

CITY OF MONTCLAIR

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

AGENDA

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

- A. Second Reading — Consider Adoption of Ordinance No. 23-1004 Amending Section 3.08.010 of the Montclair Municipal Code to Provide Informal Bidding Procedures Under the Uniform Public Construction Cost Accounting Act [CC] 6

VIII. CONSENT CALENDAR

- A. Approval of Minutes
1. Regular Joint Meeting — August 21, 2023 [CC/SA/MHC/MHA/MCF] 187
- B. Administrative Reports
1. Consider Receiving and Filing of Treasurer's Report [CC] 11
2. Consider Approval of Warrant Registers & Payroll Documentation [CC] 12
3. Consider Receiving and Filing of Treasurer's Report [SA] 13
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8. Consider Approval of Warrant Register [MHA] 18
9. Consider Approval of the Filing of a Notice of Completion with the San Bernardino County Recorder's Office for the Flashing STOP Sign Replacement Program [CC]
- Consider Authorizing Release of Retention 30 Days After Recordation of the Notice of Completion [CC] 19
10. Consider Authorizing the Sale of Certain Police Department Legacy Duty Firearms to ProForce Law Enforcement for \$21,750 [CC]
- Consider Authorizing Use of the Proceeds from the Sale of Said Firearms Toward the Purchase of 75 Ballistic Helmets from ProForce Law Enforcement for \$62,094 [CC]
- Consider Authorizing a \$41,000 Appropriation from the Federal Asset Forfeiture Fund to Cover the Remaining Balance of the Helmets and Potential Additional Shipping Costs [CC] 22
11. Consider Declaring Used Fire Hose as Surplus and Available for Donation to the Fire Department of Huatabampo, Sonora in Mexico [CC] 25
12. Consider Authorizing the Destruction of Certain Obsolete Public Records Pursuant to the City of Montclair Records Retention Schedule [CC] 26

C. Agreements

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

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

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

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

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

Consider Authorizing City Manager Edward C. Starr to Sign Said Agreement [CC]

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

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

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

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

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

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

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

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

Consider Authorizing City Manager Edward C. Starr to Sign Said Agreement [CC]

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

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

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D. Resolutions

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

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

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

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

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IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

A. Department Reports

1. Public Works – Groundbreaking Ceremony for Renovations at Sunset Park

B. City Attorney

1. Request for City Council to Meet in Closed Session Pursuant to Government Code §54956.9(d)(4) Regarding Potential Litigation [CC]

1 Potential Case

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

Employee: City Manager

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

Property: APN 1010-061-10-0-000

Negotiating Parties: City of Montclair and Jose Flores

City Negotiator: Edward C. Starr, City Manager

Under Negotiation: Recommendations Regarding Purchase Price

- C. City Manager/Executive Director
- D. Mayor/Chairperson
- E. Council Members/Directors
- F. Committee Meeting Minutes *(for informational purposes only)*

1. Personnel Committee Meeting — August 21, 2023 [CC]

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XI. CLOSED SESSION

XII. CLOSED SESSION ANNOUNCEMENTS

XIII. ADJOURNMENT

The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, October 2, 2023 at 7:00 p.m.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the meeting bodies after publication of the Agenda packet are available for public inspection in the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. Please call the City Clerk's Office at (909) 625-9416 or send an e-mail to cityclerk@cityofmontclair.org to request documents via e-mail.

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

I, Andrea M. Myrick, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at <https://www.cityofmontclair.org/agendas/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, September 14, 2023.



CITY COUNCIL AGENDA REPORT

DATE: SEPTEMBER 18, 2023

FILE I.D.: PUB600

SECTION: PUBLIC HEARINGS

DEPT.: PUBLIC WORKS

ITEM NO.: A

PREPARER: M. HEREDIA

SUBJECT: SECOND READING — CONSIDER ADOPTION OF ORDINANCE NO. 23-1004 AMENDING SECTION 3.08.010 OF THE MONTCLAIR MUNICIPAL CODE TO PROVIDE INFORMAL BIDDING PROCEDURES UNDER THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT

REASON FOR CONSIDERATION: The City Council is requested to consider adopting Ordinance No. 23-1004 amending Section 3.08.010 of the Montclair Municipal Code to provide informal bidding procedures under the California Uniform Public Construction Cost Accounting Act (Act) to expedite and streamline the procurement process for certain Public Works contracts.

BACKGROUND: The California Uniform Public Construction Cost Accounting Act (Act) became law in 1983 and is set forth in the California Public Contract Code, Sections 22000 through 22045. The Act allows local agencies to use alternative bidding procedures when they hire contractors to perform public works projects. In 2007, the California legislature passed Assembly Bill 1047, an “awareness campaign” to help public agencies understand the availability and benefits of the Act.

Specifically, under the Act:

- Projects of \$60,000 or less may be performed by the agency’s own workforce, negotiated contract, or purchase order;
- Projects of \$200,000 or less may use informal bidding procedures; and
- Public projects of more than \$200,000 shall follow formal bidding procedures.

Many participating agencies appreciate the program because it has given them more leeway in the execution of public works projects under a specific dollar amount; sped up the award process; expedited project delivery; reduced the time, effort, and expense associated with bidding projects under \$200,000; and simplified administration of those projects.

Currently, any public works project over \$5,000 must be formally bid. The Notice Inviting Bids must be published for ten days before the bids can be opened, then another two to three weeks is required to evaluate the proposals and recommend them to City Council for approval. This alternative bidding procedure can speed up the contract award process, improve the timeliness of project completion, eliminate paperwork, and simplify administration.

The Act calls for compiling an informal Bidders List by advertising yearly in the main trade journals (providing a broader competitive database) and having contractors sign up on the City’s vendor database for their specified trades. This requirement is met through PlanetBids, whereby contractors sign up to obtain Notices Inviting Bids. This compilation of contractors becomes the main list for all the notices of bids for public works projects greater than \$60,000 and less than \$200,000, as described in the Act.

The Act allows the designated official (City Manager) to immediately award those public works or maintenance contracts less than \$60,000; and to award those over \$60,000 and under \$200,000 based on uniform evaluation criteria reducing time, expense, and potential protests. The Act also allows staff to procure maintenance services or commodities in the same manner as a public works project.

The State of California encourages government agencies to adopt the Act. To date, 272 cities, 44 counties, 65 community college districts, and 654 school districts have adopted the Act, including the County of San Bernardino and the cities of Corona, Moreno Valley, Fontana, and Redlands.

After adopting the Uniform Public Construction Cost Accounting Act by resolution, participants enjoy a streamlined awards process and reduced advertising to reporting paperwork. Participating agencies may opt out at any time.

FISCAL IMPACT: Adoption and implementation of these alternative bidding procedures should provide cost savings to the City, as well as staff time savings. It would also lower the risk of losing funds for grant-funded projects not completed by the grant's deadline.

RECOMMENDATION: Staff recommends that the City Council conduct a second reading by number and title only and adopt Ordinance No. 23-1004 amending Section 3.08.010 of the Montclair Municipal Code to provide informal bidding procedures under the Uniform Public Construction Cost Accounting Act.

ORDINANCE NO. 23-1004

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING SECTION 3.08.010 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO INFORMAL BIDDING PROCEDURES FOR CERTAIN PUBLIC WORKS CONTRACTS PURSUANT TO THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT

WHEREAS, by Resolution 23-3404, adopted on August 21, 2023, the City elected to become subject to the California Uniform Public Construction Cost Accounting Act; and

WHEREAS, in order to take advantage of the informal bidding procedures set forth in the Act, Public Contract Code ("PCC") Section 22034 requires that the City adopt an ordinance establishing informal bidding procedures for public projects; and

WHEREAS, PCC 22034 sets forth the requirements of said informal bidding ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 3.08.010 of Chapter 3.08 (Purchasing) of the Montclair Municipal Code is hereby amended by adding the following subsection (D):

- D. Uniform construction cost accounting procedures. The City has elected to become subject to the uniform construction cost accounting procedures promulgated by the State Controller pursuant to the California Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq.). The purpose of this section is to set forth the requirements for contracting for small public projects in accordance with the California Uniform Public Construction Cost Accounting Act and state law.

Definitions. The following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Act" means the California Uniform Public Construction Cost Accounting Act, Public Contract Code section 22000 et seq.
2. "Facility" has the meaning set forth in Public Contract Code section 22002.
3. "Maintenance work" has the meaning set forth in Public Contract Code section 22002.
4. "Public Contract Code" means the Public Contract Code of the State of California.
5. "Public project" has the meaning set forth in Public Contract Code Section 22002.

Adoption of plans, specifications, and working details. The City Council delegates to the Public Works Director and/or City Engineer the authority to approve and adopt the plans, specifications, and working details for all public projects and maintenance work, including public projects exceeding the amount specified in Public Contract Code section 22032(c).

Small project procurement procedures. Public projects and maintenance work in the amount set forth in Public Contract Code Section 22032(a), as amended from time to time, or less may be performed by employees of the city by force account, by negotiated contract, or by purchase order without competitive bidding. The City Manager is authorized to approve and execute contracts or purchase orders issued pursuant to this section, provided that the expenditure is within the approved budget.

Informal bidding procedures. Public projects and maintenance work in the amount set forth in Section 22032(b) of the Public Contract Code, as amended from time to time, or less may be let to contract by informal procedures as set forth in the Act, including the following procedures:

1. Contractors list. The City shall comply with the requirements of Public Contract Code Section 22034 regarding maintaining a list of qualified contractors identified according to categories of work.
2. Notice inviting informal bids — circulation. Where a public project or maintenance work is to be performed which is subject to the provisions of this Section, a notice inviting informal bids shall be circulated using one or both of the following alternatives:
 - a. Notices inviting informal bids may be mailed or emailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with subsection (a) above.
 - b. Notices inviting informal bids may be mailed or emailed to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the Public Works Director or designee.
3. Notice inviting informal bids — proprietary products and services. Notwithstanding the foregoing requirements, if the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.
4. Notice inviting informal bids — mailing. All mailing of notices to contractors and Construction trade journals pursuant to this section shall be completed at least ten (10) calendar days before bids are due.
5. Notice inviting informal bids — contents. The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.
6. Rejection of bids; bid irregularities. The City Manager may, in his/her sole discretion, reject any or all bids presented and waive any minor irregularity or informality in such bids.
7. Award of contract. The City Manager is authorized to award and execute contracts informally bid in accordance with this section, provided that the expenditure is within the approved budget and the contract is in a form approved by the city attorney. Such contracts shall be awarded to the lowest responsible bidder.
8. Tie bids; no bids received. If two or more bids are the same and the lowest, the City Manager may accept the one he/she chooses. If no bids are received through the informal procedures set forth in this section, the project may be performed by city employees, by force account or negotiated contract without further complying with this section.
9. Bids over informal bidding limit. If all bids received are in excess of the amount set forth in Public Contract Code section 22034 (d), as amended from time to time, the City Council may, by adoption of a resolution by a four-fifths (4/5) vote, award the contract, at the amount specified in Public Contract Code section 22034(d), as amended from time to time, or less, to the lowest responsible bidder, if it determines the cost estimate of the city was reasonable.
10. Acceptance of work. Upon the completion of work pursuant to a contract awarded pursuant to this section, the City Manager may accept the work and may authorize the filing of the notice of completion, the release of funds retained upon such filing, and the release of any bonds upon the conclusion of their respective warranty periods.
11. Performance bonds. The city may require a performance bond before entering a contract awarded pursuant to this section in such amount as the public services director or his/her designee finds reasonably necessary to protect the best interests of the city. If the city requires a performance

bond, the form and amount of the bond shall be described in the notice inviting bids.

Section II. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section III. The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2023.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 23-1004 of said City, which was introduced at a regular meeting of the City Council held on the 21st day of August, 2023, and finally passed not less than five (5) days thereafter on the XX day of XX, 2023, by the following vote, to-wit:

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

Andrea M. Myrick,
City Clerk



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 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 August 31, 2023.

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

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

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



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 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 REGISTERS AND PAYROLL DOCUMENTATION		

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

BACKGROUND: Mayor Pro Tem Johnson has examined the Warrant Register dated September 5, 2023; the Warrant Register dated September 18, 2023; and the Payroll Documentation dated July 30, 2023, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated September 5, 2023, totals \$1,408,586.60. The Warrant Register dated September 18, 2023, totals \$1,655,424.80.

The Payroll Documentation dated July 30, 2023 totals \$788,692.84 gross, with \$570,948.27 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:	SEPTEMBER 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 August 31, 2023, pursuant to state law.

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

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

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



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 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 August 31, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Successor to the Redevelopment Agency Warrant Register dated 08.01.23-08.31.23 in the amounts of \$8,464.41 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 August 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 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 August 31, 2023, pursuant to state law.

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

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

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



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 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 August 31, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Warrant Register dated 08.01.23–08.31.23 in the amount of \$229,821.81 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 August 31, 2023.



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 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 August 31, 2023, pursuant to state law.

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

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

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



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 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 August 31, 2023, pursuant to state law.

BACKGROUND: Vice Chair Johnson has examined the Warrant Register dated 08.01.23–08.31.23 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

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



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 18, 2023	FILE I.D.:	TRC800
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	9	PREPARER:	R. ORTEGA
SUBJECT:	CONSIDER APPROVAL OF THE FILING OF A NOTICE OF COMPLETION WITH THE SAN BERNARDINO COUNTY RECORDER'S OFFICE FOR THE FLASHING STOP SIGN REPLACEMENT PROGRAM		

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

REASON FOR CONSIDERATION: State law requires Notice of Completions to be recorded with the County Recorder upon acceptance of a Public Works project. The City Council is requested to consider approving the filing of a Notice of Completion with the San Bernardino County Recorder's Office and authorize the release of retention for the Flashing STOP Sign Replacement Program.

BACKGROUND: The City Council has demonstrated a commitment to the adopted Safe Routes to School (SRTS) Program and approved the Flashing STOP Sign Replacement Program (Project) as part of the Fiscal Year 2022-23 Annual Budget.

On April 3, 2023, the City Council awarded a contract to Superior Pavement Markings (SPM) for the Flashing STOP Sign Replacement Program. City crews had initially installed nine LED solar powered STOP signs near Vernon Middle School. A total of 182 flashing LED solar powered STOP signs were successfully installed by SPM throughout the City at 101 locations, which are marked by red dots on the attached map. City crews will continue with installation of these signs as part of the ongoing sign replacement program at 20 other stop-controlled intersections, indicated by the yellow dots on the attached map. Additionally, the City received notification of a Highway Safety Improvement Program grant award that includes installation of these signs at several intersections near Monte Vista and Montera Elementary Schools and Montclair High School, shown by the green dots on the attached map.

The LED solar powered STOP signs will contribute to the City's ongoing efforts to address public safety by providing greater awareness for high-risk and high-incident intersections by alerting drivers that they are approaching a STOP sign. The new STOP signs should reduce the number of vehicles that fail to come to a complete stop at intersections during the day and more so at nighttime, preventing major accidents. Additionally, the flashing stop signs are energy efficient, which means they are carbon neutral and convenient to install with no cords, cables, or connection through ground lines needed.

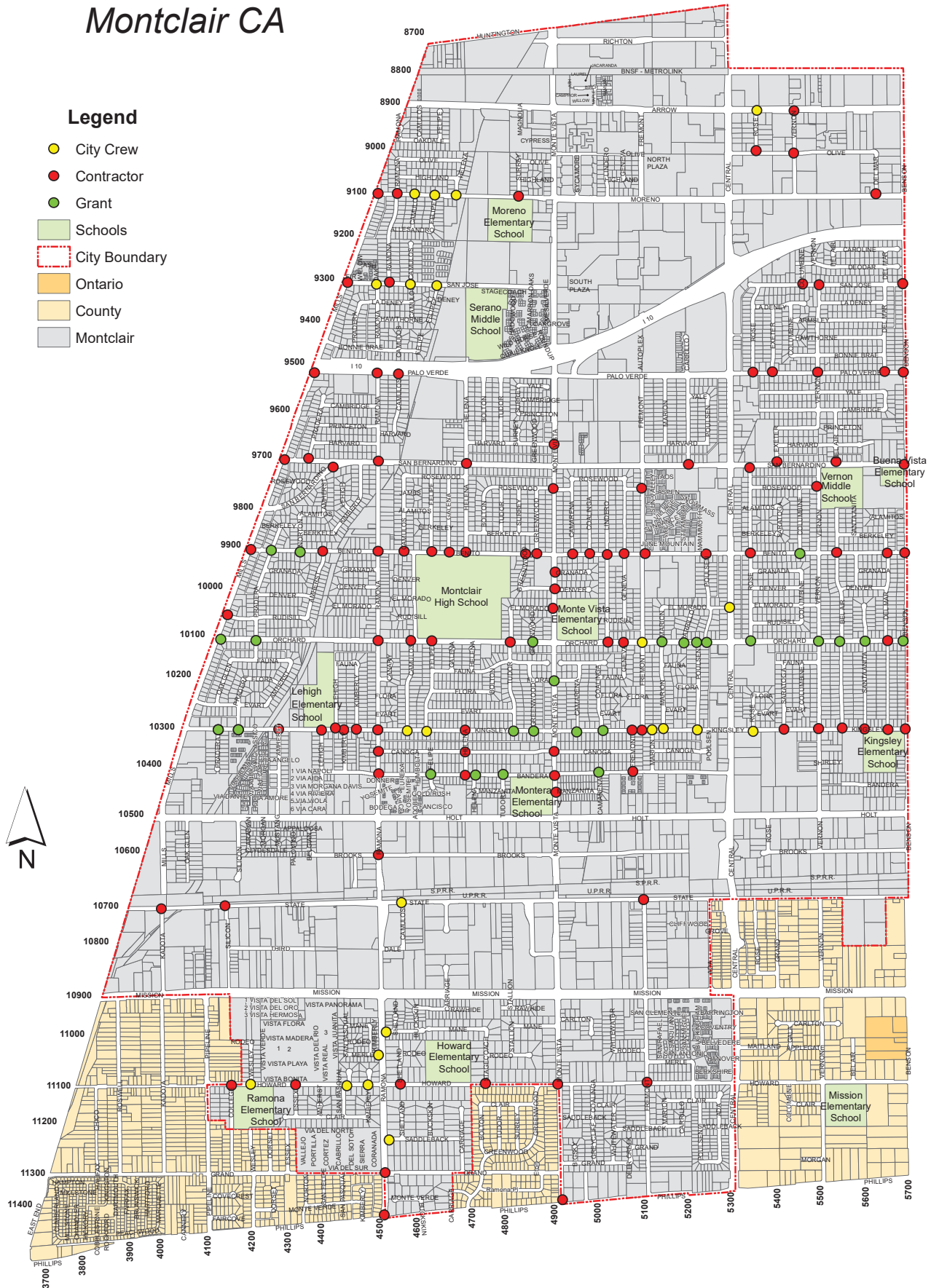
FISCAL IMPACT: The total construction cost for this project was \$457,600. The Flashing STOP Sign Replacement Program was funded using the 2021 Lease Revenue proceeds.

RECOMMENDATION: Staff recommends that the City Council take the following actions related to the Flashing STOP Sign Replacement Program:

1. Approve the filing of a Notice of Completion with the San Bernardino County Recorder's Office for the Flashing STOP Sign Replacement Program; and
2. Authorize release of retention 30 days after recordation of Notice of Completion.

Flashing STOP Sign Replacement Program

Montclair CA



RECORDING REQUESTED BY:

City of Montclair
5111 Benito Street
Montclair, CA 91763

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

Same as above

RECORDER:

Record without fee subject to
Govt. Code 6103

SPACE ABOVE FOR RECORDER'S USE ONLY

NOTICE OF COMPLETION

ASSESSOR'S PARCEL NUMBER(S): Various Locations throughout the City of Montclair

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is owner of the interest or estate stated below in the property hereinafter described.
2. The name of the property is: Flashing Stop Sign Replacement Program
3. Full address of the undersigned is: Monica Heredia, Director of Public Works/City Engineer
5111 Benito Street
Montclair, CA 91763
4. The nature of the title of the undersigned is: In Fee
5. The work of improvement on the property hereinafter described was completed on: August 25, 2023
6. The name of the CONTRACTOR for such work of improvement was:

Superior Pavement Markings, Inc., 5312 Cypress St., Cypress, CA 90630
7. The property on which said work or improvement was completed is in the County of San Bernardino, State of California, more particularly described as follows: Various Locations throughout the City

VERIFICATION

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

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

Executed on: September 13, 2023, at 5111 Benito Street, Montclair, California

BY:



Monica Heredia, Public Works Director/City Engineer
City of Montclair



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 18, 2023	FILE I.D.:	PDT360
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	POLICE
ITEM NO.:	10	PREPARER:	B. KUMANSKI

SUBJECT: CONSIDER AUTHORIZING THE SALE OF CERTAIN POLICE DEPARTMENT LEGACY DUTY FIREARMS TO PROFORCE LAW ENFORCEMENT FOR \$21,750

CONSIDER AUTHORIZING USE OF THE PROCEEDS FROM THE SALE OF SAID FIREARMS TOWARD THE PURCHASE OF 75 BALLISTIC HELMETS FROM PROFORCE LAW ENFORCEMENT FOR \$62,094

CONSIDER AUTHORIZING A \$41,000 APPROPRIATION FROM THE FEDERAL ASSET FORFEITURE FUND TO COVER THE REMAINING BALANCE OF THE HELMETS AND POTENTIAL ADDITIONAL SHIPPING COSTS

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the sale of Police Department legacy duty firearms to ProForce Law Enforcement for \$21,750. The sale would include one Glock 19, one Glock 21, two H&K USP Compacts, three Sig Sauer P228s, seven Sig Sauer P229s, eight Sig Sauer P229 DAKs, 47 Sig Sauer P220s, one Sig Sauer P232, three Sig Sauer P226s, and two G36 trigger groups from legacy Department G36 rifles.

The City Council is also requested to consider authorizing use of the proceeds from the sale of said firearms toward the purchase of 75 ballistic helmets from ProForce Law Enforcement for \$62,094 to replace the Police Department's obsolete helmets, and to consider authorizing a \$41,000 appropriation from the Federal Asset Forfeiture Fund to cover the remaining balance.

BACKGROUND: The Police Department is in the process of replacing the issued duty firearm from the Sig Sauer P220 or P229 to the Staccato P. To make room for and to facilitate the transition to the new firearm, the Department needs to sell its existing stock of handguns. In addition to the Sig Sauer P220s and P229s, the Department has several other Sig Sauer and other firearms utilized for "Sim-union" training, legacy pistols from its joint participation in the Upland SWAT team, firearms issued to prior sworn fire marshals, special assignment firearms, and a firearm from a prior Director of Public Safety. In addition, the Department still has two trigger groups from the Department's legacy G36 rifles, sold prior to the purchase of our current rifles.

Concurrently, the Department has identified a need to replace its ballistic helmets issued to every sworn officer. The existing helmets are over 22 years old and are no longer manufactured. Although the materiel is rigid, these helmets are carried on every shift and are subject to bumps and drops which, over time, can compromise their effectiveness, especially after 22 years of service. The Department's response to the riots of 2020 revealed another deficiency—the existing helmets are heavy, have inadequate cushioning for prolonged wear, and do not fit hearing protection comfortably.

Staff sought replacements and prefers the fit and function of the helmet made by Busch Protective, Model AMP-1E. This helmet can be universally sized, fitting small to large heads with an adjustable dial fit from size 6 ½ inches to 8 inches. There are extra-large sized helmets available; however, a Department member with a size 8 head fits comfortably with the adjustments provided on the standard size. This helmet also tested exceptionally against other helmets, specifically from United Shield. While all National Institute of Justice (NIJ) Certified Level 3A helmets stop the same threats from penetration, the Busch Protective AMP-1E has minimal back-face deformation, which is the amount of deformation on the inside of the helmet when struck by a projectile that limits head trauma. In addition, the Busch Protective helmet has a unique visor attachment mechanism which, unlike visors from other manufactures, uses “clip-on, clip-off” tabs, while others have to be attached with an adjustable strap across the back, making the attachment and removal more difficult for various situations. The memory foam padding on the internal suspension system is superior in comfort to existing helmets, and combined with the significant weight reduction can be worn comfortably for extended periods of time.

The Department sought bids from All State Police Equipment and ProForce Law Enforcement, as both are reputable prior vendors for the Department and both are Federal Firearms License holders that can facilitate the trade of the old handguns for credit toward the purchase of helmets. However, due to purchasing agreements between the vendors and manufacturers, ProForce Law Enforcement is the only vendor able to sell the Busch AMP-1E helmet. Staff compared this helmet with a competitor helmet by United Shield offered by All State Police Equipment.

Besides the significant factor of overall trauma prevention, other features of the Busch Protective helmet which set it apart from the United Shield helmet include the ease of face-shield attachment and removal, the upgraded padding for the suspension system, the protective face-shield sheath to prevent scratches when not worn, and local availability for in-stock replacement helmets and parts. Although not specific to helmets, the last Department purchase of a United Shield product (ballistic vest) from All State Police Equipment took over six months to receive, whereas ballistic products from ProForce Law Enforcement are reliably delivered within a couple months.

Based on the above factors, Department staff recommends utilizing ProForce Law Enforcement for the sale of Department firearms and for the purchase of the Busch Protective AMP-1E helmets. ProForce Law Enforcement provided a quote of \$21,750 for the sale of Department handguns and two trigger groups, and a quote of \$62,094 for the purchase of new helmets, including face shields and protective carry bags. This would result in a balance owed of \$40,344 for the helmet purchase. Although the majority of the firearms would be delivered by Department personnel during the initial trade-in, several firearms would be held in reserve that are currently issued to officers pending their transition to the new Staccato P handguns. They would be packed and shipped via a certified firearms carrier at that time, with an unknown overall shipping cost. The authorization of \$41,000 in Federal Asset Forfeiture Funds would cover the outstanding helmet balance and ensure sufficient funds to ship the secondary sale of handguns once the Department has fully transitioned to the new Staccato Ps.

FISCAL IMPACT: If authorized by the City Council, the proceeds from the sale of certain Department firearms would be used towards the purchase of 75 ballistic helmets, and a \$41,000 appropriation from Federal Asset Forfeiture Fund 1144 would cover the remaining balance of the helmets and potential additional shipping costs.

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

1. Consider authorizing the sale of certain Police Department legacy duty firearms to ProForce Law Enforcement for \$21,750;
2. Consider authorizing the use of proceeds from the sale of said firearms toward the purchase of 75 ballistic helmets from ProForce Law Enforcement for \$62,094; and
3. Consider authorizing a \$41,000 appropriation from the Federal Asset Forfeiture Fund to cover the remaining balance of the helmets and final shipping costs.



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 18, 2023	FILE I.D.:	EQS054
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FIRE
ITEM NO.:	11	PREPARER:	D. POHL
SUBJECT:	CONSIDER DECLARING USED FIRE HOSE AS SURPLUS AND AVAILABLE FOR DONATION TO THE FIRE DEPARTMENT OF HUATABAMPO, SONORA IN MEXICO		

REASON FOR CONSIDERATION: The City Council is requested to declare used fire hose as surplus so they may be made available for donation to the Fire Department of Huatabampo, Sonora in Mexico.

BACKGROUND: When fire hose has reached its maximum life span, it is deemed unserviceable and no longer used. The surplus hose no longer meets the acceptable standards of the Montclair Fire Department, but can still be used by an agency that does not possess the means to purchase new fire hose. The surplus hose, if not donated, will be disposed of in a landfill after being rendered totally unserviceable. Upon being declared as surplus by the City Council, a representative of the Fire Department of Huatabampo, Sonora Mexico will pick up and transport the items to their agency. The items include:

<i>Quantity</i>	<i>Item</i>
1	1" hose
7	1 ½" hose
1	1 ¾" hose
17	2 ½" hose
14	3" hose
39	4" hose

The representative for the Huatabampo Fire Department has agreed to and acknowledged the restrictions of the donation of fire hose from the City of Montclair's Fire Department, and that the City of Montclair is not making any warranties or representations as to the condition of the items. Both parties are aware that these items have been deemed no longer safe for entry into active fire environments, including live-fire training activities and may only be utilized for non-fire training purposes.

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

RECOMMENDATION: Staff recommends the City Council declare used fire hose as surplus and available for donation to the Fire Department of Huatabampo, Sonora in Mexico.



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 18, 2023	FILE I.D.:	CCK280
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	CITY MGR./CITY CLERK
ITEM NO.:	12	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER AUTHORIZING THE DESTRUCTION OF CERTAIN OBSOLETE PUBLIC RECORDS PURSUANT TO THE CITY OF MONTCLAIR RECORDS RETENTION SCHEDULE		

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

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

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

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

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

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



CITY OF MONTCLAIR

DESTRUCTION OF PUBLIC RECORDS FORM

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

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

Department: Human Services

Page 1 of 1

<i>Record type & Retention Period</i>	<i>Description of Records</i>	<i>Period covered</i>	<i>Additional Notes</i>
City Council Committees CU+2	CAC Meeting Stipend Check Stubs	9/2011 - 11/2011	
City Council Committees CU+2	CAC Community Benefits Funding Check Stubs	11/2011	
City Council Committees CU+2	CAC Home Beautification Program Scoring Sheets	6/2011	
City Council Committees CU+2	CAC CBF Applications	10/2010 & 10/2013	
City Council Committees CU+2	CAC Written Communications	11/2008 - 12/2011	
City Council Committees CU+2	CAC Attendance Sheets	9/2010 & 1/2011	
City Council Committees CU+2	CAC Volunteer of the Year Donation Letters	2/2012	
City Council Committees CU+2	John Wooton Music Scholarship Requisition Copies	9/2005 - 5/2008	
Receipt Copies AU+4	Weight Room & Racquetball Receipt Copies	12/2010 - 2/2012	
Liability Forms CU+2	Weight Room/Sauna/Shower Sign-In Sheets	2/2010 - 4/2010	
Liability Forms CU+2	Locker Rental Sign-In Sheets	5/1994 - 7/2006	

Approval for destruction of listed records:

Dept. Records Manager:

Alyssa Calonge

Date: 9/13/23

Department Head:

M. Richter

Date: 9/13/23

City Clerk:

Doreen Lujack

Date: 9/13/23

City Attorney:

Date: _____



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 18, 2023	FILE I.D.:	GRT225/PRK650
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	1	PREPARER:	R. HOERNING
SUBJECT:	CONSIDER WAIVING A MINOR BID IRREGULARITY AND AWARD OF CONTRACT TO PUB CONSTRUCTION, INC. IN THE AMOUNT OF \$6,495,030.92 FOR CONSTRUCTION OF THE SUNSET PARK BEAUTIFICATION PROJECT		

CONSIDER APPROVAL OF AGREEMENT NO. 23-64 WITH PUB CONSTRUCTION, INC. FOR CONSTRUCTION OF THE SUNSET PARK BEAUTIFICATION PROJECT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER APPROVAL OF AGREEMENT NO. 23-65 WITH LD KING, INC. IN THE AMOUNT OF \$68,290 FOR SUPPLEMENTAL ENGINEERING AND MATERIAL TESTING SERVICES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A \$650,000 CONSTRUCTION CONTINGENCY FOR THE SUNSET PARK BEAUTIFICATION PROJECT

REASON FOR CONSIDERATION: The City Council is requested to consider waiving a minor irregularity and the award of contract approval of Agreement No. 23-64 with PUB Construction, Inc. in an amount of \$6,495,030.92 for the construction of the Sunset Park Beautification Project, approval of Agreement No. 23-65 for supplemental engineering and material testing services, and consider authorizing \$650,000.00 for the construction contingency costs related to the Project.

Copies of proposed Agreement Nos. 23-64 and 23-65 are attached for City Council review and consideration.

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

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

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

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

Staff is requesting approval of Agreement No. 23-65 with LD King, Inc. to provide supplemental engineering services to Agreement No. 22-52 that are needed to properly construct the Sunset Park Beautification Project improvements. This work involves attending additional project meetings, responding to requests for clarification/submittals from the contractor, utility coordination, and additional field geotechnical and material testing quality assurance services.

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

On July 17, 2023, the City Council approved the plans and specifications and authorized permission to advertise the project for bids.

On September 11, 2023, the City received and opened eight (8) bid proposals for the Sunset Park Beautification Project. The bid results are shown in the following table.

Sunset Park Beautification Project

<i>Bidder</i>	<i>Bid Amount</i>
<i>Engineer's Estimate</i>	<i>\$5,875,000.00</i>
PUB Construction, Inc.	\$6,495,030.92
Act 1 Construction	\$7,095,376.12
Sol Construction, Inc.	\$7,190,802.50
H&H General Contractors, Inc.	\$7,417,562.00
Roadway Engineering & Construction Corp.	\$8,197,585.00
Los Angeles Engineering, Inc.	\$8,232,000.00
KASA Construction, Inc.	\$8,626,563.00
Griffith Company	\$10,237,000.00

Following the bid opening, the proposals were reviewed for completeness and accuracy. The bid from the apparent low bidder, PUB Construction, Inc., provided all the required documents. A minor irregularity was found on the Bidder's Guaranty form. However, the Bid Bond provided to Pub Construction, Inc. from Western Surety Company is for 10 percent of the Total Bid Amount in satisfaction of the Contractor's requirements. Staff and the City Attorney consider this clerical error to be a minor irregularity and has deemed PUB Construction, Inc. the lowest responsible, responsive bidder for the project. PUB Construction, Inc. is constructing the Reeder Ranch Park Project in a satisfactory manner. PUB Construction has also completed similar work for the cities of Anaheim and Hermosa Beach and San Bernardino County in a satisfactory manner.

The Engineer's project cost estimate was prepared by the engineering consultant based upon recent similar bids. Staff believes the cost of the Bid proposal is reasonable for the scope of work to be performed.

The City Council could elect to re-bid this project, but based on the evaluation of bids received, re-bidding is unlikely to yield significantly lower project cost results. Also, additional advertisement costs would be incurred. Staff is recommending the City Council award the project to PUB Construction, Inc.

The City Engineer has reviewed the plans and specifications for the project and has determined that they are in conformity with applicable statutes, codes, standards, and/or guidelines.

The project work period is 180 calendar days. The work is expected to begin in November 2023 and be completed by May 2023. The Clean California Grant funds must be fully expended and the project completed by June 30, 2024 in accordance with the Restricted Grant Agreement.

FISCAL IMPACT: The estimated construction cost for Sunset Park improvements exceeds the awarded California Department of Parks and Recreation per Capita Grant Program (\$151,154 for playground equipment and support facilities) and Clean California Reimbursement Grant (\$4,174,097 for Sunset Park improvements). Funds to complete the improvements would be provided from the 2021 Lease Revenue Bond funds. Sufficient funds have been allocated and no additional appropriation is necessary.

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

1. Waive a minor bid irregularity and award a contract to PUB Construction, Inc. in the amount of \$6,495,030.92 for construction of the Sunset Park Beautification Project;
2. Approve Agreement No. 23-64 with PUB Construction, Inc. for construction of the Project; subject to any revisions deemed necessary by the City Attorney;
3. Approve Agreement No. 23-65 with LD King, Inc. in the amount of \$68,290 for supplemental engineering and material testing services for the Project; and
4. Authorize a \$650,000 Construction Contingency for the Sunset Park Beautification Project.

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

A. Recitals.

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

SUNSET PARK BEAUTIFICATION PROJECT

"PROJECT" hereinafter.

B. Agreement.

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

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

AGREEMENT

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

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

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

(a) Types of Required Coverages

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

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

(b) Endorsements

AGREEMENT

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

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

Additional Insured: The City, United States Army Corps of Engineers (USACE) and California Department of Transportation (CALTRANS), their respective elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Contract. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

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

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

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

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

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

(e) Evidence of Insurance

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

AGREEMENT

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

AGREEMENT

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

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

(k) Insurance for Subcontractors

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

6. CONTRACTOR'S LIABILITY/INDEMNIFICATION:

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

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

- a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and

AGREEMENT

will pay all costs and expenses, including attorneys' fees incurred in connection therewith.

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

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

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

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

9. SUB-CONTRACTOR AND SUB-RECIPIENT AGREEMENTS: By signing this Agreement the Contractor agrees to provide all Sub-Contractor and Sub-recipients agreements to the City as required.

10. CONTRACT PRICE AND PAYMENT: CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **September 11, 2023**.

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

AGREEMENT

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

CONTRACTOR

CITY

PUB Construction, Inc.
23545 Palomino Dr., Ste. 104
Diamond Bar, CA. 91765

CITY OF MONTCLAIR, CALIFORNIA

By: _____

Javier "John" Dutrey
Mayor

Title

ATTEST:

By: _____

Name

Andrea M. Myrick
City Clerk

Title

APPROVED AS TO FORM:

Diane E. Robbins
City Attorney

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

SUNSET PARK IMPROVEMENTS
SUPPLEMENTAL ENGINEERING &
MATERIAL TESTING SERVICES

THIS AGREEMENT is made and effective as of on September 18, 2023, between the City of Montclair, a municipal corporation ("City") and L.D. King, 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 September 19, 2023 and shall remain and continue in effect for a period of 27 months until tasks described herein are completed, but in no event later than December 30, 2025, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

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

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Sixty Eight thousand two hundred and ninety dollars and zero cents (\$68,290.00)

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

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

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating

Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and to the extent the default is without fault or negligence of the Consultant, it shall not be considered a default.

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

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Consultant shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and

representatives, as broadly interpreted (collectively, the “Indemnified Parties”), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Consultant herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Consultant, including its subcontractors, subconsultants, employees, agents, and other persons or entities performing work for Consultant.

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

(c) Subcontractors/Subconsultants and Indemnification. Consultant agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subcontractor, 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 \$1,000,000 per occurrence, and \$2,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$2,000,000 for bodily injury and property damage, each accident. If 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:

City Engineer
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant: Carla Berard, CEO
L.D. King, Inc.
975 N. Haven Avenue, Suite 200
Ontario, CA. 91764

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 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 Contractor. If no such claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith.

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

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

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Javier John Dutrey, Mayor

By: _____
Name: Carla Berard
Title: CEO

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

September 12, 2023

Rosemary Hoerning
City of Montclair
5111 Benito Street
Montclair CA 91763

Subject: Construction Support Services and Geotechnical Observation and Testing Services for
Sunset Park, in the City of Montclair

Dear Rosemary:

Budget is requested to provide professional engineering design and geotechnical services for the project described above. The Scope of Services and Compensation are more particularly described below:

1. ENGINEERING CONSTRUCTION SUPPORT

- Response to requests for information from the contractor, field inspectors, field survey crew and other staff associated with the project. All requests should be processed through the City's construction manager as a single point contact.
- Attend construction meetings, utility coordination meetings and other meetings, as necessary, in connection with the project.

2. GEOTECHNICAL SERVICES

- Attend a pre-grade meeting at the site prior to initial of site grading and construction.
- Observation of over-excavation and fill placement within the proposed restroom building areas performed as recommended in the geotechnical report.
- Field compaction testing of the soils used to backfill building areas and other areas requiring structural compacted fill for support of new structures and other site improvements.
- Observation of the structure foundation excavations prior to placement of reinforcing steel and concrete.
- Observation and testing during subgrade and base preparation for flatwork and pavements.
- Observation and testing during utility trench backfill.
- Observation and compaction testing of the pavement/flatwork subgrade.
- Observation and compaction testing of the pavement/flatwork base course.

- Perform geotechnical laboratory testing of samples from onsite and imported soil/aggregate in accordance with the City QAP. Our laboratory tests will likely include sieve analyses, sand equivalent, optimum moisture and maximum density compaction curves (ASTM D1557).
- Provide Engineering support, analyses, and consultation, as necessary, and project management including review of Daily Field Reports.
- Preparation of one final report upon the completion of grading and construction that summarizes the work performed and the results of our observation and testing.
- The proposed geotechnical, field and laboratory testing services during construction will be performed on a time-and-expense basis at the rates listed on the attached *Professional Fee Schedule*. Our budgeted hourly rates are based on the assumption that this is a California prevailing wage project.

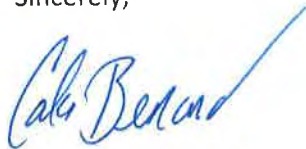
COMPENSATION

TASK	DESCRIPTION	FEE
1	Engineering Construction Support	\$7,400.00
2	Geotechnical Services	\$60,890.00
TOTAL		\$68,290.00

Client agrees to compensate Consultant for Engineering Construction Support on a Time and Materials basis for an estimated amount of \$7,400.00, and Geotechnical Services on a Time and Materials basis for an estimated amount of \$60,890.00.

Should you have any questions or need additional information regarding this proposal, please do not hesitate to contact me.

Sincerely,



Carla E. Berard, P.E., P.L.S.
CEO/Sr. Project Manager

L.D. King, Inc. Rate Schedule

October 1, 2022 – September 30, 2023

EXHIBIT B

Principal	\$186.00
Sr. Engineer Designer	\$184.00
Sr. Project Manager	\$184.00
Project Manager	\$164.00
Project Engineer	\$145.00
Engineer/Designer III	\$131.00
Engineer/Designer II	\$115.00
Engineer/Designer I	\$105.00
CAD Drafter III	\$105.00
CAD Drafter II	\$ 95.00
CAD Drafter I	\$ 70.00
Administrative Assistant	\$ 70.00
Intern	\$ 49.00

Surveying Services

Director of Survey	\$185.00
Senior Survey Calculator	\$154.00
Survey Calculator	\$136.00
3-Man Survey Crew	\$356.00
2-Man Survey Crew	\$309.00
1-Man Survey	\$198.00

Travel Time

3-Man Survey Crew	\$356.00
2-Man Survey Crew	\$309.00
1-Man Survey	\$198.00

Overtime Rates

3-Man Survey Crew	\$469.00
2-Man Survey Crew	\$410.00
1-Man Survey	\$293.00

Subsistence

3-Man Survey Crew	\$488.00
2-Man Survey Crew	\$324.00

Construction Services

Sr. Resident Engineer	\$142.00
Resident Engineer	\$136.00
Senior Inspector	\$126.00
Inspector	\$109.00
Car/Truck for Construction Services Personnel	\$ 71.00/Day

Reimbursable Costs

In-House Printing	Cost
Outsourced Printing Expenses	Cost + 15%
Express Mail & Delivery	Cost + 15%
Subconsultant Services	Cost + 10%

NOTE: L.D. King, Inc. reserves the right to change hourly rates on October 1, due to labor agreements, salary adjustments, and changes in operating expenses. All billings will be at the current billing rates.



975 N. Haven Avenue, Suite 200 Ontario, CA 91764 (909) 945-0526

LABOR RATES

CLASSIFICATION	\$/HR	CLASSIFICATION	\$/HR
Technician I.....	94	Project Administrator/Word Processor/Dispatcher	85
Technician II / Special Inspector	104	Information Specialist	125
Senior Technician / Senior Special Inspector	122	CAD Operator	145
Prevailing Wage (field soils / materials tester) *	158	GIS Specialist	145
Prevailing Wage (Special Inspector) *	162	GIS Analyst	170
Prevailing Wage (On site Source Inspector, NDT and soil remediation O&M)*	166	Staff Engineer / Geologist / Scientist	158
System Operation & Maintenance (O&M) Specialist	154	Senior Staff Engineer / Geologist / Scientist / ASMR	173
Non Destructive Testing (NDT)	162	Operations / Laboratory Manager	190
Deputy Inspector	122	Project Engineer / Geologist / Scientist	199
Field / Laboratory Supervisor	154	Senior Project Engineer / Geologist / Scientist / SMR	219
Source Inspector	140	Associate	245
City of Los Angeles Deputy Building (including Grading) Inspector	165	Principal	270
* See Prevailing Wages in Terms and Conditions		Senior Principal	325

GEOTECHNICAL LABORATORY TESTING

METHOD	\$/TEST	METHOD	\$/TEST
CLASSIFICATION & INDEX PROPERTIES		COMPACTION & PAVEMENT SUBGRADE TESTS	
Photograph of sample	10	Standard Proctor compaction, 4 points (ASTM D698)	
Moisture content (ASTM D2216)	20	- 4 inch diameter mold (Methods A & B)	160
Moisture & density (ASTM D2937) ring samples	30	- 6 inch diameter mold (Method C)	215
Moisture & density (ASTM D2937) Shelby tube or cutting	40	Modified Proctor compaction 4 points (ASTM D1557):	
Atterberg limits 3 points (ASTM D4318):	150	- 4 inch diameter mold Methods A & B	220
- Single point, non-plastic	85	- 6 inch diameter mold Method C	245
- Atterberg limits (organic ASTM D2487 / D4318)	180	Check point (per point)	65
- Visual classification as non-plastic (ASTM D2488)	10	Relative compaction of untreated/treated soils/aggregates (CTM 216)	250
Particle size:		Relative density 0.1 ft mold (ASTM D4253, D4254)	235
- Sieve only 1½ inch to #200 (AASHTO T27/ASTM C136/ASTM D6913/CTM 202) ...	135	California Bearing Ratio (ASTM D1883)	
- Large sieve 6 inch to #200 (AASHTO T27/ASTM C136/ASTM D6913/CTM 202) ...	175	- 3 point	500
- Hydrometer only (ASTM D7928)	110	- 1 point	185
- Sieve + hydrometer ≤3 inch sieve, (ASTM 7928)	185	R-Value untreated soils/aggregates (AASHTO T190/ASTM D2844/CTM 301)	310
- Percent passing #200 sieve, wash only (ASTM D1140)	70	R-Value lime or cement treated soils/aggregates (AASHTO T190/ASTM D2844/CTM 301)	340
Specific gravity and absorption of fine aggregate (AASHTO T84/ASTM C128/ASTM D854/CTM 207)	130	SOIL CHEMISTRY & CORROSIVITY	
Specific gravity and absorption of coarse aggregate (AASHTO T85/ASTM C127/CTM 206)	100	pH Method A (ASTM D4972 or CTM 643)	45
- Total porosity - on Shelby tube sample (calculated)	165	Electrical resistivity – single point – as received moisture	45
- Total porosity - on other sample (calculated)	155	Minimum resistivity 3 moisture content points (ASTM G187/CTM 643)	90
Shrinkage limits wax method (ASTM D4943)	126	pH + minimum resistivity (CTM 643)	130
Pinhole dispersion (ASTM D4647)	210	Sulfate content - gravimetric (CTM 417 B Part 2)	70
Dispersive characteristics (double hydrometer ASTM D4221)	90	Sulfate content - by ion chromatograph (CTM 417 Part 2)	80
As-received moisture & density (chunk/carved samples)	60	Sulfate screen (Hach®)	30
Sand Equivalent (AASHTO T176/ASTM D2419/CTM 217)	105	Chloride content (AASHTO T291/CTM 422)	70
SHEAR STRENGTH		Chloride content – by ion chromatograph (AASHTO T291/CTM 422)	80
Pocket penetrometer	15	Corrosion suite: minimum resistivity, sulfate, chloride, pH (CTM 643)	265
Direct shear (ASTM D3080, mod., 3 points):		Organic matter content (ASTM D2974)	65
Consolidated undrained - 0.05 inch/min (CU)	285	CONSOLIDATION & EXPANSION/SWELL TESTS	
Consolidated drained - <0.05 inch/min (CD)	345	Consolidation (ASTM D2435):	195
Residual shear EM 1110-2-1906-IXA (price per each additional pass after shear)	50	Each additional time curve	45
Remolding or hand trimming of specimens (3 points)	90	Each additional load/unload w/o time reading	40
Oriented or block hand trimming (per hour)	65	Expansion Index (ASTM D4829)	130
Single point shear	105	Single load swell/collapse - Method B (ASTM D4546-B, seat, load & inundate only)	105
Torsional shear (ASTM D6467 / ASTM D7608)	820	Swell collapse Method A up to 10 load/unloads w/o time curves (ASTM D4546-A)	290

METHOD	\$/TEST
TRIAxIAL TESTS	
Unconfined compression strength of cohesive soil (with stress/strain plot, ASTM D2186).....	135
Unconsolidated undrained triaxial compression test on cohesive soils (UU, ASTM D2850, USACE Q test, per confining stress).....	170
Consolidated undrained triaxial compression test for cohesive soils, (CU, ASTM D4767, USACE R-bar test) with back pressure saturation & pore water pressure measurement (per confining stress).....	375
Consolidated drained triaxial compression test (CD, USACE S), with volume change measurement. Price per soil type below EM 1110-2-1906(X):	
Sand or silty sand soils (per confining stress).....	375
Silt or clayey sand soils (per confining stress).....	500
Clay soils (per confining stress).....	705
Three-stage triaxial (sand or silty sand soils).....	655
Three-stage triaxial (silt or clayey sand soils).....	875
Three-stage triaxial (clay soils).....	1,235
Remolding of test specimens.....	65

METHOD	\$/TEST
HYDRAULIC CONDUCTIVITY TESTS	
Triaxial permeability in flexible-wall permeameter with backpressure saturation at one effective stress (EPA 9100/ASTM D5084, falling head Method C).....	310
Each additional effective stress.....	120
Hand trimming of soil samples for horizontal K.....	60
Remolding of test specimens.....	65
Permeability of granular soils (ASTM D2434).....	135
Soil suction (filter paper method, ASTM D5298).....	400
SOIL-CEMENT	
Moisture-density curve for soil-cement mixtures (ASTM D558).....	240
Wet-dry durability of soil-cement mixtures (ASTM D559) ¹	1,205
Compressive strength of molded soil-cement cylinder (ASTM D1633) ¹	60
Soil-cement remolded specimen (for shear strength, consolidation, etc.) ¹	235
¹ Compaction (ASTM D558 maximum density) should also be performed – not included in above price	

CONSTRUCTION MATERIALS LABORATORY TESTING

METHOD	\$/TEST
CONCRETE STRENGTH CHARACTERISTICS	
Concrete cylinders compression (ASTM C39) (6" x 12" and 4" x 8").....	35
Compression, concrete or masonry cores (testing only) ≤6 inch (ASTM C42).....	40
Trimming concrete cores (per core).....	20
Flexural strength of concrete (simple beam-3rd pt. loading, ASTM C78/CTM 523).....	85
Flexural strength of concrete (simple beam-center pt. loading, ASTM C293/CTM 523).....	85
Non shrink grout cubes (2 inch, ASTM C109/C1107).....	25
Drying shrinkage - four readings, up to 90 days, 3 bars (ASTM C157).....	400
Length of concrete cores (CTM 531).....	40
HOT MIX ASPHALT (HMA)	
Resistance of compacted HMA to moisture-induced damage (AASHTO T283/CTM 371).....	2,100
Hamburg Wheel, 4 briquettes (modified) (AASHTO T324).....	900
Superpave gyratory compaction (AASHTO T312/ASTM D6925).....	350
Extraction by ignition oven, percent asphalt (AASHTO T308/ASTM D6307/CTM 382).....	150
Ignition oven correction/correlation values (AASHTO T308/ASTM D6307/CTM 382).....	1,350
Extraction by centrifuge, percent asphalt (ASTM D2172).....	150
Gradation of extracted aggregate (AASHTO T30/ASTM D5444/CTM 202).....	135
Stabilometer, S-Value (ASTM D1560/CTM 366).....	265
Bituminous mixture preparation (AASHTO R30/CTM 304).....	80
Moisture content of HMA (AASHTO T329/ASTM D6037/CTM 370).....	60
Bulk specific gravity of compacted HMA, molded specimen or cores, uncoated (AASHTO T166/ASTM D2726/CTM 308).....	50
Bulk specific gravity of compacted HMA, molded specimen or cores, paraffin-coated (AASHTO T275/ASTM D1188/CTM 308).....	55
Maximum density - Hveem (CTM 308).....	200
Theoretical maximum density and specific gravity of HMA (AASHTO T209/ASTM D2041/CTM 309).....	130
Thickness or height of compacted bituminous paving mixture specimens (ASTM D3549).....	40
Wet track abrasion of slurry seal (ASTM D3910).....	150
Rubberized asphalt (add to above rates).....	+25%
BRICK	
Compression - cost for each, 5 required (ASTM C67).....	50
Absorption - cost for each, 5 required (ASTM C67).....	50

METHOD	\$/TEST
AGGREGATE PROPERTIES	
Bulk density and voids in aggregates (AASHTO T19/ASTM C29/ CTM 212).....	50
Organic impurities in fine aggregate sand (AASHTO T21/ASTM C40/CTM 213).....	60
LA Rattler-smaller coarse aggregate <1.5" (AASHTO T96/ASTM C131/ CTM 211).....	200
LA Rattler-larger coarse aggregate 1-3" (AASHTO T96/ASTM C535/CTM 211).....	250
Apparent specific gravity of fine aggregate (AASHTO T84/ASTM C128/ CTM 208).....	130
Specific gravity and absorption of coarse aggregate (ASTM C127/CTM 206) >#4 retained.....	100
Clay lumps, friable particles (AASHTO T112/ASTM C142).....	175
Durability Index (AASHTO T210/ASTM D3744/CTM 229).....	200
Moisture content of aggregates by oven drying (AASHTO T255/ASTM C566/CTM 226).....	40
Uncompacted void content of fine aggregate (AASHTO T304/ ASTM C1252/ CTM 234).....	130
Percent of crushed particles (AASHTO T335/ASTM D5821/CTM 205).....	135
Flat & elongated particles in coarse aggregate (ASTM D4791/CTM 235).....	215
Cleanliness value of coarse aggregate (CTM 227).....	210
Soundness, magnesium (AASHTO T104/ASTM C88/CTM 214).....	225
Soundness, sodium (AASHTO T104/ASTM C88/CTM 214).....	650
MASONRY	
Mortar cylinders 2" x 4" (ASTM C780).....	30
Grout prisms 3" x 6" (ASTM C1019).....	30
Masonry cores compression, ≤6" diameter - testing only (ASTM C42).....	40
Masonry core shear testing (Title 24).....	80
Veneer bond strength, cost for each - 5 required (ASTM C482).....	55
CMU compression to size 8" x 8" x 16" - 3 required (ASTM C140).....	55
CMU moisture content, absorption & unit weight - 6 required (ASTM C140).....	50
CMU linear drying shrinkage (ASTM C426).....	175
CMU grouted prisms compression test ≤8" x 8" x 16" (ASTM C1314).....	200
CMU grouted prisms compression test > 8" x 8" x 16" (ASTM C1314).....	250
BEARING PADS/PLATES AND JOINT SEAL	
Elastomeric bearing pads (Caltrans SS 51-3).....	990
Elastomeric bearing pad with hardness and compression tests (Caltrans SS 51-3).....	1,230
Type A Joint Seals (Caltrans SS 51-2).....	1,620
Type B Joint Seals (Caltrans SS 51-2).....	1,530
Bearing plates (A536).....	720

METHOD \$/TEST
REINFORCING STEEL AND PRESTRESSING STRANDS

Rebar tensile test, ≤ up to No. 11 (ASTM A370).....	65
Rebar tensile test, ≥ No. 14 & over (ASTM A370).....	200
Rebar bend test, up to No. 11 (ASTM A370).....	65
Rebar bend test, ≥ No. 14 & over (ASTM A370).....	200
Resistance butt-welded hoops/bars, tensile test, ≤ up to No. 10 (CTM 670)....	65
Resistance butt-welded hoops/bars, tensile test, ≥ No. 11 & over (CTM 670)....	85
Mechanical rebar splice, tensile test, ≤ up to No. 11 (CTM 670).....	65
Mechanical rebar splice, slip test, ≤ up to No. 11 (CTM 670).....	40
Mechanical rebar splice, tensile test, ≥ No. 14 & over (CTM 670).....	200
Mechanical rebar splice, slip test, ≥ No. 14 & over (CTM 670).....	200
Headed rebar splice, tensile test, ≤ up to No. 11 (CTM 670).....	65
Headed rebar splice, tensile test, ≥ No. 14 & over (CTM 670).....	200
Epoxy coated rebar/dowel film thickness (coating) test (ASTM A775/A934).....	45
Epoxy coated rebar/dowel continuity (Holiday) test (ASTM A775/A934).....	65
Epoxy coated rebar flexibility/bend test, up to No. 11 (ASTM A775/A934).....	45
Prestressing wire, tension (ASTM A416).....	175
Sample preparation (cutting).....	50

METHOD \$/TEST
STREET LIGHTS/SIGNALS

LED Luminaires / Signal Modules / Countdown Pedestrian Signal Face	
Modules (Caltrans RSS 86).....	1,300

SPRAY APPLIED FIREPROOFING

Unit weight (density, ASTM E605).....	60
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FASTENERS / BOLTS / RODS

F3125 GR A307, A325 Bolts, tensile test, ≤ up to 1-1/4" diameter, plain (ASTM A370).....	65
F3125 GR A307, A325 Bolts, tensile test, ≤ up to 1-1/4" diameter, galvanized (ASTM A370).....	75
A490 Bolts, tensile test, ≤ up to 1-1/4" diameter, plain (ASTM A370).....	65
A490 Bolts, tensile test, ≤ up to 1-1/4" diameter, galvanized (ASTM A370).....	75
A593 Bolts, tensile test, ≤ up to 1-1/4" diameter, stainless steel (ASTM A370).....	65
F1554 Bolts, tensile test, ≤ up to 1-1/4" diameter, plain (ASTM A370).....	100
F1554 Bolts, tensile test, ≤ up to 1-1/4" diameter, galvanized (ASTM A370)....	120

SAMPLE TRANSPORT

Pick-up & delivery (weekdays, per trip, <50 mile radius from Leighton office) ...	90
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EQUIPMENT LIST

ITEM	\$UNIT
1/4 inch Grab plates.....	5 each
1/4 inch Tubing (bonded).....	0.55 foot
1/4 inch Tubing (single).....	0.35 foot
3/8 inch Tubing, clear vinyl.....	0.55 foot
4-Gas meter (RKI Eagle or similar)/GEM 2000.....	130 day
Air flow meter and purge pump (200 cc/min).....	50 day
Box of 24 soil drive-sample rings.....	120 box
Brass sample tubes.....	10 each
Caution tape (1000-foot roll).....	20 each
Combination lock or padlock.....	11 each
Compressed air tank and regulator.....	50 day
Concrete coring machine (≤6-inch-dia).....	150 day
Consumables (gloves, rope, soap, tape, etc.).....	35 day
Core sample boxes.....	11 each
Crack monitor Two-Dimensional.....	25 each
Crack monitor Three-Dimensional.....	30 each
Cutoff saws, reciprocating, electric (Sawzall®).....	75 day
D-Meter Walking Floor Profiler.....	100 day
Disposable bailers.....	12 each
Disposable bladders.....	10 each
Dissolved oxygen meter.....	45 day
DOT 55-gallon containment drum with lid.....	65 drum
Double-ring infiltrometer.....	125 day
Dual-stage interface probe.....	80 day
Dynamic Cone Penetrometer.....	400 day
Generator, portable gasoline fueled, 3,500 watts.....	90 day
Global Positioning System/Laser Range Finder.....	80 day
Hand auger set.....	90 day
HDPE safety fence (≤100 feet).....	40 roll
Horiba U-51 water quality meter.....	135 day
Light tower (towable vertical mast).....	150 day
Magnehelic gauge.....	15 day
Manometer.....	25 day
Mileage (IRS Allowable).....	0.585 mile

ITEM	\$ UNIT
Moisture test kit (excludes labor to perform test, ASTM E1907).....	60 test
Nuclear moisture and density gauge.....	88 day
Electrical moisture and density gauge.....	88 Day
Pachometer.....	25 day
Particulate Monitor.....	125 day
pH/Conductivity/Temperature meter.....	55 day
Photo-Ionization Detector (PID).....	120 day
Pump, Typhoon 2 or 4 stage.....	50 day
QED bladder pump w/QED control box.....	160 day
Quire fee – Phase I only.....	200 each
Resistivity field meter and pins.....	50 day
Slip / threaded cap, 2-inch or 4-inch diameter, PVC Schedule 40.....	15 each
Slope inclinometer.....	200 day
Soil sampling T-handle (Encore).....	10 day
Soil sampling tripod.....	35 day
Speedy (R) moisture tester.....	5 day
Stainless steel bailer.....	40 day
Submersible pump, 10 gpm, high powered Grundfos	
2-inch with controller.....	160 day
Submersible pump/transfer pump, 10-25 gpm.....	50 day
Support service truck usage (well installation, etc.).....	200 day
Survey/fence stakes.....	8 each
Tedlar® bags.....	18 each
Traffic cones (≤25)/barricades (single lane).....	50 day
Turbidity meter.....	70 day
Tyvek® suit (each).....	18 each
Vapor sampling box.....	55 day
Vehicle usage (carrying equipment).....	20 hour
VelociCalc.....	35 day
Visqueen (20 x 100 feet).....	100 roll
Water level indicator (electronic well sounder) <300 feet deep well.....	60 day
ZIPLEVEL®.....	15 day
Other specialized geotechnical and environmental testing and monitoring equipment are available, and priced per site	

TERMS AND CONDITIONS

- **Expiration:** This fee schedule is effective through December 31, 2022 after which remaining work will be billed at then-current rates.
- **Proposal Expiration:** Proposals are valid for at least 30 days, subject to change after 30 days; unless otherwise stated in an attached proposal.
- **Prevailing Wages:** Our fees for prevailing wage work are based upon California prevailing wage laws and wage determinations. Unless specifically indicated in our proposal, costs for apprentice are not included. If we are required to have an apprentice on your project, additional fees will be charged.
- **Overtime:** Standard overtime rate is per California Labor Law and is billed at 1.5 or 2 times their hourly billing rate. Overtime rate for non-exempt field personnel working on a Leighton observed holiday is billed at 2 times their hourly billing rate. Overtime rate for Prevailing wage work is per the California Department of Industrial Relations (DIR) determination and is multiplied at 1.5 to 2 times their hourly billing rate for overtime and double-time, respectively.
- **Expert Witness Time:** Expert witness deposition and testimony will be charged at 2 times hourly rates listed on the previous pages, with a minimum charge of four hours per day.
- **Minimum Field Hourly Charges:** For Field Technicians, Special Inspectors or any on-site (field) materials testing services:
 - 4 hours:** 4-hour minimum charge up to the first four hours of work
 - 8 hours:** 8-hour minimum charge for over four hours of work, up to eight hours.

Project time accrued includes portal to portal travel time.
- **Insurance & Limitation of Liability:** These rates are predicated on standard insurance coverage and a limit of Leighton's liability equal to our total fees for a given project.
- **Outside Direct Costs:** Heavy equipment, subcontractor fees and expenses, project-specific permits and/or licenses, project-specific supplemental insurance, travel, subsistence, project-specific parking charges, shipping, reproduction, and other reimbursable expenses will be invoiced at cost plus 20%, unless billed directly to and paid by client.
- **Invoicing:** Invoices are rendered monthly, payable upon receipt in United States dollars. A service charge of 1½-percent per month will be charged for late payment.
- **Client Disclosures:** Client agrees to provide all information in Client's possession about actual or possible presence of buried utilities and hazardous materials on the project site, prior to fieldwork, and agrees to reimburse Leighton for all costs related to unanticipated discovery of utilities and/or hazardous materials. Client is also responsible for providing safe and legal access to the project site for all Leighton field personnel.
- **Earth Material Samples:** Quoted testing unit rates are for soil and/or rock (earth) samples free of hazardous materials. Additional costs will accrue beyond these standard testing unit rates for handling, testing and/or disposing of soil and/or rock containing hazardous materials. Hazardous materials will be returned to the site or the site owner's designated representative at additional cost not included in listed unit rates. Standard turn-around time for geotechnical-laboratory test results is 10 working days. Samples will be stored for 2 months, after which they will be discarded. Prior documented notification is required if samples need to be stored for a longer time. A monthly storage fee of \$10 per bag and \$5 per sleeve or tube will be applied. Quoted unit rates are only for earth materials sampled in the United States. There may be additional cost for handling imported samples.
- **Construction Material Samples:** After all designated 28-day breaks for a given sample set meet specified compressive or other client-designated strength, all "hold" cylinders or specimens will be automatically disposed of, unless specified in writing prior to the 28-day break. All other construction materials will be disposed of after completion of testing and reporting.



CITY COUNCIL AGENDA REPORT

DATE: SEPTEMBER 18, 2023

FILE I.D.: PDT175

SECTION: CONSENT - AGREEMENTS

DEPT.: POLICE

ITEM NO.: 2

PREPARER: B. VENTURA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 23-66 WITH STI FIREARMS LLC FOR THE PURCHASE OF STACCATO P 2011 PLATFORM STEEL-FRAME WEAPON SYSTEMS AND ASSOCIATED SERVICES AND EQUIPMENT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING CITY MANAGER EDWARD C. STARR TO SIGN SAID AGREEMENT

CONSIDER AUTHORIZING A \$200,214 APPROPRIATION FROM THE FEDERAL ASSET FORFEITURE FUND FOR COSTS ASSOCIATED WITH AGREEMENT NO. 23-66

CONSIDER AUTHORIZING A \$3,185 APPROPRIATION FROM THE FEDERAL ASSET FORFEITURE FUND FOR THE PURCHASE OF LEATHER MAGAZINE POUCHES FROM ALL STATE POLICE EQUIPMENT

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-66 with STI Firearms LLC (dba Staccato 2011 LLC) for the purchase of Staccato P 2011 platform steel-frame weapon systems, magazines, Blackhawk T-Series Level 2 holsters, Leuphold Delta Point Pro optics, and Surefire X300T-A flashlights.

The City Council is also requested to consider authorizing City Manager Edward C. Starr to sign the Agreement and authorize a \$200,214 appropriation from the Federal Asset Forfeiture Fund for costs associated with proposed Agreement No. 23-66, which has been reviewed by the City Attorney and is attached for City Council's review and consideration.

In addition, the City Council is requested to consider authorizing a \$3,185 appropriation from the Federal Asset Forfeiture Fund for the purchase of leather magazine pouches from All State Police Equipment.

BACKGROUND: The Montclair Police Department's current authorized Department-issued handgun is the Sig Sauer P-220 .45 caliber ACP pistol, Sig Sauer P-226 9mm pistol, or the Sig Sauer P-229 9mm pistol. The purchase of these handguns was approximately 15 plus years ago, and there are approximately 80 of them available for issue; however, these handguns are widely unpopular amongst the officers and only a few are currently utilized today as their on-duty weapon.

Although the manufacturer, Sig Sauer, is a reputable company, the unpopularity of these specific firearms exists for several reasons. The Sig Sauer P-220, P-226, and P-229 handguns have low-ammunition capacity and have a poor trigger feel for the shooter. The Department spent additional funds years prior re-outfitting these handguns with new trigger systems. Unfortunately, this did not enhance the feel of the trigger system, and officers still choose to purchase their own on-duty weapon.

The above listed Sig Sauer handguns are also difficult to shoot, having a strong recoil and large groupings when fired. Shooters routinely incur low proficiency qualification scores, and the handguns are not capable of being outfitted with optics. These Sig Sauer handguns are no longer supported by the manufacturer, making it extremely difficult to find replacement parts and quality holsters.

For these reasons, the Department researched alternatives to its current authorized Department-issued handgun and has determined the Staccato P 2011 to be a viable replacement. Through rigorous testing, evaluation, internal survey of officers, and zero department evaluation failures, over 1,000 agencies across the nation have approved the Staccato 2011 weapon system as an authorized department-issued handgun. The Staccato P weapon system has demonstrated reduced recoil and consistent improvement in qualification scores and groupings. An increase in distance and confidence has also been recognized and documented by shooters utilizing the Staccato P 2011 weapon system.

All Staccato weapon systems are manufactured in the USA with American steel, materials, and parts. The precise manufacturing allows Staccato to provide the Montclair Police Department with a lifetime warranty. In addition, Staccato would provide annual inspections and replace any parts or firearms as well as include an armory course and firearms transition course for Montclair Police Range Armors and Firearm Instructors at no additional cost.

By utilizing Staccato weapons, the Department would experience a reduced long-term cost in maintenance. This weapon system exceeds all standards in drop, accuracy, reliability, and endurance testing. The Staccato P is a widely popular handgun and has demonstrated to be a successful recruitment tool for officers.

Staccato would supply the Blackhawk T-Series Level 2 basket weave duty holsters, which are specifically designed for the Staccato P weapon system and are solely available through Staccato. The Blackhawk holster is pull tested and guaranteed for duty use. It is capable of carrying most optics on the market and is the only duty holster on the market capable of supporting three different lighting systems.

Staccato would supply the Leuphold Delta Point Pro optic, which is assembled in the USA. Staccato would mount and zero each optic at no additional cost. The Delta Point Pro optic gives the shooter a clear field of view and the bold aiming point needed for increased accuracy in high-pressure situations. The optic is crafted from aircraft-grade aluminum and is made to handle the rigorous aspects of patrol. It is extremely versatile and has an easy-access battery compartment that does not require re-zeroing after a battery change. It also has click adjustments for more precision and eight brightness settings, providing the shooter plenty of control over the Delta Point Pro's dot intensity. The optic is compact, lightweight, and rugged. Its sight picture is second to none and is guaranteed for life.

Staccato would also supply the Surefire X300T-A turbo flashlight, which is designed for the Staccato P weapon system. The lighting system generates a tightly focused 66,000-candela beam pattern. It is a rapid and secure attachment to the accessory rail system of the Staccato P handgun, and significantly, helps identify threats at extreme distances while also providing ample spill light for officers to maintain situational awareness. The lighting system is ambidextrous and is controlled by one finger for momentary or constant activation of light.

Staccato is the sole source manufacturer of all Staccato 2011 handguns. The handguns feature a unique combination of specifications, items, and detailing that are exclusively manufactured by Staccato 2011.

On July 18, 2023, the Montclair Police Department hosted a mandatory shooting range day for its officers to test the Staccato P weapon system. Following the range day, all shooters participated in a survey of the Staccato P weapon system. The survey revealed 100 percent of the officers felt it should be the authorized Department-issued handgun; approximately 80 percent of officers revealed they would no longer carry their personally purchased handguns and would transition to the Staccato P weapon system; and approximately 90 percent of the officers believed the Staccato P weapon system would make them a more proficient shooter.

In the proposed one-year Agreement, Staccato 2011 is offering a 25 percent discount on all Staccato P weapon systems. All handguns would be custom engraved with serial numbers unique only to the Montclair Police Department at no additional cost.

All State Police Equipment is the sole provider of the Department's current authorized leather gear. Leather magazine pouches would be provided by All State Police Equipment that would be custom-made to fit the Staccato magazines at either 21- or 17-round capacities. No other leather provider accommodates both capacities in a single pouch, which would have hidden snaps to conform to the Department's already established leather gear standards.

FISCAL IMPACT: If authorized by the City Council, funding for Agreement No. 23-66 with Staccato 2011 would result in an appropriation from the Federal Asset Forfeiture Fund 1144 in the amount of \$200,214. This includes 65 firearms, optics, holsters, and flashlights; 390 magazines; engraving; lifetime warranty; annual inspections; and training. Funding for the purchase of 65 leather magazine pouches would result in an appropriation from Fund 1144 in the amount of \$3,185. Staff is requesting a total appropriation of \$203,400 from Fund 1144.

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

1. Approve Agreement No. 23-66 with STI Firearms LLC for the purchase of Staccato P 2011 platform steel-frame weapon systems and associated services and equipment;
2. Authorize City Manager Edward C. Starr to sign said Agreement;
3. Authorize a \$200,214 appropriation from the Federal Asset Forfeiture Fund for costs associated with Agreement 23-66; and
4. Authorize a \$3,185 appropriation from the Federal Asset Forfeiture Fund for the purchase of leather magazine pouches from All State Police Equipment.

AGREEMENT WITH STACCATO 2011 LLC

This Agreement is made and entered into this 18th day of September, 2023, by and between the City of Montclair, a municipal corporation organized under the laws of the State of California with its principal place of business at 5111 Benito Street, Montclair, CA 91763 ("City") and **Staccato 2011 LLC**, a Texas **Corporation**, with its principal place of business at **114 Halmar Cove, Georgetown, TX 78628** ("Vendor"). City and Vendor are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

A. Vendor desires to perform and assume responsibility for the provision of certain services and goods required by the City pursuant to the terms and conditions set forth in this Agreement. Vendor represents that it is experienced in providing similar services and goods to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with and understands the needs of City.

B. City desires to engage Vendor to sell to City the materials and/or equipment and/or render such services as more particularly described below in this Agreement.

TERMS

1. SCOPE OF SERVICES.

1.1 General Scope of Services. Vendor promises and agrees to furnish to City all labor, materials, tools, equipment, services, and the incidental and customary work necessary to fully and adequately supply the Staccato weapons system services ("Services"), which are more particularly described in Exhibit "A", attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules and regulations.

1.2 Goods. Vendor agrees to sell to City and City agrees to purchase from Vendor the materials and/or equipment ("Goods") as specified and per the specifications attached hereto and incorporated herein as Exhibit "B." Unless specifically stated otherwise, the Goods shall be new and unused and of the current production year.

2. TERM.

2.1 The term of this Agreement shall be from **September 18, 2023, to September 17, 2024**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to extend this Agreement automatically for no more than two (2) additional one-year terms. Vendor shall provide all Goods and complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the work.

3. FEES AND PAYMENTS.

3.1 Compensation. Vendor shall receive compensation, including authorized reimbursements, for all Goods provided and Services rendered under this Agreement at the rates set forth in Exhibit "B", which is attached hereto and incorporated herein by reference. The total compensation shall not exceed **Two Hundred Thousand, Two Hundred Thirteen Dollars, and Seventy Cents (\$200,213.70)** without written approval of the City Council or City Manager or his or designee, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2 Payment of Compensation. Vendor shall submit to City an itemized statement which indicates Services rendered by Vendor and Goods provided. The statement shall describe the amount of Services and Goods provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all non-disputed and approved charges thereon.

3.3 Reimbursement for Expenses. Vendor shall not be reimbursed for any expenses unless authorized in writing by City.

3.4 Extra Work. At any time during the term of this Agreement, City may request that Vendor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Goods and Services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Vendor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

4. RESPONSIBILITIES OF VENDOR.

4.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Vendor or under its supervision. Vendor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Vendor on an independent contractor basis and not as an employee. Vendor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Vendor shall also not be employees of City and shall at all times be under Vendor's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Vendor or any of Vendor's officers, employees or agents, except as set forth in this Agreement. Vendor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of providing Goods and Services under this Agreement and as required by law. Vendor shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

4.2 Schedule of Services.

4.2.1 Vendor shall perform the Services and provide Goods expeditiously, within the term of this Agreement, and in accordance with the Schedule of Goods and Services set forth in Exhibit "B" attached hereto and incorporated herein by reference ("Performance time"). Upon request of City, Vendor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Goods and Services. Vendor agrees that if the Goods are not provided and/or

the Services are not completed within the Performance Time, it is understood, acknowledged and agreed that the City will suffer damage.

4.2.2 Neither City nor Vendor shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Vendor and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this Section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Agreement.

4.2.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Vendor to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

4.3 Conformance to Applicable Requirements. All work prepared by Vendor shall be subject to the approval of City.

4.4 Acceptance. The Goods shall be received subject to City's inspection and right of rejection. The Goods shall not be considered accepted until inspection, testing and/or use of the Goods is found to be in accordance with the City's specifications. Final inspection of the Goods shall be at the location specified herein, unless otherwise agreed in writing. If the Goods are found at any time to be defective in material or workmanship, or otherwise not in conformance with specifications, City shall have the right, in addition to any other rights which it may have under warranties or otherwise, to reject such Goods in whole or in part. Rejected Goods shall be held at Vendor's risk for a reasonable time thereafter and shall be returned or disposed of at Vendor's expense. No rejected Goods shall be replaced by Vendor without written instruction or authorization from City.

4.5 Coordination of Services. Vendor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

4.6 Standard of Care; Performance of Employees. Vendor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Vendor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Vendor warrants that all of its employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Vendor represents that it, its employees, and subcontractors have all licenses, permits, qualifications and approvals of

whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Vendor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Vendor's failure to comply with the standard of care provided for herein. Any employee of the Vendor or its sub-Vendors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed by the Vendor and shall not be re-employed to perform any of the Services provided under this Agreement.

4.7 Warranty. In addition to all warranties which may be provided by law, Vendor warrants that the Goods delivered hereunder shall, (a) be free from defect of material or workmanship and conform strictly to the specifications, drawings, or sample specified or furnished; (b) conform to drawings, plans, specifications, samples or other descriptions furnished, specified, accepted or approved by City; and (c) be merchantable and fit for the purposes intended. The warranty shall be for a period of one (1) year, or such longer period as provided by a manufacturer's warranty or as agreed to by Vendor and City, from the date of final written acceptance of the Goods by City. This warranty shall survive any inspection, delivery, acceptance, or payment by City of the Goods. Vendor, at its own expense, shall repair or replace, at the option of City, any defective Goods within three (3) working days after receipt of notice from City. Vendor also warrants that the Goods are free and clear of all liens and encumbrances whatsoever, that Vendor is conveying good and marketable title to same, and that Vendor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Goods. Vendor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

4.8 Reserved.

4.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Vendor may be required to do, or respecting the size of any payment to Vendor during the performance of this Contract, Vendor shall continue to perform the Services while said dispute is decided by the City. If Vendor disputes the City's decision, Vendor shall have such remedies as may be provided by law.

4.10 Laws and Regulations; Employee/Labor Certifications. Vendor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting its performance under this Agreement, including all OSHA requirements, and shall give all notices required by law. Vendor shall be liable for all violations of such laws and regulations in connection with this Agreement. If the Vendor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Vendor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Vendor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure

or alleged failure to comply with such laws, rules or regulations. No provision contained within this paragraph or any other provisions delineated within this Agreement shall be construed as to impose a mandatory obligation upon Vendor, an extraterritorial corporation lacking a physical presence or personnel within the jurisdiction of the State of California, to adhere to or comply with the laws or regulations of Cal/OSHA or any other in-state laws or regulations that are inapplicable or unenforceable with respect to out-of-state entities and their activities.

4.10.1 Employment Eligibility; Vendor. By executing this Agreement, Vendor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Vendor. Vendor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Vendor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Vendor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Vendor's compliance with the requirements provided for in Section 4.10 or any of its sub-sections.

4.10.2 Employment Eligibility; Subcontractors, and Consultants. To the same extent and under the same conditions as Vendor, Vendor shall require all of its subcontractors, and consultants performing any work relating to this Agreement to make the same verifications and comply with all requirements and restrictions provided for herein.

4.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Vendor verifies that they are a duly authorized officer of Vendor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Vendor or its subcontractors, or consultants to meet any of the requirements provided for in Sections 4.10.1 or 4.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Vendor under Section 4.10.2); or (3) failure to immediately remove from this contract any person found not to be in compliance with such requirements.

4.10.4 Labor Certification. By its signature hereunder, Vendor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and to the extent applicable, agrees to comply with such provisions before commencing the performance of the Services.

4.10.5 Equal Opportunity Employment. Vendor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, gender expression, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Vendor shall also comply with all relevant provisions of City's

Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

4.10.6 Air Quality. Vendor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Vendor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Vendor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Vendor, its subcontractors, or others for whom Vendor is responsible under its indemnity obligations provided for in this Agreement.

4.10.7 Water Quality.

4.10.7.1 Management and Compliance. To the extent applicable, Vendor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency, the State Water Resources Control Board and the Santa Ana Regional Water Quality Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

4.10.7.2 Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Vendor or City to penalties, fines, or additional regulatory requirements. Vendor shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Vendor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole negligence or willful misconduct of the City, its officials, officers, agents, employees or authorized volunteers.

4.10.7.3 Training. In addition to any other standard of care requirements set forth in this Agreement, Vendor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Vendor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Vendor with a list of training programs that meet the requirements of this paragraph.

5. PROJECT MANAGEMENT

5.1 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all

purposes under this Agreement. Vendor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

5.2 Vendor's Representative. Vendor hereby designates John M Ray, or his designee, to act as its representative for the performance of this Agreement ("Vendor's Representative"). Vendor's Representative shall have full authority to represent and act on behalf of the Vendor for all purposes under this Agreement. The Vendor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all work required under this Agreement.

6. INSURANCE.

6.1 Time for Compliance. Vendor shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Vendor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Section.

6.2 Minimum Requirements. Vendor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Vendor, its agents, representatives, employees or subcontractors. Vendor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

6.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by applicable State of business. The policy shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross liability for claims or suits by one insured against another.

6.2.2 Minimum Limits of Insurance. Vendor shall maintain limits no less than:

(1) *General Liability* \$2,000,000 MINIMUM per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit;

(2) *Automobile Liability* \$2,000,000 MINIMUM per accident for bodily injury and property damage; and

(3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by applicable state of business.

(4) *Professional Liability (Errors & Omissions)*: [Intentionally Deleted] Manufacturer of Goods. If Vendor is also the manufacturer of any equipment included in the Goods, Vendor shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than \$3,000,000.

6.2.3 Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Vendor 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. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Vendor or the City may withhold amounts sufficient to pay premium from Vendor payments. In the alternative, the City may suspend or terminate this Agreement.

6.2.4 Additional Insured. The City of Montclair, its directors, officials, officers, employees, agents, and volunteers shall be named as additional insureds on Vendor's and its subcontractors' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

6.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Vendor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

6.3.1 General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 26, or endorsements providing the exact same coverage, the City of Montclair, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and complete operations performed by or on behalf of the Vendor, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Vendor's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance, deductible, or self-insurance shall be called upon to protect it as a named insured. Any insurance, deductible, or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Vendor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 6.2.2, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 6.3.1.

6.3.2 Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers,

or if excess, shall stand in an unbroken chain of coverage excess of the Vendor's scheduled underlying coverage. Any insurance, deductible, or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Vendor's insurance and shall not be called upon to contribute with it in any way. Policy shall contain or be endorsed to contain such provisions. Notwithstanding the minimum limits set forth in Section 6.2.2, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 6.3.2.

6.3.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of applicable insurance policy which arise from work performed by the Vendor.

6.3.4 Professional Liability (Errors & Omissions): [Intentionally Deleted]

6.3.5 All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers, or any other additional insureds.

6.4 Separation of Insureds; No Special Limitations; Waiver of Subrogation. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. All policies shall waive any right of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

6.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to the City. Vendor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Vendor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses. Subcontractor Insurance Requirements. Vendor shall not allow any subcontractors to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Vendor, the City may approve different scopes or minimum limits of insurance for particular subcontractors. The

Vendor and the City shall be named as additional insureds on all subcontractors' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.

6.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

6.7 Verification of Coverage. Vendor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

6.8 Reporting of Claims. Vendor shall report to the City, in addition to Vendor's insurer, any and all insurance claims submitted or received by Vendor in connection with the Services under this Agreement.

7. INDEMNIFICATION.

7.1 Scope of Indemnity. To the fullest extent permitted by law, Vendor shall defend, indemnify and hold the City, its officials, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any claim that Vendor's product contains a design, manufacturing or marketing defect, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. To the fullest extent permitted by law, the City shall defend, indemnify, and hold Vendor and its officers, directors, agents, and employees harmless from any claims, liabilities, costs, and expenses arising from acts, errors, or omissions of the City, its officials, police officers, employees, or agents in connection with the provision of Services and Goods under this Agreement, the use or misuse of Vendor's products, or claims related to improper or insufficient training related to Vendor's products, including attorney fees and related costs. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Vendor's indemnity obligation shall not apply to such loss or damage which is caused by the sole negligence or willful misconduct of the City.

7.2 Additional Indemnity Obligations. The selection of legal counsel by the City shall be subject to approval by Vendor's insurance company which shall not be unreasonably withheld. In addition, Vendor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and volunteers as part of any such claim, suit, action or other proceeding arising from a claim that Vendor's product contains a design, manufacturing or marketing defect. Vendor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and volunteers as part of any such claim, suit, action or other proceeding, provided Vendor is placed on reasonable notice of the claim prior to any such settlement agreement, Vendor's applicable insurance carrier approves of any such settlement, and Vendor shall have a right to object to any such proposed settlement and defend the litigation at its cost pursuant to Section 7.1. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Vendor shall reimburse City and

its officials, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The Parties' obligations to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the Parties, their officials, employees, agents and volunteers.

8. CALIFORNIA LABOR CODE

8.1 Prevailing Wages. Vendor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Vendor agrees to fully comply with such Prevailing Wage Laws. City shall provide Vendor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Vendor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Vendor's principal place of business and at the project site. Vendor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Vendor shall therefore comply with such Labor Code sections to the fullest extent required by law.

8.2 Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Vendor and all subcontractors must be registered with the Department of Industrial Relations. Vendor shall maintain registration for the duration of this Agreement and require the same of any subcontractor. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

8.3 Compliance Monitoring. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Vendor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Vendor or any subcontractor that affect Vendor's performance of Services, including any delay, shall be Vendor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Vendor caused delay and shall not be compensable by the City. Vendor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Vendor or any subcontractor.

9. SAFETY.

Vendor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its services, the Vendor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions

under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

10. ACCOUNTING RECORDS.

Vendor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Vendor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records pursuant to this Agreement. Vendor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

11. TERMINATION OF AGREEMENT.

11.1 Grounds for Termination. City may, by written notice to Vendor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Vendor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Vendor shall be compensated only for those Services and Goods which have been adequately rendered to City, and Vendor shall be entitled to no further compensation. If terminated for cause because the Vendor refused or failed to deliver the Goods, the City may obtain Goods by whatever method it may deem expedient. If City's cost of obtaining the Goods, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Goods, Vendor shall be granted a reasonable opportunity to rectify any refusal or failure to deliver the Goods prior to the City being entitled to seek reimbursement for any resulting cost discrepancy.. Vendor may not terminate this Agreement except for cause. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

11.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Vendor to provide all finished or unfinished documents and data and other information of any kind prepared by Vendor in connection with the performance of the Services under this Agreement. Vendor shall be required to provide such document and other information within fifteen (15) days of the request.

11.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, goods and services similar to those terminated.

12. GENERAL PROVISIONS.

12.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Vendor:

Staccato 2011 LLC.
114 Halmar Cove
Georgetown, TX 78628
Attn: John M Ray Law Enforcement Business Development
Manager (West)

City:

City of Montclair
5111 Benito Street
Montclair, CA 91763

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

12.2 Subcontracting. Vendor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

12.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Vendor must comply with the claim procedures set forth in California Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code 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 Vendor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Vendor shall be barred from bringing and maintaining a valid lawsuit against the City.

12.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

12.5 City's Right to Employ Other Vendors. City reserves right to employ other vendors in connection with the Goods and Services provided under this Agreement.

12.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

12.7 Assignment or Transfer. Vendor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

12.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Vendor include all personnel, employees, agents, and subcontractors of Vendor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

12.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

12.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

12.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 12.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

12.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

12.13 Prohibited Interests. Vendor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Vendor, to solicit or secure this Agreement. Further, Vendor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Vendor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Vendor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

12.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

12.15 Authority to Enter Agreement. Vendor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

12.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

12.17 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

SIGNATURES ON NEXT PAGE

**SIGNATURE PAGE FOR AGREEMENT
BETWEEN THE CITY OF MONTCLAIR
AND STACCATO 2011, LLC.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day and year first above written.

CITY OF MONTCLAIR

Staccato 2011, LLC, a Texas Corporation

Approved By:

If Corporation, two signatures, President or Vice
President and Secretary OR Treasurer REQUIRED

Edward C. Starr
City Manager

By: _____

Its: _____

Approved as to Form:

Printed Name: _____

Diane Robbins
City Attorney

By: _____

Its: _____

Printed Name: _____

Attested By:

Andrea Myrick
City Clerk

EXHIBIT "A"

SCOPE OF SERVICES

Lifetime Warranty	Benefits are included in the purchase price of the pistols. There are no additional fees or charges.
Transition Course	If requested by the Agency, Staccato will provide a factory certified training course for the officers to become certified on the 2011 pistol. This could be in the form of a "Train the Trainer" course for the Agency's firearms or range staff.
Armorer's Course	<p>This course covers basic assembly, disassembly, and inspection process for Law Enforcement Agency purposes.</p> <p>Service includes:</p> <p>Approx: 7 hours of instruction on Staccato 2011 Platform Handguns Student hand-out booklet Learning Objectives:</p> <ol style="list-style-type: none">1) Students will learn to fully disassemble and reassemble the 2011.2) Students will learn to inspect the 2011 and visually identify worn and/or broken parts.3) Students will learn to identify malfunctions and associate them with the root mechanical cause.
OIS Program	If an officer is involved in a use of force with a Staccato pistol and that weapon is booked as evidence, Staccato will provide a replacement pistol if requested by the Agency until the officer's pistol is returned.
Annual Inspection	Staccato will provide a factory gunsmith to inspect the Agency purchased pistols on an annual basis to check for any repairs that need to be made.

Exhibit "B"



TO: Lieutenant Brian Ventura

DATE: August 10, 2023 (Quote good for 90 days)

FROM: John M Ray Law Enforcement Business Development Manager (West)
Staccato 2011 LLC.

RE: Montclair Police Department

Model:	MSRP:	Price Per Unit:	Quantity:	Total:
Staccato P	\$2,499.00	\$1,874.25	65	\$ 121,826.25
SKU: 12-1200-000003				\$ -
Leupold Delta Point Pro	\$449.99	\$449.99	65	\$ 29,249.35
SKU: 250-01016081-SP				\$ -
Leupold DPP Mounting Kit	\$49.95	\$0.00	65	\$ -
				\$ -
Optics Mounted and Zeroed		\$0.00	65	\$ -
				\$ -
Mags DS 9/38 126mm 17RD	\$ 69.99	\$0.00	260 total	
SKU: 700-291912602-SP				\$ -
Mags DS 9/38 140mm 20RD	\$ 69.99	\$0.00	130 total	
SKU: 700-291914002-SP				\$ -
				\$ -
Blackhawk T Series Holster	\$149.95	\$130.00	65	\$ 8,450.00
Level 2 Basketweave				\$ -
SKU: 970-70007-00				\$ -
				\$ -
Surefire X300T-A	\$334.99	\$334.99	65	\$ 21,774.35
SKU: 915-0006-00				\$ -
Engraving / Serial #'s	\$300.00	\$0.00	65	\$ -
Lifetime Warranty	\$2,499.00	\$0.00	65	\$ -
Transition Course	\$4,200.00	\$0.00	1	\$ -
Armors Course	\$3,600.00	\$0.00	1	\$ -
OIS Program	\$2,499.00	\$0.00	65	\$ -
Annual Inspection	\$300.00	\$0.00	65	\$ -

Sub TOTAL \$181,299.95

TAX \$16,317.00

FREIGHT @ \$39.95/ gun \$2,596.75

Credits \$0.00

TOTAL 200,213.70



Staccato 2011 LLC. | 114 Halmar Cove, Georgetown, TX 78628 | main 512.819.0656

www.stiguns.com



CITY COUNCIL AGENDA REPORT

DATE: SEPTEMBER 18, 2023

FILE I.D.: PDT175

SECTION: CONSENT - AGREEMENTS

DEPT.: POLICE

ITEM NO.: 3

PREPARER: B. VENTURA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 23-69 WITH CRASH DATA GROUP FOR THE PURCHASE OF ONE BOSCH CRASH DATA RETRIEVAL PRO TOOL PACKAGE AND A ONE-YEAR SOFTWARE SUBSCRIPTION

CONSIDER AUTHORIZING AN \$8,289 APPROPRIATION FROM THE FEDERAL ASSET FORFEITURE FUND TO PAY THE COSTS ASSOCIATED WITH AGREEMENT NO. 23-69

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-69 with Crash Data Group for the purchase of one Bosch Crash Data Retrieval (CDR) Pro Tool package and a one-year software subscription. The City Council is also requested to consider authorizing an \$8,289 appropriation from the Federal Asset Forfeiture Fund to pay the costs associated with Agreement No. 23-69.

Proposed agreement No. 23-69 has been approved by the City Attorney and is attached for City Council's review and consideration.

BACKGROUND: A CDR would be used after a traffic collision to access the event data recorder (EDR) that is located in every vehicle, which records information whenever an airbag is deployed, during near deployment events, and during rollover events (this information varies with each vehicle manufacturer). The EDR contains valuable data including, but not limited to, vehicle speeds, accelerator application, throttle position, engine revolutions per minutes (RPMs), gear position, torque produced, fault codes, brake usage, delta V (speed changes), occupied seating positions, passenger restraint usage, and possibly other vital vehicle information.

Currently, the Department uses outside agencies that possess a Bosch CDR that have been trained on the proper operation of the tool to access EDR for major accident investigations. This creates scheduling conflicts that delay important data results in time-sensitive investigations and civil litigations.

Since January 2021 to date, the Montclair Police Department has investigated 22 fatal traffic collision investigations. These investigations are usually all criminal in nature, ranging from basic primary collision factor violations, DUIs, and other complex manslaughter investigations. The Bosch CDR is paramount to obtaining and analyzing complex vehicle data for successful case filing from the District Attorney's Office.

Investing in the Bosch CDR would reduce liability to the City by utilizing factual collision data, which could then be presented and articulated to the City Attorney, District Attorney, and insurance companies to mitigate liability. Furthermore, possessing the CDR and having Department certified personnel would eliminate the reliance on neighboring agencies for collecting valuable vehicle data.

Bosch is the sole manufacturer of Bosch Crash Data Retrieval Tool products. Staff is requesting to purchase the Bosch CDR and one-year subscription from Crash Data Group, which is Bosch's sole product distributor.

FISCAL IMPACT: If authorized by the City Council, funding for Agreement No. 23-69 to purchase one Bosch CDR would result in an appropriation from Federal Asset Forfeiture Fund 1144 in the amount of \$8,289. Subsequent annual fees of \$1,500 for the annual subscription would be budgeted for in the Police Department's Budget starting with Fiscal Year 2024-25.

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

1. Approve Agreement No. 23-69 with Crash Data Group for the purchase of one Bosch Crash Data Retrieval Pro Tool Package and a one-year software subscription; and
2. Authorize an \$8,289 appropriation from the Federal Asset Forfeiture Fund to pay the costs associated with Agreement No. 23-69.



Sample of Current End User License Agreement

Contents of the End User License Agreement in CDR19.5_Activation_EULA.txt:

End User License Agreement (EULA)
For CDR Tool Software after Activation
Version: May 30, 2019

1. ACCEPTANCE OF TERMS

IMPORTANT: READ THIS ENTIRE EULA CAREFULLY. THIS IS A LEGAL DOCUMENT UNDER WHICH YOU HAVE CERTAIN LEGAL RIGHTS AND OBLIGATIONS.

THIS EULA IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR A COMPANY OR OTHER ORGANIZATION) (“YOU” OR “LICENSEE”) AND BOSCH AUTOMOTIVE SERVICE SOLUTIONS INC.(REFERRED TO HEREIN AS “BOSCH”) CONCERNING YOUR ACCESS TO AND USE OF THE SOFTWARE PURCHASED THROUGH A SUBSCRIPTION PURCHASE (“SOFTWARE”). FOR THE TERM SELECTED AT THE TIME OF PURCHASE OR RENEWAL (“SUBSCRIPTION TERM”).

THIS EULA REQUIRES BINDING ARBITRATION TO RESOLVE ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THE EULA OR YOUR ACCESS TO OR USE OF THE SOFTWARE, AND YOU AGREE THAT ANY SUCH DISPUTE OR CLAIM WILL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION OR ARBITRATION. PLEASE REVIEW SECTION 11 CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE RESOLUTION OF ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THIS EULA OR YOUR ACCESS TO OR USE OF THE SOFTWARE.

PLEASE REVIEW THIS EULA CAREFULLY. BOSCH MAY, AT ITS DISCRETION, UPDATE THIS EULA AT ANY TIME WITH OR WITHOUT NOTICE TO YOU. YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS EULA, INCLUDING ANY UPDATES COMMUNICATED TO YOU. BY CLICKING ON THE “ACCEPT” BUTTON OR DOWNLOADING, UPLOADING, INSTALLING, ACCESSING OR USING THE SOFTWARE IN ANY WAY, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA.

IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT USE THE SOFTWARE AND PROMPTLY REMOVE THE SOFTWARE PACKAGE FROM THE COMPUTER.

2. GRANT OF LICENSE AND RESTRICTIONS

2.1. Your Authorized Use of the Software. Subject to your compliance with this EULA in all material respects:

2.1.1. If You are an individual person and you received an activation certificate (“Activation Certificate”) pursuant to a Bosch CDR Tool software Subscription from Bosch or an approved CDR Tool reseller or distributor (“Subscription”), Bosch grants You a personal, limited, non-exclusive, non-transferable, non-sublicensable, revocable license to use the Software, in object code form only, for the Purpose on the Designated Equipment. “Designated Equipment” shall mean no more than one personal computer per installation of the Software, such computer equipment to be identified by You as the equipment upon which You will be the primary user and intend the Software to be used.

2.1.2. If You are a company or any other type of organization, Bosch grants to You the right to designate one individual person within Your organization to have the non-exclusive right to exercise the rights set forth in Section 2.1.1.

2.2. Delivery and Installation.

2.2.1. Provided you retain a valid Subscription issued by the Bosch CDR Software License Service (VLMS), You may implement activation of the Software only on the Designated Equipment provided that the Designated Equipment meets the minimum requirements according to Bosch’s recommendations as outlined in the Related Materials. “Related Materials” shall mean all materials other than the Software furnished by Bosch and including, for example, Getting Started Guide, CDR Help File, instructional documentation, guides, and all permitted copies of such material made by Licensee. Connections to vehicles and or electronic control units (ECU) for the purposes of retrieving data must be done by directly connect the CDR tool to the vehicle or ECU using CDR tool cables and/or adaptors approved by Bosch. Any connections to a vehicle or ECU through additional hardware and software which is not part of the CDR tool is prohibited including, but not limited to, indirectly connecting the CDR tool through a wireless OBDII communications device, enabling remote connection to CDR tools over a server or internet server.

2.2.2. The Software which is installed on a second computer may be activated using a legitimate Activation Certificate from Bosch for a single license for back-up or alternate use by the Licensee. Both activations for a single license shall not be used concurrently or in the same manner as a second license. The second activation is intended for the Licensee to use when one computer is not in use.

2.2.3. Bosch shall provide an Activation Certificate to the Licensee after receipt of Licensee's payment for the agreed upon sales price of the Subscription. Activation Certificates and corresponding Software updates are available to the Licensee during the Subscription Term and will be delivered to the Licensee through the email system and made available via download from the internet respectively.

2.2.4. Changes of email address shall promptly be provided to Bosch or the authorized CDR Tool distributor or reseller your Subscription was purchased through.

2.3. Restrictions on Your Use of the Software. The Software or its components may be used only as expressly authorized in this EULA, and in no other way. You expressly agree NOT to:

2.3.1. In whole or in part, alter, copy, disassemble, decompile, reverse engineer, decode, or otherwise attempt to access or derive the source code or architectural framework of the Software;

2.3.2. Remove any copyright or proprietary notices from any part of the Software;

2.3.3. Unless otherwise agreed in writing by Bosch, use the Software as server software for making the Software available for multiple users (simultaneous use) over a network, install it on a server and allow users to access to the Software remotely for the purpose of multi-user access, or install the software on a device for use only by remote users;

2.3.4. Copy (other than once in the process of installing the Software or downloading updates, and once for back-up purposes), distribute, rent, lease, loan, assign, or sublicense all or any portion of the Software;

2.3.5. Modify in any way or prepare derivative works of the source or object code of the Software;

2.3.6. Provide a copy of the Software to anyone who is not bound by this EULA, or permit, allow, or authorize any other person or entity who is not bound by this EULA to use the Software;

2.3.7. Use or permit any other person to use the Software in any way that competes with Bosch's products or services, except as expressly permitted by applicable law;

2.3.8. Attempt to transfer Your rights under this EULA, or delegate Your obligations under this EULA, without Bosch's express prior written permission.

2.4. Except for the right of use pursuant to Section 2.1, Bosch reserves all rights for the Software, in particular exclusive right to reproduce, to distribute, to prepare derivative works therefrom and to publicly display the Software.

3. TERMS OF PAYMENT AND PRICES

3.1. Bosch reserves the right to increase the price for any future Subscriptions. Licensee may refuse to purchase a Subscription in the event of price increase. Any failure to renew your software Subscription or update the Software will have no effect on the rights granted to Licensee related to Software which have already been obtained legitimately either for free or paid for and installed on Designated Equipment.

4. WARRANTY

4.1. THE SOFTWARE AND OTHER INFORMATION DELIVERED TO YOU IS PROVIDED "AS IS" AND WITH ALL FAULTS. BOSCH DOES NOT WARRANT THE ACCURACY AND COMPLETENESS OF THE DATA.

Therefore, in each individual case, it shall be assured by Licensee that the vehicle identification as well as the equipment used to read crash data from ECUs on a given vehicle corresponds to the data of the Software.

4.2. BOSCH DOES NOT WARRANT THAT THE SOFTWARE OR USE THEREOF WILL BE COMPATIBLE WITH EACH VEHICLE MODEL OR IN CONNECTION WITH OTHER PROGRAMS ON THE SAME COMPUTER. THE WARRANTIES SET FORTH IN THIS SECTION IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4.3. THE REMEDIES SET FORTH IN THIS SECTION REPRESENT LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY BY BOSCH.

4.4. THIS INFORMATION SUPPLIED UNDER THIS EULA HAS BEEN COMPILED FOR USE ONLY BY VEHICLE MANUFACTURER PRODUCT EXPERTS, ENGINEERS AND PROFESSIONAL ACCIDENT INVESTIGATION & RECONSTRUCTION SPECIALISTS AND ASSUMES AN APPROPRIATE LEVEL OF SKILL AND COMPETENCE.

4.5. Licensee shall promptly inform Bosch of any defect in the Software and submit the appropriate information to enable the Bosch to correct the defect. Bosch shall, at its sole option; correct the defects discovered in the Software or deliver a new version of the Software.

4.6. In the event Bosch cannot detect the defect or the defect resulted from misuse or other circumstances that are beyond Bosch's control, Licensee shall bear any costs incurred in the correction of the defect. BOSCH SHALL NOT BE LIABLE FOR ANY DEFECTS IN THE EVENT THAT LICENSEE OR A THIRD PARTY MODIFIES THE SOFTWARE UNLESS LICENSEE PROVIDES EVIDENCE THAT THE CHANGES DID NOT INFLUENCE OR PRODUCE THE DEFECT.

5. LIABILITY

5.1. In no event shall Bosch be liable for damages arising out of or related to incorrect, incomplete or misinterpreted Software and/or data. Licensee shall take care to ensure that data supplied hereunder is applicable to the vehicle ECU, the system(s) and the vehicle the data was retrieved from.

5.2. IN NO EVENT SHALL BOSCH BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE SOFTWARE OR USE THEREOF, BOSCH'S PERFORMANCE OR FAILURE TO PERFORM

ANY OF ITS OBLIGATIONS HEREUNDER, WHETHER THE CLAIMS BE IN CONTRACT OR TORT, INCLUDING NEGLIGENCE OR STRICT LIABILITY. LICENSEE'S SOLE AND EXCLUSIVE REMEDY AFTER ACCEPTANCE OF THE SOFTWARE SHALL BE THE REMEDY AVAILABLE UNDER THE WARRANTY PROVISION.

5.3. Licensee shall appoint only qualified staff and use appropriate test equipment or tools to use the Software. Where applicable, Bosch recommends the use of appropriate test equipment and tools as specified in the vehicle manufacturer's issued service manuals.

5.4. Bosch shall not be responsible for any damage claim arising from Licensee's failure to comply with the provisions of this EULA.

6. TERM/ DURATION

6.1. The license term for this Software version remains in effect as long as You keep the installed Software on the Designated Equipment in compliance with this EULA. Upon expiration of the latest purchased Subscription Term, the license granted hereunder shall continue for this version of the Software only. The Software will continue to function without timing out; however, You will not be delivered or will not be granted access to production released updates or patches that are released to the public following expiration unless the You purchase a new Software Subscription for another license period.

6.2. You may terminate this EULA at any time by returning, destroying, erasing, and/or deleting all copies of the Software and corresponding Activation Certificate, in their entirety, that are in your custody or control.

6.3. This EULA shall automatically terminate immediately and without notice to You if: (a) You fail to comply with any of the terms and conditions of this EULA. In such event, You must return, destroy, erase, and/or delete all copies of the Software, in their entirety, that are in your custody or control; or (b) You purchase an activation certificate to enable additional functionality of the Software at which time the terms and conditions of the Activation EULA will supersede this EULA.

6.4. Bosch may have other legal rights upon such termination, which it reserves and does not waive.

6.5. Sections 2.4 and 8-12 of this EULA shall remain effective and binding upon You after termination of this EULA. The survival of such sections after termination of this EULA does not give You any right to use the Software in any way after such termination.

7. OPEN SOURCE SOFTWARE

7.1. The Software may include open source software components. Relevant information and details may be found at: c:\Program Files (x86)\Bosch\VTX-VCI.

8. CONFIDENTIALITY OF THE SOFTWARE

8.1. You acknowledge and agree that parts of the source code for the computer programs underlying the Software are a Bosch trade secret. You agree that any efforts by You to reverse engineer, decode decompile, disassemble or otherwise attempt to access or derive the source code or architectural framework of the Software, or any other efforts to learn the contents of such source code, data bases or resource files and applications could result in Your access to or knowledge or disclosure of such trade secrets without Bosch's permission, and that such access, knowledge, or disclosure could violate Bosch's trade secret rights and cause Bosch immediate and irreparable injury, entitling Bosch to obtain a preliminary and/or permanent injunction against You.

8.2. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b) (the "DTSA"), Recipient is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this EULA:

8.2.1. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

8.2.2. individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

9. DATA PRIVACY AND PROTECTION.

9.1. Licensee agrees that the users of the CDR tool and Software are obligated to be familiar with and follow applicable laws and regulations with respect to data privacy and general data protection regulations (e.g., US Driver Privacy Act of 2015, and the EU General Data Protection Regulation) related to the collection of data from vehicles, including but not limited to Event Data recorded as the result of a crash or active/passive safety system related events. Data collected from the vehicle and subsequently saved to a CDR file may contain Personally Identifiable Information (PII) including but not limited to Vehicle Identification Number (VIN), date & time the event data was recorded and, in some cases, Global Positioning System (GPS) data. Depending on the applicable local, regional, federal, or EU laws and regulations, compliance to regulations may require consent from the vehicle owner or sufficient legal authority may be required to access recorded data prior to retrieval of data from the vehicle using the CDR tool as well as compliance with the GDPR when processing and handling the data stored in the CDR file. Licensee also agrees that it is incumbent on the users of the CDR tool and Software to ensure compliance with applicable laws and regulations.

10. SOFTWARE AUDIT.

10.1. During the term of this EULA and at any time during the two (2) years thereafter, Bosch may audit Your use of the Software with advance written notice. You shall cooperate with the audit, including by providing access to any books, computers, records, or other information that relate or may relate to use of the Software. Such audit shall not unreasonably interfere with Your business activities. If Vendor discovers unauthorized use, reproduction, distribution, or other exploitation of the Software, You shall reimburse Bosch for the reasonable cost of the audit, or of the next audit in case of discovery without an audit, in addition to such other rights and remedies as Bosch may have.

11. JURISDICTION

11.1. All disputes involving this EULA, except actions arising under the copyright provision of Title 17 of the U.S. Code, shall be determined under the law of the State of Michigan and shall be submitted to an arbitrator appointed and operating under the Uniform Arbitration Act and the procedural rules of the American Arbitration Association (hereinafter "AAA"). The locations of the arbitration hearing will be Oakland County, Michigan or such other location as agreed to by the parties. Within thirty (30) days after either party has notified the other in writing that it is submitting a dispute to arbitration, one arbitrator shall be chosen under the then current Rules of the AAA pertaining to commercial disputes. Neither party shall be allowed to object to any arbitrator appointed by AAA. The ensuing arbitration shall be conducted according to the Rules of the AAA. The written decision of the arbitrator shall be final, binding and enforceable in any court of the United States or Canada with appropriate jurisdiction. In no case shall the arbitrator be authorized to award cost and damages otherwise prohibited herein. The application of the collision law as well as the Hague Conventions Relating to a Uniform Law on the International Sales of Goods, the United Nations Uniform Purchase Rights and other Conventions on Contracts for the International Sale of Goods shall be excluded.

12. MISCELLANEOUS

12.1. You shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export the Software or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export it to, a country subject to a United States embargo

12.2. You agree to receive periodic email notices announcing CDR Tool updates, new activation certificates and software Subscription status notices designed to inform You of pending expiration of said Subscriptions. If You wish to opt-out of these such emails, You agree to contact their CDR Tool sales representative and request that Your account on the CDR software license server be deleted or suspended. You agree that deleted or suspended accounts will result in You no longer receiving Activation Certificates during your Subscription Term.

12.3. You shall uninstall and destroy, within one week after this EULA has terminated, the Software and corresponding Activation Certificates as well as all complete or partial copies

thereof, whether altered or embedded in other programs, as well as any documentation, and shall provide a written confirmation thereof to the Bosch.

12.4. Modifications or supplements to this EULA - including this Section 12.4 shall be valid only when provided in writing and signed by both parties.

12.5. Should any provision of this EULA be invalid or become invalid, then such provision shall be severed from this EULA and the other provisions shall remain in full force and effect. Any invalid provision shall be replaced by a reasonable provision which is permissible under the law and which reflects the intent of the original provision.

12.6. Licensee agrees to obtain written permission from the owner or leasor of the Ford vehicles which the Licensed product is used to retrieve EDR data from, or the owner's legal representative; or written legal compulsion, in the form of a subpoena, warrant or court order, prior to downloading data from a Ford vehicle. Violation of this EULA will result in the termination of the Software license.

*** END OF DOCUMENT ***



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 18, 2023	FILE I.D.:	CVC750
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	4	PREPARER:	M. HEREDIA
SUBJECT:	CONSIDER AMENDING THE 2019-2024 CAPITAL IMPROVEMENT PROGRAM ADDING THE CIVIC CENTER MASTER PLAN		

CONSIDER APPROVAL OF AGREEMENT NO. 23-70 WITH EPTDESIGN FOR DESIGN SERVICES FOR THE CIVIC CENTER MASTER PLAN, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A \$42,000 APPROPRIATION FROM 2021 LEASE REVENUE BOND FUNDS TO COVER THE CONTRACT AMOUNT AND REIMBURSABLE EXPENSES RELATED TO AGREEMENT NO. 23-70

REASON FOR CONSIDERATION: Landscaping design services are required for the development of a master plan for the Civic Center. The City Council is requested to consider approval of Agreement No. 23-70 with EPTDESIGN.

A copy of proposed Agreement No. 23-70 is attached for City Council review and consideration.

BACKGROUND: EPTDESIGN is the architect responsible for the design of the Reeder Ranch Park project, including civil engineering, structural, and landscape designs. They were selected as the top team of seven architectural firms based on an RFP issued for Reeder Ranch. EPTDESIGN is very knowledgeable and has vast experience in landscaping and architectural projects.

EPTDESIGN will provide Landscape Architectural services for the Civic Center campus, creating a Master Plan that establishes a framework for immediate and long-term improvements. The master plan will assess existing conditions and provide an outline of programming and design that can be implemented in the near future. The scope of work is outlined below and will include all exterior areas surrounding City Hall, Library, Senior Center, Community Center and the Recreation Center (see Exhibit A).

As part of the Master Plan, EPTDESIGN will provide the following:

- Prepare an overall site plan drawing.
- Identify existing conditions including programming, circulation, and major site elements.
- Establish goals for bringing the Civic Center back to its Mid-Century modern roots.
- Provide a concept diagram in support of the overall master plan.
- Overall concept imagery that shows character of specific site elements.
- Develop drought tolerant plant palette and provide images.
- Coordinate with site furnishing manufacturer regarding specific site furnishing elements and provide plan that notes suggested locations. Suggest other site furnishing options that may be purchased.
- Provide Rough Order of Magnitude cost estimate to assist with phasing of installation.

The overall Landscape Master Plan will include the following improvements:

- Address all hardscape and planting throughout the site identifying existing drainage issues currently impacting the site, such as the existing restroom area. The area of scope also includes the southern drainage swale along the existing parking lot.
- New memorial garden with seating, plaque locations, sculpture and new fountain at south entrance of Building 1.
- New hardscape and planting design at main entrance of Building 1 (Benito Street side).
- Provide location and design for sculpture that was recently removed from the “Spirit of Freedom Plaza” on Monte Vista Avenue at the Memorial Garden.
- Address planting and hardscape at blank wall at southeast side of Civic Center building between Buildings 1 and 2.
- New hardscape and softscape surrounding the Senior Center, Building 3.
- New raised performance stage including an overhead canopy behind the east side of the Community Center, Building 4.
- Relocation of basketball courts including new pathways connecting to existing park conditions.

FISCAL IMPACT: The design services agreement with EPTDESIGN is for a not-to-exceed amount of \$42,000. 2021 Lease Revenue Bond funds will cover the contract amount, including reimbursable expenses.

RECOMMENDATION: Staff recommends the City Council approve the following:

1. Amend the 2019–2024 Capital Improvement Program adding the Civic Center Master Plan;
2. Approve Agreement No. 23–70 with EPTDESIGN for design services for the Civic Center Master Plan, subject to any revisions deemed necessary by the City Attorney; and
3. Authorize a \$42,000 appropriation from 2021 Lease Revenue Bond funds to cover the contract amount and reimbursables related to Agreement No. 23–70.

EXHIBIT A



CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

DESIGN SERVICES FOR CIVIC CENTER MASTER PLAN

THIS AGREEMENT is made and effective as of September 18, 2023, between the City of Montclair, a municipal corporation ("City") and EPTDESIGN 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 September 18, 2023 and shall remain and continue in effect for a period of 18 months until tasks described herein are completed, but in no event later than May 18, 2025, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

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

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. **This amount shall not exceed**

\$42,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

(c) Consultant will submit invoices monthly 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:	Monica Heredia, P.E. City Engineer City of Montclair 5111 Benito Montclair, CA 91763
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To Consultant: EPTDESIGN
844 East Green Street, Suite 201
Pasadena, CA 91101

17. ASSIGNMENT AND SUBCONTRACTING

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF PROPOSAL

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

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

costs, expenses and attorneys' fees paid or incurred in good faith.

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

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

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

CITY OF MONTCLAIR

CONSULTANT / EPT DESIGN

By: _____
Javier "John" Dutrey, Mayor

By: _____
(Title)

Attest:

By: _____
Andrea M. Myrick, City Clerk

By: _____
(Title)

Approved as to Form:

By: _____
Diane Robbins, City Attorney

11 July 2023

PROPOSAL FOR LANDSCAPE ARCHITECTURAL SERVICES**City of Montclair****Civic Center Master Plan****I. SCOPE****A. Project Phases****1. Master Plan Document****B. Project Area**

EPTDESIGN shall provide Landscape Architectural services for the Civic Center campus, creating a Master Plan that establishes a framework for immediate and long-term improvements. The master plan will assess existing conditions and provide an outline of programming and design that can be implemented. The area of scope is highlighted in the map below and will include all exterior areas surrounding City Hall, Library, Senior Center, Community Center and the Recreation Center.



II. PROCESS

EPTDESIGN assumes the following number of meetings and document submittals per phase.

A. Master Plan Phase (4 meetings, 1 site visit)

1. Site Visit to document existing conditions
2. Progress Review Meeting with City Staff (3 meetings)
3. Final Master Plan Presentation and Document Submittal

III. DELIVERABLES

A. **EPTDESIGN** will provide the following deliverables as part of the Master Plan phase:

1. Site Visit to verify existing conditions and draft them in an overall site plan drawing.
2. Site Analysis identifying existing conditions including programming, circulation, and major site elements.
3. Establish goals for bringing back the Civic Center to its Mid-Century modern roots.
4. Provide a concept diagram in support of the overall master plan. The graphics will be used to define existing conditions, site programming, proposed areas of improvement, site circulation, and any additional notes required.
5. Overall Landscape Master Plan illustrative that includes the following improvements:
 - a. Address all hardscape and planting throughout the site identifying existing drainage issues currently impacting the site, such as the existing restroom area. The area of scope also includes the southern drainage swale along the existing parking lot.
 - b. New memorial garden with seating, plaque locations, sculpture and new fountain at south entrance of Building 1.
 - c. New hardscape and planting design at main entrance of Building 1 (Benito Streetside).
 - d. Provide location and design for sculpture currently at the "Spirit of Freedom Plaza" on Monte Vista Avenue at the Memorial Garden.
 - e. Address planting and hardscape at blank wall at southeast side of civic center building between Buildings 1 and 2.
 - f. New hardscape and softscape surrounding the Senior Center, Building 3.
 - g. New raised performance stage including an overhead canopy behind the east side of the Community Center, Building 4.
 - h. Relocation of basketball courts including new pathways connecting to existing park conditions.
6. Overall concept imagery that shows character of specific site elements.
7. Develop drought tolerant plant palette and provide images.
8. Coordinate with site furnishing manufacturer regarding specific site furnishing elements and provide plan that notes suggested locations. Suggest other site furnishing options that may be purchased.
9. Provide Rough Order of Magnitude cost estimate to assist with phasing of installation.

IV. ASSUMPTIONS & EXCLUSIONS

The following items are assumed by **EPTDESIGN** under this contract, modifications to these assumptions may require additional services.

- A. Additional meetings not outlined in this fee proposal will be billed as an additional service on an hourly basis.
- B. Changes to description of work as outlined in the Process and Deliverable may require an additional service request.
- C. Construction documentation is not included in the project phase or deliverables.
- D. Site topographic survey is excluded.
- E. Accessibility assessment, soil testing, tree report shall be provided by others at owner's expense and are not included as a part of this proposal.
- F. 3D Modeling and perspective renderings are not included in the scope of work and if required will be an additional service.
- G. Drainage and Irrigation evaluations, design and documentation are not included except as noted in the in Section III of the deliverables.
- H. Site lighting inventory, analysis and design are not included.

V. DESIGN FEE

A. General

EPTDESIGN will provide the following phases on a fixed fee basis as noted below.

1. Master Plan Phase	\$42,000
TOTAL DESIGN FEE	\$42,000
Reimbursable Expenses	\$1,000

B. Reimbursable Expenses

EPTDESIGN defines reimbursable expenses as additional compensation for basic services including actual expenditures made by **EPTDESIGN** in the development of the project. These expenses shall include, but not be limited to: printing, plotting and reproduction; overnight delivery and messenger services; and travel expenses.

C. Additional Services

EPTDESIGN will provide to the Client such additional services as requested in writing by Client. For additional services, compensation shall be on an hourly basis or negotiated lump-sum basis.

Montclair Civic Center Master Plan

11 July 2023

Page 4 of 5

Hourly Rates

Principal	\$ 230.00
Senior Associate	\$ 180.00
Associate	\$ 155.00
Project Manager	\$ 125.00
Project Captain	\$ 110.00
Designer	\$ 100.00
Administrative	\$ 85.00

Rates are effective through 31 December 2023 and are subject to escalation each year thereafter.

D. Expenses

All expenses incurred during performance of the Services are included in compensation delineated above unless otherwise authorized by the Client in writing.

VI. CERTIFICATE ON LIABILITY INSURANCE

- A. Errors and omissions \$ 1,000,000 per claim
 \$ 2,000,000 annual aggregate
- B. General liability \$ 1,000,000 each occurrence
 \$ 2,000,000 aggregate
- C. Automobile \$ 1,000,000
- D. Worker's compensation \$ 1,000,000

VII. CONSULTANT EXPENSES

- A. Any consultant hired by **EPTDESIGN** to perform services in behalf of the Client shall be invoiced at cost plus fifteen percent (15%) unless noted otherwise.

VIII. BILLING PROCEDURES

- A. Unless noted otherwise, invoicing will be on a monthly basis for the portion of the work completed or total hours expended.
- B. All invoices are due and payable upon receipt.

IX. SUSPENSION OF WORK

- A. **EPTDESIGN** may suspend and withhold all work on a project if payment is not received in full on a monthly basis for any, or all invoices presented. Such suspension of work shall relieve **EPTDESIGN** of any obligation under this agreement until all outstanding payments have been made.

X. TERMINATION

- A. This agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

- B. In the event of termination, **EPTDESIGN** shall be paid compensation of the Basic Services and Additional Services performed up to termination date, including reimbursable expenses.

XI. ARBITRATION

- A. Should an irresolvable controversy or claim arise during the course of this contract, the controversy shall be resolved by arbitration in Los Angeles or San Bernadino County in accordance with the construction industry rules of the American Arbitration Association unless the parties mutually agree to do otherwise. The prevailing party is entitled to recover reasonable attorney's fees and costs associated with this procedure.

XII. SUCCESSORS AND ASSIGNS

- A. **EPTDESIGN** and the client agree to obtain written approval of the other party before assigning or transferring interest in this agreement to third parties and each binds himself, his partners, successors, and assigns legal representatives to this agreement.



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 18, 2023	FILE I.D.:	PDT175/PDT362
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	5	PREPARER:	M. BUTLER
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-71 WITH THE COUNTY OF SAN BERNARDINO RELATED TO DISTRIBUTION OF 2023 JUSTICE ASSISTANCE GRANT PROGRAM AWARD FUNDS		
	CONSIDER AUTHORIZING CITY MANAGER EDWARD C. STARR TO SIGN SAID AGREEMENT		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-71 with the County of San Bernardino related to distribution of 2023 Justice Assistance Grant (JAG) Program Award funds and authorizing City Manager Edward C. Starr to sign said Agreement.

A copy of proposed Agreement No. 23-71 is attached for City Council review and consideration.

BACKGROUND: The Police Department has been notified by the Bureau of Justice Assistance (BJA) that it is eligible to receive an \$18,962 FY 2023 JAG Program award. BJA will award JAG Program funds to eligible units of local government for the purpose of preventing and reducing crime and violence. The JAG Program requires that the state's allocation for municipal agencies in the region be distributed and administered directly through San Bernardino County. The San Bernardino County Board of Supervisors, as the JAG Program Administrator, will submit a joint application for local jurisdictions and shall disburse appropriate grant allocations, less a 5 percent administrative fee as allowable under JAG guidelines. Each participating jurisdiction must enter into an Interlocal Agreement (proposed Agreement No. 23-71), or Memorandum of Understanding, identifying the County as the fiscal agent for these joint funds. Appropriations must be released within 60 days of receipt of grant funds by the JAG Program Administrator. Proposed Agreement No. 23-71 would allow the County to release pass-through funds to the towns and cities in accordance with the grant agreement. Before receiving grant funds, the City must also enter into a subrecipient sub-award grant agreement with the County.

Since 2005, the Edward Byrne Memorial JAG Program has provided funding to state and local governments for support of a broad range of activities intended to prevent and control crime and improve the criminal justice system. The JAG Program is the primary provider of federal criminal justice funding to states and units of local government and furthers the Department of Justice's mission to prevent or reduce crime and violence. JAG Program awards are for the exclusive use of law enforcement services and programs and are designed to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice. These funds shall supplement existing services and shall not be used to supplant any existing funding for law enforcement services.

FISCAL IMPACT: The City of Montclair's 2023 JAG allocation is \$19,960—the San Bernardino County Board of Supervisors would retain a 5 percent administrative fee of \$998. Approval of proposed Agreement No. 23-71 would result in an \$18,962 JAG Program fund allocation to the Police Department budget.

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

1. Approve Agreement No. 23-71 with the County of San Bernardino related to distribution of the 2023 Justice Assistance Grant Program Award funds.
2. Authorize City Manager Edward C. Starr to sign said Agreement.

INTERLOCAL AGREEMENT
BETWEEN THE TOWNS OF APPLE VALLEY AND YUCCA VALLEY, THE CITIES OF
ADELANTO, BARSTOW, CHINO, COLTON, FONTANA, HESPERIA, HIGHLAND,
MONTCLAIR, ONTARIO, RANCHO CUCAMONGA, REDLANDS, RIALTO, SAN
BERNARDINO, UPLAND, VICTORVILLE, YUCAIPA, AND SAN BERNARDINO COUNTY, CA

CONCERNING DISTRIBUTION OF THE
2023 JUSTICE ASSISTANCE GRANT AWARD

This Agreement is made and entered into this 22 day of August, 2023, by and between SAN BERNARDINO COUNTY, acting by and through its governing body, the Board of Supervisors (hereinafter referred to as "COUNTY"), and the aforementioned TOWNS (hereinafter referred to as "TOWNS") and named CITIES (hereinafter referred to as "CITIES"), acting by and through their respective governing bodies, the Town Councils and City Councils, all of whom are situated within San Bernardino County, State of California, as follows:

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of all parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, the COUNTY agrees to release to TOWNS and CITIES their respective grant allocation from the JAG Award within sixty (60) days upon receipt of funds, less five percent (5%) for administrative fees, as reflected on Appendix 1 here attached and hereby incorporated by reference as part of this agreement; and COUNTY agrees to use the five percent (5%) of JAG award funds received from TOWNS and CITIES under this agreement for administrative fees toward the administration of TOWNS' and CITIES' programs during the entire permissible duration of said programs; and TOWNS and CITIES agree to deposit their JAG award funds into a separate trust account in accordance with JAG guidelines; and TOWNS and CITIES each agree to the five percent (5%) reduction of their respective grant allocation from the JAG award, as reflected on Appendix 1 for administrative fees toward the administration of this program; and additionally the TOWNS and CITIES each agree that it is their responsibility to ensure these funds are expended in accordance with JAG guidelines, and that the interest generated from such funds shall be solely applied and expended in accordance with these same JAG guidelines; and

WHEREAS, the TOWNS, CITIES and COUNTY believe it to be in their best interests to reallocate the JAG funds,

NOW THEREFORE, the COUNTY and TOWNS and CITIES agree as follows:

Section 1.

COUNTY agrees to release to TOWNS and CITIES their respective grant allocation from the JAG Award within sixty (60) days upon receipt of funds, less five percent (5%) for administrative fees, as reflected in Appendix 1 here attached and hereby incorporated by reference as part of this Agreement, and; COUNTY agrees to use the five percent (5%) of JAG award funds received from

TOWNS and CITIES under this agreement for administrative fees toward the administration of the TOWNS' and CITIES' programs during the entire permissible duration of said programs.

Section 2.

TOWNS and CITIES agree to deposit their JAG award funds into a separate trust account in accordance with the JAG guidelines; and TOWNS and CITIES agree to the five percent (5%) reduction of their respective grant allocation from the JAG award, as reflected in Appendix 1, for administrative fees toward the administration of this program, and; TOWNS and CITIES each agree that it is their responsibility to ensure these funds are expended in accordance with JAG guidelines and that all interest generated from such funds shall be solely applied and expended in accordance with these same JAG guidelines.

Section 3.

TOWNS and CITIES agree to enter into a sub-award grant agreement with the COUNTY in order to acknowledge receipt of the federal award information and applicable compliance requirements, including special conditions for each sub-award, before receiving grant funds.

Section 4.

TOWNS and CITIES agree to provide COUNTY with sufficient timely information as necessary within five business days after receiving written request from COUNTY to meet JAG requirements for quarterly and annual financial and performance reports.

Section 5.

Nothing arising from this Agreement shall impose any liability for claims or actions against COUNTY other than what is authorized by law.

Section 6.

Nothing arising from this Agreement shall impose any liability for claims or actions against TOWNS and/or CITIES other than what is authorized by law.

Section 7.

Each party to this Agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable to any other party to this Agreement for any claim or action arising from the services provided under this Agreement.

Section 8.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 9.

By entering into this Agreement, the parties do not intend to create any obligations, either express or implied, other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

TOWN OF APPLE VALLEY, CA

Town Manager


ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

SAN BERNARDINO COUNTY, CA



Dawn Rowe
Chair, County Board of Supervisors

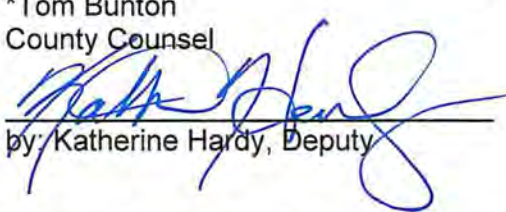
SIGNED AND CERTIFIED THAT A COPY
OF THIS HAS BEEN DELIVERED TO THE
CHAIR OF THE BOARD:



Lynne Monell
Clerk of the Board of Supervisors
of San Bernardino County

APPROVED AS TO FORM:

*Tom Bunton
County Counsel



by: Katherine Hardy, Deputy

*By law, the County Counsel's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our view of this document was conducted solely from the legal perspective of our clients. Our approval of this document was offered solely for the benefit of our clients. Other parties should not rely on this approval and should seek review and approval by their own respective attorneys.

**2023 Justice Assistance Grant
Appendix 1**

JAG 2023 - SAN BERNARDINO COUNTY - LOCAL ALLOCATIONS			
Jurisdiction	Allocation	5% Administrative Fee	Award
San Bernardino County	\$121,577	-\$6,079	\$115,498
Adelanto	\$21,722	-\$1,086	\$20,636
Apple Valley	\$27,338	-\$1,367	\$25,971
Barstow	\$22,961	-\$1,148	\$21,813
Chino	\$25,411	-\$1,270	\$24,141
Colton	\$17,372	-\$869	\$16,503
Fontana	\$58,201	-\$2,910	\$55,291
Hesperia	\$39,011	-\$1,951	\$37,060
Highland	\$26,127	-\$1,306	\$24,821
Montclair	\$19,960	-\$998	\$18,962
Ontario	\$55,475	-\$2,774	\$52,701
Rancho Cucamonga	\$36,919	-\$1,846	\$35,073
Redlands	\$20,896	-\$1,045	\$19,851
Rialto	\$45,096	-\$2,255	\$42,841
San Bernardino	\$242,190	-\$12,109	\$230,081
Upland	\$26,182	-\$1,309	\$24,873
Victorville	\$79,317	-\$3,966	\$75,351
Yucaipa	\$12,499	-\$625	\$11,874
Yucca Valley	\$11,177	-\$559	\$10,618
Total	\$909,431	-\$45,472	\$863,959



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 18, 2023	FILE I.D.:	HSV046/GRT085
SECTION:	CONSENT - AGREEMENTS	DEPT.:	COMMUNITY DEV./HUMAN SVCS.
ITEM NO.:	6	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 23-72 WITH THE SAN BERNARDINO COUNTY COMMUNITY REVITALIZATION OFFICE OF HOMELESS SERVICES TO ACCEPT AN AWARD FOR THE HOMELESS HOUSING, ASSISTANCE AND PREVENTION PROGRAM ROUND 3 (HHAP-3), SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

CONSIDER AUTHORIZING THE CITY MANAGER TO SIGN AGREEMENT NO. 23-72 AND ANY OTHER RELATED DOCUMENTS TO EFFECTUATE PROGRAMS

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 23-72 with the San Bernardino County Community Revitalization Office of Homeless Services (OHS) to accept an award for the Homeless Housing, Assistance and Prevention Round 3 (HHAP-3) subject to any revisions deemed necessary by the City Attorney.

A copy of Agreement No. 23-72 is attached for the City Council's review and consideration.

BACKGROUND: San Bernardino County has been allocated funds by the State of California, Homeless Coordinating and Financing Council in the Business, Consumer and Housing Agency, under the HHAP-3 Program authorized by AB 140 (Health & Safety Code § 50218.6, et seq.), which was signed into law by Governor Gavin Newsom on July 19, 2021. OHS is responsible for distributing nearly four million dollars in HHAP-3 funding designated for the County. The City of Montclair was successful in our application to receive HHAP-3 funds.

The City's successful application for HHAP-3 funding will be utilized to provide a comprehensive outreach program provided by the Code Enforcement Division with the goal of providing rental assistance or rapid rehousing. The goals of the HHAP-3 program include: preventing 50 households living housing-insecure and/or at-risk of homelessness; preventing 20 households at imminent risk from becoming homeless through system wide diversion, prevention, and/or eviction prevention strategies; and moving four super-utilizers to permanent housing. The Code Enforcement Division plans to achieve this through coordinating with local partners, providing street outreach, education, and information and linkages to available community services through case management. The City is required to comply with the "*Core Components of Housing First*," as defined in Exhibit 6 of the Agreement No. 23-72.

In summary, the *Housing First* methodology of providing services is an approach that offers permanent, affordable housing as quickly as possible for individuals and families experiencing homelessness, and then provides the supportive services and connections to the community-based supports people need to avoid returning to homelessness.

FISCAL IMPACT: Should the City Council approve proposed Agreement No. 23-72, OHS will provide the City with funding in the amount of \$95,901 toward eligible expenses from October 3, 2023, to June 30, 2026.

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

1. Approve Agreement No. 23-72 with the San Bernardino County Community Revitalization Office of Homeless Services to accept an award for the Homeless Housing, Assistance and Prevention Round 3 (HHAP-3), subject to any revisions deemed necessary by the City Attorney; and
2. Authorize the City Manager to sign Agreement No. 23-72 and any other related documents to effectuate programs.

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

SAP Number

Community Revitalization Office of Homeless Services

Department Contract Representative	<u>Carrie Harmon</u>
Telephone Number	<u>(909) 382-3983</u>
Contractor	<u>City of Montclair</u>
Contractor Representative	<u>Alyssa Colunga</u>
Telephone Number	<u>(909) 625-9459</u>
Contract Term	<u>October 3, 2023–June 30, 2026</u>
Original Contract Amount	<u>\$95,901</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>\$95,901</u>
Cost Center	<u>6210002479</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the San Bernardino City and County (SBC CoC) has been allocated funds by the State of California, Homeless Coordinating and Financing Council in the Business, Consumer and Housing Agency, hereinafter called State, under the Homeless Housing, Assistance and Prevention Round 3 (HHAP-3) Program authorized by AB 140 (Health & Safety Code § 50218.6, et seq.), which was signed into law by Governor Gavin Newsom on July 19, 2021; and

WHEREAS, the San Bernardino County (County) Office of Homeless Services, hereinafter referred to as OHS, is the Administrative Entity authorized to act on behalf of the County to administer HHAP-3 as designated by the SBC CoC, the eligible recipient of HHAP-3 funding; and

WHEREAS, the SBC CoC conducted a competitive process to find the City of Montclair (Contractor) to provide these services, and

WHEREAS, Contractor has the required qualifications, experience and expertise to provide services and is willing to use State funds to serve individuals and families experiencing homelessness; and

WHEREAS, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

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A. DEFINITIONS

A.1 Administrative Entity: A unit of general-purpose local government (city, county, or a city that is also a county) or nonprofit organization that has (1) previously administered federal Department of Housing and Urban Development (HUD) Continuum of Care (CoC) funds as the collaborative applicant pursuant to Section 578.3 of Title 24 of the Code of Federal Regulations, and (2) been designated by the CoC to administer program funds.

A.2 Case Management: The coordination of community-based services by a professional team to provide people the quality health care that is customized accordingly to an individual's setbacks or persistent challenges and aid them to their recovery. In addition, it can be defined as a collaborative process that assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet the client's health and human service needs.

A.3 Continuum of Care (CoC): The group organized to carry out the responsibilities required under this part and that is composed of representatives of organizations, including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within the geographic area and are available to participate.

A.4 Continuum of Care (CoC) Service Providers: A network of Community Based Organizations partnered with the SBC CoC to provide services to homeless individuals and families.

A.5 Coordinated Entry System (CES): The CES is a centralized or coordinated process developed pursuant to Section 578.7 of Title 24 of the Code of Federal Regulations, as that section read on January 10, 2019, designed to coordinate homelessness program participant intake, assessment, and provision of referrals. In order to satisfy this subdivision, a centralized or coordinated assessment system shall cover the geographic area, be easily accessed by individuals and families seeking housing or services, be well advertised, and include a comprehensive and standardized assessment tool."

A.7 Emergency Aid: Any urgent and immediate services, which include housing that will be provided to homeless individuals. Broad categories of uses include, but are not limited to, shelters, shelter beds, public toilets, shower facilities, tiny-shed homes, etc.

A.8 Emergency Shelter: Housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of any inability to pay.

A.9. General Service Area: The geographically defined area where a service entity provides outreach and direct services to homeless people.

A.10 Homeless: The same meaning as defined in Section 578.3 of Title 24 of the Code of Federal Regulations, as that section read on January 10, 2019:

- (1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
 - (i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
 - (ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or
 - (iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;
- (2) An individual or family who will imminently lose their primary nighttime residence, provided that:

- (i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
 - (ii) No subsequent residence has been identified; and
 - (iii) The individual or family lacks the resources or support networks, **e.g.**, family, friends, faith-based or other social networks, needed to obtain other permanent housing;
- (3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
- (i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
 - (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
 - (iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
 - (iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or
- (4) Any individual or family who:
- (i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;
 - (ii) Has no other residence; and
 - (iii) Lacks the resources or support networks, **e.g.**, family, friends, and faith-based or other social networks, to obtain other permanent housing.

A.11 Homeless Management Information System (HMIS): A web-enabled database used by homeless service providers to capture information about the San Bernardino County persons they serve. The database tracks services provided to homeless individuals and families by the collaborative agencies. Services tracked include: emergency, transitional, and permanent housing bed usage, employment, veteran's status, as well as referrals to health and human service providers, or other relevant supportive service agencies. As required by the U.S. Department of Housing and Urban Development, the Continuum of Care utilizes the captured information to make informed decisions in planning, homeless advocacy, and policy development that result in target services. HMIS also includes that use of a comparable database by a victim services provider or legal services provider that is permitted under Part 576 of Title 24 of the Code of Federal Regulations.

A.12 Homeless Youth: An unaccompanied youth between 12 and 24 years of age, inclusive, who is experiencing homelessness, as defined in subsection (2) of Section 725 of the federal McKinney-Vento Homeless Assistance Act [42 U.S.C. Sec. 11434a(2)]; includes unaccompanied youth who are pregnant or parenting.

A.13 Housing First: An approach to quickly and successfully connect individuals and families experiencing homelessness to permanent housing without preconditions and barriers to entry, such as sobriety, treatment or service participation requirements. Supportive services are offered to maximize housing stability and prevent returns to homelessness as opposed to addressing predetermined treatment goals prior to permanent housing entry.

A.14 Housing Search and Placement: Services to assist clients to locate, secure, and navigate the rental market. Housing Search and Placement activities may include, but are not limited to, unit identification, unit inspection, determining rent reasonableness, contracts, advocating for households, land/lord/ tenant mediation, and any other housing requirements.

A.15 Interagency Council on Homelessness (ICH): The policy making body for the San Bernardino County Homeless Partnership. ICH works to ensure that the recommendations listed in the County's 10-Year Strategy to End Homelessness are realized. ICH Membership is composed of elected officials, state and local representatives, community and faith-based organizations, and corporate advocates.

A.16 Instance of Service: Each encounter with a member of the target population where services are provided for each of the eligible grant activities. For example, one individual checks into a warming center operated by Provider X on Tuesday. The same individual checks into the same warming center the next night. This counts as two instances of service for this activity.

A.17 Navigation Center: A Housing First, low barrier, service-enriched shelter focused on moving homes individuals and families into permanent that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.

A.18 Office of Homeless Services (OHS): The lead agency for the San Bernardino County Continuum of Care (SBC CoC). The SBC CoC coordinates services with the San Bernardino County Homeless Partnership consisting of community and faith-based organizations, educational institutions, non-profit organizations, private industry, and Federal, State and local governments.

A.19 Permanent Supportive Housing (PSH): Low-barrier permanent housing with services. The type of services depends on the needs of the residents. Services may be short-term, sporadic, or ongoing indefinitely. PSH units are for individuals and families who are homeless or chronically homeless. PSH is housing combined with services, which may include mental health and health services, drug and alcohol treatment, education and job training.

A.20 Point-In-Time-Count (PITC): An unduplicated one-night estimates of both sheltered and unsheltered homeless populations conducted by Continuums of Care nationwide on a predetermined date within the last 10 days of each January pursuant to Section 578.3 of Title 24 of the Code of Federal Regulations.

A.21 Program: The Homeless Housing, Assistance and Prevention Round 3 (HHAP-3) Program, established pursuant to Chapter 5 of Part 1 of Division 31 of the Health and Safety Code,) and HHAP-3 are used interchangeably throughout this document.

A.22 Rapid Re-Housing (RRH): An intervention designed to help individuals and families quickly exit homelessness and return to permanent housing. Using the Housing First model, move families and individuals into permanent affordable housing as quickly as possible with minimal barriers, assist with move-in costs such as security and utility deposits and short-medium term declining rental subsidies, and provide intensive social services while families or individual's stability and equip them with skills and resources they need to sustain and thrive in housing and avoid future homelessness.

A.23 San Bernardino County Continuum of Care (SBC CoC): Provides leadership in creating a comprehensive countywide network of service delivery to homeless individuals and families and those at-risk of becoming homeless.

A.24 State of California, Homeless Coordinating and Financing Council (State): Created pursuant to Section 8257 of the Welfare and Institutions Code to, among other things, identify mainstream resources, benefits, and services that can be accessed to prevent and end homelessness in California.

A.25 Subcontractor: An individual, company, firm, corporation, partnership or other organization, not in the employment of or owned by Contractor who is performing services on behalf of Contractor under a separate contract with or on behalf of Contractor.

A.26 Target Population: Any person who is homeless as defined for this grant (see A.10 above).

A.27 Transitional Housing (TH): Designed to provide homeless individuals and families with the interim stability and support to successfully move to and maintain permanent housing. TH may be used to cover the costs of up to 24 months of housing with accompanying supportive services.

A.28 United States Department of Housing and Urban Development (HUD): A Federal agency established in 1965, HUD's mission is to increase homeownership, support community development, and increase access to affordable housing free from discrimination. To fulfill this mission, HUD will embrace high standards of ethics, management and accountability and forge new partnerships, particularly with faith-based and community organizations, that leverage resources and improve HUD's ability to be effective on the community level.

B. CONTRACTOR RESPONSIBILITIES

B.1 General Requirements

B.1.1 Contractor shall be in compliance with all applicable Federal, State, and local laws, required to perform this Contract. Contractor shall be required to repay the County in the event of non-compliance with any applicable law if the County is required to repay any amount of funds to the State as a result of Contractor's non-compliance.

B.1.2 Contractor and its Subcontractors shall perform the work in accordance with Federal, State and local housing and building codes, as applicable.

B.1.3 Contractor shall be responsible to accomplish the levels of performance as set forth in Exhibit 1 – HHAP AWARD BY CATEGORY and report such measures quarterly to the County with each quarterly expenditure report. The County will review Contractor performance to assess expenditure and performance progress. If Contractor is not meeting expenditure and performance measures, the County will work with Contractor to identify strategies and remediate performance issues.

B.1.4 Contractor's obligation to the County shall not end until all closeout requirements are completed. Activities during closeout period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent funds, and accounts receivable to the County), and determining the custodianship of records.

B.2 Scope of Work

The project description for services to be provided by Contractor under this Contract are identified in Exhibit 2 – SCOPE OF WORK.

B.3 Administrative Requirements

Contractor shall adhere to the following:

B.3.1 Coordinated Entry System (CES)

a. The CES is a referral process that currently coordinates with the SBC CoC. All those participating with CES will need to apply to participate with the Homeless Management Information System (HMIS).

b. Contractor must work in collaboration with CES and SBC CoC to ensure the screening, assessment, and referral of HHAP participants are consistent with the eligible uses under HHAP.

c. Contractor agrees to receive referrals from CES prior to providing services with the exception of individuals receiving emergency assistance. In such cases, immediate services can be provided, but individuals and/or families must be referred by Contractor to CES for assessment and prioritization within seventy-two

(72) hours. Contractor understands that individuals and/or families may not be referred to Contractor and may be referred to another service provider based upon the CES assessment.

B.3.2 Data Reporting

- a. Contractor will submit to OHS detailed reports containing information listed in Exhibit 3 – HHAP REPORTING REQUIREMENTS.
- b. A report will be due forty-five (45) days after the date of expiration of this Contract or upon completion of Contract services.
- c. Contractor shall submit additional reports as required by the State or County.

B.3.3 Equipment and Other Property

All equipment, materials, supplies or property of any kind (including vehicles, publications, copyrights, etc.) purchased with HHAP-3 funds received under the terms of this Contract which has a life expectancy of one (1) year or more shall be the property of the County and shall be subject to the provisions of this paragraph. The disposition of equipment or property of any kind shall be determined by the County when the Contract is terminated. Additional terms are as follows:

- a. The purchase of any furniture or equipment which was not included in Contractor's approved budget, shall require the prior written approval of the County, and shall fulfill the provisions of this Contract which are appropriate and directly related to Contractor's services or activities under the terms of the Contract. The County may refuse approval for any cost resulting from such items purchased, which are incurred by Contractor, if prior written approval has not been obtained from the County.
- b. Before equipment purchases made by Contractor are approved by the County, Contractor must submit paid vendor receipts identifying the purchase price, description of the item, serial numbers, model number and location where equipment will be used during the term of this Contract.
- c. Contractor shall submit an inventory of equipment purchased under the terms of this Contract as part of the expenditures report for the month in which the equipment is purchased. Contractor must also maintain an inventory of equipment purchased that, at a minimum, includes the description of the property, serial number or other identification number, title holder, acquisition date, cost of the equipment, location, use and condition of the property, and ultimate disposition data. A physical inventory of the property must be reconciled annually. Equipment should be adequately maintained and a control system in place to prevent loss, damage, or theft. Equipment with cost exceeding County's capitalization threshold of \$5,000 must be depreciated.
- d. No costs incurred prior to the Contract commencement date shall be eligible for reimbursement with HHAP-3 funds.
- e. Upon termination of this Contract, Contractor will provide a final inventory to the County and shall at that time query the County as to requirements, including the manner and method in returning equipment to the County. Final disposition of such equipment shall be in accordance with instructions from the County.

B.3.4 Financial Management

- a. Review, understanding, and certification that quarterly expenditure reports submitted to the County meet eligible expenses under HHAP-3 and State requirements. The County shall have no obligation to advance or pay Contractor with any funds other than HHAP-3 funds the County receives from the State.
- b. Contractor attests that by submitting a quarterly expenditures report to OHS, it has completed all due diligence necessary and verified eligibility for HHAP-3 funding. Contractor shall be required to repay County for non-eligible expenditures that may inadvertently be processed by the County.

c. Budget Changes – Contractor agrees that no changes shall be made to Contractor's HHAP-3 budget without first obtaining approval. No more than the amounts specified in Exhibit 1 – HHAP-3 AWARD BY CATEGORY may be spent for the separate cost categories specified in the budget summary. Any changes to this Contract must be requested by Contractor in writing through OHS. Changes must be approved by the County and/or the State.

d. Documentation of Costs and Other Financial Reporting
Contractor will be required to maintain books, records, documents, and other evidence directly related to the performance of work in accordance with Generally Acceptable Accounting Procedures. Costs shall be supported by properly executed payrolls, time records, invoices, receipts, vouchers or other official documentation, as evidence of the nature and propriety of the charges.

All accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible, and upon reasonable notice, the County shall have the right to audit the records of the Contractor as they relate to the Contract and the activities and services described herein.

Contractor shall also:

- 1) Maintain an effective system of internal fiscal control and accountability for all HHAP-3 funds and property acquired or improved with HHAP-3 funds, and make sure the same are used solely for authorized purposes.
- 2) Keep a continuing record of all disbursements by date, payment method, amount, vendor, description of items purchased and line item from which the money was expended, as reflected in the Contractor's accounting records.
- 3) Maintain payroll, financial, and expense reimbursement records for a minimum period of five (5) years after the termination of this Contract.
- 4) Permit inspection and audit of its records with respect to all matters authorized by this Contract by representatives of the County at any time during normal business hours and as often as necessary.
- 5) Inform the County concerning any funds allocated to Contractor, that the Contractor anticipates will not be expended during the term of this Contract.
- 6) Repay the County any funds in its possession at the time of the termination of this Contract that may be due to the County; e.g., ineligible costs, unexpended funds, etc.

B.3.5 Funding

- a. This Contract is valid and enforceable only if sufficient funds are made available to County by legislative appropriation. In addition, this Contract is subject to any additional restrictions, limitations or conditions, or statutes, regulations or any other laws, whether Federal or those of the State, or of any agency, department, or any political subdivision of Federal or the State governments, which may affect the provisions, terms or funding of this Contract in any manner.
- b. Contractor must establish and maintain effective internal controls over all funding awarded to Contractor by the County to provide reasonable assurance that Contractor complies with Federal, State, and County statutes, regulations, and terms and conditions of the Contract.
- c. County may base funding for Contractor upon positive performance outcomes, which OHS will monitor throughout the year.
- d. Contractor must be able to demonstrate that HHAP-3 funds were expended for eligible uses to benefit members of the Target Population.
- e. Funds allocated pursuant to this Contract shall be used exclusively for costs included in Contractor's Program budget. Contract funds shall not be used as

security or to guarantee payments for any non-program obligations nor as loans for non-program activities.

- f. Contractor certifies and agrees that it will not use funds provided through this Contract to pay for entertainment, gifts, or fundraising activities.
- g. Ineligible Costs – HHAP-3 funds shall not be used for costs associated with activities in violation of any law or for any activities not consistent with the intent of HHAP-3 and the eligible uses identified in California Health and Safety Code Sections 50218 and 50219.

The County or the State reserves the right to request additional information and clarification to determine the reasonableness and eligibility of all costs to be paid with funds made available by this Contract. If Contractor or its Subcontractors use HHAP-3 funds to pay for ineligible activities, Contractor shall be required to reimburse these funds to the County within thirty (30) days of the request.

- 1) An expenditure which is not authorized by this Contract, or which cannot be adequately documented, shall be disallowed and must be reimbursed to the County by Contractor.
- 2) The State, at its sole and reasonable discretion, shall make the final determination regarding the allowability of expenditures of HHAP-3 funds.
- 3) Program funds shall not be used to supplant existing local funds for homeless housing, assistance, or prevention. HHAP-3 funds cannot replace local funds that are committed to an existing or developing homeless assistance program. However, if funds previously supporting a service or project end or are reduced for reasons beyond the control of Contractor and services or housing capacity will be lost as a result of these funds ending, HHAP-3 funds may be used to maintain the service or program and are not considered supplanting [examples include, but are not limited to, a time-limited city and/or county tax or one-time block grant, such as Homeless Emergency Aid Program (HEAP) grant].

- h. Contractor must expend:
 - 1) No less than fifty percent (50%) of HHAP-3 funds by May 31, 2024;
 - 2) One hundred percent (100%) of HHAP-3 funds by June 30, 2026; and

“Expend” means all HHAP-3 funds obligated under this Contract have been fully paid and receipted, and no invoices remain outstanding.”

Reports submitted by the Contractor will be used to ensure that Contractor is on track to expend fifty percent (50%) of HHAP-3 funds by May 31, 2024 and one hundred percent (100%) of HHAP-3 funds by June 30, 2026. Contractor may submit a request to OHS prior to May 31, 2024 if Contractor is not on track to expend 50% of the HHAP-3 funds by May 31, 2024 proposing an alternative expenditure rate to meet the June 20, 2026 100% expenditure deadline with justification. The Chief of Homeless Services may approve, modify, or deny such request.

If, by January 1, 2026, Contractor has not submitted reports showing an expenditure of at least eighty percent (80%) of the HHAP-3 funds, the remaining twenty percent (20%) will be returned and reallocated.

- i. HHAP-3 funds may not be obligated and expended prior to the effective date of this Contract. “Obligate” means that Contractor has placed orders, entered into sub-contracts, received services, or entered into similar transactions that require payment from the Contract award.
- j. All proceeds from any interest-bearing account established by the Contractor for the deposit of HHAP-3 funds must be used for HHAP-eligible activities. Documentation of all expenditures and accrued interest shall be reported on the forms provided by OHS (i.e., Exhibit 7 – HHAP-3 Expenditure Report).

- k. Any housing-related activities funded with HHAP-3 funds, including but not limited to, emergency shelter, rapid-rehousing, rental assistance, transitional housing and permanent supportive housing must be in compliance or otherwise aligned with the Core Components of Housing First, pursuant to Welfare and Institution Code Section 8255(b).
- l. Contractor confirms that rental assistance will be issued directly to a property owner or an agent authorized to act on behalf of a property owner.
- m. Joint Funding – For all programs and services for which there are sources of funds in addition to County funds as provided under this Contract, Contractor shall provide proof of such funding. Contractor must be able to account for the receipt, obligation and expenditure of funds.

The County shall NOT pay for any services provided by Contractor which are funded by other sources. All restrictions and/or requirements provided in this Contract relative to accounting, budgeting, and reporting apply to the total program regardless of funding sources.
- n. The County reserves the right to reduce the Contract award when the County's fiscal monitoring indicates that Contractor's rate of expenditure will result in unspent funds at the end of the Contract term or if it is determined that costs incurred are not in conformance with eligible costs as defined in Health and Safety Code Section 50214. Changes in the Contract award will be done after consultation with Contractor. Such changes shall be incorporated into this Contract by written amendment(s).

B.3.6 Fiscal Award Monitoring

- a. The County has the right to monitor the Contract during the Contract period to ensure accuracy of expenditure reports and compliance with applicable laws and regulations.
- b. Contractor agrees to furnish duly authorized representatives from the County and the State access to all financial records necessary to review or audit Contract services and to evaluate the cost, quality, and appropriateness of services.
- c. If the State or the County determines that all, or any part of, the payments made by the County to Contractor pursuant hereto are not eligible expenses in accordance with this Contract, said funds will be repaid by Contractor to the County. In the event such payment is not made on demand, the County may withhold future disbursements to Contractor until such disallowances are paid by Contractor. If disallowable expenses are not reimbursed within thirty (30) days of demand, the Contract will terminate without consultation at the County's sole and absolute discretion.
- d. If there is a conflict between a State audit of this Contract and a County audit of this Contract, the State audit shall take precedence.

B.3.7 Closeout

Contractor shall submit a closeout report including a narrative of the project outcomes, an inventory of all equipment and property acquired or improved by HHAP funds, and a final financial report, upon termination or completion of the services specified in this Contract.

Contractor agrees to adhere to and comply with all of the closeout procedures detailed below; including, but not limited to the following:

- a. Disposition of Program assets shall be determined by the County when the Contract is terminated.
- b. Contractor shall submit within forty-five (45) days after the date of expiration of this Contract, all financial, performance, and other reports required by this Contract; and in addition, will cooperate in a Program audit by the County.

- c. Any unobligated/unexpended funds disbursed in advance to Contractor shall be returned to the County within thirty (30) days after the expiration of the Contract term, or in accordance with Section B.3.5.h, whichever occurs first. This obligation shall survive the expiration of the Contract.
- d. Contractor must account for any real and personal property acquired with HHAP-3 funds.
- e. Closeout will remain pending until all requirements are met and all outstanding issues with the Contractor have been resolved to the satisfaction of the County.

B.3.8 Homeless Management Information System

The HMIS is a local database application used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness in the County. Contractor must ensure that data on all persons served are entered into the countywide HMIS. HMIS is managed and operated by OHS. HMIS technical and data standards are set forth in the Final 2017 HMIS Data Standards, on file with OHS.

- a. Contractor shall enter into a Memorandum of Understanding (MOU) with the HMIS Lead Agency where the Contractor agrees to share HMIS data with other HHAP funded agencies, unless prohibited by law.
- b. Contractor is required to work with OHS staff to ensure the timely and accurate set-up of their HMIS program profile and to ensure the HMIS program profile is setup in a manner that accurately captures the data pertinent to Contractor's program. Contractor's program profile must be setup prior to Contractor submitting their first HHAP Disbursement Request form.
- c. Contractor shall submit a copy of HMIS reports (see Exhibit 4 – HMIS DATA REPORT SAMPLE) with the quarterly expenditure reports. In the case of Domestic Violence service providers or other agencies prohibited from entering data into HMIS, documentation from the HMIS lead agency certifying that the Contractor is using a comparable database shall be delivered to the County. The contact information for the "HMIS Lead Agency" is:

Robin Kennedy, HMIS Lead
San Bernardino County
Office of Homeless Services
560 E. Hospitality Ln., Ste. 200
San Bernardino CA 92415-0044
Robin.Kennedy@hss.sbcounty.gov
Phone: 909-501-0610

- d. Contractor must ensure all required data elements, as listed below, are entered into the HMIS system for HHAP-3 participants, in a timely manner, and is inputted no later than two (2) working days after program entry. Services rendered to clients must be entered into HMIS no later than two (2) working days from date of service(s). All clients who exit the program must have an updated status in HMIS within two (2) working days from actual exit date. Failure to meet the above data inputting requirements will constitute a violation of the terms and conditions of this Contract. Contractor will be notified by OHS, and if not rectified, the Contract may be terminated at the County's sole and absolute discretion.
- e. In addition to the timely entry of HMIS data, Contractor is required to enter accurate and complete data. The County will ensure Contractor adheres to Data Quality Standards, as established by HUD, and data entry requirements, as set forth in the HMIS MOU and the OHS Policy Handbook. The Data Quality Standards assess the data quality and completeness of the following Data Elements entered:
 - 1) Client Demographic Data
 - a) Name
 - b) Social Security Number

- c) Date of Birth
 - d) Race
 - e) Ethnicity
 - f) Gender
 - g) Veteran Status
- 2) Universal Data
 - a) Disabling Condition
 - b) Project Start Date
 - c) Project Exit Date
 - d) Destination
 - e) Relationship to Head of Household
 - f) Client Location
 - g) Housing Move-in Date
 - h) Living Situation
- 3) Common Program Specific Data Elements
 - a) Income and Sources
 - b) Non-Cash Benefits
 - c) Health Insurance
 - d) Disability Elements
 - e) Physical Disability
 - f) Developmental Disability
 - g) Chronic Health Condition
 - h) HIV/AIDS
 - i) Mental Health Problem
 - j) Substance Abuse
 - k) Domestic Violence
 - l) Contact
 - m) Date of Engagement
 - n) Bed-Night Date
 - o) Housing Assessment Disposition
- 4) Data Timeliness
 - a) Entry Timeliness
 - b) Exit Timeliness
- f. According to Data Quality Standards, Contractor is required to have a five-percent (5%) or less error rate to ensure data accuracy and less than a five-day lapse in timeliness for entry of data at time of client entry, services are rendered, and client exit. Any performance benchmarks not meeting these standards will be captured on Contractor's HMIS Data Quality Report Sample, see Exhibit 5. The report will be generated by Contractor and submitted quarterly with expenditure reports. OHS will review reports and data deficiencies, if any, will be identified and discussed with Contractor to determine methods to remediate and/or improve data quality scores.

- g. If Contractor continues to not meet data entry and data quality benchmarks, as established by HUD and set forth in the HMIS MOU and the OHS Policy Handbook, County may terminate Contract as set forth in CORRECTION OF PERFORMANCE DEFICIENCIES Section.
- h. Contractor agrees to provide the County and/or the State access to HMIS data collected and entered into HMIS, upon request, and to participate in any statewide data initiative as directed by the State including, but not limited to, a statewide data integration environment.

B.3.9 Housing First

The methodology of providing services will follow the Housing First policy. This is an approach that offers permanent, affordable housing as quickly as possible for individuals and families experiencing homelessness, and then provides the supportive services and connections to the community-based supports people need to avoid returning to homelessness. HHAP projects must align and comply with the core components of Housing First as defined in California Welfare and Institutions Code Section 8255(b) (see Exhibit 6).

B.3.10 Program Participant Eligibility

Contractor shall ensure that:

- a. HHAP-3 participants meet the Homeless definition as defined in Section 578.3 of Title 24 of the Code of Federal Regulations:
 - 1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
 - a) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
 - b) An individual or family living in a supervised publicly or privately-operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by Federal, State and local government programs for low-income individuals); or
 - c) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.
 - 2) An individual or family who will imminently lose their primary nighttime residence, provided that:
 - a) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
 - b) No subsequent residence has been identified; and
 - c) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;
 - 3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
 - a) Are defined as homeless under Section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), Section 637 of the Head Start Act (42 U.S.C. 9832), Section 41403 of the Violence Against

Women Act of 1994 (42 U.S.C. 14043e-2), Section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), Section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or Section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

- b) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
 - c) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
 - d) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or
- 4) Any individual or family who:
- a) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;
 - b) Has no other residence; and
 - c) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.
- b. HHAP-3 participants are referred by CES to Contractor.
- c. Contractor coordinates Program enrollment and services in collaboration with CES.

B.3.11 Job Training and Employment

Contractor agrees to refer HHAP-3 clients that are eligible for job training and employment services to the County of San Bernardino Workforce Development Department (WDD). Contractor also agrees to refer eligible "work ready" clients to the County's Community Employment Pathways (CEP) program for job placement services. Number of participants who have been referred to WDD and CEP will be reported on a quarterly basis by Contractor.

B.3.12 Staffing Requirements

Contractor shall provide the necessary professional staff to meet the needs of the homeless population following the Housing First model (ex. Case managers, Clinicians, medical staff, peer advocates, employment specialists, and eligibility specialists). Contractor must have the readiness capacity to immediately perform and administer homeless efforts through HHAP funding.

C. GENERAL CONTRACT REQUIREMENTS

C.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

C.2 Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

C.3 Contract Assignability

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

C.4 Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

C.5 Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

C.6 Background Checks for Contractor Personnel

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

C.7 Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

C.8 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

C.9 Compliance with County Policy

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous

posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

C.10 Confidentiality

Contractor shall protect from unauthorized use or disclosure the names and other identifying information concerning persons receiving Services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any purpose other than carrying out the Contractor's obligations under this Contract, except as may otherwise be required by law. This provision will remain in force even after the termination of the Contract.

C.11 Primary Point of Contact

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

C.12 County Representative

The Director of Community Development and Housing or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

C.13 Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

C. 14 Debarment and Suspension

Contractor certifies that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

C.15 Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- C.15.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.15.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.15.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

C.16 Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

C.17 Employment Discrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

C.18 Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the county in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

C.19 Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

C.20 Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

C.21 Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

C.22 Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

C.23 Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

C.24 Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

C.25 Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

C.26 Nondisclosure

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or

otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

C.27 Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

C.28 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract, subject to the requirements of Section IV—Term of the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

C.29 Reserved

C.30 Air, Water Pollution Control, Safety and Health

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

C.31 Records

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

C.32 Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

C.33 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

C.34 Representation of the County

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

C.35 Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

C.36 Subcontracting

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

- 36.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 36.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 36.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities and C. General Contract Requirements.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

C. 37 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

C.38 Termination for Convenience

The County reserves the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

C.39 Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

C.40 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

C.41 Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

C.42 Former County Administrative Officials

Contractor agrees to provide, or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

C.43 Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those

individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

C.44 Reserved

C.45 Reserved

C.46 Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

C.47 Reserved

C.48 Reserved

C.49 Reserved

C.50 Executive Order N-6-22 Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. Contractor shall be provided advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the County.

C.51 Reserved

C.52 Reserved

D. TERM OF CONTRACT

This Contract is effective as of October 3, 2023 and expires June 30, 2026 but may be terminated earlier in accordance with provisions of this Contract.

E. COUNTY RESPONSIBILITIES

- E.1** OHS shall provide technical assistance to Contractor.
- E.2** OHS shall participate in evaluating the progress of the overall program.
- E.3** OHS shall monitor Contractor on a regular basis in regard to compliance with Contractual requirements.

F. FISCAL PROVISIONS

- F.1** The maximum amount of payment under this Contract shall not exceed \$95,901 and shall be subject to availability of other funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.
- F.2** Quarterly disbursements will be made to the Contractor based upon satisfactory performance under the terms of this Contract.
- F.3** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- F.4** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- F.5** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- F.6** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- F.7** Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

G.1 Indemnification

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of the performance of this Contract by Contractor, its officers, employees, agents, contractors, and volunteers, including the acts, errors or omissions of Contractor and for any costs or expenses incurred by the County on account of such claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

G.2 Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

G.3 Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

G.4 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

G.5 Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

G.6 Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

G.7 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

G.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

G.9 Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

G.10 Insurance Review

Contractor is an authorized self-insurance public entity for purposes of Professional Liability, General Liability, Automobile Liability, Workers' Compensation and Property Damage and warrants that through its program of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.

G.11.6 Reserved

G.11.7 Abuse/Molestation Insurance – Contractor shall have abuse or molestation insurance providing coverage for all employees for the actual or threatened abuse or molestation by anyone of any person in the care, custody, or control of any insured, including negligent employment, investigation and supervision. The policy shall provide coverage for both defense and indemnity with liability limits of not less than one million dollars (\$1,000,000) with a two million dollars (\$2,000,000) aggregate limit.

H. RIGHT TO MONITOR AND AUDIT

H.1 The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.

H.2 All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

I. CORRECTION OF PERFORMANCE DEFICIENCIES

I.1 Failure by Contractor to comply with any of the provisions, covenants, requirements, or conditions of this Contract shall be a material breach of this Contract.

I.2 In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
- b. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
- c. Withhold funds pending duration of the breach; and/or
- d. Offset against any monies billed by Contractor but not yet paid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
- e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

J. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

San Bernardino County
Office of Homeless Services

City of Montclair
Attn: Alyssa Colunga

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

K. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

L. ELECTRONIC SIGNATURES

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

►

Dawn Rowe, Chair, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the San Bernardino County

By _____
Deputy

City of Montclair

(Print or type name of corporation, company, contractor, etc.)

By ►

(Authorized signature - sign in blue ink)

Name Edward C. Starr

(Print or type name of person signing contract)

Title City Manager

(Print or Type)

Dated: _____

Address 5111 Benito St.

Montclair, CA 91763

FOR County USE ONLY

Approved as to Legal Form

►

Suzanne Bryant, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

►

Date _____

Reviewed/Approved by Department

►

Carrie Harmon, Director

Date _____

EXHIBIT 1 – AWARD BY CATEGORY

HHAP Award by Category City of Montclair October 3, 2023 through June 30, 2026			
Eligible Use Category	Award/Allocation	Service Unit	Number Expected to be Served
Rapid Rehousing:			
Operating Subsidies:			
Street Outreach:			
Services Coordination:	\$39,100	Households	50
Systems Support:			
Delivery of Permanent Housing:			
Prevention and shelter Diversion:	\$56,801	Households	20
Interim sheltering:			
Improvements to existing emergency shelters:			
Homeless Youth (Countywide):			
Total Award	\$95,901		

EXHIBIT 2 – SCOPE OF WORK

To achieve the strategic outcome goals, including preventing 50 households living housing insecure and/or at-risk of homelessness and preventing 20 households at imminent risk from becoming homeless through system wide diversion, prevention, and/or eviction prevention strategies and moving 4 super utilizers to permanent housing, Contractor will carry out the following tasks between September 1, 2023 to August 31, 2025:

Task 1: The City of Montclair's Outreach Team will coordinate with local partners to conduct ongoing weekly street outreach and targeted equitable engagement to identify and request to assist at least 50 disproportionately homeless, housing-insecure, and households facing eviction within the City of Montclair and those coming from other nearby cities with resource and referral services.

Task 2: Upon an initial assessment, the Outreach Team will provide education and information on community support services to at least 10 disproportionately homeless and housing-insecure individuals and families, financial housing assistance to keep individuals/families in their homes, motel vouchers, and coordinated entry and transportation to temporary and/or rapid rehousing facilities for those willing to go. Other assistance may include case management, advocacy and legal representation, and linkages to community resources and support such as employment services, counseling, and healthcare to move participants toward stabilization.

Task 3: The City will track its program activities and outcome progress, including collecting data on program participation, service utilization, and other essential metrics. Evaluation findings will allow the City to make program improvements and refine program strategies and ensure that program staff are equipped to meet the needs of program participants.

EXHIBIT 3 – HHAP REPORTING REQUIREMENTS

A. Detailed reports containing, at minimum, the following information:

1. Amount awarded to Contractor with activity(ies) identified;
2. Contract expenditures;
3. Unduplicated number of homeless persons and households served by HHAP-3 funds;
4. Unduplicated number of persons and households at imminent risk of homelessness served by HHAP-3 funds;
5. Number of instances of service;
6. Increases in capacity for new and existing programs;
7. Number of unsheltered homeless persons and homeless households becoming sheltered; and
8. Number of homeless persons and homeless households entering permanent housing.
9. Number of homeless persons and households successfully exited from HHAP-3 (i.e., in permanent housing) that remain in permanent housing 12 months post-exit from HHAP-3.
10. Number of persons and households at imminent risk of homelessness successfully exited from HHAP-3 (i.e., in permanent housing) that remain in permanent housing 12 months post-exit from HHAP-3.

B. Breakdowns will be expected for each activity (i.e. services, capital improvements, rental assistance, etc.) and program type (i.e. emergency shelter, rapid re-housing, outreach, etc.) for the supplemental reporting requirements listed above, when applicable. The same information will also be requested specifically for the following subpopulations, based on priorities defined by the U.S. Department of Housing and Urban Development:

1. Chronically homeless
2. Homeless veterans
3. Unaccompanied homeless youth
4. Homeless persons in families with children

C. Counts by subpopulation will not be required in cases where that information is unavailable, but is expected in cases where client information is entered in the Homeless Management Information System (HMIS).

EXHIBIT 4 – HMIS CLIENT DATA REPORT SAMPLE

Program Roster Report	SAMPLE	Agency Name Active within 06/01/2023 thru 06/30/2023
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Housing Move-in: Undefined = Unknown HoH or adjusted Move-in is Null, = Non PH Project, **A:** Assessments, **S:** Services, **CN:** Case Notes
 You can find more information about adjusted Move-In Date at the [Help Center Article](#)

Head of Household (HoH) Unique Identifiers are listed in bold text. Household members are grouped together with the HoH.

Client	Unique Identifier	Birth Date	Age At Entry	Current Age	Enroll Date	Exit Date	LOS	Housing Move-in	A	S	CN	Assigned Staff
<i>Program: Sample Project Name</i>												
Client 1	ABC12345	99/99/9999	43	45	09/30/2021	-	639	undefined	1	0	0	A. Admin
Client 2	DEF12345	11/11/1111	57	66	07/11/2014	-	3,277	07/11/2014	10	0	0	A. Admin
Client 3	GHI12345	22/22/2222	47	56	08/15/2014	-	3,242	08/15/2014	10	0	0	A. Admin
Client 4	JKL12345	33/33/3333	23	26	04/03/2020	-	1,184	undefined	5	0	0	A. Admin
Client 5	MNO12345	44/44/4444	36	48	03/08/2011	-	4,498	03/08/2011	13	0	0	A. Admin
Client 6	PQR11111	66/66/6666	47	61	03/10/2010	-	4,861	03/10/2010	11	0	0	A. Admin
Client 7	STU12345	55/55/5555	53	64	05/05/2012	-	4,074	05/05/2012	12	0	0	A. Admin
Client 8	VWX22222	77/77/7777	53	56	12/30/2019	-	1,279	12/30/2019	4	0	0	A. Admin
Client 9	YZ123456	88/88/8888	55	58	11/24/2020	-	949	undefined	3	0	0	A. Admin
Client 10	BAC11111	-	-	-	05/10/2023	-	52	undefined	0	0	0	A. Admin
Client 11	CAD22222	10/10/1010	60	60	05/18/2023	-	44	05/18/2023	0	0	0	A. Admin

Number of Enrollments: 11

Number of Unique Clients: 11

Number of Households: 10

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EXHIBIT 5 – HMIS DATA QUALITY REPORT SAMPLE

HMIS Data Quality Report [FY 2023]

Agency Name

CoC Category Filter: Agency CoC
Date Range: 10/01/2022 thru 06/30/2023

Q3. Universal Data Elements

Program Applicability: All Projects

Data Element	Error Count	% of Error Rate
Veteran Status (3.7)	0	0%
Project Start Date (3.10)	0	0%
Relationship to Head of Household (3.15)	0	0%
Client Location (3.16)	0	0%
Disabling Condition (3.8)	0	0%

Q4. Income and Housing Data Quality

Program Applicability: All Projects

Data Element	Error Count	% of Error Rate
Destination (3.12)	1	0.12%
Income and Sources (4.2) at Start	0	0%
Income and Sources (4.2) at Annual Assessment	0	0%
Income and Sources (4.2) at Exit	0	0%
Non-Cash Benefits (4.3) at Start	0	0%
Non-Cash Benefits (4.3) at Annual Assessment	0	0%
Non-Cash Benefits (4.3) at Exit	0	0%

Q5. Chronic Homeless

Program Applicability: ES, SH, Street Outreach, TH & PH(All)

Starting into project type	Count of total records	Missing time in institution (3.9.17.2)	Missing time in housing (3.9.17.2)	Approximate Date started (3.9.17.3)	Number of times (3.9.17.4)	Number of months (3.9.17.5)	% of records unable to calculate
				Missing	DK/R/missing	DK/R/missing	
ES, SH, Street Outreach	0			0	0	0	0%
TH	0	0	0	0	0	0	0%
PH (all)	512	0	0	0	0	0	0%
Total	512						0%

Thu Jun 1 11:01:09 AM 2023

HMIS Data Quality Report [FY 2023]

Agency Name

CoC Category Filter: Agency CoC
Date Range: 10/01/2022 thru 06/30/2023

Q6. Timeliness

Program Applicability: All Projects

Time for Record Entry	Number of Project Start Records	Number of Project Exit Records
0 days	518	634
1-3 days	352	81
4-6 days	33	49
7-10 days	4	22
11+ days	12	37

Q7. Inactive Records: Street Outreach and Emergency Shelter

Program Applicability: Street Outreach & ES-Night By Night

Data Element	# of Records	# of Inactive Records	% of Inactive Records
Contact (Adults and Heads of Household in Street Outreach or ES-NbN)	0	0	0%
Bed Night (All clients in ES-NbN)	0	0	0%

Programs Included in Dataset

Agency	Program Name
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Thu Jun 8 11:01:08 AM 2023

EXHIBIT 6

**State of California
WELFARE AND INSTITUTIONS CODE
Section 8255**

8255.

For purposes of this chapter:

(a) **"Council"** means the California Interagency Council on Homelessness, formerly known as the Homeless Coordinating and Financing Council established pursuant to Section 8257.

(b) **"Core components of Housing First"** means all of the following:

(1) Tenant screening and selection practices that promote accepting applicants regardless of their sobriety or use of substances, completion of treatment, or participation in services.

(2) Applicants are not rejected on the basis of poor credit or financial history, poor or lack of rental history, criminal convictions unrelated to tenancy, or behaviors that indicate a lack of **"housing readiness."**

(3) Acceptance of referrals directly from shelters, street outreach, drop-in centers, and other parts of crisis response systems frequented by vulnerable people experiencing homelessness.

(4) Supportive services that emphasize engagement and problem solving over therapeutic goals and service plans that are highly tenant-driven without predetermined goals.

(5) Participation in services or program compliance is not a condition of permanent housing tenancy.

(6) Tenants have a lease and all the rights and responsibilities of tenancy, as outlined in **California's Civil, Health and Safety, and Government codes.**

(7) The use of alcohol or drugs in and of itself, without other lease violations, is not a reason for eviction.

(8) In communities with coordinated assessment and entry systems, incentives for funding promote tenant selection plans for supportive housing that prioritize eligible tenants based on **criteria other than "first-come-first-serve," including, but not limited to, the duration or** chronicity of homelessness, vulnerability to early mortality, or high utilization of crisis services. Prioritization may include triage tools, developed through local data, to identify high-cost, high-need homeless residents.

(9) Case managers and service coordinators who are trained in and actively employ evidence-based practices for client engagement, including, but not limited to, motivational interviewing and client-centered counseling.

(10) Services are informed by a harm-reduction philosophy that recognizes drug and alcohol **use and addiction as a part of tenants' lives, where tenants are engaged in nonjudgmental** communication regarding drug and alcohol use, and where tenants are offered education regarding how to avoid risky behaviors and engage in safer practices, as well as connected to evidence-based treatment if the tenant so chooses.

(11) The project and specific apartment may include special physical features that accommodate disabilities, reduce harm, and promote health and community and independence among tenants.

(c) **"Homeless"** has the same definition as that term is defined in Section 91.5 of Title 24 of the Code of Federal Regulations.

(d) (1) **"Housing First"** means the evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible. Housing First providers offer services as needed and requested on a voluntary basis and that do not make housing contingent on participation in services.

(2) (A) **"Housing First"** includes time-limited rental or services assistance, so long as the housing and service provider assists the recipient in accessing permanent housing and in securing longer term rental assistance, income assistance, or employment.

(B) For time-limited, supportive services programs serving homeless youth, programs should use a positive youth development model and be culturally competent to serve unaccompanied youth under 25 years of age. Providers should work with the youth to engage in family reunification efforts, where appropriate and when in the best interest of the youth. In the event of an eviction, programs shall make every effort, which shall be documented, to link tenants to other stable, safe, decent housing options. Exit to homelessness should be extremely rare, and only after a tenant refuses assistance with housing search, location, and move-in assistance.

(e) **"State programs"** means any programs a California state agency or department funds, implements, or administers for the purpose of providing housing or housing-based services to people experiencing homelessness or at risk of homelessness, with the exception of federally funded programs with requirements inconsistent with this chapter.

(Amended by Stats. 2021, Ch. 398, Sec. 3. (AB 1220) Effective January 1, 2022.)

EXHIBIT 7

Office of Homeless Services Homeless Housing, Assistance and Prevention Program (HHAP)



VENDOR NAME: _____

FISCAL YEAR _____

VENDOR ID #: _____

BILLING PERIOD _____

INVOICE # - PO: _____

FUND CENTER/WBSE _____ XXX-XXX-XXXX

BUDGET CATEGORIES (PER CONTRACT)		APPROVED BUDGET	PRIOR AMOUNT EXPENDED THROUGH	EXPENSES BILLED Current Month	AMOUNT EXPENDED TO DATE	REMAINING BALANCE	% Remaining
Eligible Use Category	WBSE						
		\$100.00	\$10.00	\$10.00	\$20.00	\$80.00	80%
		\$0.00			\$0.00	\$0.00	#DIV/0!
		\$0.00			\$0.00	\$0.00	#DIV/0!
		\$0.00			\$0.00	\$0.00	#DIV/0!
		\$0.00			\$0.00	\$0.00	#DIV/0!
		\$0.00			\$0.00	\$0.00	#DIV/0!
TOTAL OF ALL EXPENSES		\$100.00	\$10.00	\$10.00	\$20.00	\$80.00	#DIV/0!

Notes:



CITY COUNCIL AGENDA REPORT

DATE: SEPTEMBER 18, 2023

FILE I.D.: CYC320

SECTION: CONSENT - RESOLUTIONS

DEPT.: CITY MGR.

ITEM NO.: 1

PREPARER: A. MYRICK

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 23-3414 REAFFIRMING THE CITY OF MONTCLAIR'S COMMITMENT TO THE WELL-BEING AND SAFETY OF ALL INDIVIDUALS REGARDLESS OF RACE, RELIGION, ETHNICITY, NATIONAL ORIGIN, DISABILITY, SEX, GENDER, GENDER EXPRESSION, SEXUAL ORIENTATION, AGE, OR MILITARY/VETERAN STATUS; AND CONDEMNING HATE CRIMES AND ANY OTHER FORM OF RACISM, RELIGIOUS OR ETHNIC BIAS, DISCRIMINATION, INCITEMENT OF VIOLENCE, OR TARGETING OF MINORITIES

REASON FOR CONSIDERATION: The Jewish Federation has requested that the City Council adopt a resolution that condemns antisemitism and all forms of hatred. On August 18, 2023, the City Council directed staff to prepare the proposed resolution, which is attached for consideration and adoption.

BACKGROUND: The Jewish Federation of the Greater San Gabriel and Pomona Valleys (JF-SGPV) mailed letters to the Mayor and City Council of Montclair in March and June of 2023, requesting the City Council adopt a resolution condemning antisemitism and all forms of hatred. At the City Council meeting on August 7, 2023, the City Council requested staff place this item on the agenda for discussion at the next Council Meeting.

At its August 18, 2023 meeting, the City Council discussed the request and expressed its desire to adopt a resolution denouncing any form of prejudice or bigotry based on race, religion, ethnicity, national origin, disability, sex, gender, gender expression, sexual orientation, age, or military/veteran status, or any other characteristic. The City Council directed staff to prepare the requested resolution.

FISCAL IMPACT: Adoption of Resolution No. 23-3414 is not anticipated to produce any impact on the City's General Fund.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 23-3414 affirming the City of Montclair's commitment to the well-being and safety of all individuals regardless of race, religion, ethnicity, national origin, disability, sex, gender, gender expression, sexual orientation, age, or military/veteran status; and condemning hate crimes and any other form of racism, religious or ethnic bias, discrimination, incitement of violence, or targeting of minorities.

RESOLUTION NO. 23-3414

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR REAFFIRMING THE CITY OF MONTCLAIR'S COMMITMENT TO THE WELL-BEING AND SAFETY OF ALL INDIVIDUALS REGARDLESS OF RACE, RELIGION, ETHNICITY, NATIONAL ORIGIN, DISABILITY, SEX, GENDER, GENDER EXPRESSION, SEXUAL ORIENTATION, AGE, OR MILITARY/VETERAN STATUS; AND CONDEMNING HATE CRIMES AND ANY OTHER FORMS OF RACISM, RELIGIOUS OR ETHNIC BIAS, DISCRIMINATION, INCITEMENTS OF VIOLENCE, OR TARGETING OF MINORITIES

WHEREAS, in the past several years, violent crimes, threats of violence, targeting of religious, racial, and ethnic minorities have increased across the United States; and

WHEREAS, the City of Montclair values and fosters inclusivity, diversity, equity, and acceptance; and

WHEREAS, the City of Montclair is committed to inclusion and advancing equity and justice for all people regardless of race, religion, ethnicity, national origin, disability, sex, gender, gender expression, sexual orientation, age, or military/veteran status; and

WHEREAS, the City of Montclair condemns hate crimes and any other form of racism, religious, or ethnic bias, discrimination, incitement of violence, or targeting of any minority; and

WHEREAS, the Montclair City Council denounces any form of prejudice or bigotry based on race, religion, ethnicity, national origin, disability, sex, gender, gender expression, sexual orientation, age, or military/veteran status, or any other characteristic; and

WHEREAS, the Montclair City Council wishes to promote an atmosphere of acceptance, tolerance, and respect in the community.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair:

1. Rejects hate-motivated acts as an attack on the values of our society and the fundamental tenants of the United States Constitution;
2. Affirms the basic rights of all people to live in a safe environment free from discrimination, intimidation, threats, or fear;
3. Will investigate all credible reports of hate crimes and incidents and threats against minorities and hold perpetrators of those crimes, incidents, and threats accountable;
4. Calls upon all Montclair residents and the business community to join to bringing attention to, addressing the harms of, and speaking out against acts of hate, bullying, discrimination, aggression and violence against specific communities and denouncing hate in all of its forms;
5. Joins cities, counties, and states across the country in affirming the United States' commitment to the safety, equality, and well-being of all of its citizens, non-citizens, and visitors;
6. Encourages partnerships with community-based organizations, advocacy groups, and officials and agencies across San Bernardino County and in State government to protect people of all races, religion, color, national origin, disability, sex, gender expression, age, sexual orientation, or military/veteran status;
7. Calls upon local governments across the United States to:
 - a. Adopt similar commitments to reaffirm their solidarity with people of all races, religion, color, national origin, disability, sex, gender expression, age, sexual orientation, or military/veteran status;
 - b. Commit to combating hate, intolerance, prejudice, discrimination, and violence in all its forms; and

- c. Promote institutional equity including equal and fair access to all public services.

BE IT FINALLY RESOLVED that this resolution shall become effective immediately upon passage and adoption.

APPROVED AND ADOPTED this XX day of XX, 2023.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 23-3414 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2023, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 18, 2023	FILE I.D.:	GRT100/EDD100
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	ECONOMIC DEV.
ITEM NO.:	2	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 23-3420 AUTHORIZING THE CITY OF MONTCLAIR TO ENTER INTO AN AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF CANNABIS CONTROL FOR A LOCAL JURISDICTION CANNABIS RETAIL ACCESS GRANT FOR DEVELOPMENT AND IMPLEMENTATION OF A COMMERCIAL CANNABIS LICENSING PROGRAM		

REASON FOR CONSIDERATION: The California Department of Cannabis Control requires an applicant's governing body to declare, by resolution, authorizations related to grant programs.

The City Council is requested to consider adoption of Resolution No. 23-3420 authorizing the City of Montclair to enter into an agreement with the California Department of Cannabis Control for a Local Jurisdiction Cannabis Retail Access Grant for development and implementation of a commercial cannabis licensing program, a copy of which is attached for City Council review.

BACKGROUND: The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) of 2017 established a dual regulatory structure for cannabis businesses. A person who wishes to engage in commercial cannabis activity is subject to regulation at both the state and local levels.

As of February 1, 2023, 327 cities and counties (61 percent) in California do not allow the establishment of any commercial cannabis retailers, whether storefront or non-storefront, within their respective jurisdictions.

To address this, the California Department of Cannabis Control (DCC) created the Cannabis Local Jurisdiction Retail Access Grant Program to provide local governments with resources to develop and implement cannabis retail licensing programs. In total, the DCC set aside \$20 million in total funding to be distributed in two phases to applicable jurisdictions for the development and implementation of a commercial cannabis licensing program at the local level.

By supporting local governments in establishing cannabis retail licensing programs, the Cannabis Local Jurisdiction Retail Access Grant Program seeks to provide existing consumers with sufficient access to tested, regulated cannabis in the legal market, promoting consumer safety and reducing demand in the illicit market.

Cannabis Local Jurisdiction Retail Access Grant Program

Earlier this year, the DCC announced the availability of \$10 million in grant funding for Phase I of the Cannabis Local Jurisdiction Retail Access Grant. The application period opened on February 24, 2023, and closed on April 28, 2023.

In June of 2023, the DCC announced awards of over \$4 million in funding to 18 cities and counties to develop and implement local commercial cannabis retail licensing

programs. Of the cities and counties that submitted applications, the City of Montclair was one of eighteen selected to receive grant funds from the Cannabis Local Jurisdiction Retail Access Grant.

Phase I Funding

During Phase I of the Cannabis Local Jurisdiction Retail Access Grant, eligible local jurisdictions will receive initial funding to support the development and implementation of a local cannabis retailer licensing program.

Based on a local jurisdiction's population, as determined by the California Department of Finance's 2022 Population Estimates for Cities, Counties, and the State, jurisdictions will receive grant funding up to a maximum amount allotted based on their population. Additional funding will be awarded to local jurisdictions that include a proposal to issue retail licenses to qualified local equity businesses.

Based on the City of Montclair's population, the City is eligible to receive \$150,000 in grant funds and an additional \$45,000.00 in grant funds based on an equity inclusion program, for a total grant amount of \$195,000.

Eligible costs that can be covered by the grant include, but are not limited, to the following:

- Salaries and benefits for local government staff directly involved in the development or implementation of the cannabis retailer licensing program;
- Expenses to develop or implement application processes for cannabis retailer licenses, including software costs;
- Expenses to conduct stakeholder outreach or community engagement to inform the development of the cannabis retailer licensing program;
- Local government staff costs or other professional preparation of CEQA-compliant environmental documents for cannabis retailers; and
- Technical support for applicants and licensees.

Upon execution of the grant agreement, eligible expenses incurred within the Grant Term (July 1, 2023 – June 30, 2026) may be included as activities to be funded by the Cannabis Local Jurisdiction Retail Access Grant Program.

Proposed Resolution No. 23-3420 would authorize the City of Montclair to enter into an agreement with the California Department of Cannabis Control for a Local Jurisdiction Cannabis Retail Access Grant totaling \$195,000 for development and implementation of a commercial cannabis licensing program.

FISCAL IMPACT: Adoption of Resolution No. 23-3420 would authorize the City of Montclair to enter into an agreement with the California Department of Cannabis Control for a Local Jurisdiction Cannabis Retail Access Grant totaling \$195,000 for development and implementation of a commercial cannabis licensing program.

RECOMMENDATION: Staff recommends that the City Council adopt Resolution No. 23-3420 authorizing the City of Montclair to enter into an agreement with the California Department of Cannabis Control for a Local Jurisdiction Cannabis Retail Access Grant for development and implementation of a commercial cannabis licensing program.

RESOLUTION NO. 23-3420

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MONTCLAIR AUTHORIZING STATE OF CALIFORNIA LOCAL
JURISDICTION CANNABIS RETAIL ACCESS GRANT PROGRAM
FUNDING**

WHEREAS, the California Legislature has appropriated funds for award by the California Department of Cannabis Control to eligible local jurisdictions to develop and implement a cannabis retailer licensing program; and

WHEREAS, the City of Montclair has a plan to develop and implement a program to issue permits to commercial cannabis retail businesses; and

WHEREAS, the City of Montclair has determined that it will use grant funds from the Department of Cannabis Control to establish a local cannabis retailer licensing program as described in its application for grant funds.

NOW, THEREFORE, BE IT RESOLVED that the City Manager of the City of Montclair or his/her designee is authorized to execute by electronic signature on behalf of the City of Montclair the grant agreement with the Department of Cannabis Control, including any extensions or amendments thereof and any subsequent grant agreement with Department of Cannabis Control in relation thereto.

BE IT FURTHER RESOLVED that the City of Montclair agrees to abide by the terms and conditions of the Grant Agreement as set forth by the Department of Cannabis Control.

APPROVED AND ADOPTED this XX day of XX, 2023.

ATTEST:

Mayor

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 23-3420 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2023, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 18, 2023	FILE I.D.:	TRN510
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	PUBLIC WORKS
ITEM NO.:	3	PREPARER:	M. HEREDIA
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 23-3421 ADOPTING A FIVE-YEAR CAPITAL PROJECT NEEDS ANALYSIS FOR FISCAL YEARS 2025-26 THROUGH 2029-30		
	CONSIDER ADOPTION OF RESOLUTION NO. 23-3422 ADOPTING THE FIVE-YEAR LOCAL STREET CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEARS 2024-25 THROUGH 2028-29		

REASON FOR CONSIDERATION: The San Bernardino County Transportation Authority (SBCTA) requires each local jurisdiction to annually update its Five-Year Capital Project Needs Analysis (CPNA) and Local Street Capital Improvement Program (CIP). The City Council is requested to consider adopting Resolution Nos. 23-3421 and 23-3422 pursuant to SBCTA requirements.

Copies of proposed Resolution Nos. 23-3421 and 23-3422 are attached for City Council review and consideration.

BACKGROUND: Measure I, the 2010-2040 countywide transportation sales tax program, requires that each local jurisdiction applying for funds from the Valley Major Street and Valley Freeway Interchange Programs annually adopt and update Five-Year CPNAs and CIPs. The CPNA differs from the Measure I CIP in that the CPNA contains only projects that are included in SBCTA's Nexus Study Program. Projects in the CPNA typically include freeway interchange projects, arterial widening projects, and grade separation projects. Project funding also includes contributions from developers through the regional Development Impact Fee Program. The CPNA projects in the City of Montclair that make use of the Valley Major Street and Freeway Interchange Program funds include the reconstruction of the Monte Vista Avenue/I-10 Freeway Interchange Project and the Monte Vista/Union Pacific Grade Separation Project. The CIP list identifies the projects which will be funded by the local pass-through program.

FISCAL IMPACT: There is no immediate fiscal impact to the City with the adoption of Resolution Nos. 23-3421 and 23-3422. The CPNA, as its name implies, is a needs analysis allowing SBCTA to prioritize transportation improvement needs throughout the County. Having projects listed in the CPNA is not a guarantee that funds would be made available when needed, but failure to have a project listed would further delay funding until the project is listed. Measure I Local Pass-Through Program funds are received monthly and fund the projects listed on the Local Street Program. The City has been successful expediting construction of major infrastructure and utilized the available loan program from SBCTA to accelerate construction of improvements needed along Monte Vista Avenue. Future revenues from the SBCTA program will be used to pay the loan.

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

1. Adopt Resolution No. 23-3421 adopting the Five-Year CPNA for Fiscal Years 2025-26 through 2029-30; and
2. Adopt Resolution No. 23-3422 adopting the Five-Year Local CIP for Fiscal Years 2024-25 through 2028-29.

RESOLUTION NO. 23-3421

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MONTCLAIR ADOPTING THE MEASURE I FIVE-YEAR CAPITAL
PROJECTS NEEDS ANALYSIS FOR FISCAL YEARS 2024/2025
THROUGH 2028/2029**

WHEREAS, San Bernardino County voters approved passage of Measure I in November 2004, authorizing the San Bernardino County Transportation Authority to impose a one-half of one percent retail transactions and use tax applicable in the incorporated and unincorporated territory of the County of San Bernardino; and

WHEREAS, revenue from the tax can only be used for transportation improvement and traffic management programs authorized in the Expenditure Plans set forth in Ordinance No. 04-1 of the Authority; and

WHEREAS, the Strategic Plan requires each local jurisdiction applying for revenue from certain Measure I Programs to annually adopt and update a Five-Year Capital Project Needs Analysis; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby adopts the Measure I Five-Year Capital Project Needs Analysis for Fiscal Years 2024/2025 through 2028/2029, a copy of which is attached to this Resolution.

APPROVED AND ADOPTED this XX day of XX, 2023.

ATTEST:

Mayor

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 23-3421 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2023, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk

Capital Project Needs Analysis

City of Montclair

Valley Arterial Sub-Program

Nexus Project Cost \$ 5,850,000
 Dev. Loan? Yes
 5-Year Advance? No
 Public Share: 81.1%
 Dev. Share: 18.90%

Project Information I-10 & Monte Vista	Phase	Funding	PRIOR*	FY 24/25	FY 25/26	FY 26/27	FY 27/28	FY 28/29	FUTURE
PA&ED Total Cost: Fund Type:		\$883,600.00							
		MSI Interchange							
		M/VFI	\$ 670,652.00	\$	\$	\$	\$	\$	\$
		DEV FEE	\$ 212,948.00	\$	\$	\$	\$	\$	\$
		- Select Fund		\$	\$	\$	\$	\$	\$
PS&E Total Cost: Fund Type:									
		MSI Interchange							
		M/VFI	\$ 985,813.00	\$	\$	\$	\$	\$	\$
		DEV FEE	\$ 256,588.00	\$	\$	\$	\$	\$	\$
		Other:	\$ 189,288.00	\$	\$	\$	\$	\$	\$
ROW Total Cost: Fund Type:									
		MSI Interchange							
		M/VFI	\$ 2,231,738.00	\$	\$	\$	\$	\$	\$
		DEV FEE	\$ 708,628.00	\$	\$	\$	\$	\$	\$
		- Select Fund		\$	\$	\$	\$	\$	\$
CONST Total Cost: Fund Type:									
		MSI Interchange							
		M/VFI	\$ 15,722,727.00	\$ 4,280,475.00	\$	\$	\$	\$	\$
		DEV FEE	\$ 1,948,833.00	\$ 1,033,988.04	\$	\$	\$	\$	\$
		DEV LOAN	\$ 3,817,230.00	\$ 80,436.00	\$	\$	\$	\$	\$
		- Select Fund		\$	\$	\$	\$	\$	\$
		- Select Fund		\$	\$	\$	\$	\$	\$
		Other:		\$	\$	\$	\$	\$	\$

*Prior should identify any expenses incurred in prior years that have not yet been reimbursed by SBCITA including anticipated FY 2023/2024 expenses

Reference: Measure I Policies 40005 and 40006

RESOLUTION NO. 23-3422

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MONTCLAIR ADOPTING THE MEASURE I FIVE-YEAR CAPITAL
IMPROVEMENT PROGRAM AND EXPENDITURE STRATEGY
FOR FISCAL YEAR 2024-25 TO FISCAL YEAR 2028-29**

WHEREAS, San Bernardino County voters approved passage of Measure I in November 2004, authorizing the San Bernardino County Transportation Authority (SBCTA) to impose a one-half of one percent retail transactions and use tax applicable in the incorporated and unincorporated territory of the County of San Bernardino; and

WHEREAS, revenue from the tax can only be used for transportation improvement and traffic management programs authorized in the Expenditure Plans set forth in Ordinance 04-01 of the Authority, and

WHEREAS, the SBCTA's Measure I Strategic Plan requires each local jurisdiction applying for revenue from the Local Streets Program to annually adopt and update a Five-Year Capital Improvement Plan; and

WHEREAS, California Public Utilities Code 190300 and Ordinance No. 04-1 require each local jurisdiction to maintain General Fund expenditures for transportation-related construction and maintenance activities at the required Maintenance of Effort base year level in each fiscal year of the adopted Five-Year Capital Improvement Plan, which for the City of Montclair is \$894,728.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Montclair hereby adopts the Measure I Five-Year Capital Improvement Program and Expenditure Strategy for Fiscal Year 2024-25 to Fiscal Year 2028-29 attached to this resolution.

APPROVED AND ADOPTED this XX day of XX, 2023.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 23-3422 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2023, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk

CITY OF MONTCLAIR

MEASURE I CAPITAL IMPROVEMENT PLAN

EXPENDITURE STRATEGY

Fiscal Year 2024/2025 to Fiscal Year 2028/2029

The City of Montclair plans on using Measure I as matching funds for federal funds associated with the design and construction of the Central Bridge at the Union Pacific Railroad tracks. The funds will also be utilized to service the I-10/Monte Vista Interchange Term Loan Agreements in place. The City also intends to expend Measure I funds on maintenance of City streets to the extent permissible under SBCTA policies.

Resolution Number: 23-3421		Measure I Local Pass-through Program										Jurisdiction: Montclair	
Resolution Approval Date: 9/18/2023		FIVE YEAR CAPITAL IMPROVEMENT PLAN											
Contact Person/Title: Public Works Director/City Engineer		Fiscal Years 2023/2024 thru 2027/2028											
Phone: 909-625-3441													
Email: mheredia@cityofmontclair.org												6/30/23 Carryover Balance \$11,600	
<div>Projects:</div> <div>Pavement Rehabilitation Program</div> <div>Central Bridge Replacement - Design</div> <div>10 Monte Vista Interchange Term Loan Agreement</div>	Is Project in City's Non-motorized Transportation Plan? (Yes/No)	No	0.0%	0.0%	Estimated Total Project Cost	FY2023/24 Est. Revenue Current Estimate	FY2024/25 Est. Revenue Current Estimate	FY2025/26 Est. Revenue Current Estimate	FY2026/27 Est. Revenue Current Estimate	FY2027/28 Est. Revenue Current Estimate	Total Est. Revn.		
	No	No	0.0%	0.0%	\$20,000,000	\$1500,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,115,649	\$5,276,038		
	No	No	0.0%	0.0%	\$3,352,355	\$350,000	\$500,000	\$0	\$0				
	No	No	0.0%	0.0%	\$33,144,900	\$900,000	\$500,000	\$0	\$0				
	Projects Total:				\$2,750,000	\$2,100,000	\$1,000,000	\$1,000,000	\$1,000,000				
Total Programming is currently 14.9% (Must not exceed 150% of Carryover Balance + Total Estimated Revenue)												Total Estimated Programming: \$7,850,000	

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
AUGUST 21, 2023, AT 6:08 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 6:08 p.m.

II. ROLL CALL

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

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of August 7, 2023.

Moved by Council Member Ruh, seconded by Mayor Pro Tem Johnson, and carried unanimously to approve the minutes of the Personnel Committee meeting on August 7, 2023.

IV. PUBLIC COMMENT – None

V. CLOSED SESSION

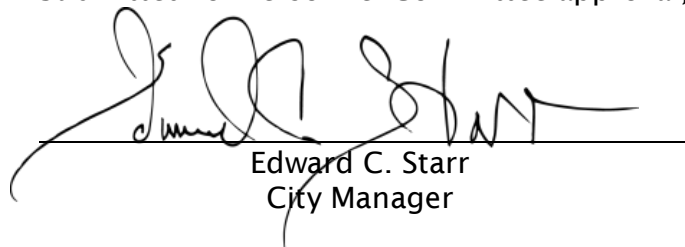
At 6:09 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:35 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 6:35 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, AUGUST 21, 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 7:01 p.m.

II. INVOCATION

Fire Department Chaplain **Jimmy Crowell** 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, Lopez, and Martinez

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

V. PRESENTATIONS

A. Certificate of Recognition Presented to Jorge Grajeda for Courageous Actions

Acting Police Chief Reed provided background information on the incident that led to **Jorge Grajeda** notifying law enforcement of occupants in a burning building, resulting in their rescue. Mayor Dutrey presented him with a Certificate of Recognition.

VI. PUBLIC COMMENT

- **Bill Kaufman** expressed frustration that the City continues to prevent his efforts to open a cannabis dispensary in the City and requested an update from the City regarding legalizing commercial cannabis within the City.
- **Tiffany Ramos** requested the City provide reserved field use for her nonprofit travel baseball team similar to the contracts in place with **Montclair Little League** and **Golden Girls Softball League**.
- **John Davis** spoke regarding the traveling baseball team and wanted the Council's support in finding a safe space for their team to practice.
- **Joana Lubmann**, speaking on behalf of businesses on Brooks Street, provided updates on the police response to crimes targeting the businesses and new incidents that have taken place since last month. She expressed her disappointment that the individuals arrested in connection to the crimes were released shortly after and the area is still being targeted, leaving employees feeling threatened.

VII. PUBLIC HEARINGS

A. Consider Adoption of Resolution No. 23-3404 Declaring the City's Intent to Become Subject to the Uniform Public Construction Cost Accounting Act [CC]

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

Consider Setting a Public Hearing for Second Reading and to Consider Adoption of Ordinance No. 23-1004 on Monday, September 18, 2023, at 7:00 P.M. in the City Council Chambers

Mayor Dutrey opened the public hearing.

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

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

Mayor Dutrey proposed adding a requirement for staff to produce a quarterly report to the City Council containing projects awarded by the City Manager.

Finance Director Kulbeck advised the Purchasing Manual will be undergoing an update shortly, and verified that the requested reporting requirement could be included in the section for this new contract award process. She noted the purchasing manual would be presented to the City Council later this year or early next year.

ACTION 1 – Public Hearings – Item A	
ACTING:	City Council
MOTION:	Adopt Resolution No. 23-3404 and direct staff to provide the City Council with a quarterly report of projects awarded using informal bidding procedures prescribed by the Uniform Construction Cost Accounting Act.
MADE BY: SECOND BY:	Mayor Dutrey Council Member Lopez
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
RESULT:	Motion carried 5-0.
ACTION 2 – Public Hearings – Item A	
ACTING:	City Council
MOTION:	Conduct the first reading of Ordinance No. 23-1004 by number and title only, waive further reading, and set a public hearing for second reading and adoption of Ordinance No. 23-1004 on Monday, September 18, 2023 at 7:00 p.m. in the City Council Chambers.
MADE BY: SECOND BY:	Mayor Pro Tem Johnson Council Member Lopez
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
RESULT:	Motion carried 5-0.

VIII. CONSENT CALENDAR

ACTION – Consent Calendar	
ACTING:	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
MOTION:	Approve the Consent Calendar as presented.
MADE BY: SECOND BY:	Mayor Pro Tem/Vice Chair Johnson Council Member Martinez
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
RESULT:	Motion carried 5-0.

A. Approval of Minutes

1. Regular Joint Meeting — August 7, 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 – July 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 – July 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 – July 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 – July 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 – July 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 – July 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 – July 2023**

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

9. **Consider Authorizing a \$33,812.14 Allocation from the General Fund for the Purchase of a 2023 Nissan Rogue from Metro Nissan Montclair for Use by the Human Services Department**

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

10. **Consider Approval of a Policy for Use of City-Owned and Controlled Electronic Message Boards**

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

C. Agreements

1. Consider Approval of Agreement Nos. 23-61, 23-62, and 23-63 with Montclair Little League and Golden Girls Softball League for Use of Ball Field Facilities

Karrina Quijada requested that the City consider allowing travel ball teams to have reserved park use time.

Council Member Lopez spoke in favor of extending a similar contract to travel ball teams.

Mayor Dutrey requested staff research what surrounding cities charge travel ball teams for field use.

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

2. Consider Approval of Agreement No. 23-67 with Epic Land Solutions to Provide Right-of-Way Consulting Services on an As-Need Basis, Subject to Any Revisions Deemed Necessary by the City Attorney

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

D. Resolutions

1. Consider Adoption of Resolution No. 23-3418 Authorizing the Submission of an Application for Grant Funds for the Community Resilience Centers Program from the Strategic Growth Council and Authorizing the Execution of Application-Related Documents by the City Manager or Their Designee

Mayor Pro Tem Johnson received clarification that staff is seeking funds to construct a new facility in another area of town that can be used for community programming and as an emergency cooling center.

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

IX. PULLED CONSENT CALENDAR ITEMS — None

X. BUSINESS ITEMS

A. Consider Providing Direction to Staff Related to a Request by the Jewish Federation of the Greater San Gabriel and Pomona Valleys for the City Council to Adopt a Resolution Denouncing Anti-Semitism and All Forms of Hatred

Jason Moss representing Jewish Federation of the Greater San Gabriel and Pomona Valleys asked the City Council to strongly consider adopting a resolution denouncing anti-Semitism and all forms of hatred.

The City Council discussed in detail the types of hatred they would like included in the City of Montclair's Resolution. They requested that the City of Upland's Resolution be used as a guide in drafting the one for Montclair.

ACTION – Business Items – Item A	
ACTING:	City Council
MOTION:	Direct staff to draft a Resolution for City Council consideration using the City of Upland's resolution as a guide, but expanding on the forms of hate to be condemned to include gender, gender expression, age, and veteran status.
MADE BY: SECOND BY:	Mayor Dutrey Council Member Lopez
AYES: NOES: ABSTAIN: ABSENT:	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
RESULT:	Motion carried 5-0.

XI. COUNCIL WORKSHOP

A. North Montclair Street Improvement Master Plan Presentation

The City Council continued this presentation to an adjourned meeting to be held on Monday, September 18, 2023, at 5:45p.m. in the City Council Chambers.

XII. COMMUNICATIONS

A. Department Reports — None

B. City Attorney

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

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

Agency: City of Montclair
Employee Management
Associations: Montclair City Confidential Employees Association
Montclair General Employees Association
Montclair Fire Fighters Association
Montclair Police Officers Association

C. City Manager/Executive Director

City Manager Starr announced Benson Avenue will re-open to traffic under the I-10 freeway on August 25, 2023 at 9:00 p.m.

D. Mayor/Chair

1. Notice of Cancellation of September 4, 2023 Regular Joint Meeting

Mayor/Chair Dutrey announced the September 4, 2023 regular joint meeting is cancelled due to the anticipated lack of pressing business.

2. Mayor/Chair Dutrey reported the old **Islands** building on Moreno Street has been demolished to make way for a new **Panera Bread** that is coming to the City, and commended the **Montclair Chamber of Commerce's** first annual *A Night Under the Stars* event that was held at the **Chino Basin Water Conservation District** on Thursday.

E. Council Members/Directors

1. Council Member/Director Ruh reminded the public that children should exit the car on the curbside in order to stay safe; noted August 14th was the anniversary of women being given the right to vote, 103 years ago; and acknowledged the anniversary of Victory over Japan Day, marking the conclusion of World War II.
2. Council Member/Director Lopez commented on the success of the **Chamber's Night Under the Stars**. He requested an updated on Saratoga Park improvements.

City Manager Starr advised the City's planning consultant **L.D. King** is currently working on the design.
3. Mayor Pro Tem/Vice Chair Johnson reported she attended an event held by **Senator Susan Rubio's** Office and learned about services offered by her office; she reminded the community to dump any standing water after the recent rain showers to prevent mosquito eggs from being laid; and she thanked Montclair restaurants who provided food for the **Montclair Chamber's Night Under the Stars** and also Councilmember Martinez who helped to set up for the event.
4. Council Member/Director Martinez stated she was glad to hear the *Night Under the Stars* event was successful, and was sad she was not able to attend although she did assist with set-up. She further commented that she would love to see more farmer markets and art walks in the City; and she reminded the public that blood donations are needed and encouraged residents to find places to donate.

F. Committee Meeting Minutes

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

1. Personnel Committee – August 7, 2023

XIII. CLOSED SESSION

At 9:09 p.m., the City Council went into closed session to discuss labor negotiations.

XIV. CLOSED SESSION ANNOUNCEMENTS

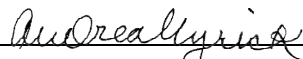
At 9:36 p.m., the City Council returned from closed session. Mayor Dutrey announced that the City Council met in closed session to discuss labor negotiations; information was received and direction given to staff on the item; and no further announcements would be made at this time.

XV. ADJOURNMENT

At 9:37 p.m., the Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board were adjourned.

At 9:37 p.m., the City Council was adjourned to Monday, September 18, 2023, at 5:45 p.m. in the City Council Chambers.

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



Andrea Myrick,
City Clerk

CITY OF MONTCLAIR

TREASURER'S REPORT

FOR THE MONTH ENDING

August 31, 2023

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STATEMENT OF CASH AND INVESTMENT ACCOUNTS

GRAPH

CASH AND INVESTMENTS BY TYPE

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

August 31, 2023

COMPLIANCE STATEMENT

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

Total Investments

\$ 48,626,488

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 August 31, 2023

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance	
General Fund	\$ 3,071,676.84	\$ 3,083,273.61	\$ 4,132,463.13	\$ -	\$ 2,022,487.32	(1)
Gas Tax Fund	(185,827.20)	187,441.21	118,611.59	-	(116,997.58)	(2)
Road Maintenance - Section 2032	2,120,356.23	87,640.83	-	-	2,207,997.06	
Measure I Fund	5,726,548.26	124,633.02	-	-	5,851,181.28	
Traffic Safety	99,175.48	-	-	-	99,175.48	
Disability Access Fund - Bus. License	54,445.30	752.40	386.80	-	54,810.90	
Park Maintenance	16,121.44	3,204.14	9,525.32	-	9,800.26	
Park Development	1,540,507.06	-	-	-	1,540,507.06	
CDBG	(18,479.73)	6,422.61	26,794.80	-	(38,851.92)	(2)
SB2 Planning Grant	(56,875.00)	-	-	-	(56,875.00)	(2)
Air Quality Improvement Trust	130,425.40	13,512.99	71,614.90	-	72,323.49	
Senior Nutrition Program	(95,884.03)	11,246.18	33,134.53	-	(117,772.38)	(2)
American Rescue Plan	-	-	-	-	-	
Forfeiture Fund - State	102,323.35	679.35	-	-	103,002.70	
Proposition 30/SB 109	83,709.03	560.36	585.85	-	83,683.54	
SB 509 Public Safety	289,664.13	100,409.00	218,975.25	-	171,097.88	
Forfeiture Fund-Federal/DOJ	589,734.02	91,101.32	116,344.07	-	564,491.27	
Asset Seizure Fund	2.14	0.31	-	-	2.45	
Section 11489 Subfund	34,421.74	239.96	5,081.61	-	29,580.09	
Fed Asset Forfeiture-Treasury	119,600.96	848.63	-	-	120,449.59	
School District Grant Fund	71,496.00	-	-	-	71,496.00	
State Supplemental Law Enforce	281,579.39	1,762.67	-	-	283,342.06	
Local Law Enforcement Block Gr	37.34	223.17	-	-	260.51	
PC 1202.5 Crime Prevention	2,445.24	16.64	-	-	2,461.88	
Recycling Grant Fund	124,321.30	781.88	5,864.00	-	119,239.18	
Statewide Park Dev Grant	174,976.00	-	-	-	174,976.00	
Homeless Housing Assist Preven	289.43	-	2,050.00	-	(1,760.57)	(2)
LEAP Grant	(79,681.25)	-	2,555.00	-	(82,236.25)	(2)
After School Program Fund	(626,868.35)	159,216.94	287,840.63	-	(755,492.04)	(2)
City of Hope	1,290.78	-	-	-	1,290.78	
Safety Dept. Grants	59,205.72	-	-	-	59,205.72	
OSMD Immunization Grant	1,370.50	-	-	-	1,370.50	(2)
Kaiser Permanente Grant	2,684.24	-	-	-	2,684.24	
Resource Center Grant - OMSD	19,143.40	-	312.29	-	18,831.11	
Title IIIB Sr Support Services	(19,646.68)	8,703.11	5,899.05	-	(16,842.62)	(2)
Healthy Community Strategic Plan	7,785.58	-	-	-	7,785.58	
ASES Supplemental Grant	204,056.44	-	-	-	204,056.44	
E.M.S. - Paramedic Fund	5,391.79	2,385.25	16,472.80	-	(8,695.76)	(3)
Economic Development	2,780,008.56	57.29	677,725.45	-	2,102,340.40	
City Contributions/Donations Fund	500.00	-	-	-	500.00	
Sewer Operating Fund	2,773,301.28	581,481.09	734,449.70	-	2,620,332.67	
Sewer Replacement Fund	2,442,459.88	233,080.85	-	-	2,675,540.73	
CFD 2011-1 (Paseos)	240,583.44	1,761.22	5,465.94	-	236,878.72	
CFD 2011-2 (Arrow Station)	125,684.84	902.72	1,515.06	-	125,072.50	
Inland Empire Utility Agency	5,098,744.87	74.22	556.65	-	5,098,262.44	
Sewer Expansion Fee Fund	975,705.41	6,532.44	-	-	982,237.85	
Developer Impact Fees - Local	1,339,408.12	8,217.00	-	-	1,347,625.12	
Developer Impact Fees - Regional	407,230.82	18,528.00	-	-	425,758.82	
Burrtec Pavement Impact Fees	268,046.51	-	-	-	268,046.51	
PUC Reimbursement Fund-MVGS	262,502.41	-	-	-	262,502.41	
Utility Underground In-Lieu	383,396.52	-	-	-	383,396.52	
General Plan Update Fee	115,777.77	963.23	10,600.00	-	106,141.00	
Housing Fund	879,108.20	-	-	-	879,108.20	
Public Education/Govt. PEG Fee Fund	122,059.21	7,852.43	-	-	129,911.64	
Infrastructure Fund	(565,524.40)	-	513,562.25	-	(1,079,086.65)	(4)
COVID-19	(92,796.74)	-	-	-	(92,796.74)	
Successor Agency Bonds-Taxable	4,924,216.63	-	-	-	4,924,216.63	
Successor Agency Bonds-Tax Exempt	8,071,619.91	-	1,435.00	-	8,070,184.91	
2021 Lease Revenue Bond Proceeds	(3,224,229.64)	3,378,581.43	675,721.20	-	(521,369.41)	
2014 Lease Revenue Bond Debt Svc	(32,712.05)	-	-	-	(32,712.05)	(5)
2021 Lease Revenue Bond Debt Svc	(9,263.96)	-	-	-	(9,263.96)	
Pension Obligation Bond Debt Svc	(7,293.99)	-	-	-	(7,293.99)	
Contingency Fund	0.96	-	-	-	0.96	(1)
Assigned General Fund Reserves	27,454,585.49	2,822,163.74	-	-	30,276,749.23	(1)
TOTALS	\$ 68,584,642.34	\$ 10,945,251.24	\$ 7,675,542.87	\$ -	\$ 71,854,350.71	

Negative Cash Notes follow this presentation.

Notes on Negative Cash Balances

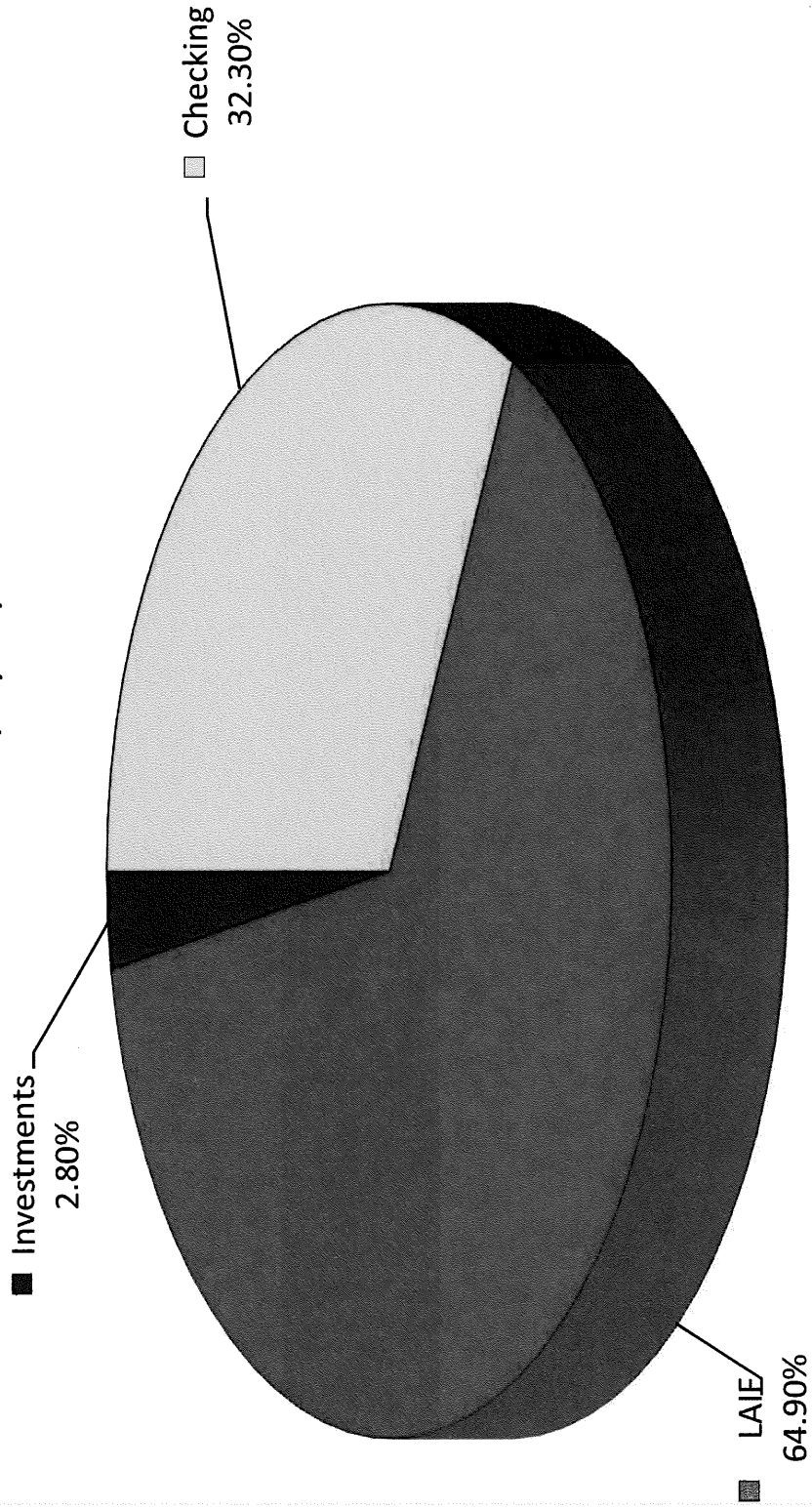
- (1)** The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this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

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

	<u>Par Value</u>	<u>Purchase Date</u>	<u>Maturity Date</u>	<u>Coupon Interest Rate</u>	<u>Current Market Value</u>	<u>Balance at Cost</u>	<u>Totals</u>
CHECKING ACCOUNT							
Checking Account							\$ 23,225,391.24
Asset Seizure Account							\$ 2,471.10
CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES							
Local Agency Investment Fund (LAIF)				3.490%	45,729,439.50	46,626,488.37	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 47,729,439.50</u>		\$ 48,626,488.37
U.S. AGENCY SECURITIES							
					<u>\$ -</u>		\$ -
TOTAL							<u>\$ 71,854,350.71</u>

Current market values obtained from US Bank.

CITY OF MONTCLAIR
CASH AND INVESTMENTS BY TYPE
August 31, 2023
Total Cash & Investments \$71,854,350



**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
TREASURER'S REPORT
FOR THE MONTH ENDING
August 31, 2023**

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

COMBINED OPERATING FUND

Operating	<u>(20,606.28)</u>	\$ (20,606.28)
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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>1,084,321.06</u></u>
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**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH
August 31, 2023**

Checking Account

US Bank

1,084,321.06

TOTAL CASH

1,084,321.06

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

August 31, 2023

City of Montclair
Final Warrant Register
Council Date 09/18/2023
Regular Warrants
Checking Account: Successor to the RDA

	Warrants	US Bank transfers	Area Totals
SRDA Combined Operating Fund	1,500.00	6,964.41	8,464.41
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	0.00
	<u>1,500.00</u>	<u>6,964.41</u>	

August 2023 Total

8,464.41

Note: Reimburse City for 08/03 payrolls
Reimburse City for 08/17 payrolls
Reimburse City for 08/31 payrolls

Vice Chair Johnson

Accounts Payable

Checks by Date - Summary by Check Number

User: cramirez
Printed: 9/7/2023 10:08 AM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
8184	BLXGr001	BLX Group LLC	08/31/2023	1,500.00
Report Total (1 checks):				1,500.00

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 08/01/2023 To 08/31/2023

Printed on 09/07/2023 at 10:13 AM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
08/31/2023	\$2152.18	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 08/31/23 Payroll
Initiate Date 08/31/2023
Initiate Time 10:18AM CDT
Initiated By JKULBECK
Completed Date 08/31/2023
Completed Time 10:18AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
08/18/2023	\$2277.42	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 08/17/23 Payroll
Initiate Date 08/18/2023
Initiate Time 07:33PM CDT
Initiated By JKULBECK
Completed Date 08/18/2023
Completed Time 07:33PM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
08/03/2023	\$2534.81	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimb City for 08/03/23 Payroll
Initiate Date 08/03/2023
Initiate Time 09:07PM CDT
Initiated By JKULBECK
Completed Date 08/03/2023
Completed Time 09:07PM CDT

Total Number of Book Transfers: 3
Total Amount of Book Transfers: \$6,964.41

--- End of Report ---

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

August 31, 2023

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SCHEDULE 1 - STATEMENT OF CASH AND INVESTMENTS

CASH AND INVESTMENTS GRAPH

Schedule 1

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

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
Checking Account			
US Bank			541,094.16
Investments			
LAIF	3.52%	1,042,529.35	<u>1,058,589.74</u>
TOTAL CASH & INVESTMENTS			<u>1,599,683.90</u>

NOTE:

8/3/23 - Withdrawl LAIF and transfer to US Bank - MHC account

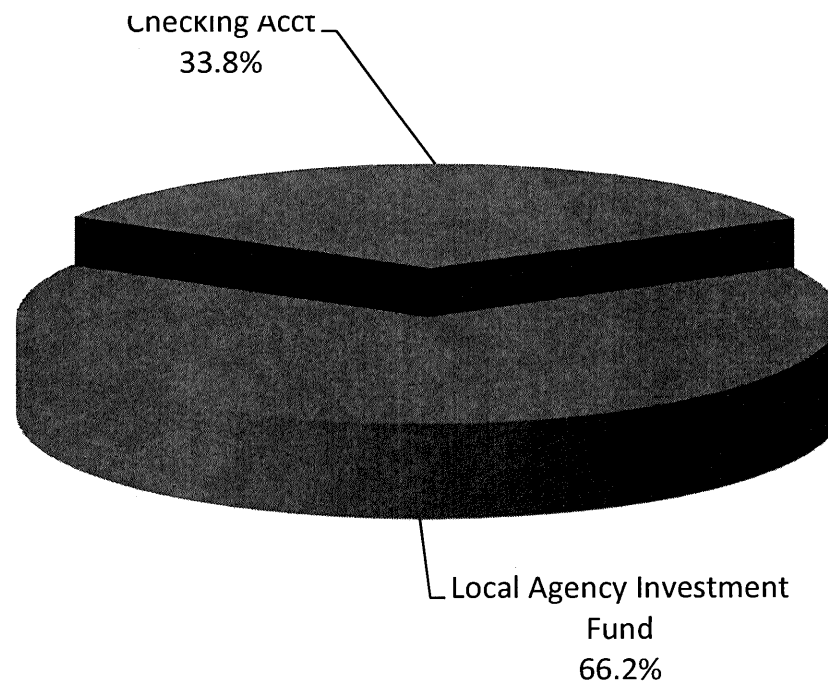
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

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
August 31, 2023**

Total Cash & Investments - \$1,599,684



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

August 31, 2023

City of Montclair
Final Warrant Register
Council Date 09/18/2023
Regular Warrants
Checking Account: MHC

Warrants	ACH Transfers	Voided Checks	US Bank transfers	Totals
229,401.81	0.00	0.00	420.00	229,821.81

August 2023 Total

229,821.81

US Bank transfers:

Reimb City for Payment of Utility Bills

Vice Chair Johnson

Accounts Payable

Checks by Date - Summary by Check Number

User: cramirez
Printed: 9/7/2023 10:08 AM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5515	LirLa001	Lira Lawns	08/03/2023	600.00
5516	Sout018	Southern California Edison Co	08/03/2023	389.00
5517	Arti005	Artic Plumbing And Drain Cleaning	08/03/2023	18,746.00
5518	Gash001	Gash Chimney Sweep	08/03/2023	3,988.00
5519	Hugo001	Hugo Jaramillo	08/03/2023	9,500.00
5520	land012	Landscape Maintenance Unlimited	08/03/2023	4,985.00
5521	Larr002	Larry Walters Pool Service Inc	08/03/2023	895.00
5522	LirLa001	Lira Lawns	08/03/2023	600.00
5523	Nagc006	NAGCO GLASS	08/03/2023	392.29
5524	Perf003	Performance Construction & Remodeling I	08/03/2023	63,100.00
5525	mont002	City of Montclair	08/17/2023	11,516.30
5526	mont074	Monte Vista Water District	08/17/2023	5,026.71
5527	Nati050	National Community Renaissance of Califo	08/17/2023	2,084.00
5528	Perf003	Performance Construction & Remodeling I	08/17/2023	15,700.00
5529	sout018	Southern California Edison Co	08/17/2023	855.99
5530	sout021	Southern California Gas Co	08/17/2023	444.32
5531	Arti005	Artic Plumbing And Drain Cleaning	08/31/2023	2,321.00
5532	land012	Landscape Maintenance Unlimited	08/31/2023	4,710.00
5533	mont074	Monte Vista Water District	08/31/2023	380.63
5534	Obli001	The Obliterator	08/31/2023	1,095.00
5535	Perf003	Performance Construction & Remodeling I	08/31/2023	81,275.00
5536	sout018	Southern California Edison Co	08/31/2023	797.57

Report Total (22 checks):

229,401.81

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR
SinglePoint
Reported Activity From 08/01/2023 To 08/31/2023
Printed on 09/07/2023 at 10:41 AM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
08/24/2023	\$420.00	153499275821	153499275805	Completed

Debit Account Name MONTCLAIR HOUSING CORPORATION
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimb City for Payment of Utility Bills
Initiate Date 08/24/2023
Initiate Time 08:13PM CDT
Initiated By JKULBECK
Completed Date 08/24/2023
Completed Time 08:13PM CDT

Total Number of Book Transfers: 1
Total Amount of Book Transfers: \$420.00

--- End of Report ---

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

August 31, 2023

Schedule 1

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

	<u>Amount</u>
Checking Account	
US Bank	3,179,582.44
TOTAL CASH	\$ <u>3,179,582.44</u>

NOTE:

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

**CITY OF MONTCLAIR
HOUSING AUTHORITY
WARRANT REGISTER
FOR THE MONTH ENDING
August 31, 2023**

City of Montclair
Final Warrant Register
Council Date 09/18/2023
Regular Warrants
Checking Account: MHA

Warrants	Voided Checks	US Bank transfers - out.	Totals
0.00	0.00	0.00	0.00

August 2023 Total 0.00

Vice Chair Johnson