

**CITY OF MONTCLAIR
AGENDA FOR CITY COUNCIL, SUCCESSOR AGENCY,
MONTCLAIR HOUSING CORPORATION, MONTCLAIR
HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY
FOUNDATION MEETINGS**

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

November 7, 2016

7:00 p.m.

As a courtesy please silence your cell phones and other electronic devices while the meeting is in session. Thank you.

The CC/SA/MHC/MHA/MCF meetings are now available in audio format on the City's website at www.cityofmontclair.org and can be accessed the day following the meeting after 10:00 a.m.

- I. CALL TO ORDER** – City Council (CC), Successor Agency (SA) Board of Directors, Montclair Housing Corporation (MHC) Board of Directors, Montclair Housing Authority (MHA) Commissioners, and Montclair Community Foundation (MCF) Board of Directors

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 Employee and Promotees

VI. PUBLIC COMMENT

This section is intended to provide members of the public with an opportunity to comment on any subject that does not appear on this agenda. Each speaker will be afforded five minutes to address the City Council Members, Successor Agency Board of Directors, Montclair Housing Corporation Board of Directors, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors (Acting Bodies). (Government Code Section 54954.3)

Under the provisions of the Brown Act, the Acting Bodies are prohibited from taking action on items not listed on the agenda.

VII. PUBLIC HEARINGS – None

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VIII. CONSENT CALENDAR

A. Approval of Minutes

1. Minutes of the Regular Joint Council/Successor Agency Board/MHC Board/MHA Commission/MCF Board Meeting of October 17, 2016 [CC/SA/ MHC/MHA/MCF]

B. Administrative Reports

1. Consider Declaring Unclaimed Bicycles in Police Custody as Surplus and Available for Donation to the Bikes 4 Vets Project Inland Empire [CC] 4
2. Consider Approval of Warrant Register and Payroll Documentation [CC] 7

C. Agreements

1. Consider Approval of Agreement No. 16-101 with I-10 Towing and Recovery for Vehicles Towed and Stored at the City’s Impound Lot Under California Vehicle Code Section 14602.6, the 30-Day Impound Law [CC] 8

2. Consider Approval of Agreement No. 16-102 with the City of Upland Amending the Term of Agreement No. 13-100 for Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid Through Mutual Agreement to Vacate Service Boundaries [CC]

Consider Authorizing the City Manager to Execute All Documents on Behalf of the City of Montclair in Relation to Implementation of Agreement No. 16-102 [CC]

Consider Authorizing an Appropriation of Up to \$80,516 from the General Fund to Cover Wage and Benefit Costs for Up to Three Firefighter-Paramedic Positions [CC] 23

D. Resolutions

1. Consider Adoption of Resolution No. 16-3138 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges [CC] 36

2. Consider Approval of Agreement No. 16-103, Administering Agency-State Master Agreement No. 08-5326F15 with the Department of Transportation for the Central Avenue Bridge Rehabilitation at the Union Pacific Railroad Project [CC]

Consider Approval of Agreement No. 16-104, Program Supplement Agreement No. 009-F with the Department of Transportation for the Central Avenue Bridge Rehabilitation at the Union Pacific Railroad Project [CC]

Consider Adoption of Resolution No. 16-3139 Authorizing Mayor Paul M. Eaton To Sign Administering Agency-State Master Agreement No. 08-5326F15 (City Agreement No. 16-103) and Program Supplement Agreement No. 009-F (City Agreement No. 16-104) [CC] 43

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE — None

XI. COMMUNICATIONS

A. City Department Reports

1. City Clerk’s Office — November 8, 2016 Election Information
2. Police Department — No Shave November Participation and Information

B. City attorney

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

Mundo v. Montclair

2. Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with Designated Labor Negotiator Edward C. Starr

Agency: City of Montclair

Employee Management

Associations: Montclair City Confidential Employees Association
Montclair General Employees Association
Montclair Fire Fighters Association
Montclair Police officers Association

C. City Manager/Executive Director

D. Mayor/Chairman

E. Council/SA Board/MHC Board/MHA Commissioners/MCF Board

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

1. Minutes of Personnel Committee Meeting of October 17, 2016 [CC] 79
2. Minutes of Public Works Committee Meeting of October 20, 2016 [CC] 80

XII. ADJOURNMENT OF SUCCESSOR AGENCY BOARD OF DIRECTORS, MONTCLAIR HOUSING CORPORATION BOARD OF DIRECTORS, MONTCLAIR HOUSING AUTHORITY COMMISSIONERS, AND MONTCLAIR COMMUNITY FOUNDATION BOARD OF DIRECTORS

(At this time, the City Council will meet in Closed Session regarding pending litigation and labor negotiations.)

XIII. CLOSED SESSION ANNOUNCEMENTS

XIV. ADJOURNMENT OF CITY COUNCIL

The next regularly scheduled joint City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation meeting will be held on Monday, November 21, 2016, at 7:00 p.m. in the Council Chambers.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the Acting Bodies after distribution of the Agenda packet are available for public inspection in the City Clerk's office at 5111 Benito Street, Montclair, California, between 7:00 a.m. and 6:00 p.m., Monday through Thursday.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's office at (909) 625-9416. Notification 48 hours 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. Phillips, Deputy 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 bulletin board adjacent to the north door of Montclair City Hall, 5111, Benito Street, Montclair, California, on Thursday, November 3, 2016.

**MONTCLAIR POLICE DEPARTMENT
UNCLAIMED BICYCLES LIST
NOVEMBER 2016**

TAG NO.	DESCRIPTION	SERIAL NO.	CASE #	STATUS
1	WHITE/BROWN ELECTRA BIKE (351A)	ELC2H04619	15-0466	F
2	GREEN FREE SPIRIT BIKE (284A)	C500109883	15-2902	F
3	BLUE NEXT POWER CLIMBER BIKE (371D)	UNK	15-3464	SK
4	BLACK BMX BIKE (312A)	HTD1836148	15-3622	F
5	BLUE/WHITE NEXT BIKE (371C)	UNK	15-3651	SK
6	BLACK BMX STYLE BIKE (355BB)	UNK	15-4407	SK
7	GREY BMX STYLE BIKE (332D)	UNK	15-4970	SK
8	BLUE NISHIKI OLYMPIC ROAD BIKE (332C)	UNK	15-5381	SK
9	BLUE MAGNUM BIKE (338A)	UNK	15-5826	SK
10	MERCIER GALAXY TOUR BIKE (364K)	L120900874	15-5853	F
11	BLACK HUFFY BACK WATER MOUNTAIN BIKE (142A)	KG5569781722F5270	15-6093	F
12	SILVER/BLUE SHIMANO MOUNTAIN BIKE (356A)	48024702	15-6337	SK
13	SILVER/BLUE BEACH CRUISER BIKE (376A)	UNK	15-6347	SK
14	BLACK TREK MOUNTAIN BIKE (338F)	WTU334C5354H	16-0166	F
15	BLUE MAGNA MOUNTAIN BIKE (322A)	UNK	16-0504	SK
16	SILVER/BLUE MONGOOSE BIKE (365A)	6NGNPC5D08156	16-0518	SK
17	SILVER BMX BIKE (361A)	UNK	16-0558	SK
18	GREY MOUNTAIN BIKE (322A)	G1504047973	16-0747	SK
19	ORANGE TREK BIKE (371C)	UNK	16-1067	SK
20	BLACK/BLUE STREET BIKE (272A)	UNK	16-1090	F
21	GREEN/ORANGE MEN'S MOUNTAIN BIKE (361A)	GS100720224	16-1168	SK
22	RED GIANT BIKE (336A)	UNK	16-1249	SK
23	GREEN HYPER HPR 26 MOUNTAIN BIKE (302B)	DMG07L1148	16-1300	SK
24	KENT GLENDALE BIKE (284A)	G532657	16-1349	F
25	PURPLE/BLACK/WHITE MOUNTAIN BIKE (363A)	UNK	16-1400	SK

**MONTCLAIR POLICE DEPARTMENT
UNCLAIMED BICYCLES LIST
NOVEMBER 2016**

TAG NO.	DESCRIPTION	SERIAL NO.	CASE #	STATUS
26	MAGNA MOUNTAIN BIKE (154G)	UNK	16-1552	SK
27	GREY HARO MOUNTAIN BIKE (355C)	32HAX5N0495	16-1839	SK
28	RED ROADMASTER MOUNTAIN BIKE (361A)	SNFSD12K74824	16-2151	SK
29	GREEN JAMIS MOUNTAIN BIKE (355A)	UNK	16-2244	SK
30	WHITE SCHWINN BIKE (341A)	13A98582	16-2351	SK
31	WHITE SMITH & WESSON BIKE (371B)	UNK	16-2524	SK
32	BLUE MONGOOSE BIKE (381A)	SNFSD15BP679	16-2528	SK
33	SCHWINN MOUNTAIN BIKE (317A)	UNK	16-2538	F
34	BLACK BEACH CRUISER BIKE (387A)	UNK	16-2566	SK
35	GREEN ROADMASTER MOUNTAIN BIKE (272A)	SNFSD158H64847	16-2980	F
36	BLACK TREK BIKE (272A)	WTU101C3399K	16-3172	F
37	STAINLESS STEEL BMX BIKE (309A)	UNK	16-3668	SK
38	BLUE MAGNA BIKE (381B)	DJDD033869	16-3741	SK

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION **DATE:** November 7, 2016
SECTION: ADMIN. REPORTS
ITEM NO.: 2
FILE I.D.: FIN540
DEPT.: ADMIN. SVCS.

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

BACKGROUND: Mayor Pro Tem Raft has examined the Warrant Register dated November 7, 2016, and the Payroll Documentation dated October 16, 2016, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated November 7, 2016, totals \$3,921,580.75; and the Payroll Documentation dated October 16, 2016, totals \$680,776.43 gross, with \$462,377.19 net being the total cash disbursement.

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

Prepared by: Andrea M Phillips Fiscal Impact Finance Review: Michael Piotrowski
Proofed by: Stephanie Hick Reviewed and Approved By: Michael Piotrowski

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 16-101 WITH I-10 TOWING AND RECOVERY FOR VEHICLES TOWED AND STORED AT THE CITY'S IMPOUND LOT UNDER CALIFORNIA VEHICLE CODE SECTION 14602.6, THE 30-DAY IMPOUND LAW	DATE: November 7, 2016
	SECTION: AGREEMENTS
	ITEM NO.: 1
	FILE I.D.: TOW050
	DEPT.: POLICE

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 16-101 with I-10 Towing and Recovery for vehicles towed and stored at the City's Impound Lot under California Vehicle Code Section 14602.6, the 30-day impound law. The proposed Agreement has been reviewed and approved by the City Attorney.

A copy of proposed Agreement No. 16-101 is attached for the City Council's review and consideration.

BACKGROUND: On September 23, 2016, the City terminated Agreement No. 11-66 with Pacific Truck and Auto Towing Inc., due to multiple violations of agreed upon terms within the contract. Specifically, Pacific Truck and Auto Towing Inc., violated a major agreed upon term of the contract when the company moved without notification from the City of Montclair to a location outside the City limits. This violation, along with others, of the company's business practices infringed upon the trust between the tow company and the City.

I-10 Towing and Recovery began its towing business on January 15, 2016. Although a relatively new towing company, it has established a strong reputation of conducting good business practices. Two of its current contracts are with AAA and Geico Insurance. I-10 Towing and Recovery has signed to a long-term lease agreement at 5391 Brooks Street in Montclair, which is the location previously occupied by Pacific Auto and Truck Towing Inc. I-10 Towing and Recovery is capable of performing "heavy towing" and has agreed to all terms listed in the contract, which mirror the terms with Dietz Towing Agreement No. 11-67 and the previous agreement with Pacific Auto and Truck Towing Inc.

If approved, Agreement No. 16-101 with I-10 Towing and Recovery would become effective November 21, 2016, and would remain in effect until terminated by either party, with or without cause, upon written notice to each party at least 30 days prior to the date specified for such termination.

FISCAL IMPACT: Should the City Council approve the proposed Agreement, annual revenue from the impound lot would continue to be approximately \$550,000.

Prepared by:	<u>B. VENTURA</u>	Fiscal Impact Finance Review:	<u>Michael Piotrowski</u>
Proofed by:	<u>Sharon P. Agajanian</u>	Reviewed and Approved By:	<u>R. Avels</u>

RECOMMENDATION: Staff recommends the City Council approve Agreement No.16-101 with I-10 Towing and Recovery for vehicles towed and stored at the City's Impound Lot under California Vehicle Code Section 14602.6, the 30 day impound law.

CITY OF MONTCLAIR

AGREEMENT FOR TOWING SERVICES

THIS AGREEMENT is made and effective as of _____, 2016, between the City of Montclair, a municipal corporation (hereinafter “City”) and I-10 Towing and Recovery Inc., a California corporation (hereinafter the “Official Police Tow Service” or “OPTS”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

RECITALS

- 1. The City desires to enter into an agreement with OPTS for tow truck services resulting from calls for service from or by the City.
- 2. The provisions of this Agreement shall apply only to the towing and storage of vehicles, contracted as a result of police activity or as requested by the City.
- 3. “Towing Operation” shall be defined as the activity of towing vehicles for compensation within the City. Towing operation includes the storing of vehicles and all other services performed as a result of towing.
- 4. In order to qualify for the status of, and be authorized to refer to itself as an Official Police Tow Service, it is necessary that OPTS accept the terms and conditions of this Agreement for Services.

AGREEMENT

1. TERM

This Agreement shall commence upon execution of this Agreement by both parties and continue in effect until terminated pursuant to the provisions of this Agreement.

2. SERVICES

OPTS shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full.

3. PERFORMANCE

OPTS shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all tasks described herein. OPTS shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of OPTS 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, including the authority to change the scope of services.

5. PAYMENT

(a) OPTS shall be compensated in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full.

(b) OPTS will submit invoices monthly for actual services performed. Said invoices shall detail all costs, rates and hours for individual tasks. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the OPTS's fees, it shall give written notice to OPTS within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. In the event this agreement is suspended or terminated as provided in Section 6 below, OPTS shall submit an invoice for any unbilled services within 30 days of the date of suspension or termination.

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, upon ten (10) days prior written notice to OPTS. Upon receipt of said notice, the OPTS 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 suspended or terminated pursuant to this Section, the City shall pay OPTS for services rendered up to the time of termination. Upon termination of the Agreement pursuant to this Section, the OPTS will submit an invoice within 30 days of the date of suspension or termination to the City pursuant to Section 5(b).

(c) OPTS may terminate this Agreement upon at least thirty (30) days written notice to City.

7. DEFAULT OF OPTS

The OPTS's failure to comply with any provision of this Agreement shall constitute a default. In the event that OPTS is in default under the terms of this Agreement, City shall have no obligation or duty to continue compensating OPTS for any work performed after the date of default and can terminate this Agreement immediately by written notice to the OPTS.

8. OWNERSHIP OF DOCUMENTS

(a) OPTS 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. OPTS 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. OPTS 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 OPTS. With respect to computer files, OPTS shall make available to the City, at the OPTS'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) Indemnification for Professional Liability. When the law establishes a professional standard of care for OPTS's services, to the fullest extent permitted by law, OPTS shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of OPTS, its officers, agents, employees or subcontractors (or any entity or individual that OPTS shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, OPTS shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses 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), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by OPTS or by any individual or entity for which OPTS is legally liable, including but not limited to officers, agents, employees or subcontractors of OPTS. Said indemnification shall include any claim that OPTS, or OPTS's employees or agents, are considered to be 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.

(c) General Indemnification Provisions. OPTS agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractors or other person or entity involved by, for, with, or on behalf of OPTS in the performance of this Agreement. In the event OPTS fails to obtain such indemnity obligations from others as required here, OPTS agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of OPTS and shall survive the termination of this Agreement or this section.

10. INSURANCE

(a) **Types of Required Coverages**

Without limiting the indemnity provisions of the Contract, the OPTS 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, OPTS 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 \$1,000,000 per occurrence for bodily injury, personal injury and property damage, and \$2,000,000 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 \$1,000,000 for bodily injury and property damage, each accident. If OPTS 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, 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 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 OPTS from waiving the right of subrogation prior to a loss. OPTS 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 OPTS, 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, OPTS 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

The coverage provided shall apply to the obligations assumed by the OPTS under the indemnity provisions of this contract.

(h) Failure to Maintain Coverage

OPTS 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 OPTS until OPTS 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 OPTS's expense, the premium thereon.

In the event that the OPTS's operations are suspended for failure to maintain required insurance coverage, the OPTS 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 OPTS'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, OPTS 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

OPTS 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.

11. INDEPENDENT OPTS

(a) OPTS 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 OPTS shall at all times be under OPTS'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 OPTS or any of OPTS's officers, employees, or agents, except as set forth in this Agreement. OPTS 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. OPTS shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

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

12. LEGAL RESPONSIBILITIES

The OPTS shall keep itself informed of all local, 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 OPTS 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 for the failure of the OPTS to comply with this Section.

13. UNDUE INFLUENCE

OPTS 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 OPTS, or from any officer, employee or agent of OPTS, 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 has responsibilities with respect to the subject matter of this Agreement 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 services to be performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by OPTS in performance of this Agreement shall be considered confidential and shall not be released by OPTS without City’s prior written authorization. OPTS, its officers, employees, agents, or subcontractors, 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 OPTS gives City notice of such court order or subpoena.

(b) OPTS shall promptly notify City should OPTS, its officers, employees, agents or subcontractors 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 OPTS and/or be present at any deposition, hearing, or similar proceeding. OPTS agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by OPTS. 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) OPTS covenants that neither he/she/it 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. OPTS 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 subcontractor.

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 5111 Benito Montclair, CA 91763 Attention: City Manager
To OPTS:	I-10 Towing and Recovery, Inc. 5391 Brooks Street Montclair, CA 91763 Attention: _____

17. ASSIGNMENT

The OPTS shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

18. LICENSES

At all times during the term of this Agreement, OPTS 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. ATTORNEY'S FEES

In the event any legal proceeding is instituted to enforce any term or provision of this agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the court to be reasonable.

20. GOVERNING LAW

The City and OPTS 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.

21. 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.

22. CONFIDENTIALITY

Information and materials obtained by the OPTS from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the OPTS for any purpose other than the performance of this Agreement.

23. DISCRIMINATION

The OPTS 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 OPTS agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

24. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF MONTCLAIR

I-10 TOWING AND RECOVERY INC.

By: _____
Paul M. Eaton, Mayor

By: _____
(signature)

Attest:

Andrea M. Phillips, Deputy City Clerk

(typed name)

(title)

Approved as to Form:

Diane E. Robbins, City Attorney

By: _____
(signature)

(typed name)

(title)

EXHIBIT A

SCOPE OF SERVICES

1. OPTS shall conduct business in an ethical orderly manner, endeavoring to obtain and keep the confidence of the community. Responses to calls for towing and/or service from the City shall be provided in a prompt and professional manner.

2. OPTS shall comply with all applicable laws and ordinances that regulate tow units and impounds, towing, illegally parked vehicles, and impounding vehicles.

3. Tow operators shall abide by the decisions of Police Officers and shall cooperate in removing hazards, illegally parked vehicles, and in impounding vehicles.

4. OPTS shall have capability of receiving calls from Police communications and dispatch tow units 24 hours per day, 365 days per year. Priority shall be given to calls from Police communication facilities. This priority service does not include nonhazardous citizen service calls made through Police communication facilities.

5. OPTS shall keep its storage lot(s) open Monday through Friday (excepting holidays) for releasing vehicles from 8:00 a.m. to 5:00 p.m. OPTS may, at its discretion, release vehicles between 5:00 p.m. and 8:00 a.m.

6. Storage lots must be fenced or otherwise secured for maximum security and reasonably lighted during the hours of darkness. It is the responsibility of OPTS to protect Police-stored/impounded vehicles under their control or within their facilities until the vehicles have either been properly released to their owners or disposed of through the legal process.

7. OPTS has the responsibility of safeguarding all articles left in impounded vehicles while under their control or within their facilities. All property left in vehicles shall be listed on the vehicle Impound/Storage Inventory Receipt. Any article removed for any reason shall be properly identified on the OPTS copy of the Impound/Storage Report.

The Impound/Storage Report shall be signed by the involved Officer. The tow operator shall also sign the report. Unless directed by a Police Department supervisor, OPTS shall not tow a vehicle without a signed Impound/Storage Report.

8. OPTS shall abide by all applicable ordinances and State and Federal statutes when disposing of unclaimed vehicles and property.

9. Any employee of OPTS who operates tow trucks and towing equipment shall be appropriately licensed and certified to operate such vehicles and equipment as required by California law.

10. OPTS shall maintain a storage facility within the geographic boundaries of the City and shall abide by all the laws that govern a business within the City, and shall meet and satisfy all business licensing requirements on a timely basis. Except for those vehicles

impounded at the City's Impound Lot, all vehicles towed and impounded pursuant to this Agreement shall be stored in said storage facility.

11. When a vehicle is towed as evidence to a crime, Officers shall designate on the Storage/Impound Report if the vehicle is related to the suspect, witness, or victim. Vehicles towed under this section shall be held and retained by OPTS until OPTS is notified in writing by the City that the vehicle is no longer needed as evidence.

(a) Any vehicles towed as evidence to a crime which are related to the suspect shall be charged all applicable administration, towing, and storage fees. Except as otherwise provided for in this section, fees shall not be charged on all other vehicles towed and stored under this paragraph.

(b) Responsible parties of vehicles belonging to victims or witnesses of a crime towed under evidence sections will be notified by the Police Department when their vehicle is ready for release. Upon verified notification, responsible parties have 72 hours to obtain their vehicles. After the 72 hours has expired, OPTS may charge storage and other applicable fees beginning on the first calendar day immediately following expiration of the 72-hour notice period.

12. When a vehicle is to be impounded for 30 days at the City's Police Impound Lot as determined by a Police Officer or other City employee, OPTS is to provide the towing service of the vehicle to the Police Impound Lot. Towing services will include the delivery and parking of towed vehicles in said Impound Lot, and shall follow the procedures established by the Montclair Police Department. The City will administer, process, and conduct the lien sale of vehicles stored at the Police Impound Lot, and will collect and retain all sale proceeds.

13. In the event that more than one tow service operates as an OPTS for the City, each OPTS shall accept the decision of the Chief of Police as it relates to the assignment of calls. The City will make a reasonable attempt to equally distribute the calls-for-service on a "rotation" basis; however, the City retains the right to assign calls at its discretion when it determines a particular service or equipment is required or an OPTS is convenient to the particular call for service. If the OPTS assigned a call for service is not on scene with the necessary equipment or service within 30 minutes from the time of call to OPTS (unless a delayed response is agreed upon by the City), the next OPTS on the rotation will be assigned the call, and the previous OPTS forfeits the call. In the event that the City and/or the general public experience displays of unprofessional, unqualified, unresponsive, and/or other questionable service by an OPTS, and such displays of inadequate service are reported to the City and found to be legitimate, the City, at its discretion, may elect to direct any or all calls for towing and/or service to a designated OPTS, and may maintain such designation until such time the competing OPTS can demonstrate to the City's satisfaction that it can appropriately serve the City and the general public.

14. Any changes in ownership, location, or form of doing business of OPTS shall be reported to the Chief of Police within 24 hours.

15. The City Manager or his designee shall have the authority to settle any claim or dispute involving the City and OPTS.

EXHIBIT B

SCHEDULE OF RATES AND CHARGES

1. OPTS shall provide, without charge or fee, towing and service calls for City-owned vehicles.

2. In the event a vehicle is towed and/or stored at the request of the City and it is later determined by City staff that the vehicle should not have been towed, OPTS shall not charge the City or third party for the towing or storage of said vehicle.

3. City shall pay to OPTS for towing services to the Police Impound Lot the following sums:

Vehicles requiring a Class A Tow Truck (GVWR less than 14,000 lbs.)	\$150.00
Vehicles requiring a Class B Tow Truck (GVWR of 14,001 – 19,501 lbs.)	\$170.00

Towing services will include the delivery and parking of towed vehicles in the Police Impound Lot and shall follow the procedures established by City staff.

OPTS shall not bill for the above towing services until 35 days after the vehicle is towed to the Police Impound Lot. City shall pay OPTS on a monthly basis.

The City will administer, process, and conduct the lien sale of vehicles stored at the Police Impound Lot and shall collect and retain all such fees and sale proceeds.

4. Rates and charges for all other towing and storage of vehicles resulting from police activity or otherwise in the performance of duties as an OPTS shall not exceed those rates known as “CHP” rates for the local area. In addition, OPTS shall not charge for a class of tow truck which has a higher rate than the class of tow truck required. For example, if a vehicle can be towed by a Class A Tow Truck, but OPTS chooses to tow the vehicle with a Class B Tow Truck, OPTS can only charge the rate for a Class A Tow Truck.

Rates and charges shall be posted in the office of OPTS, visible to the public, and all bills shall be itemized.

5. Unless otherwise provided herein, including paragraph 11 of Exhibit A, OPTS shall collect and retain all towing and storage fees for any vehicles towed to its facilities. In addition, and as authorized by state and local laws, or court of competent jurisdiction, OPTS shall administer, process, and conduct the lien sale of vehicles in storage at its facilities pursuant to the applicable provisions of the California Vehicle Code and to the provisions of this Agreement, and shall collect and retain all such fees and sale proceeds.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 16-102 WITH THE CITY OF UPLAND AMENDING THE TERM OF AGREEMENT NO. 13-100 FOR JOINT SHARING OF FIRE DEPARTMENT COMMAND STAFF AND EXPANSION OF AUTOMATIC AND MUTUAL AID THROUGH MUTUAL AGREEMENT TO VACATE SERVICE BOUNDARIES

DATE: November 7, 2016

SECTION: AGREEMENTS

ITEM NO.: 2

FILE I.D.: FRDO060

DEPT.: CITY MGR.

CONSIDER AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS ON BEHALF OF THE CITY OF MONTCLAIR IN RELATION TO IMPLEMENTATION OF AGREEMENT NO. 16-102

CONSIDER AUTHORIZING AN APPROPRIATION OF UP TO \$80,516 FROM THE GENERAL FUND TO COVER WAGE AND BENEFIT COSTS FOR UP TO THREE FIREFIGHTER-PARAMEDIC POSITIONS

REASON FOR CONSIDERATION: At its September 26, 2016, regularly scheduled meeting, the Upland City Council elected to terminate Agreement No. 13-100, a Memorandum of Understanding between the Cities of Montclair and Upland for joint sharing of Fire Department command staff and expansion of automatic mutual aid through mutual agreement to vacate service boundaries.

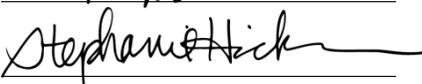
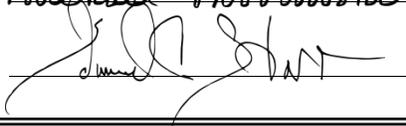
The Montclair City Manager received written correspondence from the Upland City Manager, dated October 6, 2016, providing Upland's notice of intent to terminate Agreement No. 13-100 between the Cities of Montclair and Upland within forty-eight (48) days of the date of the notice.

In order to expedite the termination of Agreement No. 13-100 between the Cities of Upland and Montclair, City staff proposes amending the term of Agreement No. 13-100.

A copy of proposed Agreement No. 16-102 amending Agreement 13-100 is attached for the City Council's review and consideration.

BACKGROUND: On December 16, 2013, the Montclair City Council approved Agreement No. 13-100, a Memorandum of Understanding between the Cities of Montclair and Upland for Joint Sharing of Fire Department Command Staff and Expansion of Automatic Mutual Aid through Mutual Agreement to Vacate Service Boundaries. This Agreement set into action a two-year pilot program that was intended to determine the feasibility and practicality of combining Fire Department

Prepared by:  Fiscal Impact
Finance Review: 

Proofed by:  Reviewed and
Approved By: 

Command/Administrative structures into one single structure under direction of a jointly designated Fire Chief.

On May 4, 2015, the City Council approved Agreement No. 15-27 amending Agreement No. 13-100 to include expansion of shared-cost positions to include nonsafety administrative personnel and a reformulation in the proportionate formula for shared costs for the Fire Chief position. On December 7, 2015, the Montclair City Council approved Agreement No. 15-94, extending the term of Agreement No. 13-100 in order to fully implement all aspects of the two-year pilot program.

During the term of Agreement No. 13-100, the Cities of Montclair and Upland have experienced continued fiscal and operational efficiencies within the Montclair and Upland fire service area, improved access to service resources, and maintained and increased the quality of fire protection and emergency medical services offered by both Cities.

This has been achieved by a phased approach towards full implementation of the pilot program aimed at fully integrating the Fire Department Command/Administrative structures of Montclair and Upland into one single structure under direction of a jointly designated Fire Chief. Long-term, the overarching goal was to establish a joint powers authority (JPA) to fully administer all aspects of the fire service function including command, administration, training, and operations.

IMPLEMENTATION OF PHASES ONE, TWO, THREE, AND FOUR OF PILOT PROGRAM

Phase One: Command Staff Sharing. During the first phase of the pilot program, the Montclair and Upland Fire Departments respectively implemented the intent of Agreement No. 13-100 by providing fire protection and emergency medical services under the direction of a unified Command Structure.

Command staff sharing was implemented on January 1, 2014, as part of *Phase One* of the Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid protocols.

Phase Two: Suspension of Service Boundaries. During the second phase of the pilot program, the Cities of Montclair and Upland jointly entered into an agreement with Consolidated Fire Agencies of San Bernardino County (CONFIRE) for joint provision of dispatch services.

The transition to CONFIRE was pivotal for both agencies because it provided access to Automatic Vehicle Location (AVL) software, using GPS technology to identify and dispatch the apparatus closest to an incident. The use of AVL made it possible for the boundary drop concept to be fully implemented.

Suspension of service boundaries and integration of joint dispatch services occurred on June 23, 2014, as part of *Phase Two* of the Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid protocols.

Phase Three: Integration of Training and Policy Manuals. During the third phase of the pilot program, the Montclair and Upland Fire Departments began working towards the creation of joint Policy and Training Manuals to be implemented by both agencies.

The intent of creating joint Policy and Training Manuals was to streamline procedures and eliminate procedural inconsistencies that may affect the cohesion of both agencies.

The integration of policy manuals was considered by City staff from both Montclair and Upland to be a long term objective.

Phase Four: Expansion of Shared-cost Positions to include Nonsafety Administrative Personnel. In order to implement the fourth phase of the pilot program, the Montclair and Upland City Councils elected to amend Agreement No. 13-100, expanding the shared-cost positions to include nonsafety administrative personnel, a reformulation of the proportionate formulas for shared costs for the Fire Chief position (Montclair's proportionate share of wages was increased to 40 percent), and adjusting the functional areas assigned to the Deputy Fire Chief Positions.

These changes were implemented on May 5, 2015, as part of *Phase Four* of the Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid protocols.

UPLAND CITY COUNCIL ACTION

At its September 26, 2016 meeting, the Upland City Council elected to terminate Agreement No. 13-100, a Memorandum of Understanding between the Cities of Montclair and Upland for Joint Sharing of Fire Department Command Staff and Expansion of Automatic Mutual Aid through Mutual Agreement to Vacate Service Boundaries.

The City of Upland cited financial considerations as their reasoning for terminating the Agreement, as well as a change in direction from the Upland City Council.

Agreement No. 13-100 includes the following provisions allowing for its termination by either party:

- ***Section I. Term. Subsection A. Termination Without Cause:*** *Either Party may terminate this Agreement without cause by providing not less than six (6) months' prior written notice of its intent to terminate.*

Subsection A was included to allow for termination of the pilot program based on changes in direction for the provision of fire services by either the Montclair or Upland City Councils.

- ***Section I. Term. Subsection B. Termination for Cause:*** *Either City may terminate this Agreement for cause upon personally serving a written Notice to Cure Default, therein specifying the acts or omissions constituting the alleged default and demanding that the default be cured within thirty (30) days. If the default remains uncured or if there is no good faith attempt to cure the alleged default during said 30-day period, termination shall be effective at the end of the default cure period. Termination for cause shall include any of the following:*
 - *Failure by either City to meet any of its obligations provided for in this Agreement following receipt of a Notice to Cure Default; or*
 - *Any act of gross negligence committed by a respective City employee, official, or agent during the course of delivering service under the terms of this Agreement. For purposes of the above-provided period for cure of this specified condition of default, cure as to any completed act of gross negligence can include appropriate investigation and/or discipline*

of the respective employee, official, or agent and/or appropriate policy changes to address or minimize the occurrence of similar occurrences in the future.

Subsection B was included in the event that either Montclair or Upland determined their existed a default in the provision of fire services, or that either party was not meeting its obligations provided for in the Agreement.

Pursuant to **Section I. Term. Subsection A. Termination Without Cause**, the Montclair City Manager received written correspondence from the Upland City Manager, dated October 6, 2016, providing Upland's notice of intent to terminate Agreement No. 13-100.

Contained in Upland's notice of intent is a request that the Agreement be terminated within forty (48) days instead of the six (6) months stated under **Subsection A. Termination Without Cause** of Agreement No. 13-100.

In view of Upland's desire to separate fire services from Montclair and push for an early termination date, Montclair City staff recommends amending the term of Agreement No. 13-100 from its current termination date of December 31, 2017 to November 28, 2016, by adoption of proposed Agreement No. 16-102.

TERMINATION OF AGREEMENT NO. 13-100

Upon termination of Agreement No. 13-100, Montclair and Upland will cease all joint sharing of Fire Department command staff and nonsafety administrative personnel, suspension of service boundaries (except for mutual and automatic aide protocols), all cost sharing provisions, and all other provisions of the Agreement excluding separate agreements with CONFIRE.

In order to effectively unwind from provisions of Agreement No. 13-100, representatives from the Montclair City Manager's Office, Public Safety, and Administrative Services met to develop termination strategies including re-establishing an independent command structure, and training and operations programs.

Dispatch of Fire Services and Emergency Medical Calls

Pursuant to Agreement No. 13-100, Montclair and Upland mutually agreed to evaluate dispatch services for the purpose of fully implementing the boundary drop concept. To achieve this objective, Montclair and Upland evaluated alternative approaches to providing dispatch services by considering implementation of a jointly shared dispatch center utilizing dispatch services provided through the Consolidated Fire Agencies of San Bernardino County (CONFIRE) and other available dispatch agencies capable of satisfactorily meeting dispatch service requirements.

Prior to adoption of Agreement No. 13-100, Montclair and Upland both contracted with the City of Ontario's Communication Division for dispatch and communication services. As part of the Agreement to consolidate fire services, Montclair and Upland jointly elected to terminate dispatch services with the City of Ontario's Communication Division and transition to CONFIRE.

With the termination of Agreement No. 13-100, Montclair and Upland will, for the short term, continue utilizing CONFIRE for dispatch and communication services pursuant to Agreement No. 14-42, an Agreement between the City of Montclair and CONFIRE for dispatch and communication services. CONFIRE utilizes Automatic Vehicle

Location (AVL) software, which allows dispatchers to know where fire units are located in real time via a satellite surveillance system. This system allows for the closest fire unit available to be dispatched to an emergency regardless of jurisdictional geography.

Termination provisions of Agreement No. 14-42 require that a separating agency provide a twelve month notice of intent to terminate, issued in the 30-days prior to the start of a new fiscal year. Furthermore, the use of AVL software by CONFIRE to identify and dispatch the closest available fire apparatus, mandates that a limited form of boundary drop services remain in place unless and until separation from CONFIRE is achieved by either or both agencies.

In the interim period prior to any actual separation from CONFIRE, Montclair City staff will evaluate possible alternative approaches for the provision of dispatch services, apart from those provided by CONFIRE. From a practical and operational perspective, the termination of Agreement No. 13-100 makes the requirement for AVL software dispensable; therefore, contracting of dispatch services with CONFIRE may be found to be no longer beneficial nor economical.

Remaining with CONFIRE may continue as a feasible choice; however, alternatives for the provision of dispatch and communication services may include consolidation of dispatch services with the Montclair Police Department, contracting of dispatch services to other agencies capable of satisfactorily meeting dispatch service requirements or contracting fire services to other fire service agencies.

Fire Department Command and Nonsafety Administrative Shared-Staff Positions

Pursuant to Agreement No. 13-100, the Cities of Montclair and Upland adopted a shared-staff concept which included Command Staff and nonsafety administrative staff positions.

City of Montclair employees in Shared Command Staff positions are identified in **Table 1**, below:

**Table 1
Montclair Shared Command Staff Positions**

Deputy Fire Chief Training	One (1) position
Battalion Chief	Two (2) positions

City of Upland employees in Shared Command Staff positions are identified in **Table 2**, below:

**Table 2
Upland Shared Command Staff Positions**

Fire Chief	One (1) position
Deputy Fire Chief Operations	One (1) position
Fire Marshal	One (1) position
Battalion Chief	One (1) position

City of Montclair Shared nonsafety administrative positions are identified in **Table 3** below:

**Table 3
Montclair Shared Nonsafety Administrative Staff Position**

Emergency Services Coordinator/ Administrative Services Officer	One (1) position
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City of Upland Shared nonsafety administrative positions are identified in **Table 4** below:

**Table 4
Upland Shared Nonsafety Administrative Staff Position**

Senior Administrative Assistant	One (1) position
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Upon termination of Agreement No. 13-100, the Cities of Montclair and Upland will cease all joint sharing of Fire Department Command Staff and nonsafety administrative personnel, and employees occupying shared-staff positions shall continue as employees of the city in which they were employed prior to adoption of the Agreement.

POST AGREEMENT NO. 13-100 FIRE DEPARTMENT ORGANIZATIONAL CHANGES

Prior to the implementation of Agreement No. 13-100, the Montclair Fire Department was under the command of the Public Safety Director/Chief of Police, who over saw both the Montclair Police and Fire Departments. This structure was implemented in 2012 as part of the City Manager’s Fiscal Year 2011-12 Reorganization Element of City Departments. Throughout the term of the Agreement, the Public Safety Director worked jointly with the shared Fire Chief (an employee of Upland); the Public Safety Director also received regular reports from the Montclair Deputy Fire Chief regarding all Montclair Fire Department Matters.

As part of the termination of Agreement No. 13-100, City staff is proposing several Fire Department Command Structure and personnel changes designed to maintain and/or expand fire protection and emergency medical resources and services.

City staff is proposing readopting the Fire Department Command Staff structure that was adopted under the City Manager’s Fiscal Year 2011-12 Reorganization Element of City Departments.

Table 6, below, identifies the proposed Command Staff structure to be implemented upon termination Agreement No. 13-100.

**Table 6
Proposed Command Staff Positions**

Public Safety Director	One (1) position
Deputy Fire Chief/Battalion Chief*	One (1) position
Battalion Chief	Two (2) positions

Public Safety Director

The Public Safety Director will continue to oversee the Montclair Police and Fire Departments, as adopted under the City Manager's Fiscal Year 2011-12 reorganization of City Departments. Management and administrative service components will continue to fall under the authority of the Public Safety Director. The Public Safety Director is assigned responsibility to develop a comprehensive, unified command approach to delivering public safety services. As part of the termination of Agreement No. 13-100, the Public Safety Director, working with the City Manager, will evaluate the feasibility of providing Fire Department administrative oversight directly through personnel assigned to the Montclair Police Department, including the potential addition of a nonsafety administrative position with oversight and coordination responsibility over the Fire Department.

Deputy Fire Chief

Under direction of the Public Safety Director, the Deputy Fire Chief will oversee the overall day-to-day operations of the Fire Department and the training of Fire Department personnel and will officially serve as Fire Marshal.

The Deputy Fire Chief will work with the City Manager and Public Safety Director in evaluating the feasibility of providing Fire Department administrative oversight directly through personnel assigned to the Montclair Police Department. The objective of a unified Public Safety command structure is to deliver public safety services in an efficient, responsive, unified and coordinated manner, and to achieve cost savings by eliminating the duplication of administrative costs and requirements.

The Deputy Fire Chief will continue to represent the Fire Department at City Council Meetings and other Montclair Community events, along with the Public Safety Director.

****It should be noted that that upon termination of Agreement No. 13-100, the Deputy Fire Chief will be temporarily assigned as a Battalion Chief in order to maintain the three Battalion Chief shift configuration. Currently only two (2) Battalion Chief positions are filled. The purpose for delaying recruitment for a third full-time Battalion Chief is to provide an opportunity to evaluate providing administrative oversight directly through the Police Department, and to provide the City Manager an opportunity to explore and evaluate alternative fire and medical emergency delivery systems.***

Battalion Chiefs

Under direction from the Deputy Fire Chief, Battalion Chiefs will continue to plan, manage and coordinate the activities and operations of fire suppression shift personnel.

Battalion Chiefs will continue to coordinate fire operations, programs, training, and other activities; coordinate and administer contracts and joint services with other agencies; serve as chief field officer/duty command officer on assigned shift; and provide staff assistance to the Deputy Fire Chief.

Deputy Fire Marshall

City staff is proposing a departmental transfer of the Fire Inspector Classification (Deputy Fire Marshal) to the Economic-Community Development Department.* The Fire Inspector will work under the supervision of the Building Official/Code Enforcement

Manager. City Staff is recommending the departmental transfer in order to provide greater oversight and coordination between all code enforcement related classifications and to improve code related services to the development community.

The Fire Inspector position is a nonsafety supervisory position that participates in field inspections to ensure compliance with applicable federal, state, and local codes and requirements related to fire suppression; reviews plans for all new water supply distribution systems; provides comprehensive ongoing code review and development, including the preparation of City ordinances; and issues permits and collects fees required of persons engaged in construction, storage, handling, or use of hazardous materials.

****At the City Strategic Planning Session in February of 2011, the City Council directed that the City's Code Enforcement program be transferred from the Fire Department to the Community Development Department. On April 11, 2011, the City's Code Enforcement program was effectively transferred. Since then, the Fire Inspector has remained as the sole Code Enforcement position to remain in the Fire Department, under supervision of the Deputy Fire Chief.***

Fire Department Training and Program Development

In addition to the above mentioned Command Staff and personnel changes, City Staff is recommending developing advanced training programs for Fire Department personnel, as well as the establishment of a Firefighter-Paramedic I classification.

The goal of both recommendations is to certify Fire Department personnel to function in higher positions with the objective of: (1) developing in-house talent; (2) providing Fire Department personnel with the ability for future advancement; (3) establishing a contingency plan to address temporary vacancies; and, (4) establishing a process for quickly filling vacancies due to terminating actions including retirements and resignations.

Firefighter-Paramedic I Program

As part of the recommendation to develop advanced training programs, City Staff is further recommending the establishment of a Firefighter-Paramedic I classification, aimed at enhancing service response and developing a pool of future Firefighter-Paramedic candidates that may be promoted to fill vacant Firefighter-Paramedic positions, as well as to fill temporary leave-associated absences.

The Firefighter-Paramedic I would be an entry-level position below the Firefighter-Paramedic classification. Under general supervision, the Firefighter-Paramedic I would perform general firefighting duties and fire prevention activities, respond to emergency calls (including medical emergencies requiring EMT-Paramedic response), learn to operate and maintain firefighting apparatus and equipment, assist and participate in fire training programs, and fire station maintenance.

Firefighter-Paramedic I employees would be trained to move into Firefighter-Paramedic positions when vacancies occur, temporarily fill positions when personnel are off duty due to leave-associated absences, and temporarily fill positions when personnel are dispatched to strike teams.

The Firefighter Paramedic I classification would be similar to San Bernardino County's former Limited Term Firefighter classification, with the difference that the Montclair

position would be a full-time benefitted position trained to meet the requirements for a full-time Firefighter-Paramedic position.

Cities throughout California utilize Firefighter Trainee Programs including the Cities of Pasadena, Fresno, San Carlos, Oakland, El Centro, Glendale, Modesto, and Hayward.

Because Firefighter-Paramedic I is a new Montclair Fire Department classification, City staff would be required to meet and confer with the Montclair Fire Firefighters Association (MFFA) before activation of the classification. As an interim and temporary measure and in the event the City and MFFA are unable to agree to terms on the Firefighter-Paramedic I classification, City Staff is proposing hiring one additional Firefighter-Paramedic (current authorization is six) for the present. This position would be used to augment services and be available to fill a vacancy anticipated to occur from upward promotion in relation to a current recruitment to fill two Fire Engineer vacancies.

Concurrent with the recruitment to fill the Fire Engineer vacancies, the City is also recruiting for additional Firefighter-Paramedics. Hiring recommendations from this latter recruitment will be made to fill up to three Firefighter-Paramedic I positions or, if necessary, up to three Firefighter-Paramedic positions based on the requirements of the organization and the direction of negotiations with MFFA.

FISCAL IMPACT: In Fiscal Year 2015-2016, the Montclair City Council allocated approximately \$4,431,893 for Fire Department operations, including \$3,858,149 for wages and benefits.

Under Agreement No. 13-100 the Cities of Montclair and Upland shared-costs for the following Command Staff and nonsafety administrative positions as identified on **Table 6**, below:

Table 6
Shared Cost Command Staff and Nonsafety Administrative Positions

Fire Chief	One (1) position	Upland
Deputy Fire Chief Operations	One (1) position	Upland
Fire Marshal	One (1) position	Upland
Senior Administrative Assistant	One (1) position	Upland
Emergency Services Coordinator/Administrative Services Officer	One (1) position	Montclair

Pursuant to terms and conditions of Agreement No. 13-100, Montclair and Upland proportionately share costs of wages and benefits (exclusive of benefit costs identified in Agreement No. 13-100 and the Fire Chief position) for positions subject to cost sharing provisions: Upland's proportionate share of costs is sixty-seven percent (67%); Montclair's proportionate share of costs is thirty-three percent (33%).

For the Fire Chief position, Upland's proportionate share of costs is sixty percent (60%) and Montclair's proportionate share of costs is forty percent (40%).

In total, for Fiscal Year 2015–2016 the cost of wages and benefits for the five (5) shared-cost positions equaled \$622,657. The City of Montclair reimbursed the City of Upland approximately \$148,773 for the shared-cost positions, and received a benefit from the City of Upland of approximately \$473,884 in shared staff time.

Upon termination of Agreement No. 13–100, the City of Montclair will no longer be responsible for reimbursement costs to the City of Upland and will no longer receive a benefit from the City of Upland for the shared-cost positions.

Implementation of the proposed Fire Department Organizational changes would result in the following costs:

Battalion Chief Position: Hiring a third Battalion Chief to fill the vacancy left by the elimination of Upland’s shared Battalion Chief position would result in an annual cost of approximately \$274,790 when calculating wages and benefits at E Step, and an annual cost of roughly \$228,970 at A Step, assuming a 3% at 50 CalPERS retirement formula. Assuming a 3% at 55 CalPERS retirement formula, the Battalion Chief position would result in an estimated annual cost of \$167,927 when calculating wages and benefits at E Step, and \$140,087 at A Step.

However, the City Manager is recommending against hiring a third Battalion Chief at this time. Instead, the Deputy Fire Chief would be temporarily assigned to shift as a Deputy Fire Chief/Battalion Chief in order to maintain the three Battalion Chief shift configuration. Delaying recruitment would provide an opportunity for the City Manager to evaluate providing administrative oversight of the Fire Department through the Police Department and provide the City Manager an opportunity to explore and evaluate alternative fire and medical emergency delivery systems. Therefore, there is no present impact related to a third Battalion Chief position. In the event the City Manager determines it is necessary to recruit for and hire a third Battalion Chief, direction will be sought from the City Council.

Firefighter-Paramedic I Classification: Introduction of up to three (3) Firefighter-Paramedic I positions would result in an estimated annual cost of \$88,137 (per position) when calculating wages and benefits at E Step, and an annual cost of approximately \$74,5984 (per position) at A Step, assuming a 2.7% at 57 CalPERS retirement formula. In total, three (3) Firefighter-Paramedic I positions at E Step would cost an estimated \$264,411 annually – A step would cost approximately \$223,782 annually.

The annual estimated cost for up to three Firefighter-Paramedic positions is \$309,804.

Based on the above fiscal impact analysis, the City Manager anticipates that the immediate annual cost to the General Fund for up to three Firefighter-Paramedic I positions is not anticipated to exceed \$264,411, or \$132,205 for the balance of Fiscal Year 2016–17. The annual cost to add up to three Firefighter-Paramedic positions is \$309,804, or \$154,902 for the balance of Fiscal Year 2016–17.

However, Montclair will also realize annual savings of approximately \$148,773, reimbursed to Upland for shared cost services. Therefore, the maximum annual fiscal impact to add three Firefighter Paramedics is \$161,031 (\$309,804 – \$148,773). For the balance of Fiscal Year 2016–17, the maximum annual cost to the General Fund is not expected to exceed \$80,516 ($\$161,031 \div 2 = \$80,516$).

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

1. Approve Agreement No. 16-102 amending the term of Agreement No. 13-100 between the Cities of Montclair and Upland for the Joint Sharing of Command Staff and Expansion of Automatic and Mutual Aid through Mutual Agreement to Vacate Service Boundaries.
2. Authorize the City Manager to execute all documents on behalf of the City of Montclair in relation to implementation of Agreement No. 16-102.
3. Authorize an appropriation of up to \$80,516 from the General Fund to cover wage and benefit costs for up to three Firefighter-Paramedic positions.

**THIRD AMENDMENT TO MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITIES OF MONTCLAIR AND UPLAND
FOR JOINT SHARING OF FIRE DEPARTMENT COMMAND STAFF
AND EXPANSION OF AUTOMATIC AND MUTUAL AID THROUGH MUTUAL
AGREEMENT TO VACATE SERVICE BOUNDARIES**

THIS AGREEMENT ("Third Amendment") amending Agreement No. 13-100 ("Agreement"), a Memorandum of Understanding Between the Cities of Montclair and Upland for Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid Through Mutual Agreement to Vacate Service Boundaries is entered into as of this _____ day of _____ 2016, by and between the CITY OF MONTCLAIR, a municipal corporation, hereinafter referred to as "Montclair," and the CITY OF UPLAND, a municipal corporation, hereinafter referred to as "Upland." Montclair and Upland may be referred to in this Agreement individually as "Montclair" or "Upland" and jointly as "Cities" or "Parties."

WITNESSETH:

WHEREAS, Montclair and Upland previously entered into the Agreement, effective January 1, 2014 and that said Agreement was amended in May of 2015 (First Amendment - Agreement No. 15-27) and again in December of 2015 (Second Amendment - Agreement No. 15-94); and

WHEREAS, the Parties desire to amend the term of the Agreement as set forth in this Third Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained in Agreement as amended, the Parties agree to the following revision.

Section I. Term.

The first paragraph of Section I. Term of the Agreement, as amended, is hereby replaced in its entirety with the following:

Term. The term of this Agreement shall be effective January 1, 2016 through November 28, 2016, unless mutually extended or sooner terminated as provided herein.

PROVISIONS OF AGREEMENT. All other terms, conditions, and provisions of the Agreement and First and Second Amendments, to the extent not modified with this Third Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

CITY OF UPLAND

Dated: _____

By: _____

Ray Musser
Mayor

Attest:

Dated: _____

By: _____

Jeannette Vagnozzi,
Deputy City Manager/
City Clerk

Approved as to Form:

Dated: _____

By: _____

Richard L. Adams II
City Attorney

CITY OF MONTCLAIR

Dated: _____

By: _____

Paul M. Eaton
Mayor

Attest:

Dated: _____

By: _____

Andrea M. Phillips
Deputy City Clerk

Approved as to Form:

Dated: _____

By: _____

Diane E. Robbins
City Attorney

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 16-3138 AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH CHARGES

DATE: November 7, 2016

SECTION: RESOLUTIONS

ITEM NO.: 1

FILE I.D.: STB300-17

DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: Staff has identified 212 sewer and trash accounts in the odd-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien.

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

The 212 liens presented for approval are for accounts that are at least 90 days delinquent.

FISCAL IMPACT: Recoverable amount is \$56,029.26, plus \$4,452.00 for release of lien fees, plus \$10,600.00 in lien fees, for a total of \$71,081.26.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 16-3138 authorizing placement of liens on certain properties for delinquent sewer and trash charges as listed on Exhibit A of said Resolution.

Prepared by:		Fiscal Impact Finance Review:	
Proofed by:		Reviewed and Approved By:	

RESOLUTION NO. 16-3138

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 212 sewer and/or trash accounts on which there are delinquencies in excess of 90 days; and

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

WHEREAS, the owners of these properties were notified on October 6, 2016, that their delinquent accounts are subject to causing a lien to be placed on their properties for settlement of such delinquencies; and that such liens would be considered for approval by the Montclair City Council on Monday, November 7, 2016.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair approves the placement of liens on the properties and in the amounts specified in Exhibit A, entitled *Report of Delinquent Civil Debts - November 2016*, attached hereto.

BE IT FURTHER RESOLVED that the Deputy 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, 2016.

Mayor

ATTEST:

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 16-3138 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, 2016, and that it was adopted by the following vote, to-wit:

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

Andrea M. Phillips
Deputy City Clerk

Exhibit A to Resolution No. 16-3138
Report of Delinquent Civil Debts — November 2016

Street No.	Street	Account Type	Delinquency	Lien Fee	Release of Lien Fee	Total Lien Amount
4334	Alamitos Street	Residential	\$ 422.38	\$ 21.00	\$ 50.00	\$ 493.38
5356	Alamitos Street	Residential	237.65	21.00	50.00	308.65
5634	Alamitos Street	Residential	208.99	21.00	50.00	279.99
4667	Allesandro Street	Residential	237.65	21.00	50.00	308.65
4575	Allesandro Street	Residential	237.85	21.00	50.00	308.85
9825	Amherst Avenue	Residential	234.69	21.00	50.00	305.69
9910	Amherst Avenue	Residential	237.65	21.00	50.00	308.65
5105	Aspen Drive	Residential	245.06	21.00	50.00	316.06
9934	Bel Air Avenue	Senior	220.96	21.00	50.00	291.96
9939	Bel Air Avenue	Residential	237.64	21.00	50.00	308.64
9945	Bel Air Avenue	Residential	234.20	21.00	50.00	305.20
9982	Bel Air Avenue	Residential	237.65	21.00	50.00	308.65
9992	Bel Air Avenue	Residential	332.37	21.00	50.00	403.37
4400	Benito Street	Residential	237.65	21.00	50.00	308.65
4460	Benito Street	Residential	237.65	21.00	50.00	308.65
5138	Benito Street	Residential	237.34	21.00	50.00	308.34
5389	Benito Street	Senior	238.21	21.00	50.00	309.21
5429	Benito Street	Residential	237.65	21.00	50.00	308.65
5568	Benito Street	Residential	211.51	21.00	50.00	282.51
5590	Benito Street	Residential	369.79	21.00	50.00	440.79
9656	Benson Avenue	Residential	238.76	21.00	50.00	309.76
9844	Benson Avenue	Residential	333.38	21.00	50.00	404.38
5382	Berkeley Street	Residential	237.65	21.00	50.00	308.65
9512	Bolton Avenue	Residential	211.51	21.00	50.00	282.51
9598	Bolton Avenue	Residential	237.65	21.00	50.00	308.65
5510	Bonnie Brae Street	Residential	292.28	21.00	50.00	363.28
5051	Brooks Street	Commercial	294.20	21.00	50.00	365.20
9851	Camarena Avenue	Residential	237.65	21.00	50.00	308.65
5438	Cambridge Street	Residential	366.71	21.00	50.00	437.71
5448	Cambridge Street	Residential	237.65	21.00	50.00	308.65
5458	Cambridge Street	Residential	237.62	21.00	50.00	308.62
5471	Cambridge Street	Residential	239.89	21.00	50.00	310.89
5606	Cambridge Street	Residential	238.76	21.00	50.00	309.76
9242	Camulos Avenue	Residential	238.74	21.00	50.00	309.74
9243	Camulos Avenue	Residential	237.65	21.00	50.00	308.65
9426	Camulos Avenue	Residential	237.87	21.00	50.00	308.87
9511	Camulos Avenue	Residential	237.65	21.00	50.00	308.65
9530	Camulos Avenue	Residential	237.65	21.00	50.00	308.65
9577	Camulos Avenue	Residential	237.30	21.00	50.00	308.30
9606	Camulos Avenue	Residential	333.38	21.00	50.00	404.38
9737	Camulos Avenue	Residential	237.65	21.00	50.00	308.65
9757	Camulos Avenue	Residential	237.66	21.00	50.00	308.66
9877	Camulos Avenue	Residential	264.38	21.00	50.00	335.38
10142	Camulos Avenue	Residential	211.51	21.00	50.00	282.51
10153	Camulos Avenue	Residential	303.22	21.00	50.00	374.22
10184	Camulos Avenue	Residential	290.72	21.00	50.00	361.72
5635	Caroline Street	Residential	302.16	21.00	50.00	373.16
5666	Caroline Street	Residential	238.32	21.00	50.00	309.32
9588	Carrillo Avenue	Residential	236.76	21.00	50.00	307.76
10067	Carrillo Avenue	Residential	218.20	21.00	50.00	289.20
9556	Central Avenue	Residential	237.64	21.00	50.00	308.64
9566	Central Avenue	Residential	237.77	21.00	50.00	308.77

Exhibit A to Resolution No. 16-3138
Report of Delinquent Civil Debts — November 2016

Street No.	Street	Account Type	Delinquency	Lien Fee	Release of Lien Fee	Total Lien Amount
9845	Central Avenue	Residential	\$ 237.66	\$ 21.00	\$ 50.00	\$ 308.66
9855	Central Avenue	Residential	238.35	21.00	50.00	309.35
10385	Central Avenue	Commerical	230.82	21.00	50.00	301.82
9775	Coalinga Avenue	Residential	238.27	21.00	50.00	309.27
9787	Coalinga Avenue	Residential	274.99	21.00	50.00	345.99
9795	Coalinga Avenue	Residential	237.65	21.00	50.00	308.65
9824	Coalinga Avenue	Senior	220.81	21.00	50.00	291.81
9875	Coalinga Avenue	Residential	237.66	21.00	50.00	308.66
9380	Columbine Avenue	Residential	264.84	21.00	50.00	335.84
9390	Columbine Avenue	Residential	407.06	21.00	50.00	478.06
9341	Del Mar Avenue	Residential	211.51	21.00	50.00	282.51
4324	Denver Street	Residential	237.34	21.00	50.00	308.34
4401	Denver Street	Senior	212.26	21.00	50.00	283.26
4405	Denver Street	Residential	227.73	21.00	50.00	298.73
4416	Denver Street	Residential	211.07	21.00	50.00	282.07
4435	Denver Street	Residential	211.51	21.00	50.00	282.51
4956	Denver Street	Residential	250.83	21.00	50.00	321.83
5401	Denver Street	Residential	330.97	21.00	50.00	401.97
5579	Denver Street	Residential	236.83	21.00	50.00	307.83
5616	Denver Street	Residential	237.65	21.00	50.00	308.65
5626	Denver Street	Residential	234.61	21.00	50.00	305.61
4461	El Morado Street	Residential	221.67	21.00	50.00	292.67
4806	El Morado Street	Residential	211.51	21.00	50.00	282.51
5168	El Morado Street	Residential	237.65	21.00	50.00	308.65
5416	El Morado Street	Residential	244.23	21.00	50.00	315.23
5429	El Morado Street	Residential	209.91	21.00	50.00	280.91
9410	Felipe Avenue	Residential	239.13	21.00	50.00	310.13
9762	Felipe Avenue	Residential	211.51	21.00	50.00	282.51
9020	Fremont Avenue	Senior	238.46	21.00	50.00	309.46
9567	Fremont Avenue	Residential	263.60	21.00	50.00	334.60
9823	Fremont Avenue	Residential	237.65	21.00	50.00	308.65
9847	Fremont Avenue	Residential	239.41	21.00	50.00	310.41
9844	Galena Avenue	Residential	234.78	21.00	50.00	305.78
9985	Geneva Avenue	Residential	237.65	21.00	50.00	308.65
10037	Geneva Avenue	Residential	237.65	21.00	50.00	308.65
4277	Granada Street	Residential	237.65	21.00	50.00	308.65
4307	Granada Street	Residential	231.46	21.00	50.00	302.46
4328	Granada Street	Residential	237.65	21.00	50.00	308.65
4426	Granada Street	Residential	231.68	21.00	50.00	302.68
4947	Granada Street	Residential	223.14	21.00	50.00	294.14
5422	Granada Street	Residential	237.20	21.00	50.00	308.20
5627	Granada Street	Residential	209.66	21.00	50.00	280.66
5628	Granada Street	Residential	237.65	21.00	50.00	308.65
9783	Greenwood Avenue	Residential	237.65	21.00	50.00	308.65
9845	Greenwood Avenue	Residential	234.78	21.00	50.00	305.78
4418	Harvard Street	Residential	237.65	21.00	50.00	308.65
4430	Harvard Street	Residential	237.64	21.00	50.00	308.64
4468	Harvard Street	Residential	398.26	21.00	50.00	469.26
4843	Harvard Street	Residential	249.53	21.00	50.00	320.53
4883	Harvard Street	Residential	211.91	21.00	50.00	282.91
5462	Harvard Street	Residential	376.17	21.00	50.00	447.17
5585	Harvard Street	Residential	236.65	21.00	50.00	307.65

Exhibit A to Resolution No. 16-3138
Report of Delinquent Civil Debts — November 2016

Street No.	Street	Account Type	Delinquency	Lien Fee	Release of Lien Fee	Total Lien Amount
511-43	Harvard Street	Multifamily	\$ 459.68	\$ 21.00	\$ 50.00	\$ 530.68
4568	Hawthorne Street	Residential	238.76	21.00	50.00	309.76
5521	Hawthorne Street	Residential	211.51	21.00	50.00	282.51
5553	Hawthorne Street	Residential	307.64	21.00	50.00	378.64
5596	Hawthorne Street	Residential	330.14	21.00	50.00	401.14
9607	Helena Avenue	Residential	237.62	21.00	50.00	308.62
4864	Highland Street	Commercial	263.60	21.00	50.00	334.60
4370	Holt Blvd.	Commercial	308.05	21.00	50.00	379.05
4667	Holt Blvd.	Commercial	224.90	21.00	50.00	295.90
4702	Holt Blvd.	Commercial	1,142.11	21.00	50.00	1,213.11
5190	Howard Street A & B	Multifamily	533.09	21.00	50.00	604.09
4585	James Street	Residential	255.44	21.00	50.00	326.44
9725	Kimberly Avenue	Residential	238.76	21.00	50.00	309.76
5430	La Deney Street	Residential	248.19	21.00	50.00	319.19
9773	Lehigh Avenue	Residential	248.19	21.00	50.00	319.19
9812	Lindero Avenue	Residential	211.51	21.00	50.00	282.51
10041	Lindero Avenue	Residential	237.65	21.00	50.00	308.65
10042	Lindero Avenue	Residential	211.51	21.00	50.00	282.51
9527	Marion Avenue	Residential	237.65	21.00	50.00	308.65
9547	Marion Avenue	Residential	336.45	21.00	50.00	407.45
9575	Mills Avenue	Residential	275.22	21.00	50.00	346.22
9995	Mills Avenue	Multifamily	748.13	21.00	50.00	819.13
4564	Mission Blvd.	Commercial	229.88	21.00	50.00	300.88
4564	Mission Blvd.	Residential	229.88	21.00	50.00	300.88
9056	Monte Vista Avenue	Residential	237.65	21.00	50.00	308.65
9886	Norton Avenue	Residential	211.51	21.00	50.00	282.51
4613	Olive Street	Residential	366.23	21.00	50.00	437.23
4644	Olive Street	Residential	249.18	21.00	50.00	320.18
4684	Olive Street	Residential	248.19	21.00	50.00	319.19
4322	Orchard Street	Residential	263.60	21.00	50.00	334.60
5512	Orchard Street	Residential	238.21	21.00	50.00	309.21
5596	Orchard Street	Residential	211.51	21.00	50.00	282.51
5690	Orchard Street	Residential	237.65	21.00	50.00	308.65
5257	Palo Verde Street	Senior	212.26	21.00	50.00	283.26
5405	Palo Verde Street	Residential	227.44	21.00	50.00	298.44
9585	Poulsen Avenue	Residential	240.91	21.00	50.00	311.91
9935	Poulsen Avenue	Residential	237.65	21.00	50.00	308.65
10043	Poulsen Avenue	Residential	237.65	21.00	50.00	308.65
9375	Pradera Avenue	Multifamily	1,064.96	21.00	50.00	1,135.96
9424	Pradera Avenue	Residential	296.98	21.00	50.00	367.98
10063	Pradera Avenue	Residential	273.13	21.00	50.00	344.13
4426	Princeton Street	Residential	237.62	21.00	50.00	308.62
4438	Princeton Street	Residential	255.79	21.00	50.00	326.79
4467	Princeton Street	Residential	237.47	21.00	50.00	308.47
4846	Princeton Street	Residential	223.70	21.00	50.00	294.70
9060	Ramona Avenue	Residential	237.77	21.00	50.00	308.77
9151	Ramona Avenue	Residential	211.51	21.00	50.00	282.51
9209	Ramona Avenue	Residential	220.28	21.00	50.00	291.28
9223	Ramona Avenue	Residential	237.34	21.00	50.00	308.34
9529	Ramona Avenue	Residential	333.38	21.00	50.00	404.38
9587	Ramona Avenue	Residential	248.19	21.00	50.00	319.19
9595	Ramona Avenue	Residential	237.65	21.00	50.00	308.65

Exhibit A to Resolution No. 16-3138
Report of Delinquent Civil Debts — November 2016

Street No.	Street	Account Type	Delinquency	Lien Fee	Release of Lien Fee	Total Lien Amount
9709	Ramona Avenue	Residential	\$ 211.51	\$ 21.00	\$ 50.00	\$ 282.51
9813	Ramona Avenue	Residential	209.77	21.00	50.00	280.77
9352	Rose Avenue	Residential	235.20	21.00	50.00	306.20
9413	Rose Avenue	Residential	289.56	21.00	50.00	360.56
9414	Rose Avenue	Residential	211.51	21.00	50.00	282.51
9434	Rose Avenue	Residential	237.65	21.00	50.00	308.65
9441	Rose Avenue	Residential	237.34	21.00	50.00	308.34
9720	Rose Avenue	Residential	323.47	21.00	50.00	394.47
9734	Rose Avenue	Residential	238.76	21.00	50.00	309.76
9866	Rose Avenue	Senior	212.26	21.00	50.00	283.26
9966	Rose Avenue	Residential	237.62	21.00	50.00	308.62
4560	Rosewood Street	Residential	237.65	21.00	50.00	308.65
4591	Rosewood Street	Residential	256.98	21.00	50.00	327.98
4683	Rosewood Street	Residential	237.65	21.00	50.00	308.65
4800	Rosewood Street	Residential	236.99	21.00	50.00	307.99
5085	Rosewood Street	Residential	333.38	21.00	50.00	404.38
5361	Rosewood Street	Residential	237.65	21.00	50.00	308.65
4164	Rudisill Street	Residential	237.65	21.00	50.00	308.65
4186	Rudisill Street	Residential	236.81	21.00	50.00	307.81
5360	Rudisill Street	Residential	263.60	21.00	50.00	334.60
5409	Rudisill Street	Residential	283.12	21.00	50.00	354.12
5421	Rudisill Street	Residential	263.60	21.00	50.00	334.60
4711	San Bernardino Street	Residential	237.65	21.00	50.00	308.65
4749	San Bernardino Street	Residential	252.01	21.00	50.00	323.01
4833	San Bernardino Street	Residential	213.48	21.00	50.00	284.48
4843	San Bernardino Street	Residential	237.65	21.00	50.00	308.65
4844	San Bernardino Street	Residential	263.60	21.00	50.00	334.60
4871	San Bernardino Street	Residential	204.79	21.00	50.00	275.79
5489	San Bernardino Street	Residential	269.50	21.00	50.00	340.50
4485	San Jose Street	Residential	263.60	21.00	50.00	334.60
4594	San Jose Street	Residential	274.21	21.00	50.00	345.21
4595	San Jose Street	Residential	264.09	21.00	50.00	335.09
5422	San Jose Street	Residential	263.74	21.00	50.00	334.74
5540	San Jose Street	Residential	345.57	21.00	50.00	416.57
5543	San Jose Street	Residential	239.38	21.00	50.00	310.38
5593	San Jose Street	Residential	333.38	21.00	50.00	404.38
4424	San Jose Street #05	Residential	221.87	21.00	50.00	292.87
4424	San Jose Street #10	Residential	237.65	21.00	50.00	308.65
4424	San Jose Street #11	Residential	211.51	21.00	50.00	282.51
4424	San Jose Street #14	Residential	539.46	21.00	50.00	610.46
4424	San Jose Street #18	Residential	237.65	21.00	50.00	308.65
4424	San Jose Street #27	Residential	237.65	21.00	50.00	308.65
10016	Santa Anita Avenue	Residential	255.79	21.00	50.00	326.79
4871	State Street	Commercial	217.94	21.00	50.00	288.94
9817	Sun Valley Drive	Residential	238.96	21.00	50.00	309.96
9514	Surrey Avenue	Residential	359.95	21.00	50.00	430.95
9528	Surrey Avenue	Residential	208.04	21.00	50.00	279.04
9617	Surrey Avenue	Residential	237.65	21.00	50.00	308.65
9554	Tudor Avenue	Residential	255.66	21.00	50.00	326.66
9824	Tudor Avenue	Residential	237.65	21.00	50.00	308.65
9834	Tudor Avenue	Residential	313.81	21.00	50.00	384.81
9222	Vernon Avenue	Residential	238.76	21.00	50.00	309.76

Exhibit A to Resolution No. 16-3138
 Report of Delinquent Civil Debts — November 2016

Street No.	Street	Account Type	Delinquency	Lien Fee	Release of Lien Fee	Total Lien Amount
9350	Vernon Avenue	Residential	\$ 222.69	\$ 21.00	\$ 50.00	\$ 293.69
9912	Vernon Avenue	Residential	252.07	21.00	50.00	323.07
4870	Yale Street	Residential	211.51	21.00	50.00	282.51
5447	Yale Street	Residential	263.60	21.00	50.00	334.60
		Total:	\$56,029.26	\$4,452.00	\$10,600.00	\$71,081.26

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 16-103, ADMINISTERING AGENCY-STATE MASTER AGREEMENT NO. 08-5326F15 WITH THE DEPARTMENT OF TRANSPORTATION FOR THE CENTRAL AVENUE BRIDGE REHABILITATION AT THE UNION PACIFIC RAILROAD PROJECT

DATE: November 7, 2016

SECTION: RESOLUTIONS

ITEM NO.: 2

FILE I.D.: STA120

DEPT.: PUBLIC WORKS

CONSIDER APPROVAL OF AGREEMENT NO. 16-104, PROGRAM SUPPLEMENT AGREEMENT NO. 009-F WITH THE DEPARTMENT OF TRANSPORTATION FOR THE CENTRAL AVENUE BRIDGE REHABILITATION AT THE UNION PACIFIC RAILROAD PROJECT

CONSIDER ADOPTION OF RESOLUTION NO. 16-3139 AUTHORIZING MAYOR PAUL M. EATON TO SIGN ADMINISTERING AGENCY-STATE MASTER AGREEMENT NO. 08-5326F15 (CITY AGREEMENT NO. 16-103) AND PROGRAM SUPPLEMENT AGREEMENT NO. 009-F (CITY AGREEMENT NO. 16-104)

REASON FOR CONSIDERATION: In order to use funds identified by the Federal Highway Bridge Program for the Central Avenue Bridge Rehabilitation at the Union Pacific Railroad Project, the state requires the City approve two agreements and adopt a resolution designating and authorizing an individual to sign the agreements. Agreements and resolutions require City Council approval.

Copies of proposed Resolution No. 16-3139 and proposed Agreement Nos. 16-103 and 16-104 are attached for the City Council's review and consideration.

BACKGROUND: In January 2013, the City applied for federal funding for the replacement of the Central Avenue Bridge over the Union Pacific Railroad tracks. The existing bridge was built in 1967, and is now considered structurally deficient and functionally obsolete. The intent of the grant request under the federal Highway Bridge Program (HBP) was to replace the existing structure. In June 2013, the City was advised that its grant application had been approved for \$17,166,600, including a local match of approximately 12 percent.

For the past three years the City and Caltrans have been discussing the scope of the project, particularly whether or not the bridge qualified for complete replacement or rehabilitation. That issue has been resolved for the moment with rehabilitation now the plan. In order to clarify the extent of rehabilitation work required, a feasibility study will first be performed.

Prepared by:  Fiscal Impact Finance Review: 

Proofed by:  Reviewed and Approved By: 

The state, acting as the federal representative for HBP funds, has authorized \$150,000 (\$132,795 federal and \$17,205 local match) for this feasibility study. In order to draw on these funds, a supplemental agreement with the state must be executed.

FISCAL IMPACT: The funds allocated by the Federal Highway Bridge Program for the Central Avenue Bridge Rehabilitation at the Union Pacific Railroad Project are \$132,795. The local match required by the City is \$17,205. Failure to sign the master and supplement agreements will prevent the City from being able to obtain reimbursement of the \$180,000 grant. The local match is included in the Measure I Expenditure Plan for the current year and was appropriated from Measure I in the 2013-14 Capital Improvement Program.

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

1. Consider approval of Agreement No. 16-103, Administering State-Agency Master Agreement No. 08-5326F15 with the Department of Transportation for the Central Avenue Bridge Rehabilitation at the Union Pacific Railroad Project.
2. Consider approval of Agreement No. 16-104, Program Supplement Agreement No. 009-F with the Department of Transportation for the Central Avenue Bridge Rehabilitation at the Union Pacific Railroad Project.
3. Consider adoption of Resolution No. 16-3139 authorizing Mayor Paul M. Eaton to sign Administering State-Agency Master Agreement No. 08-5326F15 (City Agreement No. 16-103) and Program Supplement Agreement No. 009-F (City Agreement No. 16-104).

RESOLUTION NO. 16-3139

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING MAYOR PAUL M. EATON TO SIGN ADMINISTERING AGENCY-STATE MASTER AGREEMENT NO. 08-5326F15 (CITY AGREEMENT NO. 16-103) AND PROGRAM SUPPLEMENT AGREEMENT NO. 009-F (CITY AGREEMENT NO. 16-104) FOR THE CENTRAL AVENUE BRIDGE REHABILITATION AT THE UNION PACIFIC RAILROAD PROJECT

WHEREAS, funds have been made available under the Federal Highway Bridge Program to the City for a feasibility study for the Central Avenue Bridge Rehabilitation at the Union Pacific Railroad Project; and

WHEREAS, before federal funds can be made available for a specific program project, the local agency and state are required to enter into an agreement to establish terms and conditions applicable to the local agency when receiving state funds for a designated project facility and to the subsequent operation and maintenance of that completed facility; and

WHEREAS, the state has prepared a master agreement for administering such contracts, known as Administering Agency-State Master Agreement No. 08-5326F15; and

WHEREAS, the state has prepared Program Supplement Agreement No. 009-F specific to the Central Avenue Bridge Rehabilitation at the Union Pacific Railroad Project; and

WHEREAS, the state requires the local agency to designate by resolution the appropriate City official to sign the supplement agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby designate Mayor Paul M. Eaton as the local agency official authorized to sign Administering Agency-State Master Agreement No. 08-5326F15 and Program Supplement Agreement No. 009-F.

APPROVED AND ADOPTED this XX day of XX, 2016.

Paul M. Eaton
Mayor

ATTEST:

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 16-XXXX 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, 2016, and that it was adopted by the following vote, to-wit:

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

Andrea M. Phillips
Deputy City Clerk

MASTER AGREEMENT
ADMINISTERING AGENCY-STATE AGREEMENT FOR
FEDERAL-AID PROJECTS

Agreement No. 16-103

08 City of Montclair

District Administering Agency

Agreement No. 08-5326F15

This AGREEMENT, is entered into effective this _____ day of _____, 20____, by and between City of Montclair, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE", and together referred to as "PARTIES" or individually as a "PARTY."

RECITALS:

1. WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and subsequent Transportation Authorization Bills to fund transportation programs; and
2. WHEREAS, the Legislature of the State of California has enacted legislation by which certain federal-aid funds may be made available for use on local transportation related projects of public entities qualified to act as recipients of these federal-aid funds in accordance with the intent of federal law; and
3. WHEREAS, before federal funds will be made available for a specific program project, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving federal funds for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any program project unless and until a project-specific "Authorization/Agreement Summary", herein referred to as "E-76" document, is approved by STATE and the Federal Highway Administration (FHWA).
2. The term "PROJECT", as used herein, means that authorized transportation related project and related activities financed in part with federal-aid funds as more fully-described in an "Authorization/ Agreement Summary" or "Amendment/Modification Summary", herein referred to as "E-76" or "E-76 (AMOD)" document authorized by STATE and the Federal Highway Administration (FHWA).
3. The E-76/E-76 (AMOD) shall designate the party responsible for implementing PROJECT, type of work and location of PROJECT.
4. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive federal-aid funds from/through STATE for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these federal funds that have been initially encumbered for PROJECT along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all of the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.
5. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT within ninety (90) days of receipt. The PARTIES agree that STATE may suspend future authorizations/obligations and invoice payments for any on-going or future federal-aid project performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned within that ninety (90) day period unless otherwise agreed by STATE in writing.
6. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of federal funds encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all of the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.
7. Federal, state and matching funds will not participate in PROJECT work performed in advance of the approval of the E-76 or E-76 (AMOD), unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT. ADMINISTERING AGENCY agrees that it will only proceed with the work authorized for that specific phase(s) on the project-specific E-76 or E-76 (AMOD). ADMINISTERING AGENCY further agrees to not proceed with future phases of PROJECT prior to receiving an E-76 (AMOD) from STATE for that phase(s) unless no further federal funds are needed or for those future phase(s).

8. That PROJECT or portions thereof, must be included in a federally approved Federal Statewide Transportation Improvement Program (FSTIP) prior to ADMINISTERING AGENCY submitting the "Request for Authorization".
9. ADMINISTERING AGENCY shall conform to all state statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of Federal Regulation (CFR) and 2 CFR part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.
10. If PROJECT is not on STATE-owned right of way, PROJECT shall be constructed in accordance with LOCAL ASSISTANCE PROCEDURES that describes minimum statewide design standards for local agency streets and roads. LOCAL ASSISTANCE PROCEDURES for projects off the National Highway System (NHS) allow STATE to accept either the STATE's minimum statewide design standards or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current LOCAL ASSISTANCE PROCEDURES.
11. If PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and, where appropriate, an executed Cooperative Agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights of way or work which affects STATE facilities.
12. When PROJECT is not on the State Highway System but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.
13. If PROJECT is using STATE funds, the Department of General Services, Division of the State Architect, or its designee, shall review the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and usability. ADMINISTERING AGENCY shall not award a PROJECT construction contract for these types of improvements until the State Architect has issued written approval stating that the PROJECT plans and specifications comply with the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.
14. ADMINISTERING AGENCY will advertise, award and administer PROJECT in accordance with the current LOCAL ASSISTANCE PROCEDURES unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT.

15. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. While consultants may perform supervision and inspection work for PROJECT with a fully qualified and licensed engineer, ADMINISTERING AGENCY shall provide a full-time employee to be in responsible charge of each PROJECT who is not a consultant.

16. ADMINISTERING AGENCY shall submit PROJECT-specific contract award documents to STATE's District Local Assistance Engineer within sixty (60) days after contract award. A copy of the award documents shall also be included with the submittal of the first invoice for a construction contract by ADMINISTERING AGENCY.

17. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Report of Expenditures" within one hundred eighty (180) days of project completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LOCAL ASSISTANCE PROCEDURES.

18. ADMINISTERING AGENCY shall comply with: (i) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

19. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit A attached hereto) and the NONDISCRIMINATION ASSURANCES (Exhibit B attached hereto). ADMINISTERING AGENCY further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of PROJECT-related work shall incorporate Exhibits A and B (with third party's name replacing ADMINISTERING AGENCY) as essential parts of such agreement to be enforced by that third party as verified by ADMINISTERING AGENCY.

ARTICLE II - RIGHTS OF WAY

1. No contract for the construction of a federal-aid PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.
2. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right of way for a PROJECT, including, but not limited to, being clear as certified or if said right of way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. The furnishing of right of way as provided for herein includes, in addition to all real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of relocation costs and damages to remainder real property not actually taken but injuriously affected by PROJECT. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights of way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.
3. Subject to STATE approval and such supervision as is required by LOCAL ASSISTANCE PROCEDURES over ADMINISTERING AGENCY's right of way acquisition procedures, ADMINISTERING AGENCY may claim reimbursement from federal funds for expenditures incurred in purchasing only the necessary rights of way needed for the PROJECT after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.
4. When real property rights are to be acquired by ADMINISTERING AGENCY for a PROJECT, said ADMINISTERING AGENCY must carry out that acquisition in compliance with all applicable State and Federal laws and regulations, in accordance with State procedures as published in State's current LOCAL ASSISTANCE PROCEDURES and STATE's Right-of-Way Manual, subject to STATE oversight to ensure that the completed work is acceptable under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
5. Whether or not federal-aid is to be requested for right of way, should ADMINISTERING AGENCY, in acquiring right of way for PROJECT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in 49 CFR, Part 24. The public will be adequately informed of the relocation payments and services which will be available, and, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his/her dwelling or to move his/her business or farm operation without at least ninety (90) days written notice from ADMINISTERING AGENCY. ADMINISTERING AGENCY will provide STATE with specific assurances, on each portion of the PROJECT, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that ADMINISTERING AGENCY's relocation program is realistic and adequate to provide orderly, timely and efficient relocation of PROJECT-displaced persons as provided in 49 CFR, Part 24.

6. ADMINISTERING AGENCY shall, along with recording the deed or instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, also record an Agreement Declaring Restrictive Covenants (ADRC) as a separate document incorporating the assurances included within Exhibits A and B and Appendices A, B, C and D of this AGREEMENT, as appropriate.

ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.

2. Upon ADMINISTERING AGENCY's acceptance of the completed federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and FHWA and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE and FHWA. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE and FHWA. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.

3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

ARTICLE IV - FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission (CTC).
2. STATE'S financial commitment of federal funds will occur only upon the execution of this AGREEMENT, the authorization of the project-specific E-76 or E-76 (AMOD), the execution of each project-specific PROGRAM SUPPLEMENT, and STATE's approved finance letter.
3. ADMINISTERING AGENCY may submit signed invoices in arrears for reimbursement of participating PROJECT costs on a regular basis once the project-specific PROGRAM SUPPLEMENT has been executed by STATE.
4. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six (6) months commencing after the funds are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six (6) month period.
5. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.
6. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.
7. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursement of actual allowable PROJECT costs already incurred and paid for by ADMINISTERING AGENCY.
8. Indirect Cost Allocation Plans/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.
9. Once PROJECT has been awarded, STATE reserves the right to de-obligate any excess federal funds from the construction phase of PROJECT if the contract award amount is less than the obligated amount, as shown on the PROJECT E-76 or E-76 (AMOD).
10. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

11. The estimated total cost of PROJECT, the amount of federal funds obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES hereto with a finance letter, a detailed estimate, if required, and approved E-76 (AMOD). Federal-aid funding may be increased to cover PROJECT cost increases only if such funds are available and FHWA concurs with that increase.
12. When additional federal-aid funds are not available, ADMINISTERING AGENCY agrees that the payment of federal funds will be limited to the amounts authorized on the PROJECT specific E-76 / E-76 (AMOD) and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.
13. ADMINISTERING AGENCY shall use its own non-federal funds to finance the local share of eligible costs and all expenditures or contract items ruled ineligible for financing with federal funds. STATE shall make the determination of ADMINISTERING AGENCY's cost eligibility for federal fund financing of PROJECT costs.
14. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.
15. Federal and state funds allocated from the State Transportation Improvement Program (STIP) are subject to the timely use of funds provisions enacted by Senate Bill 45, approved in 1997, and subsequent STIP Guidelines and State procedures approved by the CTC and STATE.
16. Federal funds encumbered for PROJECT are available for liquidation for a period of six (6) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. State funds encumbered for PROJECT are available for liquidation only for six (6) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. Federal or state funds not liquidated within these periods will be reverted unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance (per Government Code section 16304). The exact date of fund reversion will be reflected in the STATE signed finance letter for PROJECT.
17. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.
18. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.
19. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

20. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

21. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

22. Should ADMINISTERING AGENCY fail to refund any moneys due upon written demand by STATE as provided hereunder or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty 30 days of demand, or within such other period as may be agreed to in writing between the PARTIES, STATE, acting through the State Controller, the State Treasurer, or any other public entity or agency, may withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may withhold approval of future ADMINISTERING AGENCY federal-aid projects.

23. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 22, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

24. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover State funds improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

ARTICLE V
AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of ARTICLE V.
2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.
3. ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.
4. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year. The Federal Funds received under a PROGRAM SUPPLEMENT are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205.
5. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.
6. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contract over \$10,000, or other contracts over \$25,000 (excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)) on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions 5, 6, 17, 19 and 20 of ARTICLE IV, FISCAL PROVISIONS, and provisions 1, 2, and 3 of this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING RECORDS RETENTION AND REPORTS.

8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner as required of all other PROJECT expenditures.

9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with the LOCAL ASSISTANCE PROCEDURES.

ARTICLE VI - FEDERAL LOBBYING ACTIVITIES CERTIFICATION

1. By execution of this AGREEMENT, ADMINISTERING AGENCY certifies, to the best of the signatory officer's knowledge and belief, that:

A. No federal or state appropriated funds have been paid or will be paid, by or on behalf of ADMINISTERING AGENCY, to any person for influencing or attempting to influence an officer or employee of any STATE or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any STATE or federal contract, including this AGREEMENT, the making of any STATE or federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any STATE or federal contract, grant, loan, or cooperative contract.

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 federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this AGREEMENT, grant, local, or cooperative contract, ADMINISTERING AGENCY shall complete and submit Standard Form-LLL, "Disclosure Form to Rep Lobbying," in accordance with the form instructions.

C. This certification is a material representation of fact upon which reliance was placed when this AGREEMENT and each PROGRAM SUPPLEMENT was or will be made or entered into. Submission of this certification is a prerequisite for making or entering into this AGREEMENT imposed by Section 1352, Title 31, United States Code. Any party who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. ADMINISTERING AGENCY also agrees by signing this AGREEMENT that the language of this certification will be included in all lower tier sub-agreements which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

ARTICLE VII - MISCELLANEOUS PROVISIONS

1. ADMINISTERING AGENCY agrees to use all state funds reimbursed hereunder only for transportation purposes that are in conformance with Article XIX of the California State Constitution and the relevant Federal Regulations.
2. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
3. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees or agents of STATE or the federal government.
4. Each project-specific E-76 or E-76 (AMOD), PROGRAM SUPPLEMENT and Finance Letter shall separately establish the terms and funding limits for each described PROJECT funded under the AGREEMENT. No federal or state funds are obligated against this AGREEMENT.
5. ADMINISTERING AGENCY certifies that neither ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT. ADMINISTERING AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.
6. ADMINISTERING AGENCY warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the work actually performed, or in STATE's discretion, to deduct from the price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
7. In accordance with Public Contract Code section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two (2) year period because of ADMINISTERING AGENCY's failure to comply with an order of a federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.
8. ADMINISTERING AGENCY shall disclose any financial, business, or other relationship with STATE, FHWA or Federal Transit Administration (FTA) that may have an impact upon the outcome of this AGREEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of this AGREEMENT.
9. ADMINISTERING AGENCY hereby certifies that it does not have nor shall it acquire any financial or business interest that would conflict with the performance of PROJECT under this AGREEMENT.

10. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the work actually performed, or to deduct from the PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Contract Officer who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the Contract Officer, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Officer.

12. Neither the pending of a dispute nor its consideration by the Contract Officer will excuse ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT.

13. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

14. Neither STATE nor any officer or employee thereof shall be responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.

15. STATE reserves the right to terminate funding for any PROJECT upon written notice to ADMINISTERING AGENCY in the event that ADMINISTERING AGENCY fails to proceed with PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT, the bonding requirements if applicable, or otherwise violates the conditions of this AGREEMENT and/or PROGRAM SUPPLEMENT, or the funding allocation such that substantial performance is significantly endangered.

16. No termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if not reasonably susceptible of cure within said thirty (30) day period, ADMINISTERING AGENCY proceeds thereafter to complete the cure in a manner and time line acceptable to STATE. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE approved finance letter prior to termination, provided, however, ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

17. In case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT, the terms stated in that PROGRAM SUPPLEMENT shall prevail over those in this AGREEMENT.

18. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

19. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

City of Montclair

By _____

By _____

Chief, Office of Project Implementation
Division of Local Assistance

City of Montclair
Representative Name & Title
(Authorized Governing Body Representative)

Date _____

Date _____

EXHIBIT A

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

EXHIBIT B

NONDISCRIMINATION ASSURANCES

ADMINISTERING AGENCY HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADMINISTERING AGENCY receives federal financial assistance from the Federal Department of Transportation. ADMINISTERING AGENCY HEREBY GIVES ASSURANCE THAT ADMINISTERING AGENCY will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, ADMINISTERING AGENCY hereby gives the following specific assurances with respect to its federal-aid Program:

1. That ADMINISTERING AGENCY agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That ADMINISTERING AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That ADMINISTERING AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where ADMINISTERING AGENCY receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where ADMINISTERING AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That ADMINISTERING AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the ADMINISTERING AGENCY with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates ADMINISTERING AGENCY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates ADMINISTERING AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which ADMINISTERING AGENCY retains ownership or possession of the property.

9. That ADMINISTERING AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that ADMINISTERING AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That ADMINISTERING AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. ADMINISTERING AGENCY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. ADMINISTERING AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of STATE assisted contracts. ADMINISTERING AGENCY'S DBE Implementation Agreement is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved DBE Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX A TO EXHIBIT B

During the performance of this Agreement, ADMINISTERING AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as ADMINISTERING AGENCY) agrees as follows:

- (1) Compliance with Regulations: ADMINISTERING AGENCY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- (2) Nondiscrimination: ADMINISTERING AGENCY, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.
- (3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: ADMINISTERING AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to ADMINISTERING AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of ADMINISTERING AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTERING AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts ADMINISTERING AGENCY has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a) withholding of payments to ADMINISTERING AGENCY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: ADMINISTERING AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. ADMINISTERING AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that ADMINISTERING AGENCY will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ADMINISTERING AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto ADMINISTERING AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) *

(2) that ADMINISTERING AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.*

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX C TO EXHIBIT B

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7(a) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY and its assigns.

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX D TO EXHIBIT B

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7 (b) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY, and its assigns.

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

SPECIAL COVENANTS OR REMARKS

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.
- B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).
- C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.
- D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

E. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-

SPECIAL COVENANTS OR REMARKS

assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

G. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

H. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at www.sam.gov.

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of

SPECIAL COVENANTS OR REMARKS

Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

B. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

F. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

G. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures,

SPECIAL COVENANTS OR REMARKS

48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

I. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

J. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

K. STATE reserves the right to conduct technical and financial audits of PROJECT WORK and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by the following paragraph:

ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT, and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

M. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year of the Catalogue of Federal Domestic Assistance.

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in

SPECIAL COVENANTS OR REMARKS

ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.

O. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contracts over \$10,000, or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

P. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions B, C, F, H, I, K, and L under Section 2 of this agreement.

3. In the event that right of way acquisition for or construction of this project of the initial federal authorization for preliminary engineering is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the ADMINISTERING AGENCY shall repay the Federal Highway Administration through Caltrans the sum of Federal funds paid under the terms of this agreement.

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
OCTOBER 17, 2016, AT 6:42 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Raft called the meeting to order at 6:42 p.m.

II. ROLL CALL

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

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of October 3, 2016.

Moved by City Manager Starr, seconded by Mayor Pro Tem Raft, and carried unanimously to approve the minutes of the Personnel Committee meeting of October 3, 2016.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

At 6:43 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:56 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Raft stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 6:56 p.m., Mayor Pro Tem Raft adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager

**MINUTES OF THE REGULAR MEETING OF THE PUBLIC WORKS
COMMITTEE HELD ON THURSDAY, OCTOBER 20, 2016, AT
4:00 P.M. IN THE CITY MANAGER CONFERENCE ROOM,
5111 BENITO STREET, MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Chair Raft called the meeting to order at 4:00 p.m.

II. ROLL CALL

Present: Chair Raft; Committee Member Eaton; City Manager Starr; Deputy City Manager/Director of Economic Development Staats; Chief of Police, Executive Director Office of Public Safety Avels; Public Works Director/City Engineer Hudson; Facilities and Grounds Superintendent McGehee; Public Works Superintendent Mendez; and City Planner/Planning Manager Diaz.

Also Present: Project Manager Steve Stanton.

III. APPROVAL OF MINUTES

The Public Works Committee approved the minutes of the Public Works Committee meeting of September 15, 2016.

IV. PUBLIC COMMENT

None

V. PUBLIC WORKS DEPT. UPDATES/ITEMS

A. OPERATIONS

MAINTENANCE ACTIVITIES

A summary of Operations activities for the past month was included with the agenda.

B. FACILITIES AND GROUNDS

MAINTENANCE ACTIVITIES

A summary of Facilities and Grounds activities for the past month was included with the agenda. There were no questions or issues with the report.

C. ENGINEERING DIVISION ITEMS

ZONE 3 STREET REHABILITATION PROJECT-TREE REMOVAL POLICY

A total of 255 trees are scheduled for removal due to hardscape damage. The estimated amount per location is \$400.00 to root cut the tree, repair the sidewalk, and a temporary solution of five-ten years. The second option is estimated at \$700.00 for the tree removal, replanting of new tree, and sidewalk repair which is a permanent solution for roughly 20 years. Mr. Hudson stated that Public Works Department Staff has a difference of opinion in regards to tree removals in the Zone 3 Street Rehabilitation Project. This is the third time of replacing sidewalks from tree roots in

some areas. Mr. Hudson stated that we would recommend removing these trees and replanting with a different species. Liquidambar trees in this area are at their life expectancy with invasive roots that lift the concrete sidewalks. If West Coast Arborist (WCA), the City's tree contractor, root cuts the trees, two issues can arise. The tree roots will grow back years later and the sidewalk damage will reoccur and root cutting can disease the tree which can render the tree to be unstable in the event of a wind storm or major earthquake. Root cut may not be possible due to the lack of standard space from the tree trunk that is required by WCA.

Ms. Staats recommended if a resident is requesting a City tree be planted to call City staff to put in a request. Public Works staff has noticed multiple locations in which City trees have died from residents not watering the trees and planting trees at these locations is a waste of City funds.

Mr. Mendez would like to save as many trees as possible and root cut if enough space in around the trunk of the tree. Many trees in this area were planted near the curb and due to the drought have died or been diseased from lack of water. Trees roots tend to grow in the sewer lines or drains when not getting adequate water. The City of Montclair has not been a Tree City USA for some time now due to budget cuts and no replacement of removed City trees. Mr. Mendez will not have an issue removing the City trees if the Council concurs. Mayor Eaton said to remove the trees with issues and Chair Raft stated to remove the trees if the sidewalk is damaged. The City will offer residents the option to replace removed trees

Public Works staff stated they would not root cut Oak trees and would try to save trees with large canopies. Staff concurs to save as many healthy trees as possible with a root cut or if the tree is diseased or WCA recommended the removal, then the City will replaced the tree unless the resident states otherwise.

VI. POLICE DEPARTMENT UPDATES/ITEMS

A. UPDATE-STREET SWEEPING DEVICE

The Street Sweeper license plate reader device that was discussed in a previous meeting, poses an issue. California law requires a citation to be placed on the vehicle at the time of the violation. Only exception would be if the person receiving the citation is driving away at the moment, and a citation will be mailed to the registered address from the license plate. The camera mounted device to the Street Sweeping Vehicle is not acceptable and the Police Department is in the process to hire more cadets to distribute citations to violations.

B. STOP SIGN AT FREMONT AVENUE AND KINGSLEY STREET (ADD ON)

The relocation of a crosswalk located at Fremont Avenue and Kingsley Street will be tied into the larger upcoming West Paving Project. This project will not just consist of striping but also requires the Americans with Disabilities Act (ADA) wheel chair ramp and closure of an existing wheel chair ramp. The bid will go out in a few weeks.

VII. COMMUNITY DEVELOPMENT DEPARTMENT PROJECT UPDATES/ITEMS

A. UPDATES OF CURRENT PROJECTS

A public scoping meeting for discussion of the North Downtown Specific Plan update contained eight members of the public. No individual was opposed to the project and questions were discussed on topics of parking, density, privacy, and coyotes. This meeting was an hour long and the Public was satisfied with information and answered questions.

B. BUFFALO WILD WINGS RESTAURANT UPDATE (ADD ON)

Buffalo Wild Wings Restaurant plans to take over the former Romano's Macaroni Grill Building. A draft plan was submitted and the chain restaurant will try to keep the building. This item will soon be on a future agenda.

VIII. CAPITAL PROJECT UPDATES

Public Works Director/City Engineer Hudson reported the status of the following capital improvement projects:

A. MONTE VISTA AVENUE/UPRR GRADE SEPARATION PROJECT

The request for authorization to advertize was sent to California Department of Transportation (Caltrans) two months ago and the City is still waiting on the approval. City Staff was informed that the approval is estimated to be complete by the end of October. Advertizing the project shall open in November with an estimate of January to March to begin construction.

B. RECREATION BUILDING REMODEL-PHASE TWO FITNESS CENTER

This project was complete and will not be placed on the agenda next month. The Police Department will be receiving new gym equipment from a grant which will allow the Recreation Building Fitness Center to receive the donated equipment.

C. CENTRAL AVENUE/SAN BERNARDINO STREET TRAFFIC SIGNAL

This project is complete and will be the last time on the agenda.

D. REEDER RANCH

Due to the Reeder Ranch Foundation receiving Community Development Block Grant (CDBG) funding, the City was made aware that the historical foundation must be open for public use. The Reeder Ranch building is not stable, the interior wiring needs repairs, and the second floor is also unstable. City Staff stated that the outside grounds can be currently open to the public. Public Works Staff is not sure if ADA requirements are set for the interior of the structure. Mr. Starr asked if individuals can walk on the interior floor. Mr. Hudson stated yes and it is possible to have roped tours in the interior. City Staff will report any new information that is presented with this topic.

E. GOLD LINE

Los Angeles Mayor Eric Garcetti spoke in favor of the Gold Line extension from Azusa to San Bernardino County at Pomona College on October 14th from 9:00 a.m. to 3:00 p.m. which was also broken into three different sections. Mr. Starr stated that Representative Norma Torres announced that the San Bernardino Associated Governments (SANBAG) must start setting aside funds to connect the Gold Line to the Ontario International Airport. Torres said unless SANBAG list the project as a line item in its budget, she will no longer give her approval to additional SANBAG rail or highway future projects. If Measure M passes this November, the Gold Line project would begin in 2017 and 2018 and is estimated to be operational by 2025.

IX. OTHER ITEMS

BROADWAY BUILDING

The City met with the CIM Group on October 20th to discuss the demolition of the former Broadway/Macys Building. Demolition permits will be submitted for approval the last week in October. Barricades 10 feet high will be placed near the exterior of the building on Monday October 24th. In one to two weeks the interior will be vacated and the demolition will follow.

X. ADJOURNMENT

The next meeting of the Public Works Committee will be at 4:00 p.m. on November 17, 2016.

At 4:39 p.m., Chair Raft adjourned the meeting.

Submitted for Public Works Committee approval,



Cenica Smith
Transcribing Secretary