's request and begin work on the issue:

Severity Level (Priority)	Definition	Initial Response Time and Channel
Critical Service is inoperative	Service is inoperative, Customer's business operations or productivity are severely impacted with no available workaround, or a critical security issue exists.	2 hours during Business Days (phone or email)
Standard (High)	Service is operating but issue is causing significant disruption of Customer's business operations; workaround is unavailable or inadequate.	1 Business Day (phone or email)

Standard (Medium)	Service is operating and issue's impact on the Customer's business operations is moderate to low; a workaround or alternative is available.	1 Business Day (email)
Standard (Low)	Issue is a minor inconvenience and does not impact business operations in any significant way; little or no time sensitivity.	1 Business Day (email)

2.3 Standard Service Requests

2.3.1 Initiating Standard Service Requests. The Customer may initiate a Standard Service Request by opening a ticket via the NextRequest in-app chat system. NextRequest support team members or systems may also create tickets on the Customer's behalf in response to issues identified by monitoring systems.

2.3.2 Response and Resolution. Once NextRequest has responded to a Service Request, NextRequest will work during Business Hours with the Customer's representatives and, as needed, our Hosting Partner to resolve the problem or provide a workaround. NextRequest makes no guarantee regarding the time to resolve a Service Request, only that NextRequest will use the reasonable efforts described above.

2.4 Critical Service Requests

2.4.1 Initiating Critical Service Requests. The Customer may initiate a Critical Service Request by calling NextRequest directly at 833-698-7778 or emailing support@nextrequest.com. The Customer will be directed to leave contact information and a detailed description of the issue.

2.4.2 NextRequest's Response. NextRequest's support staff will contact the Customer within 2 hours during a Business Day of receiving the Customer's report of a Critical Service Request and will work continuously until the issue is resolved or a workaround is available. NextRequest will provide the Customer with regular updates until the issue is resolved and will coordinate with the Customer during Business Hours.

2.5 Customer Responsibilities. The Customer agrees to assist NextRequest as necessary to resolve Service Requests and to provide any information NextRequest reasonably requests, including information necessary to duplicate the issue. The Customer agrees to make available personnel capable of understanding and accurately communicating technical details necessary to enable NextRequest to review issues, and to assist NextRequest in diagnosing issues.

2.6 Bugs and Bug Reporting

2.6.1 Bug Definition. A Bug is defined as any issue where the NextRequest application does not function as intended. It is at the sole discretion of NextRequest staff to determine if an issue is classified as a Bug. None of the Customer's Customer Support hours will be deducted for reporting Bugs. The Customer may submit a Service Request in order to report a Bug.

2.7 Customer Support

2.7.1 Customer Support Definition. Staff time spent by NextRequest assisting the Customer or Customer's representatives after the Service Agreement has been signed is defined as Customer Support. This may include helping users with account creation, account log in, configuration, or understanding features. Customer Support hours exclude: bug reporting and related discussions and fixes; regularly scheduled check-ins with NextRequest staff as specified in the Order Form; and training sessions specified in the Order Form. The Customer may submit a Service Request in order to receive Customer Support.

3. Service Credits

3.1 Issuance. If NextRequest fails to meet the response time stated above, the Customer will be entitled to a credit of 2 Service hours for each hour during which the response time guarantee is not met, up to a total

of 8 hours per incident. The Customer must request a credit in writing via a support ticket no later than 14 days following the occurrence of the event giving rise to the credit. Credits will be applied to invoices issued in the future.

3.2 Sole Remedy. The credits stated in this Agreement are the Customer's sole remedy in the event NextRequest fails to meet a guarantee for which credits are provided. If NextRequest fails to perform any obligation for which a credit is not provided, the Customer's sole remedy is to have NextRequest perform or re-perform the obligation, as applicable. The maximum total credit for failure to meet any guarantee during any calendar month shall not exceed one twelfth of the annual recurring fee for the Service.

3.3 Credits for Downtime. During the term of the contract, the Service will be operational and available at least 99.9% of the time in any calendar month, with the exception of planned outages for maintenance and upgrades for which NextRequest notifies the Customer 24 hours in advance. If NextRequest does not satisfy 99.9% uptime, the Customer will be eligible to receive the service credits described below. In order to receive service credits, the Customer must request the credit in writing via a support ticket within 30 days from the time the Customer becomes eligible to receive a service credit.

Monthly Uptime Percentage	Days of Service added to the end of the service term at no charge to Customer
99.9% to 99.0%	3
89.9.0% to 95.0%	7
< 94.9%	15

3.4 Extraordinary Events. The Customer is not entitled to a credit for downtime or outages resulting from denial-of-service attacks, hacking attempts, or any other circumstances that are not within our control.

3.5 No Credit in Breach. The Customer is not entitled to a credit if: (i) the Customer is in breach of the Agreement (including the Customer's payment obligations to NextRequest) at the time of the occurrence of the event giving rise to the credit, (ii) the event giving rise to the credit results from the Customer's prior breach of the Agreement, or (iii) to the extent our failure to meet an Initial Response Time guarantee results from the Customer's delay or failure to meet the requirements of Section 2.5 ("Customer Responsibilities") of this SLA.

NextRequest for City of Montclair, CA

What do I get with NextRequest?	<p><u>An all-in-one platform for managing records requests</u> across your entire agency. It's an annual subscription and includes:</p> <ul style="list-style-type: none"> Workflow Tools, Document Hosting & Management, Dashboards, Custom Reporting, Request Diversion, and Regular Product Improvements and Feature Updates
Security?	<p>We protect your information using:</p> <ul style="list-style-type: none"> SOC 2 Security Audit, Encryption, and Threat/Uptime Monitoring. See a full overview at: nextrequest.com/security
Technical Requirements?	<p>NextRequest is entirely web based and software-as-a-service</p> <ul style="list-style-type: none"> Everything in the cloud - no downloads or installations and works on all modern web browsers

Customer	City of Montclair, CA	Start Date	1/1/2023
Account URL(s)*	cityofmontclairca.nextrequest.com <i>*Account URL cannot be altered once created</i>	Invoice Date	1/1/2023
Primary Contact Name	Andrea Myrick	Renewal Date	1/1/2024
Email and Phone	cityclerk@cityofmontclair.org (909) 625-9416		
Address	5111 Benito Street, Montclair, CA, 91763		

Service Agreement : Welcome to NextRequest! Thanks for using our platform. This Service Agreement ("Agreement") is entered between NextRequest, LLC, with a place of business at 302 South 4th Street, Suite 500, Manhattan, KS 66502 ("NextRequest"), and the Customer listed above ("Customer"), as of the Effective Date. This Agreement includes the above subscription and support (the "Services") and incorporates the above Order Form as well as the Terms and Conditions and Service Level Agreement available at <https://www.nextrequest.com/terms-conditions> and which contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

Renewals : Pricing may be subject to a standard 5% annual increase to account for application improvements, new features and inflation.

Name	Subtotal
<p>NextRequest Standard License (annually)</p> <p>Unlimited Staff Users, Up to 10 Admin-Publisher Users, and Up to 2 TB of Storage</p> <p>Core Features:</p> <p><u>Public Portal</u></p> <ul style="list-style-type: none"> Customizable request intake page, request and document publishing, Real-Time Keyword Trigger Alerts <p><u>Workflow Automations</u></p> <ul style="list-style-type: none"> Due Date calculation, automated reminders, holiday calendar Messaging (internal and external) with unlimited templates Task assignment, task tracking, automated reminders Time tracking and cost calculation Staff assignment Request timeline / audit trail <p><u>Request Repository</u></p> <ul style="list-style-type: none"> Filtering and reporting, automated status updates <p><u>Reporting and Statistics</u></p> <ul style="list-style-type: none"> General Report, Time Tracking, Invoicing and Payments, Admin Dashboard <p>Document Dashboard</p> <p>Premier Security Package</p> <p>Email Monitoring Suite</p> <p>Email Notifications</p> <p>Payments: Invoicing templates, invoice tracking, and Online Payments (*Approved payment processors)</p> <p>Review and Redaction Features:</p> <p><u>Standard Redaction with unlimited users</u></p> <ul style="list-style-type: none"> Manual redactions, keyword redactions, redaction patterns Custom redaction reasons, automated redaction logs Custom redaction patterns <p><u>RapidReview with unlimited users</u></p> <ul style="list-style-type: none"> True Batch Redaction Draft redaction, redaction commenting, live collaboration PST extractor and ZIP extractor Record staging OCR <p>IT & Compliance Features: Retention, Single Sign-On, Agency Specific Portal URL, SOC 2 Type II Audit, CJIS Attestation Available, and HIPAA Compliance Available with BAA</p>	\$10,788.00
<p>Standard Set Up & Onboarding (one-time)</p> <p>Dedicated Onboarding Team, 1 Kickoff Call, 1 Dedicated Admin Training (60 minutes), Go-Live Success Plans, Weekly Group Training Webinars, In-app Training, Video Tutorials, Knowledge Base Articles, and Service Level Agreement</p>	\$1,500.00

Subtotal **\$12,288.00**

Current Customer Incentive: 50% Discount Year 1 (one-time) **-\$6,144.00**

Incentive expires 12/31/2023

Total \$6,144.00

*Pricing is valid until 12/31/2023

City of Montclair, CA	NextRequest, LLC
Signature:	Signature:
Name & Title:	Name & Title:
Date:	Date:
Accounts Payable Info	
Name:	Phone:
Email:	Will issue PO? Yes: <input type="checkbox"/> No: <input type="checkbox"/>

Download our W-9 at: <https://www.civicplus.com/verify> (password: foiasoftware)



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 18, 2023	FILE I.D.:	STA820
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	6	PREPARER:	M. HEREDIA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-96 WITH BIGGS CARDOSA ASSOCIATES, INC., FOR DESIGN SERVICES ASSOCIATED WITH THE HOLT BOULEVARD AND PACIFIC ELECTRIC TRAIL BRIDGE PROJECT		

REASON FOR CONSIDERATION: The City Council is requested to consider approving Agreement No. 23-96 with Bigs Cardosa Associates, Inc. (BCA) for design services associated with the Holt Boulevard and Pacific Electric (PE) Trail Bridge Project.

A copy of proposed Agreement 23-96 is attached for City Council review and consideration.

BACKGROUND: The Holt Boulevard and Pacific Electric Trail bridges over the San Antonio Creek Channel have become safety issues due to the homeless encampments beneath the bridges. BCA designed the replacement of the Pacific Electric Trail Bridge after a fire burned the prior structure and forced the closure of the Pacific Electric Trail. The situation under the Holt Boulevard Bridge has worsened recently, and Code Enforcement Officers have a challenging time accessing people in need of services.

The City desires a solution to enclose these areas under those bridges in an effort to improve safety and protect public welfare. BCA has prepared preliminary exhibits for a lightweight cellular concrete fill and a precast panel wall option. Areas between the San Antonio Creek flood control channel walls, the bridge substructures, and the underside of the bridge decks will be enclosed by precast panels.

FISCAL IMPACT: The cost to design the precast panel walls is \$49,854. 2021 Lease Revenue Bond Funds will be used to cover this cost.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 23-96 with Biggs Cardosa Associates, Inc., for design services associated with the Holt Boulevard and Pacific Electric Trail Bridge Project.

CITY OF MONTCLAIR
AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and effective as of December 18, 2023, between the City of Montclair, a municipal corporation ("City") and Biggs Cardosa Associates, Inc., a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on December 18, 2023 and shall remain and continue in effect for a period of 12 months until tasks described herein are completed, but in no event later than December 18, 2024, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

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

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. **This amount shall not exceed \$49,854** 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 five thousand one hundred forty six (\$5,146.00). 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
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To Consultant:	Eric Pheifer, P.E. 500 S. Main Street, Ste. 1200 Orange, CA 92868-4507
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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

City of Montclair

CONSULTANT

Biggs Cardosa Associates, Inc.

By: _____
Tenice Johnson, Mayor Pro Tem

By: _____
Name/Title:

Attest:

By: _____
Andrea M. Myrick, City Clerk

By: _____
Name/Title:

Approved as to Form:

By: _____
Diane Robbins, City Attorney

500 S. Main Street, Ste. 1200
Orange, CA 92868-4507
Telephone 714.550.4665

Exhibit A

December 11, 2023

City of Montclair | Public Works Department
5111 Benito Street
Montclair, CA 91763

Attention: Monica Heredia, P.E.
Public Works Director / City Engineer

Subject: Homeless Encampment Emergency Safety Mitigation Project
Proposal to Provide Professional Engineering Services

Dear Ms. Heredia:

Biggs Cardosa Associates, Inc. is pleased to submit our proposal to provide engineering services for the subject project.

Project Understanding

The Holt Boulevard and Pacific Electric Trail Bridges over the San Antonio Creek Channel have become safety issues due to the homeless encampments beneath the bridges. Biggs Cardosa recently designed the replacement of the Pacific Electric Trail Bridge after a fire burned the prior structure and forced the closure of the Pacific Electric Trail. We understand that the situation under the Holt Boulevard Bridge has worsened recently, and Code Enforcement Officers have a challenging time accessing people in need of emergency services.

The City desires a solution to enclose these areas under those bridges in an effort to improve safety and protect public welfare. Biggs Cardosa (while not under contract) prepared preliminary exhibits for a lightweight cellular concrete fill and a precast panel wall option. In subsequent discussions with the City, Biggs Cardosa understands that the precast panel wall option is preferred. Areas between the flood control channel walls, the bridge substructures, and the underside of the bridge decks will be enclosed by precast panels at the Holt Boulevard and Pacific Electric Trail Bridges.

General Assumptions/Limitations

Environmental/Permitting: The City intends to file a Notice of Exemption (NOE) under the California Environmental Quality Act (CEQA). Biggs Cardosa has therefore not included environmental or permitting services as part of this proposal. This scope assumes that the City will file the NOE, apply for, obtain, and pay fees for any permits required, and will coordinate with regulatory agencies, as necessary. Biggs Cardosa's scope with respect to the environmental/permitting component of the project is limited to providing technical information and exhibits related to the precast concrete panel locations and details of the safety measures.

Homeless Encampment Emergency Safety Mitigation Project
Proposal to Provide Professional Engineering Services

Additional Services: Any service not expressly noted within this proposal is not included. If, for example, the City ultimately decides to add lighting, security cameras, landscaping, or other elements as part of this project, Biggs Cardosa can add subconsultants and prepare an Extra Work Request, at the City's option. We assume that survey information needed to layout the precast panel walls will be provided to Biggs Cardosa by the City's on-call surveyor.

Professional Services Agreement: Considering this is an atypical project, Biggs Cardosa requests careful consideration of suggested modifications to the City's standard Professional Services Agreement. Suggested modifications will be negotiated separately with the City, but may include:

- Modifications to indemnification provisions specifically related to the CEQA component of the project. We would request that the contract exclude the requirement that Biggs Cardosa defend the City against potential challenges to the CEQA NOE.
- A limitation of liability is desired should the precast panel walls be breached or undermined. We will work closely with the City to develop the best possible solution to prevent access to the areas being enclosed by walls, but guaranteeing that the walls will keep people out will be impossible. If, for example, a person(s) wishing to gain illegal access under the bridge were to acquire tools capable of penetrating high-strength concrete and steel, designing for that will not be possible.

Scope of Work

To expedite the preparation of bid documents, Biggs Cardosa proposes Draft and Issued for Bid milestones in lieu of a typical 30%, 60%, 90%, 100%, Issued for Bid milestone submittal process.

Task 1 – Project Management & Meetings

Biggs Cardosa will submit monthly invoices and perform other general administrative project tasks.

Biggs Cardosa will conduct a kick-off meeting with the City to understand requirements and concerns in developing the design. Biggs Cardosa will attend up to three (3) additional coordination meetings, either with the City to review design development and/or meet with San Bernardino County Flood Control (SBCFCD) or other stakeholders.

Biggs Cardosa will assist the City with technical information related to permit applications, if required (e.g. SBCFCD). A number of hours has been assumed in our attached fee proposal to support with these efforts.

Assumptions:

- Up to four (4) meetings are included in this scope.
- It is assumed that any permit application fees will be paid by the City.
- The City will prepare and file the CEQA Notice of Exemption.

Deliverables:

- Monthly Invoices
- Meetings:
 - Kick-Off Meeting
 - Coordination Meetings (Up to 3)

- Technical Information/Exhibits for Permit Applications (if required)

Task 2 – Plans, Specifications & Estimates (PS&E)

Biggs Cardosa will prepare plans, technical specifications, structural and quantity calculations, and a construction cost estimate. Plans are anticipated to include a General Plan (showing the existing bridge structures) and detail sheets showing how the homeless mitigation components will be constructed. A Draft Submittal will be prepared for City review, then an Issued for Bid Submittal will be prepared to advertise the construction contract.

Assumptions:

- Plans will be drafted in AutoCAD format. References will be made to City Standard Plans, Caltrans Standard Plans, and SPPWC, where applicable.
- Technical Specifications will be developed based on 2023 Caltrans Standard Specifications and Standard Special Provisions for structural items, and 2018 Greenbook for civil items.
- The City will prepare the Notice Inviting Bids and General Conditions, with input from Biggs Cardosa on technical items, as required.
- Preparation of water pollution control items (e.g. a WPCP or SWPPP) are anticipated to be prepared by the contractor.
- Cost estimates will be prepared in Excel format, and will use unit prices from similar projects and Caltrans Contract Cost Data.
- Structural calculations will be prepared in conformance with the 8th Edition of AASHTO LRFD Bridge Design Specifications.
- No modifications to the bridges (besides drilling holes to drill and bond reinforcement) or the San Antonio Creek Channel are anticipated.
- Access for maintenance and bridge inspection is assumed to be provided through manholes in the deck, and access hatches within the precast panel walls are therefore not anticipated.

Deliverables:

- Draft Plans
- Draft Technical Specifications
- Draft Cost Estimate
- Structural Calculations
- Quantity Calculations
- Issued for Bid Plans
- Issued for Bid Technical Specifications

Task 3 – Engineering Support During Construction

Biggs Cardosa will provide assistance during bidding and construction. Our scope includes responding to Requests for Information (RFIs), reviewing shop drawings, visiting the site as needed during construction, and preparing record drawings based on the Contractor's red-lined changes.

Assumptions:

- Attending a pre-construction meeting is included in this scope.
- Up to two (2) site visits are included in this scope.
- Responding to up to ten (10) RFIs for each bridge location are included in this scope.

Homeless Encampment Emergency Safety Mitigation Project
Proposal to Provide Professional Engineering Services

- Reviewing up to three (3) shop drawings for each bridge location are included in this scope.

Deliverables:

- RFI Responses
- Shop Drawing Reviews
- Site Visits
- Record Drawings

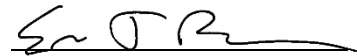
Fee

We propose to provide the services outlined in this proposal on a time and materials basis for a not to exceed amount of \$49,854. A breakdown of our fee proposal is attached.

We look forward to working with you on this project. Should you have any questions, please do not hesitate to contact me.

Sincerely,

BIGGS CARDOSA
ASSOCIATES, INC.



Eric Pheifer, PE
Principal

Attachments:

- Biggs Cardosa Fee Proposal

S.O.W. Phase / Task	Principal	Associate	Engineering Manager	Senior Engineer	Project Engineer	Staff Engineer	Assistant Engineer	Junior Engineer	Senior Computer Drafter	Project Administrator	Total Hours	Labor Subtotal
Task 1 - Project Management & Meetings												
	\$280.00	\$257.00	\$225.00	\$205.00	\$190.00	\$175.00	\$160.00	\$145.00	\$165.00	\$190.00		\$8,502
Administration / Monthly Invoices	2									4	6	\$1,320
Kick-Off Meeting	1	1		3							5	\$1,152
Coordination Meetings	2	3		9							14	\$3,176
Permit Support (Technical Info & Exhibits)	1	2		2		2	4		4		15	\$2,854
Task 2 - Plans, Specifications & Estimates (PS&E)												
Plans	1	4	8			8	16		40		77	\$13,668
Technical Specifications	1	2		4	8						15	\$3,134
Structural & Quantity Calculations	1	2		4	4	8	16				35	\$6,334
Construction Cost Estimate	1		2			4		8			15	\$2,590
Task 3 - Engineering Support During Construction												
Request for Information (RFIs)		2				4	8				14	\$2,494
Shop Drawing Review		2				4	40				46	\$7,614
Site Visits				4		4					8	\$1,520
Record Drawings	1	2		2		4			12		21	\$3,884
Labor Subtotal												
\$49,740												
Expenses / Subconsultants	Mileage / Reproduction											
Expense / Subconsultant Subtotal											\$114	
Total Not to Exceed Amount											\$49,854	



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 18, 2023

FILE I.D.: STA805C

SECTION: CONSENT - AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 7

PREPARER: M. HEREDIA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 23-97 AMENDING AGREEMENT NO. 20-23 WITH BIGGS CARDOSA ASSOCIATES, INC., FOR DESIGN SERVICES ASSOCIATED WITH THE CENTRAL AVENUE BRIDGE PROJECT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: On April 6, 2020, the City Council approved Agreement No. 20-23 with Biggs Cardosa Associates, Inc. (BCA) for the design of the Central Avenue Bridge Project (Project). BCA's current contract expires December 22, 2023. The City Council is requested to consider approval of Agreement No. 23-97 with BCA to continue design services for the Central Avenue Bridge Project, subject to any revisions deemed necessary by the City Attorney.

BACKGROUND: The Central Avenue Bridge (Bridge No. 54C0112) is a four-lane overcrossing constructed in 1967. It is located approximately 1.75 miles south of the Interstate 10 (I-10) freeway in the City of Montclair (City). The bridge carries Central Avenue over the Union Pacific Railroad (UPRR) corridor, which includes Amtrak and Metrolink service. Along with spanning seven railroad tracks, the bridge also crosses over State Street and a flood control channel on the south side, and a horseshoe access road that wraps underneath the bridge on the north side.

Central Avenue is one of the principal arterials within the City, connecting to State Route 60 (SR-60) to the south and to I-10 to the north. At the location where Central Avenue crosses UPRR, Central Avenue is a four-lane arterial roadway carrying roughly 39,900 average daily traffic (ADT). This ADT already exceeds the San Bernardino County General Plan threshold of 31,100 ADT for a four-lane roadway. Segments connecting to Central Avenue to the north and south of the bridge are six lanes. Staff proposes to widen the bridge from four to six lanes to accommodate current and future traffic, match the capacity of the adjacent roadway segments, and to eliminate the bottleneck located at the current bridge.

Staff applied and was successful in obtaining a Highway Bridge Program grant to repair the overpass. Central Avenue is the gateway to the City and its repair is vital to the overall plan for the City's future. The overpass will pave the way for redevelopment of the south end of the City.

BCA has completed the environmental portion of the Project. The City is waiting for environmental clearance from Caltrans to proceed with right-of-way and ultimately construction. BCA has submitted 60 percent design plans to the City for review. BCA's current contract, which was approved in 2020, expires December 22, 2023. The contract amount with BCA is for \$3,352,355, not including extra services totaling \$65,158. Approximately two million in environmental and engineering costs have been incurred to-date.

Additionally, BCA has completed extra services as follows:

1. Preliminary Title Reports for 18 parcels (\$9,000)
2. State Historic Preservation Officers (SHPO) required a Finding of Effect (FOE) report for a potentially historic property relating to the Union Pacific Railroad right of way (\$8,274)
3. A Benefit Cost Analysis was required to support the Bridge Investment Program (BIP) competitive grant funding application (\$27,900)
4. Caltrans Environmental requested that the Biggs Cardosa Team prepare the Environmental Commitments Record (ECR), which has traditionally been prepared by Caltrans based on their review of the Technical Studies. BCA prepared the ECR to close out the environmental process (\$12,828)
5. Additional services were needed to assist with the preparation of the Multimodal Project Discretionary Grant (MPDG). MPDG grant funding application and an updated Benefit-Cost Analysis (\$19,984)

The estimated total project cost for bridge replacement is \$30.2 million. This includes final design, right-of-way acquisition, construction engineering, construction, and contingencies. The cost for right-of-way acquisition is estimated at \$1,483,000 and includes appraisals and acquisitions of temporary construction easements and small permanent easements (no full acquisitions or relocations are anticipated). The cost of environmental and engineering fees is \$3,892,000, including preliminary engineering and final design. The overall construction cost for this project is \$24,820,600, which includes \$19,437,000 for construction services, \$1,917,000 for demolition and removal of the existing bridge, \$2,659,000 for other engineering fees during construction (i.e. construction management services), and a contingency of \$807,600.

The final design plans will be completed by the end of 2024. Staff applied for two grant applications for the construction shortfall. Unfortunately, the City did not received BIP funding last year. Staff is waiting for positive results for the MPDG grant in the amount of \$17 million. Once construction funding is secured, construction could start in Fiscal Year 2025-26. Construction duration is expected to be a little over two years. The new bridge could then be operational by the end of 2026.

FISCAL IMPACT: The City Council's approval of Agreement No. 23-97 would authorize BCA to continue design services until final design is completed. The new contract amount with BCA is for \$3,417,513. Approximately two million in environmental and engineering costs have been incurred to-date under previous Agreement No. 20-23.

Highway Bridge Program funds are available for the design costs of the Central Avenue Bridge Project.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 23-97 amending Agreement No. 20-23 with Biggs Cardosa Associates, Inc., for design services associated with the Central Avenue Bridge Project, subject to any revisions deemed necessary by the City Attorney.

City of Montclair Professional Services Agreement

Federal Project No. 5326(018)

**AMENDMENT NO. 1 TO AGREEMENT NO. 20-23
Central Avenue Bridge**

WHEREAS, the City of Montclair (LOCAL AGENCY) and Bigs Cardosa Associates, Inc. (CONSULTANT) previously entered into Contract No. 20-23 (hereinafter referred to as "the AGREEMENT"), for design services associated with the Central Avenue Bridge Project ("PROJECT"); and,

WHEREAS, BCA has completed the environmental phase of the PROJECT; and,

WHEREAS, PROJECT design is now at 60 percent and BCA has completed additional work related to the PROJECT; and,

WHEREAS, the AGREEMENT expires on December 22, 2023 and a contract term extension is necessary to finalize the design of the PROJECT.

NOW, THEREFORE, in consideration of the mutual covenants and conditions provided herein, LOCAL AGENCY and CONSULTANT hereto agree to Amend Agreement No. 20-23 as follows:

1. Article I INTRODUCTION - replace Contract Administrator for the City of Montclair from Noel Castillo to Monica Heredia.
2. Article IV PERFORMANCE PERIOD – replace December 22, 2023 to December 22, 2026.
3. Article V ALLOWABLE COSTS AND PAYMENTS, Section H – replace Noel Castillo with Monica Heredia
4. Article V ALLOWABLE COSTS AND PAYMENTS, Section I – replace \$3,352,355 to \$3,417,513
5. Article XXIII DISPUTES, Section A – replace Noel Castillo with Monica Heredia
6. Article XXXII NOTIFICATION – replace Noel Castillo with Monica Heredia

Except as amended by this Amendment No. 1, all other terms and conditions of Contract No. 20-23 shall remain the same.

This Amendment No. 1 to the AGREEMENT, Contract No. 20-23, is effective on the date it is approved and signed by LOCAL AGENCY and CONSULTANT.

City of Montclair

Biggs Cardoso & Associates

By:

Tenice Johnson, Mayor Pro Tem

By:

Eric Pheifer, Principal

Attest:

By:

Andrea M. Myrick, City Clerk

Approved as to Form:

By:

Diane Robbins, City Attorney

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
NOVEMBER 20, 2023, AT 6:00 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 6:00 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Johnson, Council Member Ruh, and City Manager Starr

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of November 6, 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 November 6, 2023.

IV. PUBLIC COMMENT – None

V. CLOSED SESSION


At 6:01 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:15 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 6:15 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 20, 2023, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

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

II. INVOCATION

Police Department Chaplain/Pastor Josh Matlock, Bethany Baptist Church, gave the invocation.

III. PLEDGE OF ALLEGIANCE

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

IV. ROLL CALL

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

City Manager/Executive Director Starr; 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. Introduction of New Police Officers

Mayor Dutrey announced this presentation would be rescheduled for another meeting.

VI. PUBLIC COMMENT

- Carolyn Raft, Board Trustee representing Montclair, West Valley Mosquito and Vector Control District, stated she has no updates from the District and wished everyone a happy Thanksgiving.

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 B-10, C-2, and C-3
MOTION:	Approve the Consent Calendar as presented.
MADE BY:	Council Member/Director Ruh
SECOND BY:	Mayor Pro Tem/Vice Chair Johnson
AYES:	Lopez, Martinez, Ruh, Johnson, Dutrey
NOES:	None
ABSTAIN:	None
ABSENT:	None
RESULT:	Motion carried 5-0.

A. Approval of Minutes

1. Regular Joint Meeting — November 6, 2023

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

B. Administrative Reports

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

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

2. Consider Approval of City Warrant Register and Payroll Documentation

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

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

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

4. Consider Approval of SA Warrant Register – October 2023

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

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

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

6. **Consider Approval of MHC Warrant Register – October 2023**

ACTION – Consent Calendar – Item B-6	
ACTING:	Montclair Housing Corporation Board
RESULT:	Approved on Consent Calendar; motion carried 5-0.

7. **Consider Receiving and Filing of MHA Treasurer’s Report – October 2023**

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

8. **Consider Approval of MHA Warrant Register – October 2023**

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

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**

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

10. **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

Mayor Pro Tem Johnson and Council Members Ruh and Lopez expressed concerns about impacts to residents whose alleyways will be affected by construction.

Staff provided clarification on the project timeline of three months to complete all of the scheduled alleyways, and on staff’s intent to communicate and coordinate with affected residents and make accommodations such as suspending the issuance of parking citations on the streets in front of impacted homes on street sweeping days during construction, and moving trash pickup to the front of those homes.

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

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**

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

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

2. Consider Approval of Agreement No. 23-87 Amending Agreement No. 22-118 with Securitas Security Services USA, Inc. for Security Guard Services at the Montclair Transcenter

Mayor Pro Tem Johnson received confirmation that there is one security guard assigned to the Transcenter at all times, and was informed that the City intends to hire a new company to take over security services at the Transcenter in the coming months.

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

3. Consider Approval of Agreement No. 23-88 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

Mayor Pro Tem Johnson requested more information about the consultant, noting she was not able to find information online.

City Manager Starr advised that before starting his consulting firm, **Ken Gominsky** provided homeless services in Orange County and has developed several successful homeless assistance programs. He noted **Mr. Gominsky** has extensive knowledge of relevant laws and can also assist with securing grants for homeless services.

Economic Development Agency Director Fuentes added that **Mr. Gominsky** is the former Deputy Police Chief of Santa Ana where he oversaw homeless outreach services and brought Santa Ana into compliance with laws related to addressing homeless issues and responding to lawsuits brought by homeless advocates.

Council Member Lopez asked what resources in San Bernardino County could be accessed by IMC, and for information about the property the City is looking to acquire for transitional housing.

City Manager Starr advised San Bernardino County does not currently have homeless assistance programs or resources available, and IMC would assist with developing those connections. He stated the City is looking to purchase the **Welcome Inn Motel** on Mission Boulevard and IMC will assist with acquiring grants for the conversion and programming for that property.

Council Member Ruh stated he looks forward to the City working with this consultant.

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

4. 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

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

D. Resolutions — None

IX. PULLED CONSENT CALENDAR ITEMS — None

X. COMMUNICATIONS

A. Department Reports

1. Human Services — Holiday Events

Recreation Manager Saltos made the following announcements:

- The Community Activities Commission invites everyone to the Holly Jolly Holiday Event on 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.
- 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.

2. Police — Dashing Through Montclair & Costco Food & Toy Drives

Acting Police Chief Reed made the following announcements:

- The Police Department will accompany Santa and Mrs. Clause as they go dashing through Montclair on Saturday, December 2, from noon 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, including several stops.
- 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.

B. City Attorney

City Attorney Robbins stated the City Council is no longer requested to hold a closed session for the following item:

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

Property: APNs 1008-011-14-0000 & 1008-011-15-0000
Negotiating Parties: City of Montclair and Mu-Wang Liu
Agency Negotiator: Edward C. Starr, City Manager
Under Negotiations: Recommendations Regarding Purchase Price

City Attorney Robbins confirmed the City Council's availability to hold an appeal hearing for former Police Sergeant John Minook on January 29, 2024, at 6:00 p.m. She also provided the following update on the *Dow/Alvarran v. Montclair* case: The City of Pomona has refused to enter into a tolling agreement with the City of Montclair in relation to this case; therefore the City of Montclair will file a claim with the City of Pomona.

C. City Manager/Executive Director — None

D. Mayor/Chair

1. Notice of Cancellation of December 4, 2023 Regular Joint Meeting

Mayor/Chair Dutrey announced the December 4, 2023 regular joint meeting is cancelled due to the anticipated lack of pressing business.

2. Mayor/Chair Dutrey complimented the Veterans Dance event held at the Senior Center, announced tonight's meeting would be adjourned in memory of former **First Lady Rosalynn Carter and his wife Anne's mother **Patricia Maloon**; and wished everyone a happy Thanksgiving.**

E. Council Members/Directors

1. Council Member/Director Ruh discussed the accomplishments of **Rosalynn Carter including her advocacy for mental health and her extensive work with and dedication to **Habitat for Humanity**; noted two food distribution events he participated in recently, one by local church **Christian Development Center** and another hosted by **Assembly Member Blanca Rubio** in partnership with **State Senator Susan Rubio**; stated November 22 will be the 60th anniversary of the assassination of **President John F. Kennedy**; and read an excerpt from **President Kennedy's** 1963 Thanksgiving Proclamation.**

2. Council Member/Director Lopez received clarification from City Manager Starr that the City does not have a park rental policy and currently rents parks to established leagues on a contract basis; congratulated **Montclair High School's football team for making it to the CIF Championships, despite not winning the title, and for its booster club having a very successful first annual antique car show; encouraged everyone to shop local on Small Business Saturday this weekend; and read an excerpt from **President Abraham Lincoln's** decree of the first Thanksgiving issued on October 3, 1863.**

3. Mayor Pro Tem/Vice Chair Johnson praised **Montclair High School for its Ready to Launch event that was very successful and clearly produces students who are prepared to enter the workforce; invited everyone to attend the **Montclair Chamber of Commerce** Holiday Lunch and Donation Event on November 29 at noon in the Community Center, with a BBQ lunch sponsored by **I-10 Towing** free with a food, toy, or \$10 monetary donation;**

and announced the Chamber is working with the Economic Development Agency to develop a shop local promotion where those who shop in Montclair can be entered into a monthly raffle.

4. Council Member/Director Martinez congratulated **Carolyn Raft** on her reappointment to the **West Valley Mosquito and Vector Control District Board**; wished everyone a happy Thanksgiving; and stated she hopes to see everyone at the upcoming holiday events.

F. Committee Meeting Minutes

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

1. Personnel Committee – November 6, 2023

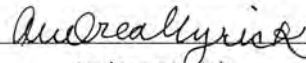
XI. CLOSED SESSION — None

XII. CLOSED SESSION ANNOUNCEMENTS — None

XIII. ADJOURNMENT

At 8:08 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 former U.S. First Lady Rosalynn Carter and Patricia Meade Maloon, mother-in-law of Mayor Dutrey.

CITY OF MONTCLAIR

TREASURER'S REPORT

FOR THE MONTH ENDING

November 30, 2023

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STATEMENT OF CASH AND INVESTMENTS BY FUND

SCHEDULE 3

STATEMENT OF CASH AND INVESTMENT ACCOUNTS

GRAPH

CASH AND INVESTMENTS BY TYPE

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

November 30, 2023

COMPLIANCE STATEMENT

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

Total Investments	\$ 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 November 30, 2023

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance
General Fund	\$ (5,436,391.73)	\$ 1,656,854.37	\$ 3,042,908.93	\$ -	\$ (6,822,446.29) (1)
Gas Tax Fund	229,398.49	169.64	159,493.89	-	70,074.24 (2)
Road Maintenance - Section 2032	2,333,441.86	86,741.74	-	-	2,420,183.60
Measure I Fund	6,006,029.23	85,649.11	-	-	6,091,678.34
Traffic Safety	126,276.56	6,330.31	-	-	132,606.87
Disability Access Fund - Bus. License	56,426.90	547.20	374.60	-	56,599.50
Park Maintenance	2,844.95	3,332.31	7,507.04	-	(1,329.78)
Park Development	1,541,907.06	-	-	-	1,541,907.06
CDBG	(45,347.42)	-	5,812.74	-	(51,160.16) (2)
SB2 Planning Grant	(55,425.00)	-	-	-	(55,425.00) (2)
Air Quality Improvement Trust	13,322.36	-	-	-	13,322.36
Senior Nutrition Program	(63,384.29)	32,336.07	22,621.23	-	(53,669.45) (2)
American Rescue Plan	-	-	-	-	-
Forfeiture Fund - State	102,654.70	-	-	-	102,654.70
Proposition 30/5B 109	83,683.54	-	-	-	83,683.54
SB 509 Public Safety	160,104.35	45,552.00	104,623.33	-	101,033.02
Forfeiture Fund-Federal/DOJ	636,304.42	-	2,260.03	-	634,044.39
Asset Seizure Fund	3.01	0.20	-	-	3.21
Section 11489 Subfund	29,277.10	-	-	-	29,277.10
Fed Asset Forfeiture-Treasury	128,001.12	-	-	-	128,001.12
School District Grant Fund	71,496.00	-	-	-	71,496.00
State Supplemental Law Enforce	386,117.48	23,481.41	-	-	409,598.89
Local Law Enforcement Block Gr	260.51	17,605.00	-	-	17,865.51
PC 1202.5 Crime Prevention	2,472.80	12.05	-	-	2,484.85
Recycling Grant Fund	113,336.96	-	-	-	113,336.96
Statewide Park Dev Grant	(0.32)	-	-	-	(0.32) (2)
Homeless Housing Assist Preven	(7,204.32)	-	6,935.00	-	(14,139.32) (2)
LEAP Grant	(82,236.25)	-	3,557.25	-	(85,793.50) (2)
After School Program Fund	(912,622.15)	310,972.50	226,426.16	-	(828,075.81) (2)
City of Hope	1,290.78	-	-	-	1,290.78
Safety Dept. Grants	36,005.63	15,638.94	-	-	51,644.57
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	-	102.79	-	18,428.42
Title IIIB Sr Support Services	(14,884.20)	4,417.90	2,972.56	-	(13,438.86) (2)
Healthy Community Strategic Plan	7,785.58	-	-	-	7,785.58
ASES Supplemental Grant	48,439.00	-	-	-	48,439.00
E.M.S. - Paramedic Fund	(6,967.96)	3,747.27	4,681.34	-	(7,902.03) (3)
Economic Development	2,929,887.01	66.35	64,642.39	-	2,865,310.97
City Contributions/Donations Fund	1,650.00	50.00	-	-	1,700.00
Sewer Operating Fund	2,805,379.86	450,927.51	2,015,079.28	-	1,241,227.89
Sewer Replacement Fund	2,675,540.73	-	-	-	2,675,540.73
CFD 2011-1 (Paseos)	59,720.27	-	10,774.69	-	48,945.58
CFD 2011-2 (Arrow Station)	79,150.10	3,888.14	-	-	83,038.24
Inland Empire Utility Agency	5,167,382.88	-	37.11	-	5,167,345.77
Sewer Expansion Fee Fund	1,003,219.66	-	74.22	-	1,003,145.44
Developer Impact Fees - Local	1,572,248.99	-	-	-	1,572,248.99
Developer Impact Fees - Regional	932,863.77	-	-	-	932,863.77
Burftec Pavement Impact Fees	294,124.17	-	-	-	294,124.17
PUC Reimbursement Fund-MVGS	219,720.15	-	-	-	219,720.15
Utility Underground In-Lieu	383,396.52	-	-	-	383,396.52
General Plan Update Fee	107,629.98	572.35	-	-	108,202.34
Housing Fund	879,108.20	-	-	-	879,108.20
Public Education/Govt. PEG Fee Fund	129,911.64	7,395.97	-	-	137,307.61
Infrastructure Fund	(1,403,254.05)	-	772,202.01	-	(2,175,456.06) (4)
COVID-19	-	-	-	-	-
Successor Agency Bonds-Taxable	4,963,351.84	-	-	-	4,963,351.84
Successor Agency Bonds-Tax Exempt	8,131,756.54	-	12,865.00	-	8,119,091.54
2021 Lease Revenue Bond Proceeds	(310,129.58)	-	113,028.26	-	(423,157.84)
2014 Lease Revenue Bond Debt Svc	(1,403,948.88)	258,110.22	-	-	(1,145,838.66) (5)
2021 Lease Revenue Bond Debt Svc	883,310.82	783,448.06	-	-	1,666,758.88
Pension Obligation Bond Debt Svc	2,298,074.06	1,311,665.34	761,163.44	8,136.36	2,856,712.32
Contingency Fund	0.96	-	-	-	0.96 (1)
Assigned General Fund Reserves	33,070,481.88	-	31,002.90	-	33,039,478.98 (1)
TOTALS	\$ 70,985,200.50	\$ 5,109,711.96	\$ 7,370,946.19	\$ 8,136.36	\$ 68,732,102.63

Negative Cash Notes follow this presentation.

Notes on Negative Cash Balances

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

**CITY OF MONTCLAIR
STATEMENT OF CASH AND INVESTMENT ACCOUNTS
AS OF November 30, 2023**

	Par Value	Purchase Date	Maturity Date	Coupon Interest Rate	Current Market Value	Balance at Cost	Totals
CHECKING ACCOUNT							
Checking Account							\$ 19,732,578.85
Asset Seizure Account							\$ 2,471.86
CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES							
Local Agency Investment Fund (LAIF)				3.930%	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>		\$ 48,997,051.92
U.S. AGENCY SECURITIES							
					\$ -		\$ -
TOTAL							<u>\$ 68,732,102.63</u>

Current market values obtained from US Bank.

CITY OF MONTCLAIR
CASH AND INVESTMENTS BY TYPE
November 30, 2023
Total Cash & Investments \$68,732,103



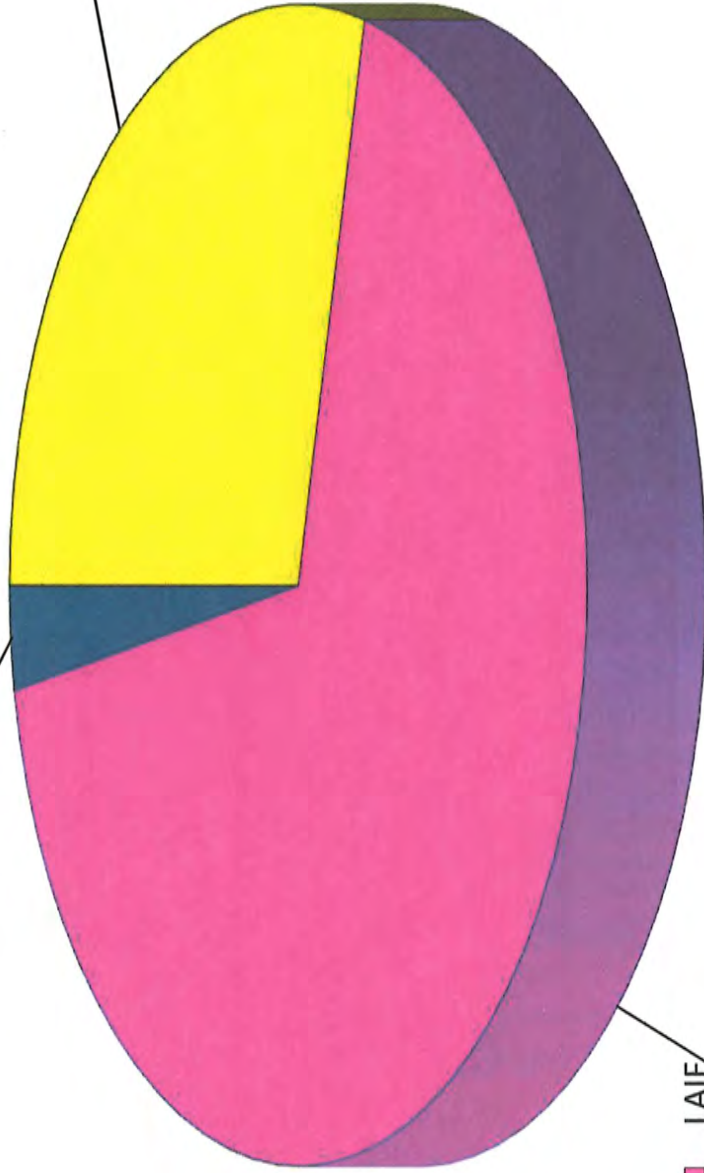
Investments
2.91%



Checking
28.71%



LAIE
68.38%



**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
TREASURER'S REPORT
FOR THE MONTH ENDING
November 30, 2023**

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

COMBINED OPERATING FUND

Operating	<u>(34,130.01)</u>	\$ (34,130.01)
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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

<u><u>\$ 1,070,797.33</u></u>

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

Checking Account

US Bank

1,070,797.33

TOTAL CASH

1,070,797.33

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
November 30, 2023**

City of Montclair
Final Warrant Register
Council Date 12/18/2023
Regular Warrants
Checking Account: Successor to the RDA

	Warrants	US Bank transfers	Area Totals
SRDA Combined Operating Fund	0.00	4,769.92	4,769.92
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	0.00
	<u>0.00</u>	<u>4,769.92</u>	

November 2023 Total

4,769.92

Note: Reimburse City for 11/09 payrolls
Reimburse City for 11/22 payrolls

Vice Chair Johnson

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 11/01/2023 To 11/30/2023

Printed on 12/04/2023 at 1:23 PM PST



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
11/27/2023	\$2412.01	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 11/22/23 Payroll
Initiate Date 11/27/2023
Initiate Time 10:31AM CDT
Initiated By JKULBECK
Completed Date 11/27/2023
Completed Time 10:31AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
11/09/2023	\$2357.91	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimb City for 11/09/23 Payroll
Initiate Date 11/08/2023
Initiate Time 08:39PM CDT
Initiated By JKULBECK
Modify Date 11/09/2023
Modify Time 08:05AM CDT
Modified By
Completed Date 11/09/2023
Completed Time 08:05AM CDT

Total Number of Book Transfers: 2
Total Amount of Book Transfers: \$4,769.92

--- End of Report ---

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

November 30, 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
November 30, 2023**

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
Checking Account			
US Bank			356,418.56
Investments			
LAIF	3.87%	1,054,155.92	<u>1,070,395.42</u>
TOTAL CASH & INVESTMENTS			<u>1,426,813.98</u>

NOTE:

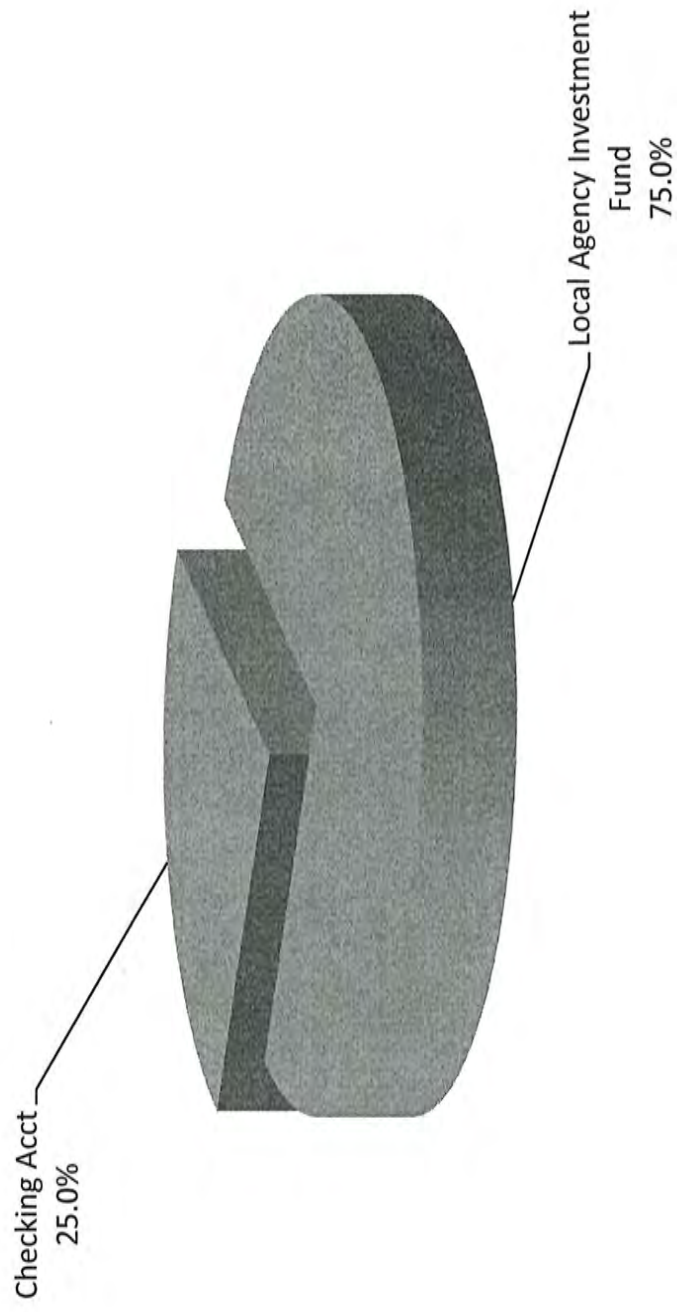
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

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
November 30, 2023**

Total Cash & Investments - \$1,426,814



**CITY OF MONTCLAIR
HOUSING CORPORATION
WARRANT REGISTER
FOR THE MONTH ENDING
November 30, 2023**

City of Montclair
Final Warrant Register
Council Date 12/18/2023
Regular Warrants
Checking Account: MHC

Warrants	ACH Transfers	Voided Checks	US Bank transfers	Totals
73,733.12	0.00	0.00	0.00	73,733.12

November 2023 Total

73,733.12

US Bank transfers:

Vice Chair Johnson

Accounts Payable

Checks by Date - Summary by Check Number

User: cramirez
Printed: 12/4/2023 1:19 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5562	COof001	CO of San Bernardino Environmental Heal	11/13/2023	122.50
5563	mont074	Monte Vista Water District	11/13/2023	887.22
5564	Nagc006	NAGCO GLASS	11/13/2023	513.86
5565	Perf003	Performance Construction & Remodeling I	11/13/2023	47,575.00
5566	sout018	Southern California Edison Co	11/13/2023	885.77
5567	Sout021	Southern California Gas Co	11/13/2023	37.05
5568	Dina001	Dina Contractor Services	11/22/2023	4,131.00
5569	land012	Landscape Maintenance Unlimited	11/22/2023	4,690.00
5570	mont002	City of Montclair	11/22/2023	1,706.64
5571	mont074	Monte Vista Water District	11/22/2023	2,544.34
5572	Nati051	National Community Renaissance of Califo	11/22/2023	7,962.00
5573	SCE-Res	Southern California Edison Co	11/22/2023	464.68
5574	Sout018	Southern California Edison Co	11/22/2023	1,483.59
5575	sout021	Southern California Gas Co	11/22/2023	729.47
Report Total (14 checks):				73,733.12

**CITY OF MONTCLAIR
HOUSING AUTHORITY
TREASURER'S REPORT
FOR THE MONTH ENDING
November 30, 2023**

Schedule 1

**CITY OF MONTCLAIR
HOUSING AUTHORITY
STATEMENT OF CASH
November 30, 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
November 30, 2023**

City of Montclair
Final Warrant Register
Council Date 12/18/2023
Regular Warrants
Checking Account: MHA

Warrants	Voided Checks	US Bank transfers - out.	Totals
0.00	0.00	0.00	0.00

November 2023 Total	0.00
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Vice Chair Johnson