

# CITY OF MONTCLAIR

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

### AGENDA

Monday, November 6, 2023  
7:00 p.m.



#### **Mayor**

Javier "John" Dutrey

#### **Mayor Pro Tem**

Tenice Johnson

#### **Council Members**

Bill Ruh

Corysa Martinez

Benjamin "Ben" Lopez

#### **City Manager**

Edward C. Starr

#### **City Attorney**

Diane E. Robbins

#### **City Clerk**

Andrea M. Myrick

#### Location

Council Chamber  
5111 Benito Street  
Montclair, CA 91763

#### Webinar Link

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

#### Dial #

1-669-900-6833

#### Meeting ID

937-1715-0550



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

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

Monday, November 6, 2023  
7:00 p.m.

*Remote Participation Information:*

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

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

*If you want to provide comments on an agenda item, including public hearing and closed session items, please complete a Speaker Card located in the Council Chambers or online at <https://www.cityofmontclair.org/public-comment/>. The Mayor/Chair (or the meeting's Presiding Officer) will call on those who submitted requests to speak at the appropriate times during the meeting. Those who did not submit a request to speak who are present at the meeting location may raise their hand during Public Comment to request to speak. Those participating remotely may request speak using the "raise hand" function in Zoom or may dial \*9 if on the phone, and then \*6 to un-mute when called on to speak. Written comments (200-word limit per agenda item, and 200-word limit for all non-agenda items combined) and requests to speak can also be emailed to [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) at least one hour before the meeting begins.*

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

## **AGENDA**

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

**II. INVOCATION**

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

**III. PLEDGE OF ALLEGIANCE**

**IV. ROLL CALL**

**V. PRESENTATIONS**

- A. Legislative Update from State Senator Susan Rubio

**VI. PUBLIC COMMENT**

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

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

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

**VII. PUBLIC HEARINGS — None**

**VIII. CONSENT CALENDAR**

**A. Approval of Minutes**

1. Regular Joint Meeting — October 16, 2023 [CC/SA/MHC/MHA/MCF] 118

**B. Administrative Reports**

1. Consider Approval of Warrant Register & Payroll Documentation [CC] 5

**C. Agreements**

1. Consider Approval of Amendment No. 1 to Agreement No. 23-63 with Golden Girls Softball League for Use of Additional Ball Field Facilities at Saratoga Park [CC] 6

2. Consider Authorizing the Receipt of \$800,000 from the Bureau of Justice Assistance (BJA) FY 2023 Byrne Discretionary Community Project Funding/ Grants Program to Implement a Body-Worn Camera Program [CC]  
Consider Authorizing an \$800,000 Appropriation from the BJA Fund to Purchase Body-Worn Cameras and Associated Equipment [CC]  
Consider Approval of Agreement No. 23-78 with Motorola Solutions, Inc. to Purchase Camera Systems, Evidence Management Systems, and Associated Equipment to Implement a Body-Worn Camera Program [CC] 13

3. Consider Approval of Agreement No. 23-80 with Lexipol, LLC for Continued Maintenance of the Fire Department’s Policy and Procedures Manual, Fire Service Daily Training Bulletins (DTB), and DTB Management Services [CC] 48

4. Consider Approval of Agreement No. 23-81 with Lexipol, LLC for Continued Maintenance of the Police Department’s Policy and Procedures Manual, Law Enforcement Daily Training Bulletins (DTB), and DTB Management Services [CC] 55

5. Consider Approval of Agreement No. 23-82 with Graffiti Tracker Inc. for Continued Use of its Database to Track And Analyze Graffiti, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]  
Consider Authorizing a \$3,300 Appropriation from the Prop 30/AB 109 Fund for Costs Associated with Agreement No. 23-82 [CC] 62

6. Consider Approval of Agreement No. 23-83 with Moule & Polyzoides Architects and Urbanists to Develop a Master Project Site Plan for the Montclair Transcenter, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]  
Consider Authorizing an Allocation of up to \$350,300 in 2021 Lease Revenue Bond Funds for Development of a Master Project Site Plan for the Montclair Transcenter [CC] 72

- 7. Consider Approval of Agreement No. 23-84 with Rymax Electric to Install Parking Lot Lighting at Fire Station 151 [CC]  
Consider Approval of Agreement No. 23-85 with Grigolla and Sons Construction Company, Inc. to Replace the Parking Lot Asphalt Surface at Fire Station 151 [CC] 86

D. Resolutions

- 1. Consider Adoption of Resolution No. 23-3423 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges [CC] 101
- 2. Consider Adoption of Resolution No. 23-3424 Rescinding and Superseding Resolution No. 21-3294 Identifying and Correcting Updated Terms and Conditions for a Fire Department Response Away from its Official Duty Station when Assigned to a State or Federal Declared Emergency Incident [CC] 107

**IX. PULLED CONSENT CALENDAR ITEMS**

**X. BUSINESS ITEMS**

- A. Consider Approval of Agreement No. 23-68 with Edward C. Starr for Professional City Manager and Executive Director Services for the City of Montclair, the Montclair Successor Redevelopment Agency, the Montclair Housing Authority, the Montclair Housing Corporation, and the Montclair Community Foundation for the Period of January 2, 2023, to December 31, 2026 [CC/SA/MHC/MHA/MCF] 110

**XI. COMMUNICATIONS**

A. Department Reports

- 1. Human Services — Events and Programs Update

B. City Attorney

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

*Cities of Ontario, Montclair, Chino v. Inland Empire Utilities Agency*

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

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

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

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

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

C. City Manager/Executive Director

D. Mayor/Chairperson

E. Council Members/Directors



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

- |   |     |
|---|-----|
| 1. Real Estate Committee — July 17, 2023  | 115 |
| 2. Personnel Committee — October 16, 2023 | 117 |

**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, November 20, 2023, at 7:00 p.m.*

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

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

*I, Andrea M. Myrick, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at <https://www.cityofmontclair.org/agendas/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, November 2, 2023.*



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 6, 2023	<b>FILE I.D.:</b>	FIN540
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	A. VONG/V. FLORES
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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

**BACKGROUND:** Mayor Pro Tem Johnson has examined the Warrant Register dated November 6, 2023, and the Payroll Documentation dated October 8, 2023, and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated November 6, 2023, totals \$2,064,173.64. The Payroll Documentation dated October 8, 2023, totals \$821,571.93 gross, with \$584,226.85 net being the total cash disbursement.

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 6, 2023	<b>FILE I.D.:</b>	HSV070, ATH215, 218, 020
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	HUMAN SVCS.
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	F. SALTOS
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AMENDMENT NO. 1 TO AGREEMENT NO. 23-63 WITH GOLDEN GIRLS SOFTBALL LEAGUE FOR USE OF ADDITIONAL BALL FIELD FACILITIES AT SARATOGA PARK		

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**REASON FOR CONSIDERATION:** Golden Girls Softball League has requested the use of additional City facilities for their winter sports activities. Granting this request would require amendment of the League's existing agreement with the City.

A copy of proposed Amendment No. 1 to Agreement No. 23-63 is attached for City Council review and consideration.

**BACKGROUND:** The City Council approved Agreement No. 23-63 with Golden Girls Softball League for use of Vernon Park ball fields for winter softball activities on August 21, 2023. The League is now requesting the use of the two northern fields at Saratoga Park on weekdays and Saturdays for its softball activities. Sunday field use by all leagues is not permitted.

Golden Girls Softball League has requested the use of lights for activities that may be conducted after dark. The cost of electrical services associated with such lighting and alarm fees will be covered by the City. In addition, the City of Montclair will have Public Works custodians clean the restrooms. The League is responsible to provide a deposit of \$300 for a cleaning fee if needed during the contract period.

**FISCAL IMPACT:** Electrical (lighting and alarm fees) and maintenance costs for the fields are incorporated in the Fiscal Year 2023-24 Budget. Approval of proposed Amendment No. 1 to Agreement No. 23-63 would not result in additional costs. The amendment does not extend the original termination date, which remains November 30, 2023.

**RECOMMENDATION:** Staff recommends the City Council approve Amendment No. 1 to Agreement No. 23-63 with Golden Girls Softball League for use of additional ball field facilities at Saratoga Park.

**AMENDMENT 1 TO AGREEMENT NO. 23-63  
WITH GOLDEN GIRLS SOFTBALL LEAGUE  
FOR USE OF SARATOGA PARK**

**THIS AGREEMENT** is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Golden Girls Softball League, hereinafter called "LEAGUE." This Agreement is contingent upon the LEAGUE fulfilling its prior contract's financial obligations and paying any and all outstanding invoices owed to the CITY. Use of any and all facilities listed herein may not be used until all fees have been paid.

**WITNESSETH:**

**WHEREAS**, CITY presently has baseball fields in Saratoga Park (two northern field and two southern fields) generally located at the southwest corner of Vernon Avenue and Kingsley Street, Montclair, California, and

**WHEREAS**, said Park has been approved to provide areas (Two northern fields and restrooms) for softball League practice, on which premises LEAGUE desires to use for Golden Girls Softball League (including the Challenger Division for children with disabilities) conditioning at such times and hours set forth in Section 1(aa). The term of this Agreement is for November 6, 2023 through November 30, 2023.

**SECTION 1:** LEAGUE hereby agrees as follows:

- a. Provide CITY a list of all your participants and coaches. All must sign CITY approved waiver and submit to CITY liaison prior to participating.
- b. Not to use the premises for any other purpose, except as above indicated.
- c. Not to sublet the field.
- d. Not to make any improvements or alterations on said premises.
- e. Not to charge for parking of vehicles in the parking lots located within CITY facilities and not to park in the fields or walkways.
- f. Not to erect any barriers or fences of any kind unless approved by CITY.
- g. Not to use herbicides at the park for any purpose.
- h. Not to disconnect or make changes to existing phone line account.
- i. Not to allow hitting balls into the chain link fences for batting practice.

- j. To provide the CITY with a written list of all items to be stored in park buildings. No items should be stored in rest room facilities, except rest room supplies. Any items found to be stored in buildings without prior written authorization from the CITY will be removed by city crews with or without prior notice to LEAGUE. Any cost incurred by the CITY by removing, storing, or disposal of said property shall be the responsibility of LEAGUE.
- k. To provide a special parking area for participants in the Challenger Division, at the times of their games, by cordoning off the southeast portion of the parking lot; to provide the equipment and personnel needed to set up the special parking area; to see that all equipment is removed and properly stored after each use; to provide personnel to monitor the cordoned off area during its use.
- l. CITY to maintain restroom facilities and CITY to furnish all supplies for each well- maintained restroom. LEAGUE to police the entire premises after each day's use and pick up all paper, trash, and other debris that may have accumulated, and leave the premises in a condition deemed acceptable to CITY. This work shall be completed within two hours after an activity has ended. If the premises are not maintained as stated a contracted cleaning agency will be hired by the CITY and the LEAGUE will be responsible for all fees related to the service.
- m. To deposit, with the CITY representative, the sum of Three Hundred Dollars (\$300) as a refundable cleaning deposit to ensure the proper care and cleanup of the snack bar, restrooms, meeting areas, towers, and equipment therein. At the end of the playing season, an inspection shall be conducted by CITY and LEAGUE representatives to ensure that all areas and CITY-owned equipment have been properly cared for, maintained and cleaned. All non-CITY-owned equipment, with exception of refrigerators, freezers, and ice machines shall be removed from snack bar areas. Refrigerators, freezers, and ice machines owned by LEAGUE shall be cleaned out, doors left open, and electrical turned off. Any food items left in the refrigerators and/or freezers will be discarded by the CITY. Ice machines owned by CITY shall be cleaned out, serviced, and maintained by CITY.
- n. To follow proper call-out procedures in an emergency (an urgent need for assistance or some type of immediate action) by using only telephone numbers issued for this purpose. A Contact List containing the emergency telephone numbers is attached.
- o. LEAGUE agrees to assist CITY in keeping order in the park area and to provide responsible supervision as may be necessary to prevent vandalism or malicious mischief to the property including graffiti removal on buildings within 24 hours of notification, contact Graffiti Abatement Hotline at 625-9429 and report vandalism immediately to the Public Works Department at 625-9480. LEAGUE will not attempt to remove Graffiti or make repairs to building. LEAGUE shall furnish and supply personnel to conduct and supervise LEAGUE activities on the premises.

- p. If LEAGUE elects to use lights for activities conducted after dark, the CITY will provide electrical services associated with lights at no charge to the LEAGUE.
- q. To deposit, with the CITY representative, the sum of Five Hundred Dollars (\$500) as a security deposit, to ensure the proper and prompt payment of any incurred damages to facilities associated with the LEAGUE. In the event all potential damages are paid by the end of this Agreement term, the deposit will be refunded.
- r. To provide the CITY representative with a list of the Board of Directors, including names, addresses, and telephone numbers.
- s. To provide CITY with participant rosters, practice and game schedules. Also, sixty percent of league participants must live in Montclair and provide verification such as registration forms.
- t. To provide CITY with financial statements upon request for audit purposes.
- u. To designate one individual as the LEAGUE's representative to work with the CITY's representative.
- v. This Agreement is subject to the terms and conditions of any master lease CITY may have with another public agency, of which LEAGUE had knowledge.
- aa. It is agreed that LEAGUE may use said baseball fields for practice from November 6, 2023 through November 30, 2023, Mondays through Fridays generally commencing at 5:00 p.m. Practices will be not be conducted past 9:45 p.m.
- bb. **PUBLIC LIABILITY AND PROPERTY DAMAGE:** Throughout the term of this Agreement, at LEAGUE's sole cost and expense, LEAGUE shall keep, or cause to be kept, in full force and effect, for the mutual benefit of CITY and LEAGUE, comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property providing proof of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person or for any one accident or occurrence, and at least Three Hundred Thousand Dollars (\$300,000) for property damage. All insurance required by this Agreement shall be carried only by responsible insurance companies duly admitted to transact business in the State of California and shall name as additional insured the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer and the insured waive the right of subrogation against CITY and CITY's elected officials, officers, employees, and agents; (2) the policies are primary and non contributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' notice, in writing, by the insurer to CITY by certified mail. LEAGUE shall furnish CITY with copies of such policies promptly upon receipt of them or certificate(s) evidencing the insurance.

- cc. INDEMNIFICATION: LEAGUE shall defend, indemnify and save harmless CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by LEAGUE of any and all legal costs and attorneys' fees in any manner arising out of any negligent or intentional or willful acts or omissions of the LEAGUE in the activities, use, or occupancy of the PREMISES including, but not limited to, all consequential damages to the maximum extent permitted by law.
- dd. It is understood and agreed that there is no relationship of employer-employee for Workers' Compensation purposes between CITY and any person connected with the LEAGUE, unless such person is otherwise regularly employed by and conducting official business of CITY.
- ee. To conduct all operations in compliance with the Americans with Disabilities Act.
- ff. LEAGUE shall provide CITY with at least two (2) weeks' notice for room reservations for use of CITY facilities for LEAGUE meetings.
- gg. LEAGUE may place banners up on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Banners are not allowed to stay up on Sundays. Banners must be no greater than 3 feet by 5 feet. Banners will be attached to outfield chain link fence using clip on rings. Banner clearance from turf is a minimum of 2 inches. The City will determine if a banner is past its useful life due to sun fade, rips, graffiti, etc., and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said banner. The CITY has the right to remove and dispose of any banner that is not displayed following the above mentioned procedures.
- hh. LEAGUE may place shade cloth as necessary to dug outs on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Shade cloth is not allowed to stay up on Sundays. Shade cloth must be no greater than what may be required to provide adequate coverage over dug outs. Shade cloth will be attached to dug out structure using clip on rings. The City will determine if a shade cloth is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said shade cloth. The CITY has the right to remove and dispose of any shade cloth that is not displayed following the above mentioned procedures. If LEAGUE does not remove or replace shade cloth as requested by CITY within 24 hours, CITY may prohibit use of fields and snack bar facilities to LEAGUE until request has been met.
- ii. Locks are issued by the City to secure areas of the park and have access to those areas such as snack bar shutters for maintenance. If locks are needed to replace a lost or damaged lock contact the City immediately. The League at no time shall use personal locks to secure any area. If a personal lock is found the League will be notified and will have 24 hours to remove it. If not removed the City will remove it by any means necessary and the City will not be held responsible for the League's lock.

**SECTION 2:** CITY hereby agrees as follows:

- a. To maintain the periphery of the premises, including shrubs and trees, and mow all grass on a year-round basis.
- b. To pay for all water used on premises.
- c. To have full control over watering the entire premises. LEAGUE shall not adjust or readjust or otherwise change the sprinkler system or water control facilities.
- d. To provide emergency call-out telephone numbers for use by LEAGUE. A Contact List containing the emergency telephone numbers is attached.
- e. To provide to LEAGUE, inventory list of equipment in snack bar and meeting areas; to provide inspection of those areas and equipment at the end of the agreement period.
- f. Upon approval of the Director of Human Services, LEAGUE's cleaning deposit shall rollover any unused monies into the next Agreement.
- g. To designate a CITY representative to work with LEAGUE on all non-maintenance issues relating to the use of CITY facilities.
- h. To provide alarm service at no charge to LEAGUE.

**NOW, THEREFORE,** if any terms of this Agreement are not complied with, the Agreement will become null and void and the LEAGUE will be refused use of CITY facilities. 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 LEAGUE at least ten (10) days prior written notice.

**APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**LEAGUE:**

**CITY:**

**MONTCLAIR LITTLE LEAGUE**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
President

\_\_\_\_\_  
Javier John Dutrey  
**ATTEST:** Mayor

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Andrea M. Myrick  
City Clerk



**CITY OF MONTCLAIR  
CONTACT LIST FOR SPORTS LEAGUES  
SEPTEMBER 2023**

<b>Reason for Contact</b>	<b>Authority</b>	<b>Contact</b>	<b>Telephone Number</b>
<b>After-Hours/ Emergency</b>	Montclair Police Department	Dispatch	(909) 621-4771 9-1-1 (Emergency)
<b>Sports League Administration</b>	City's Sports League Liaison	Fernando Saltos	(909) 625-9496
<b>Building Maintenance</b>	Pub. Works Facilities/Maint. Asst. Manager	Mathew Paradis	(909) 625-9443 Cell: (909) 721-1860
<b>Grounds Maintenance</b>	Public Works Operations Asst. Manager	Alex Cardona	(909) 625-9467 Cell: (909) 762-1372
<b>Sports League Administration</b>	Recreation Coordinator- Facility	Ramon Ramirez	(909) 625-9481
<b>Vandalism</b>	Public Works Department		(909) 625-9480
<b>Graffiti Removal</b>	Graffiti Abatement Hotline		(909) 625-9429



# CITY COUNCIL AGENDA REPORT

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**DATE:** NOVEMBER 6, 2023                      **FILE I.D.:** PDT175/PDT362

**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** POLICE

**ITEM NO.:** 2    **PREPARER:** M. BUTLER

**SUBJECT:** CONSIDER AUTHORIZING THE RECEIPT OF \$800,000 FROM THE BUREAU OF JUSTICE ASSISTANCE (BJA) FY 2023 BYRNE DISCRETIONARY COMMUNITY PROJECT FUNDING/ GRANTS PROGRAM TO IMPLEMENT A BODY-WORN CAMERA PROGRAM

CONSIDER AUTHORIZING AN \$800,000 APPROPRIATION FROM THE BJA FUND TO PURCHASE BODY-WORN CAMERAS AND ASSOCIATED EQUIPMENT

CONSIDER APPROVAL OF AGREEMENT NO. 23-78 WITH MOTOROLA SOLUTIONS, INC. TO PURCHASE CAMERA SYSTEMS, EVIDENCE MANAGEMENT SYSTEMS, AND ASSOCIATED EQUIPMENT TO IMPLEMENT A BODY-WORN CAMERA PROGRAM

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**REASON FOR CONSIDERATION:** The City Council is requested authorize the receipt of \$800,000 from the BJA FY 2023 Invited to Apply - Byrne Discretionary Community Project Funding/Byrne Discretionary Grants Program to implement a Body-Worn Camera Program, authorize an \$800,000 appropriation from the Bureau of Justice Assistance (BJA) Fund, and consider approval of Agreement No. 23-78 with Motorola Solutions, Inc.

A copy of the BJA grant award and Agreement No. 23-78 with Motorola Solutions, Inc. is attached for City Council's review and consideration.

**BACKGROUND:** Thanks to Congresswoman Norma Torres, the City of Montclair received funding as a Congressionally-directed appropriation in the Consolidated Appropriations Act, 2023 (Public Law 117-328) to establish a Body-Worn Camera Program. In order to receive this funding, the Office of Justice Programs (OJP) was required to administer the funding as a grant. Department staff submitted a grant proposal under BJA FY 2023 Invited to Apply - Byrne Discretionary Community Project Funding/Byrne Discretionary Grants Program in March 2023, and the City was selected for an \$800,000 award in August 2023 from OJP.

This Congressionally Recommended Award allows the Department to establish and implement a Body-Worn Camera Program to improve the effectiveness of Montclair's policing services and guarantee higher quality public service to build trust between the Department and the Montclair community. The purpose of wearing a body-worn camera (BWC) is to document encounters between police and the public, creating a video record of interactions to increase transparency and promote better policing. BWCs are currently utilized by approximately 80 percent of police agencies in the United States, including surrounding west end San Bernardino County police agencies. Having Montclair officers wear BWCs would rectify underlying issues of community trust; increase police accountability and legitimacy; and result in fewer complaints and use-of-force incidents—in turn, this would reduce the costs associated with these types of incidents as well as a reduction in the time required to resolve such complaints. With the implementation of a Body-Worn Camera Program, the Department hopes to increase public trust in local policing, improve officer performance, de-escalate anti-social behavior, enhance evidence collection, and reduce assaults on police officers, bettering the quality of life for all who live, work, or visit the Montclair community.

In order to execute a Body-Worn Camera Program, the Department would use BJA grant funds to purchase and deploy camera systems, evidence management systems, and associated equipment. Body-worn cameras and batteries would be purchased for every officer to wear while on-duty to record encounters with the community. USB bases would allow for versatility as these can be mounted in patrol cars or attached to a desktop or Mobile Data Computer for charging and uploading recordings to the evidence management system. The transfer stations can charge eight cameras simultaneously to guarantee cameras are available for each officer on-duty. The in-car cameras are necessary to the overall Body-Worn Camera Program, as they would seamlessly integrate with the BWCs. They can capture license plates across three lanes of traffic without the need to physically aim the camera lens; they support recording After-the-Fact Technology; and they would create reliable video footage to be uploaded to a digital evidence management system (DEMS) from any location with a cellular or Wi-Fi signal. The Department also proposes to purchase 25 in-car cameras to sufficiently outfit its patrol fleet, including its motorcycles and reserve patrol cars. Antennas and routers must be purchased for each in-car camera to ensure functionality of the camera system.

Staff proposes contracting with Motorola Solutions, Inc. to provide all the necessary equipment, including on-site deployment, installation, training, configuration, a five-year warranty on all equipment, and project management along with technical support to ensure effective and proper operation of the new camera systems. Below is an itemized budget of equipment and services provided by Motorola Solutions:

<u>ITEM</u>	<u>COST</u>	<u>QTY</u>	<u>TOTAL</u>
5-year warranty for body-worn cameras	\$250.40	75	\$18,780.00
Transfer stations	\$1,495.00	10	\$14,950.00
Body-worn cameras with mounts	\$995.00	75	\$74,625.00
Batteries for body-worn cameras	\$110.00	75	\$8,250.00
BWC USB bases	\$200.00	75	\$15,000.00
5-year warranty for in-car cameras	\$1,215.20	25	\$30,380.00
In-car cameras	\$5,413.50	25	\$135,337.50
In-car system installation	\$1,000.00	25	\$25,000.00
Antennas	\$216.91	25	\$5,422.75
Routers	\$999.20	25	\$24,980.00
5-year warranty for routers	\$168.00	25	\$4,200.00
Deployment/training/configuration	\$57,647.00	1	\$57,647.00
Digital evidence management system (EMS) for BWCs	\$3,475.00	75	\$260,625.00
Digital EMS for in-car cameras	\$4,475.00	25	\$111,875.00
Tax			\$65,331.79
Motorola legacy customer discount			<u>-\$52,404.04</u>
	<b>GRAND TOTAL:</b>		<b>\$800,000.00</b>

In 2012, the Department purchased an in-car video/camera system from Motorola Solutions, previously known as WatchGuard, which has proven to be an invaluable tool for law enforcement. Since then, Motorola Solutions has developed body-worn cameras to integrate with its current in-car camera systems. In order to seamlessly integrate the Department's current in-car camera system, it must purchase body-worn cameras and associated equipment from Motorola Solutions. The Department would be able to seamlessly migrate its legacy data to the DEMS provided by Motorola Solutions. Without this service, the legacy system would have to be maintained on its current server. Other

companies would not be able to provide this service making the cost of establishing a Body-Worn Camera Program more than the grant award. This integration and interoperability of legacy data is crucial to the success of the Program. Staff determined that Motorola Solutions is the exclusive and sole manufacturer of the V700 body-worn camera and M500 in-car video system. These proprietary products are represented and sold by Motorola via direct or applicable national, state or regional contracts and include no-fault warranties provided only by Motorola. When deployed together, the body-worn cameras and in-car camera systems form an integrated system where once one camera in the system is activated or triggered, every camera in the system would begin recording.

The V700 and M500 would seamlessly integrate captured footage to gather indisputable evidence of any incidence. Video and audio is synced and automatically tagged with GPS and time-stamp data. The DEMS and cloud migration service would link and store recordings from both in-car and body-worn cameras. This would simplify content management by storing video, audio, images, incident data, and other digital content in a central, cloud-based location, streamlining access and management across our organization. The body-worn and in-car recorded footage would be easy to review, manage, store, and aggregate through an intuitive, flexible DEMS.

Implementing a Body-Worn Camera Program will require expertise and efficient project management that Motorola Solutions would provide to the Police Department. It has proven to be a reliable, knowledgeable, and responsive company over the past 11 years and is offering a \$52,404 legacy customer discount. Its portfolio focuses on the needs of public safety and is committed to helping the Department meet its objective to build trust with the community by including body-worn cameras to its policing services. Utilizing a vendor that has a reliable reputation avoids choosing a vendor for the project that might not follow through with the terms, conditions, and specifications of the grant award. Motorola Solutions has been around since 1969 making innovation part of its history. Its solutions are of the highest function, and it has proven to be a trustworthy company. Integrating the Department's current camera systems with body-worn cameras is crucial to the success and implementation of a Body-Worn Camera Program. Motorola Solutions would provide the best available equipment and service and is the preferred sole-source vendor for this project.

Staff submitted a Sole Source Approval Grant Award Modification (GAM) to OJP requesting to contract with Motorola Solutions. Since March 2023, Motorola Solutions' prices have increased, but the legacy customer discount was also increased to keep the project at \$800,000—the amount of the grant award. Motorola Solutions is also offering the most current model of its BWCs at the same price as the old model. Since this slightly changes the grant-approved budget category amounts, OJP is also requiring a GAM to address these budget changes. The Department must wait for both GAMs to be approved prior to purchasing equipment or services, obligating funding for a contract, or entering into a contract with award funds related to sole source procurements in excess of the simplified acquisition threshold, which is currently \$250,000.

With an established Body-Worn Camera Program, the Police Department hopes to improve the public perception of its officers by demonstrating transparency and openness with its interactions with the community while increasing officer safety and improving evidence collection. This camera system could also improve the conduct of the community members being recorded and deter crime, ultimately enhancing the quality of life for the Montclair community.

**FISCAL IMPACT:** If approved by the City Council, the purchase of camera systems and associated equipment would result in an appropriation from the BJA Fund (1154) in the amount of \$800,000. The City would receive full reimbursement from the BJA FY 2023 Invited to Apply - Byrne Discretionary Community Project Funding/Byrne Discretionary Grants Program. There would be a monthly fee of approximately \$1,000 (\$40 per in-car camera) for cellular data services for the BWC and in-car camera network, which the Department will address at the mid-year budget review.

With Motorola Solutions offering a five-year warranty on the BWCs and in-car cameras along with software enhancements and digital evidence management for five years, staff does not anticipate any additional costs to implement and maintain a Body-Worn Camera Program for the next five years. After this time, costs to maintain the effectiveness of the Program, such as equipment maintenance costs, replacement equipment costs, and annual DEMS fees, would be included in the Police Department's annual budget.

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

1. Authorize the receipt of \$800,000 from the BJA FY 2023 Byrne Discretionary Community Project Funding/Grants Program to implement a Body-Worn Camera Program;
2. Authorize an \$800,000 appropriation from the BJA Fund to purchase body-worn cameras and associated equipment; and
3. Approve Agreement No. 23-78 with Motorola Solutions, Inc. to purchase camera systems, evidence management systems, and associated equipment to implement a Body-Worn Camera Program;



# Department of Justice (DOJ)

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

<b>Name and Address of Recipient:</b>		MONTCLAIR COMMUNITY FOUNDATION, INC. 5111 BENITO ST	
<b>City, State and Zip:</b>		MONTCLAIR, CA 91763	
<b>Recipient UEI:</b>		YM87HK81HED6	
<b>Project Title:</b> Montclair Police Body-Worn Camera Program		<b>Award Number:</b> 15PBJA-23-GG-00222-BRND	
<b>Solicitation Title:</b> BJA FY 23 Invited to Apply- Byrne Discretionary Community Project Funding/Byrne Discretionary Grants Program			
<b>Federal Award Amount:</b> \$800,000.00		<b>Federal Award Date:</b> 8/10/23	
<b>Awarding Agency:</b>		Office of Justice Programs Bureau of Justice Assistance	
<b>Funding Instrument Type:</b>		Grant	
<b>Opportunity Category:</b> E			
<b>Assistance Listing:</b> 16.753 - Congressionally Recommended Awards			
<b>Project Period Start Date:</b> 10/1/23		<b>Project Period End Date:</b> 9/30/27	
<b>Budget Period Start Date:</b> 10/1/23		<b>Budget Period End Date:</b> 9/30/27	
<b>Project Description:</b> The Montclair Police Department proposes to establish and implement a Body-Worn Camera Program. The purpose is to improve the effectiveness of Montclair's policing services and guarantee higher quality public service to build trust between the Department and the Montclair community. Project activities include purchasing and deploying camera systems, evidence management systems, and associated equipment; training officers in the proper use and maintenance of the camera systems; and developing written policy for capturing, viewing, using, releasing, and storing video. Expected outcomes include a reduction in complaints and use-of-force incidents; an improvement in the performance of police officers and the conduct of community members who are recorded; a monetary savings to the Department from reduced complaints against officers; and a reduction in the time required to resolve such complaints. All residents, businesses, and anyone directly interacting with police officers in the Montclair community are the intended beneficiaries of the Montclair Police Body-Worn Camera Program.			

## **Award Letter**

August 10, 2023

Dear Edward Starr,

On behalf of Attorney General Merrick B. Garland, it is my pleasure to inform you the Office of Justice Programs (OJP) has approved the application submitted by MONTCLAIR COMMUNITY FOUNDATION, INC. for an award under the funding opportunity entitled 2023 BJA FY 23 Invited to Apply- Byrne Discretionary Community Project Funding/Byrne Discretionary Grants Program. The approved award amount is \$800,000.

Review the Award Instrument below carefully and familiarize yourself with all conditions and requirements before accepting your award. The Award Instrument includes the Award Offer (Award Information, Project Information, Financial Information, and Award Conditions) and Award Acceptance. For COPS Office and OVW funding the Award Offer also includes any Other Award Documents.

Please note that award requirements include not only the conditions and limitations set forth in the Award Offer, but also compliance with assurances and certifications that relate to conduct during the period of performance for the award. These requirements encompass financial, administrative, and programmatic matters, as well as other important matters (e.g., specific restrictions on use of funds). Therefore, all key staff should receive the award conditions, the assurances and certifications, and the application as approved by OJP, so that they understand the award requirements. Information on all pertinent award requirements also must be provided to any subrecipient of the award.

Should you accept the award and then fail to comply with an award requirement, DOJ will pursue appropriate remedies for non-compliance, which may include termination of the award and/or a requirement to repay award funds.

Prior to accepting the award, your Entity Administrator must assign a Financial Manager, Grant Award Administrator, and Authorized Representative(s) in the Justice Grants System (JustGrants). The Entity Administrator will need to ensure the assigned Authorized Representative(s) is current and has the legal authority to accept awards and bind the entity to the award terms and conditions. To accept the award, the Authorized Representative(s) must accept all parts of the Award Offer in the Justice Grants System (JustGrants), including by executing the required declaration and certification, within 45 days from the award date.

To access your funds, you will need to enroll in the Automated Standard Application for Payments (ASAP) system, if you haven't already completed the enrollment process in ASAP. The Entity Administrator should have already received an email from ASAP to initiate this process.

Congratulations, and we look forward to working with you.

Maureen Henneberg  
Deputy Assistant Attorney General  
**Office for Civil Rights Notice for All Recipients**

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) has been delegated the responsibility for ensuring that recipients of federal financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) are not engaged in discrimination prohibited by law. Several federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, require recipients of federal financial assistance to give assurances that they will comply with those laws. Taken together, these civil rights laws prohibit recipients of federal financial assistance from DOJ from discriminating in services and employment because of race, color, national origin, religion, disability, sex, and, for grants authorized under the Violence Against Women Act, sexual orientation and gender identity. Recipients are also prohibited from discriminating in services because of age. For a complete review of these civil rights laws and nondiscrimination requirements, in connection with DOJ awards, see <https://ojp.gov/funding/Explore/LegalOverview/CivilRightsRequirements.htm>.

Under the delegation of authority, the OCR investigates allegations of discrimination against recipients from individuals, entities, or groups. In addition, the OCR conducts limited compliance reviews and audits based on regulatory criteria.

These reviews and audits permit the OCR to evaluate whether recipients of financial assistance from the Department are providing services in a nondiscriminatory manner to their service population or have employment practices that meet equal-opportunity standards.

If you are a recipient of grant awards under the Omnibus Crime Control and Safe Streets Act or the Juvenile Justice and Delinquency Prevention Act and your agency is part of a criminal justice system, there are two additional obligations that may apply in connection with the awards: (1) complying with the regulation relating to Equal Employment Opportunity Programs (EEOs); and (2) submitting findings of discrimination to OCR. For additional information regarding the EEO requirement, see 28 CFR Part 42, subpart E, and for additional information regarding requirements when there is an adverse finding, see 28 C.F.R. §§ 42.204(c), .205(c)(5).

The OCR is available to help you and your organization meet the civil rights requirements that are associated with DOJ grant funding. If you would like the OCR to assist you in fulfilling your organization's civil rights or nondiscrimination responsibilities as a recipient of federal financial assistance, please do not hesitate to contact the OCR at [askOCR@ojp.usdoj.gov](mailto:askOCR@ojp.usdoj.gov).

## **Memorandum Regarding NEPA**

### **NEPA Letter Type**

OJP - Categorical Exclusion

### **NEPA Letter**

None of the following activities will be conducted whether under the Office of Justice Programs federal action or a related third party action:

- (1) New construction
- (2) Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including property (a) listed on or eligible for listing on the National Register of Historic Places, or (b) located within a 100-year flood plain, a wetland, or habitat for an endangered species
- (3) A renovation that will change the basic prior use of a facility or significantly change its size
- (4) Research and technology whose anticipated and future application could be expected to have an effect on the environment
- (5) Implementation of a program involving the use of chemicals (including the identification, seizure, or closure of clandestine methamphetamine laboratories)

Additionally, the proposed action is neither a phase nor a segment of a project that when reviewed in its entirety would not meet the criteria for a categorical exclusion.

Consequently, the subject federal action meets the Office of Justice Programs' criteria for a categorical exclusion as contained in paragraph 4(b) of Appendix D to Part 61 of Title 28 of the Code of Federal Regulations.

Questions about this determination may be directed to your grant manager or Orbin Terry, Environmental Coordinator for the Bureau of Justice Assistance.

### **NEPA Coordinator**

#### **First Name**

Orbin

#### **Middle Name**

#### **Last Name**

Terry

## **Award Information**

**This award is offered subject to the conditions or limitations set forth in the Award Information, Project**



**Information, Financial Information, and Award Conditions.**

**Recipient Information**

**Recipient Name**

MONTCLAIR, CITY OF

**UEI**

YM87HK81HED6

**Street 1**

5111 BENITO ST

**Street 2**

**City**

MONTCLAIR

**State/U.S. Territory**

California

**Zip/Postal Code**

91763

**Country**

United States

**County/Parish**

**Province**

**Award Details**

**Federal Award Date**

8/10/23

**Award Type**

Initial

**Award Number**

15PBJA-23-GG-00222-BRND

**Supplement Number**

00

**Federal Award Amount**

\$800,000.00

**Funding Instrument Type**

Grant

<b>Assistance Listing Number</b>	<b>Assistance Listings Program Title</b>
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16.753	Congressionally Recommended Awards
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**Statutory Authority**

Pub. L. No. 117-328, 136 Stat 4459, 4542-4543; 28 USC 530C

[X]  
*I have read and understand the information presented in this section of the Federal Award Instrument.*

**Project Information**

**This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.**

**Solicitation Title**

**Awarding Agency**

2023 BJA FY 23 Invited to Apply- Byrne Discretionary  
Community Project Funding/Byrne Discretionary Grants  
Program

OJP

**Program Office**  
BJA

**Application Number**

GRANT13809689

**Grant Manager Name**

Fadumo Tahlil

**Phone Number**

[202-598-9805](tel:202-598-9805)

**E-mail Address**

Fadumo.Tahlil@usdoj.gov

**Project Title**

Montclair Police Body-Worn Camera Program

**Performance Period Start**

**Date**

10/01/2023

**Performance Period End Date**

09/30/2027

**Budget Period Start Date**

10/01/2023

**Budget Period End Date**

09/30/2027

**Project Description**

The Montclair Police Department proposes to establish and implement a Body-Worn Camera Program. The purpose is to improve the effectiveness of Montclair's policing services and guarantee higher quality public service to build trust between the Department and the Montclair community. Project activities include purchasing and deploying camera systems, evidence management systems, and associated equipment; training officers in the proper use and maintenance of the camera systems; and developing written policy for capturing, viewing, using, releasing, and storing video. Expected outcomes include a reduction in complaints and use-of-force incidents; an improvement in the performance of police officers and the conduct of community members who are recorded; a monetary savings to the Department from reduced complaints against officers; and a reduction in the time required to resolve such complaints. All residents, businesses, and anyone directly interacting with police officers in the Montclair community are the intended beneficiaries of the Montclair Police Body-Worn Camera Program.

[X]

*I have read and understand the information presented in this section of the Federal Award Instrument.*

**Financial Information**

**This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.**

A financial analysis of budgeted costs has been completed. Costs under this award appear reasonable, allowable, and consistent with existing guidelines. Exceptions / Adjustments are noted below.

sample text

Year 1

Total

Personnel		
\$0		\$0
Fringe Benefits		
\$0		\$0
Travel		
\$0		\$0
Equipment		
\$306,975		\$306,975
Supplies		
\$0		\$0
Construction		
\$0		\$0
SubAwards		
\$0		\$0
Procurement Contracts		
\$0		\$0
Other Costs		
\$493,025		\$493,025
Total Direct Costs		
\$800,000		\$800,000
Indirect Costs		
\$0		\$0
<b>Total Project Costs</b>		
\$800,000		\$800,000
<b>Federal</b>		
\$800,000		\$800,000

**Non-Federal**

\$0                                      \$0

**Budget Totals**

	Total	Percentage
<b>Total Project Cost</b>	\$800,000	
<b>Federal Funds</b>	\$800,000	100.00~symbolPlaceholder~
<b>Non-Federal Amount</b>	\$0	0.00~symbolPlaceholder~
Match Amount	\$0	0.00~symbolPlaceholder~
Program Income	\$ 0	

0.00~symbolPlaceholder~

Empty Space

**Please note:** After completing this budget detail summary, please confirm that the following final values entered in this section are identical to those entered in the corresponding estimated cost section of the Standard Applicant Information. Specifically, the following must be equivalent. If they are not, you will not be able to submit this application until they are updated to be equivalent.

Standard Applicant Information	Equals	Budget Summary
Total Estimated Funding	=	Total Project Costs
Federal Estimated Funding (federal share)	=	Federal Funds
Applicant Estimated Funding (non-federal share)	=	Match Amount
Program Income Estimated Funding	=	Program Income Amount

**Budget Category**

Personnel

Fringe Benefits

Travel

Equipment

Supplies

Construction

SubAwards

Procurement Contracts

Other Costs

Indirect Costs

[X]

*I have read and understand the information presented in this section of the Federal Award Instrument.*

## **Award Conditions**

**This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.**

1

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

2

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

3

Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2022 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2022 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2022 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.334.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

#### 4

##### Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

#### 5

##### Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" ([ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm](http://ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm)), and incorporated by reference into the award.

By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in OJP taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

#### 6

##### Employment eligibility verification for hiring under the award

1. The recipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify ([www.e-verify.gov](http://www.e-verify.gov)), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at [E-Verify@dhs.gov](mailto:E-Verify@dhs.gov). E-Verify employer agents can email E-Verify at E-



VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

7

#### OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://www.ojp.gov/funding/implement/training-guiding-principles-grantees-and-subgrantees>.

8

#### Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

9

#### Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

10

#### Compliance with general appropriations-law restrictions on the use of federal funds (FY 2022)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2022, are set out at <https://www.ojp.gov/funding/Explore/FY22AppropriationsRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

11

#### Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

12

#### Potential imposition of additional requirements



The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

## 13

### Required training for Grant Award Administrator and Financial Manager

The Grant Award Administrator and all Financial Managers for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after October 15, 2020, will satisfy this condition.

In the event that either the Grant Award Administrator or a Financial Manager for this award changes during the period of performance, the new Grant Award Administrator or Financial Manager must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after the date the Entity Administrator enters updated Grant Award Administrator or Financial Manager information in JustGrants. Successful completion of such a training on or after October 15, 2020, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at <https://onlinegfmt.training.ojp.gov/>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

## 14

### Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

## 15

### Requirement to report actual or imminent breach of personally identifiable information (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "Personally Identifiable Information (PII)" (2 CFR 200.1) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

## 16

### Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations,

policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

## 17

Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

## 18

Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at [OJP.ComplianceReporting@ojp.usdoj.gov](mailto:OJP.ComplianceReporting@ojp.usdoj.gov). For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

## 19

Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

## 20

Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

## 21

Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the

nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

## 22

Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

## 23

Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$250,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under

an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.

## 24

Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

## 25

Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope Grant Award Modification (GAM) to eliminate any inappropriate duplication of funding.

## 26

Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.

## 27

All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.



## 28

### Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

## 29

### Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

## 30

### Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards

Consistent with Executive Order 14074, "Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety," OJP has prohibited the use of federal funds under this award for purchases or transfers of specified equipment by law enforcement agencies. In addition, OJP requires the recipient, and any subrecipient ("subgrantee") at any tier, to put in place specified controls prior to using federal funds under this award to acquire or transfer any property identified on the "controlled equipment" list. The details of the requirement are posted on the OJP web site at <https://www.ojp.gov/funding/explore/prohibited-and-controlled-equipment> (Award condition: Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards), and are incorporated by reference here.

## 31

The recipient understands that, in accepting this award, the Authorized Representative declares and certifies, among other things, that he or she possesses the requisite legal authority to accept the award on behalf of the recipient entity and, in so doing, accepts (or adopts) all material requirements that relate to conduct throughout the period of performance under this award. The recipient further understands, and agrees, that it will not assign anyone to the role of Authorized Representative during the period of performance under the award without first ensuring that the

individual has the requisite legal authority.

## 32

### Verification and updating of recipient contact information

The recipient must verify its Grant Award Administrator, Financial Manager, and Authorized Representative contact information in JustGrants, including telephone number and e-mail address. If any information is incorrect or has changed, the award recipient's Entity Administrator must make changes to contact information through DIAMD. Instructions on how to update contact information in JustGrants can be found at <https://justicegrants.usdoj.gov/training/training-entity-management>.

## 33

### Compliance with 28 C.F.R. Part 23

With respect to any information technology system funded or supported by funds under this award, the recipient (and any subrecipient at any tier) must comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 34 U.S.C. 10231(c)-(d). The recipient may not satisfy such a fine with federal funds.

## 34

### Protection of human research subjects

The recipient (and any subrecipient at any tier) must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

## 35

### Confidentiality of data

The recipient (and any subrecipient at any tier) must comply with all confidentiality requirements of 34 U.S.C. 10231 and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.

## 36

### Copyright; Data rights

The recipient acknowledges that OJP reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use (in whole or in part, including in connection with derivative works), for Federal purposes: (1) any work subject to copyright developed under an award or subaward (at any tier); and (2) any rights of copyright to which a recipient or subrecipient (at any tier) purchases ownership with Federal support.

The recipient acknowledges that OJP has the right to (1) obtain, reproduce, publish, or otherwise use the data first produced under any such award or subaward; and (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes. "Data" includes data as defined in Federal Acquisition Regulation (FAR) provision 52.227-14 (Rights in Data - General).

It is the responsibility of the recipient (and of each subrecipient (at any tier), if applicable) to ensure that the provisions of this condition are included in any subaward (at any tier) under this award.

The recipient has the responsibility to obtain from subrecipients, contractors, and subcontractors (if any) all rights and data necessary to fulfill the recipient's obligations to the Government under this award. If a proposed subrecipient, contractor, or subcontractor refuses to accept terms affording the Government such rights, the recipient shall promptly bring such refusal to the attention of the OJP program manager for the award and not proceed with the agreement in

question without further authorization from the OJP program office.

37

#### Justice Information Sharing

Information sharing projects funded under this award must comply with DOJ's Global Justice Information Sharing Initiative (Global) guidelines. The recipient (and any subrecipient at any tier) must conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: [https://it.ojp.gov/gsp\\_grantcondition](https://it.ojp.gov/gsp_grantcondition). The recipient (and any subrecipient at any tier) must document planned approaches to information sharing and describe compliance with the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

38

The recipient agrees that no funds under this grant award (including via subcontract or subaward, at any tier) may be used for unmanned aircraft systems (UAS), which includes unmanned aircraft vehicles (UAV), or for any accompanying accessories to support UAS.

39

Any Web site that is funded in whole or in part under this award must include the following statement on the home page, on all major entry pages (i.e., pages (exclusive of documents) whose primary purpose is to navigate the user to interior content), and on any pages from which a visitor may access or use a Web-based service, including any pages that provide results or outputs from the service: "This Web site is funded in whole or in part through a grant from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Neither the U.S. Department of Justice nor any of its components operate, control, are responsible for, or necessarily endorse, this Web site (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided)." The full text of the foregoing statement must be clearly visible on the home page. On other pages, the statement may be included through a link, entitled "Notice of Federal Funding and Federal Disclaimer," to the full text of the statement.

40

Any written, visual, or audio publications funded in whole or in part under this award, with the exception of press releases, shall contain the following statements: "This project was supported by Grant No. <AWARD\_NUMBER> awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice." The current edition of the DOJ Grants Financial Guide provides guidance on allowable printing and publication activities.

41

The recipient agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.

42

#### FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of \$30,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at <https://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than \$30,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit

organization that he or she may own or operate in his or her name).

43

The recipient agrees to comply with OJP grant monitoring guidelines, protocols, and procedures, and to cooperate with BJA and OCFO on all grant monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, and/or site visits. The recipient agrees to provide to BJA and OCFO all documentation necessary to complete monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by BJA and OCFO for providing the requested documents. Failure to cooperate with BJA's/OCFO's grant monitoring activities may result in sanctions affecting the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to grant funds; referral to the Office of the Inspector General for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

44

Justification of consultant rate

Approval of this award does not indicate approval of any consultant rate in excess of \$650 per day. A detailed justification must be submitted to and approved by the OJP program office prior to obligation or expenditure of such funds.

45

The recipient shall submit semiannual performance reports. Performance reports shall be submitted within 30 days after the end of the reporting periods, which are June 30 and December 31, for the life of the award. These reports will be submitted to the Office of Justice Programs, on-line through the Internet at <https://justgrants.usdoj.gov>

46

The recipient agrees that it will submit quarterly financial status reports (the SF 425 Federal Financial Report) to OJP in JustGrants, no later than the deadlines set out in the DOJ Financial Guide and the JustGrants guidance (typically 30 days after the end of each calendar quarter). Delinquent reports may lead to funds being frozen and other remedies.

47

As of the first day of the period of performance for the award, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum, all applicable withholding conditions are removed by OJP (via an Award Condition Modification (ACM)).

Except to the extent (if any) that an award condition expressly precludes reimbursement of project costs incurred "at-risk," if and when the recipient makes a valid acceptance of this award and OJP removes each applicable withholding condition through an Award Condition Modification (ACM), the recipient is authorized to reimburse itself for project costs incurred "at-risk" earlier during the period of performance (such as project costs incurred prior to award acceptance or prior to removal of an applicable withholding condition), provided that those project costs otherwise are allowable costs under the award.

48

Limit on use of grant funds for grantees' employees' salaries

With respect to this award, federal funds may not be used to pay cash compensation (salary plus bonuses) to any employee of the award recipient at a rate that exceeds 110% of the maximum annual salary payable to a member of the federal government's Senior Executive Service (SES) at an agency with a Certified SES Performance Appraisal System for that year. (An award recipient may compensate an employee at a higher rate, provided the amount in excess of this compensation limitation is paid with non-federal funds.)

This limitation on compensation rates allowable under this award may be waived on an individual basis at the discretion of the OJP official indicated in the program announcement under which this award is made.

49



Recipient integrity and performance matters: Requirement to report information on certain civil, criminal, and administrative proceedings to SAM and FAPIIS

The recipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, recipients of OJP awards are required to report information about such proceedings, through the federal System for Award Management (known as "SAM"), to the designated federal integrity and performance system (currently, "FAPIIS").

The details of recipient obligations regarding the required reporting (and updating) of information on certain civil, criminal, and administrative proceedings to the federal designated integrity and performance system (currently, "FAPIIS") within SAM are posted on the OJP web site at <https://ojp.gov/funding/FAPIIS.htm> (Award condition: Recipient Integrity and Performance Matters, including Recipient Reporting to FAPIIS), and are incorporated by reference here.

## 50

The recipient agrees to promptly provide, upon request, financial or programmatic-related documentation related to this award, including documentation of expenditures and achievements. The recipient understands that it will be subject to additional financial and programmatic in-depth or on-site monitoring, which may be on short notice, and agrees that it will cooperate with any such monitoring. The recipient agrees to develop or maintain effective internal controls to manage federal awards (see 2 C.F.R. 200.303) and effective financial management policies and procedures to manage federal awards (see 2 C.F.R. 200.302).

## 51

The recipient may not expend or draw down any award funds until—

(1) OJP determines that the recipient's Grant Award Administrator and all Financial Manager for this award have successfully completed an "OJP financial management and grant administration training" on or after October 15, 2020, and

(2) OJP issues an Award Condition Modification (ACM) to modify or remove this condition. Once both the Grant Award Administrator and Financial Manager have successfully completed the training required by this condition, the recipient may contact the designated grant manager for the award to request initiation of an ACM to remove this condition.

A list of the OJP trainings that OJP will consider an "OJP financial management and grant administration training" for purposes of this condition is available at <https://onlinegfmt.training.ojp.gov/>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

## 52

Body-worn cameras, policies and procedures

In accepting this award, the recipient agrees not to use award funds for purchases of body-worn cameras or related expenses for any agency unless that agency has policies and procedures in place that reinforce appropriate agency Use of Force policies and training and address technology usage, evidence acquisition, data storage and retention, as well as privacy issues, accountability and discipline.

[X]

*I have read and understand the information presented in this section of the Federal Award Instrument.*

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## Award Acceptance

### Declaration and Certification to the U.S. Department of Justice as to Acceptance

By checking the declaration and certification box below, I--

A. Declare to the U.S. Department of Justice (DOJ), under penalty of perjury, that I have authority to make this declaration and certification on behalf of the applicant.

B. Certify to DOJ, under penalty of perjury, on behalf of myself and the applicant, to the best of my knowledge and belief, that the following are true as of the date of this award acceptance: (1) I have conducted or there was conducted (including by applicant's legal counsel as appropriate and made available to me) a diligent review of all terms and conditions of, and all supporting materials submitted in connection with, this award, including any assurances and certifications (including anything submitted in connection therewith by a person on behalf of the applicant before, after, or at the time of the application submission and any materials that accompany this acceptance and certification); and (2) I have the legal authority to accept this award on behalf of the applicant.

C. Accept this award on behalf of the applicant.

D. Declare the following to DOJ, under penalty of perjury, on behalf of myself and the applicant: (1) I understand that, in taking (or not taking) any action pursuant to this declaration and certification, DOJ will rely upon this declaration and certification as a material representation; and (2) I understand that any materially false, fictitious, or fraudulent information or statement in this declaration and certification (or concealment or omission of a material fact as to either) may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the applicant to civil penalties and administrative remedies under the federal False Claims Act (including under 31 U.S.C. §§ 3729-3730 and/or §§ 3801-3812) or otherwise.

**Agency Approval**

<b>Title of Approving Official</b> Deputy Assistant Attorney General	<b>Name of Approving Official</b> Maureen Henneberg	<b>Signed Date And Time</b> 7/27/23 5:04 PM
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**Authorized Representative**

Declaration and Certification

**Entity Acceptance**

**Title of Authorized Entity Official**  
City Manager

**Name of Authorized Entity Official**  
Edward Starr

**Signed Date And Time**  
8/23/2023 6:12 PM

## Motorola Solutions Customer Agreement

This Motorola Solutions Customer Agreement (the "MCA") is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 ("Motorola") and the entity purchasing Products or Services (as defined below) from Motorola ("Customer"). Motorola and Customer will each be referred to herein as a "Party" and collectively as the "Parties". This Agreement (as defined below) is effective as of the earlier of (a) the first purchase of a Product or Service from Motorola, and (b) the date of the last signature on the first Ordering Document (as defined below) between the Parties (the "Effective Date").

If you are purchasing Products or Services on behalf of your employer or another entity, you warrant that: (a) you have authority to bind your employer or the applicable entity, as "Customer" to this Agreement; (b) you have read and understand this Agreement; and (c) on behalf of the Customer that you represent, you agree to this Agreement. If you do not have the legal authority to bind your employer or the applicable entity as Customer to this Agreement, please do not complete the purchase of Services or Products from Motorola.

### 1. Agreement.

**1.1. Scope Agreement Documents.** This MCA, available at [www.motorolasolutions.com/product-terms](http://www.motorolasolutions.com/product-terms), governs Customer's purchase of Products (as defined below) and Services (as defined below) from Motorola. Additional terms and conditions applicable to specific Products and Services are set forth in one or more addenda, also available at [www.motorolasolutions.com/product-terms](http://www.motorolasolutions.com/product-terms) (each an "Addendum", and collectively the "Addenda"). In addition, the Parties may agree upon solution descriptions, equipment lists, statements of work, schedules, technical specifications, order forms, and other ordering documents setting forth the Products and Services to be purchased by Customer and provided by Motorola and additional rights and obligations of the Parties (the "Ordering Documents"). To the extent required by applicable procurement law, a proposal submitted by Motorola in response to a competitive procurement process will be included within the meaning of the term Ordering Documents. This MCA, the Addenda, and any Ordering Documents collectively form the Parties' "Agreement".

**1.2. Modifications.** Motorola may modify this Agreement (including the Addenda) at any time after providing notice thereof to Customer on [www.motorolasolutions.com/product-terms](http://www.motorolasolutions.com/product-terms). Modifications are effective as of the date of publication, and if Customer does not agree to any such modifications, Customer must cease using the Products and Services.

**1.3. Order of Precedence.** Each Addendum will control with respect to conflicting terms in the MCA, but only as applicable to the Products and Services described in such Addendum. Each Ordering Document will control with respect to conflicting terms in the MCA or any Addenda, but only as applicable to the Products and Services described on such Ordering Document.

### 2. Products and Services.

**2.1. Products.** Motorola will (a) sell hardware provided by Motorola ("Equipment"), (b) license software which is either preinstalled on Equipment or installed on Customer-Provided Equipment (as defined below) and licensed to Customer by Motorola for a perpetual or other defined license term ("Licensed Software"), and (c) license cloud-based software as a service products and other software which is either preinstalled on Equipment or installed on Customer-Provided Equipment, but licensed to Customer by Motorola on a subscription basis ("Subscription Software") to Customer, to the extent each is set forth in an Ordering Document, for Customer's own use in accordance with this Agreement. The Equipment, Licensed Software, and Subscription Software shall collectively be referred to herein as "Products", or individually as a "Product". At any time during the Term (as defined below), Motorola may substitute any Products at no cost to Customer, if the substitute is substantially similar to the Products originally purchased by Customer.

#### 2.2. Services.

2.2.1. Motorola will provide services related to purchased Products ("Services"), to the extent set forth in an Ordering Document.

2.2.2. **Integration Services; Maintenance and Support Services.** If specified in an Ordering Document, Motorola will provide, for the term of such Ordering Document, (a) design, deployment, and integration Services in order to design, install, set up, configure, and/or integrate the applicable Products at the applicable locations ("Sites"), agreed upon by the Parties ("Integration Services"), or (b) break/fix maintenance, technical support, or other Services (such as software integration Services) ("Maintenance and Support Services"), each as further described in the applicable statement of work. Maintenance and Support Services and Integration Services will each be considered "Services", as defined above.

2.2.3. **Service Ordering Documents.** The Fees for Services will be set forth in an Ordering Document and any applicable project schedules. A Customer point of contact will be set forth in the applicable statement of work for the Services. For purposes of clarity, each statement of work will be incorporated into, and form an integral part of, the Agreement.

2.2.4. **Service Completion.** Unless otherwise specified in the applicable Ordering Document, Services described in an Ordering Document will be deemed complete upon Motorola's performance of all Services listed in such Ordering Document ("Service Completion Date"); provided, however, that Maintenance and Support Services may be offered on an ongoing basis during a given Ordering Document term, in which case such Maintenance and Support Services will conclude upon the expiration or termination of such Ordering Document.

**2.3. Non-Preclusion.** If, in connection with the Products and Services provided under this Agreement, Motorola makes recommendations, including a recommendation to purchase other products or services, nothing in this Agreement precludes Motorola from participating in a future competitive bidding process or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement standards or other laws, regulations, or policies.

**2.4. Customer Obligations.** Customer will ensure that information Customer provides to Motorola in connection with receipt of Products and Services are accurate and complete in all material respects. Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for Motorola to provide the Products and Services and perform its other duties under this Agreement. Unless the applicable Ordering Document states otherwise, Motorola may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions or Customer information, decisions, or approvals described in this Section. If any assumptions in the Ordering Documents or information provided by Customer prove to be incorrect, or if Customer fails to perform any of its obligations under this Agreement, Motorola's ability to perform its obligations may be impacted and changes to the Agreement, including the scope, Fees, and performance schedule may be required.

**2.5. Documentation.** Products and Services may be delivered with documentation for the Equipment, software Products, or data that specifies technical and performance features, capabilities, users, or operation, including training manuals, and other deliverables, such as reports, specifications, designs, plans, drawings, analytics, or other information (collectively, "Documentation"). Documentation is and will be owned by Motorola, unless otherwise expressly agreed in an Addendum or Ordering Document that certain Documentation will be owned by Customer. Motorola hereby grants Customer a limited, royalty-free, worldwide, non-exclusive license to use the Documentation solely for its internal business purposes in connection with the Products and Services.

**2.6. Motorola Tools and Equipment.** As part of delivering the Products and Services, Motorola may provide certain tools, equipment, models, and other materials of its own. Such tools and equipment will remain the sole property of Motorola unless they are to be purchased by Customer as Products and are explicitly listed on an Ordering Document. The tools and equipment may be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction. Customer will safeguard all tools and equipment while in Customer's custody or control, and be liable for any loss or damage. Upon the expiration or earlier termination of this Agreement, Customer, at its expense, will return to Motorola all tools and equipment in its possession or control.

**2.7. Authorized Users.** Customer will ensure its employees and Authorized Users comply with the terms of this Agreement and will be liable for all acts and omissions of its employees and Authorized Users. Customer is responsible for the secure management of Authorized Users' names, passwords and login credentials for access to Products and Services. "**Authorized Users**" are Customer's employees, full-time contractors engaged for the purpose of supporting the Products and Services that are not competitors of Motorola, and the entities (if any) specified in an Ordering Document or otherwise approved by Motorola in writing (email from an authorized Motorola signatory accepted), which may include affiliates or other Customer agencies.

**2.8. Export Control.** Customer, its employees, and any other Authorized Users will not access or use the Products and Services in any jurisdiction in which the provision of such Products and Services is prohibited under applicable laws or regulations (a "**Prohibited Jurisdiction**"), and Customer will not provide access to the Products and Services to any government, entity, or individual located in a Prohibited Jurisdiction. Customer represents and warrants that (a) it and its Authorized Users are not named on any U.S. government list of persons prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) it and its Authorized Users are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) Customer will not permit its Authorized Users to access or use the Products or Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) Customer and its Authorized Users will comply with all applicable laws regarding the transmission of technical data exported from the U.S. and the country in which Customer, its employees, and the Authorized Users are located.

**2.9. Change Orders.** Unless a different change control process is agreed upon in writing by the Parties, a Party may request changes to an Addendum or an Ordering Document by submitting a change order to the other Party (each, a "**Change Order**"). If a requested change in a Change Order causes an increase or decrease in the Products or Services, the Parties by means of the Change Order will make appropriate adjustments to the Fees, project schedule, or other matters. Change Orders are effective and binding on the Parties only upon execution of the Change Order by an authorized representative of both Parties.

### **3. Term and Termination.**

**3.1. Term.** The term of this MCA ("**Term**") will commence on the Effective Date and continue until six (6) months after the later of (a) the termination, expiration, or discontinuance of services under the last Ordering Document in effect, or (b) the expiration of all applicable warranty periods, unless the MCA is earlier terminated as set forth herein. The applicable Addendum or Ordering Document will set forth the term for the Products and Services governed thereby.

**3.2. Termination.** Either Party may terminate the Agreement or the applicable Addendum or Ordering Document if the other Party breaches a material obligation under the Agreement and does not cure such breach within thirty (30) days after receipt of notice of the breach or fails to produce a cure plan within such period of time. Each Addendum and Ordering Document may be separately terminable as set forth therein.

**3.3. Suspension of Services.** Motorola may terminate or suspend any Products or Services under an Ordering Document if Motorola determines: (a) the related Product license has expired or has terminated for any reason; (b) the applicable Product is being used on a hardware platform, operating system, or version not approved by Motorola; (c) Customer fails to make any payments when due; or (d) Customer fails to comply with any of its other obligations or otherwise delays Motorola's ability to perform.

**3.4. Effect of Termination or Expiration.** Upon termination for any reason or expiration of this Agreement, an Addendum, or an Ordering Document, Customer and the Authorized Users will return or destroy (at Motorola's option) all Motorola Materials and Motorola's Confidential Information in their possession or control and, as applicable, provide proof of such destruction, except that Equipment purchased by Customer should not be returned. If Customer has any outstanding payment obligations under this Agreement, Motorola may accelerate and declare all such obligations of Customer immediately due and payable by Customer. Notwithstanding the reason for termination or expiration, Customer must pay Motorola for Products and Services already delivered. Customer has a duty to mitigate any damages under this Agreement, including in the event of default by Motorola and Customer's termination of this Agreement.

### **4. Payment and Invoicing.**

**4.1. Fees.** Fees and charges applicable to the Products and Services (the "**Fees**") will be as set forth in the applicable Addendum or Ordering Document or otherwise provided by Motorola, and such Fees may be changed by Motorola at any time, except that Motorola will not change the Fees for Products and Services purchased by Customer during the term of an active Ordering Document or during a Subscription Term (as defined and further described in the applicable Addendum). Changes in the scope of Services described in an Ordering Document may require an adjustment to the Fees due under such Ordering Document. If a specific invoicing or payment schedule is set forth in the applicable Addendum or Ordering Document, such schedule will apply solely with respect to such Addendum or Ordering Document. Unless otherwise specified in the applicable Ordering Document, the Fees for any Services exclude expenses associated with unusual and costly Site access requirements (e.g., if Site access requires a helicopter or other equipment), and Customer will reimburse Motorola for these or other expenses incurred by Motorola in connection with the Services.

**4.2. Taxes.** The Fees do not include any excise, sales, lease, use, property, or other taxes, assessments, duties, or regulatory charges or contribution requirements (collectively, "**Taxes**"), all of which will be paid by Customer, except as exempt by law, unless otherwise specified in an Ordering Document. If Motorola is required to pay any Taxes, Customer will reimburse Motorola for such Taxes (including any interest and penalties) within thirty (30) days after Customer's receipt of an invoice therefore. Customer will be solely responsible for reporting the Products for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income and net worth.

**4.3. Invoicing.** Motorola will invoice Customer at the frequency set forth in the applicable Addendum or Ordering Document, and Customer will pay all invoices within thirty (30) days of the invoice date or as otherwise specified in the applicable Addendum or Ordering Document. Late payments will be subject to interest charges at the maximum rate permitted by law, commencing upon the due date. Motorola may invoice electronically via email, and Customer agrees to receive invoices via email at the email address set forth in an Ordering Document. Customer acknowledges and agrees that a purchase order or other notice to proceed is not required for payment for Products or Services.

### **5. Sites; Customer-Provided Equipment; Non-Motorola Content.**

**5.1. Access to Sites.** Customer will be responsible for providing all necessary permits, licenses, and other approvals necessary for the installation and use of the Products and the performance of the Services at each applicable Site, including for Motorola to perform its obligations hereunder, and for facilitating Motorola's access to the Sites. No waivers of liability will be imposed on Motorola or its subcontractors by Customer or others at Customer facilities or other Sites, but if and to the extent any such waivers are imposed, the Parties agree such waivers are void.

**5.2. Site Conditions.** Customer will ensure that (a) all Sites are safe and secure, (b) Site conditions meet all applicable industry and legal standards (including standards promulgated by OSHA or other governmental or regulatory bodies), (c) to the extent applicable, Sites have adequate physical space, air conditioning, and other environmental conditions, electrical power outlets, distribution, equipment, connections, and telephone or other communication lines (including modem access and interfacing networking capabilities), and (d) Sites are suitable for the installation, use, and maintenance of the Products and Services. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

**5.3. Site Issues.** Motorola will have the right at any time to inspect the Sites and advise Customer of any deficiencies or non-conformities with the requirements of this **Section 5 – Sites; Customer-Provided Equipment; Non-Motorola Content**. If Motorola or Customer identifies any deficiencies or non-conformities, Customer will promptly remediate such issues or the Parties will select a replacement Site. If a Party determines that a Site identified in an Ordering Document is not acceptable or desired, the Parties will cooperate to investigate the conditions and select a replacement Site or otherwise adjust the installation plans and specifications as necessary. A change in Site or adjustment to the installation plans and specifications may cause a change in the Fees or performance schedule under the applicable Ordering Document.

**5.4. Customer-Provided Equipment.** Certain components, including equipment and software, not provided by Motorola may be required for use of the Products and Services (“**Customer-Provided Equipment**”). Customer will be responsible, at its sole cost and expense, for providing and maintaining the Customer-Provided Equipment in good working order. Customer represents and warrants that it has all rights in Customer-Provided Equipment to permit Motorola to access and use the applicable Customer-Provided Equipment to provide the Products and Services under this Agreement, and such access and use will not violate any laws or infringe any third-party rights (including intellectual property rights). Customer (and not Motorola) will be fully liable for Customer-Provided Equipment, and Customer will immediately notify Motorola of any Customer-Provided Equipment damage, loss, change, or theft that may impact Motorola’s ability to provide the Products and Services under this Agreement, and Customer acknowledges that any such events may cause a change in the Fees or performance schedule under the applicable Ordering Document.

**5.5. Non-Motorola Content.** In certain instances, Customer may be permitted to access, use, or integrate Customer or third-party software, services, hardware, content, and data that is not provided by Motorola (collectively, “**Non-Motorola Content**”) with or through the Products and Services. If Customer accesses, uses, or integrates any Non-Motorola Content with the Products or Services, Customer will first obtain all necessary rights and licenses to permit Customer’s and its Authorized Users’ use of the Non-Motorola Content in connection with the Products and Services. Customer will also obtain the necessary rights for Motorola to use such Non-Motorola Content in connection with providing the Products and Services, including the right for Motorola to access, store, and process such Non-Motorola Content (e.g., in connection with Subscription Software), and to otherwise enable interoperation with the Products and Services. Customer represents and warrants that it will obtain the foregoing rights and licenses prior to accessing, using, or integrating the applicable Non-Motorola Content with the Products and Services, and that Customer and its Authorized Users will comply with any terms and conditions applicable to such Non-Motorola Content. If any Non-Motorola Content require access to Customer Data (as defined below), Customer hereby authorizes Motorola to allow the provider of such Non-Motorola Content to access Customer Data, in connection with the interoperation of such Non-Motorola Content with the Products and Services. Customer acknowledges and agrees that Motorola is not responsible for, and makes no representations or warranties with respect to, the Non-Motorola Content (including any disclosure, modification, or deletion of Customer Data resulting from use of Non-Motorola Content or failure to properly interoperate with the Products and Services). If Customer receives notice that any Non-Motorola Content must be removed, modified, or disabled within the Products or Services, Customer will promptly do so. Motorola will have the right to disable or remove Non-Motorola Content if Motorola believes a violation of law, third-party rights, or Motorola’s policies is likely to occur, or if such Non-Motorola Content poses or may pose a security or other risk or adverse impact to the Products or Services, Motorola, Motorola’s systems, or any third party (including other Motorola customers). Motorola may provide certain Non-Motorola Content as an authorized sales representative of a third party as set out in an Ordering Document. As an authorized sales representative, the third party’s terms and conditions, as set forth in the Ordering Document, will apply to any such sales. Any orders for such Non-Motorola Content will be filled by the third party. Nothing in this Section will limit the exclusions set forth in **Section 7.2 – Intellectual Property Infringement**.

**5.6. End User Licenses.** Notwithstanding any provision to the contrary in the Agreement, certain Non-Motorola Content software are governed by a separate license, EULA, or other agreement, including terms governing third-party equipment or software, such as open source software, included in the Products and Services. Customer will comply, and ensure its Authorized Users comply, with any such additional terms applicable to third-party equipment or software. If provided for in the separate third party license, Customer may have a right to receive source code for such software; a copy of such source code may be obtained free of charge by contacting Motorola.

**6. Representations and Warranties.**

**6.1. Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that (a) it has the right to enter into the Agreement and perform its obligations hereunder, and (b) the Agreement will be binding on such Party.

**6.2. Motorola Warranties.** Subject to the disclaimers and exclusions below, Motorola represents and warrants that (a) Services will be provided in a good and workmanlike manner and will conform in all material respects to the descriptions in the applicable Ordering Document; and (b) for a period of ninety (90) days commencing upon the Service Completion Date for one-time Services, the Services will be free of material defects in materials and workmanship. Other than as set forth in subsection (a) above, recurring Services are not warranted but rather will be subject to the requirements of the applicable Addendum or Ordering Document. Motorola provides other express warranties for Motorola-manufactured Equipment, Motorola-owned software Products, and certain Services. Such express warranties are included in the applicable Addendum or Ordering Document. Such representations and warranties will apply only to the applicable Product or Service that is the subject of such Addendum or Ordering Document.

**6.3. Warranty Claims; Remedies.** To assert a warranty claim, Customer must notify Motorola in writing of the claim prior to the expiration of any warranty period set forth in this MCA or the applicable Addendum or Ordering Document. Unless a different remedy is otherwise expressly set forth for a particular warranty under an Addendum, upon receipt of such claim, Motorola will investigate the claim and use commercially reasonable efforts to repair or replace any confirmed materially non-conforming Product or re-perform any non-conforming Service, at its option. Such remedies are Customer’s sole and exclusive remedies for Motorola’s breach of a warranty. Motorola’s warranties are extended by Motorola to Customer only, and are not assignable or transferrable.

**6.4. Pass-Through Warranties.** Notwithstanding any provision of this Agreement to the contrary, Motorola will have no liability for third-party software or hardware provided by Motorola; provided, however, that to the extent offered by third-party providers of software or hardware and to the extent permitted by law, Motorola will pass through express warranties provided by such third parties.

**6.5. WARRANTY DISCLAIMER.** EXCEPT FOR THE EXPRESS AND PASS THROUGH WARRANTIES IN THIS AGREEMENT, PRODUCTS AND SERVICES PURCHASED HEREUNDER ARE PROVIDED “AS IS” AND WITH ALL FAULTS. WARRANTIES SET FORTH IN THE AGREEMENT ARE THE COMPLETE WARRANTIES FOR THE PRODUCTS AND SERVICES AND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND QUALITY. MOTOROLA DOES NOT REPRESENT OR WARRANT THAT USE OF THE PRODUCTS AND SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF SECURITY VULNERABILITIES, OR THAT THEY WILL MEET CUSTOMER’S PARTICULAR REQUIREMENTS.

**7. Indemnification.**

**7.1. General Indemnity.** Motorola will defend, indemnify, and hold Customer harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual third-party claim, demand, action, or proceeding (“**Claim**”) for personal injury, death, or direct damage to tangible property to the extent caused by Motorola’s negligence, gross negligence or willful misconduct while performing its duties under an Ordering Document or an Addendum, except to the extent the claim arises from Customer’s negligence or willful misconduct. Motorola’s duties under this **Section 7.1 – General Indemnity** are conditioned upon: (a) Customer promptly notifying Motorola in writing of the Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Claim.

**7.2. Intellectual Property Infringement.** Motorola will defend Customer against any third-party claim alleging that a Motorola-developed or manufactured Product or Service (the “**Infringing Product**”) directly infringes a United States patent or copyright (“**Infringement Claim**”), and Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim, or agreed to in writing by Motorola in settlement of an Infringement Claim. Motorola’s duties under this **Section 7.2 – Intellectual Property Infringement** are conditioned upon: (a) Customer promptly notifying Motorola in writing of the Infringement Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Infringement Claim.

7.2.1. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Infringing Product; (b) replace or modify the Infringing Product so that it becomes non-infringing; or (c) grant Customer (i) a pro-rated refund of any amounts pre-paid for the Infringing Product (if the Infringing Product is a software Product, i.e., Licensed Software or Subscription Software) or (ii) a credit for the Infringing Product, less a reasonable charge for depreciation (if the Infringing Product is Equipment, including Equipment with embedded software).

7.2.2. In addition to the other damages disclaimed under this Agreement, Motorola will have no duty to defend or indemnify Customer for any Infringement Claim that arises from or is based upon: (a) Customer Data, Customer-Provided Equipment, Non-Motorola Content, or third-party equipment, hardware, software, data, or other third-party materials; (b) the combination of the Product or Service with any products or materials not provided by Motorola; (c) a Product or Service designed, modified, or manufactured in accordance with Customer's designs, specifications, guidelines or instructions; (d) a modification of the Product or Service by a party other than Motorola; (e) use of the Product or Service in a manner for which the Product or Service was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to use or install an update to the Product or Service that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from an Infringement Claim extend in any way to any payments due on a royalty basis, other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the Infringing Product.

7.2.3. This **Section 7.2 – Intellectual Property Infringement** provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. For clarity, the rights and remedies provided in this Section are subject to, and limited by, the restrictions set forth in **Section 8 – Limitation of Liability** below.

7.3. **Customer Indemnity.** Customer will defend, indemnify, and hold Motorola and its subcontractors, subsidiaries and other affiliates harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual or threatened third-party claim, demand, action, or proceeding arising from or related to (a) Customer-Provided Equipment, Customer Data, or Non-Motorola Content, including any claim, demand, action, or proceeding alleging that any such equipment, data, or materials (or the integration or use thereof with the Products and Services) infringes or misappropriates a third-party intellectual property or other right, violates applicable law, or breaches the Agreement; (b) Customer-Provided Equipment's failure to meet the minimum requirements set forth in the applicable Documentation or match the applicable specifications provided to Motorola by Customer in connection with the Products or Services; (c) Customer's (or its service providers, agents, employees, or Authorized User's) negligence or willful misconduct; and (d) Customer's or its Authorized User's breach of this Agreement. This indemnity will not apply to the extent any such claim is caused by Motorola's use of Customer-Provided Equipment, Customer Data, or Non-Motorola Content in violation of the Agreement. Motorola will give Customer prompt, written notice of any claim subject to the foregoing indemnity. Motorola will, at its own expense, cooperate with Customer in its defense or settlement of the claim.

**8. Limitation of Liability.**

8.1. **DISCLAIMER OF CONSEQUENTIAL DAMAGES.** EXCEPT FOR PERSONAL INJURY OR DEATH, MOTOROLA, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE **"MOTOROLA PARTIES"**) WILL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER MOTOROLA'S INDEMNITY OBLIGATIONS, A CAUSE OF ACTION FOR BREACH OF CONTRACT, UNDER TORT THEORY, OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR REVENUES, EVEN IF MOTOROLA HAS BEEN ADVISED BY CUSTOMER OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES AND WHETHER OR NOT SUCH DAMAGES OR LOSSES ARE FORESEEABLE.

8.2. **DIRECT DAMAGES.** EXCEPT FOR PERSONAL INJURY OR DEATH, THE TOTAL AGGREGATE LIABILITY OF THE MOTOROLA PARTIES, WHETHER BASED ON A CLAIM IN CONTRACT OR IN TORT, LAW OR EQUITY, RELATING TO OR ARISING OUT OF THE AGREEMENT WILL NOT EXCEED THE FEES SET FORTH IN THE ORDERING DOCUMENT UNDER WHICH THE CLAIM AROSE. NOTWITHSTANDING THE FOREGOING, FOR ANY SUBSCRIPTION SOFTWARE OR FOR ANY RECURRING SERVICES, THE MOTOROLA PARTIES' TOTAL LIABILITY FOR ALL CLAIMS RELATED TO SUCH PRODUCT OR RECURRING SERVICES IN THE AGGREGATE WILL NOT EXCEED THE TOTAL FEES PAID FOR SUCH SUBSCRIPTION SOFTWARE OR RECURRING SERVICE, AS APPLICABLE, DURING THE CONSECUTIVE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FROM WHICH THE FIRST CLAIM AROSE.

8.3. **ADDITIONAL EXCLUSIONS.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, MOTOROLA WILL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF (A) CUSTOMER DATA, INCLUDING ITS TRANSMISSION TO MOTOROLA, OR ANY OTHER DATA AVAILABLE THROUGH THE PRODUCTS OR SERVICES; (B) CUSTOMER-PROVIDED EQUIPMENT, NON-MOTOROLA CONTENT, THE SITES, OR THIRD-PARTY EQUIPMENT, HARDWARE, SOFTWARE, DATA, OR OTHER THIRD-PARTY MATERIALS, OR THE COMBINATION OF PRODUCTS AND SERVICES WITH ANY OF THE FOREGOING; (C) LOSS OF DATA OR HACKING, RANSOMWARE, OR OTHER THIRD-PARTY ATTACKS OR DEMANDS; (D) MODIFICATION OF PRODUCTS OR SERVICES BY ANY PERSON OTHER THAN MOTOROLA; (E) RECOMMENDATIONS PROVIDED IN CONNECTION WITH OR BY THE PRODUCTS AND SERVICES; (F) DATA RECOVERY SERVICES OR DATABASE MODIFICATIONS; OR (G) CUSTOMER'S OR ANY AUTHORIZED USER'S BREACH OF THIS AGREEMENT OR MISUSE OF THE PRODUCTS AND SERVICES.

8.4. **Voluntary Remedies.** Motorola is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed issues in **Section 8.3 – Additional Exclusions** above, but if Motorola agrees to provide Services to help resolve such issues, Customer will reimburse Motorola for its reasonable time and expenses, including by paying Motorola any Fees set forth in an Ordering Document for such Services, if applicable.

8.5. **Statute of Limitations.** Customer may not bring any claims against a Motorola Party in connection with this Agreement or the Products and Services more than one (1) year after the date of accrual of the cause of action.

**9. Confidentiality.**

9.1. **Confidential Information.** "Confidential Information" means any and all non-public information provided by one Party ("**Discloser**") to the other ("**Recipient**") that is disclosed under this Agreement in oral, written, graphic, machine recognizable, or sample form, being clearly designated, labeled or marked as confidential or its equivalent or that a reasonable businessperson would consider non-public and confidential by its nature. With respect to Motorola, Confidential Information will also include Products and Services, and Documentation, as well as any other information relating to the Products and Services. The nature and existence of this Agreement are considered Confidential Information of the Parties. In order to be considered Confidential Information, information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by Discloser by submitting a written document to Recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

9.2. **Obligations of Confidentiality.** During the Term and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (a) not disclose Confidential Information to any third party, except as expressly permitted in this **Section 9 – Confidentiality**; (b) restrict disclosure of Confidential Information to only those employees (including, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must access the Confidential Information for the purpose of, and who are bound by confidentiality terms substantially similar to those in, this Agreement; (c) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (d) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (e) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (f) only use the Confidential Information as needed to fulfill its obligations and secure its rights under this Agreement.

9.3. **Exceptions.** Recipient is not obligated to maintain as confidential any information that Recipient can demonstrate by documentation (a) is publicly available at the time of disclosure or becomes available to the public without breach of this Agreement; (b) is lawfully obtained from a third party without a duty of confidentiality to Discloser; (c) is

otherwise lawfully known to Recipient prior to such disclosure without a duty of confidentiality to Discloser; or (d) is independently developed by Recipient without the use of, or reference to, any of Discloser's Confidential Information or any breach of this Agreement. Additionally, Recipient may disclose Confidential Information to the extent required by law, including a judicial or legislative order or proceeding.

**9.4. Ownership of Confidential Information.** All Confidential Information is and will remain the property of Discloser and will not be copied or reproduced without the express written permission of Discloser (including as permitted herein). Within ten (10) days of receipt of Discloser's written request, Recipient will return or destroy all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain (a) one (1) archival copy of the Confidential Information for use only in case of a dispute concerning this Agreement and (b) Confidential Information that has been automatically stored in accordance with Recipient's standard backup or recordkeeping procedures, provided, however that Recipient will remain subject to the obligations of this Agreement with respect to any Confidential Information retained subject to clauses (a) or (b). No license, express or implied, in the Confidential Information is granted to the Recipient other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. Discloser represents and warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

**10. Proprietary Rights; Data; Feedback.**

**10.1. Data Definitions.** The following terms will have the stated meanings: "**Customer Contact Data**" means data Motorola collects from Customer, its Authorized Users, and their end users for business contact purposes, including marketing, advertising, licensing and sales purposes; "**Service Use Data**" means data generated by Customer's use of the Products and Services or by Motorola's support of the Products and Services, including personal information, product performance and error information, activity logs and date and time of use; "**Customer Data**" means data, information, and content, including images, text, videos, documents, audio, telemetry, location and structured data base records, provided by, through, or on behalf of Customer, its Authorized Users, and their end users through the use of the Products and Services. Customer Data does not include Customer Contact Data, Service Use Data, or information from publicly available sources or other Third-Party Data or Motorola Data; "**Third-Party Data**" means information obtained by Motorola from publicly available sources or its third party content providers and made available to Customer through the Products or Services; "**Motorola Data**" means data owned or licensed by Motorola; "**Feedback**" means comments or information, in oral or written form, given to Motorola by Customer or Authorized Users, including their end users, in connection with or relating to the Products or Services; and "**Process**" or "**Processing**" means any operation or set of operations which is performed on personal information or on sets of personal information, whether or not by automated means, such as collection, recording, copying, analyzing, caching, organization, structuring, storage, adaptation, or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**10.2. Motorola Materials.** Customer acknowledges that Motorola may use or provide Customer with access to software, tools, data, and other materials, including designs, utilities, models, methodologies, systems, and specifications, which Motorola has developed or licensed from third parties (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, or derivative works of the foregoing, whether made by Motorola or another party) (collectively, "**Motorola Materials**"). The Products and Services, Motorola Data, Third-Party Data, and Documentation, are considered Motorola Materials. Except when Motorola has expressly transferred title or other interest to Customer by way of an Addendum or Ordering Document, the Motorola Materials are the property of Motorola or its licensors, and Motorola or its licensors retain all right, title and interest in and to the Motorola Materials (including, all rights in patents, copyrights, trademarks, trade names, trade secrets, know-how, other intellectual property and proprietary rights, and all associated goodwill and moral rights). For clarity, this Agreement does not grant to Customer any shared development rights in or to any Motorola Materials or other intellectual property, and Customer agrees to execute any documents and take any other actions reasonably requested by Motorola to effectuate the foregoing. Motorola and its licensors reserve all rights not expressly granted to Customer, and no rights, other than those expressly granted herein, are granted to Customer by implication, estoppel or otherwise. Customer will not modify, disassemble, reverse engineer, derive source code or create derivative works from, merge with other software, distribute, sublicense, sell, or export the Products and Services or other Motorola Materials, or permit any third party to do so.

**10.3. Ownership of Customer Data.** Customer retains all right, title and interest, including intellectual property rights, if any, in and to Customer Data. Motorola acquires no rights to Customer Data except those rights granted under this Agreement including the right to Process and use the Customer Data as set forth in **Section 10.4 – Processing Customer Data** below and in other applicable Addenda. The Parties agree that with regard to the Processing of personal information which may be part of Customer Data, Customer is the controller and Motorola is the processor, and may engage sub-processors pursuant to **Section 10.4.3 – Sub-processors**.

**10.4. Processing Customer Data.**

**10.4.1. Motorola Use of Customer Data.** To the extent permitted by law, Customer grants Motorola and its subcontractors a right to use Customer Data and a royalty-free, worldwide, non-exclusive license to use Customer Data (including to process, host, cache, store, reproduce, copy, modify, combine, analyze, create derivative works from such Customer Data and to communicate, transmit, and distribute such Customer Data to third parties engaged by Motorola) to (a) perform Services and provide Products under the Agreement, (b) analyze the Customer Data to operate, maintain, manage, and improve Motorola Products and Services, and (c) create new products and services. Customer agrees that this Agreement, along with the Documentation, are Customer's complete and final documented instructions to Motorola for the processing of Customer Data. Any additional or alternate instructions must be agreed to according to the Change Order process. Customer represents and warrants to Motorola that Customer's instructions, including appointment of Motorola as a processor or sub-processor, have been authorized by the relevant controller.

**10.4.2. Collection, Creation, Use of Customer Data.** Customer further represents and warrants that the Customer Data, Customer's collection, creation, and use of the Customer Data (including in connection with Motorola's Products and Services), and Motorola's use of such Customer Data in accordance with the Agreement, will comply with all laws and will not violate any applicable privacy notices or infringe any third-party rights (including intellectual property and privacy rights). It is Customer's responsibility to obtain all required consents, provided all necessary notices, and meet any other applicable legal requirements with respect to collection and use (including Motorola's use) of the Customer Data as described in the Agreement.

**10.4.3. Sub-processors.** Customer agrees that Motorola may engage sub-processors who in turn may engage additional sub-processors to Process personal data in accordance with this Agreement. When engaging sub-processors, Motorola will enter into agreements with the sub-processors to bind them to data processing obligations to the extent required by law.

**10.5. Data Retention and Deletion.** Except as expressly provided otherwise under the Agreement, Motorola will delete all Customer Data following termination or expiration of this MCA or the applicable Addendum or Ordering Document, with such deletion to occur no later than ninety (90) days following the applicable date of termination or expiration, unless otherwise required to comply with applicable law. Any requests for the exportation or download of Customer Data must be made by Customer to Motorola in writing before expiration or termination, subject to **Section 13.9 – Notices**. Motorola will have no obligation to retain such Customer Data beyond expiration or termination unless the Customer has purchased extended storage from Motorola through a mutually executed Ordering Document.

**10.6. Service Use Data.** Customer understands and agrees that Motorola may collect and use Service Use Data for its own purposes, including the uses described below. Motorola may use Service Use Data to (a) operate, maintain, manage, and improve existing and create new products and services, (b) test products and services, (c) to aggregate Service Use Data and combine it with that of other users, and (d) to use anonymized or aggregated data for marketing, research or other business purposes. Service Use Data may be disclosed to third parties. It is Customer's responsibility to notify Authorized Users of Motorola's collection and use of Service Use Data and to obtain any required consents, provide all necessary notices, and meet any other applicable legal requirements with respect to such collection and use, and Customer represents and warrants to Motorola that it has complied and will continue to comply with this Section.

**10.7. Third-Party Data and Motorola Data.** Motorola Data and Third-Party Data may be available to Customer through the Products and Services. Customer and its Authorized Users may use Motorola Data and Third-Party Data as permitted by Motorola and the applicable Third-Party Data provider, as described in the applicable Addendum. Unless expressly permitted in the applicable Addendum, Customer will not, and will ensure its Authorized Users will not: (a) use the Motorola Data or Third-Party Data for any purpose

other than Customer's internal business purposes; (b) disclose the data to third parties; (c) "white label" such data or otherwise misrepresent its source or ownership, or resell, distribute, sublicense, or commercially exploit the data in any manner; (d) use such data in violation of applicable laws; (e) remove, obscure, alter, or falsify any marks or proprietary rights notices indicating the source, origin, or ownership of the data; or (f) modify such data or combine it with Customer Data or other data or use the data to build databases. Additional restrictions may be set forth in the applicable Addendum. Any rights granted to Customer or Authorized Users with respect to Motorola Data or Third-Party Data will immediately terminate upon termination or expiration of the applicable Addendum, Ordering Document, or this MCA. Further, Motorola or the applicable Third-Party Data provider may suspend, change, or terminate Customer's or any Authorized User's access to Motorola Data or Third-Party Data if Motorola or such Third-Party Data provider believes Customer's or the Authorized User's use of the data violates the Agreement, applicable law or Motorola's agreement with the applicable Third-Party Data provider. Upon termination of Customer's rights to use any Motorola Data or Third-Party Data, Customer and all Authorized Users will immediately discontinue use of such data, delete all copies of such data, and certify such deletion to Motorola. Notwithstanding any provision of the Agreement to the contrary, Motorola will have no liability for Third-Party Data or Motorola Data available through the Products and Services. Motorola and its Third-Party Data providers reserve all rights in and to Motorola Data and Third-Party Data not expressly granted in an Addendum or Ordering Document.

**10.8. Feedback.** Any Feedback provided by Customer is entirely voluntary, and will not create any confidentiality obligation for Motorola, even if designated as confidential by Customer. Motorola may use, reproduce, license, and otherwise distribute and exploit the Feedback without any obligation or payment to Customer or Authorized Users and Customer represents and warrants that it has obtained all necessary rights and consents to grant Motorola the foregoing rights.

**10.9. Improvements: Products and Services.** The Parties agree that, notwithstanding any provision of this MCA or the Agreement to the contrary, all fixes, modifications and improvements to the Services or Products conceived of or made by or on behalf of Motorola that are based either in whole or in part on the Feedback, Customer Data, or Service Use Data (or otherwise) are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements will vest solely in Motorola. Customer agrees to execute any written documents necessary to assign any intellectual property or other rights it may have in such fixes, modifications or improvements to Motorola.

**11. Force Majeure; Delays Caused by Customer.**

**11.1. Force Majeure.** Except for Customer's payment obligations hereunder, neither Party will be responsible for nonperformance or delayed performance due to events outside of its reasonable control. If performance will be significantly delayed, the affected Party will provide notice to the other Party, and the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule.

**11.2. Delays Caused by Customer.** Motorola's performance of the Products and Services will be excused for delays caused by Customer or its Authorized Users or subcontractors, or by failure of any assumptions set forth in this Agreement (including in any Addendum or Ordering Document). In the event of a delay under this **Section 11.2 – Delays Caused by Customer**, (a) Customer will continue to pay the Fees as required hereunder, (b) the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule, and (c) Customer will compensate Motorola for its out-of-pocket costs incurred due to the delay (including those incurred by Motorola's affiliates, vendors, and subcontractors).

**12. Disputes.** The Parties will use the following procedure to resolve any disputes relating to or arising out of this Agreement (each, a "Dispute"):

**12.1. Governing Law.** All matters relating to or arising out of the Agreement are governed by the laws of the State of Illinois, unless Customer is the United States Government (or an agency thereof), in which case all matters relating to or arising out of the Agreement will be governed by the laws of the State in which the Products and Services are provided. The terms of the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply.

**12.2. Negotiation; Mediation.** Either Party may initiate dispute resolution procedures by sending a notice of Dispute ("**Notice of Dispute**") to the other Party. The Parties will attempt to resolve the Dispute promptly through good faith negotiations, including timely escalation of the Dispute to executives who have authority to settle the Dispute (and who are at a higher level of management than the persons with direct responsibility for the matter). If a Dispute is not resolved through negotiation, either Party may initiate mediation by sending a notice of mediation ("**Notice of Mediation**") to the other Party. The Parties will choose an independent mediator within thirty (30) days of such Notice of Mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, but if the Parties are unable to agree upon a mediator, either Party may request that the American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute. All in person meetings under this **Section 12.2 – Negotiation; Mediation** will take place in Chicago, Illinois, and all communication relating to the Dispute resolution will be maintained in strict confidence by the Parties. Notwithstanding the foregoing, any Dispute arising from or relating to Motorola's intellectual property rights will not be subject to negotiation or mediation in accordance with this Section, but instead will be decided by a court of competent jurisdiction, in accordance with **Section 12.3 – Litigation, Venue, Jurisdiction** below.

**12.3. Litigation, Venue, Jurisdiction.** If the Dispute has not been resolved by mediation within sixty (60) days from the Notice of Mediation, either Party may submit the Dispute exclusively to a court in Cook County, Illinois. Each Party expressly consents to the exclusive jurisdiction of such courts for resolution of any Dispute and to enforce the outcome of any mediation.

**13. General.**

**13.1. Compliance with Laws.** Each Party will comply with applicable laws in connection with the performance of its obligations under this Agreement, including that Customer will ensure its and its Authorized Users' use of the Products and Services complies with law (including privacy laws), and Customer will obtain any FCC and other licenses or authorizations (including licenses or authorizations required by foreign regulatory bodies) required for its and its Authorized Users' use of the Products and Services. Motorola may, at its discretion, cease providing or otherwise modify Products and Services (or any terms related thereto in an Addendum or Ordering Document), in order to comply with any changes in applicable law.

**13.2. Audit; Monitoring.** Motorola will have the right to monitor and audit use of the Products, which may also include access by Motorola to Customer Data and Service Use Data. Customer will provide notice of such monitoring to its Authorized Users and obtain any required consents, including individual end users, and will cooperate with Motorola in any monitoring or audit. Customer will maintain during the Term, and for two (2) years thereafter, accurate records relating to any software licenses granted under this Agreement to verify compliance with this Agreement. Motorola or a third party ("**Auditor**") may inspect Customer's and, as applicable, Authorized Users' premises, books, and records. Motorola will pay expenses and costs of the Auditor, unless Customer is found to be in violation of the terms of the Agreement, in which case Customer will be responsible for such expenses and costs.

**13.3. Assignment and Subcontracting.** Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. Motorola may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to a subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns.

**13.4. Waiver.** A delay or omission by either Party to exercise any right under this Agreement will not be construed to be a waiver of such right. A waiver by either Party of any of the obligations to be performed by the other, or any breach thereof, will not be construed to be a waiver of any succeeding breach or of any other obligation. All waivers must be in writing and signed by the Party waiving its rights.



**13.5. Severability.** If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision will be deemed to be modified to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement will not be affected, and each such provision will be valid and enforceable to the full extent permitted by applicable law.

**13.6. Independent Contractors.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership, or formal business organization of any kind.

**13.7. Third-Party Beneficiaries.** The Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that the Agreement will not benefit, or create any right or cause of action in or on behalf of, any entity other than the Parties. Notwithstanding the foregoing, a licensor or supplier of third-party software included in the software Products will be a direct and intended third-party beneficiary of this Agreement.

**13.8. Interpretation.** The section headings in this Agreement are included only for convenience. The words "including" and "include" will be deemed to be followed by the phrase "without limitation". This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

**13.9. Notices.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as FedEx, UPS, or DHL), and will be effective upon receipt.

**13.10. Cumulative Remedies.** Except as specifically stated in this Agreement, all remedies provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity, by contract, or otherwise. Except as specifically stated in this Agreement, the election by a Party of any remedy provided for in this Agreement or otherwise available to such Party will not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract, or otherwise.

**13.11. Survival.** The following provisions will survive the expiration or termination of this Agreement for any reason: **Section 2.4 – Customer Obligations; Section 3.4 – Effect of Termination or Expiration; Section 4 – Payment and Invoicing; Section 6.5 – Warranty Disclaimer; Section 7.3 – Customer Indemnity; Section 8 – Limitation of Liability; Section 9 – Confidentiality; Section 10 – Proprietary Rights; Data; Feedback; Section 11 – Force Majeure; Delays Caused by Customer; Section 12 – Disputes; and Section 13 – General.**

**13.12. Entire Agreement.** This Agreement, including all Addenda available at [www.motorolasolutions.com/product-terms](http://www.motorolasolutions.com/product-terms) and Ordering Documents, constitutes the entire agreement of the Parties regarding the subject matter hereto, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and will have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document. The preprinted terms and conditions found on any Customer purchase order, acknowledgment, or other form will not be considered an amendment or modification or part of this Agreement, even if a representative of each Party signs such document.

Signatures provided on QUOTE-2369990, attached as Exhibit A.



QUOTE-2369990  
(25) M500 (75) V700 - ELC + migration

Billing Address:  
MONTCLAIR POLICE DEPT,  
CITY OF  
5111 BENITO ST  
MONTCLAIR, CA 91763  
US

Shipping Address:  
Montclair PD  
4870 ARROW HWY  
MONTCLAIR, CA 91763  
US

Quote Date:10/09/2023  
Expiration Date:12/15/2023  
Quote Created By:  
Dianne Kiehne  
Dianne.Kiehne@  
motorolasolutions.com

End Customer:  
MONTCLAIR POLICE DEPT, CITY OF

Payment Terms:30 NET

### Summary:

Any sales transaction resulting from Motorola's quote is based on and subject to the applicable Motorola Standard Terms and Conditions, notwithstanding terms and conditions on purchase orders or other Customer ordering documents. Motorola Standard Terms and Conditions are found at [www.motorolasolutions.com/product-terms](http://www.motorolasolutions.com/product-terms).

### Summary:

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Javier "John" Dutrey, Mayor

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Andrea M. Myrick, City Clerk

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Diane E. Robbins, City Attorney

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Nicole Talton, Motorola Solutions  
NA VP Sales

Line #	Item Number	Description	Qty	Term	List Price	Sale Price	Ext. Sale Price
	M500						
1	WGW00502	M500 EXTENDED WARRANTY	25	5 YEAR	\$1,519.00	\$1,215.20	\$30,380.00
2	WGB-0703A	M500 ICV SYSTEM, V300 WIFI DOCK, SPS*	25		\$7,518.75	\$5,413.50	\$135,337.50



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products.  
Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 ~ #: 36-1115800

Line #	Item Number	Description	Qty	Term	List Price	Sale Price	Ext. Sale Price
3	WGW00121	IN-CAR SYSTEM INSTALLATION (PER UNIT CHARGE)	25		\$812.50	\$1,000.00	\$25,000.00
	V700						
4	WGB-0740A	V700 BODY WORN CAMERA VERIZON READY	75		\$1,612.50	\$995.00	\$74,625.00
5	WGB-0138A	V300 TRANSFER STATION II	10		\$1,868.75	\$1,495.00	\$14,950.00
6	WGA00640-KIT1	V300, USB DOCK, D300, DESK CHGR/UPLD KIT	75		\$250.00	\$200.00	\$15,000.00
7	WGP02798-KIT	V700 MAGNETIC MOUNT WITH BWC BOX	75		Included	Included	Included
8	LSV07I03510A	ESSENTIAL SOFTWARE SUPPORT AND HARDWARE REPAIR	75	5 YEAR	\$313.00	\$250.40	\$18,780.00
9	SWV07S03593A	SOFTWARE ENHANCEMENTS	75	5 YEAR	Included	Included	Included
10	WGP02950	V700 BATTERY, 3.8V, 4180MAH, REMOVABLE	75		\$137.50	\$110.00	\$8,250.00
11	WSWA-6001197	SIERRAWRLS ANTENNA 2XLTE 3XWIFI 2.4/5GHZ	25		\$271.14	\$216.91	\$5,422.75
12	WSWA-1104073	SIERRAWRLS MP70 ADVPROROUTER WIFI LTE	25		\$1,249.00	\$999.20	\$24,980.00
13	WSWA-9010324	SIERRAWRLS AL-COMP MP/RV ALMS 5YRS WRNTY	25		\$210.00	\$168.00	\$4,200.00
	VideoManager EL & EX: Video Evidence Management						
14	WGW00122-301	MOBILE VIDEO DEPLOYMENT SERVICES ON-SITE DEPLOYMENT, TRAINING, CONFIGURATION AND PROJECT MANAGEMENT	5764 7		\$1.25	\$1.00	\$57,647.00



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products.  
 Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 ~ #: 36-1115800

Line #	Item Number	Description	Qty	Term	List Price	Sale Price	Ext. Sale Price
15	WGC02002	VIDEOMANAGER EL CLOUD, ANNUAL UNLIMITED STORAGE PER IN-CAR VIDEO SYSTEM WITH 2 CAMERAS	25	5 YEAR	\$5,593.75	\$4,475.00	\$111,875.00
16	WGC02001	VIDEOMANAGER EL CLOUD, ANNUAL UNLIMITED STORAGE PER BODY WORN CAMERA	75	5 YEAR	\$4,343.75	\$3,475.00	\$260,625.00
17	Incentive	Motorola Legacy Customer Expiration Date: 12/31/2023	1		-\$52,404.04	-\$52,404.04	-\$52,404.04
Subtotal							\$734,668.21
Estimated Tax							\$65,331.79
<b>Grand Total</b>					<b>\$800,000.00(USD)</b>		

### Pricing Summary

	List Price	Sale Price
Upfront Costs for Hardware, Accessories and Implementation (if applicable), plus Subscription Fee	\$597,696.00	\$397,340.21
Year 2 Subscription Fee	\$105,415.00	\$84,332.00
Year 3 Subscription Fee	\$105,415.00	\$84,332.00
Year 4 Subscription Fee	\$105,415.00	\$84,332.00
Year 5 Subscription Fee	\$105,415.00	\$84,332.00
<b>Grand Total System Price</b>	<b>\$1,019,356.00</b>	<b>\$734,668.21</b>

### Notes:

- Additional information is required for one or more items on the quote for an order.
- This quote contains items with approved price exceptions applied against them.
- Unless otherwise noted in this quote / order, installation of equipment is not included.



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products.  
 Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 ~ #: 36-1115800



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 6, 2023	<b>FILE I.D.:</b>	FRD215
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	FIRE
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	N. JENNINGS
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 23-80 WITH LEXIPOL, LLC FOR CONTINUED MAINTENANCE OF THE FIRE DEPARTMENT'S POLICY AND PROCEDURES MANUAL, FIRE SERVICE DAILY TRAINING BULLETINS (DTB), AND DTB MANAGEMENT SERVICES		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 23-80 with Lexipol, LLC for continued maintenance of the Fire Department's Policy and Procedures Manual and fire service Daily Training Bulletins (DTB).

A copy of proposed Agreement No. 23-80 is attached for the City Council's review and consideration.

**BACKGROUND:** Lexipol was founded in 2003 by public safety experts to provide public safety agencies with policy management, online training, wellness resources, and grant assistance aimed at keeping personnel safe and healthy and reducing risk. Since then, Lexipol has grown to serve more than 8,100 agencies and municipalities and 2 million public safety and governmental professionals.

In January 2022, Lexipol, LLC implemented a Policy and Procedures Manual for the Fire Department, providing fully developed, constitutionally sound, state-specific fire service policies researched and written by subject-matter experts and public safety attorneys. These policies are based on the latest standards and nationwide best practices that incorporate state and federal laws and regulations where appropriate. If proposed Agreement No. 23-80 is approved, Lexipol's legal and content development teams would continue to update these policies by continuously reviewing state and federal laws and regulations, court decisions, and evolving best practices. Lexipol would also continue to provide fire procedures based on national best practices augmenting safe, effective, and consistent emergency responses and operations, including tactical and administrative procedures. Fire Department staff would continue to monitor updates for applicability, customize the updates if necessary, and issue the new updated Manual through Lexipol's Knowledge Management System (KMS)—a web-based delivery platform and mobile app. The KMS would continue to provide secure storage, easy access to all policies, and push updates to members of the Fire Department online, in which members would log in, review updates to the Policy Manual, and electronically accept the updates by the assigned deadline.

Staff would also like to continue the training program offered by Lexipol, LLC through Daily Training Bulletins (DTB). The DTB program is designed by a team of public safety attorneys and policy experts employed by Lexipol, LLC to continually monitor national and California-specific policy changes. The DTBs are used as a daily training exercise by employees of the Fire Department to reinforce their understanding of policies and procedures, help minimize risk, and increase the effectiveness of service to the community. DTBs help personnel learn and apply policy and procedure content through two-minute online training exercises, which are scenario-based that tie Department

policy to real-world applications. The training exercises can be completed via desktop or laptop computers or from smartphones, tablets, or other mobile devices such as the Mobile Data Computers installed in the Fire vehicles. On-line training makes it easy to track and report training hours, keeps personnel up-to-date on new laws and best practices, enhances safety, and assists with applying proper policy. Upon completing the training bulletins, a report shows completion by the agency member and the topic instructed.

Lexipol also currently provides a supplemental publication service, which electronically links Department-specific procedural or supplemental content to the Policy and Procedures Manual. This gives Fire Department staff the ability to access standard operating procedures, guidelines, training guides, or secondary policy manuals all in one place on Lexipol's online content delivery platform, KMS.

**FISCAL IMPACT:** The subscription services included in Agreement No. 23-80 with Lexipol, LLC are for five calendar years (2024 to 2028) and would cost \$8,358.56 for the first year. Future amounts will be budgeted in future years at a five percent increase each year. Included in the Fire Department's Fiscal Year 2023-24 Budget in the Special Contract Services Fund is \$8,500 to contract with Lexipol for these services.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 23-80 with Lexipol, LLC for continued maintenance of the Fire Department's Policy and Procedures Manual, fire service Daily Training Bulletins, and DTB management services.



MASTER SERVICE AGREEMENT

**Agency Name** Montclair Fire Department  
**Agency Address** 8901 Monte Vista Ave POB 2308  
Montclair, CA 91763  
**Attention** Chief David Pohl

**Lexipol's Address** 2611 Internet Boulevard, Suite 100  
Frisco, TX 75034

**Effective Date** INSERT EFFECTIVE DATE 1/1/2024

This Master Service Agreement (the "Agreement") is entered into by and between Lexipol, LLC, a Delaware limited liability company ("Lexipol"), which may include one or more Lexipol subsidiary entities, and the Agency identified above.

This Agreement consists of:

- (a) this **Cover Sheet**
- (b) **Exhibit A** - Selected Services and Associated Fees
- (c) **Exhibit B** - Terms and Conditions Specific to this Agreement

Each individual signing below represents and warrants that they have full and complete authority to bind the party on whose behalf they are signing to all terms and conditions contained in this Agreement.

**Montclair Fire Department**

**Lexipol, LLC**

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Print Name: Javier John Dutrey

Print Name: \_\_\_\_\_

Title: Mayor

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

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

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

**Attest:**

\_\_\_\_\_  
Andrea Myrick, City Clerk

**Approved as to Form:**

Javier John Dutrey

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

Exhibit A

Selected Services and Associated Fees

Agency is purchasing the following:

TERM ONE				
DESCRIPTION	TERM	UNIT PRICE	DISCOUNT	EXTENDED
Annual Fire Policy, DTB, SPS and Content Subscription	1/1/2024-12/31/2024	\$ 8,358.56	0%	\$ 8,358.56
				\$ -
				\$ -
				\$ -
				\$ -
<b>TERM ONE TOTAL</b>		<b>\$ 8,358.56</b>		<b>\$ 8,358.56</b>
<b>Term One Subscription Total</b>				<b>\$ 8,358.56</b>

TERM TWO				
DESCRIPTION	TERM	UNIT PRICE	DISCOUNT	EXTENDED
Annual Fire Policy, DTB, SPS and Content Subscription	1/1/2025-12/31/2025	\$ 8,776.49	0%	\$ 8,776.49
		\$ -	0%	\$ -
		\$ -	0%	\$ -
		\$ -	0%	\$ -
		\$ -	0%	\$ -
<b>TERM TWO TOTAL</b>		<b>\$ 8,776.49</b>		<b>\$ 8,776.49</b>
<b>Term Two Subscription Total</b>				<b>\$ 8,776.49</b>

TERM THREE TOTAL				
DESCRIPTION	TERM	UNIT PRICE	DISCOUNT	EXTENDED
Annual Fire Policy, DTB, SPS and Content Subscription	1/1/2026-12/31/2026	\$ 9,215.31	0%	\$ 9,215.31
		\$ -	0%	\$ -
		\$ -	0%	\$ -
		\$ -	0%	\$ -
		\$ -	0%	\$ -
<b>TERM THREE TOTAL</b>		<b>\$ 9,215.31</b>		<b>\$ 9,215.31</b>
<b>Term Three Subscription Total</b>				<b>\$ 9,215.31</b>

TERM FOUR TOTAL				
DESCRIPTION	TERM	UNIT PRICE	DISCOUNT	EXTENDED
Annual Fire Policy, DTB, SPS and Content Subscription	1/1/2027-1/1/2027	\$ 9,676.08	0%	\$ 9,676.08
		\$ -	0%	\$ -
		\$ -	0%	\$ -
		\$ -	0%	\$ -
		\$ -	0%	\$ -
<b>TERM FOUR TOTAL</b>		<b>\$ 9,676.08</b>		<b>\$ 9,676.08</b>
<b>Term Four Subscription Total</b>				<b>\$ 9,676.08</b>

TERM FIVE TOTAL				
DESCRIPTION	TERM	UNIT PRICE	DISCOUNT	EXTENDED
Annual Fire Policy, DTB, SPS and Content Subscription	1/1/2028-12/31/2028	\$ 10,159.88	0%	\$ 10,159.88
		\$ -	0%	\$ -
		\$ -	0%	\$ -
		\$ -	0%	\$ -
		\$ -	0%	\$ -
<b>TERM FIVE TOTAL</b>		<b>\$ 10,159.88</b>		<b>\$ 10,159.88</b>
<b>Term Five Subscription Total</b>				<b>\$ 10,159.88</b>



**Exhibit B**  
**Terms and Conditions of Service**

These Terms and Conditions of Service (the “Terms”) govern the rights and obligations of Lexipol and Agency under this Agreement. Lexipol and Agency may each be referred to herein as a “party” and collectively as the “parties.”

**1. Definitions.** Each of the following capitalized terms will have the meaning included in this Section 1. Other capitalized terms are defined within their respective sections, below.

**1.1 “Agency”** means the department, agency, office, organization, company, or other entity purchasing and/or otherwise subscribing to the Lexipol Services set forth in Exhibit A.

**1.2 “Agency Data”** means data, information, and content owned by Agency prior to the Effective Date, or which Agency provides during the Term of this Agreement for purposes of identifying authorized users, confirming agency or department information, or other purposes that are ancillary to receipt of the Service.

**1.3 “Agreement”** means the combination of the cover sheet (signature page); Exhibit A (“Selected Services and Associated Fees”); this Exhibit B; and any other documents attached hereto and expressly incorporated herein by reference.

**1.4 “Effective Date”** means the date specified on the cover sheet (signature page), or as otherwise expressly set forth and agreed upon by Lexipol and Agency in a writing and defined as the “Effective Date.”

**1.5 “Initial Term”** means the period commencing on the Effective Date and continuing for the length of time indicated on Exhibit A. If not so indicated, the default Initial Term is one (1) year from the Effective Date.

**1.6 “Lexipol Content”** means all content in any format including but not limited to: written content, images, videos, data, information, and software multimedia provided by Lexipol and/or its licensors via the Services.

**1.7 “Services”** means all products and services, including but not limited to all software subscriptions, professional services, and ancillary support services, as may be offered by Lexipol and/or its affiliates from time to time.

**2. Term; Renewal.** This Agreement becomes enforceable upon signature by Agency’s authorized representative, with an Effective Date as indicated on the cover page. Unless expressly stated in the “Custom Agreement Terms” section of Exhibit A, this Agreement shall automatically renew in successive one-year periods (each, a “Renewal Term”) on the anniversary of the Effective Date unless a party provides written notice of non-renewal to the other party at least sixty (60) days prior to such renewal. The Initial Term and all Renewal Terms collectively comprise the “Term” of this Agreement.

**3. Termination.**

**3.1 For Convenience; Non-Appropriation.** This Agreement may be terminated at any time for convenience (including due to lack of appropriation of funds) upon sixty (60) days written notice.<sup>1</sup>

**3.2 For Cause.** This Agreement may be terminated by either party, effective immediately, (a) in the event the other party fails to discharge any obligation, including payment obligations, or remedy any default hereunder for a period of more than thirty (30) calendar days after it has been provided written notice of such failure or default; or (b) in the event that the other party makes an assignment for the benefit of creditors or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to the bankruptcy laws of any applicable jurisdiction.

**3.3 Effect of Expiration or Termination.** Upon the expiration or termination of this Agreement for any reason, Agency’s access to Lexipol’s Services shall immediately cease unless Lexipol has, in its sole discretion, provided for their limited continuation. Termination or expiration of this Agreement shall not, however, relieve either party from any obligation or liability that has accrued under this Agreement prior to the date of such termination or expiration, including payment obligations.

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<sup>1</sup> Note: fees paid for Online Services are not eligible for refund, proration, or offset in the event of Agency’s termination for convenience as Online Services are delivered in full as of the Effective Date. Fees pre-paid for Professional Services are eligible for refund, proration, or offset to the extent such Services have not been delivered or utilized by Agency. Fees both Online and Professional Services are eligible for refund, proration or offset on the event of Agency’s termination for cause.

4. **Fees; Invoicing.** Lexipol will invoice Agency at the commencement of the Initial Term and at the commencement of each Renewal Term. Agency agrees to remit payment within thirty (30) calendar days following receipt of Lexipol's invoice. Payments may be made electronically or by mailing a check to Lexipol at 2611 Internet Blvd, Ste. 100, Frisco, TX 75034 (Attn: Accounts Receivable). Lexipol reserves the right to increase fees for Renewal Terms occurring after those set forth in Exhibit A. All fee amounts stated in Exhibit A are exclusive of taxes and similar fees now in force or enacted in the future. Agency is responsible for all third-party fees (e.g., wire fees, bank fees, credit card processing fees). Unless otherwise exempt, Agency is responsible for and will pay in full all taxes related to its receipt of Lexipol's Services, except for taxes based on Lexipol's net income.

5. **Terms of Service.** The following terms and conditions govern access to and use of Lexipol's Services:

5.1 **Online Services.** Lexipol's Online Services include all cloud-based services offered by Lexipol and its partners, affiliates, and licensors. Online Services include, without limitation, Lexipol's Knowledge Management System ("KMS") for policy, Learning Management System ("LMS")<sup>2</sup>, GrantFinder, and Cordico wellness applications (collectively, the "Online Services"). Lexipol's Online Services are proprietary and, where applicable, protected under U.S. copyright, trademark, patent, and/or other applicable laws. By subscribing to Lexipol's Online Services, Agency receives a personal, limited, non-sublicensable and non-assignable license to access and use such Services in conformity with these Terms.

5.2 **Professional Services.** Lexipol's Professional Services include all Services that are not part of Lexipol's Online Services, and which require the professional expertise of Lexipol personnel and/or contractors, including implementation support for policy manuals, technical support for online learning, accreditation consulting, grant writing and consulting<sup>3</sup>, and projects requiring regular input from Lexipol's subject matter experts (collectively, "Professional Services"). Lexipol shall provide all Professional Services in accordance with industry best practices.

5.3 **Intellectual Property; License.** Lexipol's Services and all Lexipol Content are the proprietary intellectual property of Lexipol and/or its licensors, and are protected where applicable by copyright, trademark, and patent laws. Nothing contained in this Agreement or these Terms shall be construed as conferring any right of ownership or use to Lexipol's Services or Lexipol Content. Notwithstanding the foregoing, Agency may, in limited circumstances (e.g. creation, modification, and updating of Agency's policy manuals) create Derivative Works based on Lexipol's Content and shall retain a personal, non-commercial, non-sublicensable and non-assignable license to use such Derivative Works, including beyond the expiration or termination of this Agreement. "Derivative Works" include all work product based on or which incorporates any Lexipol Content, including any revision, modification, abridgement, condensation, expansion, compilation, or any other form in which Lexipol Content, or any portion thereof, is recast, transformed, or adapted. Agency acknowledges and agrees that Lexipol shall have no responsibility to update Lexipol Content used by Agency beyond the Term of this Agreement and shall have no liability whatsoever for Agency's creation or use of Derivative Works.

5.4 **Account Security.** Access to Lexipol's Services is personal and unique to Agency. Agency shall not assign or otherwise transfer any such rights to any other person or entity. Except as set forth herein, Agency remains responsible for maintaining the security and confidentiality of Agency's usernames and passwords and the security of Agency's accounts. Agency will immediately notify Lexipol if Agency becomes aware that any person or entity other than authorized Agency personnel has used Agency's account or Agency's usernames and/or passwords.

5.5 **Agency Data.** Lexipol will use commercially reasonable efforts to ensure the security of all Agency Data. Lexipol's Services use the Secure Socket Layer (SSL) protocol, which encrypts information as it travels between Lexipol and Agency. However, data transmission on the internet is not always 100% secure and Lexipol cannot and does not warrant that information Agency transmits to or through Lexipol or the Services is 100% secure. Lexipol's use of Agency Data is limited to providing the Services, retaining records in the regular course of business, and complying with valid legal obligations.

6. **Confidentiality.** During the Term of this Agreement, each party may disclose information to the other party that would be reasonably considered confidential, including Agency Data (collectively, "Confidential Information"). The receiving party will: (a) limit disclosure of any such Confidential Information to the receiving party's authorized representatives; (b) advise its personnel and agents of the confidential nature of the Confidential Information and of the obligations set forth in this Agreement; and (c) not disclose any Confidential Information to any third party unless expressly authorized by the disclosing party. A party may disclose Confidential Information pursuant to a valid governmental, judicial, or administrative order, subpoena, regulatory request, Freedom of

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<sup>2</sup> LMS Services include, but are not limited to: PoliceOne Academy, FireRescue1 Academy, EMS1 Academy, Corrections1 Academy, and LocalGovU.

<sup>3</sup> Agency is responsible for submitting all information reasonably required by Lexipol's grant writing team in a timely manner and always at least five (5) days prior to each grant application submission date. Agency is responsible submissions of final grant applications by grant deadlines. Failure to timely submit required materials to Lexipol's grant writing team will result in rollover of project fees to next grant application cycle, not a refund of fees. Requests for cancellation of grant writing services which have already begun will result in a 50% fee of the total value of the service.

Information Act (FOIA) request, Public Records Act (PRA) request, or equivalent, provided that the disclosing party promptly notifies, to the extent practicable, the other party in writing prior to such disclosure so that the other party may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information. Each party shall be responsible for any breach of this section by any of such party's personnel or agents. The parties may also disclose the fact that they are working together, including for promotional purposes, and include each other's name and logo(s) for such purposes.

**7. Warranty.** LEXIPOL WARRANTS THAT ITS SERVICES ARE PROVIDED IN A PROFESSIONAL AND WORKMANLIKE MANNER IN ACCORDANCE WITH PREVAILING INDUSTRY STANDARDS, THAT THEY SHALL BE FIT FOR THE PURPOSES SET FORTH HEREIN, AND THAT SUCH SERVICES SHALL NOT INFRINGE THE RIGHTS OR INTELLECTUAL PROPERTY OF THIRD PARTIES. NOTWITHSTANDING THE FOREGOING, LEXIPOL'S SERVICES ARE PROVIDED "AS-IS" AND LEXIPOL DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AS WELL AS ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

**8. Indemnification.** Lexipol will indemnify, defend, and hold harmless Agency from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty, or expense arising directly and solely out of Lexipol's gross negligence or willful misconduct in providing Services pursuant to this Agreement. Agency shall likewise indemnify, defend, and hold Lexipol harmless from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty, or expense arising out of acts or omissions by Agency, Agency's personnel, or any party acting on Agency's behalf.

**9. Limitation of Liability.** Each party's cumulative liability resulting from any claims, demands, or actions arising out of or relating to this Agreement, the Services, or the use of any Lexipol Content shall not exceed the larger of: the aggregate amount of fees paid to Lexipol by Agency during the twelve-month period immediately prior to the assertion of such claim, demand, or action; or \$10,000.00. In no event shall either party be liable for any indirect, incidental, consequential, special, exemplary damages, or lost profits, even if such party has been advised of the possibility of such damages.

**10. General Terms.**

**10.1 Entire Agreement.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements with respect to the subject matter hereof. No representation, promise, or statement of intention has been made by either party that is not embodied herein. Terms and conditions set forth in any purchase order or other document that are inconsistent with or in addition to the terms and conditions set forth in this Agreement are rejected in their entirety and void, regardless of when received, without further action. No amendment, modification, or supplement to this Agreement shall be binding unless it is made in writing and signed by both parties.

**10.2 General Interpretation.** The terms of this Agreement have been chosen by the parties hereto to express their mutual intent. This Agreement shall be construed equally against each party without regard to any presumption or rule requiring construction against the party who drafted this Agreement or any portion thereof.

**10.3 Invalidity of Provisions.** Each provision contained in this Agreement is distinct and severable. A declaration of invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision. Should any provision or portion thereof be held to be invalid or unenforceable, the parties agree that the reviewing authority should endeavor to give effect to the parties' intention as reflected in such provision to the maximum extent possible.

**10.4 Compliance; Governing Law.** Each party shall maintain compliance with all applicable laws, rules, regulations, and orders relating to its obligations pursuant to this Agreement. This Agreement shall be construed in accordance with, and governed by, the laws of the state in which Agency is located, without giving effect to any choice of law doctrine that would cause the law of any other jurisdiction to apply.

**10.5 Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other. Notwithstanding the foregoing, this Agreement may be assumed by a party's successor in interest through merger, acquisition, or consolidation without additional notice or consent.

**10.6 Waiver.** Either party's failure to exercise, or delay in exercising, any right or remedy under any provision of this Agreement shall not constitute a waiver of such right or remedy.

**10.7 Notices.** Any notice required hereunder shall be in writing and shall be made by certified mail (postage prepaid) to known, authorized recipients at such address as each party may indicate from time to time. In addition, electronic mail (email) to established and authorized recipients is acceptable when acknowledged by the receiving party.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 6, 2023	<b>FILE I.D.:</b>	PDT175
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	M. BUTLER
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 23-81 WITH LEXIPOL, LLC FOR CONTINUED MAINTENANCE OF THE POLICE DEPARTMENT'S POLICY AND PROCEDURES MANUAL, LAW ENFORCEMENT DAILY TRAINING BULLETINS (DTB), AND DTB MANAGEMENT SERVICES		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 23-81 with Lexipol, LLC for continued maintenance of the Police Department's Policy and Procedures Manual, Law Enforcement Daily Training Bulletins (DTB), and DTB management services.

A copy of proposed Agreement No. 23-81 is attached for the City Council's review and consideration.

**BACKGROUND:** The Police Department has utilized Lexipol, LLC for continued maintenance of the Police Department's Policy and Procedures Manual for 15 years and would like to enter into a five-year contract. Lexipol provides fully developed, state-specific policies researched and written by subject-matter experts and vetted by attorneys. These policies are based on nationwide standards and best practices while also incorporating state and federal laws and regulations where appropriate. Lexipol's legal and content development teams follow a rigorous multi-step process to evaluate thousands of legislative changes annually and ensure changes are made to the Police Department's Policy and Procedures Manual commensurate with the changes. This service is utilized in the continual updating of the Department's over-750-page Policy and Procedures Manual. Command Staff monitors updates to the Manual recommended by Lexipol, analyzes the updates for applicability, customizes the updates if necessary, and issues the new updated Manual through Lexipol's Knowledge Management System (KMS)—a web-based delivery platform and mobile app. The KMS pushes updates to members of the Police Department online. Members must log in, review updates to the Manual, and electronically accept the updates by the assigned deadline.

Beginning in January 2020, Lexipol, LLC started providing an additional training program through Daily Training Bulletins (DTB). The DTB program is designed by the team of public safety lawyers and policy experts employed by Lexipol, LLC to continually monitor national and California-specific policy changes. The DTBs are utilized as a daily training exercise by employees of the Police Department to reinforce the understanding of policies and procedures, help minimize risk, and increase the effectiveness of service to the community. DTBs are designed to help personnel learn and apply policy and procedure content through two-minute online training exercises, which are scenario-based and tie Department policies to real-world applications. These training exercises can be completed via desktop or laptop computers, smartphones, tablets, or other mobile devices such as the Mobile Data Computers installed in the Police vehicles. Upon completion of the DTBs, a report shows completion by the agency member and the topic instructed. Command Staff has found DTBs to be an effective tool to assist with the proper application of policies and would like to continue this service.

Lexipol, LLC has also been providing DTB management services. This service customizes the DTB scenarios based on the changes made by Command Staff during the policy update process. This service analyzes DTB master content compared to Montclair Police Department's customized policies, adapts monthly DTB packages to fit the parameters of the Department's policy content, issues the monthly DTB training packages, and customizes the DTB completion reports as well as agency-specific year-end data analysis. Without DTB management service, these procedures would have to be completed by a member of Command Staff, who has found this service to be a vital component of the DTB program and would like to continue the service.

**FISCAL IMPACT:** The subscription services included in Agreement No. 23-81 with Lexipol, LLC are for five years beginning in 2024 for \$14,582.11. There would be a 5 percent increase each subsequent year for a total of \$80,575.38 for the term of the agreement. Included in the Police Department's Fiscal Year 2023-24 Budget in Special Contract Services is \$14,600 for policy and procedural manual updates, DTBs, and DTB management services from the SB 509 Fund, which covers the subscription services for 2024. By entering into a five-year contract, the City would be locked in at a 5 percent increase each year versus a 6-8 percent increase, which has been standard for the past few years. Staff would include the cost of Lexipol services as outlined in Agreement No. 23-81 in the next four budgets.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 23-81 with Lexipol, LLC for continued maintenance of the Police Department's Policy and Procedures Manual, Law Enforcement Daily Training Bulletins, and DTB management services.



MASTER SERVICE AGREEMENT

Agency's Name: Montclair Police Department (CA)  
Agency's Address: 4870 Arrow Hwy POB 2308  
Montclair, CA 91763

Attention:

Sales Rep: Theresa Maza  
Lexipol's Address: 2611 Internet Boulevard, Suite 100  
Frisco, Texas 75034

Effective Date: \_\_\_\_\_  
(to be completed by Lexipol upon receipt of signed Agreement)

This Master Service Agreement (the "Agreement") is entered into by and between Lexipol, LLC, a Delaware limited liability company ("Lexipol"), and the department, entity, or organization referenced above ("Agency"). This Agreement consists of:

- (a) this **Cover Sheet**
- (b) **Exhibit A** - Selected Services and Associated Fees
- (c) **Exhibit B** - Terms and Conditions of Service

Each individual signing below represents and warrants that they have full and complete authority to bind the party on whose behalf they are signing to all terms and conditions contained in this Agreement.

**Montclair Police Department (CA)**

**Lexipol, LLC**

Signature: \_\_\_\_\_  
Print Name: Javier John Dutrey  
Title: Mayor  
Date Signed: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Andrea Myrick, City Clerk

**Approved as to Form:**

Exhibit A

Selected Services and Associated Fees

Agency is purchasing the following:

<b>TERM ONE</b>				
DESCRIPTION	TERM	UNIT PRICE	DISCOUNT	EXTENDED
Annual Law Enforcement Policy & DTB Subscription	1/1/2024-12/31/2024	\$ 11,293.51	0%	\$ 11,293.51
DTB Management	1/1/2024-12/31/2024	\$ 3,288.60		\$ 3,288.60
				\$ -
				\$ -
				\$ -
<b>TERM ONE TOTAL</b>		<b>\$ 14,582.11</b>		<b>\$ 14,582.11</b>
<b>Term One Subscription Total</b>				<b>\$ 14,582.11</b>

<b>TERM TWO</b>				
DESCRIPTION	TERM	UNIT PRICE	DISCOUNT	EXTENDED
Annual Law Enforcement Policy & DTB Subscription	1/1/2025-12/31/2025	\$ 11,858.19	0%	\$ 11,858.19
DTB Management	1/1/2025-12/31/2025	\$ 3,453.03	0%	\$ 3,453.03
		\$ -	0%	\$ -
		\$ -	0%	\$ -
		\$ -	0%	\$ -
<b>TERM TWO TOTAL</b>		<b>\$ 15,311.22</b>		<b>\$ 15,311.22</b>
<b>Term Two Subscription Total</b>				<b>\$ 15,311.22</b>

<b>TERM THREE TOTAL</b>				
DESCRIPTION	TERM	UNIT PRICE	DISCOUNT	EXTENDED
Annual Law Enforcement Policy & DTB Subscription	1/1/2026-12/31/2026	\$ 12,451.09	0%	\$ 12,451.09
DTB Management	1/1/2026-12/31/2026	\$ 3,625.68	0%	\$ 3,625.68
		\$ -	0%	\$ -
		\$ -	0%	\$ -
		\$ -	0%	\$ -
<b>TERM THREE TOTAL</b>		<b>\$ 16,076.78</b>		<b>\$ 16,076.78</b>
<b>Term Three Subscription Total</b>				<b>\$ 16,076.78</b>

<b>TERM FOUR TOTAL</b>				
DESCRIPTION	TERM	UNIT PRICE	DISCOUNT	EXTENDED
Annual Law Enforcement Policy & DTB Subscription	1/1/2027-1/1/2027	\$ 13,073.65	0%	\$ 13,073.65
DTB Management	1/1/2027-1/1/2027	\$ 3,806.97	0%	\$ 3,806.97
		\$ -	0%	\$ -
		\$ -	0%	\$ -
		\$ -	0%	\$ -
<b>TERM FOUR TOTAL</b>		<b>\$ 16,880.62</b>		<b>\$ 16,880.62</b>
<b>Term Four Subscription Total</b>				<b>\$ 16,880.62</b>

<b>TERM FIVE TOTAL</b>				
DESCRIPTION	TERM	UNIT PRICE	DISCOUNT	EXTENDED
Annual Law Enforcement Policy & DTB Subscription	1/1/2028-12/31/2028	\$ 13,727.33	0%	\$ 13,727.33
DTB Management	1/1/2028-12/31/2028	\$ 3,997.31	0%	\$ 3,997.31
		\$ -	0%	\$ -
		\$ -	0%	\$ -
		\$ -	0%	\$ -
<b>TERM FIVE TOTAL</b>		<b>\$ 17,724.65</b>		<b>\$ 17,724.65</b>
<b>Term Five Subscription Total</b>				<b>\$ 17,724.65</b>

**Exhibit B**  
**Terms and Conditions of Service**

These Terms and Conditions of Service (the “Terms”) govern the rights and obligations of Lexipol and Agency under this Agreement. Lexipol and Agency may each be referred to herein as a “party” and collectively as the “parties.”

**1. Definitions.** Each of the following capitalized terms will have the meaning included in this Section 1. Other capitalized terms are defined within their respective sections, below.

**1.1 “Agency”** means the department, agency, office, organization, company, or other entity purchasing and/or otherwise subscribing to the Lexipol Services set forth in Exhibit A.

**1.2 “Agency Data”** means data, information, and content owned by Agency prior to the Effective Date, or which Agency provides during the Term of this Agreement for purposes of identifying authorized users, confirming agency or department information, or other purposes that are ancillary to receipt of the Service.

**1.3 “Agreement”** means the combination of the cover sheet (signature page); Exhibit A (“Selected Services and Associated Fees”); this Exhibit B; and any other documents attached hereto and expressly incorporated herein by reference.

**1.4 “Effective Date”** means the date specified on the cover sheet (signature page), or as otherwise expressly set forth and agreed upon by Lexipol and Agency in a writing and defined as the “Effective Date.”

**1.5 “Initial Term”** means the period commencing on the Effective Date and continuing for the length of time indicated on Exhibit A. If not so indicated, the default Initial Term is one (1) year from the Effective Date.

**1.6 “Lexipol Content”** means all content in any format including but not limited to: written content, images, videos, data, information, and software multimedia provided by Lexipol and/or its licensors via the Services.

**1.7 “Services”** means all products and services, including but not limited to all software subscriptions, professional services, and ancillary support services, as may be offered by Lexipol and/or its affiliates from time to time.

**2. Term; Renewal.** This Agreement becomes enforceable upon signature by Agency’s authorized representative, with an Effective Date as indicated on the cover page. Unless expressly stated in the “Custom Agreement Terms” section of Exhibit A, this Agreement shall automatically renew in successive one-year periods (each, a “Renewal Term”) on the anniversary of the Effective Date unless a party provides written notice of non-renewal to the other party at least sixty (60) days prior to such renewal. The Initial Term and all Renewal Terms collectively comprise the “Term” of this Agreement.

**3. Termination.**

**3.1 For Convenience; Non-Appropriation.** This Agreement may be terminated at any time for convenience (including due to lack of appropriation of funds) upon sixty (60) days written notice.<sup>1</sup>

**3.2 For Cause.** This Agreement may be terminated by either party, effective immediately, (a) in the event the other party fails to discharge any obligation, including payment obligations, or remedy any default hereunder for a period of more than thirty (30) calendar days after it has been provided written notice of such failure or default; or (b) in the event that the other party makes an assignment for the benefit of creditors or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to the bankruptcy laws of any applicable jurisdiction.

**3.3 Effect of Expiration or Termination.** Upon the expiration or termination of this Agreement for any reason, Agency’s access to Lexipol’s Services shall immediately cease unless Lexipol has, in its sole discretion, provided for their limited continuation. Termination or expiration of this Agreement shall not, however, relieve either party from any obligation or liability that has accrued under this Agreement prior to the date of such termination or expiration, including payment obligations.

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<sup>1</sup> Note: fees paid for Online Services are not eligible for refund, proration, or offset in the event of Agency’s termination for convenience as Online Services are delivered in full as of the Effective Date. Fees pre-paid for Professional Services are eligible for refund, proration, or offset to the extent such Services have not been delivered or utilized by Agency. Fees both Online and Professional Services are eligible for refund, proration or offset on the event of Agency’s termination for cause.



4. **Fees; Invoicing.** Lexipol will invoice Agency at the commencement of the Initial Term and at the commencement of each Renewal Term. Agency agrees to remit payment within thirty (30) calendar days following receipt of Lexipol's invoice. Payments may be made electronically or by mailing a check to Lexipol at 2611 Internet Blvd, Ste. 100, Frisco, TX 75034 (Attn: Accounts Receivable). Lexipol reserves the right to increase fees for Renewal Terms occurring after those set forth in Exhibit A. All fee amounts stated in Exhibit A are exclusive of taxes and similar fees now in force or enacted in the future. Agency is responsible for all third-party fees (e.g., wire fees, bank fees, credit card processing fees). Unless otherwise exempt, Agency is responsible for and will pay in full all taxes related to its receipt of Lexipol's Services, except for taxes based on Lexipol's net income.

5. **Terms of Service.** The following terms and conditions govern access to and use of Lexipol's Services:

5.1 **Online Services.** Lexipol's Online Services include all cloud-based services offered by Lexipol and its partners, affiliates, and licensors. Online Services include, without limitation, Lexipol's Knowledge Management System ("KMS") for policy, Learning Management System ("LMS")<sup>2</sup>, GrantFinder, and Cordico wellness applications (collectively, the "Online Services"). Lexipol's Online Services are proprietary and, where applicable, protected under U.S. copyright, trademark, patent, and/or other applicable laws. By subscribing to Lexipol's Online Services, Agency receives a personal, limited, non-sublicensable and non-assignable license to access and use such Services in conformity with these Terms.

5.2 **Professional Services.** Lexipol's Professional Services include all Services that are not part of Lexipol's Online Services, and which require the professional expertise of Lexipol personnel and/or contractors, including implementation support for policy manuals, technical support for online learning, accreditation consulting, grant writing and consulting<sup>3</sup>, and projects requiring regular input from Lexipol's subject matter experts (collectively, "Professional Services"). Lexipol shall provide all Professional Services in accordance with industry best practices.

5.3 **Intellectual Property; License.** Lexipol's Services and all Lexipol Content are the proprietary intellectual property of Lexipol and/or its licensors, and are protected where applicable by copyright, trademark, and patent laws. Nothing contained in this Agreement or these Terms shall be construed as conferring any right of ownership or use to Lexipol's Services or Lexipol Content. Notwithstanding the foregoing, Agency may, in limited circumstances (e.g. creation, modification, and updating of Agency's policy manuals) create Derivative Works based on Lexipol's Content and shall retain a personal, non-commercial, non-sublicensable and non-assignable license to use such Derivative Works, including beyond the expiration or termination of this Agreement. "Derivative Works" include all work product based on or which incorporates any Lexipol Content, including any revision, modification, abridgement, condensation, expansion, compilation, or any other form in which Lexipol Content, or any portion thereof, is recast, transformed, or adapted. Agency acknowledges and agrees that Lexipol shall have no responsibility to update Lexipol Content used by Agency beyond the Term of this Agreement and shall have no liability whatsoever for Agency's creation or use of Derivative Works.

5.4 **Account Security.** Access to Lexipol's Services is personal and unique to Agency. Agency shall not assign or otherwise transfer any such rights to any other person or entity. Except as set forth herein, Agency remains responsible for maintaining the security and confidentiality of Agency's usernames and passwords and the security of Agency's accounts. Agency will immediately notify Lexipol if Agency becomes aware that any person or entity other than authorized Agency personnel has used Agency's account or Agency's usernames and/or passwords.

5.5 **Agency Data.** Lexipol will use commercially reasonable efforts to ensure the security of all Agency Data. Lexipol's Services use the Secure Socket Layer (SSL) protocol, which encrypts information as it travels between Lexipol and Agency. However, data transmission on the internet is not always 100% secure and Lexipol cannot and does not warrant that information Agency transmits to or through Lexipol or the Services is 100% secure. Lexipol's use of Agency Data is limited to providing the Services, retaining records in the regular course of business, and complying with valid legal obligations.

6. **Confidentiality.** During the Term of this Agreement, each party may disclose information to the other party that would be reasonably considered confidential, including Agency Data (collectively, "Confidential Information"). The receiving party will: (a) limit disclosure of any such Confidential Information to the receiving party's authorized representatives; (b) advise its personnel and agents of the confidential nature of the Confidential Information and of the obligations set forth in this Agreement; and (c) not disclose any Confidential Information to any third party unless expressly authorized by the disclosing party. A party may disclose Confidential Information pursuant to a valid governmental, judicial, or administrative order, subpoena, regulatory request, Freedom of

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<sup>2</sup> LMS Services include, but are not limited to: PoliceOne Academy, FireRescue1 Academy, EMS1 Academy, Corrections1 Academy, and LocalGovU.

<sup>3</sup> Agency is responsible for submitting all information reasonably required by Lexipol's grant writing team in a timely manner and always at least five (5) days prior to each grant application submission date. Agency is responsible submissions of final grant applications by grant deadlines. Failure to timely submit required materials to Lexipol's grant writing team will result in rollover of project fees to next grant application cycle, not a refund of fees. Requests for cancellation of grant writing services which have already begun will result in a 50% fee of the total value of the service.

Information Act (FOIA) request, Public Records Act (PRA) request, or equivalent, provided that the disclosing party promptly notifies, to the extent practicable, the other party in writing prior to such disclosure so that the other party may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information. Each party shall be responsible for any breach of this section by any of such party's personnel or agents. The parties may also disclose the fact that they are working together, including for promotional purposes, and include each other's name and logo(s) for such purposes.

**7. Warranty.** LEXIPOL WARRANTS THAT ITS SERVICES ARE PROVIDED IN A PROFESSIONAL AND WORKMANLIKE MANNER IN ACCORDANCE WITH PREVAILING INDUSTRY STANDARDS, THAT THEY SHALL BE FIT FOR THE PURPOSES SET FORTH HEREIN, AND THAT SUCH SERVICES SHALL NOT INFRINGE THE RIGHTS OR INTELLECTUAL PROPERTY OF THIRD PARTIES. NOTWITHSTANDING THE FOREGOING, LEXIPOL'S SERVICES ARE PROVIDED "AS-IS" AND LEXIPOL DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AS WELL AS ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

**8. Indemnification.** Lexipol will indemnify, defend, and hold harmless Agency from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty, or expense arising directly and solely out of Lexipol's gross negligence or willful misconduct in providing Services pursuant to this Agreement. Agency shall likewise indemnify, defend, and hold Lexipol harmless from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty, or expense arising out of acts or omissions by Agency, Agency's personnel, or any party acting on Agency's behalf.

**9. Limitation of Liability.** Each party's cumulative liability resulting from any claims, demands, or actions arising out of or relating to this Agreement, the Services, or the use of any Lexipol Content shall not exceed the larger of: the aggregate amount of fees paid to Lexipol by Agency during the twelve-month period immediately prior to the assertion of such claim, demand, or action; or \$10,000.00. In no event shall either party be liable for any indirect, incidental, consequential, special, exemplary damages, or lost profits, even if such party has been advised of the possibility of such damages.

**10. General Terms.**

**10.1 Entire Agreement.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements with respect to the subject matter hereof. No representation, promise, or statement of intention has been made by either party that is not embodied herein. Terms and conditions set forth in any purchase order or other document that are inconsistent with or in addition to the terms and conditions set forth in this Agreement are rejected in their entirety and void, regardless of when received, without further action. No amendment, modification, or supplement to this Agreement shall be binding unless it is made in writing and signed by both parties.

**10.2 General Interpretation.** The terms of this Agreement have been chosen by the parties hereto to express their mutual intent. This Agreement shall be construed equally against each party without regard to any presumption or rule requiring construction against the party who drafted this Agreement or any portion thereof.

**10.3 Invalidity of Provisions.** Each provision contained in this Agreement is distinct and severable. A declaration of invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision. Should any provision or portion thereof be held to be invalid or unenforceable, the parties agree that the reviewing authority should endeavor to give effect to the parties' intention as reflected in such provision to the maximum extent possible.

**10.4 Compliance; Governing Law.** Each party shall maintain compliance with all applicable laws, rules, regulations, and orders relating to its obligations pursuant to this Agreement. This Agreement shall be construed in accordance with, and governed by, the laws of the state in which Agency is located, without giving effect to any choice of law doctrine that would cause the law of any other jurisdiction to apply.

**10.5 Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other. Notwithstanding the foregoing, this Agreement may be assumed by a party's successor in interest through merger, acquisition, or consolidation without additional notice or consent.

**10.6 Waiver.** Either party's failure to exercise, or delay in exercising, any right or remedy under any provision of this Agreement shall not constitute a waiver of such right or remedy.

**10.7 Notices.** Any notice required hereunder shall be in writing and shall be made by certified mail (postage prepaid) to known, authorized recipients at such address as each party may indicate from time to time. In addition, electronic mail (email) to established and authorized recipients is acceptable when acknowledged by the receiving party.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 6, 2023	<b>FILE I.D.:</b>	GRF050
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	5	<b>PREPARER:</b>	M. BUTLER

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 23-82 WITH GRAFFITI TRACKER INC. FOR CONTINUED USE OF ITS DATABASE TO TRACK AND ANALYZE GRAFFITI, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A \$3,300 APPROPRIATION FROM THE PROP 30/AB 109 FUND FOR COSTS ASSOCIATED WITH AGREEMENT NO. 23-82

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 23-82 with Graffiti Tracker Inc. for continued use of its database to track and analyze graffiti and to authorize a \$3,300 appropriation from the Prop 30/AB 109 Fund to pay the costs associated with the Agreement.

A copy of proposed Agreement No. 23-82 is attached for the City Council's review and consideration.

**BACKGROUND:** Graffiti has long been one of the most common urban problems threatening the vitality and beauty of cities across the country and continues to be a major concern for the City of Montclair.

Since 2007, Graffiti Tracker Inc. has provided City personnel with the tools needed to reduce graffiti vandalism. The company assisted the City in implementing a graffiti protocol that continues to provide a graffiti database, analyses, and tracking to reduce graffiti vandalism further. Graffiti Tracker utilizes cameras equipped with Global Positioning System technology. The City's graffiti abatement crews take photographs of graffiti, which they submit to Graffiti Tracker, where they are analyzed and categorized for reference. The result of the analysis is then stored in a web-based graffiti tracking system. City personnel is permitted unlimited searches of the organized database to determine patterns of graffiti incidents, such as most active vandals and gangs, rising tension between rival gangs, and frequently hit areas or "hot spots." Since the program is web-based, there is no need for software installation or restrictions on the number of system users.

**FISCAL IMPACT:** If authorized by the City Council, funding for Agreement No. 23-82 would result in an appropriation and expenditure from the Prop 30/AB 109 Fund (1141) in the amount of \$3,300.

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

1. Approve Agreement No. 23-82 with Graffiti Tracker Inc. for continued use of its database to track and analyze graffiti, subject to any revisions deemed necessary by the City Attorney; and
2. Authorize a \$3,300 appropriation from the Prop 30/AB 109 Fund for costs associated with Agreement No. 23-82.

## PROFESSIONAL SERVICES AGREEMENT

(City of Montclair and Graffiti Tracker Inc.)

**THIS PROFESSIONAL SERVICES AGREEMENT** is made as of January 1, 2024 by and between the City of Montclair, (“Agency”), and Graffiti Tracker Inc. (“Contractor”).

### RECITALS

1. Agency has determined that it requires professional services from a Contractor to provide graffiti analysis and tracking services for the Agency.
2. Agency desires to retain Contractor, as an independent contractor to provide such services on an as needed basis.
3. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

**NOW, THEREFORE**, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

#### **1. Contractor’s Services.**

- a. **Scope and Level of Services.** The nature, scope, and level of the specific services to be performed by Contractor are as set forth in Exhibit A, attached to this Agreement and incorporated herein as though set forth in full. Agency is retaining Contractor pursuant to this Agreement on a non-exclusive basis and reserves the right to retain other professionals to perform similar service if Agency determines such services are needed.
  - b. **Time of Performance.** The services shall be performed in a timely manner and on a regular basis in accordance with the written instruction of the Contract Administrator. Time is of the essence in the performance of this Agreement.
2. **Standard of Care.** As a material inducement to Agency to enter into this Agreement, Contractor hereby represents and warrants that it has the professional expertise and experience necessary to undertake the services to be provided herein.
  3. **Compliance with Law.** All services rendered hereunder by Contractor shall be provided

in accordance with all ordinances, resolutions, statutes, rules, and regulations of Agency and any federal, state or local governmental agency having jurisdiction in effect at the time service is rendered.

4. **Term of Agreement.** This Agreement is effective on the date set forth in the initial paragraph of this Agreement and shall remain in effect for a period of 12 months, unless earlier terminated pursuant to Section 14.
5. **Compensation.** Agency agrees to compensate Contractor for its services according to the fee and payment schedule set forth in Exhibit B, attached hereto and incorporated herein as though set forth in full. In no event shall the total compensation and costs payable to Contractor under this Agreement exceed the sum of three thousand three hundred (\$3,300.00) unless specifically approved by the City Council. Agency agrees that services may not begin until first payment is received.
6. **Ownership of Work Product.** All reports, documents or other written material developed by Contractor in the performance of this Agreement shall be and remain the property of Agency without restriction or limitation upon its use or dissemination by Agency.
7. **Representatives.**
  - a. **Project Manager.** The Project Manager for the services required under this Agreement is hereby designated as Timothy M. Kephart who shall be the representative of Contractor authorized to act in its behalf with respect to the services specified herein. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Project Manager were a substantial inducement for Agency to enter into this Agreement. Therefore, the foregoing Project Manager shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. Contractor may not change the foregoing Project Manager without the express written approval of Agency.
  - b. **Contract Administrator.** The Contract Administrator and Agency's representative shall be the Chief of Police, or in his/her absence, an individual designated in writing by the Contract Administrator. It shall be Contractor's responsibility to assure that the Contract Administrator is kept informed of the progress of the performance of the services, and Contractor shall refer any decisions that must be made by Agency to the Contract Administrator. Unless otherwise specified herein, any approval of Agency required hereunder shall mean the approval of the Contract Administrator.

8. **Standard of Performance.** Contractor shall perform all work to the highest professional standards and in a manner reasonably satisfactory to Agency. Contractor hereby covenants that it shall follow the highest professional standards in performing all services required hereunder.
9. **Status as Independent Contractor.** Contractor is, and shall at all times remain as to Agency, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of Agency or otherwise act on behalf of Agency as an agent. Neither Agency nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner, employees of Agency. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Agreement, and to indemnify and hold Agency harmless from any and all taxes, assessments, penalties, and interest asserted against Agency by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor further agrees to indemnify and hold Agency harmless from any failure of Contractor to comply with applicable workers' compensation laws. Agency shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to Agency from Contractor as a result of Contractor's failure to promptly pay to Agency any reimbursement or indemnification arising under this section.
10. **Confidentiality.** Agency agrees not to use any intellectual property or information related to the Graffiti Tracker system for purposes of development or competition of another Graffiti Tracker system. Upon request, all Agency data shall be returned to Agency upon the termination of this Agreement. Contractor's covenant under this section shall survive the termination of this Agreement.
11. **Conflict of Interest.** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Contractor under this Agreement, or which would conflict in any manner with the performance of its services hereunder.
12. **Indemnification.** Contractor agrees to indemnify, hold harmless and defend Agency and the Redevelopment Agency, and their respective officers, employees, volunteers, and agents serving as independent contractors in the role of Agency or Agency officials, (collectively, "Indemnities"), from any claim, demand, damage, liability, loss, cost or expense, for any damage whatsoever, including but not limited to death or injury to any person and injury to any property, resulting from willful misconduct, negligent acts,

errors or omissions of Contractor or any of its officers, employees, or agents.

- a. Agency does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by Agency, or the deposit with Agency, of any insurance policy or certificate required pursuant to this Agreement.
- b. This hold harmless, indemnification and defense provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. Contractor agrees that Contractor's covenant under this section shall survive the termination of this Agreement.

**13. Cooperation.** In the event any claim or action is brought against Agency relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation that Agency might require.

**14. Termination.**

- a. Agency shall have the right to terminate the services of Contractor at any time for any reason on sixty (60) calendar days written notice to Contractor. In the event this Agreement is terminated by Agency, Contractor shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect, and Contractor shall have no other claim against Agency by reason of such termination, including any claim for compensation.
- b. Contractor shall have the right to terminate this Agreement at any time for any reason on sixty (60) calendar days written notice to Agency, and Contractor shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect.

**15. Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's regular business hours or by facsimile before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

**Agency:**

Montclair Police Department  
4870 Arrow Highway  
Montclair, CA 91763

**Contractor:**

Graffiti Tracker Inc.  
2916 S 132nd St #311  
Omaha, NE 68144

16. **Nondiscrimination and Equal Employment Opportunity.** In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. Contractor will take affirmative action to ensure that employees are treated without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.
17. **Assignability; Subcontracting.** Contractor shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Contractor's obligations hereunder, without the prior written consent of Agency, and any attempt by Contractor to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be void and of no effect.
18. **Compliance with Laws/Licenses.** Contractor shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments. Contractor shall obtain and maintain all necessary professional licenses for providing the services outlined in this Agreement.
19. **Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Agency of any payment to Contractor constitute or be construed as a waiver by Agency of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by Agency shall in no way impair or prejudice any right or remedy available to Agency with regard to such breach or default.



20. **Attorney's Fees.** In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be San Bernardino County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted this Agreement or who drafted that portion of the Agreement.
21. **Exhibits; Precedence.** All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provision of any Exhibit or document incorporated herein by reference, the provisions of this Agreement shall prevail.
22. **Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Agency and Contractor. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

**“Agency”**

City of Montclair

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

Attest

Approved as to Form

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

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

**“Contractor”**

By: \_\_\_\_\_  
Timothy M. Kephart - President

By: \_\_\_\_\_  
Faith Snider - Secretary

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Contractor shall perform the following services for the City of Montclair:

#### **Responsibilities**

1. Train designated personnel on how to use GPS cameras/ Phone App.
2. Establish graffiti tracking protocols.
3. Train personnel on how to upload graffiti data to the Graffiti Analysis Intelligence Tracking System (GAITS).
4. Provide access to GAITS to all designated personnel twenty-four hours a day, seven days a week until contract ends.
5. On a daily basis, graffiti data will be uploaded to the GAITS system from the City of Lancaster's staff. Graffiti Tracker Inc. will be responsible for analyzing all of that data and making the results of that analysis available to the GAITS system.
6. Provide training to all designated personnel (Agency staff/law enforcement/District Attorney's Office) on how to utilize the GAITS system.

This contract constitutes a lease for access to the Graffiti Analysis Intelligence Tracking System (GAITS). Permission from the Contract Administrator will be required for anyone to have access to this system. Upon permission being granted for access to the system, a username and password will be given to those individuals and they will be granted an "Operator" level access to the GAITS system. This lease will be in effect for the duration of the contract.

## **EXHIBIT B**

### **SCHEDULE OF FEES**

Contractor will not be required to work on the following ten holidays:

1. January 1 (New Year's Day)
2. The third Monday in January (Dr. Martin Luther King Jr. Day)
3. The third Monday in February (President's Day)
4. March 31st (Cesar Chavez Day)
5. The last Monday in May (Memorial Day)
6. July 4 (Independence Day)
7. The first Monday in September (Labor Day)
8. November 11 (Veteran's Day)
9. The fourth Thursday in November (Thanksgiving Day)
10. December 25 (Christmas Day)

The total contract amount for the twelve-month time period commencing January 1, 2024 and ending December 31, 2024 will be an amount not to exceed \$3,300.00 based on an average of graffiti analyzed per month.

Effective upon the signing of this contract, an invoice for the amount of \$3,300.00 will be submitted by the Contractor to the Contract Administrator. Payment should be processed and received no later than 30 calendar days from the date invoice was submitted.

It is recommended that each graffiti abatement crew be equipped with one (1) camera. Services will commence once the first invoice is paid.



# CITY COUNCIL AGENDA REPORT

**DATE:** NOVEMBER 6, 2023

**FILE I.D.:** TRN240

**SECTION:** CONSENT - AGREEMENTS

**DEPT.:** CITY MGR.

**ITEM NO.:** 6

**PREPARER:** E. STARR

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 23-83 WITH MOULE & POLYZOIDES ARCHITECTS AND URBANISTS TO DEVELOP A MASTER PROJECT SITE PLAN FOR THE MONTCLAIR TRANSCENTER, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING AN ALLOCATION OF UP TO \$350,300 IN 2021 LEASE REVENUE BOND FUNDS FOR DEVELOPMENT OF A MASTER PROJECT SITE PLAN FOR THE MONTCLAIR TRANSCENTER

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 23-83 with Moule & Polyzoides Architects and Urbanists to develop a site-specific plan for the Montclair Transcenter, subject to review and modification by the City Attorney. A copy of the proposed agreement is attached to this report.

**BACKGROUND:** Pursuant to provisions of the North Montclair Downtown Specific Plan, and in anticipation of arrival of the Gold Line light rail system to the Montclair Transcenter toward the end of the current decade, the City is in the process of pursuing a number of actions with co-partner agencies and legislative representatives to facilitate transfer of the Transcenter property from the California Department of Transportation (Caltrans) to the City of Montclair for future development and enhancement of the property's position as a high-quality transit center.

City Council members are aware that there is an ongoing legislative effort to transfer ownership of Caltrans-owned property at the Transcenter to the City of Montclair. Caltrans presently owns the parking fields on both the north and south sides of Richton Street, as well as all the Transcenter service areas—together, representing approximately 23 acres. Train platforms at the Transcenter are owned and operated by Metrolink. The balance of the property, the Kid' Station and park land south of the child care facility, are jointly owned between the City of Montclair and San Bernardino County Transportation Authority (SBCTA), and represent approximately 1.6 acres. The Caltrans-owned property represents approximately 93.5 percent of the approximate 24.6-acre site, and it is this Caltrans property that represents the primary value for future development and improved service for transit users.

A major hurdle to legislative transfer of the Caltrans-owned property at the Transcenter to the City of Montclair has been the defined status of the property; i.e., its maintenance by Caltrans as part of the Department's managed, active transportation properties portfolio. Caltrans' Right of Way Office of Real Property Services (RPS) is responsible for the management and disposition of all property purchased for, and held by, Caltrans for transportation projects. RPS is staffed by a Supervising Right of Way Agent and Senior Right of Way Agents who are responsible, on a statewide basis, for the management, efficiency and effectiveness of these functional areas. RPS is also responsible for assuring that Caltrans optimizes both the use of, and economic return from, properties held for future transportation projects.

On October 3, 2023, City staff met with Ms. Rebecca Guirado, Caltrans' Deputy District Director, Right of Way & Land Surveys, Caltrans District 8, to discuss the legal status of the Montclair Transcenter. The October meeting represents a sequential series of long-term discussions City staff has had with Caltrans representatives over the past decade regarding reassignment of the Montclair Transcenter Caltrans-owned property to Caltrans' Excess Properties List. Transferring the site to the Excess Properties List would make the property available for acquisition by the City for operation, maintenance and/or development purposes.

Excess land is defined as *“land that is not needed to serve or support the existing use. The highest and best use of the excess land may or may not be the same as the highest and best use of the improved parcel. Excess land has the potential to be sold separately and is valued separately.”* Thus, Caltrans-owned property at the Transcenter can be separated from the rail use component and made available for acquisition to the City or a secondary party if the City elected to not acquire the property.

At the October 2023 meeting, Caltrans advised City staff that the Caltrans-owned property at the Montclair Transcenter had been recently placed on the Department of Transportation's (DOT) Excess Properties List. Because the Transcenter is in the City of Montclair, and is operated as a public use, Montclair has the right of first refusal—right of first refusal is a provision that provides a designated party, in this case the City of Montclair, the right to buy a listed property before it is placed in auction or a sale is negotiated with another party. In response, City staff advised Caltrans representatives of the following:

1. The City of Montclair is pursuing legislation that would transfer to the City of Montclair the Montclair Transcenter Caltrans-owned property through a real property transfer arrangement agreed to by Caltrans and the Legislature. A real property transfer may include a fee simple assignment, quitclaim deed, deed transfer or other real property transfer arrangement for the purpose of obtaining vested, possessory interest in the property.
2. Alternatively, the City of Montclair is working with legislative representatives to secure a State grant for purchase of the Montclair Transcenter Caltrans-owned property—the purchase price to be based on market rate as determined by an appraisal conducted by Caltrans.
3. Failing the above two approaches, City staff would ask the Montclair City Council to consider exercising right of first refusal and purchase the Montclair Transcenter Caltrans-owned property at the appraised market rate, provided Caltrans allows for a payment schedule that comports with the City's fiscal ability to purchase the property—Ms. Guirado indicated that terms of payment could be worked out between Caltrans and the City.

Acquisition, by the City of Montclair, of the Montclair Transcenter Caltrans-owned property is essential for future control and development of the Transcenter property, including its maintenance as a high-quality transit facility. Without City participation in property ownership, a developer acquiring the Montclair Transcenter Caltrans-owned property could develop the site for a use incompatible with its current transit use.

Paragraphs “1” and “2”, above, are the preferred approach related to the City's acquisition of the Montclair Transcenter Caltrans-owned property. Of these two approaches, the recent decision by Caltrans to place the Montclair Transcenter Caltrans-owned property on the Department's Excess Property List has facilitated the opportunity

to use the approach identified in paragraph “1” as the primary legislative approach to facilitate the City of Montclair’s acquisition of the property.

Pursuit of either of the two approaches identified in paragraphs “1” and “2”, above, are apparent when the results of two City-commissioned appraisals conducted in 2022, one on the market value of the Montclair Transcenter Caltrans-owned property, and the second regarding the cost to construct a 1,600-vehicle parking garage at the Transcenter, are taken into consideration—these appraisals are discussed below:

- **Montclair Transcenter Caltrans-owned property appraisal.** In 2022 an appraisal was conducted on the market value of the Montclair Transcenter Caltrans-owned property. Based on the results of that appraisal, the then estimated land acquisition cost for the Montclair Transcenter Caltrans-owned property was approximately \$34 million.
- **Montclair Transcenter Parking Structure appraisal.** In 2014-15, the Metro Foothill Gold Line Extension Construction Authority completed a California Environmental Quality Act (CEQA) study on the Gold Line extension from Azusa to Montclair. The traffic analysis and air quality impact components of the CEQA analysis for the Montclair Transcenter assumed the maintenance of the existing 1,600 parking spaces, as well as continued use of the site as a high-quality transit facility. Therefore, acquisition of the Montclair Transcenter Caltrans-owned property by the City would include the public use requirement to minimally maintain both a transit service component and parking spaces for approximately 1,600 vehicles.

City staff proposes that in development of a site project plan for the Montclair Transcenter, required parking spaces would be maintained via construction of a 1,600-vehicle space parking structure to maximize the amount of developable land. The estimated construction cost for a 1,600-vehicle space parking structure, based on a 2022 City-commissioned analysis, is approximately \$38 million—this estimate assumes a \$24,000 per-vehicle space construction cost.

The actual cost for construction of a 1,600-vehicle space parking structure would be based on other features that may be proposed for incorporation into the parking structure. These additional features may include the following:

- Ground-level transit bus pick-up and drop-off bays;
- Tram and passenger pick-up and drop-off turnouts; and
- Transit customer service and waiting areas featuring vendor spaces, bicycle storage lockers, restroom facilities, ticket and information kiosks, and security office.

Construction of a parking structure, potentially in the southeast quadrant of the Transcenter adjacent to the Metrolink tracks, would allow for development of an estimated 75 percent of the existing Transcenter property for housing and other purposes.

The Montclair Transcenter Caltrans-owned property appraised land value of \$34 million, together with the estimated \$38 million construction cost for a 1,600-vehicle space parking structure creates a significant, negative land acquisition value; i.e., few, if any developers would purchase the land if saddled with a requirement to construct a parking structure facility with a construction cost higher than the land acquisition value. To address this deterrent factor, City staff have determined that a public-private-partnership would be the most feasible approach for future development of the Transcenter site. With City ownership of the Transcenter through a deed transfer, the private developer partner would enter into a development agreement with the City to construct improvements to the property with no land

acquisition costs. In exchange, the developer would be required to complete public improvements, including construction of the 1,600-vehicle space parking structure. In addition, the Master Project Site Plan for development of the Montclair Transcenter would require maintenance of transit facilities as a public use and construction of both affordable and market-rate housing units.

**The City Council is advised that Montclair’s failure to purchase or otherwise acquire the Montclair Transcenter Caltrans-owned property through legislative assistance would free Caltrans to sell the property at auction as excess property. As indicated above, “*Excess Land is defined as land that is not needed to serve or support the existing use. The highest and best use of the excess land may or may not be the same as the highest and best use of the improved parcel. Excess land has the potential to be sold separately and is valued separately.*” Surplus land, in contrast, cannot be separated from the property and sold off for another use.**

**The Montclair Transcenter Caltrans-owned property is defined as “Excess Land,” not “Surplus Land.” Caltrans has, therefore, indicated that a developer purchasing the property at auction would be free to develop the property without regard for its public use as a high-quality transit facility. It is also likely that, under this scenario, a private developer would be free to disregard the CEQA analysis that provides for maintaining public parking for 1,600 vehicles.**

Moving forward, City staff is currently working with the office of Assemblymember Freddie Rodriguez to introduce legislation in the 2024 Legislative Session to deed the Montclair Transcenter Caltrans-owned property to the City of Montclair. Assemblymember Rodriguez’ office will seek co-authorship of proposed legislation through the office of Senator Susan Rubio.

Concurrent with this effort, the City will be required to demonstrate evidence of a Master Project Site Plan for the Transcenter property. To achieve this objective, City staff requested that Moule & Polyzoides Architects and Urbanists (hereafter, “M&P”) submit a proposal for a Master Project Site Plan for the Montclair Transcenter, the City-owned property north of the Montclair Police Station facility (the former City Impound Lot and Nissan Vehicle Storage Lot), and the City-owned property west of the Hasco Outlet, located at 8710 Central Avenue.

Council is aware that M&P has worked with the City, and private developers, on nearly every project constructed in North Montclair over the past decade. M&P, in collaboration with City staff, drafted the 2006 North Montclair Downtown Specific Plan (NMDSP) and its 2017 revision, and the 2018 Montclair Place District Specific Plan (MPDSP). In addition, M&P designed the Arrow Highway and Fremont Avenue Street improvements, and is currently completing a street design package for the following streets:

- Moreno Street (between Central and Monte Vista Avenue),
- Arrow Highway (between Monte Vista and Mills Avenue),
- Central Avenue (north of the I-10 Freeway to the City’s northern border),
- Monte Vista Avenue (north of the I-10 Freeway to the City’s northern border),
- Richton Street (between Central and Monte Vista Avenue),
- Hunting Drive extension (between Claremont Boulevard to Monte Vista Avenue), and
- Rambla (an internal street on Montclair Place property).



M&P is also working with Rangwala Associates on development of the General Plan and the Arrow Highway Mixed Use District Plan (AHMUD).

City staff has determined that based on M&P's unique design perspectives, development of the form-based code design plans for North Montclair, and the firm's intimate and in-depth knowledge of the City's strategic efforts in North Montclair, M&P is the most competent urbanist design team for development of a Master Project Site Plan for the Montclair Transcenter and City-owned properties in North Montclair.

A master project site plan is an architectural set of plans and exhibits that function as a blue print for property development. The plan includes details related to orientation of buildings, structural elements, landscape features, property lines and setbacks, existing and proposed conditions, existing easements, surrounding infrastructure, utilities, drainage facilities, parking road and block patterns, transit-related components, and other features specific to a property's particular site development requirements.

Specific to the Montclair Transcenter site, the Master Project Site Plan would be consistent with Section 3.2 (Station Area) of the amended, 2017 NMDSP. In addition, following are site plan features designated by City staff for the study:

- Housing – Both market-rate and affordable housing on properties adjacent to both the north and south side of Richton Street, and other City-owned properties in North Montclair.
- Commercial – At a minimum, ground floor retail along the east- or west-facing side of the Transit Plaza.
- Parking Structure – 1,600-vehicle space parking structure with integrated, ground-floor bus connection/terminal services; sheltered bus parking; and Transit Customer Service facility with seated waiting area, bicycle storage locker, and vendor, information, ticket and restroom services.
  - Alternatively, the Master Project Site Plan would evaluate for the following:
    - Maintain a stand-alone Bus Terminal facility.
    - Develop a stand-alone Transit Customer Service facility.
- Gold Line Platform – Integrate into the Master Project Site Plan's development scheme the proposed Gold Line Station Platform design, north of the existing Metrolink Platform, using schematics provided by the Metro Foothill Gold Line Construction Authority—the platform is planned for construction north of the existing Metrolink Platform in the Transcenter's southeast parcel.
- Kid's Station – Consider re-purposing Kid's Station and existing park land to achieve other development objectives.
- E-tram Services – Consider an integrated design for e-tram services between the Montclair Transcenter and Montclair Place District.
- Ontario International Airport (ONT) Shuttle Services – Consider an integrated design for public/private shuttle and private on-demand transportation services for transit riders bound to and from ONT.

- City-owned Property – Incorporate into the Master Project Site Plan development concepts for City-owned property north of the Montclair Police Station facility and west of the Hasco Outlet, located at 8710 Central Avenue.
  - The study will evaluate both sites for housing or, as an alternative, using the City-owned property north of the Montclair Police Station facility as parkland and/or a remote or main parking structure serving the Montclair Transcenter and/or neighboring residential blocks in North Montclair.

Pursuant to the objectives outlined above, M&P will complete a number of tasks as outlined in the Montclair Transcenter Master Project Site Plan submission letter dated October 6, 2023, and enclosed in the agenda packet.

Tasks identified in the submission letter include the following:

**1. Block, Street & Transit Design.** Fee – \$64,600 fixed M&P fee.

Prepare Site-Specific Plan for the Montclair Transcenter and the two proximate, City-owned properties; i.e., the two parcels north of the Montclair Police Station facility (former City-operated impound lot and new vehicle storage lot) and the parcel west of the Hasco Outlet, located at 8710 Central Avenue.

Deliverables include:

- Site Plan.
- Street Sections.
- Public Parking Diagram – on street and parking structure.
- Transit Components and Circulation Diagram.

**2. Development Capacity Study.** Fee – \$112,600 Fixed M&P fee.

Site-specific Plan modifications based on City comments and study development capacity for each configured block. Includes NMDSP base scenarios for development capacity and options provided for under the State Density Bonus law and other transit-centric housing laws.

Deliverables include:

- Site Plan with building footprints and massing.
- Diagrammatic floor plans per block (base scheme and density bonus scheme).
- Diagrammatic parking plans per block.
- 3-D Aerial Sketch-Up view of site plan.
- Rough Order of Magnitude (ROM) program summary and capacity—ROM calculations are used to provide a rough estimate on the expenses related to project completion. ROM is also used to decide which projects should be chosen from available options. make decisions regarding project cost estimates and which projects to fund.
- Precedent images of proposed architecture and landscape character.

3. **Refinement of Development Study & Draft Report.** Fee – \$65,800 fixed M&P fee.

Refine development study to incorporate landscape and transportation consultant observations. Produce draft report. Write site-specific development regulations and standards. Create draft renderings.

Deliverables include:

- Illustrative Plan showing public spaces, streets and building footprints.
- Regulating Plan showing blocks, ground floor uses and frontages.
- Street and Public Space Sections, with tree species matrix.
- Parking Plan showing public and private parking.
- Transit Facility Diagram showing various transit components and circulation.
- Per-block diagrammatic floor and parking plans.
- Refined ROM program summary and capacity.
- Images of proposed architecture and landscape character.
- Phasing diagram.
- Development Regulations and Standards.
- Four black and white draft renderings (one aerial and three street level)

4. **Final Report.** Refine Development Study into Final Report. Fee: \$18,320 fixed M&P fee, plus \$12,000 fee for converting four draft renderings to color.

Deliverables include:

- Final Report (11" x 17").
- Final version of Task 3 Deliverables.
- Four Draft Renderings will be updated and converted to color versions.

In addition to the above fee components related to stated tasks by M&P, an additional fee of up to \$75,000 for the services of a Landscape Architects firm and Transportation Engineer firm is projected. Consultant services include the following:

- Landscape Architect, with following scope of work:
  - Conceptual landscape studies for public and open spaces.
  - Street Sections and trolley stop amenities.
  - Tree and drought landscape species matrix.
- Transportation Engineer, with following scope of work:
  - Review programming elements as defined by City, LA Metro/Metrolink, Foothill Gold Line Extension Construction Authority, and SBCTA and support M&P in creating an inventory of space and physical relationships.
  - Develop sketches illustrating key dimensions and orientation of transit-related and parking elements, and dimensions of key features.
  - Review drawings and program descriptions provided by M&P.
  - Coordinate with City and relevant agencies in refining program elements and drawings.
  - Review draft documents prepared by M&P and provide recommendations.

**FISCAL IMPACT:** Total expenses are not to exceed \$350,300 and would be paid from 2021 Lease Revenue Bond funds. Costs related to approval of Agreement No. 23-83 include the following:

1. Moule & Polyzoides Architects and Urbanists - \$261,300 fixed fee.
2. Allowance for four color renderings of project site - \$12,000.
3. Allowance for Landscape Architect and Transportation Engineer Consultants - up to \$75,000.
4. Reimbursable expenses - \$2,000

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

1. Approve Agreement No. 23-83 with Moule & Polyzoides Architects and Urbanists to develop a Master Project Site Plan for the Montclair Transcenter, subject to any revisions deemed necessary by the City Attorney; and
2. Authorize an allocation of up to \$350,300 in 2021 Lease Revenue Bond funds for development of a Master Project Site Plan for the Montclair Transcenter.

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October 30, 2023

Ed Starr, City Manager  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763  
Via E- mail: ecstarr@cityofmontclair.org

***Re: Montclair Transcenter Site Plan***

Dear Ed;

The following is a proposal to create a site plan for the site currently occupied by the Montclair Transcenter surface parking lots. The site, bisected by Richton Street is bounded by the railroad right-of-way to the south, Monte Vista Avenue to the west, the Montclair City boundary to the north, and the eastern boundary of the parcels that currently accommodate the Transcenter parking lots. The total site area is approximately 23 acres.

**Project Understanding**

We understand from our conversations that the purpose of this effort is to create exhibits to guide the future development of this site - its open spaces, streets, blocks, buildings, and transit components - consistent with the vision described in Section 3.2 (Station Area) of the *North Montclair Downtown Specific Plan (NMDSP)*.

We will also study the basic disposition of each block and its building(s) – its massing, height, circulation, parking and unit configuration, to generate broad unit and parking capacities for each block/building within the study area. The NMDSP allows multi-family residential and mixed-use projects on this site up to 65 feet in height. For each block, we will study base development scenarios per the NMDSP, as well as maximum State Density Bonus options. We will create illustrative imagery to describe the design along with a broad program summary.

From the memo provided to us on April 27, 2023, and from our examination of the NMDSP, the following are specific components of this study:

- Housing – Market-rate and affordable housing on the north side of Richton Street and the southwest parking field south of Richton Street.
- Retail - At a minimum, ground floor retail along the east side of the Transit Plaza
- Parking Structure – 1600 spaces, with ground-floor shelter for buses not in service
- Gold Line Station Platform – Located north of the existing Metrolink Platform, and based on schematics provided by the Gold Line Construction Authority
- Bus Terminal – Examine options for constructing the bus terminal and transit customer service facility as integrated components of the parking structure. The study should

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determine if a standalone or integrated approach is better. The objective is to maximize land for development.

- Day Care Center - Study potential locations, maximizing developable land
- Transit Service Facility – Standalone or integrated with parking structure to include a shelter for passengers, food service, bicycle storage, ticket/information center, restrooms, and furniture
- E-trolley Service – With a minimum of three trolleys (two in service and one standby)
- Ontario International Airport Shuttle Ride – study pick-up and drop-off locations, with other e-transportation services such as bicycles and scooters

We also understand that the City does not currently own the approximately 1.6-acre Kid's Center parcel in the center of the 23-acre study area. The Site Plan should be designed keeping this multiple ownership in mind. The City would like to expand the study area to include the two proximate City-owned parcels. The first is the 2.7-acre parking lot north of the Montclair Police Department Facility to the left of Monte Vista Avenue, and south of Richton Street. The design explorations need to evaluate the potential of this parcel as a park; or a park at the south end with housing or parking structure at the north end. The second is a 2-acre unused lot at 8710 Central Avenue (for affordable housing) behind the Hasco Outlet Store and Red Dragon Karate Montclair to the left of Central Avenue and north of Richton Street. Our scope as outlined in this proposal does not include any outreach meetings or presentations to City Council and other administrative entities.

## **Scope**

### ***Task 1: Block, Street, & Transit Design***

We will visit the site, and review relevant planning documents, following which, we will develop a Site Plan for the 23-acre site and the two proximate parcels. We will explore the disposition of development blocks, street rights-of-way, public spaces. We will also explore the overall configuration of various transit-related components in coordination with our transportation consultant. The intent of this task is to have the City staff and transit agencies confirm the basic decisions of the Site Plan. We will meet with the client team once during this phase of work.

### ***Deliverables:***

- Site plan showing blocks, street, and public space network
- Street Sections
- Public parking Diagram, showing on street and garage parking
- Transit Components and Circulation Diagram

***Schedule:*** 4 weeks

***Fee:*** \$64,600 fixed MPA fee

Consultants fee (amount TBD; total of all tasks not to exceed \$75,000)

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## **Task 2: Development Capacity Study**

Based on City staff comments, we will adjust the site plan, and conduct a study of the development capacity for each block. We will study base scenarios per the rules of the Specific Plan and study an option for the maximum State Density Bonus scenario (80%). Additionally, we will create a summary chart describing various development capacities for other Density Bonus scenarios (20%, 35%, & 50%). We will meet with the client team once in-person during this phase of work.

### **Deliverables**

- Site plan showing building footprints and massing
- Diagrammatic floor plans per block (base scheme & maximum density bonus schemes)
- Diagrammatic parking plans per block
- 3-d SketchUp aerial model views of the site plan
- Rough order of magnitude program summary and capacity
- Precedent images of proposed architecture and landscape character

**Schedule:** 6 weeks

**Fee:** \$112,600 Fixed MPA fee

Consultants fee (amount TBD; total of all tasks not to exceed \$75,000)

## **Task 3: Refinement of Development Study and Draft Report**

Based on City staff comments, we will refine the development study into a pdf Draft Report in coordination with our landscape and transportation consultant. We will identify any site-specific development regulations and standards that would need to be altered or supplemented to those already in the Specific Plan, particularly those related to State Density Bonus implications. We will also create draft renderings for the project. We will meet with the client team once in-person during this phase of work.

### **Deliverables:** (in pdf 11 x 17 Draft Report)

- Illustrative Plan showing public spaces, streets and building footprints
- Regulating Plan showing blocks, ground floor uses and frontages
- Street and Public Space Sections with tree species matrix
- Parking Plan showing public and private parking
- Transit Facility Diagram showing various transit components, circulation and drop-off
- Per-block diagrammatic floor and parking plans
- Rough order of magnitude program summary and capacity
- Precedent images of proposed architecture and landscape character
- Phasing diagram
- Identification of Development Regulations and Standards to be updated
- Four sketch black and white draft renderings (one aerial and three street level views)

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**Schedule:** 4 weeks

**Fee:** \$65,800 fixed MPA fee

\$6000 allowance for four black & white draft renderings

Consultants fee (amount TBD; total of all tasks not to exceed \$75,000)

## **Task 4: Final Report**

Based on staff comments, we will refine the development study into a pdf Final Report. This will include up to two rounds of comments and changes. We will meet with the client team once in-person during this phase of work.

**Deliverables:** (in pdf 11 x 17 Final Report): Final versions of deliverables listed in Task 3 (the four renderings will be updated colored versions.)

**Schedule:** 2-3 weeks

**Fee:** \$18,320

\$6000 allowance for updating renderings into colored final versions

Consultants fee (amount TBD; total of all tasks not to exceed \$75,000)

## **Consultants:**

We anticipate the need for following consultants for this study:

Landscape Architect – Scope will include:

1. Conceptual landscape studies for public space network and open spaces
2. Street Sections and trolley stop amenities
3. Tree and drought landscape species matrix

Transportation Engineer – Scope will include:

1. Review the programming elements as defined by the City and LA Metro, and support MPA in creating an inventory of the needed space and physical relationships
2. Develop sketches to illustrate the key dimensions and orientation of the transit-related and parking elements. Also provide dimensions for key features.
3. Review drawings and program descriptions prepared by MPA
4. Coordinate with the City staff (planning, PW, fire, police) and Metro in refining the program elements and drawings. Budgeted for eight meetings total.
6. Review draft documents prepared by MPA and offer suggestions.

## **Fees:**

Moule & Polyzoides Architecture/Planning Fixed fee \$261,320

Allowance for 4 renderings \$12,000

Allowance for Consultants: \$75,000

Reimbursable expenses such as travel not included

Fees will be paid according to the following schedule:



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An initial payment of \$25,000 will be due upon the signing of the contract. The rest of the fee will be invoiced on a progress basis. Invoices will be paid within 15 days of submission and bear an interest rate of 1% monthly past 30 days. Reimbursable expenses will be in addition, estimated as an allowance of \$500.00, and will include the costs of transportation, delivery, process printing and other costs incurred by the Consultant Team in its service on this project. Expenses will be billed by M&P to Client at a multiplier of 1.15 to cover administrative and processing costs.

## **Additional Services**

Should the Client request Moule & Polyzoides to provide Additional Services in addition to those set forth in the above Scope of Work, Moule & Polyzoides will prepare a scope, schedule, and budget for providing such services for approval by the Client. If any such services are to be paid on a time and materials basis, professional fee compensation shall be billed according to the schedule as follows:

2023 Hourly rates for M&P staff are as follows:

Partner	\$340
Principal	\$280
Senior Associate	\$260
Associate	\$220
Project Manager	\$200
Senior Designer	\$180
Junior Designer	\$160

## **Miscellaneous**

- A. Architect shall not be held liable for damages caused by delays in his/her performance that arise out of events beyond his/her reasonable professional control.
- B. This Proposal anticipates our services for this phase will be completed within 6 months of executing this agreement.
- C. The Architect will provide professional and general liability insurance coverage in the amount of \$1,000,000 and will provide certificates of the above policies to the Client. The Client may be named as an Additional Insured on the General Liability policy, if requested.
- D. The Documents produced shall be used solely in matters relating to the Agreement. The Architect shall be deemed the author of the Documents and shall retain ownership of them. The original documents shall remain in the possession of the Architect. The documents given to the Client will be high-quality reproducible reproductions. These Documents shall not be used by the Client or others on other projects including extensions or modifications to this project except by agreement in writing and with appropriate compensation to the Architect.
- E. If Client fails to make payments to Architect in accordance with this Agreement, such failure shall provide the option to suspend performance of services under this Agreement upon seven (7) days written notice to Client. In the event of a suspension of services, Architect shall have no liability for any delays or damages caused because of such suspension. Before

# MOULE & POLYZOIDES

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- resuming services, Architect shall be paid all sums due prior to suspension and any expenses incurred by Architect in the interruption and resumption of its services. If any invoice is in dispute, Client shall pay the disputed sum and resolve the payment dispute after substantial completion.
- F. This Agreement may be terminated by either party, with or without cause, with seven (7) days written notice to the other. If this Agreement is terminated, Architect shall be paid for all services performed to the termination notice date and all reimbursable expenses due.
  - G. In the event of termination, the Client shall receive copies of the Documents, and shall not use the Documents in matters relating to the Project or any other project.
  - H. To the fullest extent permitted by law, the Architect's total exposure for any and all injuries, claims, losses, expenses or damages of any kind arising out of or in any way related to the project or this Agreement from any cause or causes including but not limited to the Architect's negligence, errors or omissions, shall not exceed the total compensation received by the Architect under this agreement.

## Notices

All notices or other communications which may be given pursuant to the Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or, if by mail, on the fifth day after being posted or the date of the actual receipt, whichever is earlier.

### **Client:**

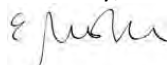
Ed Starr  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

### **Architect/ Urbanist:**

Elizabeth Moule  
Moule & Polyzoides  
180 East California Blvd  
Pasadena, CA 91105

We are very excited about doing the design for this project and we look forward to working with you on its successful completion. We will begin work immediately upon receipt of your order to proceed and the initial payment. Please do not hesitate to call me if you have any questions.

Sincerely,



Elizabeth Moule  
Architect and Urbanist

AGREED

---

Name

Date



# CITY COUNCIL AGENDA REPORT

**DATE:** NOVEMBER 6, 2023                      **FILE I.D.:** PUB 355  
**SECTION:** CONSENT - AGREEMENTS            **DEPT.:** PUBLIC WORKS  
**ITEM NO.:** 7    **PREPARER:** M. PARADIS  
**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 23-84 WITH RYMAX ELECTRIC TO  
 INSTALL PARKING LOT LIGHTING AT FIRE STATION 151  
  
 CONSIDER APPROVAL OF AGREEMENT NO. 23-85 WITH GRIGOLLA AND SONS  
 CONSTRUCTION COMPANY, INC. TO REPLACE THE PARKING LOT ASPHALT SURFACE  
 AT FIRE STATION 151

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 23-84 with Rymax Electric to install parking lot lighting, and Agreement No. 23-85 with Grigolla and Sons Construction Company, Inc. to replace the parking lot asphalt surface at Fire Station 151.

A copy of proposed Agreement Nos. 23-84 and 23-85 are attached for the City Council’s review and consideration.

**BACKGROUND:** In 2018, the City purchased a 48-foot long, 72,520 pound ladder truck. The ladder truck required a larger diameter turning radius to enter the fire station bay doors. To provide the additional turning space, the center island and parking lot lighting was removed from the parking lot. The new path of travel transitions from the concrete driveway onto the parking lot asphalt surface and the size and the weight of the ladder truck has worn away the asphalt in multiple areas. Eight inches of 3,250 psi concrete is needed to support the weight of the ladder truck. Parking lot lighting is also needed for the safety and security of staff and equipment.

Staff obtained quotes from vendors to replace the parking lot asphalt surface as follows:

<i>Company</i>	<i>Quote</i>
Grigolla and Sons	\$130,850
Gentry Brothers, Inc.	\$159,192
T.E Roberts	Non-responsive

After review of the estimates, it was determined by the Public Works staff that the estimate from Grigolla and Sons. was the best value for the City.

The installation of the parking lot lighting by Rymax Electric, the City’s preferred vendor, is an additional \$18,950.

**FISCAL IMPACT:** The total cost of the asphalt surface replacement and installation of the parking lot lighting and a contingency of \$10,000 is \$156,800. Funding in the amount of \$175,000 to replace the parking lot asphalt surface at Fire Station 151 was included in the Fiscal Year 2023-2024 Public Works Operations Budget using the 2021 Lease Revenue Bond proceeds.

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

1. Approve Agreement No. 23-84 with Rymax Electric to install parking lot lighting at Fire Station 151; and
2. Approve Agreement No. 23-85 with Grigolla and Sons Construction Company, Inc. to replace the parking lot asphalt surface at Fire Station 151.

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 **RYMAX ELECTRIC, INC.**, hereinafter referred to as "CONTRACTOR" and the CITY OF MONTCLAIR, hereinafter referred to as "CITY."

**A. Recitals.**

- (i) CITY accepts the CONTRACTOR's proposal.
- (ii) CITY authorizes the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of:

**INSTALLATION OF PARKING LOT LIGHTING**

"PROJECT" hereinafter.

**B. Resolution.**

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 the CONTRACTOR'S proposal dated October 13, 2023, a copy of which is attached hereto as Exhibit "A". 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. In the event there is any conflict or inconsistency between the Contractor's proposal and this written Agreement, the provisions of this written Agreement shall control.
2. 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 30 days of executing the contract.
3. 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.
4. INSURANCE: The CONTRACTOR shall not commence work under this contract until he 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 his 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. Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish to the Engineer a policy of insurance or proper endorsement as proof that he has taken out full compensation insurance for all persons whom he may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract.

In accordance with the provisions of §3700 of the California Labor Code, every contractor shall secure the payment of compensation to his employees. CONTRACTOR, prior to commencing work, shall sign and file with CITY a certification as follows:

**"I am aware of the provisions of §3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."**

- b. For all operations of the CONTRACTOR or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage:
- (1) Public Liability - Bodily Injury (not auto) \$1,000,000 each person; \$2,000,000 each accident.
  - (2) Public Liability - Property Damage (not auto) \$500,000 each accident; \$1,000,000 aggregate.
  - (3) Contractor's Protective - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
  - (4) Contractor's Protective - Property Damage \$500,000 each accident; \$1,000,000 aggregate.
  - (5) Automobile - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
  - (6) Automobile - Property Damage \$500,000 each accident.
- c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:
- (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;

- (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.
- d. Each such policy of insurance provided for in paragraph b. shall:
- (1) Be issued by an insurance company approved in writing by CITY, which is qualified to do business in the State of California;
  - (2) Name as additional insureds the CITY, its officers, agents and employees;
  - (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
  - (4) Contain a clause substantially in the following words:  

"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."
  - (5) Otherwise be in form satisfactory to CITY.
- e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraphs a. and b., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.

5. CONTRACTOR'S LIABILITY: The City of Montclair 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 workmen, employees of the CONTRACTOR or his 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, its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the project or at any time before its completion and final acceptance. The CONTRACTOR will indemnify CITY against and will hold and save CITY 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, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful

misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY, and in connection therewith:

- a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.
- b. The CONTRACTOR will promptly pay any judgment or award rendered against the CONTRACTOR or CITY covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the CONTRACTOR hereunder or reasonable settlement in lieu of judgment or award, and the CONTRACTOR agrees to save and hold the CITY harmless therefrom.
- c. In the event CITY 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 any and all costs and expenses incurred by CITY in such action or proceeding together with reasonable attorneys' fees.

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

6. 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.

7. 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.

8. 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 **October 13, 2023**.

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



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

**CONTRACTOR**

**CITY**

**RYMAX ELECTRIC, INC.**  
1315 E. 9<sup>th</sup> St.  
Upland, CA 91786

**CITY OF MONTCLAIR, CALIFORNIA**  
5111 Benito Street  
Montclair, CA 91763

By: \_\_\_\_\_

By: \_\_\_\_\_

Javier "John" Dutrey  
Mayor

\_\_\_\_\_  
Name, Title

**ATTEST:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Andrea M. Myrick  
City Clerk

\_\_\_\_\_  
Name, Title

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Diane E. Robbins  
City Attorney

Exhibit "A"

**Rymax Electric, Inc.**

1315 E. 9th Street  
 Upland, CA 91786  
 Ph: (909) 985-7250 Fax: (909) 985-2551  
 License C10-621770

**PROPOSAL**

Date	proposal
10/13/2023	2534

Name / Address
City of Montclair Public Works Department P.O. Box 2308 Montclair, CA 91763

Project
Fire Station #1 Parking Lot Lighting

Description	Total
Price Includes: Electrical as described below; 1) Construct (2) Concrete Light Pole Foundations 24" Round, 7'6" Below grade, 36" above grade. 2) Trench approx 100' for conduit. 3) Install (2) 1" Conduits for Power and Camera. 4) Provide and Install (2) 20' Light Poles and (2) LED Area Lights. 5) Make all connections for a complete system.  Price:	18,950.00
<b>Total</b>	<b>\$18,950.00</b>

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 **GRIGOLLA AND SONS CONSTRUCTION CO, INC.**, a **CORPORATION**, hereinafter referred to as "CONTRACTOR" and the CITY OF MONTCLAIR, hereinafter referred to as "CITY."

**A. Recitals.**

- (i) CITY accepts the CONTRACTOR's proposal.
- (ii) CITY authorizes the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of:

**ASPHALT SURFACE REPLACEMENT AT FIRE STATION 151**

"PROJECT" hereinafter.

**B. Resolution.**

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 the CONTRACTOR'S proposal dated October 5, 2023, a copy of which is attached hereto as Exhibit "A". 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. In the event there is any conflict or inconsistency between the Contractor's proposal and this written Agreement, the provisions of this written Agreement shall control.
2. 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 30 days of executing the contract.
3. 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.
4. INSURANCE: The CONTRACTOR shall not commence work under this contract until he 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 his 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. Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish to the Engineer a policy of insurance or proper endorsement as proof that he has taken out full compensation insurance for all persons whom he may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract.

In accordance with the provisions of §3700 of the California Labor Code, every contractor shall secure the payment of compensation to his employees. CONTRACTOR, prior to commencing work, shall sign and file with CITY a certification as follows:

**"I am aware of the provisions of §3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."**

- b. For all operations of the CONTRACTOR or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage:
- (1) Public Liability - Bodily Injury (not auto) \$1,000,000 each person; \$2,000,000 each accident.
  - (2) Public Liability - Property Damage (not auto) \$500,000 each accident; \$1,000,000 aggregate.
  - (3) Contractor's Protective - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
  - (4) Contractor's Protective - Property Damage \$500,000 each accident; \$1,000,000 aggregate.
  - (5) Automobile - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
  - (6) Automobile - Property Damage \$500,000 each accident.
- c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:
- (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;

- (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.
- d. Each such policy of insurance provided for in paragraph b. shall:
- (1) Be issued by an insurance company approved in writing by CITY, which is qualified to do business in the State of California;
  - (2) Name as additional insureds the CITY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;
  - (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
  - (4) Contain a clause substantially in the following words:  

"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."
  - (5) Otherwise be in form satisfactory to CITY.
- e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraphs a. and b., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.

5. CONTRACTOR'S LIABILITY: The City of Montclair 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 workmen, employees of the CONTRACTOR or his 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, its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the project or at any time before its completion and final acceptance. The CONTRACTOR will indemnify CITY against and will hold and save CITY 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, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY, but excluding such actions, claims, damages to persons

or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY, and in connection therewith:

- a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.
- b. The CONTRACTOR will promptly pay any judgment or award rendered against the CONTRACTOR or CITY covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the CONTRACTOR hereunder or reasonable settlement in lieu of judgment or award, and the CONTRACTOR agrees to save and hold the CITY harmless therefrom.
- c. In the event CITY 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 any and all costs and expenses incurred by CITY in such action or proceeding together with reasonable attorneys' fees.

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

6. 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.

7. 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.

8. 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 **October 5, 2023**.

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

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

**CONTRACTOR**

**GRIGOLLA AND SONS  
CONSTRUCTION CO., INC.**  
627 W. Allen Ave  
San Dimas, CA 91773

**CITY**

**CITY OF MONTCLAIR, CALIFORNIA**  
5111 Benito Street  
Montclair, CA 91763

By: \_\_\_\_\_

\_\_\_\_\_  
Name, Title

By: \_\_\_\_\_

Javier "John" Dutrey  
Mayor

**ATTEST:**

By: \_\_\_\_\_

\_\_\_\_\_  
Name, Title

By: \_\_\_\_\_

Andrea M. Myrick  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Diane E. Robbins  
City Attorney

Exhibit "A"

**Proposal**  
**Grigolla & Sons Construction Co., Inc.**

627 W Allen Ave. Agency: City of Montclair  
 San Dimas, CA 91773 5111 BenitoSt., Montclair, CA 91763  
 (909) 447-8530 P.O.Box 2308, Montclair, CA 91763  
 Fax: (909) 447-8548 Attn: Alex Cardona  
 License #514132-A Office Ph: 909-625-9467 Cell Ph: 909-762-1372

Date: 10/05/23  
 Pjt.: Montclair Fire Station # 151  
 8901 Monte Vista Ave.  
 Montclair, CA 91763

Notes: This proposal is based on prevailing wages

Onsite Fire Station Rear parking lot		Quan	Ftg.	Amount	Total
	Saw cut, Remove, Haul away 4" asphalt and 10" of dirt/base for a rectangular section				
	134 ft. x 66 ft. to cross slope drainage as existing area is now. Compact sub-grade and place				
	6" of class II CMB and compact. Place 8" of new concrete 3,250 psi. with saw cuts 2" inches				
	deep and curing compound. #4 epoxy dowels 48" o.c. to existing concrete. New concrete to				
	have #4 rebars at 4 ft. o.c. with 3" dobies. Saw cuts at 13 ft. or less both ways. 8844 s.f.	1	LS	\$121,000.00	\$ 121,000.00
	Add for fuel, materials and dump site increases. @	1	LS	\$ 6,850.00	\$ 6,850.00
	3250 psi. 7 day full cure time. One week to complete.			Sub Total	\$ 127,850.00
Striping allowance		Quan	Ftg.	Amount	Total
	Add if needed 4" parking striping for 30 spaces allowance @	1	LS	\$ 3,000.00	\$ 3,000.00



**Provisions**  
**Grigolla & Sons Construction, Co. Inc.**  
**627 W. Allen Ave., San Dimas, CA 91773**  
**PH: (909)447-8530, FAX: (909)447-8548**  
**LICENSE # 514132**

**Provisions:**

1. Measurements are a hard set per proposal. If the area exceeds a square foot cost will be added.
2. No engineering, testing, permit, or inspection fees.
3. No plans or written specs given.
4. This bid is based upon (1) move-in (s) and any additional will be \$2,000.00 each.
5. Rock base or sand under concrete is included only if stated.
6. The sub-grade material will be balanced, compacted to required percentage and within one-tenth of a foot, (0.10') by others unless specified.
7. No color included.
8. No gate tracks included.
9. No sealing, caulking or joint filling included.
10. No walls or footings included.
11. No weed control, soil treatment, moisture barriers or saturation of any kind included.
12. Pipe bollards or related work not included.
13. Anchor bolts and templates not included.
14. This proposal is not bid regarding no soils report given.
15. We cannot be responsible for cracks, we can only place expansion joints or weakened plane joints where it is most likely to crack.
16. Truncated domes are not included, unless stated.
- 17. This is only a proposal. It does not constitute an agreement or a contract unless signed or given a purchase order.**
18. This proposal is good until 12/31/23.
19. Grigolla & Sons supplies its own washout bins.
20. No overtime or premium time included. When requested an extra charge covering time and a half or double time will be added. No work on Sunday will be conducted.
21. Any unforeseen rock or underground issues while excavating will ensue extra cost based on time and material.
22. No slopes regarding ADA have been given to meet or be compliant with.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	NOVEMBER 6, 2023	<b>FILE I.D.:</b>	STB300-17
<b>SECTION:</b>	CONSENT - RESOLUTIONS	<b>DEPT.:</b>	CITY MGR.
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	C. GRAVES
<b>SUBJECT:</b>	CONSIDER ADOPTION OF RESOLUTION NO. 23-3423 AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH CHARGES		

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**REASON FOR CONSIDERATION:** Staff has identified 186 sewer and trash accounts in the odd-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien.

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

**FISCAL IMPACT:** Recoverable amount is \$65,044.95, plus \$3,720 for release of lien fees, plus \$9,300 in lien fees, for a total of \$78,064.95.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 23-3423 authorizing placement of liens on certain properties for delinquent sewer and trash charges.

RESOLUTION NO. 23-3423

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

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

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

WHEREAS, it has been determined that there are 186 sewer and/or trash accounts on which there are delinquencies in excess of 90 days; and

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

WHEREAS, the owners of these properties were notified on October 5, 2023, that their delinquent accounts are subject to causing a lien to be placed on their properties for settlement of such delinquencies; and that such liens would be considered for approval by the Montclair City Council on Monday, November 6, 2023.

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

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

APPROVED AND ADOPTED this XX day of XX, 2023.

\_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 23-3423 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2023, and that it was adopted by the following vote, to-wit:

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

\_\_\_\_\_

Andrea M. Myrick  
City Clerk

Exhibit A to Resolution No. 23-3423  
Report of Delinquent Civil Debts - November 2023

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
5356	Alamitos Street	Residential	322.84	20.00	50.00	392.84
5366	Alamitos Street	Senior	321.42	20.00	50.00	391.42
9757	Amherst Avenue	Residential	322.84	20.00	50.00	392.84
9910	Amherst Avenue	Residential	322.84	20.00	50.00	392.84
9960	Amherst Avenue	Residential	323.46	20.00	50.00	393.46
10065	Amherst Avenue	Residential	215.48	20.00	50.00	285.48
10085	Amherst Avenue	Residential	210.76	20.00	50.00	280.76
5363	Arrow Hwy	Commercial	371.45	20.00	50.00	441.45
9909	Bel Air Avenue	Residential	323.00	20.00	50.00	393.00
9910	Bel Air Avenue	Residential	233.74	20.00	50.00	303.74
9950	Bel Air Avenue	Residential	332.50	20.00	50.00	402.50
10045	Bel Air Avenue	Residential	323.77	20.00	50.00	393.77
10063	Bel Air Avenue	Residential	300.00	20.00	50.00	370.00
4460	Benito Street	Residential	469.24	20.00	50.00	539.24
4814	Benito Street	Senior	299.49	20.00	50.00	369.49
4824	Benito Street	Residential	719.12	20.00	50.00	789.12
4959	Benito Street	Residential	200.52	20.00	50.00	270.52
5233	Benito Street	Senior	287.65	20.00	50.00	357.65
5429	Benito Street	Residential	322.84	20.00	50.00	392.84
5448	Benito Street	Residential	216.43	20.00	50.00	286.43
5598	Benito Street	Residential	353.70	20.00	50.00	423.70
9384	Benson Avenue	Residential	223.25	20.00	50.00	293.25
9590	Benson Avenue	Senior	442.81	20.00	50.00	512.81
9974	Benson Avenue	Residential	340.24	20.00	50.00	410.24
4843	Berkeley Street	Residential	322.84	20.00	50.00	392.84
5353	Berkeley Street	Residential	351.03	20.00	50.00	421.03
5382	Berkeley Street	Residential	288.73	20.00	50.00	358.73
5392	Berkeley Street	Residential	273.68	20.00	50.00	343.68
5605	Berkeley Street	Residential	467.00	20.00	50.00	537.00
9543	Bolton Avenue	Residential	455.33	20.00	50.00	525.33
9598	Bolton Avenue	Residential	322.84	20.00	50.00	392.84
4541	Bonnie Brae Street	Residential	322.84	20.00	50.00	392.84
4576	Bonnie Brae Street	Residential	276.27	20.00	50.00	346.27
5475	Bonnie Brae Street	Senior	374.30	20.00	50.00	444.30
5563	Bonnie Brae Street	Residential	455.33	20.00	50.00	525.33
9851	Camarena Avenue	Residential	322.84	20.00	50.00	392.84
4443	Cambridge Street	Residential	322.88	20.00	50.00	392.88
4853	Cambridge Street	Residential	322.84	20.00	50.00	392.84
5448	Cambridge Street	Residential	420.35	20.00	50.00	490.35
5470	Cambridge Street	Residential	322.84	20.00	50.00	392.84
5471	Cambridge Street	Residential	322.84	20.00	50.00	392.84
5561	Cambridge Street	Residential	345.42	20.00	50.00	415.42
5591	Cambridge Street	Residential	393.15	20.00	50.00	463.15
5645	Cambridge Street	Residential	556.72	20.00	50.00	626.72
9243	Camulos Avenue	Residential	322.84	20.00	50.00	392.84
9426	Camulos Avenue	Residential	353.70	20.00	50.00	423.70
9433	Camulos Avenue	Residential	273.83	20.00	50.00	343.83

Exhibit A to Resolution No. 23-3423  
Report of Delinquent Civil Debts - November 2023

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
9511	Camulos Avenue	Residential	353.70	20.00	50.00	423.70
9540	Camulos Avenue	Residential	353.87	20.00	50.00	423.87
9737	Camulos Avenue	Residential	322.45	20.00	50.00	392.45
9820	Camulos Avenue	Residential	204.12	20.00	50.00	274.12
9877	Camulos Avenue	Residential	353.70	20.00	50.00	423.70
10060	Camulos Avenue	Residential	319.25	20.00	50.00	389.25
5666	Caroline Street	Residential	322.84	20.00	50.00	392.84
9845	Central Avenue	Residential	475.59	20.00	50.00	545.59
9855	Central Avenue	Residential	364.62	20.00	50.00	434.62
9795	Coalinga Avenue	Residential	322.84	20.00	50.00	392.84
9824	Coalinga Avenue	Senior	297.31	20.00	50.00	367.31
9872	Coalinga Avenue	Residential	288.88	20.00	50.00	358.88
11207	College Avenue	Residential	289.05	20.00	50.00	359.05
9477	Del Mar Avenue	Residential	353.84	20.00	50.00	423.84
9964	Del Mar Avenue	Residential	469.59	20.00	50.00	539.59
4405	Denver Street	Residential	353.70	20.00	50.00	423.70
4455	Denver Street	Senior	323.00	20.00	50.00	393.00
4986	Denver Street	Residential	325.32	20.00	50.00	395.32
5427	Denver Street	Residential	455.33	20.00	50.00	525.33
5579	Denver Street	Residential	223.33	20.00	50.00	293.33
5616	Denver Street	Residential	322.84	20.00	50.00	392.84
5626	Denver Street	Residential	353.70	20.00	50.00	423.70
5168	El Morado Street	Residential	360.66	20.00	50.00	430.66
5404	El Morado Street	Residential	288.88	20.00	50.00	358.88
5429	El Morado Street	Residential	322.84	20.00	50.00	392.84
9358	Exeter Avenue	Residential	455.33	20.00	50.00	525.33
9463	Exeter Avenue	Residential	250.15	20.00	50.00	320.15
9367	Felipe Avenue	Residential	324.27	20.00	50.00	394.27
9737	Felipe Avenue	Residential	415.17	20.00	50.00	485.17
9793	Felipe Avenue	Senior	287.65	20.00	50.00	357.65
9874	Felipe Avenue	Residential	297.19	20.00	50.00	367.19
9020	Fremont Avenue	Senior	318.51	20.00	50.00	388.51
9729	Fremont Avenue	Residential	288.88	20.00	50.00	358.88
9802	Fremont Avenue	Residential	220.67	20.00	50.00	290.67
9812	Fremont Avenue	Residential	237.03	20.00	50.00	307.03
9823	Fremont Avenue	Residential	322.84	20.00	50.00	392.84
10037	Fremont Avenue	Residential	314.57	20.00	50.00	384.57
9771	Galena Avenue	Residential	519.62	20.00	50.00	589.62
9985	Geneva Avenue	Residential	322.84	20.00	50.00	392.84
4328	Granada Street	Residential	322.84	20.00	50.00	392.84
9627	Greenwood Avenue	Residential	288.88	20.00	50.00	358.88
9772	Greenwood Avenue	Residential	315.95	20.00	50.00	385.95
9793	Greenwood Avenue	Residential	398.75	20.00	50.00	468.75
4376	Harvard Street	Senior	322.84	20.00	50.00	392.84
4418	Harvard Street	Residential	322.84	20.00	50.00	392.84
4430	Harvard Street	Residential	332.16	20.00	50.00	402.16
4825	Harvard Street	Residential	336.01	20.00	50.00	406.01

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Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
4883	Harvard Street	Residential	289.28	20.00	50.00	359.28
5430	Harvard Street	Residential	470.43	20.00	50.00	540.43
5141-43	Harvard Street	Multifamily	645.69	20.00	50.00	715.69
4522	Hawthorne Street	Residential	288.88	20.00	50.00	358.88
9045	Helena Avenue	Residential	468.44	20.00	50.00	538.44
9075	Helena Avenue	Residential	372.15	20.00	50.00	442.15
9607	Helena Avenue	Residential	320.15	20.00	50.00	390.15
5190	Howard Street A & B	Multifamily	714.36	20.00	50.00	784.36
4585	James Street	Residential	353.70	20.00	50.00	423.70
5156	June Mountain Drive	Residential	358.23	20.00	50.00	428.23
9877	Kimberly Avenue	Residential	348.92	20.00	50.00	418.92
5400	La Deney Street	Residential	287.39	20.00	50.00	357.39
5483	La Deney Street	Senior	270.00	20.00	50.00	340.00
9958	Lindero Avenue	Residential	431.41	20.00	50.00	501.41
10007	Lindero Avenue	Senior	286.54	20.00	50.00	356.54
10042	Lindero Avenue	Residential	323.00	20.00	50.00	393.00
10086	Lindero Avenue	Residential	443.76	20.00	50.00	513.76
9527	Marion Avenue	Residential	322.84	20.00	50.00	392.84
9598	Marion Avenue	Residential	329.41	20.00	50.00	399.41
10049	Marion Avenue	Residential	312.12	20.00	50.00	382.12
9595	Mills Avenue	Residential	353.70	20.00	50.00	423.70
9745	Mills Avenue	Residential	770.67	20.00	50.00	840.67
9985	Mills Avenue	Residential	339.93	20.00	50.00	409.93
9721	Monte Vista Avenue	Residential	253.82	20.00	50.00	323.82
9795	Monte Vista Avenue	Residential	336.01	20.00	50.00	406.01
5092	Moreno Street	Residential	455.33	20.00	50.00	525.33
5616	Moreno Street	Residential	444.23	20.00	50.00	514.23
4644	Olive Street	Residential	374.03	20.00	50.00	444.03
4771	Orchard Street	Residential	325.66	20.00	50.00	395.66
5032	Orchard Street	Residential	353.71	20.00	50.00	423.71
5690	Orchard Street	Residential	322.84	20.00	50.00	392.84
4996	Phillips Blvd	Residential	244.61	20.00	50.00	314.61
9925	Poulsen Avenue	Residential	322.84	20.00	50.00	392.84
9375	Pradera Avenue	Multifamily	1,369.28	20.00	50.00	1,439.28
10074	Pradera Avenue	Residential	368.17	20.00	50.00	438.17
4426	Princeton Street	Residential	322.87	20.00	50.00	392.87
4467	Princeton Street	Residential	322.84	20.00	50.00	392.84
9060	Ramona Avenue	Residential	322.84	20.00	50.00	392.84
9090	Ramona Avenue	Residential	455.33	20.00	50.00	525.33
9109	Ramona Avenue	Residential	299.03	20.00	50.00	369.03
9263	Ramona Avenue	Residential	222.13	20.00	50.00	292.13
9366	Ramona Avenue	Multifamily	275.12	20.00	50.00	345.12
9587	Ramona Avenue	Residential	322.84	20.00	50.00	392.84
9801	Ramona Avenue	Senior	306.75	20.00	50.00	376.75
10080	Ramona Avenue	Residential	288.88	20.00	50.00	358.88
10654-60	Ramona Avenue	Commercial	285.97	20.00	50.00	355.97
9413	Rose Avenue	Residential	384.55	20.00	50.00	454.55

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Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
9434	Rose Avenue	Residential	322.84	20.00	50.00	392.84
9441	Rose Avenue	Residential	370.22	20.00	50.00	440.22
9734	Rose Avenue	Residential	563.31	20.00	50.00	633.31
9866	Rose Avenue	Senior	287.65	20.00	50.00	357.65
9988	Rose Avenue	Residential	357.98	20.00	50.00	427.98
4669	Rosewood Street	Residential	319.17	20.00	50.00	389.17
4683	Rosewood Street	Residential	322.84	20.00	50.00	392.84
5361	Rosewood Street	Residential	322.84	20.00	50.00	392.84
11076	Roswell Avenue	Residential	332.72	20.00	50.00	402.72
4246	Rudisill Street	Residential	334.16	20.00	50.00	404.16
4300	Rudisill Street	Residential	344.79	20.00	50.00	414.79
5432	Rudisill Street	Residential	340.32	20.00	50.00	410.32
5452	Rudisill Street	Residential	255.96	20.00	50.00	325.96
4711	San Bernardino Street	Residential	322.84	20.00	50.00	392.84
4749	San Bernardino Street	Residential	338.74	20.00	50.00	408.74
4794	San Bernardino Street	Residential	288.88	20.00	50.00	358.88
5216	San Bernardino Street	Residential	322.84	20.00	50.00	392.84
5418	San Bernardino Street	Residential	319.25	20.00	50.00	389.25
5489	San Bernardino Street	Residential	359.69	20.00	50.00	429.69
5528	San Bernardino Street	Residential	323.32	20.00	50.00	393.32
4463	San Jose Street	Multifamily	233.35	20.00	50.00	303.35
5422	San Jose Street	Residential	353.70	20.00	50.00	423.70
5433	San Jose Street	Residential	319.25	20.00	50.00	389.25
4424	San Jose Street #05	Residential	322.84	20.00	50.00	392.84
4424	San Jose Street #18	Residential	324.21	20.00	50.00	394.21
4424	San Jose Street #20	Residential	455.33	20.00	50.00	525.33
4622	San Jose Street O	Residential	332.83	20.00	50.00	402.83
4622	San Jose Street R	Residential	373.09	20.00	50.00	443.09
4622	San Jose Street X	Residential	371.94	20.00	50.00	441.94
9831	Santa Anita Avenue	Residential	455.33	20.00	50.00	525.33
10016	Santa Anita Avenue	Residential	324.84	20.00	50.00	394.84
9830	Saratoga Avenue	Residential	498.75	20.00	50.00	568.75
5225	State Street	Residential	330.32	20.00	50.00	400.32
9817	Sun Valley Drive	Residential	328.22	20.00	50.00	398.22
9617	Surrey Avenue	Residential	322.84	20.00	50.00	392.84
9793	Surrey Avenue	Residential	322.61	20.00	50.00	392.61
9824	Surrey Avenue	Senior	384.46	20.00	50.00	454.46
9554	Tudor Avenue	Senior	429.01	20.00	50.00	499.01
9773	Tudor Avenue	Residential	316.43	20.00	50.00	386.43
10016	Tudor Avenue	Residential	268.10	20.00	50.00	338.10
9829	Vail Drive	Residential	336.10	20.00	50.00	406.10
9784	Vernon Avenue	Residential	288.88	20.00	50.00	358.88
5172	Village Drive	Residential	249.25	20.00	50.00	319.25
4878	Yale Street	Residential	323.29	20.00	50.00	393.29
5405	Yale Street	Residential	322.87	20.00	50.00	392.87
			65,044.95	3,720.00	9,300.00	78,064.95



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	OCTOBER 24, 2023	<b>FILE I.D.:</b>	FRD040
<b>SECTION:</b>	CONSENT - RESOLUTIONS	<b>DEPT.:</b>	FIRE
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	D. POHL
<b>SUBJECT:</b>	CONSIDER ADOPTION OF RESOLUTION NO. 23-3424 RESCINDING AND SUPERSEDING RESOLUTION NO. 21-3294 IDENTIFYING AND CORRECTING UPDATED TERMS AND CONDITIONS FOR A FIRE DEPARTMENT RESPONSE AWAY FROM ITS OFFICIAL DUTY STATION WHEN ASSIGNED TO A STATE OR FEDERAL DECLARED EMERGENCY INCIDENT		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider adoption of Resolution No. 23-3424 rescinding and superseding Resolution No. 21-3294 correcting and identifying updated terms and conditions for a Fire Department response away from their official duty station and assigned to State or Federal declared emergency incident.

**BACKGROUND:** The Montclair Fire Department responds to all-hazard events under the terms and conditions of the Agreement for Local Government Fire and Emergency Assistance, hereafter referred to as the "California Fire Assistant Agreement" or "CFAA." The signatory agencies to the CFAA are United States Department of the Interior agencies (Bureau of Land Management, National Park Service, and Fish and Wildlife); State of California, Department of Forestry and Fire Protection (CAL FIRE); State of California Governor's Office of Emergency Services (Cal OES); and United States Forest Service.

At times of severe wildfire conditions and other emergencies, there is often a need for emergency apparatus and/or personnel to provide fire protection or perform other tasks to control the situation. Through the California Fire and Rescue Mutual Aid System, Cal OES has such emergency apparatus and personnel, which may be available from local jurisdictions for dispatch and use. Cal OES, CAL FIRE, and the Federal Fire Agencies will generally use the CFAA for engines, water tenders, and overhead to address an incident once local government resources are exhausted or where a local agreement is not in place.

The signatories to the CFAA intend to compensate California Fire and Rescue Mutual Aid System agencies for the cost of assisting the State of California and the Federal Fire Agencies. The rates, methodologies, and formulas in the CFAA are intended to provide such costs. The compensation shall be consistent with the assisting agency's normal business practices and any existing governing body resolution supporting those business practices.

Adoption of proposed Resolution No. 23-3424 would accomplish the following:

1. Acknowledge that personnel are compensated (portal-to-portal) beginning at the time of dispatch to the return to jurisdiction when equipment and personnel are in service and available for agency response;
2. Establish the rates at which the classifications of Fire Chief, Assistant Fire Chief, Fire Battalion Chief, Fire Captain, Fire Engineer/Paramedic, Fire Engineer, Firefighter/ Paramedic, and Firefighter will be compensated for overtime while in



the course of their employment and away from their official duty station and while assigned to a State or Federal emergency incident, in support of a State or Federal emergency incident, or pre-positioned for a State or Federal emergency response;

3. Satisfy the requirements outlined in Exhibit A, Section A-8.2 of the 2020 CFAA, to submit a governing body resolution to Cal OES Fire and Rescue Divisions that demonstrates the City's normal internal business practices for compensating its employees while in the course of their employment and away from their official duty station and while assigned to a State or Federal emergency incident, in support of a State or Federal emergency incident, or pre-position for a State or Federal emergency response; and
4. Reaffirm the City's commitment, in the spirit of cooperation, to fairly compensate its employees that may be called upon to work for indefinite periods during emergency situations.

Upon adoption of proposed Resolution No. 23-3424, the Fire Department will forward proof of the adoption to Cal OES with its 2024 Salary Survey. A Salary Survey is completed by Fire Department staff annually and submitted to Cal OES. This survey documents the average actual rate for each classification that may be assigned to a State or Federal emergency incident. Cal OES uses the information provided on the survey to generate reimbursements for those incidents that our agency responded to under the terms and conditions of the CFAA.

**FISCAL IMPACT:** Should the City Council adopt proposed Resolution No. 23-3424, the costs associated with compensating employees portal-to-portal while in the course of their employment and away from their official duty station and while assigned to a State or Federal emergency incident, in support of a State or Federal emergency incident, or pre-position for a State or Federal emergency response, will be funded by the Fire Department's Emergency Services Budget Program.

Depending on the severity of fire conditions throughout the State, the funds allocated towards this budget program may be sufficient or require adjustment. Historically, strike team responses have generated a considerable expenditure to the Emergency Services Budget Program; however, Fire Department staff has employed a strategy to reduce these expenditures by submitting reimbursement requests to Cal OES for expenses (labor costs, benefits, vehicle costs) incurred by the City during strike team deployments. Reimbursement for the aforementioned items will be in full and will not incur a cost to the City. Additionally, an administrative fee will also be included in the reimbursement amount to offset any administrative or indirect costs incurred by the city.

Cal OES, CAL FIRE, and the Federal Fire Agencies use the CFAA as the fiscal authority for reimbursing local government agencies for the use of their resources when they are dispatched to incidents through the California Fire and Rescue Mutual Aid System.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 23-3424 rescinding and superseding Resolution No. 21-3294 identifying and correcting updated terms and conditions for a Fire Department response away from its official duty station when assigned to a State or Federal declared emergency incident.

RESOLUTION NO. 23-3424

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR RESCINDING AND SUPERSEDING RESOLUTION NO. 23-3294 CORRECTING AND IDENTIFYING UPDATED TERMS AND CONDITIONS FOR A FIRE DEPARTMENT RESPONSE AWAY FROM THE DEPARTMENT'S OFFICIAL DUTY STATION WHEN ASSIGNED TO A STATE OR FEDERAL DECLARED EMERGENCY INCIDENT

WHEREAS, the Montclair Fire Department is a public agency located in the County of San Bernardino, State of California; and

WHEREAS, it is the City of Montclair's desire to provide fair and legal payment to all its employees for time and overtime worked; and

WHEREAS, the City of Montclair has in its employ Fire Department response personnel including Fire Chief, Assistant Fire Chief, Fire Battalion Chief, Fire Captain, Fire Engineer/ Paramedic, Firefighter/ Paramedic, and Firefighter; and

WHEREAS, The City of Montclair will compensate its employees portal-to-portal while in the course of their employment and away from their official duty station and while assigned to a State or Federal declared emergency incident, in support of a State or Federal emergency incident, or pre-positioned for a State or Federal emergency response; and

WHEREAS, the City of Montclair will compensate its employees overtime in accordance with the rates stated below while in the course of their employment and away from their official duty station and while assigned to a State or Federal emergency incident, in support of a State or Federal emergency incident, or pre-positioned for a State or Federal emergency response:

1. The ranks of Fire Chief and Assistant Fire Chief are considered exempt employees and would not normally receive overtime compensation for hours worked in excess of 40 hours per week; however, when this rank is assigned to an emergency incident that is away from its official duty station, it shall be paid at time and one-half for any hours worked beyond the normal 40-hour shift schedule.
2. The rank of Fire Battalion Chief shall be paid at time and one-half rate.
3. The ranks of Fire Captain, Fire Engineer/Paramedic, Firefighter/ Paramedic, and Firefighter shall be paid at time and one-half rate.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby find and determine that the conditions set forth in this resolution, as stated above, take effect immediately upon 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. 23-3424 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:** NOVEMBER 6, 2023

**FILE I.D.:** CMR075

**SECTION:** BUSINESS ITEMS

**DEPT.:** CITY MGR.

**ITEM NO.:** A

**PREPARER:** D. ROBBINS

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 23-68 WITH EDWARD C. STARR FOR PROFESSIONAL CITY MANAGER AND EXECUTIVE DIRECTOR SERVICES FOR THE CITY OF MONTCLAIR, THE MONTCLAIR SUCCESSORY REDEVELOPMENT AGENCY, THE MONTCLAIR HOUSING AUTHORITY, THE MONTCLAIR HOUSING CORPORATION, AND THE MONTCLAIR COMMUNITY FOUNDATION FOR THE PERIOD OF JANUARY 2, 2023, TO DECEMBER 31, 2026

**REASON FOR CONSIDERATION:** The Montclair municipal government is based on the council-manager form of government, as provided for by § 34851 *et seq.* of the Government Code. The City Council also serves as the Board of Directors for the Montclair Successor Redevelopment Agency, the Montclair Housing Authority, the Montclair Housing Corporation, and the Montclair Community Foundation.

The Montclair City Council/Board of Directors, acting in its capacity as the elected legislative body, is responsible for establishing policy, setting a vision, adopting a legal framework, approving appropriations and appointing a professional manager/executive director to oversee administrative operations and management functions for the City of Montclair and the City's other relevant authorities on a day-to-day basis. In appointing a professional manager/executive director, the California Government Code authorizes the City Council/Board of Directors to execute employment agreements.

In June 2010, the Montclair City Council/Board of Directors (hereafter, "the City") and Edward C. Starr (hereafter, "Mr. Starr") entered into Agreement No. 10-90, appointing Mr. Starr to the position of Montclair City Manager/Executive Director for a term of four years, effective July 1, 2010, through June 30, 2014, with automatic one-year extensions.

In October 2014, the City and Mr. Starr entered into Agreement No. 14-88, extending the employment of Mr. Starr for an additional four-year term, effective September 15, 2014, through December 31, 2018, with automatic one-year extensions.

In December 2018, the City and Mr. Starr entered into Agreement No. 18-95, extending the employment of Mr. Starr for an additional four-year term, effective December 3, 2018, through December 31, 2022, with automatic one-year extensions.

Pursuant to Section II.H. of Agreement No. 18-95, Mr. Starr is currently on the first of two automatic one-year extensions, with the first extension expiring December 31, 2023. The second automatic one-year extension would commence on December 31, 2023, and expire on December 31, 2024.

Proposed Agreement No. 23-68 between the City and Mr. Starr would extend the employment of Mr. Starr for an additional four-year term, retroactive to an effective date of January 2, 2023 thru December 31, 2026.

The City Council/Board of Directors is requested to consider entering into Agreement No. 23-68 to retain the services of Mr. Starr as City Manager/Executive Director.

For purposes of review, Agreement No. 23-68 is included in City Council agenda packets as **Exhibit 1**.

Provisions of Agreement No. 23-68 are subject to final review, modification and approval by the City Attorney.

**BACKGROUND:** In California, the most common structure of city government is the council-manager system. Established by § 34851 *et seq.* of the Government Code, the council-manager form of government is used in both general law and charter cities throughout the state, with approximately 97 percent of all California cities using the council-manager form of government. Essentially, this form of government allows a city to establish, by ordinance, the position of City Manager, statutorily imbued with specific powers and duties under the general law.

Government Code § 34852 permits a governing board to enumerate the powers and duties of the city manager by ordinance, and to separately establish wages and benefits for that position. In practice, the majority of California city managers are appointed pursuant to agreement, with the terms and conditions of employment respectively set forth therein.

Generally, the powers and duties of a city manager include the following:

1. Implement policies established by the City Council;
2. Appoint, discipline and remove employees and agents of the City (subject to any civil service or other personnel rules), except the City Attorney, who is typically responsible to the City Council;
3. See to the efficient administration of all aspects of city business;
4. Enforce all ordinances and laws within the jurisdiction;
5. Attend all meetings of the City Council;
6. Recommend measures and ordinances for adoption;
7. Investigate the affairs of the City or any department or any contract of the city to assure proper performance of any obligation due the city;
8. Prepare an annual budget, ensure payment of bills, and inform the City Council as to financial matters;
9. Fulfill all requirements of the position;
10. Perform such other duties as the City Council may prescribe by action, resolution or ordinance.

#### **Past Employment Agreements Between the City and Mr. Starr.**

- **Agreement No. 10-90.** Pursuant to the terms of Agreement No. 10-90, on July 1, 2010, the City hired Deputy City Manager/Administrative Services Director Edward C. Starr to the position of City Manager/Executive Director/Director of Administrative Services/City Clerk effective July 1, 2010 through June 30, 2014.

During the first two years of Mr. Starr's employment under Agreement No. 10-90, and in consideration of the economic impacts of the Great Recession, Mr. Starr

declined to accept a pay adjustment, remaining instead at Mr. Starr's previous Deputy City Manager classification salary from July 1, 2010 through June 30, 2012. According to an independent audit conducted by Van Lant & Fankhanel, LLP (included in the City Council agenda packets as Exhibit C), during the two years the Mr. Starr declined the City Manager position wage adjustment, the Mr. Starr saved the City an estimated \$123,690 in wage- and benefit-related compensation, plus an estimated \$25,000 in CalPERS the City-related costs.

Excluding the wage and benefit adjustment from Deputy City Manager to City Manager/Executive Director implemented half-way through the four-year term of Agreement No. 10-90, Mr. Starr received no additional wage or benefit adjustment.

- **Agreement No. 14-88.** On October 6, 2014, the City and Mr. Starr entered into Agreement No. 14-88, extending the employment of Mr. Starr for an additional four-year term, effective September 15, 2014 through December 31, 2018.

Excluding a two percent authorized wage adjustment in November 2016, Mr. Starr received no other Agreement-related wage or benefit adjustment during the four-year term of Agreement No. 14-88.

- **Agreement No. 18-95.** On December 3, 2018, the City and Mr. Starr entered into Agreement No. 18-95, extending the employment of Mr. Starr for an additional four-year term, effective December 3, 2018 through December 31, 2022, with automatic one-year extensions.

Upon approval of Agreement No. 18-95, Mr. Starr received a 15 percent wage adjustment. Mr. Starr has received no other Agreement-related wage or benefit adjustments during the four-year term of Agreement No. 18-95. The four-year value of the 15 percent wage adjustment (\$134,640) exceeded the value of compensation forfeited by Mr. Starr (\$123,690) during the first two years of employment as City Manager/Executive Director (July 1, 2010 through June 31, 2012) by approximately \$10,950.

#### **First Automatic Extension of Agreement No. 18-95 to December 31, 2023.**

- Pursuant to Section II.H. of Agreement No. 18-95, twelve months prior to the Agreement's expiration, or no later than December 31, 2021, the City was required to provide notice in writing to Mr. Starr if the Agreement was to not be renewed. the City provided no required notice of non-renewal to Mr. Starr; therefore, effective December 30, 2022, Agreement No. 18-95 automatically renewed for an additional twelve-month period through December 31, 2023, and remains in effect indefinitely with automatic, annual extensions unless otherwise terminated, altered, or superseded by the City.

During the first automatic one-year extension of Agreement No. 18-95 (December 31, 2022 to the present date (September 18, 2023), Mr. Starr has, to date, received no wage or benefit adjustment.

#### **Second Automatic Extension of Agreement No. 18-95 to December 31, 2024.**

- Had it been the intent of the City to not renew Agreement No. 18-95 beyond the first automatic extension to December 31, 2023, the City was required to provide notice in writing to Mr. Starr no later than December 31, 2022, that Agreement No. 18-95 would not be renewed or allowed to extend beyond December 31, 2023; therefore, effective December 31, 2023, Agreement No. 18-95 will automatically renew for an additional twelve-month period through December 31,

2024, and will remain in effect indefinitely with automatic, annual extensions unless otherwise terminated, altered or superseded by the City.

There is presently no wage adjustment attached to the second, one-year automatic extension of Agreement No. 18-95 through December 31, 2024.

### **Proposed Agreement No. 23-68.**

In the interest of providing continuity for the City and Mr. Starr, the City is asked to consider approving Agreement No. 23-68 between the City and Mr. Starr, contractually reauthorizing the employment of Mr. Starr for the term of January 2, 2023 to December 31, 2026. Thereafter, pursuant to Section II.H., Agreement No. 23-68 would automatically remain in full force and effect at twelve-month intervals, unless otherwise terminated or altered/superseded by a successor agreement.

The City's failure to approve Agreement No. 23-68, would serve as notice to Mr. Starr that his employment would end no later than December 31, 2024, unless otherwise extended by separate agreement between the City and Mr. Starr.

Terms and conditions of employment contained in Agreement No. 18-95 carry over into proposed Agreement No. 23-68, and have been revised to incorporate (1) correction of dates, (2) addition of paragraph titles, (3) modifications to terms and conditions of employment for clarity and legal compliance, and (4) to reflect any wage and/or benefit modifications.

Salient differences between Agreement No. 18-95 and proposed Agreement No. 23-68 include the following:

#### 1. Term of employment.

- A. The effective term of the Agreement is January 2, 2023, thru December 31, 2026. Thereafter, the Agreement automatically remains in full force and effect in twelve-month (12-month) intervals, with each December 31 serving as the anniversary date, unless and until otherwise altered or superseded by a successor agreement negotiated and agreed upon by and between Mr. Starr and the City; or unless and until Mr. Starr is terminated by the City, or Mr. Starr otherwise voluntarily separates from employment.

#### 2. Wages.

- A. Mr. Starr voluntarily agrees to defer the effective date of the wage adjustment from January 2, 2023 to July 3, 2023 (the first day of the first pay period for Fiscal Year 2023-24). Effective July 3, 2023, the City shall pay Mr. Starr a monthly base pay rate of twenty-five thousand three hundred and seventy-six dollars (\$25,376)—representing an eighteen percent wage adjustment above the current monthly rate of \$21,505. The proposed wage adjustment, Mr. Starr's first wage adjustment since the City approval of Agreement No. 18-95 on December 3, 2018, averages to a 4.25 percent wage adjustment over each of the four years of the term of Agreement No. 23-68. Agreement No. 23-68 does not provide for any automatic wage or benefit adjustment for the duration of the contract period through December 31, 2026.

#### 3. Deferred Compensation.

- A. The City, on behalf of Mr. Starr, contributes to an employer-designated 457 deferred compensation plan, up to the maximum annual amount allowable

under Federal Tax Law for employer-provided deferred compensation plans. The current maximum limit under Agreement No. 18-95 is a maximum elective/catchup deferral up to \$24,500 annually. The proposed language change under Agreement No. 23-68 represents an estimated decrease of \$2,000 annually based on the current Federal Internal Revenue Service elective deferral limit set at \$22,500.

4. Service Award Program.

- A. The City provides eligible employees a monetary service award after completing each five-year period of service. Under Agreement No. 18-95, Mr. Starr's service award is \$2,500 every five years. Agreement No. 23-68 proposes adjusting the service award for Mr. Starr to \$4,500 every five years.

**FISCAL IMPACT:** The total additional annual value of wage- and benefit-related compensation for the City Manager/Executive Director under the terms of Agreement No. 22-107 is approximately \$46,452 in wages, minus a \$2,000 annual decrease in the 457(b) deferred compensation plan elective deferral limit, and an estimated \$9,800 in benefit-related costs, for a total of \$54,342 in additional costs.

The above additional increase in Mr. Starr's compensation is offset by an estimated \$251,128 annually in wage and benefit savings related to the October 2022 elimination of the Administrative Services Director classification, and delegation of duties assigned to that classification to Mr. Starr, Assistant City Manager/Human Services Director and City Clerk/Human Resources Manager.

Equally dividing the \$251,128 in annual wage and benefit savings related to the Administrative Services Director classification into thirds produces a net annual savings of approximately \$83,709 generated by each of the three positions (City Manager, Assistant City Manager/Human Services Director and City Clerk/Human Resources Manager) that absorbed the former position's duties.

Subtracting the proposed \$54,342 in annual wage and benefit adjustments for Mr. Starr from the estimated one-third share of \$83,709 in wage and benefit savings related to elimination of the former Administrative Services Director classification produces a net annual savings of +\$29,367.

Based on City Council action to approve Agreement No. 23-68, year-end adjustments would be made to the personnel budget account for City Manager/Executive Director wage and benefit compensation to address additional funding requirements for the balance of the current fiscal year. Future fiscal year budget accounts would be adjusted during the budget preparation process to address changes to wage and benefit compensation for the City Manager/Executive Director classification.

**RECOMMENDATION:** Staff recommends the City Council and Board of Directors for the Montclair Successor Redevelopment Agency, Montclair Successor Housing Authority, Montclair Housing Corporation and Montclair Community Foundation approve Agreement No. 23-68 with Edward C. Starr to provide professional city manager and executive director services for the Montclair Successor Redevelopment Agency, the Montclair Housing Authority, the Montclair Housing Corporation, and the Montclair Community Foundation for the period of January 2, 2023, to December 31, 2026.

**MINUTES OF THE CITY OF MONTCLAIR REAL ESTATE  
COMMITTEE MEETING HELD ON MONDAY, JULY 17, 2023  
AT 5:31 P.M. IN THE CITY HALL CONFERENCE ROOM,  
5111 BENITO STREET,**

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**I. CALL TO ORDER**

Chair Dutrey called the meeting to order at 5:31 p.m.

**II. ROLL CALL**

Present: Mayor Dutrey (Chair); Council Member Martinez (Vice Chair); City Manager Starr, Director of Economic Development and Housing Fuentes; Director of Community Development Diaz, Senior Planner Gutiérrez, Building Official/Code Enforcement Manager Westerlin; Plans Examiner Dorsey; Acting Chief of Police Reed; Director of Public Works Heredia; Administrative Specialist Giang

**III. APPROVAL OF MINUTES — None**

**IV. PUBLIC COMMENT — None**

**V. DISCUSSION ITEMS**

**A. DEVELOPMENT PROPOSALS**

**1. SB9 Ordinance Update**

Staff made a PowerPoint presentation regarding SB9 legislation. The presentation was intended to provide the Committee background as to why the City needs to adopt an ordinance pursuant to the provisions of SB9 regarding ministerial approval of housing development in the single-family residential zone.

Chair Dutrey sought clarification about the specific details of the lot split, maximum units at each property, utility meter, alley access, and design standards, to which staff responded. Chair Dutrey asked staff to review and ensure the provisions for subdividing and demolishing the main house structure. Both Chair Dutrey and Vice Chair Martinez indicated their support for the draft ordinance and the next steps in the review process leading to its adoption.

**2. Accessory Dwelling Unit (ADU) Ordinance Update**

The Committee viewed a short PowerPoint presentation on the ADU ordinance update. Chair Dutrey shared his concerns regarding new setback allowances, right-of-way encroachments, and front yard ADU additions. Staff responded to his questions and concerns.



3. **Electric Fencing Ordinance**

The Committee reviewed the PowerPoint presentation for the potential use of electric fences. The committee discussed safety concerns related to the use of electrified fences. Both Chair Dutrey and Vice Chair Martinez indicated their support for the draft ordinance and the next steps in the review process leading to consideration by the City Council.

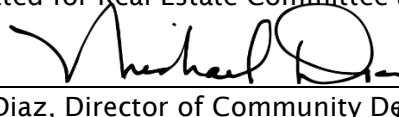
**VI. OTHER ITEMS**

A. Staff noted the Panera Bread project is undergoing construction.

**VII. ADJOURNMENT**

At 6:20 p.m., Chair Dutrey adjourned the Real Estate Committee. The Committee is scheduled to next meet on Monday, August 21, 2023.

Submitted for Real Estate Committee approval,

A handwritten signature in black ink, appearing to read "Michael Diaz", is written over a horizontal line.

Michael Diaz, Director of Community Development

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
OCTOBER 16, 2023, AT 5:19 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Mayor Pro Tem Johnson called the meeting to order at 5:19 p.m.

**II. ROLL CALL**

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

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of October  
2, 2023.**

Moved by Council Member Ruh, seconded by Mayor Pro Tem  
Johnson, and carried unanimously to approve the minutes of the  
Personnel Committee meeting on October 2, 2023.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**


At 5:20 p.m., the Personnel Committee went into Closed Session  
regarding personnel matters related to appointments, resignations/  
terminations, and evaluations of employee performance.

At 5:34 p.m., the Personnel Committee returned from Closed Session.  
Mayor Pro Tem Johnson stated that no announcements would be made  
at this time.

**VI. ADJOURNMENT**

At 5:34 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, OCTOBER 16, 2023, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

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I. CALL TO ORDER

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

II. INVOCATION

Pastor Lance Irely, Trinity Lutheran Church, gave the invocation.

III. PLEDGE OF ALLEGIANCE

Council Member/Director Martinez 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 — None

VI. PUBLIC COMMENT

- **Cathy Cimbalo** speaking on behalf of **Court Appointed Special Advocates (CASA) of San Bernardino County**, invited the City Council to a Casino Night fundraiser event at the Upland Country Club on Thursday, November 2, 2023.
- **Nena Upadhyaya** introduced herself as the District Representative for **Senator Susan Rubio (California Senate District 22)**, and announced that the Senator is opening a new district office in Ontario. She advised **Senator Rubio's** Office is hosting an upcoming Senior Scam Stopper seminar in partnership with the **California Department of Financial Protection and Innovation** at the Irwindale Senior Center on Thursday, November 2, at 10:00 a.m.
- **Vincent Urbina** spoke in opposition to the City participating in Community Choice Energy, thanked Council Member Lopez for discussing unsafe driving conditions on Monte Vista Avenue, and expressed concerns related to increasing pollution in the City due to the recent industrial and economic growth.
- **Ruby Long**, Field Representative for **San Bernardino County Fourth District Supervisor Curt Hagman**, announced the District will host a Veteran Claims Event on Wednesday, November 8, from 10:00 a.m. to 2:00 p.m. at the District office located at 14010 City Center Drive in Chino Hills.

VII. PUBLIC HEARINGS — None

**VIII. CONSENT CALENDAR**

<b>ACTION – Consent Calendar</b>	
<b>ACTING:</b>	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
<b>DISCUSSION:</b>	Item B-10
<b>MOTION:</b>	Pull Item C-1; and approve the remainder of the Consent Calendar as presented.
<b>MADE BY:</b> <b>SECOND BY:</b>	Council Member/Director Lopez Council Member/Director Ruh
<b>AYES:</b> <b>NOES:</b> <b>ABSTAIN:</b> <b>ABSENT:</b>	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
<b>RESULT:</b>	Motion carried 5-0.

**A. Approval of Minutes**

**1. Regular Joint Meeting — October 2, 2023**

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

**B. Administrative Reports**

**1. Consider Receiving and Filing City Treasurer’s Report – September 2023**

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

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

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

**3. Consider Receiving and Filing SA Treasurer’s Report – September 2023**

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

4. **Consider Approval of SA Warrant Register – September 2023**

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

5. **Consider Receiving and Filing MHC Treasurer’s Report – September 2023**

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

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

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

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

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

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

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

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

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

10. **Consider Approval of the Filing of a Notice of Completion with the San Bernardino County Recorder’s Office for the Electric Vehicle Charging Stations Project**

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

Council Member Lopez received clarification that unexpended funds for this project will remain in the same fund from which they would have been expended and would not be transferred to the General Fund.

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

11. **Consider Authorizing the Receipt of \$5,695.82 from the Fiscal Year 2023 Patrick Leahy Bulletproof Vest Partnership Program to Assist with the Purchase of Ballistic Vests**

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

**C. Agreements**

2. **Consider Approval of Agreement No. 23-79, Amendment No. 1 to Agreement No. 20-31 with San Bernardino County for Construction of the Pipeline Avenue Pavement Rehabilitation Project, Subject to Any Revisions Deemed Necessary by the City Attorney**

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

3. **Consider Approval of Agreement No. 23-50 with Ontario-Montclair School District to Provide Case Management Services, Subject to Any Revisions Deemed Necessary by the City Attorney**

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

**D. Resolutions — None**

**IX. PULLED CONSENT CALENDAR ITEMS**

**C. Agreements**

1. **Consider Approval of Agreement No. 23-77, Between the City of Montclair and the Montclair Chamber of Commerce for the Lease of a City-Owned Facility, Subject to Any Revisions Deemed Necessary by the City Attorney**

Mayor Pro Tem Johnson recused herself due to her volunteer involvement with the Chamber’s operations.

Council Member Lopez stated he is glad the Chamber will be using the facility.

<b>ACTION –Consent Calendar- Item C-1 (Pulled)</b>	
<b>ACTING:</b>	City Council
<b>DISCUSSION:</b>	Item C-1
<b>MOTION:</b>	Approve Agreement No. 23-77 with the Montclair Chamber of Commerce.

ACTION –Consent Calendar– Item C-1 (Pulled)	
<b>MADE BY:</b>	Mayor Dutrey
<b>SECOND BY:</b>	Council Member Ruh
<b>AYES:</b>	Lopez, Martinez, Ruh, Dutrey
<b>NOES:</b>	None
<b>ABSTAIN:</b>	Johnson
<b>ABSENT:</b>	None
<b>RESULT:</b>	Motion carried 4-0-1 (Johnson abstained).

**X. COMMUNICATIONS**

**A. Department Reports** — None

**B. City Attorney** — None

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

**D. Mayor/Chair**

Mayor/Chair Dutrey somberly recognized the conflict taking place in Israel and Palestine and stated tonight’s meeting would be adjourned in memory of those who have lost their lives. He expressed hope for peace in the world and stated this country must continue to support the common good of all cultures and people.

**E. Council Members/Directors**

1. Council Member/Director Ruh announced the passing of 50-year Montclair resident **Barbara Ness**, who worked at Montclair Hospital for 18 years and extended to her family his deepest condolences; noted he recently attended an event at the **University of La Verne** for the inauguration of its new president, **Dr. Pardis Mahdavi**; and shared his thoughts on the conflict in the Middle East.
2. Council Member/Director Lopez noted former Mayor of Rancho Cucamonga **Donald Kurch** recently passed away and should be remembered for overcoming addiction and becoming a doctor to help others in need. He announced **SED Cocina** just had its grand opening and encouraged residents to try it out, and noted he attended **Montclair High School’s** homecoming game on October 13. He disapproved the media’s portrayal of the conflict in Israel, and provided history on Hamas as a terrorist and anti-Semitic organization while expressing support for Israel.
3. Mayor Pro Tem/Vice Chair Johnson stated the conflict in Israel hurts her heart and she hopes it ends quickly. She announced **Montclair High School** needs volunteers to interview and counsel students about careers for the school’s *Ready to Launch* initiative on November 8, from 8:00 a.m. to 1:00 p.m., which prepares students to enter the job market.

**F. Committee Meeting Minutes**

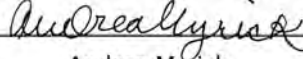
The following committee minutes were received and filed for informational purposes:

1. Personnel Committee – October 2, 2023

**XI. ADJOURNMENT**

At 7:36 p.m., the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board were adjourned.

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



Andrea Myrick,  
City Clerk

*The meeting was adjourned in memory of longtime Montclair resident **Barbara Ness**, former Rancho Cucamonga Mayor **Donald Kurth**, and the innocents who have lost their lives in the ongoing conflict in the Middle East.*

PENDING APPROVAL