CITY OF MONTCLAIR

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

AGENDA

Monday, February 5, 2024
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, February 5, 2024
7:00 p.m.

Remote Participation Information:

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

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

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

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

AGENDA

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

II. INVOCATION

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

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

V. PRESENTATIONS

A. Introduction of New and Promoting Fire Department Employees

B. Introduction of New Police Officers

VI. PUBLIC COMMENT

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

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

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

Consider Adoption of MHC Resolution No. 24-01 Approving Agreement No. 24-12, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Authority [MHC]

Consider Adoption of MHA Resolution No. 24-01 Approving Agreement No. 24-12, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Corporation, and Accepting the Transfer of Certain Real Property from the City of Montclair [MHA]

Consider Authorizing a $100,000 Appropriation from the Housing Trust Fund for Rehabilitation of the Property Located at 9795 Central Avenue, Montclair [MHA] 145

4. Consider Adoption of Resolution No. 24-3430 Authorizing the Appointment of Merry Westerlin as a Retired Annuitant into the Temporary Part-Time Position of Building Official Pursuant to Government Code Section 21221(h) Effective February 6, 2024 [CC]

   Consider Authorizing the Commencement of a Recruitment for a Permanent Building Official on February 6, 2024 [CC] 211

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE

A. Consider Receiving the Response to an Inquiry from the City Council Regarding Costs Associated with, and Potential Dissemination of, a Public Information Communication to Montclair Households Addressing all Cost Components Related to Garcia/Fuentes v. Lopez, Including Expenditures Related to Legal Claims, Conducting Investigations, Mediation, City Staff Services, Settlement with Plaintiffs and Litigation, and Other Matters Thereof; and Providing any Further Direction Thereto [CC] 215

XI. COMMUNICATIONS

A. Department Reports — None

B. City Attorney

C. City Manager/Executive Director

D. Mayor/Chairperson

   1. Announcement of a Special City Council Meeting to be held Wednesday, February 21, 2024, at 6:00 p.m. in the Council Chambers for the Mid-Year Budget Review [CC/MHC]

E. Council Members/Directors

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

   1. Personnel Committee Meeting — January 16, 2024 [CC] 223

XII. ADJOURNMENT — *This meeting will be adjourned in memory of Building Official Michael Dorsey.*

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 Tuesday, February 20, 2024 at 7:00 p.m.

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

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

I, Andrea M. Myrick, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at https://www.cityofmontclair.org/agendas/ and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, February 1, 2024.

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	CDV021
SECTION:	PUBLIC HEARINGS	**DEPT.:**	COMMUNITY DEV.
ITEM NO.:	A	**PREPARER:**	M. DIAZ

SUBJECT: SECOND READING — CONSIDER ADOPTION OF ORDINANCE NO. 24-1005 AMENDING TITLE 11, CHAPTERS 11.02 (DEFINITIONS), 11.38 (DEVELOPMENT STANDARDS GENERALLY), AND 11.77 (ADMINISTRATIVE PERMIT) OF THE MONTCLAIR MUNICIPAL CODE TO ALLOW MONITORED ELECTRIFIED SECURITY FENCES IN SPECIFIED COMMERCIAL AND INDUSTRIAL ZONES WITHIN CITY LIMITS (CASE NO. 2023-35)

REASON FOR CONSIDERATION: Amarok, LLC, a nationwide electrified security fence company (applicant), is requesting a Zoning Code Amendment to allow the use of monitored electrified security fence systems within specified commercial and industrial locations of the City.

The City Council is requested to consider adoption of Ordinance No. 24-1005 amending Title 11, Chapters 11.02, 11.38, and 11.77 of the Montclair Municipal Code (MMC) to allow monitored electrified security fences in specified commercial and industrial zones within City limits.

A copy of proposed Ordinance No. 24-1005 is attached to this report.

BACKGROUND: Currently, the Municipal Code does not permit the use electrified security fences of any kind within City boundaries. California Civil Code of Section 835 allows the use of a low-voltage "electrified security fence system" to protect and secure commercial, manufacturing, or industrial property, if permitted by a local ordinance, and subject to specified minimum requirements. Moreover, Civil Code Section 835 (b) (1) does not allow the installation and operation of an "electrified security fence" in a residential zone. The proposed Ordinance would comply with State law including the prohibited use of electrified security fences in any residential zone, including mixed-use zones.

The request to allow monitored electrified security fencing originated from two industrial businesses located on the south side of Brooks Street abutting the railroad which have experienced ongoing difficulties in securing their properties from trespassing and theft. The close proximity of the Union Pacific Railroad corridor to the industrial properties along the corridor and nearby street overpasses have made the properties susceptible to ongoing vandalism and theft. Restricted access and lack of adequate visibility to the corridor contribute to the problem of adequately securing properties.

On November 27, 2023, the Planning Commission conducted a public hearing and fully studied the proposed Ordinance. The Planning Commission recommended approval of the Ordinance with minor changes by a 5-0 vote (PC Resolution No. 23-1988). Planning Commission Resolution No. 23-1988 incorporates the requested changes.

On January 16, 2024, the City Council conducted a public hearing on the proposed Ordinance, where the Council, by a vote of 5-0, set February 5, 2024, as the date for the second reading of Ordinance No. 24-1005.

Proposed Zoning Code Amendments

The proposed Ordinance would require changes to Title 11- Zoning and Development – of the Montclair Municipal Code (MMC). The full text of the proposed changes is contained in the proposed Ordinance, attached to this report.

A summary of the key provisions of the proposed Ordinance is as follows:

- **New Definitions added to Section 11.02 Definitions:**

  "Electrified Fence" – means any fence, barrier, or enclosure partially or totally enclosing a building, field, or yard, carrying any electrical pulse or charge through any part, section, or element, which is designed to or placed so that a person or animal coming into contact with the conductive element of the fence receives an electrical shock. Any unmonitored electrified security fence within the City is prohibited.

  "Monitored Electrified Security Fence" – means a perimeter alarm system that transmits a signal intended to alert the business utilizing the system and an alarm monitoring service in response to an intrusion or burglary with an assembly of battery-powered equipment, including but not limited to:

  1. A monitored alarm device and energizer which is intended to periodically deliver non-lethal electric pulses to a security fence;
  2. A battery charging device used exclusively to charge the system's battery;
  3. Audible and video surveillance equipment; and
  4. Other integrated components.

  "Key Box (e.g. "Knox Box") means a secure device with a lock operable only by emergency personnel, and containing building entry keys and other keys that may be required for access in an emergency pursuant to the latest California Fire Code.

- **New Chapter at 11.38.100 – Monitored Electrified Security Fence**

  The addition of Chapter 11.38.100 is to provide a set of regulations and procedures necessary for considering the approval of a permit to use an electrified security fencing system as a supplemental means to secure commercial or industrial property properties where other conventional means for securing a site have failed to protect outdoor areas.

The following are selected portions from the proposed text in Section 11.38.100.

Components of a Monitored Electrified Security Fence

1. *Physical Barrier*: An electric security fence consisting of 12.5 gauge galvanized steel wires running horizontally and supported by regularly spaced vertical support poles. The wires would be no higher than 10 feet, or two feet higher than an existing permitted wall or decorative fence, whichever is lower. The electric security fence system is required to be 4-8 inches behind a minimum 6-foot-high non-electrified perimeter fence or wall.
2. *Power Source*: The primary power source for this system is a 12V/DC battery, charged by a solar panel. No part of the system connects to the electrical grid, and it does not carry continuous current.
3. *Shock*: If a breach occurs, the electric fence delivers a 7,000-volt non-lethal shock to the trespasser. Activation of the electrified security fence would be only after business hours.

4. *Alarms and Lights*: Any attempt to scale or touch the fence triggers an alarm and turn on bright LED lights. When activated, the system will go into alarm mode and notify a monitoring operator.
5. *Signs*: Warning signs that read "Warning – Electric Fence" (in English and Spanish) at intervals of not more than 30 linear feet will be installed.
6. *Certification:* Electrified security fence systems are required to be constructed and operated in conformance with the specifications outlined in International Electrotechnical Commission (IEC) Standard No. 60335-2- 76, current edition.

Locations

1. Allowed in the Commercial and Industrial zones as specified in the Ordinance (e.g., outdoor storage, vehicle and large equipment rental, parking lots, etc.) and when deemed essential to supplement existing security measures.
2. Prohibited within specific plans, including the *North Montclair Downtown Specific Plan* (NMDSP) and *Montclair Place District Specific Plan* (MPDSP) areas.
3. Prohibited within 10 feet of a front or street-side property line or any public right-of-way.
4. Prohibited within 300 feet of a public park/open space, church, and/or school facility (public or private).

Amendment of Chapter 11.77 – Administrative Permit

To review and approve requests for electrified fences, Chapter 11.77 will be amended to add electrified security fence requests as a type of application subject to the approval and issuance of an Administrative Permit. As such, the following change to Section 11.77.020 (Scope) will be as follows:

> "C. Applications to install electrified security fences pursuant to the requirements and findings contained in Chapter 11.38.100 of the MMC."

Discussion

The topic of electrified security fences first arose a few years ago by the applicant at the behest of existing businesses within an industrial area of the City located on Brooks Street along the Union Pacific Rail corridor. The intention was to provide an additional security option for these businesses to utilize in handling excessive trespassing and theft. At that time, City staff did not support the use of electrified fencing over concerns about the technology, aesthetics of such systems, and public safety. In 2023, following years of continuous and increasing problems with trespassing and theft they were experiencing, the issue of allowing electrified security fencing revived. In developing the proposed ordinance, staff considered how an electrified security fence might be used with the least impact on the community when necessary.

Monitored Electrified Security Fence

The type of electrified fence system permitted under consideration in the ordinance is for a "monitored" system only, meaning that it operates in the same manner as a burglar alarm for open outdoor areas. The intent of installing a monitored electric security fence system is to help some businesses deter persistent criminal activity, where other measures have not been successful.

When contact occurs with the monitored electrified security fence, or the system detects a breach, an audible alarm triggers and sends a signal to a monitoring station. The monitoring station then verifies the reason for the alarm and either silences it or notifies emergency responders. Even if an intruder manages to breach the monitored electrified security fence, the monitoring component of the system has already detected the breach and the monitoring company initiates the process for verifying the nature of the situation before contacting law enforcement. As part of the approved permit, applicants would be required to comply with existing City provisions for alarm systems in the City.

Survey of Local Jurisdictions Policy on Monitored Electrified Security Fence Systems

City staff surveyed a number of local jurisdictions on the use of monitored electrified security fence systems within their respective communities. Some cities prohibit their use while others have adopted an Ordinance or other policy procedure to address requests. Jurisdictions that allow electrical security fences limit their use to industrial or rural areas consistent with State law. Montclair's proposed Ordinance would do the same.

Jurisdiction	***Allowed: Yes or No***	***Review Process***
Claremont	No	N/A
Upland	No	N/A
La Verne	Yes	Administrative Approval or CUP
Ontario	Yes	Administrative Approval or CUP
Colton	Yes	Administrative Approval or CUP
Fontana	Yes	Administrative Approval for Industrial Areas only
Rialto	Yes	Administrative Approval or CUP
Riverside	Yes	Administrative Approval
San Bernardino	Yes	Industrial zones are located behind a primary fence.
San Bernardino County	Yes	Industrial districts and other limited circumstances when required by City, County, State, or Federal agency

Locations

State law already prohibits the use of an electrified security fence in residential areas, so electrified security fences of any kind are not permitted in residential areas of the City. The prohibition would extend to existing and future mixed-use zones of the City where both residential and commercial uses are present or will be. In addition, the Ordinance prohibits the installation of any electrified security fence within 300 feet of a public park/open space, church, and/or school facility (public or private).

The primary locations where a monitored electrified security fence might be utilized are within the industrial zones of the City, particularly along the railway corridors that cut across the City. More specifically, the type of businesses with a particular interest in a monitored electric security fencing system are those that have fleet vehicles and/or outdoor storage of high-value equipment (e.g., boom and scissor lifts, mini excavators, trailers, etc.) and supply or construction materials. Properties on the south side of Brooks Street that back up to the north side of the Union Pacific railroad corridor have been highly interested.

The Union Pacific corridor cuts through the middle of the City and has historically helped define the City's industrial area. The railway primarily accommodates freight trains on at least three tracks within a right-of-way that ranges from approximately 100 feet on the west end of the City to over 300 feet in width where it meets the City of Ontario border. Over the past few years, thefts from idle freight trains have become a threat to one of California's major supply chains. Due to the proximity of idle freight trains (adjacent to bridges and other areas along the San Antonio Flood Control Channel), neighboring businesses have also fell victim to similar crimes. Unlike the south side of the corridor, industrial properties directly abut the north side of the corridor for nearly all of its length through the City. Given the length and width of the Union Pacific corridor, respective distances from adjacent streets and limited visibility, the properties adjacent to the corridor have been more vulnerable to criminal activity (theft, trespassing, break-ins, etc.).

Aesthetics and Safety

The proposed standards in the Ordinance seek to maximize public safety and address aesthetic and security concerns to the greatest extent possible. Regarding the appearance of monitored electrified security fences, the Ordinance requires that they must be behind a minimum permitted six-foot decorative or solid fence or wall at prescribed or approved setbacks of the underlying zone. This requirement serves to mitigate/screen the presence of a permitted monitored electric security fence and prevent accidental contact. An existing or proposed chain link fence is not considered a decorative fence meeting the intent of the ordinance.

The visible wires extending above a fence or wall are slender and of a color that will somewhat blend into the sky behind them. Since each application and site will be different from another site, the Ordinance gives the Director the discretion to work with applicant to fine-tune the proposal and mitigate any potential site-specific visibility or aesthetic concerns that may be present.

As indicated above, the power source for the monitored electric security fence is a 12 Volt battery charged by a solar panel. As such, the system does not connect to the electrical grid or have a continuous current. The system will only provide a brief shock to repulse a person making contact with the wires when the fence system is activated. During regular business hours, the system is required to be off and only operational after the property closes for the day/evening. Police and Fire Department personnel will be able to deactivate the fence to respond to calls for service. Staff believes the above features and standards, in addition to required warning signs, are appropriate measures to prevent inadvertent contact and risk of shock.

The Ordinance also requires all applicants issued permits to install or use a monitored electrified security fence system to defend, indemnify, and hold harmless the City from all claims, actions, or proceedings arising out of any personal injury, including death, or property damage caused by the electric fence.

Review Process

Allowing a monitored electrified security fencing "by right" is not a part of the proposed ordinance as each request is subject to review on a case-by-case basis via the recommended Administrative Permit (AP) review process. Further, submittal of an application would not guarantee approval. Many cities use a similar administrative process, which is less complicated than processing a Conditional Use Permit (CUP) since approval runs with the land in perpetuity. The AP process offers an easier path to revoke a permit for failure to comply with the requirements of the ordinance.

As part of the review process, the party requesting approval to install a monitored electrified security fence is required to demonstrate the need for its use as a supplemental measure to bolster existing security measures on the property. In granting an AP for the use of a monitored electrified security fence system, the Director of Community Development may require additional conditions than those required by the provisions of Chapter 11.38.100, to protect both the health and safety of the public and property values in the area.

Although a monitored electric security fence system can provide an additional layer of protection, it cannot fully deter a person with a determined interest to trespass and/or steal; it can provide a reasonable deterrent. Finally, the use of an electrified security fence is not expected to be widespread in the community due to the requirements of the proposed ordinance and the cost of installing, operating, and maintaining a system.

Public Notice and Comment

On November 17, 2023, a notice of a public hearing on proposed Ordinance No. 24-1005 was published in the *Inland Valley Daily Bulletin* per State law, for the November 27, 2023 Planning Commission meeting. Prior to the meeting, there were no comments regarding the proposal. During the meeting, in addition to the applicant, one business owner on Brooks Street provided comments in support of the proposed ordinance.

On January 5, 2024, a notice of a public hearing on proposed Ordinance No. 24-1005 was published in the *Inland Valley Daily Bulletin* per State law, for the January 16, 2024, City Council meeting. As of the writing of this report, staff received one comment in opposition to the proposed Ordinance.

Environmental Assessment

The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) (Common Sense Exemption), 15301 (Existing Facilities), 15303 (New Construction or Conversion of Small Structures), and 15311 (Accessory Structures) of the CEQA Guidelines. As such, there is no substantial evidence that the proposed Ordinance will potentially significantly impact the environment.

FISCAL IMPACT: No impact to the General Fund. The applicant paid for the proposed code amendment process and will pay for the cost of public notifications in the Inland Valley Daily Bulletin. The cost for review of future Administrative Permit applications for a monitored electrified security fence would be borne by future property owners at the fee for such permits as listed on the established City Fee Schedule approved by and amended from time to time by the City Council.

RECOMMENDATION: Staff recommends that the City Council conduct the second reading, by number and title only, and adopt Ordinance No. 24-1005 amending Title 11, Chapters 11.02 (definitions), 11.38 (Development Standards Generally), and 11.77 (Administrative Permit) of the Montclair Municipal Code to allow monitored electrified security fences in specified commercial and industrial zones within the City Limits (Case No. 2023-35).

ORDINANCE NO. 24-1005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING CHAPTER 11.02 OF THE MONTCLAIR MUNICIPAL CODE ADDING NEW DEFINITIONS INCLUDING A DEFINITION FOR MONITORED ELECTRIFIED SECURITY FENCE AND AMENDING CHAPTERS 11.38 AND 11.77 TO ESTABLISH NEW STANDARDS AND PROCEDURE FOR ALLOWING MONITORED ELECTRIFIED SECURITY FENCES IN SPECIFIED COMMERCIAL AND INDUSTRIAL ZONES WITHIN THE CITY

WHEREAS, on October 2, 2023, AMAROK, LLC, a full-perimeter security company based in Columbia, South Carolina, submitted an application requesting a zoning code amendment to allow monitored electrified security fence systems within the City boundaries; and

WHEREAS, AMAROK, LLC, is seeking a code amendment to the Montclair Municipal Code, that would allow business owners located on properties zoned C-3 (General Commercial Zone), MIP (Manufacturing Industrial Park Zone), M-1 (Limited Manufacturing Zone), and M-2 (General Manufacturing Zone) to allow the use of monitored electric fence security systems inside their existing perimeter fence or wall; and

WHEREAS, a **"**Monitored Electrified Security Fence System" means a perimeter alarm system that transmits a signal intended to alert the business utilizing the system and an alarm monitoring service in response to an intrusion or burglary; and

WHEREAS, California Civil Code Section 835, allows the use of a low-voltage "electrified security fence" to protect and secure commercial, manufacturing, or industrial property, if permitted by a local ordinance, and subject to specified minimum requirements; and

WHEREAS, California Civil Code Section 835 (b) (1), does not allow the installation and operation of an "electrified security fence" in a residential zone; and

WHEREAS, the City has received reports of several incidents involving trespassing, burglary, and major theft on properties located on the south side of Brooks Street adjacent to the Union Pacific Railroad right-of-way; and

WHEREAS, on June 20, 2023, City staff met with the owners of two businesses on Brooks Street to discuss issues regarding incidents of trespassing, burglary, and major theft on properties occurring on their properties and their desire to enhance security utilizing an electrified security fence; and

WHEREAS, on July 17, 2023, the City Council Real Estate Committee staff discussed the potential use of monitored electric security fences within specific areas within the City; and

WHEREAS, the Montclair Municipal Code currently has no provisions addressing the use of monitored electrified security fence systems within the City, and is, therefore, not a permitted use; and

WHEREAS, the purpose of this Ordinance is to provide regulations and a process for considering the approval of permits for allowing the use of monitored electrified security fencing as a supplemental means for securing industrial and commercial properties where other conventional means for securing a site have failed to protect outdoor areas from persistent trespassing, vandalism, and theft activities; and

WHEREAS, the purpose of this Ordinance is to add standards and procedures for monitored electrified fence systems to the Montclair Municipal Code; and

WHEREAS, the City of Montclair, California ("City") is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, pursuant to the police powers delegated to the City of Montclair by the California Constitution, the City is authorized to enact laws that promote the public health, safety, and general welfare of its citizens; and

WHEREAS, the City Council deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction, and maintenance of monitored electrified security fence systems on public and private property in the City; and

WHEREAS, the Planning Commission of the City of Montclair held a public hearing on November 27, 2023, after giving published notice of the proposed code amendment to allow monitored electrified security fences in specified locations within the City; and

WHEREAS, the Planning Commission adopted Resolution No. 23-1998, by a vote of 5 to 0, and recommended approval with minor changes of the Ordinance to the City Council; and

WHEREAS, on January 5, 2024, a notice of a public hearing for Ordinance No. 24-1005 was published in the Inland Valley Daily Bulletin per State law for the January 16, 2024, City Council meeting, and

WHEREAS, the City Council of the City of Montclair held a public hearing regarding the proposed ordinance; and

WHEREAS, on January 16, 2024, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the City Council conducted a public hearing at which time all persons wishing to testify in connection with the proposed ordinance were heard and the proposal was fully studied; and

WHEREAS, on January 16, 2024, the City Council unanimously set February 5, 2024, as the date for the second reading of Ordinance No. 24-1005; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

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

SECTION I. The foregoing Recitals are adopted as findings of the City Council as though set forth fully within the body of this Ordinance.

SECTION II. Chapter 11.02 "Definitions" of Title 11 (Zoning and Development) of the Montclair Municipal Code is hereby amended to add the following definitions:

11.02 Definitions.

"Electrified Fence" – means any fence, barrier, or enclosure partially or totally enclosing a building, field, or yard, carrying any electrical pulse or charge through any part, section, or element, which is so designed or placed that a person or animal coming into contact with the conductive element of the fence receives an electrical shock. The use of any unmonitored electrified security fence not complying with MMC is prohibited.

"**Monitored Electrified Security Fence**" - means a perimeter alarm system that transmits a signal intended to alert the business utilizing the system and an alarm monitoring service in response to an intrusion or burglary with an assembly of battery-powered equipment, including but not limited to:

1. A monitored alarm device and energizer which is intended to periodically deliver non-lethal electric pulses to a security fence; and

2. A battery charging device used exclusively to charge the system's battery; and

3. Audible and video surveillance equipment; and

4. Other integrated components.

"Key Box (e.g. "Knox Box") means a secure device with a lock operable only by emergency personnel, and containing building entry keys and other keys that may be required for access in an emergency by the latest California Fire Code.

SECTION III. Section 11.38.100 of Chapter 11.38 of Title 11 (Zoning and Development) of the Montclair Municipal Code shall be added as shown in Exhibit A; and

SECTION IV. Chapter 11.77 of Title 11 (Administrative Permit) of the Montclair Municipal Code shall be amended to add the following application type at Section 11.77.020 (Scope) as follows:

> "C. Applications to install monitored electrified security fences pursuant to the requirements and findings contained in Chapter 11.38.100 of the MMC."

SECTION V: The proposed Amendment is exempt from further California Environmental Quality Act (CEQA) review under Section 15061(b)(3) (Common Sense Exemption), 15301 (Existing Facilities), 15303 (New Construction or Conversion of Small Structures), and 15311 (Accessory Structures) of the CEQA Guidelines.

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

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

APPROVED AND ADOPTED this XX day of XX, 2024.

_____
Mayor

ATTEST:

_____
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 24-1005 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2024, and finally passed not less than five (5) days thereafter on the XX day of XX, 2024, by the following vote, to-wit:

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

_____
Andrea M. Myrick,
City Clerk

EXHIBIT A

New Zoning Code Section 11.38.100

11.38.100 - Monitored Electrified Security Fences

This chapter is intended to provide the regulations and procedure necessary for considering the approval of a permit to use an electrified security fencing system as a supplemental means for securing industrial and commercial properties where other conventional means for securing a site have failed to protect outdoor areas from persistent trespassing, vandalism, and theft activities. In granting such permits, the Director of Community Development may require conditions, in addition to those required by the provisions of this title, to protect both the health and safety of members of the public and property values in the area.

A. Monitored Electrified Security Fence Allowed.

Only monitored electrified security fence systems designed to carry non-lethal pulses of direct current to deter potential intruders shall be allowed in the City as provided in this section and subject to the following standards:

1. All monitored electrified security fence systems shall be a product listed by a Nationally Recognized Testing Laboratory (e.g., UL, CSA, IAPMO) in compliance with International Standard IEC 60335-2-76.

2. Monitored electrified security fences shall be pulsed output-type system only. Continuous output-type systems are prohibited.

3. The energizer for an electrified security fence must be driven by a commercial storage battery not to exceed 12 Volts DC. No part of the system shall connect to the electrical grid or carry continuous current.

4. Supplemental lighting, audible, and video surveillance equipment connected to an alarm monitoring company shall be installed as required by the Director of Community Development.

5. A Key Box (e.g. "Knox Box") or other similar approved device shall be installed for emergency access to property by Police and Fire Department personnel. The location of the key box shall be determined by the Fire Marshal.

6. Installation of all monitored electrified security fence systems shall be completed by a licensed C-10 electrical contractor in conformity with this Section and the safety requirements of IEC 60335-2-76.

7. The monitored electrified security fence system shall comply with the provisions of California Civil Code Section 835.

8. No part of a monitored electrified security fence shall be allowed to extend into the public right-of-way or public park/open space.

9. Before the installation of a monitored electrified security fence is permitted under this Section, the owner must provide written notice to the Fire Marshal of the proposed location of the electrified security fence.

B. Restricted Use

The installation of a monitored electrified security fence is restricted to the following areas and zoning districts as indicated and/or defined on the City of Montclair Official Zoning Map:

1. Commercially Zoned Property (C-3-General Commercial Zone):

    a. Permitted outdoor storage of equipment or machinery, motor vehicle storage, major utility and recycling facilities, or contractor yard, in conjunction with a permitted and operating business, except where abutting a residentially-zoned property or use.

b. On developed properties where one or more general boundary lines of property abuts a railway, overpass, freeway, drainage channel, or other extraordinary or unusual physical condition(s).

c. Wireless Telecommunication Facilities sites located 100 feet from a residential use or zone.

2. Industrially Zoned Property (MIP-Manufacturing Industrial Park Zone; M-1-Limited Manufacturing Zone); M-2-General Manufacturing Zone), such as:

a. Where general warehousing, outdoor storage of equipment or machinery, motor vehicle storage areas, freight/logistics uses, major utility and recycling facilities, contractor yards, and mini or self-storage facilities are lawfully permitted and operating.

b. On developed properties where one or more boundary lines of property abuts a railway, overpass, freeway, drainage channel, or other extraordinary or unusual physical condition(s).

c. Wireless Telecommunication Facilities sites 100 feet from a residential use or zone.

3. Prohibited Locations:

a. Single-family and multifamily zones and properties. Mixed-use developments are considered a multifamily zone.

b. Properties adjacent to a residential zone and use.

c. Within the boundaries of the *North Montclair Downtown Specific Plan* (NMDSP) and *Montclair Place District Specific Plan* (MPDSP) areas;

d. Within 10 feet of a front or street side property line or any public right-of-way.

e. Within 300 feet of a public park/open space, church, and/or school facility (public or private).

f. Within the public right-of-way.

4. Exempt Locations Citywide

a. Federal or State-owned properties or uses not adjacent to residential zones and uses.

b. City facilities (not including Public Parks).

c. Unoccupied Public Utility Infrastructure Facilities (e.g. substations, water tanks, telecommunication sites, etc.). Such facilities shall meet the requirements of and obtain an approved Alarm Permit per Section 11.38.200.

5. Uses not listed above in 11.38.120(.1) and (2) are not eligible to use monitored electrified security fences unless the Director of Community Development, or his/her designee, determines the use is similar and the monitored electrified security fence can meet all other applicable requirements of this Chapter.

C. Permits Required.

It shall be unlawful for any person to install, maintain, or operate an electrified fence system of any kind in violation of this Section. Any approved electrified fence security system shall require the following:

1. An Administrative Permit issued by the Community Development Department as defined and regulated in Chapter 11.77 of the MMC (Administrative Permit).

a. Administrative Permits for monitored electrified security fences are not transferable unless the new owner of the business for which an Administrative Permit was issued is not making any substantive changes to the operation of the business as determined by the Director. A new business license, Alarm Permit, and updated Administrative Permit shall be required.

b. New businesses, new development of the property, expansion, or substantial changes to the use of the property as determined by the Director shall require the removal of the electrified security fence system or submittal of a new application for an Administrative Permit, subject to the requirements of this Chapter.

2. Building Permit(s) issued by the Building Division. The monitored electrified security fence system shall comply with all applicable local and state regulations.

   a. It shall be unlawful to operate a monitored electrified security fence system until the building permit final has been issued by the Building Official or designee.

   b. Unpermitted, inoperable, or abandoned monitored electrified fence systems shall be immediately removed from the premises by the applicant and/or property owner.

3. An Alarm User Permit according to Chapter 4.12.040 of the Montclair Municipal Code.

D. Justification for Monitored Electrified Security Fence

As part of the application for an Administrative Permit to install a monitored electrified security fence, the applicant shall submit a written justification for utilizing such a system on-site. The applicant shall provide:

1. A notarized authorization letter from the property owner (if different from the applicant) allowing the applicant to apply for, install, and operate an electrified security fence system on the subject property.

2. A detailed site plan showing existing improvements and location for the proposed monitored electrified fence security system and its various components (e.g. screen wall or fence, system materials, power source, key box, cut-off switch, cameras, lights, etc.).

3. A written request that includes the intended purpose for an electrified security fence system, facts, and/or diagrams to support the need for an electrified fence security system including but not limited to Police reports (e.g. calls for service, arrests, loss statements, etc.). The written request shall also demonstrate that all reasonable measures (e.g., existing fences or walls, security guards, conventional alarms, etc.) have not been successful in mitigating or preventing security breaches or property theft.

4. The established fee for a permit to install a monitored electrified security fence shall be paid by the applicant at the time of application submittal.

E. Findings for Approval

In approving an Administrative Permit for a monitored electrified security fence system, the Director of Community Development, or his/her designee, shall make all of the following findings:

1. Based on the justification provided by the applicant, and site inspection(s), the proposed use of a monitored electrified fence system is warranted and after all other reasonable efforts have been attempted, and would be an effective means of deterring potential intruders; and

2. The proposed monitored electrified security fence system complies with all requirements of this section; and

3. The installation of the proposed monitored electrified security fence system will not have a detrimental effect on the appearance of the street, pose a direct danger to members of the public, or adversely affect the use of surrounding properties. In some cases, the Director, or his/her designee, may require new or existing exterior fences to be installed or modified with additional details (e.g. mesh, slats, increased height, etc.), or low-growing landscaping (on the exterior side of the non-electrified fence or wall) as a means of protecting the aesthetics of commercial areas and to further prevent unintentional contact with the electrified security fence.

F. Permit Revocation

If an approved monitored electrified security fence system is found not to comply with any provision of this Section and the applicant has not taken the initiative to address the deficiency within ten (10) days of written notice from the City, the City may revoke the Administrative Permit approval. Upon permit revocation, the permit holder/applicant shall receive a statement from the Community Development Department describing the reason for the revocation and shall immediately turn off the electric pulse for the fence.

G. Appeal.

A decision of the Director of Community Development may be appealed to the Planning Commission within 10 days of the Director's decision. The appeal shall be made on forms prescribed by the Planning Division and fees paid per the fee resolution. The submission of the application and fees shall constitute the filing of the appeal. The Planning Commission shall review the appeal at a regularly scheduled meeting according to the schedule of meetings and deadlines for submission of applications. The Commission shall either uphold, reverse, or modify the Director's decision.

If anyone is aggrieved or affected by the decision of the Planning Commission, they may appeal the decision to the City Council within 10 days of the decision of the Planning Commission. The appeal shall be submitted per the above appeal provisions. The City Council shall review the appeal and either uphold, reverse, or modify the Planning Commission's decision. The City Council's decision shall be final.

H. Installation Requirements.

1. Decorative Perimeter Fence or Wall Required.

    a. No monitored electrified security fence system shall be installed or operated unless it is completely behind a new or existing permitted non-electrified decorative fence or wall of at least six feet in height (New or existing chainlink fences are not considered to be decorative). The installation of a standalone electrified fence system is prohibited.

    b. An electrified fence, or portion thereof, shall be a minimum of 10 feet back from any street property line.

    c. For new or existing buildings with frontages abutting a public or private sidewalk, or within 10 feet of a street property line, an electrified fence shall be set back from the face of the building by at least five feet.

    d. The non-electrified perimeter fence shall be separated from the electrified fence system between four to eight inches inside the non-electric perimeter barrier, except for gate openings with insulated contacts.

    e. The inside area between the non-electric perimeter fence and the monitored electrified security fence shall be kept clear of landscaping, shrubbery, debris, or material of any kind.

    f. Barbed, razor, or similar wires shall be removed from existing walls and fences.

2. Design.

    a. A monitored electrified security fence system shall be installed to appear as minimally intrusive as possible as viewed from any public or private street.

    b. The number of vertical support posts shall be minimized and evenly spaced to the greatest extent possible.

3. Height.

    Monitored electric security fence systems shall be limited to a maximum height of 10 feet, or two feet higher than an existing and permitted wall or fence barrier, whichever is lower. Height shall be measured from an adjacent public sidewalk or level-paved surface, whichever is closer.

4. Warning Signs.

   Monitored electrified security fences shall be identified by warning signs. The warning signs shall conform to the following requirements:

   a. Warning signs shall be located on both sides of the electrified security fence, parallel with the direction of the fence, at not more than 30-foot intervals and shall read: "WARNING – ELECTRIC SECURITY FENCE" and include commonly recognized symbol for shock, consistent with California Civil Code Section 835.

   b. The text shall be printed in English and Spanish. All lettering shall be a minimum of one (1) inch high.

   c. Warning sign dimensions shall be a minimum of four inches high by eight inches wide.

   d. The warning signs shall consist of a yellow background with black text and must be kept in good condition to ensure visibility.

5. Electrical Shut-Off for Emergencies.

   Installation of a cut-off switch capable of disconnecting and de-energizing the fence from the controller in case of emergencies, electrical storms, etc., is required. A key box/switch or keypad shall be installed to provide secure access to the cut-off switch. The key box/switch or keypad shall be provided with a reflective marker displayed in an approved location.

   All electrified security fence systems shall also have an approved visual signal indicator next to the key switch for emergency responders that indicates if the battery-operated alarmed electric fence is energized or de-energized. The signal indicator shall be lit when the fence is charged and not lit when not charged.

I. Hours of Activation

An electrified security fence shall be energized only during the hours when the general public does not have access to the protected property.

J. Alarm System

All approved monitored electrified security fence systems shall require and include an interface with an alarm system to be monitored during all times after a business is closed, or at all times when electrified security fences are installed to protect unoccupied public utility properties. The alarm system shall be registered with the City, subject to the requirements of Chapter 4.12 of the Montclair Municipal Code, including service fees for false alarm service calls.

K. Indemnification

The property owner and the applicant issued permits to install and use a monitored electrified security fence system as provided in this Section shall agree, as a condition of permit issuance, to defend, indemnify, and hold harmless the City of Montclair and its agents, officers, consultants, independent contractors and employees from any claims, actions or proceedings arising out of any personal injury, including death, or property damage caused by the electrified fence.

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	GRT050
SECTION:	PUBLIC HEARINGS	**DEPT.:**	COMMUNITY DEV.
ITEM NO.:	B	**PREPARER:**	C. CALDWELL

SUBJECT: CONSIDER PROJECTS AND PRIORITIZATION OF FUNDING FOR THE FISCAL YEAR 2024-25 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

REASON FOR CONSIDERATION: Each fiscal year, the City of Montclair is required to conduct a public hearing to prioritize funding for various competing Community Development Block Grant (CDBG) projects. This hearing is conducted in compliance with requirements of the Department of Housing and Urban Development (HUD) and the County of San Bernardino Department of Community Development and Housing (CDH).

BACKGROUND: The total funding available for Montclair's Fiscal Year 2024-25 CDBG Program is estimated to be $266,647. Last year's CDBG allocation was $271,698.

CDBG limits funding allocation for public service projects to 15 percent of the overall CDBG funding assigned to Montclair. The City anticipates a $39,997 allocation for public service projects. This year, no outside agencies submitted requests for funding through the City's public service allocation. Staff recommends the City Council continue to fund the Graffiti Abatement and Golden Express Transportation programs with its public service allocation.

For the upcoming fiscal year, staff recommends the City Council approve the projects and funding levels summarized as follows:

Code Enforcement Program	50,000
Kingsley Street/Canoga Street Alleyway Improvements	176,650
Graffiti Abatement	30,000
Senior Transportation Services (Golden Express Transportation)	9,997
TOTAL	**$266,647**

FISCAL IMPACT: The City expects to receive $266,647 from HUD for the Fiscal Year 2024-25 CDBG Program. City Council approval would allocate CDBG funds to the specified projects and programs for the upcoming fiscal year.

RECOMMENDATION: Staff recommends the City Council approve the above projects and prioritization of funding for the Fiscal Year 2024-25 CDBG Program.

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	**DEPT.:**	FINANCE
ITEM NO.:	1	**PREPARER:**	A. VONG/V. FLORES

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION

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

BACKGROUND: Mayor Pro Tem Johnson has examined the Warrant Register dated February 5, 2024; and the Payroll Documentation dated December 31, 2023, and January 14, 2024, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated February 5, 2024, totals $2,471,806.75.

The Payroll Documentation dated December 31, 2023, totals $830,161.97 gross, with $570,631.82 net being the total cash disbursement.

The Payroll Documentation dated January 14, 2024, totals $822,815.87 gross, with $585,339.79 net being the total cash disbursement.

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

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	CCK280
SECTION:	CONSENT - ADMIN. REPORTS	**DEPT.:**	CITY MGR./CITY CLERK
ITEM NO.:	2	**PREPARER:**	A. MYRICK

SUBJECT: CONSIDER AUTHORIZING THE DESTRUCTION OF CERTAIN OBSOLETE PUBLIC RECORDS PURSUANT TO THE CITY OF MONTCLAIR RECORDS RETENTION SCHEDULE

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

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

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

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

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

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

APPROVED BY THE
MONTCLAIR CITY COUNCIL ON: _____

CITY OF MONTCLAIR

DESTRUCTION OF PUBLIC RECORDS FORM

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

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

Department: Human Services

Record type & Retention Period	*Description of Records*	*Period covered*	*Additional Notes*
Activity/ Project Files; CU+2	HS Key Sign Out Log	2021	
Liability Forms; CU +2	weight room & racquetball sign-in sheets	01/2021-12/2021	
Leave Reports; CU+6	Time Off Requests Forms	2017	
Activity/Project Files	GAP attendance sheets	08/2018-11/2018	Grant; Keep 5 years, exp. 2023
Activity/Project Files; CU+2	Santa Letters	December 2020	
Activity/Project Files; CU+2	Santa Letters	December 2021	
Activity/ Project Files; CU+2	HS Vehicle Sign-Out Logs	2021	
Registrations; CU+4; Liability Forms: CU+2	weight room/raquetball registration cards w/ waiver on back	3/2019-6/2019	
Activity/ Project Files; CU+2	HS Credit Card Use Forms	2020-2021	

Approval for destruction of listed records:

Dept. Records Manager: _____ Date: 1/24/24

Department Head: _____ Date: 1/29/24

City Clerk: _____ Date: 1/29/24

City Attorney: _____ Date: 1/29/24

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	PDT360
SECTION:	CONSENT - ADMIN. REPORTS	**DEPT.:**	POLICE
ITEM NO.:	3	**PREPARER:**	M. BUTLER

SUBJECT: CONSIDER AUTHORIZING A $54,200 APPROPRIATION FROM THE FEDERAL ASSET FORFEITURE FUND TO PURCHASE THREE NEW SERVERS FOR THE POLICE DEPARTMENT

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing a $54,200 appropriation from the Federal Asset Forfeiture Fund to purchase three new servers for the Police Department.

BACKGROUND: Recently, the Police Department (Department) received an $800,000 Bureau of Justice Assistance grant to 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 Department needs to upgrade its network servers due to the expansion and acquisition of body-worn cameras and new in-car cameras, faster network traffic, and advanced security systems. To ensure the optimal performance of these devices and the effective management of critical network traffic, it is imperative that we upgrade the existing server infrastructure to support the seamless integration of the Body-Worn Camera Program.

The current server infrastructure, while reliable, is not equipped to handle the increased demands placed upon it by the advancement of newer technologies acquired during this current fiscal year and building on past fiscal years. This has led to occasional performance constraints and concerns regarding data processing speed and storage capacity. The proposed server upgrade addresses these challenges by providing a robust foundation for integrating Motorola Solutions body-worn cameras, in-car cameras, and the seamless management of critical network traffic. This aligns with the Department's commitment to leveraging cutting-edge technologies to enhance public safety and law enforcement capabilities. The new servers are specified with the latest technological advancements to meet the demanding requirements of the Motorola Solutions cameras and ensure optimal performance. This includes increased processing power, expanded storage capacity, and advanced security features to safeguard sensitive law enforcement data. The server upgrade is expected to have a direct and positive impact on the overall performance of devices, desktop computers, and security measures within the Department. It would result in faster data processing, reduced latency, and improved reliability, thereby enhancing the efficiency of our operations and the Body-Worn Camera Program.

Bid quotations for the purchase of three new servers were received from the following vendors:

Vendor	*Bid Amount*
Hewlett Packard	$66,714.24
CDW-G	$66,697.84
Intelli-Tech	$54,169.19

Staff is recommending Intelli-Tech as the vendor for the purchase of the servers. This vendor has been a reliable, local partner for the City over the past several years with its main warehouse office conveniently located in La Verne. This close proximity allows for the rapid resolution of any errors or issues related to product deliveries. Intelli-Tech's commitment to providing competitive pricing, swift product availability, and exceptional customer support has consistently exceeded expectations. As a valued customer, the City has benefited from Intelli-Tech's commitment to offering the most cost-effective pricing and exclusive discounts, solidifying its status as the vendor of choice. Choosing Intelli-Tech aligns with the City's goal of fostering strong local partnerships while ensuring efficient and cost-effective procurement processes.

FISCAL IMPACT: If authorized by the City Council, funding to cover the purchase of three new servers would result in an appropriation from the Federal Asset Forfeiture Fund 1144 in the amount of $54,200.

RECOMMENDATION: Staff recommends the City Council authorize a $54,200 appropriation from the Federal Asset Forfeiture Fund to purchase three new servers for the Police Department.

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	VEH125
SECTION:	CONSENT - ADMIN. REPORTS	**DEPT.:**	PUBLIC WORKS
ITEM NO.:	4	**PREPARER:**	M. PARADIS

SUBJECT: CONSIDER DECLARING A 2012 TORO GM4000 WIDE AREA MOWER (UNIT 410) AS IRREPARABLE AND AUTHORIZING ITS DISPOSAL AND REMOVAL FROM INVENTORY

REASON FOR CONSIDERATION: The City Council is requested to consider declaring a 2012 Toro GM4000 Wide Area Mower (Unit 410) as irreparable and authorizing its disposal and removal from inventory.

BACKGROUND: Unit 410 is a 2012 Toro GM4000 Wide Area Mower. On January 13, 2022, Unit 410 caught on fire while being operated by a Maintenance Worker. The employee felt heat on his back from the burning mower and was able to safely distance himself from the mower before it completely ignited. The Montclair Fire Department was called to extinguish the burning mower.

The estimated value of a working 2012 Toro GM4000 Wide Area Mower is $5,000. The mower in its current damaged condition will be recycled by Burrtec and has a scrap value of approximately $100.

FISCAL IMPACT: It is estimated that the City will receive approximately $100 from the scrap value of this equipment. The proceeds from the sale of this piece of equipment will be returned to the equipment replacement fund.

RECOMMENDATION: Staff recommends the City Council declare Unit 410 as irreparable and authorize its disposal and removal from inventory.

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	MCF175/MCF200
SECTION:	CONSENT - ADMIN. REPORTS	**DEPT.:**	HUMAN SVCS./MCF
ITEM NO.:	5	**PREPARER:**	A.COLUNGA

SUBJECT: CONSIDER AUTHORIZING AN ALLOCATION OF UP TO $15,000 FROM DONATION FUNDS FROM THE MONTCLAIR COMMUNITY FOUNDATION FOR THE PURCHASE OF ITEMS FOR THE 2024 MONTCLAIR TO COLLEGE GRADUATION CEREMONY

REASON FOR CONSIDERATION: The Montclair Community Foundation (MCF) Board of Directors is requested to consider approving the use of Montclair to College Funds to pay for items related to the 2024 Montclair to College Graduation Ceremony. MCF adheres to the purchasing policies of the City of Montclair. According to the City's Purchasing Manual, major purchases over $1,000 require governing board approval. Staff recommends the MCF Board approve the purchase of items related to Montclair to College Graduation, not to exceed $15,000.

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

The Montclair to College Graduation Ceremony is scheduled to be held on Wednesday, April 24, 2024, at the Canyon at Montclair Place if the MCF Board approves the proposed use of funds. Items to be purchased related to the graduation ceremony include the dinner at the event for graduates and guests, decorations, and advertising.

FISCAL IMPACT: Should the MCF Board approve the purchase of items related to the Montclair to College Graduation, costs would not exceed $15,000 from MCF donation funds.

RECOMMENDATION: Staff recommends the Montclair Community Foundation Board of Directors authorize an allocation of up to $15,000 from donation funds for the purchase of items for the 2024 Montclair to College Graduation Ceremony.

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	HSV070, ATH215, 218, 020
SECTION:	CONSENT - AGREEMENTS	**DEPT.:**	HUMAN SVCS.
ITEM NO.:	1	**PREPARER:**	F. SALTOS

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NOS. 24-04, 24-05, AND 24-06 WITH MONTCLAIR LITTLE LEAGUE AND GOLDEN GIRLS SOFTBALL LEAGUE FOR THE USE OF BALL FIELD FACILITIES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: Montclair Little League and Golden Girls Softball League (the Leagues) have requested the use of City facilities for their spring sports activities.

Copies of Agreement Nos. 24-04, 24-05, and 24-06 are attached for City Council review and consideration.

BACKGROUND: Pursuant to Agreement Nos. 24-04 and 24-05, Montclair Little League is requesting the use of the two southern and two northern fields at Saratoga Park and the southern field at Kingsley Park on weekdays and Saturdays for its baseball activities. Pursuant to Agreement No. 24-06, Golden Girls Softball League would use the two fields at Vernon Park for its softball activities on weekdays and Saturdays. Sunday field use by all leagues is not permitted.

The Leagues have each 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 Leagues are responsible to provide a deposit of $300 for a cleaning fee if needed during the contract period.

FISCAL IMPACT: Approval of the proposed Agreements would result in a cost to the City of approximately $13,000 total in lighting and alarm fees and $6,200 in restroom cleaning fees through Public Works Department, for a total of $19,200. Maintenance costs for the fields are incorporated in the Fiscal Year 2023-24 Budget. The terms of proposed Agreement Nos. 24-04, 24-05, and 24-06 with Montclair Little League and Golden Girls Softball League are from January 30, 2024, through August 31, 2024.

RECOMMENDATION: Staff recommends the City Council approve Agreement Nos. 24-04, 24-05, and 24-06 with Montclair Little League and Golden Girls Softball League for use of ball field facilities, subject to any revisions deemed necessary by the City Attorney.

AGREEMENT NO. 24-04
WITH MONTCLAIR LITTLE LEAGUE
FOR USE OF SARATOGA PARK

THIS AGREEMENT is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Montclair Little 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 and two southern fields) generally located at the southwest corner of Vernon Avenue and Kingsley Street, Montclair, California, and

WHEREAS, said Park has been developed to provide areas for youth sports, on which premises LEAGUE desires to use for Little League baseball (including the Challenger Division for children with disabilities) practices and games at such times and hours set forth in Section 1(aa). The term of this Agreement is for January 30, 2024 through August 31, 2024.

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. Opening and closing ceremonies will be permitted. Any other events or clinics will require written notice one month in advance for approval. The League shall not hold special events which conflict with City sponsored community special events.

c. Not to sublet the field.

d. Not to make any improvements or alterations or mow grass 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 maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, grills, screens, exhaust hoods, mop all floors and clean countertops and utensils after each day's use and leave the snack bar in a condition deemed acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items used for snack bar operations.

n. To ensure when a barbecue is used (a permit is required to be obtained by Department of Public Health), it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used. All safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed. LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.

o. 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.

p. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snack bar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.

q. 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.

r. 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 for 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.

s. 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.

t. 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.

u. To provide the CITY representative with a list of the Board of Directors, including names, addresses, and telephone numbers.

v. To provide CITY with participant rosters, practice and game schedules. Fields will be allocated to the League accordingly. The City reserves the right to allocate any field not in use by the League. Also, sixty percent of league participants must live in Montclair and provide verification such as registration forms.

w. To provide CITY with financial statements upon request for audit purposes.

x. To designate one individual as the LEAGUE's representative to work with the CITY's representative.

y. 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 from January 30, 2024, through August 31, 2024, Mondays through Fridays generally commencing at 4:00 p.m. and Saturdays, generally commencing at 8:00 a.m. No games or activities will 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 _____, 2024.

LEAGUE:

MONTCLAIR LITTLE LEAGUE

_____
President

_____
Secretary

CITY:

CITY OF MONTCLAIR

_____
Javier John Dutrey
Mayor

ATTEST:

_____
Andrea M. Myrick
City Clerk

CITY OF MONTCLAIR
CONTACT LIST FOR SPORTS LEAGUES
JANUARY 2024

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

AGREEMENT NO. 24-05
WITH MONTCLAIR LITTLE LEAGUE
FOR USE OF KINGSLEY PARK

THIS AGREEMENT is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Montclair Little 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 a baseball field generally located at the northwest end of Kingsley Elementary School at Benson Avenue and Kingsley Street, Montclair, California, and

WHEREAS, said Park has been developed to provide areas for youth sports, on which premises LEAGUE desires to use for Junior/Senior Little League baseball practices and games at such times and hours set forth in Section 1(y). The term of this Agreement is for January 30, 2024 through August 31, 2024.

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. Opening and closing ceremonies will be permitted. Any other events or clinics will require written notice one month in advance for approval. The League shall not hold special events which conflict with City sponsored community special events.

c. Not to sublet the field.

d. Not to make any improvements or alterations or mow grass 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. 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.

l. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, grills, screens, exhaust hoods, mop all floors and clean countertops and utensils after each day's use and leave the snack bar in a condition deemed acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items used for snack bar operations.

m. To ensure when a barbecue is used (a permit is required to be obtained by Department of Public Health), it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used. All safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed. LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.

n. 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.

o. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snack bar as

Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.

p. 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.

q. 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 for 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.

r. 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.

s. 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.

t. To provide the CITY representative with a list of the Board of Directors including names, addresses, and telephone numbers.

u. To provide CITY with participant rosters, practice and game schedules. Fields will be allocated to the League accordingly. The City reserves the right to allocate any field not in use by the League. Also, sixty percent of league participants must live in Montclair and provide verification such as registration forms.

v. To provide CITY with financial statements upon request for audit purposes.

w. To designate one individual as the LEAGUE's representative to work with the CITY's representative.

x. 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.

y. It is agreed that LEAGUE may use said baseball fields from January 30, 2024, through August 31, 2024, Mondays through Fridays generally commencing at 4:00 p.m. and Saturdays generally commencing at 8:00 a.m.. No games or activities will be conducted past 9:45 p.m.

z. 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 noncontributing 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.

aa. 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.

bb. 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.

cc. To conduct all operations in compliance with the Americans with Disabilities Act.

dd. LEAGUE shall provide CITY with at least two (2) weeks' notice for room reservations for use of CITY facilities for LEAGUE meetings.

ee. 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'X 5'. Banners will be attached to outfield chain link fence using clip on rings. Banner clearance from turf is a minimum of 2". 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.

ff. 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.

gg. 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 _____, 2024.

LEAGUE:

MONTCLAIR LITTLE LEAGUE

_____
President

_____
Secretary

CITY:

CITY OF MONTCLAIR

_____
Javier John Dutrey
Mayor

ATTEST:

_____
Andrea M. Myrick
City Clerk

CITY OF MONTCLAIR
CONTACT LIST FOR SPORTS LEAGUES
JANUARY 2024

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

AGREEMENT NO. 24-06
WITH MONTCLAIR GOLDEN GIRLS SOFTBALL LEAGUE
FOR USE OF VERNON PARK

THIS AGREEMENT is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Montclair Little 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 softball fields (the east and west fields) generally located at the southeast corner of the Vernon Junior High School complex, south of the corner of Benson Avenue and San Bernardino Street, Montclair, California; and

WHEREAS, said Park has been developed to provide areas for youth sports, on which premises LEAGUE desires to use for girls softball practices and games at such times and hours set forth in Section 1(y). The term of this Agreement is for January 30, 2024 through August 31, 2024.

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. Opening and closing ceremonies will be permitted. Any other events or clinics will require written notice one month in advance for approval. The League shall not hold special events which conflict with City sponsored community special events.

c. Not to permit practice sessions in the southeast quadrant of the field; to provide specific written notice to each coach and, in turn, obtain written confirmation from each coach.

d. Not to sublet the field.

e. Not to make any improvements or alterations or mow grass on said premises.

f. Not to charge for parking of vehicles in the parking lots located within CITY facilities and not to park in the fields or walkways.

g. Not to erect any barriers or fences of any kind unless approved by CITY.

h. Not to use herbicides at the park for any purpose.

i. Not to disconnect or make changes to existing phone line account

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. 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.

l. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, grills, screens, exhaust hoods, mop all floors and clean countertops and utensils after each day's use and leave the snack bar in a condition deemed acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items used for snack bar operations.

m. To ensure when a barbecue is used (a permit is required to be obtained by Department of Public Health), it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used. All safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed. LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.

n. 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, 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.

o. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snackbar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.

p. To be responsible for all costs as a result of lost or stolen keys.

q. 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 for 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.

r. 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.

s. 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.

t. To provide the CITY representative with a list of the Board of Directors including names, addresses, and telephone numbers.

u. To provide CITY with participant rosters, practice and game schedules. Fields will be allocated to the League accordingly. The City reserves the right to allocate any field not in use by the League. Also, sixty percent of league participants must live in Montclair and provide verification such as registration forms.

v. To provide CITY with financial statements upon request for audit purposes.

w. To designate one individual as the LEAGUE's representative to work with the CITY's representative.

x. 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.

y. It is agreed that LEAGUE may use said baseball fields from January 30, 2024, through August 31, 2024, Mondays through Fridays generally commencing at 4:00 p.m. and Saturdays generally commencing at 8:00 a.m.. No games or activities will be conducted past 9:45 p.m.

z. 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 noncontributing 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.

aa. 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.

bb. 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.

cc. To conduct all operations in compliance with the Americans with Disabilities Act.

dd. LEAGUE shall provide CITY with at least two (2) weeks' notice for room reservations for use of CITY facilities for LEAGUE meetings.

ee. 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'X 5'. Banners will be attached to outfield chain link fence using clip on rings. Banner clearance from turf is a minimum of 2". 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.

ff. 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.

gg. 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. Upon approval of the Director of Human Services, LEAGUE's cleaning deposit shall rollover any unused monies into the next Agreement.

f. To designate a CITY representative to work with LEAGUE on all non-maintenance issues relating to the use of CITY facilities.

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 _____, 2024.

LEAGUE:

GOLDEN GIRLS SOFTBALL LEAGUE

_____
President

_____
Secretary

CITY:

CITY OF MONTCLAIR

_____
Javier John Dutrey
Mayor

ATTEST:

_____
Andrea M. Myrick
City Clerk

CITY OF MONTCLAIR
CONTACT LIST FOR SPORTS LEAGUES
JANUARY 2024

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

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	STA050/GRT050-D
SECTION:	CONSENT - AGREEMENTS	**DEPT.:**	PUBLIC WORKS
ITEM NO.:	2	**PREPARER:**	C. STEVENSON

SUBJECT: CONSIDER AWARD OF CONTRACT TO SEQUEL CONTRACTORS, INC. IN THE AMOUNT OF $2,696,433.75 FOR CONSTRUCTION OF THE ALLEYWAY IMPROVEMENTS PROJECT

CONSIDER APPROVAL OF AGREEMENT NO. 24-08 WITH SEQUEL CONTRACTORS, INC. FOR THE CONSTRUCTION OF THE ALLEYWAY IMPROVEMENTS PROJECT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A $966,433.75 APPROPRIATION FROM THE 2021 LEASE REVENUE BOND FUND FOR COSTS RELATED TO THE CONSTRUCTION OF THE ALLEYWAY IMPROVEMENTS PROJECT

CONSIDER AUTHORIZING A $270,000 CONSTRUCTION CONTINGENCY FOR THE ALLEYWAY IMPROVEMENTS PROJECT

REASON FOR CONSIDERATION: The City Council is requested to consider awarding a contract to Sequel Contractors, Inc. in an amount of $2,696,433.75, approving Agreement No. 24-08 related to the construction of the Alleyway Improvements Project, and authorizing a $270,000 contingency.

A copy of proposed Agreement 24-08 is attached for City Council's review and consideration.

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

There are 38 alleyways in the City, 16 of these alleyways are located in Community Development Block Grant (CDBG) areas. To date, ten alleyways have been reconstructed, including five alleyways in the CDBG area completed in 2022. The project will provide improvements to 13 alleyways throughout the City, with Sequel Contractors responsible for notifying residents, the City, and any other affected Agencies prior to the start of construction. Additionally, Sequel Contractors is responsible for providing and maintaining a Traffic Control plan with Staff to establish a safe construction area.

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

On November 20, 2023, the City Council authorized the advertisement for bid proposals for the Alleyway Improvements Project after plans and specifications were prepared by LD King, Inc.

Staff began bid advertisement on December 19, 2023, and on January 17, 2024, the City received and opened five (5) bid proposals for the Alleyway Improvements Project as shown below:

Bidder	*Bid Amount*
Engineer's Estimate	***$2,000,00.00***
Sequel Contractors, Inc.	$2,696,433.75
Hardy & Harper, Inc.	$3,650,000.00
Gentry Brothers, Inc.	$3,775,486.40
Onyx Paving Company, Inc.	$5,151,000.00
All American Asphalt	$5,339,260.00

Following the bid opening, the bids were reviewed for completeness and accuracy. The bid from the apparent low bidder, Sequel Contractors, Inc., provided all the required documents. Sequel Contractors, Inc. has worked for the City of Montclair in the past and has completed similar work for neighboring cities such as Pomona, San Dimas, and Chino in a satisfactory manner.

As a result of the significant difference between the Engineer's estimate and the bids received, staff contacted neighboring jurisdictions to determine whether the price bid is reasonable. A review of bid summary data from these agencies indicates a significant rise in construction costs recently. Based upon this review, staff believes the price bid by Sequel Contractors, Inc. to be the current market cost for these proposed improvements.

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

The project work period is 60 calendar days. The work is expected to begin in March 2024 and be completed by June 2024.

FISCAL IMPACT: The estimated construction cost for Alleyway Improvements Project exceeds the authorized $2,000,000 appropriation from the 2021 Lease Revenue Bond funds. The City Council is requested to consider authorizing the additional $966,433.75 from the 2021 Lease Revenue Bond funds for the cost of the Project and contingency.

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

1. Award a contract to Sequel Contractors, Inc. in the amount of $2,696,433.75 for construction of the Project.
2. Approve Agreement No. 24-08 with Sequel Contractors, Inc. for construction of the Project, subject to any revisions deemed necessary by the City Attorney.
3. Authorize appropriation of $966,433.75 from the 2021 Lease Revenue Bond Fund for construction of the Project.
4. Authorize a $270,000 construction contingency for the Project.

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

A. Recitals.

(i) Pursuant to Notice Inviting Sealed Bids or Proposals, bids were received, publicly opened, and declared on the date specified in said notice.

(ii) CITY did accept the bid of CONTRACTOR.

(iii) CITY has authorized the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of:

(iv)

Alleyway Improvements Project

"PROJECT" hereinafter.

B. Agreement.

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

1. GENERAL SCOPE OF WORK: CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for and do all work contemplated and embraced for the PROJECT. Said PROJECT to be performed in accordance with specifications and standards on file in the Office of the City Engineer and in accordance with bid prices hereinafter mentioned and in accordance with the instructions of the Engineer.

2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: The aforesaid specifications are incorporated herein by reference thereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, the Notice Inviting Bids, the Instructions to Bidders, the Proposal and any City-issued addenda, together with this written Agreement, shall constitute the contract between the parties. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written Agreement, the provisions of this written Agreement shall control.

3. TERMS OF CONTRACT: The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of PROJECT within the time specified in the Special Provisions. CONTRACTOR agrees further to the assessment of liquidated damages in the amount specified in the Special Provisions or the Standard Specifications, whichever is higher, for each calendar day PROJECT remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due

the CONTRACTOR under this contract. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

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

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

(a) Types of Required Coverages

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

(1) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, with minimum limits of at least $2,000,000 per occurrence for bodily injury, personal injury and property damage, and $3,000,000 aggregate total bodily injury, personal injury and property damage. Commercial General Liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

(2) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of $2,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

(3) **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 each accident for bodily injury and $1,000,000 each employee for bodily injury by disease.

(b) Endorsements

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

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

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

Additional Insured Endorsements shall not:

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

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

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

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

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

(e) Evidence of Insurance

The Contractor, concurrently with the execution of the contract, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is

cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

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

(k) Insurance for Subcontractors

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

6. CONTRACTOR'S LIABILITY/INDEMNIFICATION:

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

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

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

b. The CONTRACTOR will promptly pay any judgment or award rendered against the CONTRACTOR or CITY covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the CONTRACTOR hereunder or reasonable settlement in lieu of judgment or award, and the CONTRACTOR agrees to save and hold the CITY harmless therefrom.

c. In the event CITY &/or CALTRANS is made a party to any action or proceeding filed or prosecuted against the CONTRACTOR for damages or other claims arising out of or in connection with the project, operation, or activities of the CONTRACTOR hereunder, the CONTRACTOR agrees to pay to CITY &/or CALTRANS any and all costs and expenses incurred by CITY in such action or proceeding together with reasonable attorneys' fees.

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

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

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

9. CONTRACT PRICE AND PAYMENT: CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **January 16, 2024.**

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

AGREEMENT

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

CONTRACTOR

Sequel Contractors, Inc.
Address
City, State Zip

By: _____

_____
Name, Title

By: _____

_____
Name, Title

CITY

CITY OF MONTLAIR, CALIFORNIA

_____
Javier “John” Dutrey
Mayor

ATTEST:

_____
Andrea M. Myrick
City Clerk

APPROVED AS TO FORM:

_____
Diane E. Robbins
City Attorney

Infrastructure Fund
Capital Project Funding Information

Project Name: Alleyway Improvements Project

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

Preparation Date: January 30, 2024

Department: Public Works/Engineering Department

Project No. (Assigned by Finance):

Contact/Ext.: C. Stevenson x444

	Fiscal Years							
Phase	Prior Years	2021/2022	2022/2023	2023/2024	2024/2025	2025/2026	Total	Fund/Program
Environmental								
Design				106,400.00			106,400.00	2021 LRB
Construction				2,696,434.00			2,696,434.00	2021 LRB
Total	0.00	0.00	0.00	2,802,834.00	0.00	0.00	2,802,834.00	

Approvals:

Department: Public Works/Engineering By: Date:

Finance By: Date:

City Council Date:

Revision Number:

Total Project Cost: 2,802,834.00

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	GRT125
SECTION:	CONSENT - AGREEMENTS	**DEPT.:**	HUMAN SVCS.
ITEM NO.:	3	**PREPARER:**	A. COLUNGA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 24-09 WITH BLAIS & ASSOCIATES, INC. FOR GRANT WRITING SERVICES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A $100,000 APPROPRIATION FROM THE CONTINGENCY RESERVE FUND FOR COSTS RELATED TO AGREEMENT NO. 24-09

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 24-09 with Blais & Associates, Inc. (Blais) for grant writing services.

A copy of Agreement No. 24-09 is attached for City Council's Review and Approval.

BACKGROUND: In 2017, the City of Montclair began utilizing Blais for grant writing services. The City has seen much success in working with Blais, with eleven major grant awards totaling over seventeen million dollars that will transform the City, including:

- $5,701,000 for Safe Routes to School Implementation
- $5,137,000 for Reeder Ranch Park
- $4,174,097 for the Sunset Park Beautification Project
- $771,000 for the Ramona Avenue/Howard Street Roundabout
- $362,070 for the Orchard Street Pedestrian Safety Improvements
- $249,930 for Pedestrian Crossing Enhancements
- $227,554 for the Pacific Electric Bridge Replacement
- $200,000 for the Active Transportation Plan
- $177,000 for the San Antonio Creek Trail Multimodal Plan
- $95,901 for Homeless Outreach
- $76,320 for the Energy Efficiency and Conservation Block Grant

In total, the City of Montclair has applied for twenty-five grants utilizing Blais' services, five of which are currently under review. Additionally, two grant applications are currently in process to be submitted within the next thirty days. The return on investment to the City is $66 in funding received for every dollar spent on grant writing services.

The City would like to continue to pursue grant funding when possible to address a variety of needs in the community. There are current funding announcements that staff would like to pursue, along with announcements of future opportunities. Each of these funding opportunities requires an extraordinary amount of time and specific expertise.

Although there are no guarantees stipulated in the agreement for future expenditures or awards, it is anticipated that aggregate expenses for future services through Agreement No. 24-09 will be approximately $100,000. Before the execution of the original agreement with Blais, City staff went through a vetting process to make sure that Blais was the best value for the City. Therefore, proposals from other firms were not sought. Staff recommends it is in the best interest and value of the City to continue utilizing Blais to provide grant writing services. However, the City is not obligated to exclusively work with Blais for grant writing services.

FISCAL IMPACT: Staff estimates preparation of future grant applications will cost approximately $100,000. It is recommended that the Contingency Reserve Fund be utilized to fund the grant writing services from February 5, 2024, through December 31, 2024.

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

1. Approve Agreement No. 24-09 with Blais & Associates, Inc. for grant writing services, subject to any revisions deemed necessary by the City Attorney.

2. Authorize a $100,000 appropriation from the Contingency Reserve Fund for costs related to Agreement No. 24-09.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

GRANT WRITING

THIS AGREEMENT is made and effective as of February 5, 2024, between the City of Montclair, a municipal corporation ("City") and Blais & Associates, LLC, a Texas limited liability company ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on February 5, 2024 and shall remain and continue in effect for a period of 11 months until tasks described herein are completed, but in no event later than December 31, 2024, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

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

3. PERFORMANCE

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

4. CITY MANAGEMENT

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

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full. This amount shall not exceed $100,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

7. DEFAULT OF CONSULTANT

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

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

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

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

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

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

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

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

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

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

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

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

10. INSURANCE

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

(a) Types of Required Coverages

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

(1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than $3,000,000 per occurrence, and $5,000,000 aggregate total bodily injury, personal injury, and property damage.

(2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of $5,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

(3) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 each accident for bodily injury and $1,000,000 each employee for bodily injury by disease.

(4) Professional Liability: Professional Liability insurance with limit of not less than $3,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

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

(1) Commercial General Liability

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

Additional Insured Endorsements shall not:

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

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

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

(2) Auto Liability

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

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

(3) Workers’ Compensation

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

(c) Notice of Cancellation

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

(d) Waiver of Subrogation

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

(e) Evidence of Insurance

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

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

(f) Deductible or Self-Insured Retention

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

(g) Contractual Liability/Insurance Obligations

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

(h) Failure to Maintain Coverage

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

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

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

(i) Acceptability of Insurers

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

(j) Claims Made Policies

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

(k) Insurance for Subcontractors

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

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

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

16. NOTICES

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

To City:
City of Montclair
Attn: Alyssa Colunga
Asst. Director of Human Services/Grants Manager
5111 Benito
Montclair, CA 91763

To Consultant: Blais & Associates
Attn: Jordan P. Carter
2807 Allen Street, Suite 2050
Dallas, TX 75204

17. ASSIGNMENT AND SUBCONTRACTING

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF REQUEST FOR PROPOSALS

Not Applicable.

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

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

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

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

28. COST OF LITIGATION

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

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

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

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

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

CITY OF MONTCLAIR

By:_____
Javier John Dutrey, Mayor

Attest:

By:_____
Andrea Myrick, City Clerk

Approved as to Form:

By:_____
Diane E. Robbins, City Attorney

Date: _____

Blais & Associates

By:_____
Jordan Carter, CEO

Date: _____

EXHIBIT A

May 9, 2023

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

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

Dear Ms. Colunga:

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

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

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

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

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

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

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

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

Respectfully yours,

Whitten Guajardo
Director of Operations

COST PROPOSAL

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

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

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

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

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

SCHEDULE OF ESTIMATED FEES – 12-MONTH PROGRAM

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

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

STANDARD FEE SCHEDULE

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

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

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

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

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

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	HSV020
SECTION:	CONSENT - AGREEMENTS	**DEPT.:**	HUMAN SVCS.
ITEM NO.:	4	**PREPARER:**	A. COLUNGA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 24-10 WITH CLAREMONT GRADUATE UNIVERSITY SCHOOL OF COMMUNITY AND GLOBAL HEALTH TO IMPLEMENT A FIELD INTERNSHIP PROGRAM FOR MASTER IN PUBLIC HEALTH AND APPLIED BIOSTATICS, AND DOCTORATE IN PUBLIC HEALTH STUDENTS, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 24-10 with Claremont Graduate University School of Community and Global Health to implement a field internship program for Master in Public Health and Applied Biostatics, and Doctorate in Public Health Students.

BACKGROUND: The City of Montclair has partnered with Claremont Graduate University School of Community and Global Health since 2012 by hosting a site for graduate level Master in Public Health Interns. Since that time, the School of Community and Global Health has expanded its scope and now offers a Master in Applied Biostatistics and Doctorate in Public Health.

Student interns will assist within various programs of the Human Services Department such as Health Education, Youth programs, Senior Center programs, and the Medical Clinic. Students may work on projects related to health policy, program planning, community outreach, and evaluation. The City of Montclair will provide field supervision under the direction of Alyssa Colunga who has earned a Doctorate in Public Health.

FISCAL IMPACT: There will be no adverse fiscal impact should the City Council approve Agreement No. 24-10.

RECOMMENDATION: Staff recommends the City Council approve of Agreement No. 24-10 with Claremont Graduate University School of Community and Global Health to implement a field internship program for Master in Public Health and Applied Biostatics, and Doctorate in Public Health Students, subject to any revisions deemed necessary by the City Attorney.

DOMESTIC INTERNSHIP AFFILIATION AGREEMENT

This INTERNSHIP AFFILIATION AGREEMENT ("Agreement") is entered into on the 5th day of February, 2024 by and between Claremont Graduate University, through its School of Community and Global Health (the "University"), and the City of Montclair (the "Facility").

Recitals

A. An integral part of the University's Master of Public Health ("MPH"), Doctorate in Public Health ("DrPH"), and Master of Science in Applied Biostatistics ("MS") programs is a supervised field training experience with an approved facility for which students receive academic credit.

B. The University desires the cooperation of Facility in implementing supervised field internship programs in public health at Facility's location and training University students in the practical applications of public health ("Internship Program").

C. Facility will benefit from the contributions of the University's students participating in the Internship Program.

D. Facility wishes to assist the University in implementing an Internship Program;

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the University and the Facility enter into this Agreement on the terms and conditions set forth below.

The University's Rights and Responsibilities

1. To assign students to Facility who meet the University's requirements and qualifications to participate in the Internship Program.

2. To appoint University faculty and/or staff member(s) as "Faculty Advisor" and/or "Internship Coordinator" to administer the University's responsibilities related to the Internship Program; to oversee the students' field experience at Facility, including discussing and approving student intern responsibilities and activities; and, to ensure program requirements for University internships are met and being followed by all parties. For each student who may be an employee of the Facility, the activities and responsibilities for the student intern will be discussed with, and approved by, the Faculty Advisor and/or Internship Coordinator prior to beginning the internship.

3. To approve the qualified Field Supervisor, as defined herein and as outlined in the CGU MPH, DrPH, or MS Applied Practice Experience Handbook and/or Student Handbook, and to establish and maintain ongoing communication with the Field Supervisor leading up to and throughout the duration of the Internship.

4. To notify the Facility's Field Supervisor, at a time mutually agreed upon, of the University's planned schedule of students' assignments, including the names of the students, level of academic preparation, and length and dates of the internship experiences.

5. To inform students that they are to obtain and maintain adequate health insurance coverage while participating in the Internship Program and to assist students in providing evidence of such coverage to Facility, at Facility's reasonable request.

6. To ensure that all students participating in the Internship Program at Facility will be covered by general liability insurance, and if applicable professional liability insurance coverage, through the University's insurance coverage policies in the amounts set forth under "General Provisions" herein.

7. To direct the assigned students to comply with the existing pertinent rules and regulations of Facility and all reasonable directions given by qualified Facility personnel.

8. To assume responsibility for providing grades to the students in connection with the Internship Program.

9. To promptly inform Facility in the event that a student withdraws from the Internship Program or otherwise is unable to complete the Internship Program.

Facility's Rights and Responsibilities

1. To provide one (1) qualified Facility supervisor ("Field Supervisor") for each student enrolled in the Internship Program. Field supervisor responsibilities include the following:

    a. Meet with the student prior to the commencement of the field training experience;
    b. Orient the student to the Facility;
    c. With the student, develop a scope of work, which illustrates clearly tasks to be completed by the student;
    d. Assist the student in gaining access to information and data required the project to be completed by student;
    e. Monitor student's attendance and meet with student in person, at a minimum, one hour per week;
    f. Provide guidance and advice to the student in the program area in which they will be located;
    g. Keep in contact (in person or by phone, email etc.) for the entire fieldwork period, during the hours the students are in placement;
    h. Appoint another staff person to supervise the student when the Field Supervisor is not available;
    i. Complete all necessary forms in a timely manner;
    j. Submit a final evaluation report of the student's performance;
    k. Review policies and procedures with the Internship Director either in person, during a site visit, or by phone; and
    l. Any other responsibilities mutually agreed upon by the parties.

2. To complete and submit to the University an application for field placement students, with at least two weeks' notice if possible, and to comply with the Internship Program Scope of Work.

3. To provide field experiences in accordance with the requirements of the University's curriculum. On-site visits will be arranged when feasible and/or upon request by the University. Facility shall advise the University of any changes in its personnel, operation or policies, which may materially affect the students' field experiences, or the Internship Program at Facility.

4. To ensure that students are given duties commensurate with their skills and experience.

5. To provide the physical facilities, resources and equipment necessary to operate the Internship Program at Facility, including if applicable, access to and use of library facilities, and a safe and reasonable work and storage space.

6. To determine and notify the University as to the number of students which it can accommodate during a given period of time and notify the University promptly prior to the commencement of the Internship Program if any restrictions will apply and for which period of time such restrictions may be in effect.

7. To provide the assigned students with a copy of the Facility's existing pertinent rules and regulations with which the students are expected to comply.

8. To provide all students participating in the Internship Program at the Facility, prior to commencing in the Internship Program, all necessary information about access to emergency health care. In addition, Facility shall make available, whenever reasonably necessary, emergency health care for the assigned students, the cost of which shall be borne by the students.

9. To request the University to withdraw a student from the Internship Program at Facility when student's performance, after warnings or recommendations for improvement have gone unheeded, has been determined to be unsatisfactory to Facility or the student's behavior has been determined to be continually disruptive to Facility or its clients. Facility shall state its reasons for requesting a student withdrawal in writing to the Internship Director. It is understood that except as set forth in paragraph 10 below, only the University can withdraw a student from the Internship Program at Facility.

10. To immediately remove from the Facility any student who poses an immediate threat or danger to personnel or the property of Facility, or such persons or clients who utilize the Facility for services. Following the removal of any student, the Facility shall promptly provide written notice to the Internship Director of any removal including the reasons for making such determination and a recommendation as to whether the student should continue the internship.

11. To comply with all applicable laws and ordinances concerning the confidentiality of student records.

12. To comply with all applicable laws and ordinances concerning human subject research if students participate in a research program as part of a research team.

13. To maintain general liability and, if applicable, workers' compensation insurance coverage, that is acceptable to the University (with minimum coverage amounts as set forth herein to cover the Facility, its buildings, equipment and materials, its employees and agents, and any claims relating to actions or omissions taken by Facility's personnel.

General Provisions

1. Non-discrimination. The parties shall make no distinction or discriminate in any way among students covered by this Agreement on the basis of race, color, sex (including pregnancy), religious creed, age, physical or mental disability, ancestry, sexual orientation, gender identity, marital status, national origin, or any other characteristic that is protected by the laws of the United States.

2. Coordination of Internship Program. The parties shall use reasonable efforts to establish the educational objectives for the Internship Program, devise methods for its implementation and continually evaluate to determine the effectiveness of the field experience.

3. Students Not University or Facility Employees. The parties hereto agree that the University's students are fulfilling specific requirements for field experiences as part of a degree requirement and, therefore, the University's students are not to be considered employees or agents of the University or Facility for any purpose, including Workers' Compensation or employee benefit programs.

4. Insurance. Each party to this Agreement shall provide and maintain, at its own expense, a program of insurance or self-insurance covering its activities and operations hereunder. Such program of insurance or self-insurance shall include, but not be limited to, comprehensive general liability, professional liability and workers' compensation. The general liability insurance shall have a minimum coverage of $1,000,000 per occurrence and $3,000,000 aggregate.

5. Term. This Agreement shall be effective for a period of one year when executed by both parties. This Agreement will be automatically renewed annually unless otherwise indicated in writing by one of the parties at least thirty (30) days prior to the end of the term, or unless terminated in accordance with paragraph 6 below.

6. Termination. This Agreement may be terminated by either party with or without cause upon ninety (90) days written notice, if all students currently enrolled in the Internship Program at Facility at the time of notice of termination shall be given the opportunity to complete the Internship Program at Facility. In the event of any termination, the terms and conditions of this Agreement shall continue to apply until all students assigned to the Facility have completed the scope of work at the Facility or been allowed to transfer to another Facility, whichever date is sooner.

7. Arbitration. All controversies, claims and disputes arising in connection with this Agreement shall be settled by mutual consultation between the parties in good faith as promptly as possible, but failing an amicable settlement shall be settled finally by arbitration in accordance with the provisions of this paragraph. Such arbitration shall be conducted in San Bernardino County, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The parties hereto hereby agree that the arbitration procedure provided for herein shall be the sole and exclusive method of resolving any and all of the aforesaid controversies, claims or disputes. The costs and expenses of the arbitration shall initially be shared equally by both parties, but ultimately will be determined by the arbitrator. The prevailing party in any arbitration will be entitled to recovery of all costs and attorneys' fees expended in the arbitration.

(a) Judicial Action. Legal action for (i) entry of judgment upon any arbitration award or (ii) adjudication of any controversy, claim or dispute arising from a breach or alleged breach of this paragraph 7 may be heard or tried only in the courts of the State of California for the County of San Bernardino or the Federal District Court for the Central District of California. Each of the parties hereto hereby waives any defense of lack of in personam jurisdiction of said courts and agrees that service of process in such action may be made upon each of them by mailing it certified or registered mail to the other party at the address provided for in this Agreement. Both parties agree that the prevailing party in any such judicial action shall be entitled to recover from the non-prevailing party reasonable expenses, including without limitation, attorneys' fees.

8. No Agency. Both parties acknowledge that they are independent contractors, and nothing contained herein shall be deemed to create an agency, joint venture, franchise or partnership relationship between the parties, and neither party shall so hold itself out. Neither party shall have the right to obligate or bind the other party in any manner whatsoever, and nothing contained in this Agreement shall give or is intended to give any right of any kind to third persons not signatory to this Agreement.

9. Assignment. Neither party hereto shall have the right, directly or indirectly, to assign, transfer, convey or encumber any of its rights or responsibilities under this Agreement without the prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the University and Facility.

10. Governing Law. This Agreement shall be construed in accordance with and all disputes regarding this Agreement shall be governed by the laws of the State of California.

11. Severability. If any term or provision of this Agreement is for any reason held to be invalid, such invalidity shall not affect any other term or provision, and this Agreement shall be interpreted as if such term or provision had never been contained in this Agreement.

12. Notice. All notices to be given under this Agreement (which shall be in writing) shall be given at the respective addresses of the parties as set forth below, unless notification of a change of address is given in writing. Any notice required by this Agreement shall be deemed to have been properly received when delivered in person or when mailed by registered or certified first class mail, return receipt requested, or by Federal Express to the address as given below, or such addresses as may be designated from time to time during this term of this Agreement.

Claremont Graduate University	City of Montclair
School of Community and Global Health	Attn: Alyssa Colunga
150 E. 10th St.	5111 Benito Street
Claremont, CA 91711	Montclair, CA 91763
909.607.8235	909.625.9459

13. Authority to Sign. The parties signing below are authorized and empowered to execute this Agreement and bind the parties to the terms and conditions contained herein.

14. No Third Party Beneficiaries. This Agreement shall not create any rights, including without

limitation third party beneficiary rights, in any person or entity not a party to this Agreement.

15. No Waiver. Any failure of a party to enforce that party's right under any provision of this Agreement shall not be construed or act as a waiver of that party's subsequent right to enforce any provisions contained herein.

16. Entire Agreement. This Agreement fully supersedes any and all prior agreements or understandings between the parties hereto or any of their respective affiliates with respect to the subject matter of this Agreement, and no change in, modification of, or addition, amendment or supplement to this Agreement shall be valid unless set forth in writing and signed and dated by both parties hereto subsequent to the execution of this Agreement.

17. Limitation of Liability. To the maximum extent permitted by law and excluding a breach of any term of this Agreement, in no event will either party be responsible to the other for any incidental damages, consequential damages, exemplary damages of any kind, lost goodwill, lost profits, lost business and/or any indirect economic damages whatsoever regardless of whether such damages arise from claims based upon contract, negligence, tort (including strict liability or other legal theory), and regardless of whether a party was advised or had reason to know of the possibility of incurring such damages in advance.

Claremont Graduate University,
On behalf of the School of Community and Global Health

By: _____
Michelle Bligh, PhD
Executive Vice President & Provost

CGU approval as to form and content only:

By: _____
Jay Orr, JD
Dean of the School of Community & Global Health

"FACILITY": **City of Montclair**

By: _____
Javier John Dutrey
Mayor

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

Please return this agreement to:

Jamie Felicitas-Perkins
Applied Practice Experience Coordinator
Claremont Graduate University
150 E. 10th St.
Claremont, CA 91711
Phone: (909) 607-3680
E-mail: jamie.felicitas-perkins@cgu.edu

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	PDT362
SECTION:	CONSENT - AGREEMENTS	**DEPT.:**	POLICE
ITEM NO.:	5	**PREPARER:**	M. BUTLER

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 24-11 WITH FIREHOUSE SUBS PUBLIC SAFETY FOUNDATION, INC. AUTHORIZING THE RECEIPT OF A GRANT AWARD FOR $28,067.50 TO PURCHASE AUTOMATED EXTERNAL DEFIBRILLATORS

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

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 24-11 with Firehouse Subs Public Safety Foundation, Inc. authorizing the receipt of a grant award for $28,067.50 to purchase automated external defibrillators (AED); and consider authorizing City Manager Edward C. Starr to sign said Agreement.

A copy of Agreement No. 24-11 with Firehouse Subs Public Safety Foundation, Inc. is attached for City Council review and consideration.

BACKGROUND: The Firehouse Subs Public Safety Foundation, Inc. (Foundation) allows fire departments, law enforcement, Emergency Medical Services, municipal and state organizations, public safety organizations, non-profits, and schools to apply for a competitive grant award for lifesaving equipment. A maximum of 600 applications are accepted on a quarterly basis, no matching funds are required, and the Foundation focuses its resources in areas served by Firehouse Subs restaurants. The mission of the Foundation is to impact the lifesaving capabilities, and the lives of local heroes and their communities by providing lifesaving equipment and prevention education tools to first responders, non-profits and public safety organizations.

The Montclair Police Department (MPD) applied for a grant award from the Foundation in October 2023 requesting 10 AEDs to provide first responders with the necessary equipment to help victims experiencing sudden cardiac arrest. Police officers are often the first to arrive on scene of a cardiac emergency and can begin lifesaving measures before emergency medical personnel are available. It is the policy of the MPD that all officers be trained to provide emergency medical aid and to facilitate an emergency medical response. Initiating high-quality cardiopulmonary resuscitation (CPR) and immediate use of an AED can make the difference between life and death. With our country facing a mental health crisis, our Department is experiencing multiple calls for service for individuals who have overdosed on Fentanyl or other controlled substances—situations where victims may need an electric shock to the heart to restore normal heart rhythm. AEDs are also a lifesaving measure to members of our own Department, including officers who may experience a cardiac arrest while on-duty related to an injury, a gunshot wound, or natural causes. Research suggests that over time, officers experiencing stress related to their duties can lead to heart disease and high blood pressure—both of which can lead to cardiac arrest. Heart attacks are in the top five causes of police officer deaths.

Currently, the Department has seven AEDs: two mounted in the police station, one in each of the two watch commander's patrol units, two for our officers' patrol units, and one broken AED that would cost more to fix than replace it. These AEDs were purchased 13 years ago and are coming to the end of their life cycle. The Department has 16 patrol units in its fleet, and vehicles assigned to command staff members, detectives, investigators, and cadets are not equipped with AEDs. With this grant award, the 10 new AEDs would be placed in patrol cars that are not currently AED equipped and would replace broken and worn out AEDs. With more readily available and dependable AEDs, the MPD would be more sufficiently prepared to initiate lifesaving treatment to members of the public or the Department suffering from sudden cardiac arrest.

On January 9, 2024, staff was notified that the Department was selected by the Firehouse Subs Public Safety Foundation Board of Directors to receive a $28,067.50 grant award to be used toward the direct purchase of 10 Physio-Control LIFEPAK 1000 AEDs. To accept the grant award, the City must enter into a Memorandum of Understanding (MOU), which is Funding Agreement No. 24-11, and adhere to the requirements of this Funding Agreement. One of the requirements in this MOU stipulates that staff must order the equipment as stated in approved Quote No. QUO30762 from One Beat Medical, which sells these AEDs at a very competitive price of $2,575 each. The Department is grateful to the Foundation for reviewing our grant application and for selecting us to receive a grant award to ensure our officers have the necessary equipment to keep community members and ourselves safe.

FISCAL IMPACT: If approved by the City Council, the Foundation would provide funding via an ACH transfer of $28,067.50. The Department would then directly purchase the AEDs from One Beat Medical per the approved quote.

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

1. Approve Agreement No. 24-11 with Firehouse Subs Public Safety Foundation, Inc. authorizing the receipt of a grant award for $28,067.50 to purchase AEDs; and

2. Authorize City Manager Edward C. Starr to sign said Agreement.

Firehouse Subs Public Safety Foundation, Inc.

12735 Gran Bay Pkwy., Suite 150, Jacksonville, Florida 32258

MEMO OF UNDERSTANDING- FUNDING AGREEMENT
January 11, 2023

Failure to adhere to the requirements of this Funding Agreement will jeopardize your grant award.
All purchases must match the quantities and equipment approved in the original grant request and approved quote.

Firehouse Subs Public Safety Foundation Responsibilities

- Firehouse Subs Public Safety Foundation will award funding to **City of Montclair, on behalf of City of Montclair Police Department, Montclair, CA** for **$28,067.50** to be used toward the direct purchase of **Ten LIFEPAK 1000 AEDs.**

City of Montclair, on behalf of City of Montclair Police Department Responsibilities

1. An ACH transfer will be remitted to the organization name as stated in this memo of understanding and **must** match the EIN number submitted on the grant request and bank account information listed on the ACH Authorization. If there is a change in either information, you must submit a W-9.
2. **Purchase** the equipment on Approved Quote #QUO30762 from One Beat.
    a. **NOTE:** DO NOT PREPAY for the equipment order at the time of purchase
3. **Confirm Receipt of ACH Transfer** by emailing procurementfoundation@firehousesubs.com
4. **Verify Purchase and Delivery** by providing Firehouse Subs Public Safety Foundation with the following:
    a. All signed and dated packing slips
    b. Copies of paid invoices, verifying your organization's name as the customer and matching the vendor quote(s)
    c. A copy of the cleared check(s), verifying the payee and payment amount matches the vendor quote(s)
5. In the event that the purchased equipment costs less than the dollar amount awarded, all excess funds must be returned to Firehouse Subs Public Safety Foundation.
    a. Email procurementfoundation@firehousesubs.com with notification of excess funds within 30 days of purchase
    b. Return Excess Funds within 30 days of receipt of excess funds invoice to Firehouse Subs Public Safety Foundation, Attention: Gina Brown, 12735 Gran Bay Parkway, Suite 150, Jacksonville, FL 32258
6. If purchases exceed funding, **City of Montclair, on behalf of City of Montclair Police Department** is responsible for the additional amount.

VERY IMPORTANT: Deadline for submitted documentation is June 30, 2024.

_____ _____
Firehouse Subs Public Safety Foundation — Date

_____ _____
City of Montclair, OBO City of Montclair Police Department Representative (**Signature**) — Date

Edward C. Starr, City Manager
City of Montclair, OBO City of Montclair Police Department Representative Name (**Print**)

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	PDT362
SECTION:	CONSENT - AGREEMENTS	**DEPT.:**	POLICE
ITEM NO.:	6	**PREPARER:**	M. BUTLER

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 24-15 WITH THE SAN BERNARDINO COUNTY OFFICE OF EMERGENCY SERVICES AUTHORIZING THE RECEIPT OF $16,021 FROM THE FISCAL YEAR 2022 HOMELAND SECURITY GRANT PROGRAM

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

CONSIDER AUTHORIZING A $16,021 APPROPRIATION FROM THE PUBLIC SAFETY GRANT FUND TO PURCHASE A FIREWALL AND A MAINTENANCE SERVICE AGREEMENT FOR THE POLICE STATION AND FIRE STATION 151

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 24-15 with the San Bernardino County Office of Emergency Services (County OES) authorizing the receipt of $16,021 from the Fiscal Year (FY) 2022 Homeland Security Grant Program (HSGP), and authorize City Manager Starr to sign said Agreement.

The City Council is also requested to consider authorizing a $16,021 appropriation from the Public Safety Grant Fund to purchase a firewall and a maintenance service agreement for the Police Station and Fire Station 151. The Public Safety Grant Fund would be fully reimbursed by the FY 2022 HSGP.

BACKGROUND: The State HSGP is designed to assist organizations, government agencies, and communities in implementing programs and measures to prevent, prepare for, protect against, mitigate against, respond to, and recover from all terror-related hazards and acts of terrorism. It is administered and funded by the California Governor's Office of Emergency Services (Cal OES). County OES is a subgrantee of the HSGP and oversees the administration of grant funds for the San Bernardino County Operational Area. In its capacity as subgrantee, County OES is tasked with applying for HSGP funds on behalf of regional jurisdictions. Through this process, the Montclair Police Department was approved to receive $16,021 in FY 2022 HSGP funds on December 12, 2023. After procurement of equipment is completed, a request for reimbursement would be submitted to County OES.

The City has received approval to use FY 2022 HSGP funds to procure a firewall along with a maintenance service agreement for the Police Station and Fire Station 151 to enhance and strengthen security and preparedness across cyberspace. This project has been categorized by Cal OES as a National Priority Project and as such cannot be modified.

After conducting a cybersecurity risk assessment, staff has identified a vulnerability in its protection from cyberattacks. The current network firewall is at its end of life, and the manufacturer no longer supports updates, patches, or hardware replacement. The network firewall is required by Criminal Justice Information Services (CJIS) and the Department of Justice (DOJ) to protect against external cyberattacks. The firewall, which

would be installed in the server cabinet at the Police Station, securely analyzes data flow from the internet and/or third party networks before allowing or blocking access based on specific security rules. A firewall protects the Department's internal network from attacks—it protects electronic communications systems, information, and services from damage, unauthorized use, and exploitation. Maintaining cybersecurity is crucial to ensure the security, reliability, integrity, and availability of critical information, records, and communications systems and services.

The City of Montclair has chosen to adopt the Netgate firewall as the sole-source vendor for the Montclair Police Department. This decision is rooted in the unparalleled intellectual property offered by Netgate PfSense, setting it apart as the most advanced and cost-effective solution for the Department's unique security needs.

Netgate firewall and its proprietary software, PfSense, is a leading firewall solution that boasts features comparable to, and often surpassing, those found in premium commercial firewall alternatives like Cisco or Palo Alto networks. The Netgate firewall project, initiated in 2004 with its first official release in 2006, has evolved into a thriving, open-source community offering both a free Community Edition (CE) and a paid Plus edition with enhanced features and support. The cost for the Netgate firewall and maintenance service agreement, quoted at $15,960, demonstrates a three- to five-times lower total cost of ownership compared to proprietary solutions, which provides significant financial savings for the City's overall financial investments. Netgate firewall proprietary technology boasts over 2 million downloads with a diverse user base ranging from small government agencies to large enterprises and service providers. They are trusted by various sectors, including enterprise-level companies, government agencies, K-12 schools, and higher education institutions.

Netgate is built on an open-source platform, which allows for greater transparency in security measures and consists of community-driven vulnerability detection with regular patching. Its firewall is highly configurable, enabling tailored security measures; it encompasses extensive functionalities; it has a web-based GUI that simplifies administration, reducing reliance on specialized IT expertise; it stresses ease of use for seamless integration into our existing infrastructure; it allows the City to adapt to its growth with flexible licensing options and compatibility with a wide-range of hardware; and its open-source code fosters trust and accountability in the security posture, aligning with the transparency required in law enforcement operations. Netgate offers 24/7 support coverage and professional service consultations, ensuring ongoing support, guidance, and valuable resources for the Department's needs.

Staff recommends Netgate as the sole-source vendor for the purchase of a firewall as it offers a secure, cost-effective, and flexible solution with the technical depth required for operations. With its customization features, community support, and open-source transparency, Netgate is a compelling alternative to traditional and expensive firewall solutions and would significantly elevate the City's security infrastructure while ensuring responsible financial stewardship.

Staff must submit a request to Cal OES for a noncompetitive procurement to purchase the firewall from Netgate. Once this request is approved and the City Council has approved Netgate as a sole-source vendor, staff can move forward with this project.

FISCAL IMPACT: If approved by the City Council, the purchase of a firewall and maintenance service agreement would result in an appropriation from the Public Safety Grant Fund (1163) in the amount of $16,021. The City would receive full reimbursement

from the FY 2022 HSGP. Any remaining grant funds would be returned to County OES.

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

1. Approve Agreement No. 24-15 with the San Bernardino County Office of Emergency Services authorizing the receipt of $16,021 from the FY 2022 Homeland Security Grant Program.

2. Authorize City Manager Starr to sign said Agreement.

3. Authorize a $16,021 appropriation from the Public Safety Grant Fund to purchase a firewall and a maintenance service agreement for the Police Station and Fire Station 151.

County of San Bernardino
FY2022 Homeland Security Grant Program
CFDA 97.067

Subrecipient Assurances
Grant No. 2022-0043

Name of Applicant: Montclair Police Department (hereafter "Applicant" or "Subrecipient")
Address: 4870 Arrow Highway
City: Montclair State: CA Zip Code: 91763
Telephone Number: 909-448-3600 Fax Number: 909-626-4892
E-Mail Address: mbutler@cityofmontclair.org

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

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

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

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

Federal Regulations

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

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

1. Proof of Authority

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

a) To provide all matching funds required (if applicable) for the grant project and that any cash match will be appropriated as required;
b) Any liability arising out of the performance of this agreement shall be the responsibility of the Applicant and the city council, governing board, or authorized body;
c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board or authorized body;

d) Applicant is authorized by the city council, governing board, or authorized body to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost, if any) to ensure proper planning, management and completion of the project described in this application; and

e) The official executing this agreement is authorized by the Applicant.

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

2. Period of Performance

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

3. Lobbying and Political Activities

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

a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.

c) The Applicant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

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

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

4. Debarment and Suspension

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

a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

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

5. Non-Discrimination and Equal Employment Opportunity

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

a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. §2000d et. Seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;

b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on basis of sex in any federally funded educational program or activity;

c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794), which prohibits discrimination against those with disabilities or access and functional needs;

d) Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. §§12101-12213), which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs;

e) Age Discrimination Act of 1975, (42 U.S.C §§6101-6107), which prohibits discrimination on the basis of age;

f) Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-2), relating to confidentiality of patient records regarding substance abuse treatment;

g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);

h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over $10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin;

i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;

j) California Public Contract Code § 10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;

k) DHS policy to ensure the equal treatment of faith-based organizations, under which the Applicant must comply with equal treatment policies and requirements contained in 6 C.F.R Part 19;

l) The Applicant will comply with California's Fair Employment and Housing Act (FEHA) (California Government Code §§ 12940, 12945, 12945.2), as applicable. FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave, military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions;

m) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and

n) The requirements of any other nondiscrimination statute(s) which may apply to this application.

6. Drug-Free Workplace

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

7. Environmental Standards

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

a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000-21177), to include coordination with the city or county planning agency;

b) CEQA Guidelines (California Code of Regulation, Title 14, Division 6, Chapter 3, §§ 15000-15387);

c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;

d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;

e) Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;

f) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;

g) Executive Order 11514 which sets forth the national environmental standards;

h) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;

i) The Safe Drinking Water Act of 1974, (P.L. 93-523);

j) The Endangered Species Act of 1973, (P.L. 93-205);

k) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);

l) Conformity of Federal Actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); and

m) Wild and Scenic Rivers Act of 1968 (16 U.S.C § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

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

8. Audits

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

9. Cooperation and Access to Records

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

10. Conflict of Interest

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

11. Financial Management

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

12. Reporting and Accountability

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

13. Whistleblower Protections

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

14. Human Trafficking

The Applicant will comply with the requirement of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits the Applicant or its subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect: (2) procuring a commercial sex act during the period of time that the award is in effect: (3) using forced labor in the performance of the award or subawards under the award.

15. Labor Standards

The Applicant will comply with the following federal labor standards:

a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts, and

b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

16. Worker's Compensation

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

17. Property-Related

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

a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchase;

Initials ____

b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires federal award subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

c) Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C §469a-1 et seq.); and

d) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

18. Certifications Applicable Only to Federally-Funded Construction Projects

For all construction projects, the Applicant will:

a) Not dispose of, modify the use of, or change the terms of the real property title of other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;

b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and

c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

19. Use of Cellular Device While Driving is Prohibited

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

20. California Public Records Act and Freedom of Information Act

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

HOMELAND SECURITY GRANT PROGRAM (HSGP) – PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS

21. Acknowledgment of Federal Funding from DHS

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

22. Activities Conducted Abroad

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

Initials

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

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

24. Copyright

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

25. Duplication of Benefits

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

26. Energy Policy and Conservation Act

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

27. Federal Debt Status

All subrecipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefits overpayments. See OMB Circular A-129.

28. Fly America Act of 1974

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

29. Hotel and Motel Fire Safety Act of 1990

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

30. Non-supplanting Requirement

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

31. Patents and Intellectual Property Rights

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

32. SAFECOM

If the Applicant receives federal financial assistance awards made under programs that provide emergency communication equipment and its related activities, the Applicant must comply with the SAFECOM Guidance

Initials

for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

33. Terrorist Financing

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

34. Reporting of Matters Related to Recipient Integrity Performance

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

35. USA Patriot Act 2001

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

36. Use of DHS Seal, Logo and Flags

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

37. Performance Goals

In addition to the Biannual Report submission requirements outlined in the Preparedness Grants Manual, the Applicant must demonstrate how the grant-funded project addresses the core capability gap associated with each project and identified in the Threat and Hazard Identification and Risk Analysis or Stakeholder Preparedness Review or sustains existing capabilities, as applicable. The capability gap reduction or capability sustainment must be addressed in the Project Description for each project.

38. Applicability of DHS Standard Terms and Conditions to Tribes

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

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

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

(a) All iron and steel used in the project are produces in the United States – this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

(b) All manufactured products used in the project are produced in the United States – this means the manufactured product was manufactured in the United States; and the cost of components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for

determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

(c) All construction materials are manufactured in the United States – this means that all manufacturing processes for the construction material occurred in the United States.

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

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

On July 1, 2022, OMB approved FEMA's General Applicability Public Interest Waiver of BABAA requirements to be effective for a period of six months, through January 1, 2023. Applicants will not be required to follow the BABAA requirements for FEMA awards made, and any other funding FEMA obligates, during this waiver period. For any new awards FEMA makes after January 1, 2023, as well as new funding FEMA obligates to existing awards or through renewal awards where the new funding is obligated after January 1, 2023, Applicants will be required to follow the BABAA requirements unless another waiver is requested and approved.

Initials _____

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

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

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

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

Applicant: Montclair Police Department

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: Edward C. Starr

Title: City Manager Date: _____

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

County of San Bernardino

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: Daniel Muñoz

Title: Deputy Executive Officer Date: _____

Initials _____

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	GRT200/PUB050
SECTION:	CONSENT - AGREEMENTS	**DEPT.:**	PUBLIC WORKS
ITEM NO.:	7	**PREPARER:**	M. HEREDIA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 24-16 WITH THE UNITED STATES DEPARTMENT OF ENERGY TO ACCEPT THE ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT EQUIPMENT REBATE VOUCHER AWARD

CONSIDER AUTHORIZING PUBLIC WORKS DIRECTOR MONICA HEREDIA TO SIGN SAID AGREEMENT AND OTHER PROGRAM-RELATED DOCUMENTS

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 24-16 with the United States Department of Energy to Accept the Energy Efficiency and Conservation Block Grant (EECBG) Equipment Rebate Voucher Award and authorize the Public Works Director to sign the EECBG Equipment Rebate Terms and Conditions and other program-related documents.

A copy of Agreement No. 24-16 of the EECBG Equipment Rebate Terms and Conditions is attached for City Council review and consideration.

BACKGROUND: On December 19, 2023, staff successfully applied to the United States Department of Energy's EECBG Equipment Rebate Voucher program with the assistance of the City's grant consultant, Blais and Associates. On January 22, 2024, the U.S. Department of Energy approved the City's EECBG Voucher application. However, an authorized staff member must sign the terms and conditions to accept the award.

The EECBG award will be used to purchase an air conditioning unit for Fire Station 151. The air conditioning unit will include two twenty-five ton condensers. The air-cooled condensing units will provide an Energy Efficiency Rating up to 12.0 (tested per Air Conditioning, Heating, and Refrigeration Institute 340/360). This high-efficiency unit will help reduce overall operating costs and energy consumption.

FISCAL IMPACT: The total cost of the equipment is estimated to be $120,000. The EECBG award will cover $76,320 and the remainder cost will be funded using the 2021 Lease Revenue Bond proceeds.

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

1. Approve Agreement No. 24-16 with the United States Department of Energy to Accept the Energy Efficiency and Conservation Block Grant (EECBG) Equipment Rebate Voucher Award; and

2. Authorize Public Works Director Monica Heredia to sign said Agreement and other program-related documents.

Agreement No. 24-16

Special Terms and Conditions

Entity Name:_____ ("Recipient"), which is identified in the Assistance Agreement, and the Office of State and Community Energy Programs ("SCEP"), and Energy Efficiency and Conservation Block Grant Program ("EECBG"), an office within the United States Department of Energy ("DOE"), enters into this Award, to achieve the project objectives and the technical milestones and deliverables stated in Attachment 1 to this Award.

This Award consists of the following documents, including all terms and conditions therein:

	Special Terms and Conditions
Attachment 1	Federal Assistance Reporting Checklist (FARC)[1]
Attachment 2	NEPA Determination[2]

The following are incorporated into this Award by reference:

- DOE Assistance Regulations, 2 CFR part 200 as amended by 2 CFR part 910 at http://www.eCFR.gov.
- National Policy Requirements (November 12, 2020) at http://www.nsf.gov/awards/managing/rtc.jsp.
- The Recipient's application/proposal as approved by SCEP.
- Public Law 117-58, also known as the Bipartisan Infrastructure Law (BIL).

[1] The FARC will be provided at a later date.
[2] The NEPA Determination is attached to your application in the EECBG Program Voucher Application Portal

Table of Contents

Subpart A. General Provisions

Term 1. Legal Authority and Effect

A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

The Recipient may accept or reject the Award. Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by DOE, specifically The EECBG Program Voucher Portal (https://doerebates.my.site.com/eecbgvouchers/s/), constitutes the Recipient's acceptance of the terms and conditions of this Award. Acknowledgement via the EECBG Program Voucher Portal by the Recipient's authorized representative constitutes the Recipient's electronic signature.

Term 2. Flow Down Requirement

The Recipient agrees to apply the terms and conditions of this Award, as applicable to all subcontractors as required by 2 CFR 200.101, and to require their strict compliance therewith. Further, the Recipient must apply the Award terms as required by 2 CFR 200.327 to all sub contractors and to require their strict compliance therewith.

Term 3. Compliance with Federal, State, and Municipal Law

The Recipient is required to comply with applicable Federal, state, and local laws and regulations for all work performed under this Award. The Recipient is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Award.

Term 4. Inconsistency with Federal Law

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this Award must be referred to the DOE Award Administrator for guidance.

Term 5. Federal Stewardship

SCEP will exercise normal Federal stewardship in overseeing the project activities performed under this Award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to address deficiencies that develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished.

Term 6. NEPA Requirements

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. Based on all information provided by the Recipient, SCEP has made a

NEPA determination by issuing a categorical exclusion (CX) for all activities listed in the Application approved by the Contracting Officer and the DOE NEPA Determination. The Recipient is thereby authorized to use Federal funds for the defined project activities, except where such activity is subject to a restriction set forth elsewhere in this Award.

This authorization is specific to the project activities and locations as described in the Application approved by the Contracting Officer and the DOE NEPA Determination.

If the Recipient later intends to add to or modify the activities or locations as described in the approved Application and the DOE NEPA Determination, those new activities/locations or modified activities/locations are subject to additional NEPA review and are not authorized for Federal funding until the Contracting Officer provides written authorization on those additions or modifications. Should the Recipient elect to undertake activities or change locations prior to written authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding for those activities, and such costs may not be recognized as allowable cost share.

Condition(s):
NEPA Logs if conducting potentially ground disturbing activities.

Term 7. Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Award should be American-made.

Term 8. Reporting Requirements

The reporting requirements for this Award are identified on the Federal Assistance Reporting Checklist, attached to this Award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the Award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

Term 9. Lobbying

By accepting funds under this Award, the Recipient agrees that none of the funds obligated on the Award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Term 10. Publications

The Recipient is required to include the following acknowledgement in publications arising out of, or relating to, work performed under this Award, whether copyrighted or not:

- *Acknowledgment:* "This material is based upon work supported by the U.S. Department of Energy's Office of State and Community Energy Programs (SCEP) under the Energy Efficiency and Conservation Block Grant (EECBG) Program Application # XXXXXXXXX"

- *Full Legal Disclaimer:* "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

  Abridged Legal Disclaimer: "The views expressed herein do not necessarily represent the views of the U.S. Department of Energy or the United States Government."

  Recipients should make every effort to include the full Legal Disclaimer. However, in the event that recipients are constrained by formatting and/or page limitations set by the publisher, the abridged Legal Disclaimer is an acceptable alternative.

Term 11. No-Cost Extension

As provided in 2 CFR 200.308, the Recipient must provide the Contracting Officer with notice in advance if it intends to utilize a one-time, no-cost extension of this Award. The notification must include the supporting reasons and the revised period of performance. The Recipient must submit this notification in writing to the Contracting Officer and DOE Technology Manager/ Project Officer at least 30 days before the end of the current budget period.

Any no-cost extension will not alter the project scope, milestones, deliverables, or budget of this Award.

Term 12. Property Standards

The complete text of the Property Standards can be found at 2 CFR 200.310 through 200.316. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit recipients.

Term 13. Insurance Coverage

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit recipients.

Term 14. Real Property

Subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.311 before disposing of the property.

Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity. The instructions must provide for one of the following alternatives: (1) retain title after compensating DOE as described in 2 CFR 200.311(c)(1); (2) Sell the property and compensate DOE as specified in 2 CFR 200.311(c)(2); or (3) transfer title to DOE or to a third party designated/approved by DOE as specified in 2 CFR 200.311(c)(3).

See 2 CFR 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award.

Term 15. Equipment

Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will conditionally vest upon acquisition with the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.313 before disposing of the property.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity.

Disposition will be made as follows: (1) items of equipment with a current fair market value of $5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to DOE; (2) Non-Federal entity may retain title or sell the equipment after compensating DOE as

described in 2 CFR 200.313(e)(2); or (3) transfer title to DOE or to an eligible third party as specified in 2 CFR 200.313(e)(3).

See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. See also 2 CFR 200.439 Equipment and other capital expenditures.

Term 16. Supplies

See 2 CFR 200.314 for requirements pertaining to supplies acquired under a Federal award. See also 2 CFR 200.453 Materials and supplies costs, including costs of computing devices.

Term 17. Property Trust Relationship

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. See 2 CFR 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

Term 18. Record Retention

Consistent with 2 CFR 200.334 through 200.338, the Recipient is required to retain records relating to this Award.

Term 19. Audits

A. Government-Initiated Audits

The Recipient must provide any information, documents, site access, or other assistance requested by SCEP, DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Recipient's records relating to this Award.

Consistent with 2 CFR part 200 as amended by 2 CFR part 910, DOE may audit the Recipient's financial records or administrative records relating to this Award at any time. Government-initiated audits are generally paid for by DOE.

DOE may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Recipient is required to refund to DOE any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

DOE will provide reasonable advance notice of audits and will minimize interference

with ongoing work, to the maximum extent practicable.

B. Annual Independent Audits (Single Audit or Compliance Audit)
The Recipient must comply with the annual independent audit requirements in 2 CFR 200.500 through .521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500 through .521 for for-profit entities (Compliance audit).

The annual independent audits are separate from Government-initiated audits discussed in part A. of this Term and must be paid for by the Recipient. To minimize expense, the Recipient may have a Compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is **not** a substitute for the Compliance audit. If the audit (Single audit or Compliance audit, depending on Recipient entity type) has not been performed or completed prior to the closeout of the award, DOE may impose one or more of the actions outlined in 2 CFR 200.339, Remedies for Noncompliance.

Term 20. Indemnity

The Recipient shall indemnify DOE and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of DOE officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

Term 21. Foreign National Participation

If the Recipient (including any of its contractors) anticipates involving foreign nationals in the performance of the Award, the Recipient must, upon DOE's request, provide DOE with specific information about each foreign national to ensure compliance with the requirements for participation and access approval. The volume and type of information required may depend on various factors associated with the Award. The DOE Contracting Officer will notify the Recipient if this information is required.

DOE may elect to deny a foreign national's participation in the Award. Likewise, DOE may elect to deny a foreign national's access to a DOE sites, information, technologies, equipment, programs or personnel.

Term 22. Post-Award Due Diligence Reviews

During the life of the Award, DOE may conduct ongoing due diligence reviews, through Government resources, to identify potential risks of undue foreign influence. In the event, a risk is identified, DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the Award.

Subpart B. Financial Provisions

Term 23. Maximum Obligation

The maximum obligation of DOE for this Award is the total "Funds Obligated" stated in Block 13 of the Assistance Agreement to this Award.

Term 24. Refund Obligation

The Recipient must refund any excess payments received from SCEP, including any costs determined unallowable by the Contracting Officer. Upon the end of the project period (or the termination of the Award, if applicable), the Recipient must refund to SCEP the difference between (1) the total payments received from SCEP, and (2) the Federal share of the costs incurred. Refund obligations under this Term do not supersede the annual reconciliation or true up process if specified under the Indirect Cost Term.

Term 25. Allowable Costs

SCEP determines the allowability of costs through reference to 2 CFR part 200 as amended by 2 CFR part 910. All project costs must be allowable, allocable, and reasonable. The Recipient must document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its subcontractors, and project costs that the Recipient claims as cost sharing, including in-kind contributions. The Recipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the cost principles. Upon request, the Recipient is required to provide such records to SCEP. Such records are subject to audit. Failure to provide SCEP adequate supporting documentation may result in a determination by the Contracting Officer that those costs are unallowable.

The Recipient is required to obtain the prior written approval of the Contracting Officer for any foreign travel costs.

Term 26. Decontamination and/or Decommissioning (D&D) Costs

Notwithstanding any other provisions of this Award, the Government shall not be responsible for or have any obligation to the Recipient for (1) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (2) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Award, whether said work was performed prior to or subsequent to the effective date of the Award.

Term 27. Use of Program Income

If the Recipient earns program income during the project period as a result of this Award, the

Recipient must add the program income to the funds committed to the Award and used to further eligible project objectives.

Term 28. Payment Procedures

A. Method of Payment
Payment will be made by reimbursement by CFO through ACH. Equipment rebate voucher applications will be approved for payment by DOE once the equipment has been installed and all required documentation has been provided.

B. Payments
All payments are made by electronic funds transfer to the bank account identified attached to the Recipient's UEI and identified in the Recipient's SAM.gov account.

C. Unauthorized Drawdown of Federal Funds
For each budget period, the Recipient may not spend more than the Federal share authorized to that award, without specific written approval from the Contracting Officer. The Recipient must immediately refund SCEP any amounts spent in excess of the authorized amount.

A. Supporting Documents for Agency Approval of Payments

DOE may request additional information from the Recipient to support the payment requests prior to release of funds, as deemed necessary. The Recipient is required to comply with these requests. Supporting documents include invoices, copies of contracts, vendor quotes, proof of installation and other expenditure explanations that justify the payment requests.

Term 29. Budget Changes

A. Budget Changes Generally
The Contracting Officer has reviewed and approved the budget in Attachment 1 to this Award.

Any increase in the total project cost, whether DOE share or Cost Share, which is stated as "Total" in Block 12 to the Assistance Agreement of this Award, must be approved in advance and in writing by the Contracting Officer.

Any change that alters the project scope, milestones or deliverables requires prior written approval of the Contracting Officer. SCEP may deny reimbursement for any failure to comply with the requirements in this term.

B. Transfers of Funds Among Direct Cost Categories
The Recipient is required to obtain the prior written approval of the Contracting Officer for any transfer of funds among direct cost categories where the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total project cost stated in the budget on the recipient's application.

The Recipient is required to notify the DOE Technology Manager/Project Officer of any transfer of funds among direct cost categories where the cumulative amount of such transfers is equal to or below 10 percent of the total project cost, stated in the budget on the recipient's application.

Subpart C. Miscellaneous Provisions

Term 30. Environmental, Safety and Health Performance of Work at DOE Facilities

With respect to the performance of any portion of the work under this Award which is performed at a DOE -owned or controlled site, the Recipient agrees to comply with all State and Federal Environmental, Safety and Health (ES&H) regulations and with all other ES&H requirements of the operator of such site.

Prior to the performance on any work at a DOE-owned or controlled site, the Recipient shall contact the site facility manager for information on DOE and site-specific ES&H requirements.

The Recipient is required apply this provision to its contractors.

Term 31. System for Award Management and Universal Identifier Requirements

A. Requirement for Registration in the System for Award Management (SAM)
Unless the Recipient is exempted from this requirement under 2 CFR 25.110, tThe Recipient must maintain the currency of its information in SAM until the Recipient submits the final financial report required under this Award or receive the final payment, whichever is later. This requires that the Recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in its information or another award term.

B. Unique Entity Identifier (UEI)
SAM automatically assigns a UEI to all active SAM.gov registered entities. Entities no longer have to go to a third-party website to obtain their identifier. This information

is displayed on SAM.gov.

If the Recipient is authorized to make subawards under this Award, the Recipient:

i. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from the Recipient unless the entity has provided its UEI number to the Recipient.

ii. May not make a subaward to an entity unless the entity has provided its UEI number to the Recipient.

C. Definitions

For purposes of this award term:

i. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at).

ii. Unique Entity Identifier (UEI) is the 12-character, alpha-numeric identifier that will be assigned by SAM.gov upon registration.

iii. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, subpart C:

1. A Governmental organization, which is a State, local government, or Indian Tribe.
2. A foreign public entity.
3. A domestic or foreign nonprofit organization.
4. A domestic or foreign for-profit organization.
5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

iv. Subaward:

1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.

2. The term does not include the Recipient's procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) *Subrecipients*

and Contractors and/or 2 CFR 910.501 Audit requirements, (f) *Subrecipients and Contractors*).

3. A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.

v. Subrecipient means an entity that:

1. Receives a subaward from the Recipient under this Award; and
2. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

Term 32. Nondisclosure and Confidentiality Agreements Assurances

A. By entering into this agreement, the Recipient attests that it **does not and will not** require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contactors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

B. The Recipient further attests that it **does not and will not** use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

i. *''These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.''*

ii. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

iii. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity,

other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

Term 33. Contractor Change Notification

Except for contractors specifically proposed as part of the Recipient's Application for award, the Recipient must notify the Contracting Officer and Project Manager in writing 30 days prior to the execution of new or modified contract agreements, including naming any To Be Determined contractors. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR part 200 as amended by 2 CFR part 910, nor does it relieve the Recipient from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

In order to satisfy this notification requirement, the Recipient documentation must, as a minimum, include the following:

- A description of the service to be provided or the equipment to be purchased.
- An assurance that the process undertaken by the Recipient to solicit the contractor complies with their written procurement procedures as outlined in 2 CFR 200.317 through 200.327.
- An assurance that no planned, actual or apparent conflict of interest exists between the Recipient and the selected contractor and that the Recipient's written standards of conduct were followed.[3]
- A completed Environmental Questionnaire, if applicable.
- An assurance that the contractor is not a debarred or suspended entity.
- An assurance that all required award provisions will be flowed down in the resulting contract agreement.

[3] It is DOE's position that the existence of a "covered relationship" as defined in 5 CFR 2635.502(a)&(b) between a member of the Recipient's owners or senior management and a member of a subrecipient's owners or senior management creates at a minimum an apparent conflict of interest that would require the Recipient to notify the Contracting Officer and provide detailed information and justification (including, for example, mitigation measures) as to why the subrecipient agreement does not create an actual conflict of interest. The Recipient must also notify the Contracting Officer of any new subrecipient agreement with: (1) an entity that is owned or otherwise controlled by the Recipient; or (2) an entity that is owned or otherwise controlled by another entity that also owns or otherwise controls the Recipient, as it is DOE's position that these situations also create at a minimum an apparent conflict of interest.

The Recipient is responsible for making a final determination to award or modify contractor agreements under this agreement, but the Recipient may not proceed with the contractor agreement until the Contracting Officer determines, and provides the Recipient written notification, that the information provided is adequate.

Should the Recipient not receive a written notification of adequacy from the Contracting Officer within 30 days of the submission of the contractor documentation stipulated above, the Recipient may proceed to award or modify the proposed contractor agreement.

Term 34. Recipient Integrity and Performance Matters

A. General Reporting Requirement

If the total value of your currently active Financial Assistance awards, grants, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this term. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

i. Is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;

ii. Reached its final disposition during the most recent five-year period; and

iii. Is one of the following:

1. A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;
2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;
3. An administrative proceeding, as defined in paragraph E of this term, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

4. Any other criminal, civil, or administrative proceeding if:
    a. It could have led to an outcome described in paragraph B.iii.1, 2, or 3 of this term;
    b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    c. The requirement in this term to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this term. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

D. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph A of this term, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, Financial Assistance awards, (including cooperative agreement awards) with a cumulative total value greater than $10,000,000, must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

For purposes of this term:

i. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.

ii. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.

iii. Total value of currently active Financial Assistance awards, cooperative agreements and procurement contracts includes—

1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

Term 35. Export Control

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as "Export Controls." The Recipient is responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under a resulting award.
The Recipient must immediately report to DOE any export control violations related to the project funded under this award, at the recipient or subrecipient level, and provide the corrective action(s) to prevent future violations.

Term 36. Interim Conflict of Interest Policy for Financial Assistance

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance. This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under this Award. The term "Investigator" means the PI and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. The Recipient must flow down the requirements of the interim COI Policy to any contracting non-Federal entities, with the exception of DOE National Laboratories. Further, the Recipient must identify all financial conflicts of interests (FCOI), i.e., managed and unmanaged/ unmanageable, in its initial and ongoing FCOI reports.

Prior to award, the Recipient was required to: 1) ensure all Investigators on this Award completed their significant financial disclosures; 2) review the disclosures; 3) determine whether a FCOI exists; 4) develop and implement a management plan for FCOIs; and 5) provide DOE with an initial FCOI report that includes all FCOIs (i.e., managed and unmanaged/unmanageable). Within 180 days of the date of the Award, the Recipient must be in full compliance with the other requirements set forth in DOE's interim COI Policy.

Term 37. Organizational Conflict of Interest

Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the Recipient is unable or appears to be unable to

be impartial in conducting procurement action involving a related organization (2 CFR 200.318(c)(2)).

The Recipient must disclose in writing any potential or actual organizational conflict of interest to the DOE Contracting Officer. The Recipient must provide the disclosure prior to engaging in a procurement or transaction using project funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. For a list of the information that must be included the disclosure, see Section VI. of the DOE interim Conflict of Interest Policy for Financial Assistance at https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance.

If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the Recipient must procure goods and services from other sources when using project funds. Otherwise, DOE may terminate the Award in accordance with 2 CFR 200.340 unless continued performance is determined to be in the best interest of the Federal government.

The Recipient must flow down the requirements of the interim COI Policy to any contracting non-Federal entities, with the exception of DOE National Laboratories. The Recipient is responsible for ensuring contractor compliance with this term.

If the Recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the Recipient must maintain written standards of conduct covering organizational conflicts of interest.

Term 38. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

As set forth in 2 CFR 200.216, recipients and subrecipients are prohibited from obligating or expending project funds (Federal and non-Federal funds) to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video

surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

See Public Law 115-232, section 889 for additional information.

Term 39. Human Subjects Research

Research involving human subjects, biospecimens, or identifiable private information conducted with Department of Energy (DOE) funding is subject to the requirements of DOE Order 443.1C, *Protection of Human Research Subjects*, 45 CFR Part 46, *Protection of Human Subjects* (*subpart A which is referred to as the "Common Rule"),* and 10 CFR Part 745, *Protection of Human Subjects*.

Federal regulation and the DOE Order require review by an Institutional Review Board (IRB) of all proposed human subjects research projects. The IRB is an interdisciplinary ethics board responsible for ensuring that the proposed research is sound and justifies the use of human subjects or their data; the potential risks to human subjects have been minimized; participation is voluntary; and clear and accurate information about the study, the benefits and risks of participating, and how individuals' data/specimens will be protected/used, is provided to potential participants for their use in determining whether or not to participate.

The Recipient shall provide the Federal Wide Assurance number identified in item 1 below and the certification identified in item 2 below to DOE prior to initiation of any project that will involve interactions with humans in some way (e.g., through surveys); analysis of their identifiable data (e.g., demographic data and energy use over time); asking individuals to test devices, products, or materials developed through research; and/or testing of commercially available devices in buildings/homes in which humans will be present. *Note:* This list of examples is illustrative and not all inclusive.

No DOE funded research activity involving human subjects, biospecimens, or identifiable private information shall be conducted without:

1) A registration and a Federal Wide Assurance of compliance accepted by the Office of Human Research Protection (OHRP) in the Department of Health and Human Services; and
2) Certification that the research has been reviewed and approved by an Institutional Review Board (IRB) provided for in the assurance. IRB review may be accomplished by the awardee's institutional IRB; by the Central DOE IRB; or if collaborating with one of the DOE national laboratories, by the DOE national laboratory IRB.

The Recipient is responsible for ensuring all subrecipients comply and for reporting information on the project annually to the DOE Human Subjects Research Database (HSRD) at https://science.osti.gov/HumanSubjects/Human-Subjects-Database/home. *Note:* If a DOE IRB is used, no end of year reporting will be needed.

Additional information on the DOE Human Subjects Research Program can be found at: https://science.osti.gov/ber/human-subjects

Term 40. Fraud, Waste and Abuse

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE's programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department of Energy activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit https://www.energy.gov/ig/ig-hotline.

Additionally, the Recipient must be cognizant of the requirements of 2 CFR § 200.113 Mandatory disclosures, which states:

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII of 2 CFR Part 200 are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

Subpart D. Bipartisan Infrastructure Law (BIL)-specific requirements

Term 41. Reporting, Tracking and Segregation of Incurred Costs

BIL funds can be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related Office of Management and Budget (OMB) Guidance. The Recipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL. Funding provided through the BIL that is supplemental to an existing grant or cooperative agreement is one-time funding.

Term 42. Davis-Bacon Requirements

This award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of $2,000 on an award funded directly by or assisted in whole or in part by funds made available under this award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA).

Recipients shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair, through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

The Recipient must comply with all of the Davis-Bacon Act requirements, including but not limited to:

(1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts.

(2) being responsible for compliance by any subcontractor with the Davis-Bacon labor standards.

(3) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.

(4) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).

(5) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and as requested or directed by the DOE.

(6) cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.

(7) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.

(8) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, , contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(9) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (https://doeibenefits2.energy.gov) or its successor system.

The Recipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the Recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events.

The Department of Energy has contracted with, a third-party DBA electronic payroll compliance software application. The Recipient must ensure the timely electronic submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular contractor or subcontractor because they are unable or limited in their ability to use or access the software.

Davis Bacon Act Electronic Certified Payroll Submission Waiver
A waiver must be granted before the award starts. The applicant does not have the right to appeal SCEP's decision concerning a waiver request.

For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see https://www.dol.gov/agencies/whd/government-contracts/construction and https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction.

Term 43. Buy American Requirement for Infrastructure Projects

**NOTE: Buy American Requirements only apply to awards over $250,000. Please disregard this section if your total EECBG Program award is less than $250,000.*

A. Definitions

Components are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

Construction Materials are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or enginSCEPd wood products.

Domestic Content Procurement Preference Requirement- means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—
(A) all iron and steel used in the project are produced in the United States;
(B) the manufactured products used in the project are produced in the United States; or
(C) the construction materials used in the project are produced in the United States.
Also referred to as the **Buy America Requirement**.

Infrastructure includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy - including electric vehicle (EV) charging.
The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

Manufactured Products are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials' aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

Primarily of iron or steel means greater than 50% iron or steel, measured by cost.

Project- means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Public- The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered "public" if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be "utilized primarily for a public purpose" if it is privately operated on behalf of the public or is a place of public accommodation.

B. Buy America Requirement

None of the funds provided under this award (federal share or recipient cost-share) may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

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

Recipients are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

C. Certification of Compliance

The Recipient must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this Award.

The Recipient must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the Recipient. The Recipient must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

D. Waivers

When necessary, the Recipient may apply for, and DOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the Contracting Officer. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days.

Waivers must be based on one of the following justifications:

1. Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;

2. Non-Availability- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or

3. Unreasonable Cost- The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;

- A detailed justification as to how the non-domestic item(s) is/are essential the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

The Recipient should consider using the following principles as minimum requirements contained in their waiver request:

- Time-limited: Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the Recipient should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).

- Targeted: Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.

- Conditional: The Recipient may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017.

DOE may request, and the Recipient must provide, additional information for consideration of this wavier. DOE may reject or grant

waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOEs final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

Term 44. Affirmative Action and Pay Transparency Requirements

All federally assisted construction contracts exceeding $10,000 annually will be subject to the requirements of Executive Order 11246:

(1) Recipients and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.

(2) Recipients and contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.

(3) Recipients and contractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide[4] should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take.

Term 45. Potentially Duplicative Funding Notice

If the Recipient have or receive any other award of federal funds for activities that potentially overlap with the activities funded under this Award, the Recipient must promptly notify DOE in writing of the potential overlap and state whether project funds (i.e., recipient cost share and federal 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 under this Award. If there are identical cost items, the Recipient must promptly notify the DOE Contracting Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

Term 46. Transparency of Foreign Connections

[4] See OFCCP's Technical Assistance Guide at: https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec Also see the National Policy Assurances http://www.nsf.gov/awards/managing/rtc.jsp

During the term of the Award, the Recipient must notify the DOE Contracting Officer within fifteen (15) business days of learning of the following circumstances in relation to the Recipient or contractors:

1. The existence of any joint venture or subsidiary that is based in, funded by, or has a foreign affiliation with any foreign country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of the Recipient or contractors that increases foreign ownership related to a country of risk;
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
6. Any current or pending foreign business entity, offshore entity, or entity outside the United States related to the Recipient or subrecipient.

Term 47. Foreign Collaboration Considerations

a. Consideration of new collaborations with foreign organizations and governments. The Recipient must provide DOE with advanced written notification of any potential collaboration with foreign entities, organizations or governments in connection with its DOE-funded award scope. The Recipient must await further guidance from DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.

b. Existing collaborations with foreign entities, organizations and governments. The Recipient must provide DOE with a written list of all existing foreign collaborations in which has entered in connection with its DOE-funded award scope.

c. Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the Recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the Award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the Award but resulting in provision of a thing of value from or to the Award must also be reported. Collaborations do not include routine workshops, conferences, use of the Recipient's services and facilities by foreign investigators resulting from its standard published

process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the Recipient's standard policies and procedures.

Authorized Signature Date

Name:

Title:

Entity Name:

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	STB300-17
SECTION:	CONSENT - RESOLUTIONS	**DEPT.:**	CITY MGR.
ITEM NO.:	1	**PREPARER:**	C. GRAVES

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 24-3426 AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH CHARGES

REASON FOR CONSIDERATION: Staff has identified 174 sewer and trash accounts in the even-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien.

A copy of proposed Resolution No. 24-3426 is attached for City Council consideration. Properties subject to lien are listed on Exhibit A of said Resolution

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 $62,676.81, plus $3,480.00 for release of lien fees, plus $8,700.00 in lien fees, for a total of $74,856.81.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 24-3426 authorizing placement of liens on certain properties for delinquent sewer and trash charges.

RESOLUTION NO. 24-3426

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 174 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 January 4, 2024, 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, February 5, 2024.

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 — February 2024*, 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, 2024.

_____
Mayor

ATTEST:

_____
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 24-3426 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, 2024, 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. 24-3426
Report of Delinquent Civil Debts - February 2024

Street No	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
11141	Ada Avenue	Residential	302.15	20.00	50.00	372.15
11225	Ada Avenue	Residential	331.59	20.00	50.00	401.59
10483	Adobe Court	Senior	296.14	20.00	50.00	366.14
11141	Amherst Avenue	Residential	331.59	20.00	50.00	401.59
11151	Amherst Avenue	Residential	331.59	20.00	50.00	401.59
4238	Appaloosa Way	Residential	503.87	20.00	50.00	573.87
5512	Arrow Hwy #D	Commercial	323.76	20.00	50.00	393.76
4624	Bandera Street	Multifamily	1,251.09	20.00	50.00	1,321.09
4644	Bandera Street	Multifamily	559.96	20.00	50.00	629.96
4750	Bandera Street	Multifamily	600.56	20.00	50.00	670.56
4959	Bandera Street	Residential	296.14	20.00	50.00	366.14
5095	Bandera Street	Residential	261.89	20.00	50.00	331.89
5169	Bandera Street	Residential	487.81	20.00	50.00	557.81
5185	Bandera Street	Residential	213.42	20.00	50.00	283.42
5207	Bandera Street	Residential	670.19	20.00	50.00	740.19
5211	Bandera Street	Residential	462.60	20.00	50.00	532.60
5215	Bandera Street	Residential	462.60	20.00	50.00	532.60
5217	Bandera Street	Residential	444.16	20.00	50.00	514.16
5235	Bandera Street	Residential	219.14	20.00	50.00	289.14
5239	Bandera Street	Residential	535.69	20.00	50.00	605.69
5633	Bandera Street	Residential	379.78	20.00	50.00	449.78
10133	Bel Air Avenue	Residential	216.80	20.00	50.00	286.80
10145	Bel Air Avenue	Residential	331.59	20.00	50.00	401.59
10545	Belgian Place	Residential	333.98	20.00	50.00	403.98
10551	Belgian Place	Residential	237.76	20.00	50.00	307.76
5216	Belvedere Way	Residential	736.22	20.00	50.00	806.22
5219	Belvedere Way	Residential	273.77	20.00	50.00	343.77
10268	Benson Avenue	Residential	300.00	20.00	50.00	370.00
10376	Benson Avenue	Multifamily	438.85	20.00	50.00	508.85
11419	Brunswick Lane	Residential	339.69	20.00	50.00	409.69
11427	Brunswick Lane	Residential	259.17	20.00	50.00	329.17
10464	Calico Court	Residential	518.02	20.00	50.00	588.02
10488	Calico Court	Residential	296.14	20.00	50.00	366.14
10401	Camarena Avenue	Residential	330.02	20.00	50.00	400.02
8953	Camulos Avenue	Residential	521.06	20.00	50.00	591.06
10234	Camulos Avenue	Residential	331.59	20.00	50.00	401.59
10259	Camulos Avenue	Residential	351.50	20.00	50.00	421.50
11372	Cannery Row	Residential	270.74	20.00	50.00	340.74
11409	Cannery Row	Residential	340.26	20.00	50.00	410.26
4912	Canoga Street	Residential	327.92	20.00	50.00	397.92
4924	Canoga Street	Residential	331.59	20.00	50.00	401.59
11178	Carrillo Avenue	Residential	331.59	20.00	50.00	401.59
9645	Central Avenue	Residential	214.92	20.00	50.00	284.92
11368	Chandler Lane	Residential	380.12	20.00	50.00	450.12
11456	Chandler Lane	Residential	386.89	20.00	50.00	456.89
4265	Clair Street	Residential	498.46	20.00	50.00	568.46
4337	Clair Street	Residential	362.80	20.00	50.00	432.80

Street No	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
5158	Clair Street	Residential	312.91	20.00	50.00	382.91
4241	Clydesdale Way	Residential	328.25	20.00	50.00	398.25
4303	Clydesdale Way	Residential	373.83	20.00	50.00	443.83
4311	Clydesdale Way	Residential	261.28	20.00	50.00	331.28
10164	Coalinga Avenue	Residential	331.59	20.00	50.00	401.59
10231	Coalinga Avenue	Residential	330.88	20.00	50.00	400.88
10276	Coalinga Avenue	Residential	341.34	20.00	50.00	411.34
10995	Coalinga Avenue	Residential	327.92	20.00	50.00	397.92
11148	Coalinga Avenue	Residential	331.59	20.00	50.00	401.59
11465	Cobblestone Lane	Residential	338.52	20.00	50.00	408.52
4126	Covecrest Court	Residential	296.31	20.00	50.00	366.31
11476	Cumberland Lane	Residential	340.50	20.00	50.00	410.50
10190	Del Mar Avenue	Residential	331.59	20.00	50.00	401.59
10236	Del Mar Avenue	Residential	331.57	20.00	50.00	401.57
4506	Donner Court	Commercial	345.46	20.00	50.00	415.46
11159	Essex Avenue	Residential	331.59	20.00	50.00	401.59
4705	Evart Street	Residential	331.60	20.00	50.00	401.60
4771	Evart Street	Residential	330.54	20.00	50.00	400.54
4789	Evart Street	Residential	287.25	20.00	50.00	357.25
4799	Evart Street	Residential	266.02	20.00	50.00	336.02
4114	Faircove Court	Residential	340.80	20.00	50.00	410.80
4219	Fauna Street	Residential	331.59	20.00	50.00	401.59
4244	Fauna Street	Residential	331.59	20.00	50.00	401.59
4256	Fauna Street	Residential	341.89	20.00	50.00	411.89
4267	Fauna Street	Residential	330.20	20.00	50.00	400.20
4291	Fauna Street	Residential	331.59	20.00	50.00	401.59
4703	Fauna Street	Residential	331.59	20.00	50.00	401.59
4852	Fauna Street	Residential	331.59	20.00	50.00	401.59
5420	Fauna Street	Residential	327.92	20.00	50.00	397.92
10260	Felipe Avenue	Residential	330.31	20.00	50.00	400.31
8919-21	Felipe Avenue	Multifamily	663.17	20.00	50.00	733.17
8947-49	Felipe Avenue	Multifamily	592.29	20.00	50.00	662.29
10427	Felipe Lane	Residential	212.60	20.00	50.00	282.60
4532	Flora Street	Residential	381.31	20.00	50.00	451.31
4639	Flora Street	Senior	356.03	20.00	50.00	426.03
4704	Flora Street	Residential	374.54	20.00	50.00	444.54
4932	Flora Street	Residential	384.00	20.00	50.00	454.00
5185	Flora Street	Residential	326.09	20.00	50.00	396.09
10253	Fremont Avenue	Residential	331.59	20.00	50.00	401.59
10287	Fremont Avenue	Residential	362.53	20.00	50.00	432.53
10945	Fremont Avenue	Multifamily	203.87	20.00	50.00	273.87
11049	Fremont Avenue	Residential	336.56	20.00	50.00	406.56
10365-67	Fremont Avenue	Multifamily	622.49	20.00	50.00	692.49
10111	Galena Avenue	Residential	244.50	20.00	50.00	314.50
10161	Geneva Avenue	Residential	655.13	20.00	50.00	725.13
4507	Grand Avenue	Residential	283.00	20.00	50.00	353.00
11327	Halifax Lane	Residential	213.42	20.00	50.00	283.42

Street No	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
4103	Howard Street	Residential	331.59	20.00	50.00	401.59
4341	Howard Street	Residential	333.18	20.00	50.00	403.18
4605	Howard Street	Residential	329.52	20.00	50.00	399.52
5245	Howard Street	Residential	308.09	20.00	50.00	378.09
10163	Kimberly Avenue	Residential	296.14	20.00	50.00	366.14
10170	Kimberly Avenue	Senior	311.56	20.00	50.00	381.56
10236	Kimberly Avenue	Residential	331.59	20.00	50.00	401.59
10244	Kimberly Avenue	Residential	333.79	20.00	50.00	403.79
11065	Kimberly Avenue	Residential	331.59	20.00	50.00	401.59
11175	Kimberly Avenue	Residential	615.89	20.00	50.00	685.89
4561	Kingsley Street	Multifamily	284.44	20.00	50.00	354.44
4671	Kingsley Street	Multifamily	284.44	20.00	50.00	354.44
5486	Kingsley Street	Residential	406.14	20.00	50.00	476.14
5141-43	Kingsley Street	Multifamily	619.27	20.00	50.00	689.27
5173-75	Kingsley Street	Multifamily	284.44	20.00	50.00	354.44
5015	Laurel Street	Residential	350.80	20.00	50.00	420.80
10360-62	Lehigh Avenue	Multifamily	663.17	20.00	50.00	733.17
10370-72	Lehigh Avenue	Multifamily	318.20	20.00	50.00	388.20
4414	Mane Street	Residential	354.76	20.00	50.00	424.76
4428	Mane Street	Residential	263.40	20.00	50.00	333.40
4595	Mane Street	Residential	331.59	20.00	50.00	401.59
4839	Mane Street	Residential	331.59	20.00	50.00	401.59
4846	Mane Street	Residential	362.53	20.00	50.00	432.53
11154	Marion Avenue	Residential	207.94	20.00	50.00	277.94
11336	Marquette Ln	Residential	338.26	20.00	50.00	408.26
11442	Marquette Ln	Residential	340.39	20.00	50.00	410.39
4441	Merle Street	Residential	309.56	20.00	50.00	379.56
4444	Merle Street	Residential	345.54	20.00	50.00	415.54
10157	Mills Avenue	Residential	312.79	20.00	50.00	382.79
10231	Mills Avenue	Residential	331.59	20.00	50.00	401.59
10279	Mills Avenue	Residential	374.95	20.00	50.00	444.95
3818	Millstone Ln	Residential	304.60	20.00	50.00	374.60
11458	Millstone Ln	Residential	340.14	20.00	50.00	410.14
4548	Monte Verde Street	Residential	446.35	20.00	50.00	516.35
5239	Monte Verde Street	Residential	331.59	20.00	50.00	401.59
10290	Monte Vista Avenue	Senior	338.24	20.00	50.00	408.24
5136	N Plaza Lane	Commercial	282.29	20.00	50.00	352.29
10163	Oak Glen Avenue	Senior	296.10	20.00	50.00	366.10
10176	Oak Glen Avenue	Senior	341.69	20.00	50.00	411.69
4595	Oakdale Street	Residential	331.59	20.00	50.00	401.59
5035	Orchard Street	Residential	293.07	20.00	50.00	363.07
5171	Orchard Street	Senior	299.28	20.00	50.00	369.28
5415	Orchard Street	Residential	239.59	20.00	50.00	309.59
5422	Orchard Street	Residential	331.59	20.00	50.00	401.59
5471	Orchard Street	Residential	320.12	20.00	50.00	390.12
10165	Poulsen Avenue	Residential	231.97	20.00	50.00	301.97
10206	Pradera Avenue	Residential	331.59	20.00	50.00	401.59

Street No	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
4574	Rawhide Street	Residential	268.45	20.00	50.00	338.45
4668	Rawhide Street	Residential	462.60	20.00	50.00	532.60
5155	Saddleback Street	Residential	482.03	20.00	50.00	552.03
11020	San Pasqual Avenue	Residential	331.59	20.00	50.00	401.59
11083	San Pasqual Avenue	Residential	362.50	20.00	50.00	432.50
11143	San Pasqual Avenue	Residential	262.65	20.00	50.00	332.65
11153	San Pasqual Avenue	Residential	449.15	20.00	50.00	519.15
10183	Santa Anita Avenue	Residential	362.70	20.00	50.00	432.70
10204	Santa Anita Avenue	Residential	333.04	20.00	50.00	403.04
10221	Santa Anita Avenue	Residential	331.78	20.00	50.00	401.78
10298	Santa Anita Avenue	Residential	333.62	20.00	50.00	403.62
10170	Saratoga Avenue	Residential	331.08	20.00	50.00	401.08
10226	Saratoga Avenue	Residential	547.89	20.00	50.00	617.89
5538	Shirley Ln	Residential	462.60	20.00	50.00	532.60
11011	Stallion Avenue	Residential	332.05	20.00	50.00	402.05
10289	Tudor Avenue	Residential	331.59	20.00	50.00	401.59
10427	Tudor Avenue	Senior	286.92	20.00	50.00	356.92
10115	Vernon Avenue	Residential	331.61	20.00	50.00	401.61
10236	Vernon Avenue	Residential	331.61	20.00	50.00	401.61
10241	Vernon Avenue	Residential	345.46	20.00	50.00	415.46
5533	Vernon Ct	Residential	331.19	20.00	50.00	401.19
5555	Vernon Ct	Residential	345.46	20.00	50.00	415.46
4226	Via Morgana Davis	Residential	296.14	20.00	50.00	366.14
10438	Via Palma	Residential	234.28	20.00	50.00	304.28
11053	Wesley Avenue	Residential	331.59	20.00	50.00	401.59
10995	Whitewater Avenue	Senior	506.02	20.00	50.00	576.02
11178	Whitewater Avenue	Residential	331.59	20.00	50.00	401.59
11238	Whitewater Avenue	Residential	296.14	20.00	50.00	366.14
11263	Whitewater Avenue	Residential	327.92	20.00	50.00	397.92
5013	Willow Street	Residential	498.49	20.00	50.00	568.49
4515	Yosemite Drive	Residential	335.12	20.00	50.00	405.12
4523	Yosemite Drive	Residential	296.14	20.00	50.00	366.14
4548	Yosemite Drive	Residential	397.38	20.00	50.00	467.38
			62,676.81	3,480.00	8,700.00	74,856.81

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	FRD040
SECTION:	CONSENT - RESOLUTIONS	**DEPT.:**	FIRE
ITEM NO.:	2	**PREPARER:**	D. POHL

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 24-3427 RESCINDING AND SUPERSEDING RESOLUTION NO. 23-3424 IDENTIFYING AND CORRECTING UPDATED TERMS AND CONDITIONS FOR A FIRE DEPARTMENT RESPONSE AWAY FROM ITS OFFICIAL DUTY STATION WHEN ASSIGNED TO AN EMERGENCY INCIDENT AND MODIFYING LANGUAGE AT THE DIRECTION OF THE STATE OF CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Resolution No. 24-3427 rescinding and superseding Resolution No. 23-3424 identifying and correcting updated terms and conditions for a Fire Department response away from its official duty station when assigned to an emergency incident, and modifying language at the direction of State of California Governor's Office of Emergency Services (CalOES) to remove the phrase "State and Federal" and replace with "an emergency incident."

A copy of proposed Resolution No. 24-3427 is attached for City Council review and consideration.

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); 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. 24-3427 would accomplish the following:

1. 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 an emergency incident, in support of an emergency incident, or pre-positioned for an emergency response;
2. 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 an emergency incident, in support of an emergency incident, or pre-position for an emergency response; and
3. Modify language used in Resolution No. 23-3424 by removing the phrase "State and Federal" and replacing with "an emergency incident" at the direction of CalOES.

Upon adoption of proposed Resolution No. 24-3427, 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 an 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. 24-3427, 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 an emergency incident, in support of an emergency incident, or pre-position for an 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. 24-3427 rescinding and superseding Resolution No. 23-3424 identifying and correcting updated terms and conditions for a Fire Department response away from its official duty station when assigned to an emergency incident and modifying language at the direction of the State of California Governor's Office of Emergency Services.

RESOLUTION NO. 24-3427

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR RESCINDING AND SUPERSEDING RESOLUTION NO. 23-3424 CORRECTING AND IDENTIFYING UPDATED TERMS AND CONDITIONS FOR A FIRE DEPARTMENT RESPONSE AWAY FROM THE DEPARTMENT'S OFFICIAL DUTY STATION WHEN ASSIGNED TO AN 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, Fire Engineer, 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 an emergency incident, in support of an emergency incident, or pre-positioned for an 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 an emergency incident, in support of an emergency incident, or pre-positioned for an 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, Fire Engineer 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, 2024.

_____
Mayor

ATTEST:

_____
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 24-3427 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, 2024, 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:	FEBRUARY 5, 2024	**FILE I.D.:**	EDD100/MHA100
SECTION:	CONSENT - RESOLUTIONS	**DEPT.:**	ECONOMIC DEV./MHA
ITEM NO.:	3	**PREPARER:**	M. FUENTES

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 24-3428 DECLARING THAT CERTAIN REAL PROPERTY LOCATED AT 9795 CENTRAL AVENUE, MONTCLAIR, IS EXEMPT SURPLUS LAND PURSUANT TO GOVERNMENT CODE SECTION 54221 AND FINDING THAT SUCH DECLARATION IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

CONSIDER ADOPTION OF RESOLUTION NO. 24-3429 APPROVING AGREEMENT NO. 24-12, AN AFFORDABLE HOUSING AGREEMENT WITH THE MONTCLAIR HOUSING AUTHORITY AND THE MONTCLAIR HOUSING CORPORATION; AUTHORIZING THE TRANSFER OF 9795 CENTRAL AVENUE, MONTCLAIR, TO THE MONTCLAIR HOUSING AUTHORITY FOR USE AS AN AFFORDABLE HOUSING UNIT

CONSIDER ADOPTION OF MHC RESOLUTION NO. 24-01 APPROVING AGREEMENT NO. 24-12, AN AFFORDABLE HOUSING AGREEMENT WITH THE CITY OF MONTCLAIR AND THE MONTCLAIR HOUSING AUTHORITY

CONSIDER ADOPTION OF MHA RESOLUTION NO. 24-01 APPROVING AGREEMENT NO. 24-12, AN AFFORDABLE HOUSING AGREEMENT WITH THE CITY OF MONTCLAIR AND THE MONTCLAIR HOUSING CORPORATION, AND ACCEPTING THE TRANSFER OF CERTAIN REAL PROPERTY FROM THE CITY OF MONTCLAIR

CONSIDER AUTHORIZING A $100,000 APPROPRIATION FROM THE HOUSING TRUST FUND FOR REHABILITATION OF THE PROPERTY LOCATED AT 9795 CENTRAL AVENUE, MONTCLAIR

REASON FOR CONSIDERATION: Proposed Agreement No. 24-12 is an Affordable Housing Agreement between the City of Montclair (City), the Montclair Housing Authority (MHA), and the Montclair Housing Corporation (MHC) for the conveyance of real property located at 9795 Central Avenue and the subsequent leasing and operations of said property as an affordable housing unit.

Proposed City Council Resolution No. 24-3428 would declare the property as exempt surplus land pursuant to Government Code (GC) Section (§) 54221 and find that such declaration is exempt from environmental review under the California Environmental Quality Act.

Proposed City Council Resolution No. 24-3429 would approve entering into Agreement No. 24-12 and would authorize the transfer of Property from the City to the MHA. Proposed MHC Resolution No. 24-01 would approve entering into Agreement No. 24-12. Proposed MHA Resolution No. 24-01 would approve entering into Agreement No. 24-12 and accept the transfer of property from the City to the MHA.

A copy of the proposed resolutions and agreement are attached for review and consideration by the City Council, the MHA Commissioners, and the MHC Board.

BACKGROUND: In June 1987, the former Redevelopment Agency (RDA) Board of Directors adopted the *Central Avenue Single-family Acquisition Policy* (Policy) authorizing staff to make purchase offers on single-family residences along the Central Avenue corridor, subject to the former Redevelopment Agency Board of Directors' approval.

The Policy was later expanded to include areas along Central Avenue or in locations of high visibility. Pursuant to the Policy, a total of 17 single-family homes were purchased by the former RDA before its dissolution.

With the dissolution of redevelopment agencies in 2011 (AB 1X 26) and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos,* the City Council elected to continue the former RDA's policy of acquiring single-family residences along the Central Avenue corridor or in locations of high visibility and further expanded the Policy to included residences along all of the City's major corridors.

The properties formerly owned by the RDA were transferred to the Montclair Housing Authority (MHA), the successor housing entity, and are currently rented to low- to-moderate-income families and are managed by the Montclair Housing Corporation (MHC), a nonprofit public-benefit corporation organized for the purpose of increasing, improving, and preserving affordable housing in the City of Montclair.

The rents and other income from the MHC belong to the MHA; however, they are granted to the MHC for use in covering expenses of operating the various housing units. The amount of rents collected from the renters is established by the State Department of Housing and Community Development and varies based upon income levels.

Surplus Land Act

The California Surplus Land Act (SLA—GC §54220, et seq.) governs the disposition of surplus lands and requires local agencies to follow certain disposition procedures to provide opportunities for certain uses, including affordable housing development, on any land a local agency may sell, lease, or dispose of.

The SLA requires that a local agency declare land as either "surplus" or "exempt surplus" by an action of its legislative body, supported by written findings. Therefore, before the City can convey the Property to MHA, the City Council will need to determine that the conveyance of the Property to the MHA is "exempt surplus land," as that term is defined in the SLA.

If the Property is not exempt surplus land, the City would be required to advertise the availability of the property interest and engage in negotiations with parties interested in developing the property for housing, or open space uses.

Pursuant to §102(h) of the implementing regulations adopted by the California Department of Housing and Community Development (HCD Guidelines), the disposition of surplus lands means "the sale or lease of local agency-owned land formally declared surplus." The Property is not subject to sale or lease and therefore is not subject to the SLA.

Pursuant to the Surplus Land Act, specifically GC §54221(f)(1)(D), and HCD Guidelines, "exempt surplus land" includes "surplus land that a local agency is transferring to another local, state or federal agency for the agency's use." The City and the MHA are considered local agencies; accordingly, a transfer of the Property by the City to MHA would constitute a transfer of exempt surplus land from one local agency to another and satisfy the requirements of this exemption.

Proposed City Council Resolution No. 24-3428 would declare the property located at 9795 Central Avenue, Montclair, as exempt surplus land pursuant to GC §54221(f)(1)(D) and find that such declaration is exempt from environmental review under the California Environmental Quality Act.

Upon approval of Resolution No. 24-3428, staff would be required to notify HCD of the City's declaration of the property as exempt surplus land and wait a period of thirty days prior to the disposition and transfer of the Property to the MHA.

Agreement No. 24-12 Affordable Housing Agreement

In order to meet the City's Regional Housing Needs Assessment (RHNA), a representation of future housing needs for all income levels in a region, staff recommends the property be operated as a rental unit made available to low- to moderate-income persons. As such, staff has prepared Agreement No. 24-12, an affordable housing agreement by and between the City, MHA, and MHC.

Proposed Agreement No. 24-12 contains language related to the conveyance of the property, compliance with applicable laws, use of the property, remedies, and general provisions. The more salient points of proposed Agreement No. 24-12 relate to the conveyance of fee title of the property from the City to the MHA and leasing of the property from the MHA to the MHC for the day-to-day operation of the property, as well as the rehabilitation and rental of the property to low- to moderate-income persons.

9795 Central Avenue

The subject property is located on a highly visible and desirable portion of Central Avenue between Benito Street and San Bernardino Street, thereby meeting the criteria established in the City Council's Policy to acquire properties along the City's major corridors and areas of high visibility.

The property was built in 1958 and the lot size is 6,900 square feet. The dwelling unit includes two bedrooms and one bathroom and is 890 square feet.

Staff is recommending several improvements to the residential unit related to general property clean-up including: minor painting, landscaping, installation of draining pipes to address pooling of water, and fence replacement. Staff is also recommending a complete kitchen rehabilitation.

FISCAL IMPACT: Approval of Agreement No. 24-12 would produce no fiscal impact to the City of Montclair General Fund.

Staff is recommending an allocation of $100,000 from the Housing Trust Fund in order to cover estimated costs for rehabilitation of the property.

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

1. Adopt Resolution No. 24-3428 declaring that certain real property located at 9795 Central Avenue, Montclair, is exempt surplus land pursuant to Government Code Section 54221 and finding that such declaration is exempt from environmental review under the California Environmental Quality Act;

2. Adopt Resolution No. 24-3429 approving Agreement No. 24-12, an Affordable Housing Agreement with the Montclair Housing Authority and Montclair Housing Corporation; authorizing transfer of certain real property located at 9795 Central Avenue, Montclair, to the Montclair Housing Authority for use as an affordable housing unit; and

Staff recommends that the Montclair Housing Corporation Board of Directors adopt Resolution. No. 24-01 approving Agreement No. 24-12, an Affordable Housing Agreement with the City of Montclair and the Montclair Housing Authority.

Staff recommends that the Montclair Housing Authority Commissioners take the following actions:

1. Adopt Resolution No. 24-01 approving Agreement No. 24-12, an Affordable Housing Agreement by and between the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation and accepting the transfer of certain real property from the City of Montclair to the Montclair Housing Authority.

2. Authorize an $100,000 appropriation from the Housing Trust Fund for rehabilitation of the property located at 9795 Central Avenue, Montclair.

AFFORDABLE HOUSING AGREEMENT

by and among the

CITY OF MONTCLAIR

and the

MONTCLAIR HOUSING AUTHORITY

and the

MONTCLAIR HOUSING CORPORATION

TABLE OF CONTENTS

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (the "Agreement") is hereby entered into as of February 5, 2024 (the "Date of Agreement"), by and among the **CITY OF MONTCLAIR**, a California municipal corporation (the "City"), the **MONTCLAIR HOUSING AUTHORITY**, a public body, corporate and politic (the "Authority"), the and **MONTCLAIR HOUSING CORPORATION**, a California nonprofit public benefit corporation (the "Operator").

RECITALS

A. Authority is a housing authority duly established and operating as a local housing authority pursuant to the California Housing Authority Law, Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code ("Housing Authority Law" or "HAL").

B. City is the owner of that certain property located within the corporate limits of the City of Montclair, located at 9795 Central Avenue, Montclair, California (the "Property" or "House"). The Property is further described in the Legal Description which is attached hereto as Attachment No. 1.

C. City desires to convey to Authority the Property and Authority desires to acquire the Property from the City as provided herein.

D. Upon acquiring the Property, Authority intends to lease the Property to the Operator for the operation of the Property as an affordable rental housing resources for households of "Low Income" as defined below.

E. The transaction contemplated by this Agreement is in the vital and best interest of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, the parties hereto agree as follows:

1. DEFINITIONS. The following terms shall have the following definitions for the purpose of this Agreement:

"Additional Rent" is defined in Section 2.2 hereof.

"Affordable Rent" is defined in Section 4.2(f) hereof.

"Authority" means the Montclair Housing Authority, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Housing Authority Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

"Agreement" means this Affordable Housing Agreement among Authority, City, and Operator.

"Authority Executive Director" means the Executive Director of the Authority or his or her designee.

"City" means the City of Montclair, California, a California municipal corporation.

"***City Code***" means and refers to the City of Montclair Municipal Code as revised from time to time.

"***City Deed***" means a grant deed substantially in the form of Attachment No. 3.

"***Date of Agreement***" is defined in the first paragraph of this Agreement.

"Event of Default" means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 5.1 hereof.

"House" means the single family home which is located on and constitutes part of the Property.

"Housing Authority Law" or "***HAL***" has the meaning set forth therefor in Recital A.

"Low Income Household" shall mean a household earning not greater than eighty percent (80%) of San Bernardino County median income as determined pursuant to Health and Safety Code Section 50079.5.

"Net Profits" shall mean all gross income from the Property, including without limitation rents and interest on security deposits, less the sum of the Operating Expenses.

"Operating Expenses" shall mean actual, reasonable and customary costs, fees and expenses directly incurred and attributable to the operation, maintenance, and management of the Property. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation.

"Operator" means the Montclair Housing Corporation, a California nonprofit public benefit corporation.

"Parties" means, collectively, City, Authority, and Operator.

"Property" means the single family house in the City of Montclair located at 9795 Central Avenue, Montclair, California, and described in the Legal Descriptions.

"Property Value" means the amount of Six Hundred and Thousand Dollars ($600,000). The Property's Value is mutually believed to be by each of the Parties to represent the fair market value of the Property as of the Date of Agreement.

2. CONVEYANCE OF THE PROPERTY.

2.1 Conveyance of Fee Title. City agrees to convey to Authority the Property by City Deed. The purchase price payable by Authority to City in consideration of the conveyance of the Property shall be One Dollar ($1.00) (the "Authority Purchase Price"); provided that City may waive receipt of Authority Purchase Price. Upon request therefor by Authority, City will, in connection with the conveyance of the Property, provide to Authority an owner's standard ALTA policy of title insurance as to the Property by a title insurer mutually acceptable to City and Authority, with the policy to be based upon the Property Value (the "Authority Title Policy"). Any and all documentary transfer

taxes, recording fees, escrow charges, premiums for title insurance, and any costs associated with the conveyance of the Property to Authority shall be borne by City.

2.2 Lease Terms. Subject to the satisfaction of all of the conditions precedent to commencement of the Lease set forth in Section 2.3 hereof, the Authority shall lease the Property to the Operator for a fifteen (15) year term at a base rental amount of One Dollar ($1.00) per year together with the "Additional Rent" as set forth below. The terms and conditions of such lease shall be set forth in a "Lease" to be executed by the Authority and the Operator in the form of Attachment No. 2 which is attached hereto and incorporated herein.

At the end of each operating year, the Operator shall calculate total gross operating revenue for that year, and shall thereupon pay to the Authority as "Additional Rent" an amount equal to Net Profits, which equals total gross operating revenue less the Operating Expenses for that year. If total gross revenue from the Property for that year is less than the Operating Expenses, no Additional Rent shall be payable and the Operator shall be responsible for such additional costs from its own funds, and shall not be entitled to additional compensation from the Authority or be entitled to reduce the required level of services. The Authority and its authorized representatives shall, at all times, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of the Operator which in any manner relate to the expenses and revenues of the Property under this Agreement and the Operator's obligations hereunder. The Operator's staff shall cooperate fully with authorized auditors when they conduct audits and examinations of Authority funded programs. Within thirty (30) days of the submittal of such audit report, the Operator shall provide a written response to all conditions or findings reported in such audit report. The response must discuss each condition or finding and set forth a proposed resolution, including a schedule for correcting any deficiency. All conditions or correction actions shall take place within six (6) months after receipt of the audit report unless the Authority Executive Director or designee authorizes an extension of time to submit such corrections.

2.3 Conditions Precedent to Commencement of Lease. Prior to and as conditions to the Authority's execution of and the commencement of the Lease: (i) City shall have conveyed the titles of the Property to Authority; (ii) if requested by Authority, City shall have caused to be delivered to Authority the Authority Title Policy; (iii) Operator shall have executed the Lease; and (iv) Operator shall have provided proof of insurance (certificates) conforming to Section 3.7 of this Agreement.

3. COMPLIANCE WITH LAWS. Operator shall carry out the operation of the Property in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq*.

4. USE OF THE PROPERTY.

4.1 Use in Conformance with Agreement. The Operator covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof that, during the term of this Agreement, the Operator, such successors and such assignees, shall use,

operate and maintain the Property in conformity with this Agreement and shall devote the Property to the uses specified in this Agreement for the periods of time specified therein.

4.2 Affordable Rental Housing.

(a) Number of Units. Upon the commencement of the Lease, the Operator agrees to make available, restrict occupancy to, and rent the House to Low Income Households, at an Affordable Rent.

(b) Lease Requirements. Prior to rental of the House within the Property, the Operator shall submit a standard lease form to the Authority for the Authority's approval. The Authority Executive Director, or designee, shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement. The Operator shall enter into a lease, in the form approved by the Authority, with each tenant of the House.

(c) Duration of Affordability Requirements. The House shall be subject to the requirements of this Section 4.2 for a period coextensive with the term of the Lease. The duration of this requirement shall be known as the "Affordability Period." All tenants residing in the House during the last two (2) years of the Affordability Period shall be given notice at least once every six (6) months of the expiration date of this requirement, and that the rent payable on the House may be raised to a market rate rent at the end of the Affordability Period.

(d) Selection of Tenants. The House shall be leased to tenants selected by the Operator who meet all of the requirements provided herein. The Authority may, from time to time, assist in the leasing of the House by providing to the Operator names of persons who have expressed interest in renting the House. The Operator shall adopt a tenant selection system, which shall be approved by the Authority Executive Director, or designee. The tenant selection system shall include, without limitation, a method for investigation of the credit history of proposed tenants through obtaining a credit report on the proposed tenant. Highest priority in the selection of tenants shall be given to those applicants who have been displaced by Authority projects, if any.

(e) Income of Tenants. Prior to the rental or lease of the House to tenants, and annually thereafter, the Operator shall obtain an income certification from each tenant of the Property. The Operator shall verify the income certification of the tenant in one or more of the following methods:

(1) obtain two (2) paycheck stubs from the tenant's two (2) most recent pay periods, if any.

(2) obtain a true copy of an income tax return from the tenant for the most recent tax year in which a return was filed.

(3) obtain an income verification certification from the employer of the tenant.

(4) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies.

(5) obtain a credit report from a commercial credit reporting agency.

(6) obtain an alternate form of income verification reasonably requested by the Operator, if none of the above forms of verification is available to the Operator.

A person or family who at the time of income certification qualified as a Low Income Household shall continue to be deemed so qualified until such time as the person or family's income is redetermined and the person or family is determined by the Operator to no longer be so qualified, even if such person or family's income has subsequently increased to an amount above the applicable income level. Upon the Operator's determination that the tenant is no longer qualified as a Low Income Household, such tenant shall no longer be eligible to rent such House and shall be given a written notice which requires such tenant to vacate the House within sixty (60) days, and the Operator shall provide assistance to such tenants in finding another appropriate rental unit in the vicinity. The tenant lease shall contain the above provisions. In addition, the Operator shall annually submit to the Authority a certification that the House are actually occupied by a Low Income Household in the form which is provided by the Authority.

(f) Determination of Affordable Rent for the Property. The House shall be rented at an "Affordable Rent" to be established by the Authority as provided herein. The maximum monthly rental amount for the House shall be established at not greater than the lesser of (a) fair market rent, as reasonably determined by the Operator, or (b) thirty percent (30%) of sixty percent (60%) of San Bernardino County median income for a household size appropriate for the House or, if greater, the amount determined pursuant to Health and Safety Code section 50053(b)(3). For purposes of this Section 4.2, "rent" means the total of monthly payments for (a) use and occupancy of the House and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Operator which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Operator. The Authority may in its discretion base the utilities allowance on a utilities allowance adopted in connection with the Section 8 program administered by the United States Department of Housing and Urban Development. Household size appropriate to the unit shall mean two persons for a one bedroom House, three persons for a two bedroom House, four persons for a three bedroom House, and five persons for a four bedroom House. Upon the approval of the Authority or the Authority Executive Director, rents may be established at amounts which are lower than the maximum monthly rental amounts set forth above.

4.3 Occupancy Standards. Occupancy of the House shall be limited to five (5) persons.

4.4 Management and Maintenance. The Operator shall manage and maintain the Property in conformity with the City Code. The following standards shall be complied with by Operator and its maintenance staff, contractors or subcontractors:

(a) Operator shall maintain the Property in a safe and sanitary fashion and in first class condition for single family houses of their age and type.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, parking areas, driveways and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(d) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

(e) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied only by persons possessing valid California applicators licenses, and in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

(f) Operator shall make such capital repairs to the Property as are necessary, including the following: carpet and drape replacement; appliance replacement; exterior painting, hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; and lighting fixture replacement.

Management and maintenance shall be overseen by the Authority or its designee and, if the above standards are breached, after notice and opportunity to cure within the time set forth in this paragraph, the Authority or its designee may in its reasonable discretion direct the Operator to and the Operator shall hire a management company acceptable to the Authority to manage the Properties. If, at any time, the Operator or the management company fails to adequately maintain such areas, and such condition is not corrected immediately upon notice of an imminent threat to health and safety or after expiration of thirty (30) days from the date of written notice from the Authority for all other violations, the Authority may (but shall not be obligated to) perform the necessary maintenance and Operator shall pay such costs as are reasonably incurred for such maintenance.

4.5 Rights of Access. The Authority, for itself and for the City and other public agencies, at their sole risk and expense, shall have the right to inspect the Properties. Any such inspection shall be made only after reasonable notice to Operator. Upon receipt of such notice, the Operator agrees to cooperate with the Authority in making the Property available for inspection by the Authority and/or City. Operator acknowledges and agrees that in the event that if for any reason the Operator fails to consent to such entry or inspection, the Authority may obtain an administrative inspection warrant or take such other legal actions as may be necessary to gain entry to and inspect the Properties. Authority shall indemnify and hold Operator harmless from any costs, claims, damages or liabilities pertaining to any entry.

4.6 Nondiscrimination. The Operator covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Properties, nor shall Operator itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof. The foregoing covenants shall run with the land.

The Operator shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, creed, religion, sex, marital status, disability, familial status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises subject to this agreement nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises."

The covenants established in this Agreement and the Lease for the Property shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Authority, its successors and assigns, the City and any successor in interest to the Properties. The covenants against discrimination shall remain in effect in perpetuity. However, nothing in this Section 4.6 shall give the Operator any additional rights to convey a fee or leasehold interest in the Property except as otherwise authorized by this Agreement.

4.7 Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding upon and for the benefit and in favor of the Operator and the Authority, their respective successors and assigns, as to those covenants which are for their benefit. The covenants contained in this Agreement shall remain in effect until the expiration of the Affordability Period. The covenants against discrimination shall remain in perpetuity. The Authority is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the Authority, without regard to whether the Authority has been, remains or is an owner of any land or interest therein in the Properties. The Authority shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

5. REMEDIES.

5.1 Events of Default. An "Event of Default" shall occur under this Agreement when there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the defaulting party without the defaulting party curing such breach, or if such breach cannot reasonably be cured within such thirty (30) day period, commencing the cure of such breach within such thirty (30) day period and thereafter diligently proceeding to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of this Agreement, the specific provision shall control.

5.2 Remedies. The occurrence of any Event of Default shall give the nondefaulting party the right to proceed with any and all remedies set forth in this Agreement, including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.

5.3 Force Majeure. Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, pandemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, acts or failures to act of any public or governmental entity (except that the Authority's acts or failure to act shall not excuse performance of the Authority hereunder), or any other causes beyond the control and

without the fault of the party claiming an extension of time to perform. An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause.

In addition to the foregoing, following the acquisition of the Property by Authority, the Authority Executive Director shall have the authority to extend times for performance by up to one hundred eighty (180) days in the aggregate without necessity of further action by the governing board of the Authority.

5.4 Attorneys' Fees. In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover from the other party its costs of suit, including without limitation expert witness fees, and reasonable attorneys' fees.

5.5 Remedies Cumulative. No right, power, or remedy given to the Authority by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Authority by the terms of any such instrument, or by any statute or otherwise against Operator and any other person.

5.6 Waiver of Terms and Conditions. The Authority may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

5.7 Non-Liability of Authority Officials and Employees. No member, official, employee or agent of the City or Authority shall be personally liable to Operator, or any successor in interest, in the event of any default or breach by the Authority or for any amount which may become due to Operator or its successors, or on any obligations under the terms of this Agreement.

6. GENERAL PROVISIONS.

6.1 Time. Time is of the essence in this Agreement.

6.2 Notices. Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, or by personal delivery, addressed to the appropriate party at the following addresses:

Authority: Montclair Housing Authority
5111 Benito Street
Montclair, California 91763
Attention: Executive Director

Lessee: Montclair Housing Corporation
5111 Benito Street
Montclair, California 91763
Attention: Executive Director

City: City of Montclair
5111 Benito Street
Montclair, California 91763
Attention: City Manager

6.3 Representations and Warranties of Operator. Operator hereby represents and warrants to the Authority as follows:

(a) Organization. Operator is a duly organized, validly existing nonprofit corporation in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Operator. Operator has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Valid Binding Agreement. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Operator enforceable against it in accordance with their respective terms.

(d) Pending Proceedings. Operator is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Operator, threatened against or affecting Operator, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Operator, materially affect Operator's ability to perform its obligations hereunder.

6.4 Limitation Upon Change in Ownership, Management and Control of Operator.

(a) Prohibition. The identity and qualifications of Operator are of particular concern to the Authority. It is because of this identity and these qualifications that the Authority has entered into this Agreement with Operator. No voluntary or involuntary successor in interest of Operator shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall Operator make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Property without the prior written approval of the Authority, which approval may be granted, conditionally granted, or denied at the sole and absolute discretion of the Authority Executive Director; provided that the rental of the Property by Operator to a Low Income household at Affordable Rent in conformity with the Lease shall not require the specific approval by the Authority Executive Director.

(b) Successors and Assigns. This Agreement shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon Operator and the permitted successors and assigns of Operator. Whenever the term "Operator" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

6.5 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of the Authority, its successors and assigns, City, successors and assigns, and Operator, its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

6.6 Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

6.7 Governing Law. This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

6.8 Amendment. This Agreement may not be changed orally, but only by agreement in writing signed by Operator and the Authority.

6.9 Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the Authority, such approval may be given on behalf of the Authority by the Authority Executive Director or his or her designee. The Authority Executive Director or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement. The Authority Executive Director is authorized to execute amendments of this Agreement so long as such amendments do not materially increase the costs to be incurred by the Authority hereunder or materially decrease the revenues to be received by the Authority hereunder.

IN WITNESS WHEREOF, the Authority, City, and the Operator have executed this Agreement as of the date set forth above.

MONTCLAIR HOUSING AUTHORITY,
a public body corporate and politic

By:_____
Edward C. Starr
Authority Executive Director

CITY OF MONTCLAIR,
a municipal corporation

By:_____
Edward C. Starr
City Manager

MONTCLAIR HOUSING CORPORATION,
a California nonprofit public benefit corporation

By:_____
Edward C. Starr
Authority Executive Director

ATTACHMENT NO. 1

LEGAL DESCRIPTION

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APN: 1010–054–01–0000

The South 60 feet of the West 162 feet of Lot(s) 2, Block 10, Monte Vista Tract, in the City of Montclair, County of San Bernardino, State of California, as per plat recorded in Book 11 Page(s) 34 of Maps, in the Office of the County Recorder of said County

ATTACHMENT NO. 2

LEASE

By and Between

THE MONTCLAIR HOUSING AUTHORITY

and

MONTCLAIR HOUSING CORPORATION

LEASE

THIS LEASE (the "Lease") is made as of February 5, 2024, by and between the **MONTCLAIR HOUSING AUTHORITY,** a public body, corporate and politic (the "Authority" or "Lessor"), and **MONTCLAIR HOUSING CORPORATION,** a California nonprofit public benefit corporation (the "Operator" or "Lessee").

SECTION 1. SUBJECT OF LEASE.

1.1 Purpose of the Lease. The purpose of this Lease is to effectuate the Affordable Housing Agreement by and among the Authority, the City of Montclair, a municipal corporation (the "City"), and the Operator dated February 5, 2024 (the "Agreement"), by providing for the lease of the "Properties" (as hereinafter defined) within the City of Montclair to Lessee and the sublease of the Property to Low Income Persons. The Agreement, which is available in the offices of the Authority as a public record, is incorporated herein by reference and made a part hereof as though fully set forth herein.

SECTION 2. LEASE OF THE PROPERTIES.

The Authority, for and in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Lessee to be paid, kept, performed and observed by Lessee, hereby leases to Lessee, and Lessee hereby leases from Authority, that certain real property consisting of single family house in the City of Montclair (the "City") located at 9795 Central Avenue (the "House"), and having the legal description in the "Legal Description" attached hereto as Exhibit A and incorporated herein by this reference. Except as expressly provided to the contrary in this Lease, reference to the Property is to the described land, inclusive of any improvements now or hereafter located on the land.

SECTION 3. LEASE TERM.

Lessee shall lease the Property from Authority and Authority shall lease the Property to Lessee for a term commencing on February 5, 2024 (the "Commencement Date") and continuing until [February 5, 2039] (the "Term"), unless sooner terminated as provided for herein. The term "Lease Year" shall mean a period commencing on the Commencement Date or an anniversary thereof and continuing for one full calendar year thereafter.

SECTION 4. USE OF THE PROPERTIES.

4.1 Use of the Properties. Lessee covenants and agrees for itself, its successors and assigns, that during the Term, the Property shall be devoted to those uses as set forth in the Agreement.

4.2 Management. Lessee shall manage or cause the Property to be managed in a prudent and business-like manner, consistent with first-class single family rental housing in San Bernardino County, California.

Lessee may contract with a management company or manager to operate and maintain the Property in accordance with the terms of this Lease; provided, however, that the selection and hiring of such management company shall be subject to approval by Authority, or its Executive Director.

Lessee may act as manager. Approval of a management company or manager by Authority shall not be unreasonably withheld. If, at any time, the management company is not performing to the reasonable satisfaction of the Authority, or its Executive Director or the City Manager of the City, and said condition is not corrected after expiration of ninety (90) days from the date of written notice from the Authority, the Authority may direct the Lessee to, and the Lessee shall, terminate immediately the management contract. Notwithstanding the above, Lessee shall use its best efforts to correct any defects in management at the earliest feasible time and, if necessary, to replace the management company prior to the elapsing of such time period.

4.3 Only Lawful Uses Permitted. Lessee shall not use the Property for any purpose that is in violation of any law, ordinance or regulation of any federal, state, county or local governmental agency, body or entity. Furthermore, Lessee shall not maintain or commit any nuisance, as now or hereafter defined by any applicable statutory or decisional law, on the Properties, or any part thereof.

SECTION 5. RENT.

5.1 Net Lease. It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Authority and that Lessee shall pay all costs, charges and expenses of every kind and nature against the Property which may arise or become due during the Term and which, except for execution hereof, would or could have been payable by Authority.

5.2 Rent.

(A) During the Term of this Lease, Lessee agrees to pay in advance, on the Commencement Date and thereafter on the first day of each "Lease Year" (as hereinafter defined), rent in the amount of One Dollar ($1.00) per house. The parties understand and acknowledge that the primary consideration for this Lease is the performance of the covenants set forth in this Lease and the Agreement, particularly (without limitation, however) the covenants to rent the units to low- and moderate income tenants at an affordable rent pursuant to Section 6 hereof and Section 4.2 of the Agreement. As used herein, a "Lease Year" shall consist of twelve (12) consecutive calendar months ending on the anniversary (the "Anniversary Date") of the day immediately preceding the Commencement Date.

(B) During the Term of this Lease, Lessee agrees to pay at the end of each Lease Year the "Additional Rent," as herein defined. At the end of each Operating Year, the Lessee shall calculate total gross operating revenue for that year, and shall thereupon pay to the Authority as "Additional Rent" an amount equal to total gross operating revenue less the operating costs for that year. If total gross operating revenue for that year is less than operating costs, no Additional Rent shall be payable and the Lessee and the Authority shall negotiate in good faith for the Authority to provide additional compensation to cover such deficit. The Authority and its authorized representatives shall, at all times, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of the Lessee which in any manner relate to the expenses and revenues of the Property under this Lease and the Lessee's obligations hereunder. The Lessee's staff shall cooperate fully with authorized auditors when they conduct audits and examinations of Authority funded programs. Within thirty (30) days of the submittal of such audit report, the Lessee shall provide a written response to all conditions or findings reported in such audit report. The response must discuss each condition or finding and set forth a proposed resolution, including a schedule for correcting any deficiency. All conditions or correction actions shall take place within six (6) months after receipt of

the audit report unless the Authority Executive Director or designee authorizes an extension of time to submit such corrections.

5.3 Payment of Rent. All rent that becomes due and payable pursuant to this Lease shall be paid to the Authority at the address of the Authority listed in Section 26.7 or such other place as the Authority may from time to time designate by written notice to the Lessee without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension or deduction. Except as expressly provided herein, under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall the Authority be expected or required to make any payment of any kind whatsoever or to perform any act or obligation whatsoever or be under any obligation or liability hereunder or with respect to the Properties.

SECTION 6. AFFORDABLE HOUSING REQUIREMENTS

6.1 Affordable Unit. The Lessee agrees to make available, restrict occupancy to, and rent the House to "Low Income Households" at the rents established pursuant to Section 6.6 hereof. "Low Income Household" shall mean a household earning not greater than eighty percent (80%) of San Bernardino County median income as further set forth in California Health and Safety Code Section 50079.5.

6.2 Lease Requirements. Prior to rental of the Properties, Lessee shall submit a standard lease form to the Authority for Authority's approval. The Authority shall approve such lease form upon finding that such lease form is consistent with this Lease and the Agreement. The Lessee shall enter into a lease, in the form approved by the Authority, with each tenant of the House.

6.3 Duration of Affordability Requirements. The Property shall be subject to the requirements of this Section 6 for a period coextensive with the term of this Lease beginning on the Commencement Date. The duration of this requirement shall be known as the "Affordability Period." All tenants residing in the House during the last two (2) years of the Affordability Period shall be given notice by the Lessee at least once every six (6) months of the expiration date of this requirement, and that the rent payable on the Property may be raised to a market rate rent at the end of the Affordability Period.

6.4 Selection of Tenants. The Property shall be leased to tenants selected by the Lessee who meet all of the requirements provided herein. The Authority may, from time to time, assist in the leasing of the House by providing to the Lessee names of persons who have expressed interest in renting the House. Lessee shall adopt a tenant selection system, which shall be approved by the Authority. The tenant selection system shall include, without limitation, a method for investigation of the credit history of proposed tenants through obtaining a credit report on the proposed tenant. Highest priority in the selection of tenants shall be given to those applicants who have been displaced by Authority projects, if any.

6.5 Income of Tenants. Prior to the rental or lease of each of the House to a tenant, and annually thereafter, the Lessee shall obtain an income certification from the tenant of the Properties. The Lessee shall verify the income certification of the tenant in one or more of the following methods:

(A) obtain two (2) paycheck stubs from the tenant's two (2) most recent pay periods, if any.

(B) obtain a true copy of an income tax return from the tenant for the most recent tax year in which a return was filed.

(C) obtain an income verification certification from the employer of the tenant.

(D) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies.

(E) obtain a credit report from a commercial credit reporting agency.

(F) obtain an alternate form of income verification reasonably requested by the Lessee, if none of the above forms of verification is available to the Lessee.

A person or family who at the time of income certification qualified as a Low Income Household shall continue to be deemed so qualified, until such time as the person or family's income is redetermined and the person or family is determined by the Lessee to no longer be so qualified, even if such person or family's income has subsequently increased to an amount above the applicable income level. Upon the Lessee's determination that the tenant is no longer qualified as a Low Income Household, such tenant shall no longer be eligible to rent the Property and shall be given a written notice which requires such tenant to vacate the Property within sixty (60) days, and the Lessee shall provide assistance to such tenants in finding another appropriate rental unit in the vicinity. The tenant lease shall contain the above provisions. In addition, the Lessee shall annually submit to the Authority a certification that the House is actually occupied by Low-Income Households in such form as may be provided by the Authority.

6.6 Determination of Affordable Rent for the Property. The House shall be rented at an "Affordable Rent" to be established by the Authority as provided herein. The maximum monthly rental amount for the Property shall be established at the lesser of (a) fair market rent, as reasonably determined by the Operator, or (b) thirty percent (30%) of sixty percent (60%) of San Bernardino County median income for a household size appropriate for the unit or, if greater, the amount determined pursuant to Health and Safety Code section 50053(b)(3). Household size appropriate to the unit shall mean two persons for a one bedroom House, three persons for a two bedroom House, four persons for a three bedroom House, and five persons for a four bedroom House. The rents of the Property may be increased once per year, regardless of when particular tenants commenced occupancy of the House. The maximum monthly rental amount for the House shall include a reasonable utilities allowance to be determined by the Authority, which utilities allowance shall be set at an amount which will cover the projected charge for all utilities (whether paid for by Lessee or paid directly by the individual tenant), including gas and electrical service, water, sewer and garbage collection, but excluding telephone service and cable television. The Authority may in its discretion base the utilities allowance on a utilities allowance adopted in connection with the Section 8 program administered by the United States Department of Housing and Urban Development. Upon the approval of the Authority or Authority Executive Director, rents may be established at amounts which are lower than the maximum monthly rental amounts set forth above.

SECTION 7. UTILITIES AND TAXES.

7.1 Utilities. Lessee shall pay or cause to be paid by the tenants all charges for gas, electricity, water, sewer, garbage collection, cable television, and other utilities furnished to the House.

7.2 Real Estate Taxes.

(A) As used herein, the term "real estate taxes" shall mean all real estate taxes, assessments for improvements to the House, municipal or county water and sewer rates and charges which shall be levied against the House, or any interest therein, and which become a lien thereon and accrues during the Term.

(B) The Property shall be assessed and taxed in the same manner as privately owned property, provided, however, that Lessee may apply for and obtain a full or partial exemption from property taxes. The Authority shall provide notice to the San Bernardino County Assessor within thirty (30) days of the commencement of this Lease as required by Health and Safety Code Section 33673.1. Lessee shall pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes levied against any and all interests in the Property during the Term, and not merely the assessed value of the leasehold interest in the Property.

(C) Any real estate taxes which are payable by Lessee hereunder shall be prorated between Authority and Lessee as of the Commencement Date and then again at the expiration or earlier termination of the Term.

(D) Lessee shall have the right to apply for the "welfare exemption" and any other applicable exemption from real property taxes, and shall further have the right to contest the amount or validity of any real estate taxes, in whole or in part, by appropriate administrative and legal proceedings, without any costs or expense to Authority. Lessee may postpone payment of any such contested real estate taxes pending the prosecution of such proceedings and any appeals so long as such proceedings shall operate to prevent the collection of such real estate taxes and the sale of the Property to satisfy any lien arising out of the nonpayment of the same, and Lessee furnishes a bond to Authority securing the payment of the same in the event a decision in such contest shall be adverse to Lessee.

7.3 Personal Property Taxes. Lessee covenants and agrees to pay before delinquency all personal property taxes, assessments and liens of every kind and nature upon all personalities as may be from time to time situated within the Property.

SECTION 8. OWNERSHIP OF IMPROVEMENTS, FIXTURES AND FURNISHINGS.

The Property shall, during the Term, be and remain the property of the Authority. Upon termination of this Lease, whether by expiration of the Term or otherwise, all fixtures and furnishings within the Property shall, without compensation to Lessee, be Authority's property, free and clear of all claims to or against them by Lessee or any third person, firm or entity.

SECTION 9. INDEMNIFICATION: FAITHFUL PERFORMANCE.

Lessee shall not suffer or permit any liens to be enforced against the fee simple estate as to the Property, nor against Lessee's leasehold interest therein by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone holding the Property, or any part thereof, through or under Lessee, and Lessee agrees to defend, indemnify and hold Authority harmless against such liens. If any such lien shall at any time be filed against the Property, Lessee shall, within thirty (30) days after notice to Lessee of the filing thereof, cause the same to be discharged of record; provided, however, that Lessee shall have the right to contest the amount or validity, in whole or in

part, of any such lien by appropriate proceedings but in such event, Lessee shall notify Authority and promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of California or provide other security acceptable to Authority. Lessee shall prosecute such proceedings with due diligence. Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of Authority, express or implied, by inference or otherwise, to any person, firm or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Property or any part thereof. Prior to commencement of any repair or alteration to the Property, Lessee shall give Authority not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws; provided that a shorter notice may be given in cases of emergency.

SECTION 10. MAINTENANCE AND REPAIR.

Lessee agrees to assume full responsibility for the management, operation and maintenance of the Property throughout the Term without expense to Authority, and to perform all repairs and replacements necessary to maintain and preserve the Property in a clean and safe condition reasonably satisfactory to Authority and in compliance with all applicable laws. Lessee agrees that Authority shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Property. Lessee hereby waives all rights to make repairs or to cause any work to be performed at the expense of Authority as provided for in Section 1941 and 1942 of the California Civil Code. The Lessee shall manage and maintain the Property in conformity with the Montclair Municipal Code.

The following standards shall be complied with by Lessee and its maintenance staff, contractors or subcontractors:

(A) Lessee shall maintain the Property in a safe and sanitary fashion in a first class condition.

(B) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(C) Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, parking areas, driveways and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(D) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

(E) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied only by persons possessing valid California applicators licenses,

and in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

(F) Lessee shall make such capital repairs to the Property as are necessary, including the following: carpet and drape replacement; appliance replacement; exterior painting, hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; and lighting fixture replacement.

Management and maintenance shall be overseen by the Authority or its designee and, if the above standards are breached, after notice and opportunity to cure within the time set forth in this paragraph, the Authority or its designee may in its reasonable discretion direct the Lessee to and the Lessee shall hire a management company acceptable to the Authority to manage the Property. If, at any time, the Lessee or the management company fails to adequately maintain such areas, and such condition is not corrected immediately upon notice of an imminent threat to health and safety or after expiration of thirty (30) days from the date of written notice from the Authority for all other violations, the Authority may (but shall not be obligated to) perform the necessary maintenance and Lessee shall pay such costs as are reasonably incurred for such maintenance.

SECTION 11. ENVIRONMENTAL MATTERS.

11.1 Definitions. For the purposes of this Lease, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

(A) The term "Hazardous Materials" shall mean (i) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, *et seq*.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Sections 25300, *et seq.*), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) petroleum, oil, gasoline (refined and unrefined) and their respective by products and constituents; and (vi) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any "Governmental Requirements" (as defined in Subparagraph c of this Section 11.1) either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment.

(B) The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Date of Lease) emanating from the Property.

(C) The term "Governmental Requirements" shall mean all past, present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property are located, and any other state, county city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over Authority, Lessee or the Property.

11.2 Responsibility for Contamination. Lessee assumes any and all responsibility and Liabilities (as defined in Section 11.4 of this Lease) for all Hazardous Materials Contamination, which occurs during the Term of this Lease.

11.3 Indemnification. Lessee shall save, protect, defend, indemnify and hold harmless Authority and its officers, directors, shareholders, employees and agents from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by Authority and its officers, directors, shareholders, employees or agents by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (1) the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or Hazardous Materials Contamination after the commencement of this Lease, including any Liabilities incurred under any Governmental Requirements relating to such Hazardous Materials or Hazardous Materials Contamination, (2) the performance by Lessee of any acts, including, but not limited to, the performance of any act required by this Lease, and (3) the performance by the Authority of any act required to be performed by the Lessee under this Lease. Lessee's obligations under this Section 11.3 shall survive the expiration of this Lease.

Authority shall save, protect, defend, indemnify and hold harmless Lessee and its officers, directors, shareholders, employees and agents from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by Lessees and its officers, directors, shareholders, employees or agents by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (1) the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Authority of any Hazardous Materials or Hazardous Materials Contamination prior to the commencement of this Lease, including any Liabilities incurred under any Governmental Requirements relating to such Hazardous Materials or Hazardous Materials Contamination, (2) the performance by Authority of any acts, including, but not limited to, the performance of any act required by this Lease, and (3) the performance by the Lessee of any act required to be performed by the Authority under this Lease. Authority's obligations under this Section 11.3 shall survive the expiration of this Lease.

11.4 Duty to Prevent Hazardous Material Contamination. Lessee shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Lessee shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the highest standards generally applied by residential developments as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

11.5 Obligation of Tenant to Remediate Premises. Notwithstanding the obligation of Lessee to indemnify Authority pursuant to Section 11.3 of this Lease, Lessee shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state or local governmental agency or political subdivision or any Governmental Requirements and (ii) all actions necessary to make full

economic use of the Property for the purposes contemplated by this Lease and the Agreement, which requirements or necessity arise from the presence upon, about or beneath the Property of any Hazardous Materials or Hazardous Materials Contamination no matter when occurring. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. Lessee shall take all actions necessary to promptly restore the Property to an environmentally sound condition for the uses contemplated by this Lease and the Agreement notwithstanding any lesser standard of remediation allowable under applicable Governmental Requirements. Lessee shall nevertheless obtain the Authority's written approval prior to undertaking any activities required by this Section 11.5 during the Term of this Lease, which approval shall not be unreasonably withheld so long as such actions would not adversely affect the Property or be harmful to any other person or property. The Authority's obligations under this Section 11.5 shall survive the expiration of this Lease.

11.6 Right of Entry. Notwithstanding any other term or provision of this Lease, Lessee shall permit the Authority or its agents or employees to enter the Property at any time during normal business hours (except in the event of an emergency), without prior notice in the event of an emergency, and with not less than forty-eight hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency or long-term remedial action with respect to Hazardous Materials and Hazardous Materials Contamination on or affecting the Property, or to discharge Lessee's obligations hereunder with respect to such Hazardous Materials and Hazardous Materials Contamination when Lessee has failed to do so. All costs and expenses incurred by the Authority in connection with performing Lessee's obligations hereunder shall be reimbursed by Lessee to the Authority within ten (10) days of Lessee's receipt of written request therefor.

11.7 Storage or Handling of Hazardous Materials. Lessee, at its sole cost and expense, shall comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials. In the event Lessee does store, use, transport, handle or dispose of any Hazardous Materials, Lessee shall notify Authority in writing at least ten (10) days prior to their first appearance on the Property and Lessee's failure to do so shall constitute a material default under this Lease. Lessee shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by the Authority in its reasonable judgment, the Authority may require Lessee, at Lessee's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Property. Lessee's monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials on the Property, shall be satisfactory to Authority, in Authority's reasonable discretion. Lessee shall further be solely responsible, and shall reimburse Authority, for all costs and expenses incurred by Authority arising out of or connected with the removal, clean-up and/or restoration work and materials necessary to return the Property and any property adjacent to the Property affected by Hazardous Materials emanating from the Property to their condition existing at the time of the Commencement Date. Lessee's obligations hereunder shall survive the termination of this Lease.

11.8 Environmental Inquiries. Lessee shall notify Authority, and provide to Authority a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: Notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and

reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Lessee shall report to the Authority, as soon as possible after each incident, any unusual, potentially important incidents, including but not limited to, the following:

(A) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Requirement;

(B) All fires;

(C) All instances where asbestos has been or may be disturbed by repair work, tenant improvements or other activities in buildings containing asbestos;

(D) All notices of suspension of any permits;

(E) All notices of violation from Federal, State or local environmental authorities;

(F) All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding federal statutes, concerning investigation, compliance schedules, clean up, or other remedial actions;

(G) All orders under the Porter-Cologne Act, including corrective action orders, cease and desist orders, and clean-up and abatement orders;

(H) Any notices of violation from OSHA or Cal-OSHA concerning employees' exposure to Hazardous Materials;

(I) All complaints and other pleadings filed against Lessee and/or Authority relating to Lessee's storage, use, transportation, handling or disposal of Hazardous Materials on the Property.

In the event of a release of any Hazardous Materials into the environment, Lessee shall, as soon as possible after the release, furnish to the Authority a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Authority, Lessee shall furnish to the Authority a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

SECTION 12. ALTERATION OF IMPROVEMENTS.

Lessee shall not make or permit to be made any structural alteration of, addition to or change in the Property, nor demolish all or any part of the Property without the prior written consent of Authority; provided, however, that the foregoing shall not prohibit or restrict the repair and/or replacement of the Property by Lessee. In requesting such consent Lessee shall submit to Authority detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. This provision shall not limit or set aside any obligation of Lessee under this Lease to maintain the Property in a clean and safe condition, including structural repair and restoration of damaged Property. Authority shall not be obligated by this Lease to make any improvements to the Property or to assume any expense therefor. Lessee shall not commit or suffer to be committed any

waste or impairment of the Property, or any part thereof, except as otherwise permitted pursuant to this Lease.

SECTION 13. DAMAGE OR DESTRUCTION.

Lessee agrees to give notice to Authority of any fire or other damage (collectively "casualty") that may occur on the Property within ten (10) days of such fire or damage. In the event of such casualty Lessee agrees, to the extent of any insurance proceeds available therefor, to make or cause to be made full repair of such casualty, or Lessee agrees, to the extent of any insurance proceeds available therefor, to clear and remove from the Property all debris resulting from such casualty and rebuild the Property in accordance with plans and specifications previously submitted to Authority and approved in writing in order to replace in kind and scope the Property which existed prior to such damage. In the event of a casualty in which the Property are not required to be repaired, restored or rebuilt by Lessee pursuant to the terms of this Section 13, and provided Lessee does not nevertheless elect to repair, restore or rebuild the Property although Lessee has no obligations to do so, Authority may terminate this Lease.

SECTION 14. SALE, ASSIGNMENT, SUBLEASE OR OTHER TRANSFER.

Except for (a) the lease of the Property to a tenant, and (b) transfers made pursuant to Section 6.4 of the Agreement, Lessee shall not sell, assign, sublease or otherwise transfer this Lease or any right therein, nor make any total or partial sale, assignment, sublease or transfer in any other mode or form of the whole or any part of the Property (each of which events is referred to in this Lease as an "Assignment"), without prior written approval of Authority, which approval shall not be unreasonably withheld as more particularly set forth below in this Section 14.2. Notwithstanding anything else herein contained, the term "Assignment" shall not be deemed to include the obtaining of any "Capital Improvement Loan(s)" (all as hereinafter defined), but shall be deemed to include all refinancing thereof and any other loans approved by Authority. Any purported assignment without the prior written consent of Authority shall render this Lease absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee. The approval of Authority to any Assignment shall not be unreasonably withheld if the proposed purchaser, assignee, sublessee or transferee has reasonably demonstrated to the Authority, at least sixty (60) days prior to the effective date of such Assignment, such proposed purchaser's, assignee's, sublessee's or transferee's financial capability and overall competence and experience to construct and operate the Property. Review of experience in operating similar projects shall not be required with respect to institutional lenders providing financing pursuant to Section 15 hereof so long as the original Lessee (or a successor that has been expressly approved in writing by the Authority) remains responsible for operating the Property and performing as Lessee pursuant to this Lease. Approval by Authority of any sale, assignment, sublease or transfer shall be conditioned upon such purchaser, assignee, sublessee or transferee agreeing in writing to assume the rights and obligations thereby sold, assigned, subleased or transferred, and to keep and perform all covenants, conditions and provisions of this Lease which are applicable to the rights acquired. In the absence of specific written agreement by Authority, no such sale, assignment, sublease or transfer of this Lease or the Property (or any portion thereof), or approval by Authority of any such sale, assignment, sublease or transfer shall be deemed to relieve Lessee or any other party from any obligation under this Lease.

Notwithstanding anything else contained in this Section 14, this Lease may be assigned, without the consent of Authority, to the purchaser at any foreclosure sale, whether judicial or non-judicial, or to the beneficiary or mortgagee under any Permitted Encumbrance (as defined in

Section 15), pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of this Lease to such beneficiary or mortgagee in lieu thereof, and may thereafter be assigned by such beneficiary or mortgagee without Authority's consent, and any such purchaser, beneficiary, mortgagee or assignee shall be liable to perform the obligations herein imposed on Lessee, other than as set forth in Sections 15 of this Lease, only for and during the period that such purchaser, beneficiary, mortgagee or assignee is in possession or ownership of the leasehold estate created hereby.

SECTION 15. FINANCING.

Lessee may, at any time and from time to time during the Term, upon prior written notice to the Authority and subject to the requirements of Sections 5.3 and 14 hereof, request that the Authority authorize Lessee to mortgage, pledge, hypothecate or otherwise encumber to a federally or state chartered bank or savings and loan, a life insurance company, a mortgage company, a pension fund, investment trust or similar institutional lender (herein called "Lender") by deed of trust or mortgage or other security instrument all or any portion of Lessee's right, title and interest pursuant to this Lease and the leasehold estate hereby, following thirty (30) days prior written notice to Authority (which notice shall include an itemization of and budget for the capital improvements to be financed), to secure financing of capital improvements to the Property ("Capital Improvement Loan(s)"). The Authority shall consider such request in good faith, and may approve, disapprove or conditionally approve in Authority's reasonable discretion. The encumbrances securing the Capital Improvement Loan(s), together with refinancing of the Capital Improvement Loan(s) approved by the Authority pursuant to Section 14, and any other loan or encumbrance approved by the Authority pursuant to this Lease shall be deemed to be "Permitted Encumbrances."

The proceeds of any Capital Improvement Loan(s) shall be used solely to pay (i) the costs of construction of capital improvements to the Property, and (ii) the costs of obtaining the Capital Improvement Loan(s).

Authority and Lessee acknowledge and agree that neither Authority's interest or fee ownership of the Property nor Authority's right to receive Rent hereunder shall be subordinate to any Permitted Encumbrance or any other lien, mortgage, deed of trust, pledge or other encumbrance of Lessee's leasehold interest hereunder.

SECTION 16. INDEMNITY.

During the Term, Lessee agrees that Authority and City, their agents, officers, representatives and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, Property or effects of Lessee, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether caused by or resulting from any act or omission of Lessee or its sublessees or any other person on or about the Property, or in connection with the operation thereof, or from any defect in the Property. Lessee agrees to indemnify and save free and harmless Authority and City and their authorized agents, officers, representatives and employees against any of the foregoing liabilities and any costs and expenses incurred by Authority or City on account of any claim or claims therefor. Lessee shall not be responsible for (and such indemnity shall not apply to) any acts, errors or omissions of Authority, City, or their respective agents, officers, representatives or employees.

SECTION 17. INSURANCE.

17.1 Insurance to be Provided by Lessee. During the Term, Lessee, at its sole cost and expense, shall:

(A) Maintain or cause to be maintained a policy or policies of insurance against loss or damage to the Property of all property of an insurable nature located upon the Property, resulting from fire, lightning, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage fire insurance policies. Such policy or policies shall be required to provide coverage against loss or damage resulting from flood and/or earthquake only to the extent such coverage is available at commercially reasonable rates and is required by any lender making a loan to Lessee which is secured by the Property. Such insurance policy shall name Authority as an additional insured and shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Property, as defined herein in this Section 17.

(B) Maintain or cause to be maintained public liability insurance issued by a company with a Best's rating of not less than A, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Lessee or its sublessees, or any person acting for Lessee, or under their respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Lessee of its sublessees, or any person acting for Lessee, or under their respective control or direction. Such property damage and personal injury insurance shall also provide for and protect against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the entire term of this Lease in the amount of at least One Million Dollars ($1,000,000) combined single limit, naming Authority and City as additional insured. If the operation under this Lease results in an increased or decreased risk in the reasonable determination of Authority, then Lessee agrees that the minimum limit hereinabove designated shall be changed accordingly upon request by Authority. Lessee agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, activities of its sublessees or the activities of any other person or persons for which Lessee is otherwise responsible. Pollution liability insurance provided in compliance with the indemnification provision required by Section 11.3 hereof shall be required only to the extent such coverage is available at commercially reasonable rates.

(C) Maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Lessee in connection with the Property and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Lessee.

17.2 Definition of "Full Insurable Value". The term "full insurable value" as used in this Section 17 shall mean the actual replacement cost (excluding the cost of excavation, foundation and

footings below the lowest floor and without deduction for depreciation) of the Property, including the cost of construction of the Property, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Lessee shall cause the full insurable value to be determined from time to time by appraisal by the insurer or, if no such appraisal is available, by an appraiser mutually acceptable to Authority and Lessee, not less often than once every three (3) years.

17.3 General Insurance Provisions. All liability policies of insurance provided for in this Section 17 shall name Lessee as the insured and Authority as an additional insured, as their respective interests may appear. All property casualty insurance policies shall include the interest of any Lessee's Mortgagee, and may provide that any loss is payable jointly to Lessee and Lessee's Mortgagee in which event such policies shall contain standard mortgage loss payable clauses. Lessee agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance.

Lessee agrees to submit policies of all insurance required by this Section 17 of this Lease, or certificates evidencing the existence thereof, to Authority on or before the effective date of this Lease, indicating full coverage of the contractual liability imposed by this Lease. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Authority.

All insurance provided for under this Section 17 shall be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California, approved by Authority.

All policies or certificates of insurance shall: (i) provide that such policies shall not be cancelled or limited in any manner without at least thirty (30) days prior written notice to Authority; (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by the Authority and shall contain a waiver of subrogation for the benefit of the City and the Authority; and (iii) name the City, Authority, and their respective officers, agents, and employees as additional insured under such policies.

17.4 Failure to Maintain Insurance. If Lessee fails or refuses to procure or maintain insurance as required by this Lease, Authority shall have the right, at Authority's election, and upon ten (10) days prior notice to Lessee, to procure and maintain such insurance. The premiums paid by Authority shall be treated as added rent due from Lessee, to be paid on the first day of the month following the date on which the premiums were paid. Authority shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

17.5 Insurance Proceeds Resulting from Loss or Damage to Property. All proceeds of insurance with respect to loss or damage to the Property during the term of this Lease shall be payable, under the provisions of the policy of insurance, to Lessee, and said proceeds shall constitute a trust fund to be used for the restoration, repair and rebuilding of the Property in accordance with plans and specifications approved in writing by Authority. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, then such additional proceeds shall be distributed to the Authority. Notwithstanding the foregoing, within the period during which there is an outstanding mortgage upon the Property, such proceeds shall be payable in accordance with Section 17.3 of this Lease.

In the event this Lease is terminated by mutual agreement of Authority and Lessee and said Property are not restored, repaired or rebuilt, the insurance proceeds shall be jointly retained by the Authority and Lessee and shall be applied first to any payments due under this Lease from Lessee to Authority, second to restore the Property to its original condition and to a neat and clean condition, and finally any excess shall be apportioned between Lessee and Authority as their interests may appear; provided, however, that within any period when there is an outstanding mortgage upon the Property, such proceeds shall be applied first to discharge the debt secured by the mortgage and then for the purposes and in the order set forth above in this paragraph. The value of each interest for the purpose of apportioning excess proceeds under this Section 17.5 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

SECTION 18. EMINENT DOMAIN.

In the event that the Property or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then, as between Authority and Lessee (or mortgagee, if a mortgage is then in effect), the interests of Authority and Lessee (or mortgagee) in the award and the effect of the taking upon this Lease shall be as follows:

(A) In the event of such taking of only a part of the Property, leaving the remainder of the Property in such location and in such form, shape and size as to be used effectively and practicably for the conduct thereon of the uses permitted hereunder, this Lease shall terminate and end as to the portion of the Property so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Property not so taken.

(B) In the event of taking of only a part of the Property, leaving the remainder of the Property in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, for the conduct thereon of the uses permitted hereunder, this Lease and all right, title and interest thereunder shall cease on the date title to the Property or the portion thereof so taken vests in the condemning authority.

(C) In the event the Property is so taken, this Lease and all of the right, title and interest thereunder, shall cease on the date title to the Property vests in the condemning authority.

(D) Promptly after a partial taking, at Lessee's expense and in the manner specified in provisions of this Lease related to maintenance, repairs, alterations, Lessee shall restore the Property, to the extent of condemnation proceeds received by Lessee, so as to place them in a condition suitable for the uses and purposes for which the Property was leased.

(E) In the event of any taking under subparagraphs (a), (b) or (c) hereinabove, that portion of any award of compensation attributable to the fair market value of the Property or portion thereof taken, valued as subject to this Lease, shall belong to Authority. That portion of any award attributable to the fair market value of Lessee's leasehold interest in the Property pursuant to this Lease shall belong to Lessee. That portion of any award attributable to the fair market value of the Property or portion thereof taken shall belong to Authority and Lessee, as their interests may appear, except that in the event of a partial taking, where the Lease remains in effect and Lessee is obligated to restore or repair the Property, then Lessee shall be entitled to any portion of the award attributable to severance damages to the remaining Property. Said award shall be used for the restoration, repair or rebuilding of the Property in accordance with plans and specifications approved in writing by Authority. To the extent that said award for severance damages exceeds the cost of such restoration, repair or rebuilding,

then such award shall be apportioned between Lessee and Authority as their interests may appear. The value of each interest for the purpose of apportionment under this Section shall be the fair market value of such interests at the time of the taking.

(F) Provided, however, that within the period during which there is an outstanding mortgage on the Property, the mortgagee shall be entitled to any portion of the award attributable to the Property, to the extent of its interest therein. The mortgagee may at its option apply said portions of the award to restoration of the Property or to reduction of the mortgage. Any excess portion of the award attributable to the condemnation of the Property shall be apportioned between Lessee and Authority as their interests may appear.

(G) Notwithstanding the foregoing provisions of this Section, Authority may, in its discretion and without affecting the validity and existence of this Lease, transfer Authority's interests in the Property in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by Authority, Lessee (or mortgagee if a mortgage is then in effect) and Authority shall retain whatever rights they may have to recover from said authority the fair market value of their respective interests in the Property taken by the authority.

(H) All valuations to be made pursuant to this Section 18 shall be made by mutual agreement of Authority and Lessee.

SECTION 19. OBLIGATION TO REFRAIN FROM DISCRIMINATION.

There shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property, and Lessee itself or any person claiming under or through it shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees thereof or any portion thereof, or in the providing of goods, services, facilities, privileges, advantages and accommodation.

Lessee shall refrain from restricting the rental, sale or lease of the Property, or any portion thereof, on the basis of sex, marital status, race, color, creed, religion, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(A) In Leases: "The lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

> "That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, religion, disability, familial status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(B) In Contracts:

"There shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, creed, religion, disability, familial status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

SECTION 20. NONDISCRIMINATION IN EMPLOYMENT.

Lessee, for itself and its successors and assigns, agrees that during the operation of the Property provided for in this Lease, and during any work of repair or replacement, Lessee will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, physical or mental disability, sexual orientation, ancestry or national origin.

SECTION 21. LABOR STANDARDS.

Lessee shall comply, and require all contractors and subcontractors employed pursuant to this Lease to comply with all applicable labor standards provisions of the California Labor Code and federal law, including payment of prevailing wages for off-site work. Lessee shall comply with all bidding requirements applicable pursuant to the California Public Contracts Code or other applicable law.

SECTION 22. COMPLIANCE WITH LAW.

Lessee agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Property, as well as operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Property, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees, if any, assessor levied upon Lessee or the Property, including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the Property. The judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee in any action or proceeding against them, or any of them, whether Authority be a party thereto or not, that Lessee, sublessee or permittee has violated any such ordinance or statute in the use of the Property shall be conclusive of that fact as between Authority and Lessee, or such sublessee or permittee.

SECTION 23. ENTRY AND INSPECTION.

Authority reserves and shall have the right during reasonable business hours (except in cases of emergency), upon forty-eight (48) hours prior notice (except in cases of emergency) to Lessee by the Executive Director of Authority, to enter the Property for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Property or to inspect the operations conducted thereon.

SECTION 24. RIGHT TO MAINTAIN.

In the event that the entry or inspection by Authority pursuant to Section 23 hereof discloses that the Property are not in a decent, safe, and sanitary condition, Authority shall have the right, after thirty (30) days written notice to Lessee (except in case of emergency, in which event no notice shall be necessary), to have any necessary maintenance work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and all costs incurred by Authority in having such necessary maintenance work done in order to keep the Property in a decent, safe and sanitary condition. The rights reserved in this Section shall not create any obligations or Authority or increase obligations elsewhere in this Lease imposed on Authority.

SECTION 25. EVENTS OF DEFAULT AND REMEDIES.

25.1 Events of Default by Lessee.

(A) Lessee shall abandon or surrender the Property; or

(B) Lessee shall fail or refuse to pay, within ten (10) days of notice from Authority that the same is due, any installment of rent or any other sum required by this Lease to be paid by Lessee; or

(C) Lessee shall fail to perform any covenant or condition of the Agreement and/or this Lease other than as set forth in subparagraphs (a) or (b) above, and any such failure shall not be cured within thirty (30) days following the service on Lessee of a written notice from Authority specifying the failure complained of, or if it is not practicable to cure or remedy such failure within such thirty (30) day period, within such longer period as shall be reasonable under the circumstances; or

(D) Lessee shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the same shall not be dismissed within sixty (60) days thereafter; or

(E) Lessee shall be adjudicated a bankrupt; or

(F) Lessee shall make a general assignment for the benefit of creditors in violation of the terms of this Lease; then such event shall constitute an event of default under this Lease.

25.2 Remedies of Authority. In the event of any such default as described in Section 25.1, Authority may, at its option:

(1) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by Authority in enforcing this provision) to the account of Lessee, which charge shall be due and payable within fifteen (15) days after presentation by Authority of a statement of all or part of said costs;

(2) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by Authority in enforcing this provision) from the proceeds of any insurance; or in the event that Lessee has obtained a faithful performance bond indemnifying Authority, Authority

may call upon the bonding agent to correct said default or to pay the costs of such correction performed by or at the direction of Authority;

(3) Exercise its right to maintain any and all actions at law or suits in equity to compel Lessee to correct or cause to be corrected said default;

(4) Have a receiver appointed to take possession of Lessee's interest in the Property, with power in said receiver to administer Lessee's interest in the Property, to collect all funds available to Lessee in connection with its operation and maintenance of the Property; and to perform all other consistent with Lessee's obligation under this Lease as the court deems proper;

(5) Maintain and operate the Property, without terminating this Lease;

(6) With respect to a monetary default or material non-monetary default, terminate this Lease by written notice to Lessee of its intention to do so.

25.3 Right of Authority in the Event of Termination of Lease. Upon termination of this Lease pursuant to Section 25.2, it shall be lawful for Authority to re-enter and repossess the Property and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Property peaceably to Authority immediately upon such termination in good order, condition and repair, except for reasonable wear and tear. Lessee agrees that upon such termination, title to all the Property on the Property shall vest in Authority. Even though Lessee has breached the Lease and abandoned the Property, this Lease shall continue in effect for so long as Authority does not terminate Lessee's right to possession, and Authority may enforce all of its right and remedies under this Lease, including, but not limited to, the right to recover the rent as it becomes due under this Lease. No ejectment, re-entry or other act by or on behalf of Authority shall constitute a termination unless Authority gives Lessee notice of termination in writing. Termination of this Lease shall not relieve or release Lessee from any obligation incurred pursuant to this Lease prior to the date of such termination. Termination of this Lease shall not relieve Lessee from the obligation to pay any sum due to Authority or from any claim for damages against Lessee.

25.4 Damages. Damages which Authority recovers in the event of default under this Lease shall be those which are then available under applicable California case and statutory law to lessors for leases in the State of California including, but not limited to, any accrued but unpaid rent and the worth at the time of award of the amount by which the unpaid rent for the balance of the term of this Lease after the date of award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

25.5 Rights and Remedies are Cumulative. The remedies provided by this Section 25 are not exclusive and shall be cumulative to all other rights and remedies possessed by Authority. The exercise by Authority of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Lessee.

25.6 Limitation of Lessee's Liability. Notwithstanding anything to the contrary herein contained, following completion of the construction of the Property, (i) the liability of Lessee shall be limited to its interest in the Property, and any rents, issues and profits arising from any subleases of the Property which are misapplied, or which have accrued but are not yet due and payable, at the time of any default hereunder and which are misapplied by Lessee when collected, and, in addition, with

respect to any obligation to hold and apply insurance proceeds, proceeds of condemnation or other monies hereunder, any such monies received by it to the extent not so applied; (ii) no other assets of Lessee shall be affected by or subject to being applied to the satisfaction of any liability which Lessee may have to Authority or to another person by reason of this Lease; and (iii) any judgment, order, decree or other award in favor of Authority shall be collectible only out of, or enforceable in accordance with, the terms of this Lease by termination or other extinguishment of Lessee's interest in the Property. As a condition to protection under the provisions of this Section 25.6, Lessee covenants not to collect more than one (1) month's rent in advance, exclusive of reasonable security deposits, under the terms of any subleases of the Property that Lessee may enter into.

Notwithstanding the foregoing, it is expressly understood and agreed that the aforesaid limitation on liability shall in no way restrict or abridge Lessee's continued personal liability for:

(1) fraud or willful or grossly negligent misrepresentation made by Lessee in connection with this Lease;

(2) misapplication of (i) proceeds of insurance and condemnation or (ii) rentals received by Lessee under subleases subsequent to the date Authority is entitled to re-enter the Property by reason of Lessee's default pursuant to the terms hereof and applicable law;

(3) the retention by Lessee of all advance rentals and security deposits of sublessees not refunded to or forfeited by such sublessees;

(4) the indemnification undertakings of Lessee under Section 16; and

(5) Material waste by Lessee with respect to the Property.

25.7 Events of Default by Authority. If the Authority shall fail to perform any covenant or condition of the Agreement and/or this Lease, and any such failure shall not be cured within thirty (30) days following the service on Authority of a written notice from Lessee specifying the failure complained of, or if it is not practicable to cure or remedy such failure within such thirty (30) day period, within such longer period as shall be reasonable under the circumstances, the such event shall constitute an event of default under this Lease.

25.8 Remedies of Lessee. In the event of any such default as described in Section 25.6, Authority may, at its option:

(1) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by Lessee in enforcing this provision) as an operating expense for the current year;

(2) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by Lessee in enforcing this provision) from the proceeds of any insurance; or in the event that Authority has obtained a faithful performance bond indemnifying Lessee, Lessee may call upon the bonding agent to correct said default or to pay the costs of such correction performed by or at the direction of Lessee;

(3) Exercise its right to maintain any and all actions at law or suits in equity compel Authority to correct or cause to be corrected said default;

(4) Maintain and operate the Property, without terminating this Lease;

(5) With respect to a monetary default or material non-monetary default, terminate this Lease by written notice to Authority of its intention to do so.

SECTION 26. MISCELLANEOUS.

26.1 Governing Law. The laws of the State of California shall govern the interpretation and enforcement of this Lease.

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

26.3 Acceptance of Service of Process. In the event that any legal action is commenced by Lessee against Authority, service of process on Authority shall be made by personal service upon the Chairman or Executive Director of Authority, or in such other manner as may be provided by law.

In the event that any legal action is commenced by Authority against Lessee, service of process on Lessee shall be made by personal service upon any officer of Lessee or in such other manner as may be provided by law, whether made within or without the State of California.

26.4 Attorneys' Fees And Court Costs. In the event that either Authority or Lessee shall bring or commence an action to enforce the terms and conditions of this Lease or to obtain damages against the other party arising from any default under or violation of this Lease, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

26.5 Inspection of Books And Records. Authority has the right (at Lessee's office, upon not less than forty-eight (48) hours' notice, and during normal business hours) to inspect the books and records of Lessee pertaining to the Property as pertinent to the purposes of this Lease. Lessee also has the right (at Authority's office, upon not less than forty-eight (48) hours' notice, and at all reasonable times) to inspect the books and records of Authority pertaining to the Property as pertinent to the purposes of this Lease.

26.6 Interest. Any amount due Authority that is not paid when due shall bear interest from the date such amount becomes due until it is paid. Interest shall be at a rate equal to the lesser of the discount rate established by the San Francisco office of the Federal Reserve Bank, plus two percent (2%), on the first day of the month such amount becomes due, and the maximum rate permitted by applicable law.

26.7 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, upon personal delivery or five (5) days after deposit within California in the United States mail, certified or registered mail, return receipt requested, postage prepaid and addressed as follows:

Authority: Montclair Housing Authority
5111 Benito Street
Montclair, California 91763
Attention: Executive Director

Lessee: Montclair Housing Corporation
5111 Benito Street
Montclair, California 91763
Attention: Executive Director

or to such other address as either party shall later designate for such purposes by written notice to the other party.

26.8 Time is of the Essence. Time is of the essence in the performance of the terms and conditions of this Lease.

26.9 Non-Merger of Fee And Leasehold Estates. If both Authority's and Lessee's estates in the Property or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except at the express election of Authority and Lessee's Mortgagee. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work as a merger and shall, at the option of Authority, terminate all or any existing sublease or subtenancies or may, at the option of Authority, operate as an assignment to Authority of any or all such existing subleases or subtenancies.

26.10 Holding Over. The occupancy of the Property after the expiration of the Term of this Lease shall be construed to be a tenancy from month to month, and all other terms and conditions of this Lease shall continue in full force and effect.

26.11 Conflict of Interest. No member, official or employee of Authority shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to the Lease which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

Lessee warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

26.12 Non-Liability of Authority Officials And Employees. No member, official or employee of Authority shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by Authority or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

26.13 Relationship. The relationship between the parties hereto shall at all times be deemed to be that of landlord and tenant. The parties do not intend nor shall this Lease be deemed to create a partnership or joint venture.

26.14 Transactions with Affiliates. Lessee shall have the right to enter into transactions with subsidiaries, affiliates and other related entities for the purpose of leasing space, providing cleaning, maintenance and repair services, insurance policies and other purposes related to the use and development of the Property, provided that all such costs, charges and rents are competitive with the

costs, charges, rent and other sums which would be paid by or to, as the case may be, an unrelated third party.

26.15 Waivers And Amendments. All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of Authority or Lessee.

The waiver by Authority of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Authority shall not be deemed to be a waiver of any preceding breach of Lessee of any term, covenant or condition of this Lease, regardless of Authority's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of Authority to require or exact full and complete compliance with any of the covenants or conditions of this Lease shall not be construed as in any manner changing the terms hereof and shall not prevent Authority from enforcing any provision hereof. All amendments hereto must be in writing and signed by the appropriate authorities of Authority and Lessee. The Lessee's Mortgagee permitted by this Lease shall not be bound by any waiver or amendment to this Lease without Lessee's Mortgagee giving its prior written consent.

26.16 Non-Merger With Agreement. None of the terms, covenants or conditions agreed upon in writing in the Agreement and other instruments between the parties to this Lease with respect to obligations to be performed, kept or observed by Lessee or Authority in respect to the Property or any part thereof, shall be deemed to be merged with this Lease.

26.17 Duplicate Originals. This Lease is executed in three (3) duplicate originals, each of which is deemed to be an original.

26.18 Severability. If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

26.19 Terminology. All personal pronouns used in this Lease, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of sections are for convenience only, and neither limit nor amplify the provisions of the Lease itself. Except for terms expressly defined in this Lease, all terms shall have the same meaning as set forth in the Agreement.

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

26.21 Estoppel Certificate. Each of the parties shall at any time and from time to time upon not less than twenty (20) days' prior notice by the other, execute, acknowledge and deliver to such other party a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there shall have been modifications that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid, and stating whether or not to the best knowledge of the signer of such certificate such other party is in default in performing or observing any provision of this Lease, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other party may reasonably request, it

being intended that any such statement delivered by Lessee may be relied upon by Authority or any successor in interest to Authority or any prospective mortgagee or encumbrancer thereof, and it being further intended that any such statement delivered by Authority may be relied upon by any prospective assignee of Lessee's interest in this Lease or any prospective mortgagee or encumbrancer thereof. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge.

26.22 Force Majeure. The time within which Authority or Lessee is obligated herein to perform any obligation hereunder, other than an obligation that may be performed by the payment of money, shall be extended and the performance excused when the delay is caused by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot, insurrection or other cause beyond the control of the applicable party.

26.23 Quiet Enjoyment. Landlord does hereby covenant, promise and agree to and with Tenant that Tenant, for so long as it is not in default hereof, shall and may at all times peaceable and quietly have, hold, use, occupy and possess the Property throughout the Term.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their lawfully authorized officers.

AUTHORITY:

MONTCLAIR HOUSING AUTHORITY, a public body corporate and politic

By: Edward C. Starr
Its: Executive Director

LESSEE:

MONTCLAIR HOUSING CORPORATION, a California nonprofit public benefit corporation

By: Edward C. Starr
Its: Executive Director

EXHIBIT A TO ATTACHMENT NO. 2

PROPERTY MAP

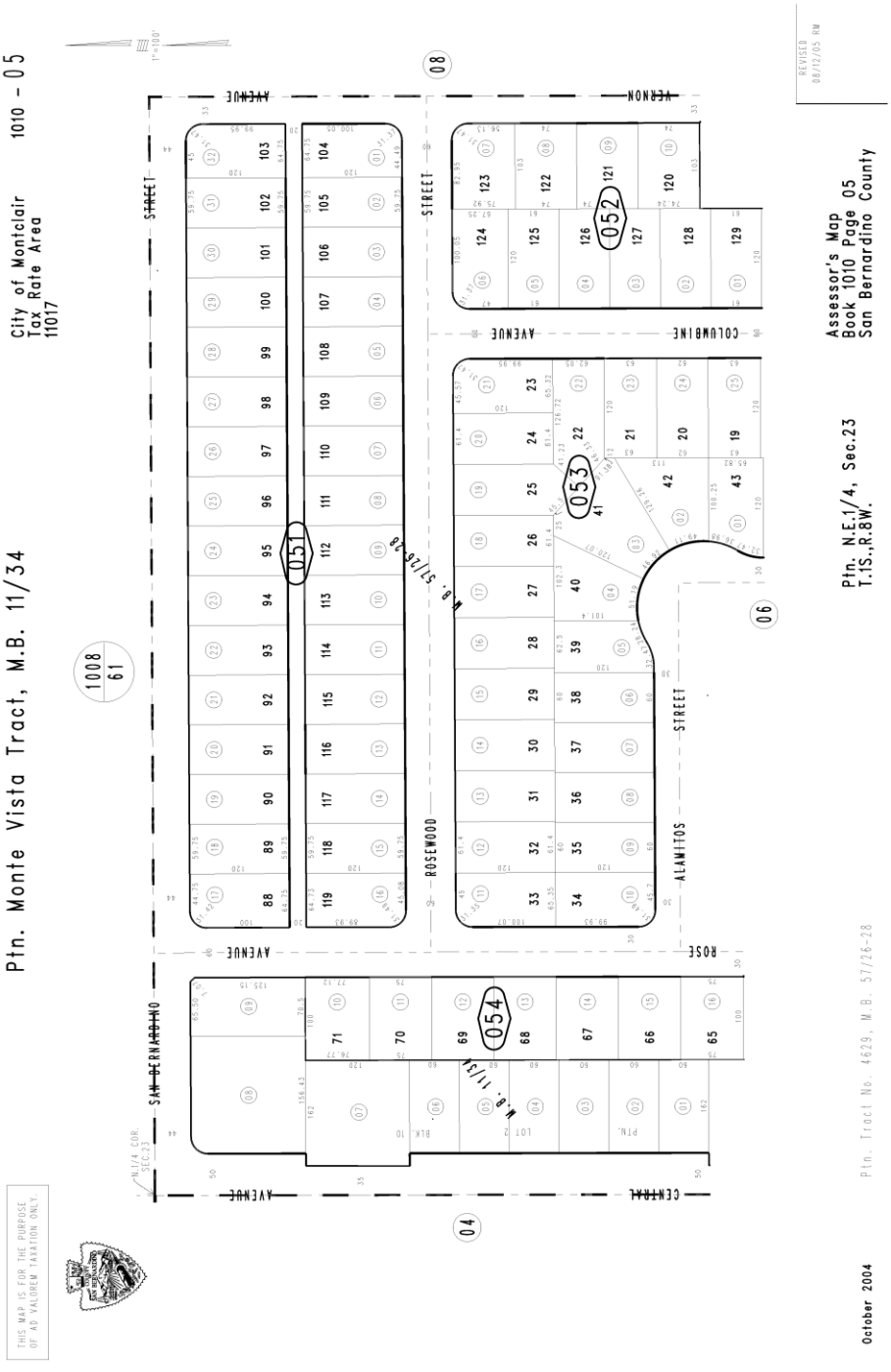

EXHIBIT B TO ATTACHMENT NO. 2

LEGAL DESCRIPTION

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APN: 1010–054–01–0000

The South 60 feet of the West 162 feet of Lot(s) 2, Block 10, Monte Vista Tract, in the City of Montclair, County of San Bernardino, State of California, as per plat recorded in Book 11 Page(s) 34 of Maps, in the Office of the County Recorder of said County

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____ , Notary Public,
(Print Name of Notary Public)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:_____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title Or Type Of Document

_____
Number Of Pages

_____
Date Of Documents

_____
Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____ , Notary Public,
(Print Name of Notary Public)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:_____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title Or Type Of Document

_____
Number Of Pages

_____
Date Of Documents

_____
Signer(s) Other Than Named Above

ATTACHMENT NO. 3

CITY DEED

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: Montclair Housing Authority 5111 Benito Street Montclair, California 91763 Attn: Executive Director	

APNS: 1010-054-01-0000

[Space above for recorder.]

Exempt from recording fee and documentary transfer tax pursuant to Government Code Section 27383 and Revenue and Taxation Code Section 11928.

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF MONTCLAIR, a municipal corporation ("Grantor"), hereby grants to the MONTCLAIR HOUSING AUTHORITY, a public body, corporate and politic, that certain real property located in the County of San Bernardino, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

CITY OF MONTCLAIR,
a municipal corporation

By:_____
Edward C. Starr, City Manager

EXHIBIT A TO ATTACHMENT NO. 3

LEGAL DESCRIPTION

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APN: 1010–054–01–0000

The South 60 feet of the West 162 feet of Lot(s) 2, Block 10, Monte Vista Tract, in the City of Montclair, County of San Bernardino, State of California, as per plat recorded in Book 11 Page(s) 34 of Maps, in the Office of the County Recorder of said County

CERTIFICATE OF ACCEPTANCE

This is to certify that the fee interest in real property conveyed under the foregoing Grant Deed by the City of Montclair, a municipal corporation, as to the following property:

Real property in the City of Montclair, County of San Bernardino, State of California, described as follows:

APN:
1010-054-01-0000

The South 60 feet of the West 162 feet of Lot(s) 2, Block 10, Monte Vista Tract, in the City of Montclair, County of San Bernardino, State of California, as per plat recorded in Book 11 Page(s) 34 of Maps, in the Office of the County Recorder of said County

is hereby accepted by the Executive Director of the Montclair Housing Authority ("Authority" and "Grantee") on behalf of the governing board of the Authority pursuant to authority conferred by action of the governing board of the Authority on _____ __, ____, and the Grantee consents to recordation thereof by its duly authorized officer.

MONTCLAIR HOUSING AUTHORITY,
a public body, corporate and politic

By:_____
Executive Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____ , Notary Public,
(Print Name of Notary Public)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:_____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title Or Type Of Document

_____
Number Of Pages

_____
Date Of Documents

_____
Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____ , Notary Public,
(Print Name of Notary Public)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:_____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title Or Type Of Document

_____
Number Of Pages

_____
Date Of Documents

_____
Signer(s) Other Than Named Above

RESOLUTION NO. 24-3428

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR PURSUANT TO GOVERNMENT CODE SECTION 54221 DECLARING THAT CERTAIN REAL PROPERTY LOCATED AT 9795 CENTRAL AVENUE IS EXEMPT SURPLUS LAND, AND FINDING THAT SUCH DECLARATION IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the City of Montclair (the "City") acquired property located at 9795, Central Avenue (APN 1010-054-01-0000), as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "Property") with funds from the City's Housing Trust Fund for the purpose of increasing, improving, and preserving the City of Montclair's supply of low- and moderate-income housing available at an affordable cost; and

WHEREAS, the City is the owner of that Property within the corporate limits of the City of Montclair; and

WHEREAS, the Surplus Land Act, Government Code sections 54220 et seq. (the "Act") applies when a local agency disposes of "surplus land," which is defined in the Act as "land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use." (Government Code section 54221(b)(1)); and

WHEREAS, the Act expressly does "not apply to the disposal of exempt surplus land." (Government Code section 54222.3); and

WHEREAS, under the Act, "exempt surplus land" includes land that a local agency is transferring to another local, state, or federal agency for the transferee agency's use. (Government Code section 54221(f)(1)(D)); and

WHEREAS, the Act requires local agencies such as the City to declare certain real property they own as either "surplus land" or "exempt surplus land," as supported by written findings, prior to any disposition of the real property; and

WHEREAS, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

WHEREAS, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

WHEREAS, the City desires to transfer the Property to the Housing Authority, which is a "local agency" under the Act, and upon acquiring of the Property, the Housing Authority intends to ensure the Property, which already contains pre-existing constructed housing unit(s) and does not require development, is utilized as an affordable rental housing resources for low- to moderate-income households; and

WHEREAS, the City Council has reviewed this Resolution and now desires to declare the Property as exempt surplus land under the Act, based on the findings and justifications contained in this Resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby find, determine, and order as follows:

SECTION 1: The above recitals are true and correct and are a substantive part of this Resolution and findings of the City Council.

SECTION 2: The City Council hereby declares that the Property is exempt from the Act as exempt surplus land pursuant to Government Code section 54221(f)(1)(D), based on the findings contained in this Resolution for the Property, namely that the City intends to transfer the Property to the Housing Authority, another local agency, for the Housing Authority's purposes of maintaining affordable rental housing.

SECTION 3: This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). City staff has determined that the designation of the Property as exempt surplus does not have the potential for creating a significant effect on the environment and is therefore exempt from further review under CEQA pursuant to State CEQA Guidelines Section 15060(c)(3), because it is not a project as defined by the CEQA Guidelines, Section 15378. Adoption of the Resolution, in and of itself, does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

SECTION 4: The City Manager or designee is hereby authorized and directed to send a copy of this Resolution to the California Department of Housing and Community Development in accordance with the requirements of Section 400(e) of the SLA Guidelines.

SECTION 5: If any section, subsection, paragraph, sentence, clause or phrase of this Resolution is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Resolution.

SECTION 6: The City Clerk shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this XX day of XX, 2024.

_____
Mayor

ATTEST:

_____
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 24-3428 was duly adopted by the Montclair City Council at a regular meeting thereof held on the XX day of XX, 2024, 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

LEGAL DESCRIPTION

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APN: 1010-054-01-0000

The South 60 feet of the West 162 feet of Lot(s) 2, Block 10, Monte Vista Tract, in the City of Montclair, County of San Bernardino, State of California, as per plat recorded in Book 11 Page(s) 34 of Maps, in the Office of the County Recorder of said County.

RESOLUTION NO. 24-3429

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING AGREEMENT NO. 24-12, AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR HOUSING CORPORATION; AUTHORIZING TRANSFER OF CERTAIN REAL PROPERTY LOCATED AT 9795 CENTRAL AVENUE FROM THE CITY OF MONTCLAIR TO THE MONTCLAIR HOUSING AUTHORITY; AND DECLARING SUCH REAL PROPERTIES TO BE EXEMPT SURPLUS LAND

WHEREAS, the City of Montclair (the "City") acquired property located at 9795, Central Avenue (APN 1010-054-01-0000), as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "Property") with funds from the City's Housing Trust Fund for the purpose of increasing, improving, and preserving the City of Montclair's supply of low- and moderate-income housing available at an affordable cost; and

WHEREAS, the City is the owner of those Property within the corporate limits of the City of Montclair; and

WHEREAS, the Surplus Land Act, Government Code sections 54220 et seq. (the "Act") applies when a local agency disposes of "surplus land," which is defined in the Act as "land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use." (Government Code section 54221(b)(1)); and

WHEREAS, the Act expressly does "not apply to the disposal of exempt surplus land." (Government Code section 54222.3); and

WHEREAS, under the Act, "exempt surplus land" includes land that a local agency is transferring to another local, state, or federal agency for the transferee agency's use. (Government Code section 54221(f)(1)(D)); and

WHEREAS, the Act requires local agencies such as the City to declare certain real property they own as either "surplus land" or "exempt surplus land," as supported by written findings, prior to any disposition of the real property; and

WHEREAS, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

WHEREAS, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

WHEREAS, the City desires to transfer the Property to the Housing Authority, which is a "local agency" under the Act, and upon acquiring of the Property, the Housing Authority intends to ensure the Property, which already contains pre-existing constructed housing unit(s) and does not require development, is utilized as an affordable rental housing resources for low- to moderate-income households; and

WHEREAS, the City Council has declared the Property as exempt surplus land under the Act, based on the findings and justifications contained in Resolution No. 23-3416; and

WHEREAS, the Montclair Housing Corporation (the "Housing Corporation") was formed as a 501(c)(3) to operate and maintain the housing assets including single and mutli-family residential units of the Housing Authority; and

WHEREAS, no development of the Property is contemplated; and

WHEREAS, upon acquiring of the Property, the Housing Authority intends to lease the Property to the Housing Corporation for operation of the Property as an affordable rental housing resources for low- to moderate-income households; and

WHEREAS, Agreement No. 24-12, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby find, determine, and order as follows:

SECTION 1: The above recitals are true and correct and are a substantive part of this Resolution.

SECTION 2: The City of Montclair hereby finds and determines that the transfer of the Property to the Montclair Housing Authority will ensure the continued preservation and availability of low- and moderate-income housing is available at an affordable cost.

SECTION 3: The City of Montclair is hereby authorized and directed to enter Agreement 24-12, an Affordable Housing Agreement by and among the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation.

SECTION 4: The City of Montclair agrees to the transfer of the Property to the Montclair Housing Authority. The City Manager, or designee, is authorized to record the grant deeds and further actions that are necessary or appropriate to transfer the Properties to the Montclair Housing Authority.

SECTION 5: The City Clerk shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this XX day of XX, 2024.

_____
Mayor

ATTEST:

_____
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 24-3429 was duly adopted by the Montclair City Council at a regular meeting thereof held on the XX day of XX, 2024, 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

LEGAL DESCRIPTION

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APN: 1010-054-01-0000

The South 60 feet of the West 162 feet of Lot(s) 2, Block 10, Monte Vista Tract, in the City of Montclair, County of San Bernardino, State of California, as per plat recorded in Book 11 Page(s) 34 of Maps, in the Office of the County Recorder of said County.

RESOLUTION NO. 24-01

A RESOLUTION OF THE MONTCLAIR HOUSING CORPORATION APPROVING AGREEMENT NO. 24-12, AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR HOUSING CORPORATION

WHEREAS, the City of Montclair (the "City") acquired property located at 9795, Central Avenue (APN 1010-054-01-0000), as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "Property") with funds from the City's Housing Trust Fund for the purpose of increasing, improving, and preserving the City of Montclair's supply of low- and moderate-income housing available at an affordable cost; and

WHEREAS, the City is the owner of that Property within the corporate limits of the City of Montclair; and

WHEREAS, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

WHEREAS, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

WHEREAS, the Montclair Housing Corporation (the "Housing Corporation") was formed as a 501(c)(3) to operate and maintain the housing assets including single and multi-family residential units of the Housing Authority; and

WHEREAS, the City desires to convey to the Housing Authority the Property and the Housing Authority desires to acquire the Property from the City; and

WHEREAS, upon acquiring of the Property, the Housing Authority intends to lease the Property to the Housing Corporation for operation of the Property as an affordable rental housing resources for low- to moderate-income households; and

WHEREAS, Agreement No. 24-12, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, BE IT RESOLVED that the Montclair Housing Corporation Board of Directors does hereby find, determine, and order as follows:

SECTION 1: The above recitals are true and correct and are a substantive part of this Resolution.

SECTION 2: The Montclair Housing Corporation hereby finds and determines that the transfer of the Properties to the Montclair Housing Authority will ensure the continued preservation and availability of low- and moderate-income housing is available at an affordable cost.

SECTION 3: The Montclair Housing Corporation is hereby authorized and directed to enter Agreement 24-12, an Affordable Housing Agreement by and among the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation.

SECTION 4: The Montclair Housing Corporation Secretary shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this XX day of XX, 2024.

_____
Chair

ATTEST:

_____
Secretary

I, Andrea M. Myrick, Secretary of the Montclair Housing Corporation, DO HEREBY CERTIFY that Resolution No. 24-01 was duly adopted by the Montclair Housing Corporation Board at a regular meeting thereof held on the XX day of XX, 2024, and that it was adopted by the following vote, to-wit:

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

_____
Andrea M. Myrick
Secretary

EXHIBIT A

LEGAL DESCRIPTION

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APN: 1010-054-01-0000

The South 60 feet of the West 162 feet of Lot(s) 2, Block 10, Monte Vista Tract, in the City of Montclair, County of San Bernardino, State of California, as per plat recorded in Book 11 Page(s) 34 of Maps, in the Office of the County Recorder of said County

RESOLUTION NO. 24-01

A RESOLUTION OF THE MONTCLAIR HOUSING AUTHORITY APPROVING AGREEMENT NO. 24-12, AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR HOUSING CORPORATION, AND ACCEPTING THE TRANSFER OF CERTAIN REAL PROPERTY LOCATED AT 9795 CENTRAL AVENUE FROM THE CITY OF MONTCLAIR

WHEREAS, the City of Montclair (the "City") acquired property located at 9795, Central Avenue (APN 1010-054-01-0000), as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "Property") with funds from the City's Housing Trust Fund for the purpose of increasing, improving, and preserving the City of Montclair's supply of low- and moderate-income housing available at an affordable cost; and

WHEREAS, the City is the owner of that Property within the corporate limits of the City of Montclair; and

WHEREAS, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

WHEREAS, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

WHEREAS, the Montclair Housing Corporation (the "Housing Corporation") was formed as a 501(c)(3) to operate and maintain the housing assets including single and multi-family residential units of the Housing Authority; and

WHEREAS, the City desires to convey to the Housing Authority the Property and the Housing Authority desires to acquire the Property from the City; and

WHEREAS, upon acquiring of the Property, the Housing Authority intends to lease the Property to the Housing Corporation for operation of the Property as an affordable rental housing resources for low- to moderate-income households; and

WHEREAS, Agreement No. 24-12, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, BE IT RESOLVED that the Montclair Housing Authority Board of Directors does hereby find, determine, and order as follows:

SECTION 1: The above recitals are true and correct and are a substantive part of this Resolution.

SECTION 2: The Montclair Housing Authority hereby finds and determines that the transfer of the Property to the Montclair Housing Authority will ensure the continued preservation and availability of low- and moderate-income housing is available at an affordable cost.

SECTION 3: The Montclair Housing Authority is hereby authorized and directed to enter Agreement 24-12, an Affordable Housing Agreement by and among the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation.

SECTION 4: The Montclair Housing Authority agrees to accept the transfer of Property from the City of Montclair. The Executive Director of the Montclair Housing Authority, or designee, is authorized to record the grant deeds and further actions which are necessary or appropriate to transfer the Property to the Montclair Housing Authority.

SECTION 5: The Montclair Housing Authority Secretary shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this XX day of XX, 2024.

Chair

ATTEST:

Secretary

I, Andrea M. Myrick, Secretary of the Montclair Housing Authority, DO HEREBY CERTIFY that Resolution No. 24-01was duly adopted by the Montclair Housing Authority Board at a regular meeting thereof held on the XX day of XX**,** 2024, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
Secretary

EXHIBIT A

LEGAL DESCRIPTION

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

APN: 1010-054-01-0000

The South 60 feet of the West 162 feet of Lot(s) 2, Block 10, Monte Vista Tract, in the City of Montclair, County of San Bernardino, State of California, as per plat recorded in Book 11 Page(s) 34 of Maps, in the Office of the County Recorder of said County

CITY COUNCIL
AGENDA REPORT

DATE:	FEBRUARY 5, 2024	**FILE I.D.:**	PER597
SECTION:	CONSENT - RESOLUTIONS	**DEPT.:**	ADMIN. SVCS.
ITEM NO.:	4	**PREPARER:**	A. MYRICK

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 24-3430 AUTHORIZING THE APPOINTMENT OF MERRY WESTERLIN AS A RETIRED ANNUITANT INTO THE TEMPORARY PART-TIME POSITION OF BUILDING OFFICIAL PURSUANT TO GOVERNMENT CODE SECTION 21221(H) EFFECTIVE FEBRUARY 6, 2024

CONSIDER AUTHORIZING THE COMMENCEMENT OF A RECRUITMENT FOR A PERMANENT BUILDING OFFICIAL ON FEBRUARY 6, 2024

REASON FOR CONSIDERATION: The Pension Reform Act of 2012 permits a public agency's governing body to appoint a CalPERS retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year.

The City Council is requested to consider adoption of Resolution No. 24-3430 authorizing the appointment of Merry Westerlin as a retired annuitant into the temporary part-time position of Building Official effective February 6, 2024.

A copy of proposed Resolution No. 24-3430 is attached for the City Council's review and consideration.

BACKGROUND: Building Official/Code Enforcement Manager Merry Westerlin was initially hired into the Building Official position on October 1, 2007. She served as Building Official from 2007 to 2015, and in 2016 was assigned to overseeing the Code Enforcement Division in addition to her duties as Building Official. She retired effective August 1, 2023, after an almost 16-year career with the City of Montclair.

Upon Building Official/Code Enforcement Manager Westerlin's retirement, Plans Examiner Michael Dorsey was promoted to the Building Official position on August 21, 2023, and oversight of the Code Enforcement Division was re-assigned to staff within the Division.

Last week, City staff received the devastating news of the unexpected and sudden passing of Building Official Dorsey. Graciously, Merry Westerlin reached out and offered to return to work for the City as a part-time Building Official until a new Building Official can be hired.

Pursuant to California Government Code (GC) §7522.56(b), "[a] retired person shall not serve, be employed by, or be employed through a contract directly by, a public employer in the same public retirement system from which the retiree received the benefit without reinstatement from retirement, except as permitted by this section." GC §7522.56(c), then provides the following exception: "A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by [CalPERS] upon appointment by the appointing power of a public employer either during an

emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of a limited duration." GC §7522.56(f)(1) provides: "A retired person shall not be eligible to be employed pursuant to this section for a period of 180 days following the date of retirement…"

Merry Westerlin has been retired for 180 days as of January 28, 2024, and therefore it is allowable to hire her as a temporary part-time Building Official while the City recruits for a permanent appointment.

As a retired annuitant, Merry Westerlin will only be working on a temporary, part-time basis and will remain at or below the 960 permitted hours per fiscal year a retired annuitant may work pursuant to Section 7522.56(d). Her specialized skills are needed to continue the operations of the Building Division while a recruitment is conducted for the vacant Building Official position, and also to assist with training the new Building Official.

Pursuant to Section 7522.56(d), a retired annuitant's pay may not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay scheduled equal to an hourly rate. The maximum base salary for the Building Official position is $11,309 per month, and the hourly equivalent is $65.24.

FISCAL IMPACT: The hiring of Merry Westerlin as a retired annuitant is estimated to have no major fiscal impact to the Community Development personnel budget for remainder of Fiscal Year 2023-2024 due to cost savings from the new and existing vacancies within the Department. The Fiscal Year 2024-2025 Community Department personnel budget will provide funds for this retired annuitant positon if it is still needed.

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

1. Adopt Resolution No. 24-3430 authorizing the appointment of Merry Westerlin as a retired annuitant into the temporary part-time position of Building Official pursuant to Government Code Section 21221(h) effective February 6, 2024.

2. Authorize the commencement of a recruitment for a permanent Building Official on February 6, 2024.

RESOLUTION NO. 24-3430

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING THE APPOINTMENT OF MERRY WESTERLIN AS A RETIRED ANNUITANT INTO THE TEMPORARY PART-TIME POSITION OF BUILDING OFFICIAL PURSUANT TO GOVERNMENT CODE SECTION 21221(H)

WHEREAS, Government (Gov.) Code section 21221(h) of the Public Employees' Retirement Law permits the governing body to appoint a CalPERS retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, Merry Westerlin retired from the City of Montclair in the position of Building Official/Code Enforcement Manager effective August 1, 2023; and

WHEREAS, the 60-day period of bona fide separation required to hire a CalPERS retiree who retired prior to reaching their retirement formula's minimum retirement age elapsed on September 30, 2024; and

WHEREAS, the 180-day wait period required to hire a CalPERS retiree by a CalPERS member agency after the date of retirement elapsed on January 28, 2024; and

WHEREAS, the City Council, the City of Montclair, and Merry Westerlin certify that Merry Westerlin has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, an appointment under Gov. Code section 21221(h) requires the retiree is appointed into the interim appointment during recruitment for a permanent appointment; and

WHEREAS, the governing body has authorized the search for a permanent appointment on February 6, 2024; and

WHEREAS, this Gov. Code section 21221(h) appointment shall only be made once and therefore will end on or before June 30, 2025; and

WHEREAS, the entire employment agreement, contract or appointment document between Merry Westerlin and the City of Montclair has been reviewed by this body and is attached herein; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum base salary for Building Official is $11,309 and the hourly equivalent is $65.24; the minimum base salary for this position is $9,304 and the hourly equivalent is $53.68; and

WHEREAS, the hourly rate paid to Merry Westerlin will be $65.24; and

WHEREAS, Merry Westerlin has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby certifies the nature of the appointment of Merry Westerlin as described herein and that this appointment is necessary to fill the critically needed position of Building Official for the City of Montclair by February 6, 2024, because the City is currently without a Building Official, and there are crucial duties of the Building Official that must be performed to remain in compliance with Federal and State laws and guidelines including the Building Code and the Health and Safety Code.

APPROVED AND ADOPTED this XX day of XX, 20XX.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 24-3430 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, 20XX, 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:	FEBRUARY 5, 2024	**FILE I.D.:**	CYC260
SECTION:	RESPONSE	**DEPT.:**	CITY MGR.
ITEM NO.:	A	**PREPARER:**	E. STARR

SUBJECT: CONSIDER RECEIVING THE RESPONSE TO AN INQUIRY FROM THE CITY COUNCIL REGARDING COSTS ASSOCIATED WITH, AND POTENTIAL DISSEMINATION OF, A PUBLIC INFORMATION COMMUNICATION TO MONTCLAIR HOUSEHOLDS ADDRESSING ALL COST COMPONENTS RELATED TO GARCIA/FUENTES V. LOPEZ, INCLUDING EXPENDITURES RELATED TO LEGAL CLAIMS, CONDUCTING INVESTIGATIONS, MEDIATION, CITY STAFF SERVICES, SETTLEMENT WITH PLAINTIFFS AND LITIGATION, AND OTHER MATTERS THEREOF; AND PROVIDING ANY FURTHER DIRECTION THERETO

REASON FOR CONSIDERATION: At the January 16, 2024, meeting of the City Council, following discussion related to Agenda Item No. B.9, "CONSIDER RECEIVING AND FILING A REPORT ON EXTRAORDINARY EXPENDITURES RELATED TO ALL COST COMPONENTS REGARDING THE MATTERS OF *GARCIA/FUENTES V. LOPEZ*, INLCUDING EXPENDITURES RELATED TO ADDRESSING LEGAL CLAIMS, CONDUCTING INVESTIGATIONS, SETTLEMENTS, AND LITIGATION," upon a motion approved by a majority of the governing board, the City Manager was directed to respond back regarding the potential dissemination of, and costs associated with, a public information communication to Montclair households addressing all cost components related to *Garcia/Fuentes v. Benjamin Isaac Lopez and the City of Montclair* (hereafter, "*Garcia/Fuentes v. Lopez*"), including expenditures related to legal claims, conducting investigations, mediation, City staff services, settlement with plaintiffs and litigation, and other matters thereof.

The City Council is requested to receive this report and consider providing any further direction to the City Manager related thereto.

BACKGROUND: *Garcia/Fuentes v. Lopez* stems from two verified complaints in lawsuits filed by two City of Montclair employees against both Council Member Benjamin Lopez (hereafter, "Council Member Benjamin Lopez" or "Lopez") and the City of Montclair (hereafter, "City"). The complaints contained allegations of discrimination based on sexual orientation and unlawful sexual harassment charged against Lopez.

The City Council, on August 2, 2021, approved Agreement No. 21-47 with EXTTI, Inc., a company recognized for its professional workplace services in expert testimony, training and investigations. Pursuant to Agreement No. 21-47, an independent investigator was hired to conduct a workplace investigation into allegations made by employees Garcia and Fuentes concerning the alleged inappropriate interactions by Council Member Benjamin Lopez.

On March 1, 2022, the independent workplace investigator presented to the City Council, in closed session, an oral presentation of the investigation and the finding reached, sustaining allegations that Council Member Benjamin Lopez, as a private individual and outside the course and scope of his duties, responsibilities, and performance as a member of the City Council did (1) conduct an extended conversation with one employee about his sexual orientation; and (2) intentionally hide his identity from another employee when they communicated on social media dating sites, and that their

communication thereon included sharing sexually explicit content and photographs.

Based on the nature of the allegations and findings reached by the independent investigator that sustained the allegations, together with the filing of two verified complaints in lawsuits by the two employees containing allegations of discrimination based on sexual orientation and unlawful sexual harassment against Council Member Benjamin Lopez, the City Council determined that there was sufficient cause to consider adoption of a "Resolution of Censure."

On April 4, 2022, the City Council adopted Resolution No. 22-3339 (hereafter, the "Resolution of Censure"). In approving the Resolution of Censure, the City Council did find that the interaction Council Member Benjamin Lopez had with certain employees was "reprehensible, inappropriate, abusive, and disrespectful", and "brought disrepute to the City of Montclair and the Montclair City Council." Further, the City Council stated that it did not condone or approve of the type of conduct and behavior exhibited by Lopez, and found it necessary and prudent to declare its strong disapproval of such conduct and behavior.

On October 6, 2022, a mediation hearing was conducted to negotiate a global settlement to the complaints filed by plaintiffs Garcia and Fuentes against Council Member Benjamin Lopez and the City. The date of mediation was discussed and agreed to by all relevant parties. Mediation, as used in law, is a structured, interactive process for resolving disputes between two or more parties. Typically, a third party, the mediator, directs the parties toward a negotiated settlement. For the process to be effective, all parties and/or their respective legal counsel must constructively participate in the process to achieve open communication and an optimal solution. The City and its legal counsel, as well as plaintiffs Garcia and Fuentes and their legal counsel, respectively, participated in the October 6, 2022, mediation. Neither Lopez nor his legal counsel attended nor participated in the mediation hearing.

In matters related to plaintiffs Garcia and Fuentes and the City, the mediation hearing achieved a negotiated settlement. However, the parties were unable to reach a global settlement due to Council Member Benjamin Lopez' failure to participate. Thus, while plaintiffs Garcia and Fuentes settled with the City, they elected to continue with their complaint against Council Member Benjamin Lopez. The City, in turn, filed a cross complaint against Lopez to recover on damages, attorney fees and court costs related to *Garcia/Fuentes v. Lopez*—a cross complaint is a written complaint filed by a defendant (in this case, the City as cross-complainant) against a cross-defendant (in this case, Lopez as cross-defendant). Thus, for the City, litigation in *Garcia/Fuentes v. Lopez* will continue until either (i) Lopez settles with the cross-complainant (City) by court-ordered mediation; or (ii) when a decision is rendered through trial.

On January 16, 2024, the City Council received and filed Agenda Item No. B.9 (title referenced above), regarding costs related to *Garcia/Fuentes v. Lopez*. Agenda Item No. B.9. demonstrated that, as of December 31, 2023, litigation, mediation, and settlement expenditures related to *Garica/Fuentes v. Lopez* reached a total of $703,052.09. Identified expenditures do not list City staff time nor the loss of productivity related to dealing with matters concerning *Garcia/Fuentes v. Lopez*—over the course of 2.5 years, those costs are estimated to be between $80,000 to $100,000. The City Council was also advised that because the City filed a cross-complaint against Council Member Benjamin Lopez, litigation costs shall continue until the cross-complaint is resolved, either through court-ordered mediation or at trial.

Political Reform Act and Fair Political Practices Commission as Governing Authority over Mass Mailings. The expenditure of municipal General Fund dollars to mail public information to residents is generally controlled and regulated by the Fair Political Practices Commission (FPPC). The FPPC was established in 1974 when more than 70 percent of California voters approved the Political Reform Act (hereafter, the "Act") and creation of the FPPC.

The FPPC has primary responsibility for the impartial and effective administration of the Act, which is intended to serve as the legal foundation of governmental ethics in California and, in that regard, regulates the following:

- Campaign Finance
- Financial Conflicts of Interest by Public Officials
- Lobbyist Registration and Reporting
- Post-Governmental Employment
- **Mass Mailings at Public Expense**
- Gifts and Honoraria given to Public Officials and Candidates

Lawmakers and voters have altered the Act over time to account for the ever-changing landscape of campaign finance, and to ensure the integrity of California's public officials. For example, Propositions 208 (1998) and 34 (2000) dramatically altered the rules every candidate and elected official must follow when running for office in the state.

In addition to statutory changes to the Act, the FPPC has adopted regulations that provide specific guidelines to candidates, committees, treasurers, public officials, and others. Collectively, the Act and FPPC regulations make responding to the question of mass mailings, as posed by the City Council, both nuanced and complex.

As a general rule, the FPPC prohibits the expenditure of public funds on communications that are designed to influence the outcome of an election, particularly if that spending is not disclosed to the public.

The most common communication scenario falling under FPPC purview is where a city, county, or special district uses public monies to produce communications, including letters, flyers, radio, or television spots that are intended to persuade voters to support or oppose a ballot measure instead of simply providing voters with impartial information.

Effectively, a government may not "take sides" in election contests on measures or candidates, or bestow an unfair advantage on one of several competing factions.

Examples of "taking sides" include the following:

- A payment of public moneys by a state or local governmental agency, or by an agent of the agency, made in connection with a communication to the public that expressly advocates on an election, including:
    - Defeat or election of a clearly identified candidate; or

- The qualification, passage, or defeat of a clearly identified measure; or, that taken as a whole and in context, unambiguously urges a particular result.

A communication paid for with public moneys by a state or local governmental agency unambiguously urges a particular result in an election if the communication meets either one of the following criteria:

- The communication is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or other mass media advertising including, but not limited to, television or radio spots.

- When considering the style, tenor and timing of the communication, the communication can be reasonably characterized as campaign material and not a fair presentation of facts that serve only an informational purpose.

  When considering the style, tenor and timing of a communication, factors to be considered include, but are not limited to, whether the communication is any of the following:

  - Funded from a special appropriation as opposed to a general appropriation.

  - Consistent with the normal communication pattern for the agency.

  - Consistent with the style of other communications issued by the agency, and does not include inflammatory or argumentative language.

What is a Mass Mailing? Under FPPC regulations, mass mailings are defined as "over 200 substantially similar pieces of mail," not including a "form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry."

Primary to the inquiry made by the City Council is the issue of mass mailings at public expense.

FPPC regulations contain specific provisions related to mass mailings at public expense, including the following:

- Mailings that feature or include the name, office, photograph, or other reference to an elected official affiliated with the agency producing or sending the mailer. With some exceptions, the Act prohibits the distribution of more than 200 copies of substantially similar items in a calendar month if the items include the name, office, photograph, or other reference of an elected official. Additional rules apply for certain mailings that mention an elected official sent within 60 days of the official's election.

- Campaign Related Communications. A state or local government agency that pays for a campaign-related communication may become a committee subject to

campaign reporting requirements if payments qualify as contributions or independent expenditures.

Campaign related mailings are prohibited if all of the following criteria are met:

- Tangible and Delivered. A tangible item, such as a newsletter or brochure, is delivered, by any means, including by transmission of a fax, to a person's residence, place of employment or business, or post office box. *Emails, website postings, text messages, and recorded telephone messages/robocalls are not considered tangible items and, therefore, are not subject to the Act's mass mailing at public expense restrictions.*

- Campaign Related. The item sent contains express words of advocacy or unambiguously urges a particular result in an election.

- Item Features an Elected Officer. The mailing sent either features an elected officer affiliated with the agency (by including the officer's photo or signature, or singling out the officer by his or her name), or the item includes a reference to an elected officer affiliated with the agency and the item is prepared or sent in cooperation with the elected officer or other members of the governing board.

- Public Funds. Any of the costs of distribution are paid for with public moneys; or, if public funds are not used for the actual distribution, in excess of $50 in public moneys is used to design, produce, or print the item and the design, production, or printing is done with the intent of sending the item other than as permitted by the Act.

- Mass Mailing. More than 200 substantially similar items are sent in a calendar month, excluding any item sent in response to an unsolicited request.

The entirety of the communication and the factual circumstances under which the communication is made must be considered in determining whether any particular communication is campaign material or informational only.

Merely labeling a communication as "informational" is not determinative as to whether a communication is informational or campaign-related.

Permissible mailings except when sent within 60 days of an officer's election. Generally, mass mailings of types listed below are not prohibited by the Act; such mailings may not, however, be sent within 60-days of an election by or on behalf of a candidate whose name will appear on the ballot at that election:

- Letterhead/Roster Listing. A mailing in which an elected officer's name appears only in the letterhead or logotype of the stationery, forms, and envelopes of the agency, or in a roster listing containing the names of all elected officers of the agency. The names of all elected officers must appear in the same size, font type, color, and location. The item may not contain an elected officer's photo, signature, or any other reference to the officer.

- Meeting Announcement. A public meeting announcement sent to an elected officer's constituents, so long as the meeting is directly related to the elected officer's governmental duties and he or she intends to attend. The item may not contain the elected officer's photo or signature, and may include only a single mention of the elected officer.

- Event Announcement. An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff, or other financial support. The item may not contain the elected officer's photo or signature, and may include only a single mention of the elected officer.

- Business Cards. Business cards that do not contain an elected officer's photo or more than one mention of the elected officer's name.

Normal Agency Business Practices. The following communications are not, at any time, restricted by the Act's mass mailing prohibition:

- Press releases sent to members of the media.

- Any item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer.

- Any intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff.

- Tax bills, checks, and similar documents, in any instance where use of the elected officer's name, office, title, or signature is necessary to the payment or collection of the funds.

- A telephone directory, organization chart, or similar listing or roster that includes the names of elected officers as well as other individuals in the agency sending the mailing.

- Responses to unsolicited requests. An "unsolicited request" is a written or oral communication that specifically requests a response and that is not requested or induced by the elected officer or any third person acting at the officer's behest.

Concluding Analysis. Based on the above discussion, City staff sought to address the following questions:

1. **Is the proposed communication designed to, or does it expressly advocate for, defeat of a clearly identified candidate?** Provided the communication does not unambiguously advocate for the election or defeat of a candidate, and completely avoids any reference to an election, the communication may be permissible under the Act. For example, if the communication is specifically for public information purposes, including regarding an action taken by the City Council at a public meeting, the communication may be permissible as a mass mailing, with public expenditure.

While the proposed communication is intended to be public information, its identification of a sitting member of the governing board, coupled with its distribution proximate to an election cycle with public funds approved by the governing board would appear to set it within the category of FPPC-prohibited mass mailings.

2. **Does the Act prohibit a mass mailing related to the proposed communication?** The Act's mass mailing provisions do not prohibit a government from sending a mass mailing that does not expressly advocate for a candidate or measure, or unambiguously urge a particular result in an election. The Act does, however, prohibit the mass mailing if it is authorized by members of the governing board, contains the name or names of elected members of the governing board, and it does not generally fit within the "permissible mailings' under FPPC guidelines noted above. In addition, the entirety of the communication and the factual circumstances under which the communication is made must be considered in determining whether any particular communication is campaign material or informational. Merely labeling a communication as "informational" is not determinative as to whether a communication is informational or campaign-related.

3. **Would the proposed dissemination of a public information to Montclair households represent a mass mailing; i.e., would the mailing be "over 200 substantially similar pieces of mail" in a month?** Yes, the mailing would be approximately 9,000 pieces and would, therefore, constitute a mass mailing subject to FPPC regulations.

4. **As a mass mailing, would dissemination of the proposed public information be in conflict with the Act?** The proposed mass mailing meets each of the following criteria and, therefore, would not be permissible under FPPC regulations:

    a. It is a tangible item delivered to a person's residence, place of employment or business, or post office box. *Tangible items do not include emails, website postings, text messages, recorded telephone messages and robocalls. These forms of delivery are not subject to the Act's mass mailing at public expense restrictions.*

    b. The proposed public information piece features an elected officer affiliated with the City by singling out the officer by name or office.

    c. As proposed, public moneys would be expended on distribution of the proposed public information piece.

    d. As proposed, more than 200 substantially similar items would be distributed in a calendar month.

    As a general rule, mass mailings listing an elected official's name or image should not be mailed within 60-days of an election. In addition, the mass mailing of the type proposed is not reflective of normal agency practices.

Based on the above analysis, City staff is of the opinion that the proposed information piece that is subject to this Response to City Council Inquiry would not be permissible under FPPC regulations.

FPPC mass mailing provisions do not apply to public expenditures on telephone messages, pre-recorded telephone calls, robocalls, text messaging, website postings, and electronic mail as they are not considered a tangible item, and provided they are limited to factual information and do not otherwise stray into unambiguous campaign-related communications.

FISCAL IMPACT: The estimated cost to mass mail a one-page, double-sided public information piece to all Montclair households, including printing and distribution costs, would not be expected to exceed $5,000.

RECOMMENDATION: Staff recommends the City Council receive the response to an inquiry from the City Council regarding costs associated with, and potential dissemination of, a public information communication to Montclair households addressing all cost components related to *Garcia/Fuentes v. Lopez*, including expenditures related to legal claims, conducting investigations, mediation, City staff services, settlement with plaintiffs and litigation, and other matters thereof; and provide any further direction thereto.

MINUTES OF THE MEETING OF THE MONTCLAIR PERSONNEL COMMITTEE HELD ON TUESDAY, JANUARY 16, 2024, AT 5:17 P.M. IN THE CITY ADMINISTRATIVE OFFICES, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor Pro Tem Johnson called the meeting to order at 5:17 p.m.

II. ROLL CALL

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

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of December 18, 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 December 18, 2023.

IV. PUBLIC COMMENT – None

V. CLOSED SESSION

At 5:17 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/ terminations, and evaluations of employee performance.

At 5:43 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 5:43 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 TUESDAY, JANUARY 16, 2024 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

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

II. INVOCATION

Pastor Robert Edwards, Set Free Ministry, 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, Martinez, and Lopez

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

V. PRESENTATIONS

A. Introduction of New Police Department Employees

Police Chief Reed introduced recently hired Police **Officer Kyle Ramiro**. Mayor Dutrey and Council Members welcomed Officer Ramiro to the Montclair City family.

B. Community Activities Commission (CAC) Presentation Military Banner Presentation

Community Activities Commission (CAC) Chair Escalante stated that sixteen years ago, the CAC began sponsoring a military street banner program to recognize Montclair residents currently serving in the **U.S. Armed Forces**. He advised that in 2023, 32 military banners and two banners honoring "all Veterans" were proudly displayed throughout Montclair.

As CAC Chair Escalante introduced and summarized the service of each military veteran, Mayor Dutrey and Council Members congratulated and presented each honoree or their family member(s) with their military banner. The three honorees were:

- **Melanie Anne Feliciano**, Navy, 2018–2023
- **Monique Fodor**, Navy, 2003–2023
- **Matthew Murawski**, Navy, 2002–2023

Mayor Dutrey thanked CAC Chair Escalante for his presentation, and thanked the honorees for their service.

VI. PUBLIC COMMENT

- **Bill Kaufman** informed the City Council that he has a meeting with the City of Laguna Woods to discuss opening a health center in their city where seniors can seek various health remedies, including cannabis and herbs. He commented that his business is still interested in the location on Central Avenue in Montclair and would like to bring this format to the City of Montclair.

- **Xavier Mendez, resident,** congratulated recently hired Police Officer Ramiro and newly appointed Police Chief Reed, and thanked the U.S. Armed Forces honorees for their service.

VII. PUBLIC HEARINGS

A. First Reading — Consider Ordinance No. 24-1005 Amending Title 11 of the Montclair Municipal Code, Chapters 11.02 (Definitions), 11.38 (Development Standards Generally), and 11.77 (Administrative Permit) to allow Monitored Electrified Security Fences in Specified Commercial and Industrial Zones within City Limits (Case No. 2023-35)

Consider Setting a Public Hearing for Second Reading and to Consider Adoption of Ordinance No. 24-1005 on Monday, February 5, 2024, at 7:00 p.m. in the City Council Chambers

Community Development Director Diaz gave a brief presentation of the item.

At 7:53 p.m., the City Council recessed for a five minute break.

The City Council returned at 7:58 p.m. with all members present.

Mayor Dutrey declared it the time and place set for public hearing to consider first reading of Ordinance No. 24-1005 and invited comments from the public.

Joana Lubmann, speaking on behalf of a distribution company on Brooks Street, commented on an incident that occurred at the property over the weekend that involved two individuals arrested for vandalism and theft. She spoke on various expenses to repair/replace numerous doors and windows and the installation of rod iron fencing around the property, incurring over $30,000 in repairs and replacements just this year. She stated that they are satisfied with the City's police response; however, it is disheartening dealing with the numerous incidents at their location. She spoke in favor of electrified fencing noting it could be an additional deterrent.

Bruce Culp, resident, spoke in opposition of electric fencing and expressed that it is a moral issue. He noted those who may have health issues or heart concerns could be gravely injured, and asserted it is a form of torture when it comes to animals or others that may come in contact. He expressed that other measures could be implemented to prevent additional crimes.

Luis Furias, representative of **Amarok Ultimate Perimeter Security,** thanked City Council for recognizing the value of longtime businesses and understanding the negative effects of crime. He spoke on the crime deterrent system his company offers and expressed that their system meets the requirements of the proposed ordinance and the needs of businesses in Montclair. He expressed his appreciation for staff's work on this Ordinance to allow businesses to protect themselves with this technology.

Joe Montleon, representative of **Stotz Equipment**, expressed that his company has been in Montclair for over 40 years, and thanked staff, Montclair Police Department, and City Council for their time and leadership on this issue. He expressed concerns regarding issues of vandalism and burglaries at his business and safety of staff, and advised that he has incurred financial losses in excess of $150,000 over the past three years. He spoke in favor of electrified fencing to be utilized with the numerous security measures that he currently has in place.

There being no one else in the audience wishing to speak, Mayor Dutrey closed the public hearing and returned the matter to the City Council for its consideration.

Mayor Dutrey asked questions of representatives of **Amarok** about the wiring of the fencing, and criminals utilizing wire cutters to access a business.

Mr. Keith Kaneko from **Amarok** advised the system would detect if an individual were to cut the wires, and may experience a shock.

Mayor Pro Tem Johnson commented on the loss of expenses and staff safety at numerous business locations, and the loss of business in Montclair. She received clarification from **Mr. Kaneko** regarding the spacing allowed between existing perimeter walls and the electrified fencing, who noted the 4-8 inch requirement cannot be modified because it is established by the **International Electro-technical Commission**.

Mayor Pro Tem Johnson also inquired regarding the voltage of the electricity, whether the shock is continuous, and when activated how the property owner and law enforcement will receive notifications.

Mr. Kaneko explained that the current is pulsed and is not a constant shock, adding that the current is not connected to the grid. He explained that monitoring is performed by a twenty-four hour third party service and an operator verifies that an incident is in progress before notifying the business owner and local authorities.

Mayor Dutrey asked Building Official Dorsey if this is harmful to individuals that may come in contact with the fencing.

Building Official Dorsey expressed that it is non-lethal, however it is painful to the touch.

Council Member Martinez inquired if various security measures would be more effective if utilized in unison instead of electric fencing, and expressed concerns of an individual potentially getting stuck on a fence.

Mr. Kaneko commented on alternate security measures, such as higher walls, and explained that height does not necessarily deter criminals due to the ease of erecting ladders. He explained that, in the event an individual were to become stuck on the fence, the system can be turned off remotely by the monitoring operator or the owner.

Council Member Martinez inquired about the indemnity provisions and if the City is going to require the business to maintain insurance if an electric fence is allowed on their property.

City Manager Starr advised that the indemnification would cover the City. He also commented on the difficulties of continuously monitoring and patrolling specific locations in the City.

Mayor Dutrey commented on the population that is residing along the railroad tracks, and informed those present that staff is working on clearing out individuals; however, within 24 hours they return.

Police Chief Reed commented that instantaneous notification is needed in terms of breaking into businesses, expressing that a block wall surrounding a business could potentially block officers' view and create a barrier to enforce.

City Manager Starr in response to Mayor Dutrey's comment informed City Council that it is difficult to continually monitor the railroad tracks, adding that Montclair Police Officers can only enter the railroad right-of-way if there is a call for service.

Council Member Lopez asked if a petty theft committed via burglary is elevated to the level of grand theft or if the value threshold still matters.

Police Chief Reed advised that a burglary is a much more serious offense than stealing under the $950 threshold and would likely elevate the charges to a felony regardless of the cost of items stolen or damaged.

Council Member Lopez asked if the electrified fence could stand higher than the block wall. Community Development Director Diaz advised that the electrified fence could be a maximum height of two feet over the required six-foot wall, and there is required signage.

Council Member Ruh commented on concerns expressed by the public. He stated that he understands the need for this ordinance but does not have enough information to approve this item and has long-term concerns.

Moved by Council Member Ruh, seconded by Council Member Lopez, and carried that Ordinance No. 24-1005 be read by number and title only, further reading be waived, and this be declared its first reading; and that the City Council set a public hearing for Monday, February 5, 2024 at 7:00 p.m. to consider second reading and adoption of Ordinance No. 24-1005.

First reading of Ordinance No. 24-1005 was approved, and public hearing for second reading was set, by the following 5-0 vote:

AYES: Lopez, Martinez, Ruh, Johnson, Dutrey
NOES: None
ABSTAIN: None
ABSENT: None

VIII. CONSENT CALENDAR

ACTION – Consent Calendar	
ACTING:	City Council Successor Agency Board Montclair Housing Corporation Board Montclair Housing Authority Commissioners Montclair Community Foundation Board
DISCUSSION:	Items B-9, B-11, and C-2
MOTION:	Pull Item B-9 and approve the remainder of the Consent Calendar as presented.
MADE BY: **SECOND BY:**	Council Member/Director Ruh Mayor Pro Tem/Vice Chair Johnson
AYES: **NOES:** **ABSTAIN:** **ABSENT:**	Lopez, Martinez, Ruh, Johnson, Dutrey None None None
RESULT:	Motion carried 5-0.

A. Approval of Minutes

1. Regular Joint Meeting — December 18, 2023

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

B. Administrative Reports

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

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

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

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

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

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

4. **Consider Approval of SA Warrant Register – December 2023**

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

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

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

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

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

7. **Consider Receiving and Filing of MHA Treasurer's Report – December 2023**

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

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

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

10. **Consider Authorizing the use of 2020 Justice Assistance Grant Funds toward the Cost of Transitioning to a Records Management System Compliant with the National Incident Based Reporting System**

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

11. Consider receiving and filing the Fiscal Year 2022-23 Compliance Report for State-Mandated Annual Fire Inspections in the City of Montclair as Required by California Health and Safety Code Section 13146.4

Xavier Mendez, resident, commented that it is great to see Montclair has completed the required amount of inspections.

Council Member Lopez confirmed that the inspections occurred in Fiscal Year 2022-23, and asked why the apartment condo inspections are only at 10% completion.

City Manager Starr advised that there is not enough in-house staffing; however, the City is considering contracting these services out in the future and expects to complete inspections by the end of this Fiscal Year.

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

C. Agreements

1. Consider Approval of Agreement No. 24-01 with the County of San Bernardino to Provide for the Receipt of Grand Funds from the 2023 Justice Assistance Grant Award

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

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

2. Consider Approval of Agreement No. 24-02, Amendment No. 4 to Agreement No. 73-230, a Joint Powers Authority (JPA) Agreement with the San Bernardino Council of Governments (SBCOG), Setting Forth a Process For Determining Annual Assessments to Member Agencies of SBCOG Effective Fiscal Year 2024-25 and each Fiscal Year Thereafter; Allowing for Optional Subscription Assessments for Specified Programs; and Establishing a Revised Annual Membership Fee for Montclair and Other Member Agencies of SBCOG for Fiscal Year 2024-25

Council Member Ruh spoke on membership dues and questioned the increase, stating that successful cities are being punished with additional dues.

Mayor Dutrey advised he served on the advisory committee for **SBCOG** to determine the formula to calculate membership fees based on 50% population and 50% tax revenue. He noted the increase will address the lack of staffing and allow **SBCOG** to take on more activities that will benefit member cities and the County of San Bernardino.

City Manager Starr advised that this is a hybrid formula and does not burden any one particular agency based on any specific factor.

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

3. Consider Approval of Agreement No. 24-03 with Red Dot Industrial Park, LLC for the Maintenance and Use of the Common Walls at Reeder Ranch Park, Subject to any Revisions Deemed Necessary by the City Attorney

Xavier Mendez, resident, commented on the possibility of recording the agreement against the property with the San Bernardino County Assessor-Recorder-Clerk's Office to ensure the agreement stays in place if a new owner purchases the property.

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

D. Resolutions

1. Consider Adoption of Resolution No. 24-3425 Authorizing Salaries and Classification Titles for City Employees on a Consolidated Salary Schedule

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

IX. PULLED CONSENT CALENDAR ITEMS

9. Consider Receiving and Filing a Report on Extraordinary Expenditures Related to All Cost Components Regarding the Matters of *Garcia/Fuentes v. Lopez*, Including Expenditures Related to Addressing Legal Claims, Conducting Investigations, Settlements, and Litigation

Bruce Culp, resident, stated that the money going toward these lawsuits could have been spent on various needed improvements the City. He commented that Council Member Lopez has failed to attend the required sexual harassment trainings and employees still have to endure his presence on a daily basis. He indicated Council Member Lopez should not receive any official support for his re-election in light of this information and should be removed from office.

Council Member Martinez read an excerpt from the staff report that reiterated the actions of the City Council pertaining to the allegations against Council Member Lopez relating to sexual harassment and discrimination, and stated that the City has expended $703,052.09 on this matter to date. She noted he has shown no remorse nor taken responsibility for his actions and has made it extremely difficult for staff to perform their jobs. She concluded he has shown a complete disregard for the censure and staff resources have been wasted dealing with this matter.

Mayor Dutrey commented on the investigation and advised the public that legally a recall election would be necessary to remove a Council Member from office, or a regular election provided he does not get enough votes. He commented on the mediation hearing that occurred, in which City representatives

and employees were present, however Council Member Lopez did not participate. He advised that the legal case is still continuing and the City is involved in a cross complaint with Council Member Lopez regarding this case.

Mayor Dutrey stated that this is a matter for the residents of Montclair and made a motion to direct staff to send letters to all of the residents in the city of Montclair, informing them of what is occurring in their city in relation to this matter.

ACTION	
ACTING:	City Council
MOTION:	Direct staff mail to all Montclair residents a notice advising them of City Council actions relating to *Garcia/Fuentes v. Lopez*.
MADE BY: **SECOND BY:**	Mayor Dutrey Council Member Martinez
AYES: **NOES:** **ABSTAIN:** **ABSENT:**	Martinez, Ruh, Johnson, Dutrey Lopez None None
RESULT:	Motion carried 4-1.

Council Member Lopez stated he did not refuse to attend sexual harassment training and his failure to attend was related to health issues, noting his attorney has tried to reschedule the training with the City to no avail. He contended that the allegations made against him are made for political reasons, adding that the City should be defending him. He stated that he maintains his innocence and is entitled to that right.

ACTION – Consent Calendar – Item B-9 (Pulled)	
ACTING:	City Council
MOTION:	Receive and file report on extraordinary expenditures related to all cost components regarding the matters of *Garcia/Fuentes v. Lopez*, including expenditures related to addressing legal claims, conducting investigations, settlements, and litigation.
MADE BY: **SECOND BY:**	Mayor Dutrey Council Member Martinez
AYES: **NOES:** **ABSTAIN:** **ABSENT:**	Martinez, Ruh, Johnson, Dutrey Lopez None None
RESULT:	Motion carried 4-1 (Lopez voted No).

X. COMMUNICATIONS

A. Department Reports — None

B. City Attorney

City Attorney Robbins announced the City Council will be holding an appeal hearing on January 29, 2024 at 6:00 p.m. in the City Council Chambers.

C. City Manager/Executive Director — None

D. Mayor/Chair

Mayor/Chair Dutrey announced the March to Miles event on Saturday, March 2nd; advised that permits have been issued to **Calaveras Restaurant**; announced that staff is working on a master plan to address street striping in the City; recognized the Public Works for its display of new equipment in the City Hall parking lot this evening; and recognized **Montclair High School's** boys' soccer team for ranking 14th in the state and the girls' soccer team for ranking 69th in the state.

E. Council Members/Directors

1. Mayor Pro Tem/Vice Chair Johnson thanked the 103 attendees for joining the **Montclair Chamber of Commerce** at its Firefighter Recognition Luncheon last week and thanked Fire Chief Pohl for his help; announced the upcoming Police Officer Recognition Luncheon in May; announced that **Chino Basin Water Conservation District** is hosting a Time Capsule event on January 18th at 11:00 a.m. and a ribbon cutting event at **Al Pastor Taqueria** on the same day at noon; announced a ribbon cutting event at **Schematch Educational Foundation** on January 24th at noon; and announced the grand opening and ribbon cutting luncheon for the relocation of the **Montclair Chamber of Commerce** at 9916 Central Ave, on February 1st.
2. Council Member/Director Lopez announced that on January 7th, the **Montclair High School** Booster Club honored seniors for their exemplary accomplishments, presented **Jonathan Navarro** with Coach of the Year award, and recognized a graduating senior that enlisted in the Army and was selected to play for the **Army West Point** football team; congratulated **Montclair Chamber of Commerce** for their turnout and congratulated Firefighter Metzo for earning the Firefighter of the Year award; and expressed his pride in his cousin **Monique Fodor,** whose mother received her military banner earlier this evening, for serving her country in the Navy.
3. Council Member/Director Ruh commented that he was unable to attend the Firefighter Recognition Luncheon as he was attending the **Gold Line Joint Powers Authority** meeting as the Treasurer; announced that the **Metropolitan Transportation Authority** will be celebrating Transit Equity Day on February 4, and will be offering free rides all day on public transportation in honor of **Rosa Parks**; recognized **Martin Luther King, Jr**; and remembered **KNXT** reporter **Ruth Ashton Taylor**, who passed away at the age of 101, speaking on her life and ties to Montclair by reporting on the historic opening of **Nordstrom** in the City.

F. Committee Meeting Minutes

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

1. Personnel Committee – December 18, 2023

XI. ADJOURNMENT

At 9:54 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