

CITY OF MONTEBELLO CITY COUNCIL
NOTICE OF SPECIAL MEETING

**PLEASE TAKE NOTICE THAT THE MAYOR HAS CALLED AN
SPECIAL MEETING AS FOLLOWS:**

**CITY OF MONTEBELLO CITY HALL
CITY COUNCIL CHAMBERS
1600 WEST BEVERLY BOULEVARD
MONTEBELLO, CALIFORNIA¹
WEDNESDAY, APRIL 15, 2020 – 2:00 P.M.**

(NOTE: CORRECTION TO RECOMMENDATION AND STAFF REPORT ON AGENDA ITEM NO. 8 ONLY AS STATED BELOW. ALL ITEMS PREVIOUSLY POSTED ARE CORRECT AND UNCHANGED. NO ITEMS HAVE BEEN ADDED OR ALTERED. UNDERLINED CORRECTIONS IN THE NOTICE AND STAFF REPORT ARE TO CLARIFY, BUT NOT CHANGE OR ALTER THE PROPOSED ACTION PRESENTED TO CITY COUNCIL.)

FOR THE PURPOSE OF THE FOLLOWING:

OPENING CEREMONIES

- 1. CALL MEETING TO ORDER:** Mayor Melendez
- 2. ROLL CALL:** City Clerk I. Barajas
- 3. STATEMENT OF PUBLIC ORAL COMMUNICATIONS:** Members of the public interested in addressing the City Council during this Special Meeting may only address the items which have been described in the notice of this Special Meeting in accordance with Government Code Section 54954.3(a). At this City Council meeting and consistent with the Governor's Executive Order No. N-29-20, the City Council meeting will continue to be live streamed for the public's convenience and can be watched at www.cityofmontebello.com and click on "Live Stream." For those interested in making public comments, you may call on Wednesday April 15, 2020 between 9:00 a.m. – 12:00 p.m. at (323) 887-1437. Staff will complete public comment cards in the order received. The public will be called during the City Council meeting that begins at 2:00 p.m. The exact call back time is not predictable due to the nature of the City Council agenda. As a result, you must be available until the end of the meeting to receive a live call from staff during the meeting. The City has created an email address ccpubliccomment@cityofmontebello.com where the public can submit public comments from 12:30 p.m. – 1:30 p.m. on Wednesday, April 15, 2020. These questions will be read out loud and submitted for the record. The email address for City Council meetings can be located on the City's webpage under the City Clerk tab, <https://www.cityofmontebello.com/departments/administration/city-clerk-s-office.html>.
- 4. PUBLIC ORAL COMMUNICATIONS**

CONSENT MATTERS

- 5. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTEBELLO, CALIFORNIA FURTHER DECLARING AND PROCLAIMING THE CONTINUED EXISTENCE OF A LOCAL EMERGENCY DUE TO THE AFFECTS OF THE COVID-19 VIRUS AND THE EFFECTS AND IMPACTS UPON THE OPERATIONS OF GOVERNMENT OF THE CITY OF MONTEBELLO**

RECOMMENDED ACTION: It is recommended that the City Council: Adopt the proposed resolution.

¹ In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Building Official at 323/887-1497. 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)

6. APPROVAL AND ADOPTION OF THE TRANSPORTATION DEPARTMENT'S REFINED TITLE VI PROGRAM

RECOMMENDATION: It is recommended that the City Council:

- 1) Rescind Resolution 19-109 adopted on September 11, 2019; and
- 2) Approve and adopt proposed Resolution which includes the Transportation Department's commitment to provide and implement an updated Montebello Bus Lines (MBL) Title VI Program in Compliance with Federal requirements.

7. CONSIDERATION OF CHANGES TO MONTEBELLO MUNICIPAL CODE CHAPTER 2.04 RELATING TO POWERS, DUTIES AND RESPONSIBILITY OF THE CITY MANAGER

RECOMMENDATION: It is recommended that the City Council:

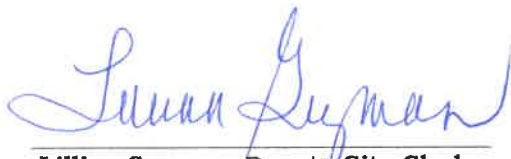
- 1) Review the Ordinance relating to the position of City Manager and approve or provide direction relative to the clarifications of the Montebello Municipal Code (MMC); and
- 2) Introduce the Ordinance for First Reading.

8. FIRST AMENDMENT TO AGREEMENT NO. 3749 BETWEEN THE CITY OF MONTEBELLO AND FIESTA TAXI COOPERATIVE INC.

RECOMMENDATION: It is recommended that the City Council:

Approve First Amendment to Agreement No. 3749 between the City of Montebello and Fiesta Taxi Cooperative Inc. for the temporary provision of COVID-19 related fixed route services in an amount not to exceed three hundred sixty thousand dollars (\$360,000).

ADJOURNMENT



Lillian Guzman, Deputy City Clerk
April 14, 2020

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTEBELLO, CALIFORNIA FURTHER DECLARING AND PROCLAIMING THE CONTINUED EXISTENCE OF A LOCAL EMERGENCY DUE TO THE AFFECTS OF THE COVID-19 VIRUS AND THE EFFECTS AND IMPACTS UPON THE OPERATIONS OF GOVERNMENT OF THE CITY OF MONTEBELLO

WHEREAS, the City Council of the City of Montebello has been responding to the spread of coronavirus disease, and has found that international, national, state, and local health and governmental authorities are responding to an outbreak of said respiratory disease caused by a novel coronavirus, also known and abbreviated as COVID-19, (“COVID-19”); and

WHEREAS, the City Council of the City of Montebello is and has been responding to the spread of coronavirus disease, and now continues to find that international, national, state, and local health and governmental authorities are responding to an outbreak of said respiratory disease caused by a novel coronavirus, COVID-19; and

WHEREAS, Chapter 2.48, et seq. of the Montebello Municipal Code authorizes the City Council to proclaim the existence or threatened existence of a local emergency, and further authorizes the City Manager with enumerated powers when the Governor or County has declared a state of emergency, which has been the case as discussed hereinabove as it relates to COVID-19; and

WHEREAS, the City of Montebello remains vigilant with federal, state, and county officials’ updates related to COVID-19 because information, orders, and directives continue to change on a daily basis; and

WHEREAS, pursuant to Montebello Municipal Code Section 2.48.090, the City Council of the City of Montebello hereby continues to declare and proclaim the existence of a local emergency due to the COVID-19 virus, and;

WHEREAS, the City Council of the City of Montebello hereby finds that conditions of extreme peril exists to the safety of persons and property continues within the City caused by the COVID-19 virus, and;

WHEREAS, these conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of said City;

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that a local emergency continues to exist throughout the City of Montebello, and;

SECTION 1: IT IS FURTHER PROCLAIMED AND ORDERED that during the existence of said local emergency the powers, functions, and duties of the emergency organization of this City shall be those prescribed by state and County law, by local ordinances, and resolutions of this City; and the City continues to seek all services, financial assistance and other related aid provided for or made available by the County of Los Angeles, State of California or Federal Government.

SECTION 2: All individuals, organizations, and business entities are hereby required to comply and adhere to all federal, state, and local orders and directives within the City's jurisdiction and boundaries relating to COVID-19. Should subsequent federal, state, or county orders and directives be issued that promote various forms of social distancing to protect the most vulnerable from COVID-19, as well as to contain the spread of same, the more restrictive orders and directives shall apply. Specifically the City Council hereby confirms and supports the "Safer at Home Order for Control of COVID-19" issued by the County of Los Angeles Department of Public Health on April 10, 2020, attached hereto as Exhibit "A" and incorporated herein by this reference.

SECTION 3: This Resolution is adopted consistent with and as set forth in Montebello Municipal Code Section 2.48.090 which requires the City Council to review, at least every fourteen days until the local emergency is terminated, the need for continuing the local emergency until the termination of the local emergency at the earliest possible date that conditions warrant.

SECTION 4: It is hereby proclaimed and ordered that during the existence of said local emergency, the powers, functions, and duties of the emergency organization of the City shall be as prescribed by federal, state, and county law, as well as the laws, ordinances and resolutions of the City of Montebello.

SECTION 5: SEVERABILITY. If any section, subsection, paragraph, sentence, clause, phrase, or portion thereof, of this Resolution is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council declares that it would have adopted this Resolution, and each section, subsection, paragraph, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, phrases, or portions thereof, be declared invalid or unconstitutional. To this end, the provisions of this Resolution are declared to be severable.

PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MONTEBELLO, CALIFORNIA, THIS 15TH DAY OF APRIL, 2020.

Salvador Melendez, Mayor

ATTEST:

APPROVED AS TO FORM

Irma Barajas, City Clerk

Arnold M. Alvarez-Glasman
City Attorney

CITY OF MONTEBELLO

CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and Members of the City Council

FROM: René Bobadilla, City Manager

BY: Young-Gi Kim Harabedian, Director of Transportation

SUBJECT: **Approval and Adoption of the Transportation Department's refined Title VI Program**

DATE: Special Meeting of April 15, 2020

RECOMMENDATION

It is recommended that City Council:

1. Rescind Resolution 19-109 adopted on September 11, 2019; and
2. Approve and adopt proposed Resolution 20-____, which includes the Transportation Department's commitment to provide and implement an updated Montebello Bus Lines (MBL) Title VI Program in Compliance with Federal requirements.
3. Take such additional, related, action that may be desirable.

BACKGROUND

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. As a recipient of Federal Transit Administration (FTA) funding, the City is required to be in compliance with the Department of Transportation's (DOT) Title VI program that demonstrates that no transit program of service provided by the Montebello Bus Lines (MBL) creates discrimination toward any demographic of the population served by that program or service. The Title VI Program is required to be updated every three (3) years and submitted to the FTA for review and approval.

The City's current Title VI Program was adopted in September 2019 (Resolution 19-109). Since its adoption, it has come to staff's attention that additional Title VI Program requirements must be included in City's Title VI Program, therefore it is necessary to rescind Resolution 19-109 and adopt proposed Resolution No. 20-____ in its place. Proposed Resolution No. 20-____ will authorize the City's adoption of additional requirements and will refine data, implementation procedures and data collection forms to

CITY COUNCIL AGENDA REPORT – SPECIAL MEETING OF APRIL 15, 2020
**APPROVAL AND ADOPTION OF THE TRANSPORTATION DEPARTMENT'S
REFINED TITLE VI PROGRAM**

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ensure that Title VI requirements are adopted into MBL's programs, activities and services.

ANALYSIS

On September 11, 2019, the City Council adopted Resolution 19-109 implementing the FTA's Title VI tri-annual update. Since its adoption, it has come to staff's attention that additional requirements must be included within the City's Title VI Program. Staff has been diligently working with a consultant to prepare the City's additional Title VI program language, data and relevant forms so that it is in full compliance with FTA Circular 4702. 1B, dated October 1, 2012.

The Title VI Program provides the City's commitment to ensuring that no person is excluded from participation or denied the benefits of, or otherwise subjected to discrimination under any of its programs, activities or services on the basis of race, color, or national origin. Specifically, the Title VI Program requires the following contents:

- Notice to the Public of Rights under Title VI
- Instructions on how to file a Title VI complaint and a copy of complaint form
- List of the recipient's Title VI investigations, complaints and/or lawsuits
- Public Participation Plan
- Limited English Proficient (LEP) Plan
- Racial breakdown of non-elected Advisory Councils
- Narrative describing sub-recipient monitoring
- Transit Facilities Equity Analysis (constructed or planned since last Comprehensive Review)
- Equity and/or fare equity analyses for fare or major service changes (implemented or planned since last Comprehensive Review)
- Governing body resolution or minutes demonstrating approval of the Program

FTA requires governing bodies adopt resolutions which outline all required program language, data and forms, for this reason, it is necessary to rescind Resolution 19-109 and in its place adopt proposed Resolution. Staff is recommending the City Council consider rescinding Resolution 19-109 and adoption of proposed Resolution so that that City's Title VI Program is compliance with all mandated requirements.

FISCAL IMPACT

Approval of this item will ensure compliance with FTA and DOT mandated requirements and enable the City to continue receiving federal grants.

CITY COUNCIL AGENDA REPORT – SPECIAL MEETING OF APRIL 15, 2020
**APPROVAL AND ADOPTION OF THE TRANSPORTATION DEPARTMENT'S
REFINED TITLE VI PROGRAM**

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SUMMARY

Once the proposed Resolution is approved by the City Council, this Title VI Program will be submitted to the FTA for review and final approval. Failure to provide or update this document every three (3) years could result in the loss of future FTA funds that the City needs to provide its transit service.

ATTACHMENT: 1) Resolution

ATTACHMENT A

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTEBELLO RESCINDING PRIOR RESOLUTION NO. 19-109 AND REPLACING WITH RESOLUTION NO. 20- ____ ADOPTING NEW TITLE VI PROGRAM REQUIREMENTS

WHEREAS, the City of Montebello Transportation Department is an eligible recipient of federal financial assistance for transportation services; and

WHEREAS, to receive federal funds, the City is required to adhere to Title VI of the Civil Rights Act of 1964 (49 CFR part 21) regulations that prohibit discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance; and

WHEREAS, to ensure compliance with Title VI regulations, and receipt of federal financial assistance for transportation, the City integrates programs and activities considerations expressed in the U.S. Department of Transportation's (DOT) Policy Guidance Concerning Recipients' Responsibility to Limited English Proficient Persons (70 FR 74087, December 14, 2005) into its applicable policies and procedures; and

WHEREAS, the City is fully committed to ensure that no person is excluded from participation in, or denied the benefits of, its services on the basis of race, color or national origin as protected by Title VI of the Civil Rights Act of 1964 (49 CFR part 21), as amended; and

WHEREAS, on October 1, 2012, DOT's Federal Transit Administration (FTA) issued Circular 4702.1B, which sets out additional criteria for recipients of federal financial assistance; and

WHEREAS, the triennially updated Title VI Program must be approved by an eligible recipient's governing body prior to submission; and

WHEREAS, the Title VI Program must contain the following elements:

- Notice to the Public of Rights under Title VI
- Instructions on how to file a Title VI complaint and a copy of complaint form
- List of the recipient's Title VI investigations, complaints and/or lawsuits
- Public Participation Plan
- Limited English Proficient (LEP) Plan
- Racial breakdown of non-elected Advisory Councils
- Narrative describing sub-recipient monitoring
- Transit Facilities Equity Analysis (constructed or planned since last Comprehensive Review)

- Equity and/or fare equity analyses for fare or major service changes (implemented or planned since last Comprehensive Review)
- Governing body resolution or minutes demonstrating approval of the Program

WHEREAS, therefore, the City desires to rescind Resolution No. 19-109, which does not include these additional requirements and hereby adopts Resolution 20-____ authorizing inclusion of new language into the City's Title IV Program.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Montebello as follows:

SECTION 1. Resolution No. 19-109 passed at the September 11, 2019 City Council Meeting is hereby rescinded.

SECTION 2. Resolution No. 20-_____ is hereby adopted to include those requirements into the City's Title VI Program which are required by Federal law; attached hereto as Exhibit "A," and said to take effect immediately.

SECTION 3. The City Manager, or his/her designee, is hereby authorized to develop, implement, monitor and execute all required documents necessary to comply with Title VI Program requirements of 49 CFR part 21 and FTA Circular 4702.1B.

SECTION 4. The City Clerk is hereby directed to attest and certify to the passage and adoption of this resolution which shall become effective immediately upon its approval.

CERTIFICATION The undersigned duly qualified City Clerk, acting on behalf of the City of Montebello, certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the City Council of Montebello held on April 15, 2020.

APPROVED AND ADOPTED THIS _____ DAY OF APRIL, 2020.

Salvador Melendez, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Barajas, City Clerk

Arnold M. Alvarez-Glasman, City Attorney

RESOLUTION NO. 20-_____

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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF MONTEBELLO)

I, Irma Barajas, City Clerk of the City of Montebello, do hereby certify that the foregoing City Council Resolution No. 20-_____ was duly and regularly approved and adopted by the City Council of the City of Montebello at their meeting held on the 15th day of April, 2020, as approved by law by the following vote:

AYES:

NOES:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City on the 15th day of April, 2020.

IRMA BARAJAS, City Clerk

CITY OF MONTEBELLO**CITY COUNCIL AGENDA STAFF REPORT**

TO: Honorable Mayor and City Council Members

FROM: René Bobadilla, City Manager
Arnold M. Alvarez-Glasman, City Attorney

SUBJECT: CONSIDERATION OF CHANGES TO MONTEBELLO MUNICIPAL CODE CHAPTER 2.04 RELATING TO POWERS, DUTIES AND RESPONSIBILITY OF THE CITY MANAGER

DATE: Special Meeting of April 15, 2020

RECOMMENDATION

It is recommended that the City Council:

- 1) Review the attached Ordinance relating to the position of City Manager and approve or provide direction relative to the clarifications of the Montebello Municipal Code (MMC); and
- 2) Introduce the Ordinance for First Reading.

BACKGROUND / ANALYSIS

At the April 8, 2020 City Council meeting there was discussion by members of the City Council relative to the role, duties, and responsibilities of the City Manager. The City of Montebello, like a majority of cities in the State of California, operate under a council-manager form of government. The Institute for Local Self Government (which is an arm of the League of California Cities), reports that in California, 440 of the 480 cities operate under the council-manager form of government.

The California Government Code Section 34851 to 34859 addresses the council-manager form of government. Government Code Section 34852 allows for an ordinance to be adopted to define powers and duties of a city manager.

The above cited code sections generally provide under the city manager form of government, the city manager has the power to:

- Administer the day-to-day affairs of the city;
- Hire and fire city employees (except the city attorney); and
- Perform such other functions as the council chooses to authorize by ordinance.

As stated in the League of California Cities, *Municipal Law Handbook*, California general law does not specifically define the council/administrator form of city

**CITY COUNCIL AGENDA REPORT – SPECIAL MEETING OF APRIL 15, 2020
CONSIDERATION OF CHANGES TO MONTEBELLO MUNICIPAL CODE CHAPTER
2.04 RELATING TO POWERS, DUTIES AND RESPONSIBILITY OF THE CITY
MANAGER**

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government. The terms "city manager" and "city administrator" are sometimes used interchangeably. However, it is the city council that defines the powers and duties of the city manager as it chooses. A council could limit the authority of its "manager" to administrative duties. Adopting such an ordinance would mean that the council would retain the management authority not defined for its administrator.

For many years, Montebello operated under a council/administrator form of government. In 2015, the City Council adopted Ordinance No. 2367, which changed the title from City Administrator to City Manager. While the defined powers or duties did not change, the language contained in Chapter 2.04 is outdated and should be re-examined. The attached draft ordinance is being provided for your review and consideration.

The primary changes address the authority of the City Manager to govern and manage the city's directors and employees, but all actions must be consistent with the established civil service system currently existing in the Montebello Municipal Code. In addition, this ordinance clarifies the City Manager's authority to implement the budget adopted by the City Council. Finally, this ordinance authorizes the City Manager to sign contracts on behalf of the City as permitted by the California Government Code Section 40602.

These proposed clarifications are modeled after powers defined in similar language found in other municipal codes from other cities.

FISCAL IMPACT

None

SUMMARY

The City Council will consider approving the attached Ordinance for First Reading. If introduced for First Reading, this Ordinance will be brought back to the City Council at the next Regular City Council meeting for adoption. If adopted, it would then take effect thirty (30) days thereafter.

ATTACHMENT: 1) Ordinance relating to Montebello Municipal Code, Chapter 2.04

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MONTEBELLO AMENDING CHAPTER 2.04 – CITY MANAGER OF THE
MONTTEBELLO MUNICIPAL CODE**

WHEREAS, the City of Montebello operates under a Council-Manager form of government as set forth in Chapter 2.04 of the Montebello Municipal Code (MMC);

WHEREAS, the current provisions of the MMC are outdate and need clarification; and

WHEREAS, the City Council desires to address, revise and clarify the duties and responsibilities of the City Manager;

NOW, THEREFORE, The City Council of the City of Montebello ordains that:

SECTION 1. INCORPORATION OF RECITALS. The City Council for the City of Montebello finds and declares the foregoing are true and correct and incorporates said recitals fully into this Ordinance as substantive findings.

SECTION 2. ADOPTION OF CHAPTER 2.04 – CITY MANAGER. The City hereby adopts revisions to Chapter 2.04 of the MMC by amending said Chapter in its entirety and replacing it with the following:

Chapter 2.04 - CITY MANAGER

2.04.000 – Form of Government.

Pursuant to California Government Code Sections 34851(a) and 34852, the City Council of the City of Montebello hereby establishes a Council - City Manager form of government.

2.04.010 - Office created—Basis for appointments.

The office of the city manager of the city is created and established. The holder of this office shall be appointed by the city council solely on the basis of his/her executive and administrative qualifications, ability and previous governmental experience, and shall hold office at the pleasure of the city council excepting as hereinafter provided in Section 2.04.060.

2.04.020 - Residence. The section intentionally omitted.

~~The appointed city manager, if not a resident of the city at the time of appointment, shall become a resident of the city within ninety days after his appointment.~~

2.04.030 - Eligibility of council members.

No member of the city council of the city shall be eligible for an appointment as city manager until one year has elapsed after he/[she](#) has ceased to be a member of the council.

2.04.040 - Compensation.

The city manager shall receive such compensation as the city council shall from time to time determine and fix by resolution [or contract](#).

2.04.050 - Duties.

The city manager shall be the administrative head of city government under the direction and control of the city council. He/[she](#) shall [be responsible for the efficient administration of all affairs, both administrative and managerial, of the city. In addition to his/her general powers as the administrative and management head, and not as a limitation thereon, it shall be his duty and authority for the following:](#)

- A. [Supervise and oversee](#) ~~Be responsible for~~ the preparation and submission to the city council of [a detailed proposed the annual city budget and to offer his/her recommendations as to such increases, decreases, cancellations, transfers or changes in any items included in the proposed budget before adoption of the final budget and](#) its administration after its [final](#) adoption, [and to keep the city council informed with respect thereto](#);
- B. Prepare and submit to the city council at the end of each fiscal year a comprehensive report of the financial and administrative activities of the city for the preceding year;
- C. Advise the city council of the financial condition and future needs of the city;
- D. Prepare such general rules and regulations as are necessary or proper for the general conduct of the administrative offices and departments of the city under his express jurisdiction and submit the same to the city council for its approval;
- E. Serve as personnel officer of the city, [however, in exercising this authority, neither the council nor any of its members shall direct or request the appointment of any person, promotion/demotion/discipline of or removal from employment any department head or employee in the administrative services of the city. In addressing personnel matters of the city, the city council and its members shall inquire or seek information solely through the city manager or his/her designee and neither the city council nor any of its members shall give orders to any subordinates of the city manager, either publicly or privately](#);
- F. Be responsible for public relations and the dissemination of information to the citizens of the city.
- G. Attend all meetings of the city council and such other boards and commissions as may be designated by the city council [and to report upon any matter concerning the affairs of the departments, services or activities under his/her supervision upon which, in his/her judgement, the city council should be informed, or upon which reports are request by a majority of the city council](#);

- H. Be responsible to see that all franchises, permits and privileges granted by the city council are faithfully performed and all due conditions met and observed;
- I. Exercise general supervision over all public buildings, public parks and public property under the control and jurisdiction of the city council and not specifically delegated to a particular board or other department head;
- J. Devote his/her entire time to the duties of this office and to the interests of the city;
- K. Perform such other duties and exercise such other powers as are necessarily incident to the powers contained in this section, or as may be assigned, delegated or required of him from time to time by the action of the city council:-
- L. Oversee the development and organization of public improvement projects and programs, and to aid and assist the city council and other city departments and offices of the city;
- M. To appoint competent, qualified officers, department heads and employees to the administrative service (which term is inclusive of all persons governed by the City's Civil Service/Personnel System as established and defined in Chapter 2.60 "Civil Service System," excepting the City Council, City Clerk and City Attorney), and to dismiss, suspend and/or discipline such officers and employees in accordance with the Chapter 2.60 and the Civil Service Commission process defined therein. To recommend to the city council such reorganization of officers, departments or divisions as may be in the best interests of efficient and economical conduct of the city's business, and affect such reorganization when authorized by ordinance, resolution or other approval of the city council; and to employ such temporary or part-time employees as may be required, in his/her opinion, subject to the Civil Service/Personnel System;
- N. To control, order and manage all department heads, subordinate officers and employees of the city;
- O. Prepare and recommend to the city council from time to time desirable revisions to the Compensation Plan of the city;
- P. As agent for the city council, and within the authority established by the Municipal Code and in accordance with the municipal budget adopted by the city council, to exercise the power of approval or rejection of expenditures for all departments, divisions, services and offices of the city government; this shall include the authority to authorize minor deviations from the municipal budget, and transfer funds and appropriations from accounts to accounts, within the same department or office, where the exigencies of the situation or practical needs of the city's operations require such action, but in all such cases the city manager shall report the exercise of such authority established herein to the city council within thirty (30) days or sooner, thereafter;
- Q. To prescribe such rules, regulations and policies as he/she deems necessary or expedient for the conduct of administrative services and, within authorized limits of law, policies and/or regulations, to revoke, suspend or amend any rule, regulations or policy established by any department head or other person in the position of providing administrative services for the city;

R. The city manager shall have the power and authority to sign any contract or conveyance as authorized by California Government Code Section 40602.

2.04.060 - Removal.

- A. The city manager shall not be removed from office ~~during ninety (90) days prior to~~ or within a period of ~~thirtyninety (90) days~~ ~~next succeeding~~after any municipal election at which time a member of the city council is elected. At any other time the city manager may be removed only at a regular meeting of the city council and upon affirmation votes of at least three members of the city council. Even if there are less than five (5) members seated, removal can only occur if there at least three (3) affirmative votes. Any abstention will not be counted as an affirmative vote. At least thirty days prior to the effective date of his/her removal, the city manager shall be furnished with a written notice stating the council's intention to remove him/her and reasons therefor. Within seven days after receipt of such notice, the city manager may, by written notification to the city clerk, request a hearing before the city council, in which event the city council shall fix a time for a public hearing which shall be held at its regular meeting place before the expiration of the thirty-day period referred to. The city manager shall appear and be heard at such hearing.
- B. After furnishing the city manager with written notice of his/her intended removal, the city council may suspend him/her from duty, but his/her compensation shall continue until his/her removal as herein provided. In removing the city manager, the city council shall use its uncontrolled discretion, and its actions shall be final and shall not depend upon any particular showing or degree of proof at the hearing, the purpose of which is to allow the city manager and city council to present to each other and the public all pertinent facts prior to the final action of removal.

2.04.070 - Exclusion from civil service and personnel system.

The office of city manager is specifically excluded from the civil service or personnel system of the city, and the city manager shall not be entitled to the benefits, advantages or protection of the civil service or personnel system of the city; he/she shall not be subject to the procedures outlined or prevailing in the system.

SECTION 5. SEVERABILITY. If any action, subsection, line, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid or unconstitutional, either facially or as applied, by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, and each and every individual section, subsection, line, sentence, clause, phrase, or word without regard to any such decision.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days after approval by the City Council.

SECTION 7. PUBLICATION. The City Clerk shall certify to the adoption of this Ordinance causing it to be posted as required by law.

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PASSED, APPROVED AND ADOPTED this ____ day of May, 2020.

Salvador Melendez, Mayor

APPROVED AS TO FORM:

ATTEST:

Arnold M. Alvarez-Glasman
City Attorney

Irma Barajas
City Clerk

CITY OF MONTEBELLO

CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and Members of the City Council

FROM: René Bobadilla, City Manager

BY: Young-Gi Kim Harabedian, Director of Transportation

SUBJECT: **First Amendment to Agreement No. 3749 Between the City of Montebello and Fiesta Taxi Cooperative Inc. for the Temporary Provision of COVID-19 Fixed Route Services**

DATE: Special Meeting of April 15, 2020

RECOMMENDATION

It is recommended that the City Council:

1. Approve the First Amendment to Agreement No. 3749 between the City of Montebello and Fiesta Taxi Cooperative Inc. for the temporary provision of COVID-19 related fixed route services in an amount not to exceed \$360,000.

BACKGROUND

On February 13, 2020, the City of Montebello entered into a contract agreement (Agreement No. 3749) to operate a Dial-A-Taxi service (DAT service). The DAT service is a reservation-based taxi service that aims to provide transportation services within thirty (30) minute window from the time a reservation is requested.

In an effort to protect public health and all our community in response to the COVID-19 pandemic, normal operations of Montebello Bus Lines (MBL) has been temporarily suspended. To compensate for its reduced operation, MBL would like to temporarily expand services offered by Fiesta Taxi Cooperative Inc.. Fiesta Taxi vans will operate on a fixed route schedule during MBL's temporary suspension and "COVID-19 Bus Schedule."

**CITY COUNCIL AGENDA REPORT – SPECIAL MEETING OF APRIL 15, 2020
FIRST AMENDMENT AGREEMENT NO. 3749 BETWEEN THE CITY OF
MONTEBELLO AND FIESTA TAXI COOPERATIVE INC.**

Page 2 of 2

ANALYSIS

On April 8, 2020, the City Council approved the Transportation Department's recommendation to expand Fiesta Taxi's services to provide temporary, COVID-19 fixed route services. In addition, the City Council approved further reductions to MBL's fixed route operational schedule and authorized the implementation of a "COVID-19 Bus Schedule" with limited weekend service provided by augmented support services to protect the public health and safety of all riders and staff.

Staff is recommending the City Council consider approving an amendment (First Amendment) to Agreement No. 3749 which would expand the temporary operation of Fiesta's services to provide COVID-19 related fixed route services.

FISCAL IMPACT

The temporary COVID-19 Bus Schedule service requires additional funding in an amount of three hundred sixty thousand dollars (\$360,000). The City is looking at various funding sources for its entire COVID-19 pandemic response. Recent Federal legislation has set aside funding that could be used for various COVID-19 related services. Staff will conduct additional research to find the most appropriate funding source for this temporary COVID-19 fixed route service.

SUMMARY

Staff is recommending that the City Council approve the proposed First Amendment to Agreement No. 3749 with Fiesta Taxi Cooperative Inc., exercising the City's option to enhance the scope of work and related compensation to provide temporary COVID-19 fixed route services for an amount not to exceed \$360,000.

- ATTACHMENTS:**
- 1) First Amendment
 - 2) Project Overview
 - 3) Fiesta Taxi Agreement No. 3749

ATTACHMENT 1

FIRST AMENDMENT TO AGREEMENT NO. 3749 BETWEEN THE CITY OF MONTEBELLO AND FIESTA TAXI COOPERATIVE INC. FOR THE CITY'S DIAL-A-TAXI PROGRAM

This First Amendment to Contract Agreement No. 3749 ("First Amendment") between the City of Montebello and Fiesta Taxi Cooperative Inc. for implementation of the City's Dial-A-Taxi Program is made and entered into on this ____ of April, 2020, by the City of Montebello, a California municipal corporation ("AGENCY"), and Fiesta Taxi Cooperative Inc., a California corporation ("CONTRACTOR"). AGENCY and CONTRACTOR are sometime hereinafter referred to collectively as the "PARTIES".

RECITALS

WHEREAS, AGENCY and CONTRACTOR are Parties to that certain Contract Agreement No. 3749 for the Dial-A-Taxi Program with an "Effective Date" of February 13, 2020 ("Agreement"), pursuant to which AGENCY contracted with CONTRACTOR to provide services as defined in the Agreement; and

WHEREAS, pursuant to Article XXI ("Entire Agreement; No Waiver") of the Agreement, the Parties desire to amend the scope of work and related compensation.

NOW, THEREFORE, based upon the foregoing recitals, which the Parties agree are true and correct, and for good and adequate consideration the receipt and adequacy of which is acknowledged by the Parties, the Parties agree as follows:

AMENDMENT

SECTION 1: AMENDMENT TO THE SCOPE OF WORK. Through this First Amendment, the Parties hereto agree to modify the Scope of Work described in Article II of the Agreement ("Services to be performed by CONTRACTOR") and previously made part of the Request for Proposal (RFP) No. 19-42 ("RFP 19-42"), by replacing it in its entirety with the "Revised Statement of Work," attached hereto as Exhibit "A," and made part of this First Amendment.

SECTION 2: AMENDMENT TO COMPENSATION. Through this First Amendment, the Parties hereto also agree to amend the compensation due under the Agreement Article III of the Agreement ("Compensation: Term") related to the amendment to the Scope of Work described in Section 1 above. The agreed-upon compensation for the First Amendment shall not exceed **eight hundred ten**

FIRST AMENDMENT TO AGREEMENT NO. 3749

Page 2 of 3

thousand dollars and zero cents (\$810,000.00). Such sum shall include all amounts payable to CONTRACTOR for its subcontracts, leases, materials, and cost arising from, or due to termination of the Agreement. AGENCY shall pay CONTRACTOR upon thirty (30) days of receipt of invoice and full acceptance of product and services by the AGENCY. Said compensation of the First Amendment shall cover all expenses, losses, damages, and consequences arising out of the nature of work during its progress or prior to its acceptance including those for well and faithfully completing the work contemplated in Exhibit "A" of this First Amendment and the whole thereof in the manner of time specified in the aforesaid Agreement; and also include those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risk of any description connected with the work.

SECTION 3: TERM OF THIS FIRST AMENDMENT. The Parties hereto acknowledge and understand that the amendment to the Scope of Work as outlined in the "Revised Statement of Work" (Exhibit "A" to this First Amendment) and related increase in compensation described in Section 2 above, will be valid and effective until otherwise directed by the City of Montebello City Council.

SECTION 4: INCORPORATION OF REMAINING TERMS. Other than as expressly modified in this First Amendment with respect to the terms of the Agreement, all remaining terms, conditions, and provisions of the Agreement, and the entirety thereof, shall remain in full force and effect, and is incorporated fully herein by this reference.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Contract Agreement No. 3749 for the Dial-A-Taxi Program as of the day and year first above written.

[SIGNATURES ON NEXT PAGE]

FIRST AMENDMENT TO AGREEMENT NO. 3749

Page 3 of 3

CITY OF MONTEBELLO
("AGENCY")

Fiesta Taxi Cooperative, Inc.
("CONTRACTOR")

René Bobadilla, City Manager

Marco Soto, Vice President and Director
of Operations

Date:

Date:

ATTEST:

Irma Barajas, City Clerk

APPROVED AS TO FORM:

Arnold M. Alvarez-Glasman, City Attorney

ATTACHMENT 2

PROJECT OVERVIEW

BACKGROUND

In response to the COVID-19 pandemic, in an effort to protect public health and all our community, normal operation of the Montebello Bus Lines has been temporarily suspended and replaced by a temporary reduced schedule by Fiesta Taxi vans. Fiesta Taxi Vans will operate on a fixed route until further directed by City Council.

STATEMENT OF WORK

All of the following required work will be done (where applicable) between the hours of 4 a.m. and 7 p.m. (15 hours daily)

1. Provide Dail-A-Taxi Services to non-registered seniors and disabled.
2. Provide well trained and qualified drivers to offer fixed route transit services.
3. All trips will begin and end within the service area designated by the City of Montebello. Fiesta Taxi will be flexible in making whatever changes to the service area the City may deem necessary during the performance of the Agreement and First Amendment.
4. Use recommended Center for Disease Control and Prevention (CDC) chemicals to destroy germs on surfaces, including wiping down all drivers controls, seating, windows, steering wheels, door handles, switches and any surface that a passenger may come in contact with.
5. Limit capacity of the passengers per van to keep a social distance.
6. Provide free fare service.
7. Passengers will be calling a dedicated phone line to request service.
8. Insure sufficient staffing levels to ensure rapid and accurate responses to phone calls.

CITY OF MONTEBELLO

CONTRACT AGREEMENT NO. 3749

FOR

DIAL-A-TAXI PROGRAM

(RFP No. 19-42)

This Contract Agreement ("Agreement") is made and entered into for the above-stated project this 13th day of February, 2020 ("Effective Date") by and between the City of Montebello, a California municipal corporation, as the "AGENCY," and Fiesta Taxi Cooperative Inc. a California corporation, as the "CONTRACTOR." AGENCY and CONTRACTOR may be individually referred to herein as a "Party" or collectively referred to herein as the "Parties."

RECITALS

- A. AGENCY is a municipal corporation duly-organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California.
- B. CONTRACTOR is a corporation duly-organized and doing business in the State of California. CONTRACTOR represents it has the background, knowledge, experience and expertise necessary to provide AGENCY with the equipment, goods and services set forth in this Agreement.
- C. AGENCY seeks to procure from CONTRACTOR, and CONTRACTOR seeks to provide to AGENCY, equipment, goods and services necessary for the Dial-A-Taxi program ("Project") as further described in Invitation for Proposal ("RFP") NO. 19-42 ("RFP No. 19-42").

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, AGENCY and CONTRACTOR agree as follows:

ARTICLE I. Incorporation of Recitals and other Contract Documents

The above-referenced Recitals constitute a material part hereof, and shall hereby be incorporated by reference. Moreover, this Agreement consists of the following documents, in order of precedence, all of which are incorporated herein and made part of this Agreement, as though fully set forth herein:

- a. This Agreement, including any and all addenda or supplemental agreements.
- b. RFP No. 19-42

- c. CONTRACTOR's Proposal Price dated January 6, 2020.
- d. All other documents, including but not limited to all required bonds, insurance certificates, permits, notices, schedules, forms, certifications, and affidavits.

These documents shall be collectively referred to herein as the "Contract Documents." In the event of a conflict among the Contract Documents, the order of precedence shall be as set forth above.

ARTICLE II. Services to be performed by CONTRACTOR

For and in consideration of the payments and agreements to be made and performed by AGENCY, CONTRACTOR agrees to perform the services and furnish all materials necessary to perform all work required for the above-stated Project, and to fulfill all other obligations as set forth in the aforesaid Contract Documents. CONTRACTOR covenants with AGENCY to furnish its best skill, judgment and efforts and to cooperate with AGENCY and any other contractors engaged by AGENCY in providing the services necessary for the Project. CONTRACTOR covenants to use its best effort to perform its duties and obligation under this Agreement in an efficient, expeditious and economical manner, consistent with the best interests of AGENCY. Workmanship throughout the performance of this Agreement shall conform to the highest standard of commercially accepted practice of work and shall result in a neat finished appearance to the satisfaction of AGENCY.

ARTICLE III. Compensation

As full compensation for furnishing all materials, performing all services, and fulfilling all obligations set forth in this Agreement, AGENCY agrees to pay and CONTRACTOR agrees to receive and accept the prices set forth in the Price Sheet submitted by CONTRACTOR dated January 6, 2020 ("Compensation"), attached hereto as **Exhibit "A"** and incorporated by this reference. The Compensation shall not exceed **four hundred fifty thousand dollars and no cents** (\$450,000) per year and such sum shall include a ten dollar (\$10) per trip minimum; all amounts payable to CONTRACTOR for its authorized subcontracts, leases, materials and costs arising from, or due to termination of this Agreement. AGENCY shall pay CONTRACTOR upon thirty (30) days of receipt of invoice and full acceptance of product and services by AGENCY.

Said Compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof if such are incurred in the manner and time specified in the aforesaid Contract Documents; and also including those resulting from acts beyond reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

ARTICLE IV. Completion of Work; Liquidated Damages

The work and services set forth in this Agreement will be completed in a timely manner, and in accordance with an agreed-upon work schedule to be determined by the Parties. An extension of the period for completion may be granted in writing by mutual agreement by the Parties,

herein for reasons outside the control of the CONTRACTOR including acts of God. CONTRACTOR shall request an extension by notifying AGENCY in writing at least fifteen (15) days prior to the expected Completion Date.

No extension of time requested or granted hereunder shall entitle CONTRACTOR to additional compensation unless, as a consequence of such extension, additional work must be performed, and such additional work is approved in writing. In such event, AGENCY shall in good faith consider any request for additional compensation submitted by CONTRACTOR.

ARTICLE V. Ownership of Written Products

All reports, documents, data, objects, written materials or other tangible things ("Written Products") developed by CONTRACTOR in its performance of this Agreement shall be and remain the property of AGENCY without restriction or limitation upon its use or dissemination by the AGENCY. CONTRACTOR may take and retain copies of such Written Products as desired, but no such written products shall be the subject of a copyright application by CONTRACTOR.

ARTICLE VI. Independent Contractor

CONTRACTOR is, and shall at all times remain to AGENCY, a wholly independent contractor. CONTRACTOR shall have no power to incur any debt, obligation, or liability on behalf of AGENCY or otherwise to act on behalf of the AGENCY as an agent. Neither AGENCY nor any of its officers, employees or agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's employees or agents, except as set forth in this Agreement. CONTRACTOR shall not represent that it is, or that any of its agents or employees are, in any manner employees of AGENCY.

ARTICLE VII. Confidentiality

All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by AGENCY. AGENCY shall grant such consent if disclosure is legally required. All AGENCY Written Products shall be returned to AGENCY upon the termination or expiration of this Agreement. CONTRACTOR agrees that the covenants contained in this Article shall survive the expiration or termination of this Agreement.

ARTICLE VIII. Compliance with State and Local Laws

CONTRACTOR shall comply with all applicable federal, state, and local laws throughout its performance of this Agreement. CONTRACTOR acknowledges the provisions of the State Labor Code requiring every employer to be insured against liability for worker's compensation, or to undertake self-insurance in accordance with the provisions of that code, and certifies compliance with such provisions. All services required under this Agreement will be performed by CONTRACTOR, or under its supervision, and all personnel shall possess the qualification, permits, and licenses required by the State and local law to perform such services.

CONTRACTOR shall be solely responsible for the satisfactory work performance of all personnel engaged in performing service required by this Agreement, and compliance with all reasonable performance standards established by AGENCY. CONTRACTOR shall be

responsible for payment of all employees' and sub-contractors' wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security. CONTRACTOR shall indemnify and hold harmless the AGENCY from any liability, damages, claims, costs and expenses of any nature arising from alleged violations of personnel practices. The Parties agree that the covenants contained in this Article shall survive the expiration or termination of this Agreement.

ARTICLE IX. Indemnification

The CONTRACTOR agrees to protect, defend, indemnify, save and hold harmless AGENCY, and all of its elected and appointed officials, boards and commissions, officers, directors, employees, and agents from and against any or all injuries, deaths, losses, damages, claims, suits, liabilities, demands, lawsuits, costs, expenses or causes of action, including reasonable attorneys' fees and related costs and expenses, which may accrue against the AGENCY based on, occurring, arising out of, or incident to (1) any alleged damage to property or any alleged injury to persons (including death) which may occur or be alleged to have occurred by or on account of the negligence, recklessness, willful misconduct, or errors or omissions by CONTRACTOR, its sub-contractors, or any of their servants, employees or agents; or, if applicable, (2) any infringement of the patent rights of any person or persons in consequence of the use by AGENCY or by any of its employees or agents, of articles supplied under contract, arising from proposals submitted and which CONTRACTOR is not lawfully entitled to sell. AGENCY will give CONTRACTOR prompt notice in writing of the institution of any suit or proceeding and permit CONTRACTOR through its counsel to defend AGENCY and will give all needed information, assistance and authority to enable the CONTRACTOR to do so.

CONTRACTOR shall give AGENCY immediate notice of any suit or action filed or prompt notice of any claim made against AGENCY arising out of the performance of this contract. CONTRACTOR shall furnish immediately to AGENCY copies of all pertinent papers received by the CONTRACTOR. If the amount of the liability claimed exceeds the amount of insurance coverage, CONTRACTOR shall authorize representatives of AGENCY or the Federal Government to collaborate with counsel for the insurance carrier, if any, in setting or defending such claim. The Parties agree that the covenants contained in this Article shall survive the expiration or termination of this Agreement.

ARTICLE X. PERS Eligibility Indemnity

In the event that CONTRACTOR, or its employee, agent, or subcontractor providing services under this Agreement, claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of AGENCY, CONTRACTOR shall indemnify, defend, and hold AGENCY harmless for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONTRACTOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of AGENCY.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONTRACTOR and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by AGENCY, including, but not limited to, eligibility to enroll in PERS as an employee of the AGENCY and entitlement to any contribution to be paid by the AGENCY for employer

contribution, employee contribution, or both, for PERS benefits. CONTRACTOR agrees that the covenants contained in this Article shall survive the expiration or termination of this Agreement.

ARTICLE XI. Insurance

In accordance with the terms of the Contract Documents, CONTRACTOR shall furnish the AGENCY a policy or certificate of insurance evidencing coverage for Worker's Compensation insurance and comprehensive liability insurance, including automobile, in which, upon the request of AGENCY, its officers and employees shall be named as additional insured with respect to all claims arising out of or in connection with the work to be performed, including any act or omission of employees, agents, sub-contractors, or their employees, whether or not caused by the sole (or contributing) negligence of the AGENCY, its officers or employees, and which shall remain in full force and effect until the work or services is accepted herein by the AGENCY. The policies shall provide the coverage limits set forth in the Contract Documents. Such comprehensive liability insurance shall be primary and non-contributing with any insurance coverage available to AGENCY, shall contain a severability of interest clause (cross liability) and shall provide that it shall not be canceled or materially reduced, except for non-payment of premium, without thirty (30) days' prior written notice to the AGENCY. In the event the policy is cancelled for non-payment of premium, CONTRACTOR shall give ten (10) days' prior written notice to AGENCY.

ARTICLE XII. Authorization by CONTRACTOR

CONTRACTOR affirms that the signatures, titles, and seals set forth hereinafter in execution of this Agreement represent all duly authorized individuals, firm members, partners, joint ventures, and/or corporate officers having principal interest herein.

ARTICLE XIII. Termination

In the event that either Party hereto fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, the non-defaulting party shall give the defaulting party written notice of the default, the nature of the default, and of the steps necessary to cure the default.

13.1. **Material Breach.** For any breach deemed by the non-defaulting party to constitute a material breach, the defaulting party is required to cure the breach within five (5) calendar days upon receipt of written notice.

13.2. **Non-Material Breach.** For any breach deemed by the non-defaulting party to constitute a non-material breach, the defaulting party is obligated to cure such breach within ten (10) calendar days upon receipt of written notice. However, if the nature of the non-material breach requires more than ten (10) days to cure, the defaulting party shall have thirty (30) days to diligently pursue and complete a cure.

13.3. **Failure to Cure.** In addition to any other available legal or equitable rights or remedies, if the default is not cured within the time periods described above, the non-defaulting party may terminate this Agreement by giving written notice thereof to the defaulting party, setting forth the effective date thereof.

13.4. **Termination for Convenience.** AGENCY shall have the option, at its sole discretion and without cause, of terminating this Agreement in whole, or in part, by giving ten (10) business days' written notice to CONTRACTOR.

13.5. Upon the termination of this Agreement as provided in this Article , the AGENCY shall provide to CONTRACTOR the part of Compensation which would otherwise be payable to CONTRACTOR for services CONTRACTOR had completed as of the date of termination, less the amount of all previous payment with respect to the Compensation. Further, upon such a termination for convenience by AGENCY, the Parties agree that CONTRACTOR shall be reimbursed for any "non-refundable" costs that CONTRACTOR has incurred for its services under this Agreement, provided that: (1) such "non-refundable" costs were incurred by the CONTRACTOR prior to the date of termination, and (2) that CONTRACTOR provides the AGENCY with adequate proof that CONTRACTOR incurred the costs after receiving AGENCY's Notice to Proceed (as defined in paragraph 13.5.1 below), and is unable to be seek a refund for such costs. Such "non-refundable" costs may include, but are not limited to, travel reservations incurred by CONTRACTOR for its performance of services under this Agreement. CONTRACTOR agrees to cease all work under this Agreement on or before the effective date of any notice of termination.

13.5.1. Notice to Proceed shall be issued within fifteen (15) working days of Contract execution. Should there be reasons why the Notice to Proceed cannot be issued within such period; the time may be extended by mutual agreement between AGENCY and CONTRACTOR. If the Notice to Proceed has not been issued within the 15-day period or within the period mutually agreed upon, the CONTRACTOR may terminate the Contract without further liability on the part of either party. AGENCY shall retain sole discretion to require multiple Notices to Proceed at each milestone, of phase of the Project where deemed applicable and/or desirable by AGENCY.

With the exception of the covenants contained in Articles VII (Confidentiality), IX (Indemnification), and XIV (Dispute Resolution and Legal Remedies), this Agreement shall expire upon full payment of the Compensation by the AGENCY to CONTRACTOR.

ARTICLE XIV. Dispute Resolution and Legal Remedies

Disputes regarding the interpretation or application of any provision(s) of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Parties. If any action at law or in equity is brought to enforce this Agreement or because of alleged dispute, breach, default or misrepresentation in connection with the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements incurred in that action or proceeding, in addition to such other relief as may be sought and awarded. The venue for any litigation shall be Los Angeles County, California. The Parties agree that the covenants contained in this Article shall survive the expiration or termination of this Agreement.

ARTICLE XV. Subcontract, Assignment or Delegation

CONTRACTOR shall not subcontract, delegate or assign its duties or rights hereunder, either in whole or in part, without the prior written consent of AGENCY. Any proposed subcontract, delegation, or assignment shall provide a description of the services to be covered, identification of the proposed sub-contractor, delegee, or assignee, and an explanation of why and how the

same was selected, including the degree of competition involved.

Any subcontract, delegation or assignment shall be made in the name of CONTRACTOR and shall not bind or purport to bind AGENCY and shall not release CONTRACTOR from any obligations under this Agreement including, but not limited to, the duty to properly supervise and coordinate the work of employees, assignees, delegees or sub-contractors. No such subcontract, delegation or assignment shall result in any increase in the amount of total compensation payable to CONTRACTOR under the Agreement.

ARTICLE XVI. Non-discrimination and Equal Opportunity Employer

In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, sub-contractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, mental condition or sexual orientation. CONTRACTOR will take affirmative action to ensure that sub-contractor and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.

ARTICLE XVII. Notices

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second (2nd) business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, or approvals hereunder shall be given to the following addresses or such other addresses as the Parties may designate by written notice:

To AGENCY: Montebello Bus Lines
Tom Barrio, Director of Transportation
400 South Taylor Avenue
Montebello, CA 90640
(323) 558-1625
(323) 887-4643 (Fax)
tbarrio@cityofmontebello.com

To CONTRACTOR: Fiesta Taxi Cooperative, Inc.
Marco A. Soto, Vice President and Director of Operations
2129 W. Rosecrans Avenue
Gardena, CA 90249
msoto@layellowcab.com

ARTICLE XVIII. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provision(s) nevertheless will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XIX. Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of

California.

ARTICLE XX. Entire Agreement; No Waiver

This Agreement and the aforementioned Contract Documents shall constitute the Entire Agreement by the Parties, and supersedes all prior proposals, agreements, and understandings between the Parties and may not be modified or terminated orally. The waiver by AGENCY of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No attempted waiver of any of the provisions herein, nor any change, amendment or modification to this Agreement shall be effective unless in writing and signed by the party against whom the same is sought to be enforced.

ARTICLE XXI. Effective Date

Unless otherwise specified herein, this Agreement shall become effective as of the date in which the last of the Parties, whether AGENCY or CONTRACTOR, executes this Agreement. This Agreement may be signed in counterparts, each of which shall constitute an original, and which collectively shall constitute one instrument.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF the Parties enter into this Agreement as of the Effective Date set forth above.

CITY OF MONTEBELLO
("AGENCY")



Salvador Melendez, Mayor

Fiesta Taxi Cooperative, Inc.
("CONTRACTOR")



Marco Soto, Vice President and Director of Operations

Date:

Date:

ATTEST:



Irma Barajas, City Clerk

APPROVED AS TO FORM:



Arnold M. Alvarez-Glasman, City Attorney

