

CITY COUNCIL
MEETING AGENDA

CITY OF MONTEBELLO CITY COUNCIL/SUCCESSOR AGENCY
CITY HALL COUNCIL CHAMBERS
1600 WEST BEVERLY BOULEVARD
MONTEBELLO, CALIFORNIA¹ ^{1[2]}
WEDNESDAY, FEBRUARY 13, 2019

5:30 P.M.

MONTEBELLO CITY COUNCIL

JACK HADJINIAN
MAYOR PRO TEM

SALVADOR MELENDEZ
COUNCILMEMBER

KIMBERLY A. COBOS-CAWTHORNE
COUNCILMEMBER

ANGIE M. JIMENEZ
COUNCILMEMBER

CITY CLERK
IRMA BARAJAS

CITY TREASURER
RAFAEL GUTIERREZ

CITY STAFF

ACTING CITY MANAGER
Paul L. Talbot

CITY ATTORNEY
Arnold M. Alvarez-Glasman

DEPARTMENT HEADS

Assistant City Manager
Fire Chief
Police Chief
Director of Finance
Director of Human Resources
Director of Planning/Community Development
Director of Recreation and Community Services
Director of Transportation

Danilo Batson
Fernando Pelaez
Brad Keller
Robert Mescher
Bob Franco
Manuel Mancha
David Sosnowski
Tom Barrio

OPENING CEREMONIES

1. **CALL MEETING TO ORDER:** Mayor Pro Tem Hadjinian
2. **ROLL CALL:** City Clerk I. Barajas

***IN CONSIDERATION OF OTHERS, PLEASE TURN OFF, OR MUTE,
ALL CELL PHONES AND PAGERS.***

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 III203+)*

^{2[2]} *Please note that the information contained in this agenda is a summary of the staff report prepared or each item. Complete copies of each staff report are available in the Office of the City Clerk.*

THANK YOU FOR YOUR COOPERATION.

- 3. STATEMENT OF PUBLIC ORAL COMMUNICATIONS FOR CLOSED SESSION ITEMS:**
Members of the public interested in addressing the City Council on Closed Session items must fill out a form provided at the door, and turn it in to the City Clerk prior to the announcement of Closed Session items.

Please be aware that the maximum time allotted for individuals to speak shall not exceed three (3) minutes per speaker. Please be aware that in accordance with State Law, the City Council may not take action or entertain extended discussion on a topic not listed on the agenda. Please show courtesy to others and direct all of your comments to the Mayor.

***IN CONSIDERATION OF OTHERS, PLEASE TURN OFF, OR MUTE,
ALL CELL PHONES AND PAGERS.
THANK YOU FOR YOUR COOPERATION.***

ORAL COMMUNICATIONS ON CLOSED SESSION ITEMS

CLOSED SESSION

The City Attorney shall provide a briefing on the item listed for Closed Session as follows:

- 4. LIABILITY CLAIMS**
Government Code Section 54956.95
Claimant: F. Osorio (claim no. MNTA-3539)
Agency claimed against: City of Montebello
- 5. LIABILITY CLAIMS**
Government Code Section 54956.95
Claimant: D. Jacobs (claim no. MNTA-3516)
Agency claimed against: City of Montebello
- 6. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Government Code Section 54956.9(d)(1)
Names of Case: M. Polanco v. City of Montebello, L.A.S.C. Case No. BC671250
- 7. CONFERENCE WITH LEGAL COUNCIL – EXISTING LITIGATION**
Government Code Section 54956.9(d)(1)
Name of Case: V. Ocampo v. City of Montebello (Worker's Compensation case number ADJ11390566)

REGULAR SESSION

- 8. INVOCATION**
- 9. PLEDGE OF ALLEGIANCE**
- 10. STATEMENT OF PUBLIC ORAL COMMUNICATIONS:** Members of the public interested in addressing the City Council on any agenda item or topic must fill out a form provided at the door, and turn it in to the City Clerk prior to the beginning Oral communications. A form does not need to be submitted for public hearing items.

Speakers wishing to address the City Council on an item that is not on the agenda will be called upon in the order that their speaker card was received. Those persons not accommodated during this thirty (30) minute period will have an opportunity to speak

under “Oral Communications – Continued” after all scheduled matters have been considered.

Please be aware that the maximum time allotted for individuals to speak shall not exceed three (3) minutes per speaker. Please be aware that in accordance with State Law, the City Council may not take action or entertain extended discussion on a topic not listed on the agenda. Please show courtesy to others and direct all of your comments to the Mayor.

- 11. PUBLIC ORAL COMMUNICATIONS ON OPEN SESSION ITEMS (30 MINUTES)**
- 12. STAFF COMMUNICATIONS ON ITEMS OF COMMUNITY INTEREST**
- 13. CORRECTIONS TO THE AGENDA – ACTING CITY MANAGER**
- 14. APPROVAL OF AGENDA:** Any items a Councilmember wishes to discuss should be designated at this time. All other items may be approved in a single motion with the exception of **Item No. 15** and any item upon which a member of the public or a member of the City Council has requested to speak. Such approval will also waive the reading of any ordinance.

SCHEDULED MATTERS

- 15. PUBLIC HEARING: COMMERCIAL CANNABIS PROCESS – RECOMMENDED NEXT STEPS BY CANNABIS AD HOC COMMITTEE, SELECTION OF POTENTIAL OPERATORS FOR PHASE III CONSIDERATION, AND ADOPTION OF FEES AFTER PUBLIC HEARING**

RECOMMENDATION:

City staff recommends that the City Council:

- (1) receive and approve the recommendations of the City’s cannabis ad hoc committee related to the approval of certain applicants onto Phase III consideration; and
- (2) conduct a public hearing for consideration of adoption of a resolution setting fees related to processing and approving potential cannabis operators’ licensing and other entitlements, as required by State law; and
- (3) adopt the attached fee resolution.

CONSENT MATTERS

- 16. APPROPRIATION OF ASSET FORFEITURE FUNDS TO PURCHASE TWO LEASED VEHICLES**

RECOMMENDATION: It is recommended that the City Council approve the appropriation of Drug Asset Forfeiture funds to purchase two (2) leased vehicles at the conclusion of the 4 year lease agreement (due to expire February 28, 2019).

- 17. AWARD POLICE DEPARTMENT HVAC MAINTENANCE AND REPAIRS RFP#19-11**

RECOMMENDATION: It is recommended that City Council: (1) Award a contract in the amount of \$122,822 per year to F.M. Thomas Air Conditioning, Inc. for HVAC Maintenance and Repairs RFP#19-11 at the Police Department; and (2) Authorize the Acting City Manager to execute the Contract Agreement on behalf of the City.

18. APPROVAL OF DISADVANTAGED BUSINESS ENTERPRISE (DBE) THREE YEAR GOAL FOR FEDERAL FISCAL YEARS 2019 THROUGH 2021

RECOMMENDATION: Staff recommends City Council adopt Resolution authorizing a three year Disadvantaged Business Enterprise (“DBE”) goal of three percent (3%) for Federal Transit Administration (“FTA”) contracting opportunities for Federal Fiscal Years 2019 through 2021.

19. APPROVAL OF AGREEMENTS WITH THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY AND CUBIC TRANSPORTATION SYSTEMS, INC. TO UPGRADE THE TRANSIT ACCESS PASS CARD SYSTEMS ON THE MONTEBELLO BUS LINES FLEET

RECOMMENDATION: Approve and adopt the attached agreements (collectively, the “TAP Agreements”) with the Los Angeles County Metropolitan Transportation Authority (“Metro”) and Cubic Transportation Systems, Inc. (“Cubic” or “Contractor”): (1) Cooperative Transit Access Pass (TAP) Participant Agreement with Metro; (2) TAP Farebox Upgrade Reimbursement Agreement with Metro; (3) Farebox Upgrade Agreement with Cubic; and (4) Tap Systems Data Use and Non-Disclosure Agreement with Metro.

20. PARTNERSHIP AGREEMENT BETWEEN THE CITY OF MONTEBELLO AND THE SHOPS OF MONTEBELLO

RECOMMENDATION: It is recommended that the City Council approve the proposed Partnership Agreement between the City and The Shops, and authorize the City Manager to execute the agreement on the City’s behalf.

21. RESOLUTION AUTHORIZING THE FILING OF APPLICATIONS WITH THE FEDERAL TRANSIT ADMINISTRATION FOR FEDERAL TRANSPORTATION ASSISTANCE

RECOMMENDATION: It is recommended that the City Council adopt a Resolution authorizing the filing of applications with the Federal Transit Administration for the City of Montebello, through the Montebello Bus Lines, to receive federal transportation assistance.

22. CITY COUNCIL AGENDA PACKETS AND WEEKLY NEWSLETTER – CONVERSION TO ELECTRONIC PRODUCTION AND DISTRIBUTION

RECOMMENDATION: That the City Council approve electronic production and distribution of City Council Agenda Packets.

23. CONTINUATION OF CALPERS CONTRIBUTIONS

RECOMMENDATION: Staff recommends that the City Council approve the attached resolution and side letter agreements, substantially in form, continuing the CalPERS Contributions for non-represented classic member employees, for non-safety and safety units, during the City’s labor negotiations with the various employee organizations.

24. ORDINANCE AMENDING CHAPTERS 3.20 AND 3.21 OF THE MONTEBELLO MUNICIPAL CODE RELATING TO PROCUREMENT

RECOMMENDATION: That the City Council Approve the Ordinance Amending Chapters 3.20 and 3.21 of the Montebello Municipal Code Relating to Procurement.

25. CLAIMS AGAINST THE CITY

RECOMMENDED ACTION: Move to **DENY** the following claim: S. Chaves in the amount of \$250,000.00.

26. PAYMENT OF BILLS: RESOLUTION APPROVING THE CITY/SUCCESSOR AGENCY WARRANT REGISTER OF DEMANDS DATED FEBRUARY 13, 2019

RECOMMENDED ACTION: Adopt the proposed resolution approving the Warrant Register dated February 13, 2019.

27. APPROVAL OF MINUTES: REGULAR SESSIONS OF AUGUST 8, SEPTEMBER 12, SEPTEMBER 19, SEPTEMBER 26 AND OCTOBER 10, 2018

RECOMMENDED ACTION: Move to approve and file said minutes.

28. PUBLIC ORALS – IF NEEDED

COUNCIL ORALS

29. COUNCILMEMBER MELENDEZ

- a. Beautification Project

30. COUNCILMEMBER COBOS-CAWTHORNE

- a. ICA Conference recap
- b. SEAACA Meeting update
- c. Acknowledgements

31. COUNCILMEMBER JIMENEZ

None.

32. MAYOR PRO TEM HADJINIAN

None.

ADJOURNMENT

CITY OF MONTEBELLO

CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Paul Talbot, Acting City Manager

BY: Arnold M. Alvarez-Glasman, City Attorney
Iain MacMillan, Assistant City Attorney

SUBJECT: **Commercial Cannabis Process – Recommended Next Steps by Cannabis Ad Hoc Committee, Selection of Potential Operators for Phase III Consideration, and Adoption of Fees after Public Hearing**

DATE: February 13, 2019

RECOMMENDATION:

City staff recommends that the City Council:

- (1) receive and approve the recommendations of the City's cannabis ad hoc committee related to the approval of certain applicants onto Phase III consideration; and
- (2) conduct a public hearing for consideration of adoption of a resolution setting fees related to processing and approving potential cannabis operators' licensing and other entitlements, as required by State law; and
- (3) adopt the attached fee resolution.

BACKGROUND:

During the January 23, 2019 City Council meeting, the City Council approved the following three recommendations from the cannabis ad hoc committee, from which City staff additionally took the following actions:

Recommendation #1: Direct City staff to process local entitlements and development agreement terms after its due consideration and evaluation for all current applicants who have secured a property site in compliance with the City's Zoning Code and have obtained a State temporary license for any commercial cannabis activities allowed under the City's Municipal Code in accordance with a specified timeline.

Pursuant to Council direction, City staff sent all 36 applicants the notice attached hereto as Attachment A ("Notice"). The Notice informed the applicants that the City would process into Phase III consideration all current commercial cannabis applicants who have secured a property site in compliance with the City's Zoning Code, obtained a State temporary license for any commercial cannabis activities allowed under the City's Municipal Code, and paid the Phase III fee no later than January 30, 2019. Applicants

were required to provide specified proof of these requirements by the aforementioned deadline. Lastly, these applicants were required to contact the Montebello Police Department no later than January 31, 2019 in order to schedule an appointment with the Montebello Police Department to have a Livescan for all owners of the business identified in their application.

Recommendation #2: Authorize the City Manager to hire a consultant to assist City staff in processing any qualifying applicants. Pursuant to Council direction, the Acting City Manager hired a consultant. The Acting City Manager retained Tierra West consistent with his purchasing authority.

Recommendation #3: Adopt the attached resolution setting various cannabis business-related fees relating to recovering the City's costs in processing any qualifying applicants, subject to a future public hearing as required by State law. Pursuant to Council direction, City staff properly noticed a public hearing for this item at the February 13, 2019 Council meeting.

DISCUSSION:

Selection of Applicants for Phase III Consideration

On January 31, 2019, the cannabis ad hoc committee met with the City's department heads to review all requested materials submitted by the applicants and to evaluate the thirty-six (36) current applicants. After substantive discussion, the ad hoc committee developed recommendations regarding processing certain applicants onto Phase III consideration. The following are the recommendations from the ad hoc committee for City Council consideration:

Recommendation #1: Approve the following list of twenty-one (21) applicants for Phase III consideration:

1. Blue Basil, LLC
2. GW Montebello, Inc.
3. Aralo Enterprises
4. RZ Capital Development LLC
5. Calimed Management Group
6. Saint's Place, LLC
7. Lean Green Machine
8. Jade Effect / Select Green Organics Inc.
9. RD Montebello Inc.
10. OG Montebello Inc.
11. Bello Monte Farms LLC
12. The Jasmine Rose LLC
13. One-Up Montebello LLC
14. The Laboratory/Green Delivery Inc.

Commercial Cannabis Process – Recommended Next Steps by Cannabis Ad Hoc Committee, Selection of Potential Operators for Phase III Consideration, and Adoption of Fees after Public Hearing
Page 3

15. Prime Care Inc.
16. SB Montebello Investments, LLC
17. CalGreen, LLC
18. Garden of Leaves, LLC
19. Green Hearts LLC
20. Luna Caregivers
21. EEL Holdings, LLC

Eighteen of the aforementioned twenty-one applicants timely complied with all of the Notice's requirements. Three of the aforementioned applicants timely complied with all of the Notice's requirements, with the exception of providing the State license. However, all three of these applicants have pending State license applications and will be required to provide evidence of such licensing prior to any potential local authorization.

Recommendation #2: Stay any Phase III consideration for the following three (3) applicants for at least sixty (60) days:

1. Telem Enterprises, LLC
2. MTN Farm
3. Eppek, LLC

Each of these three applicants timely paid the Phase III fee but did not timely provide site control or State licensing documentation. By staying consideration of these applicants, they are not denied further processing, but could be evaluated for consideration at a later date.

Recommendation #3: Remove the following twelve (12) applicants from any further consideration, subject to potential future cannabis ad hoc committee recommendations to reinstate consideration:

1. Evelina Lopez
2. Uranti LLC
3. Hot Spot
4. Lowell Herb Co.
5. Havana Green, LLP
6. MIC Biological Technology (first application)
7. MIC Biological Technology (second application)
8. J Supreme Green
9. Cali Green
10. Strategic Star Properties, LLC
11. Plain Jane LLC
12. MendoMeds

These applicants did not timely submit any of the required information requested in the Notice.

Public Hearing and Adoption of Fees

The attached resolution sets various cannabis business-related fees relating to recovering the City's costs in processing any qualifying applicants. These fees are in addition to any generally applicable fees that have already been adopted by the City.

In order to recover all costs reasonably associated with the preparation, processing, administration, and enforcement of the City's cannabis business program, the City needs to adopt cannabis business-related fees. Accordingly, City staff determined the costs of establishing and maintaining the City's commercial cannabis program by estimating staff and consultant time for various tasks of the process. City staff also studied the fees charged by neighboring jurisdictions for similar actions and determined that the resolution's fees are reasonable and support a justifiable 100% cost recovery model. As such, the City must impose a fee for each commercial cannabis activity application, associated development agreement and all other related implementation, monitoring or enforcement costs. To determine the appropriate fee amount for each application, the City's expenses - including expenses for public hearings, staffing, consulting services and legal fees - were calculated and equally divided between the projected minimum number of applications the City may receive.

Table 1-1 summarizes the expenditures of the City to-date and the projected expense anticipated throughout the application process.

Table 1-1 – Commercial Cannabis Permit Cost Recovery Summary

Commercial Cannabis Application Fees

	Estimated Hours	Billable Rate	Total Estimated Cost	Estimated Cost/Fee Per Activity Type	Permit Application Projection (total)
CANNABIS PROPERTY EXPEDITED SCREENING FEES (PHASE III)					
Project Coordination/Admin Costs	350	\$ 137.50	\$ 48,125.00	\$ 2,005.00	24
Community Outreach+ Public Hearings	150	\$ 137.50	\$ 20,625.00	\$ 860.00	24
Phase III Initial Screening and Preliminary Determination	50	\$ 137.50	\$ 6,875.00	\$ 286.00	24
Phase III Investigation and Zoning/Sensitive Use Verification	100	\$ 137.50	\$ 13,750.00	\$ 573.00	24
Legal Cost Recovery and Inspection	100	\$ 350.00	\$ 35,000.00	\$ 1,458.00	24
Application Review and Processing	72	\$ 137.50	\$ 9,900.00	\$ 9,900.00	24
Non-Refundable Application Fee (per activity)				\$15,000	
DEVELOPMENT AGREEMENT (DA) FEE					
Development Agreement Coordination	31	\$ 137.50	\$ 4,250.00		
Development Agreement Preparation (legal)	35	\$ 350.00	\$ 12,250.00		
Non-refundable Development Agreement Deposit			\$ 16,500.00		
DETERMINATION APPEALS					
Planning Commission Determination Appeal				Same as Cannabis Property Expedited Application Fee	
CHANGE OF LOCATION, OWNERSHIP OR TRANSFER					
	42	\$ 137.50	\$ 5,800.00		
DEVELOPMENT AGREEMENT MODIFICATION					
			\$ 6,200.00		

To maintain a full cost recovery model (100% cost recovery), the City must charge Commercial Cannabis Permit applicants for the costs associated with development, review and processing of their application request. Because the City has no definitive model for projecting the number of potential applicants, staff reviewed the application process and applicant turnout of other municipalities. Staff determined that a minimum of twenty-four (24) applications would likely result from the allowed commercial cannabis activities within the City. The cost-recovery model uses twenty-four (24) as the cost denominator which results in a non-refundable Commercial Cannabis Permit Application Fee of \$15,000.00 per permit type. The computation as set forth in Table 1-1 takes into account the estimated time to complete specified program tasks, multiplied by the hourly burdened rate of City staff, agents, and representatives. This permit fee will ensure 100% recovery of the City's current and future costs.

California law requires that the proposed fee information be made available to the public for at least ten (10) days prior to the City Council's consideration of the proposed Resolution. City Staff provided notice of this hearing as required by law, and the information set forth was made available. Finally, the attached resolution, if adopted, would be effective immediately.

The proposed fees, to be reflected and incorporated as amendments to the appropriate City Fee Schedule is presented below:

Amendments to City Fee Schedule	
Application	Fee
Cannabis Property Expedited Screening	\$15,000.00 Non-Refundable Flat Fee (per requested activity type* at property)
Commercial Cannabis Development Agreement	\$16,500.00 Non-Refundable Deposit
Determination Appeals	Same as original application fee
Change of Location, Ownership or Transfer	\$5,800.00 Non-Refundable Flat Fee
Development Agreement Modification	\$6,200.00 Non-Refundable Deposit

*Activity type means any of the following activity types allowed under the City's Municipal Code, as may be amended: indoor cultivation, manufacturing, testing, distribution, and non-storefront retail delivery

Further Direction Requested by City Staff

City staff requests direction from the Council regarding the tentative Checklist Timeline, attached hereto as Attachment C. If the Council approves the requested actions described herein, City staff recommends that the City set a schedule for the application and processing deadlines within Phase III. Specifically, City staff seeks direction

regarding setting deadlines for the highlighted actions on the Checklist Timeline. As options, either the Council can direct the ad hoc committee to meet and develop a recommended timeline, subject to Council approval, or it can provide direction as to a specific timeline at the February 13, 2019 Council meeting.

In addition, the draft Development Agreement is once again presented for your review and comment. If the City Council approves the ad hoc committee's recommendation to engage in further negotiations with the 21 recommended applicants, the draft Development Agreement will serve as the template for negotiations.

FINANCIAL IMPACT

The recommended action will have a positive fiscal impact by recovering all City costs relating to the implementation of the City's commercial cannabis program.

SUMMARY:

The City's cannabis ad hoc committee is presenting and requesting Council approval of its recommendations related to selection of applicants for Phase III consideration. Additionally, the City held a public hearing for consideration of City staff's recommended cannabis-related fee adoption.

ATTACHMENTS

- A. Notice to Cannabis Applicants, dated January 25, 2019
- B. Fee Resolution
- C. Checklist Timeline
- D. Draft Development Agreement

ATTACHMENT A



City of Montebello

January 25, 2019

Via E-mail

TO ALL MONTEBELLO CANNABIS APPLICANTS,

Re: Potential Processing of Phase III Applicants

The City of Montebello (the "City") will process into Phase III consideration all current commercial cannabis applicants who have secured a property site in compliance with the City's Zoning Code and have obtained a State of California ("State") temporary license for any commercial cannabis activities allowed under the City's Municipal Code and State law. Please review all City Municipal Code and Zoning Code provisions regulating commercial cannabis operations for reference. All applicants who have (i) received a State license, (ii) believe that their proposed business location complies with the City's Zoning Code, and (iii) wish to proceed in the application process, must submit all of the following to the City **no later than January 30, 2019 by 5:00 p.m.**

(a) **Verification of site control.** If you own the premises, please provide my office with a true and correct copy of your recorded grant deed or a copy of your title for the property. If the property is being leased, please provide my office with a copy of a fully executed, signed and dated lease AND a signed, notarized consent statement form from the owner of the property, acknowledging that the property owner has read City of Montebello Municipal Code and Zoning Code provisions regulating commercial cannabis operations and consents to the potential operation of the commercial cannabis business on the owner's property. Please send all required documents described herein by email to mgonzalez@agclawfirm.com. Please see **attached** property owner consent form that needs to be completed, signed and notarized;

(b) **Copy of all State temporary cannabis license(s) they were approved for by email to mgonzalez@agclawfirm.com; and**

(c) **Payment of the non-refundable Phase III fee in the amount of \$2,900.00 in the form of a cashier's check payable to the City of Montebello.** Please provide payment to Montebello City Hall.

Additionally, these applicants must contact the Montebello Police Department no later than January 31, 2019 in order to schedule an appointment with the Montebello Police Department, as available by Montebello Police Department's determination, to have a Livescan for all owners of the business identified in their application. A Livescan form will be provided to all applicants prior to the Livescan. Failure to comply with these requirements will subject the applicant to be

rejected from Phase III consideration. The City will then conduct verification of site control, site location, minimum site distance from sensitive uses identified in City Municipal Code section 17.71.010, and State licenses, prior to directing qualifying applicants to proceed in accordance with the attached checklist. The attached checklist is subject to change by sole discretion of the City, and applicants will be informed of any changes.

Thank you,

ALVAREZ-GLASMAN & COLVIN



Arnold M. Alvarez-Glasman
City Attorney

Attachment A: Property Owner Consent Form

Attachment B: Checklist for Montebello Cannabis Applicants

Attachment A

PROPERTY OWNER SIGNED AND NOTARIZED CONSENT FORM

Property Address: _____

APN(s): _____

Legal Property Owner Name: _____

I, _____,
Authorized Person First and Last Name Title (owner, president, managing partner, managing member, trustee)

have read the City of Montebello Municipal Code and Zoning Code provisions regulating commercial cannabis operations and consent to the operation of

_____, a proposed commercial cannabis business, at the
Primary Owner / Applicant Business Name

real property identified hereinabove.

Authorized Signature: _____ Date: _____

Commercial Cannabis Permit Primary Owner / Applicant Information:

Primary Owner / Applicant First and Last Name: _____

Phone Number: _____ Email: _____

Check all that apply:

- ☐ Property is leased to the Primary Applicant. ☐ Property is optioned by the Primary Applicant.
☐ Property is optioned to more than one entity. (List others, below.) ☐ Other (explain below)

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____, County of _____
On _____ (Date) before me _____ (Notary name)
personally appeared _____ (Property Owner Name), who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Notary Public)

(Seal)

Attachment B

CHECKLIST FOR MONTEBELLO CANNABIS APPLICANTS

January 23, 2019

<u>ACTION REQUIRED</u>	<u>DEADLINE (Tentative)</u>
Phase One Review	Completed
Phase Two Review	
Preliminary Background checks	Completed
LiveScan	January 31, 2019
Phase Three Review	
Payment of Phase Three Fee	January 30, 2019 5:00 p.m.
Verification of Site Control (Execution of Affidavit and back-up documentation)	January 30, 2019 5:00 pm
Verification of State temporary license (Provide City with State license)	January 30, 2019 5:00 p.m.
Verification of Site distance	February 5, 2019
Review by Council subcommittee	January 31, 2019
Notice to qualified applicants	February 5, 2019
Payment of Expedited Screening Fee	February 11, 2019
Payment of Cannabis Development Agreement Fees with request for Agreement review meeting	February 11, 2019
Submittal of CUP application with payment of fees	March 5, 2019
Development Agreement and CUP processing	
CUP hearing before Planning Commission	Approximately 30 days from submittal of final Application
Review of Development Agreement by City Council	Approximately 15 days from CUP approval by PC

Upon approval of a CUP and Development Agreement, including compliance with all provisions of the Montebello Municipal Code, State laws and payment of all fees, the City, at its sole discretion, may issue a business license for the operation of a Cannibals business operation. All approvals are subject to the City Council and Planning Commission.

ATTACHMENT B

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTEBELLO,
CALIFORNIA, ESTABLISHING NEW FEES RELATED TO THE CITY'S COMMERCIAL
CANNABIS PROGRAM FOR COST COVERY**

WHEREAS, the City of Montebello ("City") is a general law city, incorporated under the laws of the State of California, and has the power to make and enforce within its jurisdictional limits all local, police, sanitary, and other ordinances, resolutions, and regulations not in conflict with general laws of the state;

WHEREAS, the City allows cannabis cultivation, manufacturing, testing, distribution, and non-storefront retailer-delivery only of medicinal and adult-use cannabis and cannabis products, and the ancillary transportation and delivery of same, in a responsible manner to protect the health, safety, and welfare of the residents of City of Montebello and to enforce rules and regulations consistent with the California Medicinal and Adult-Use Cannabis Regulation and Safety Act, and related laws, regulations, and policies issued by the State of California;

WHEREAS, the City may set and establish fees, subject to a public hearing, which will serve to recover the City's costs reasonably incurred in processing, administering, monitoring and enforcing its commercial cannabis program;

WHEREAS, certain fees must be imposed to applicants in order to ensure all costs reasonably associated with the preparation, processing, administration, and enforcement of the City's commercial cannabis program are recovered by the City;

WHEREAS, accordingly, the City has determined the costs of establishing and maintaining a commercial cannabis program;

WHEREAS, the City has properly noticed a public hearing for this Resolution at the February 13, 2019 Council meeting;

WHEREAS, the City must impose a fee for each commercial cannabis activity application, associated development agreement and all other related implementation, monitoring or enforcement costs. To determine the appropriate fee amount for each commercial cannabis activity application, the City's expenses - including expenses for public hearings, staffing, consulting services and legal fees - were calculated and equally divided between the projected minimum number of applications the City may receive;

WHEREAS, based on the City's study of estimated costs to conduct tasks associated with the commercial cannabis program and review of neighboring jurisdictions' fees, as reflected in the February 13, 2019 staff report for this item, the proposed new fees to be reflected and incorporated as amendments to the appropriate City fee schedule are as follows:

Amendments to City Fee Schedule

Application	Fee
Cannabis Property Expedited Screening	\$15,000.00 Non-Refundable Flat Fee (per requested activity type* at property)
Commercial Cannabis Development Agreement	\$16,500.00 Non-Refundable Deposit

Determination Appeals	Same as original application fee
Change of Location, Ownership or Transfer	\$5,8000.00 Non-Refundable Flat Fee
Development Agreement Modification	\$6,200.00 Non-Refundable Deposit

*Activity type means any of the following activity types allowed under the City's Municipal Code, as may be amended: indoor cultivation, manufacturing, testing, distribution, and non-storefront retail delivery

WHEREAS, City Council approval of the imposition of these fees concerning commercial cannabis businesses and activities, will allow the City to proceed with the application process for the purpose of accepting applications, processing applications, undergoing a review and selection process of applicants, and ultimately entering into development agreements for commercial cannabis operations within the City,

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTEBELLO HEREBY RESOLVES, DECLARES, AND DETERMINES AS FOLLOWS:

SECTION 1. RECITALS.

The City Council hereby finds and declares that the foregoing recitals are true and correct and incorporates them herein as a substantive part of this Resolution.

SECTION 2. ADOPTED FEES.

(a) That the City Council hereby adopts the fees, as established herein and incorporated by this reference, by this Resolution under its authority pursuant to local and state law, and such fees shall be imposed as set forth herein, for the reasonable estimated costs the City of Montebello will incur with respect to accepting, processing, reviewing, investigating, and performing certain regulatory activities associated with the enforcement of the program pursuant to the City Council-approved commercial cannabis program:

Amendments to City Fee Schedule

Application	Fee
Cannabis Property Expedited Screening	\$15,000.00 Non-Refundable Flat Fee (per requested activity type* at property)
Commercial Cannabis Development Agreement	\$16,500.00 Non-Refundable Deposit
Determination Appeals	Same as original application fee
Change of Location, Ownership or Transfer	\$5,800.00 Non-Refundable Flat Fee
Development Agreement Modification	\$6,200.00 Non-Refundable Deposit

*Activity type means any of the following activity types allowed under the City's Municipal Code, as may be amended: indoor cultivation, manufacturing, testing, distribution, and non-storefront retail delivery

(b) That payment of the fees be submitted to the City of Montebello.

(c) That the City of Montebello will not begin any task as required by its commercial cannabis program, until and unless the applicable fee has been paid to the City of Montebello in full.

(d) That the fees as designated herein shall be non-refundable.

(e) That payment of the fees does not guarantee approval of any cannabis business, or the reversal of a decision of the City of Montebello. It also, does not guarantee any approval of a conditional use permit or other City granted entitlements.

(f) That the above fees do not include any other fees due for, without limitation, other permits, licenses, inspections, document preparation that may be required by the City of Montebello such as, but not limited to, application for conditional use permit or other land use entitlements, building permits, certificates of occupancy, or mandatory fire inspections.

SECTION 3: CEQA EXEMPTION. The City Council, on the basis of the whole record and exercising independent judgment, finds that this Resolution is not subject to environmental review pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA). Sections 15060(c)(2) and 15060(c)(3) pertain to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a project under Section 15378.

SECTION 4. SEVERABILITY. If any section, subsection, line, sentence, clause, phrase, word, part, provision, or portion of this Resolution, or its application to any individual, entity, or circumstance, for any reason, is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution, and shall continue in full force and effect. To this end, any section, subsection, line, sentence, clause, phrase, word, part, provision, or portion of this Resolution is severable. The City Council of the City of Montebello declares that this Resolution would have been adopted by the City Council regardless of the fact that any section, subsection, line, sentence, clause, phrase, word, part, provision, or portion thereof, might be declared to be invalid or unconstitutional.

SECTION 5. PASSAGE AND EFFECTIVE DATE. The City Clerk shall attest and certify to the passage and adoption of this Resolution, and enter it into the book of original resolutions. This Resolution shall be effective immediately upon adoption.

PASSED, APPROVED and ADOPTED this ____ day of _____ 2019.

Jack Hadjinian, Mayor Pro Tem

APPROVED AS TO FORM:

ATTEST:

Arnold M. Alvarez-Glasman, City Attorney

Irma Barajas, City Clerk

ATTACHMENT C

CHECKLIST FOR MONTEBELLO CANNABIS APPLICANTS

January 23, 2019

<u>ACTION REQUIRED</u>	<u>DEADLINE (Tentative)</u>
Phase One Review	Completed
Phase Two Review	
Preliminary Background checks	Completed
LiveScan	January 31, 2019
Phase Three Review	
Payment of Phase Three Fee	January 30, 2019 5:00 p.m.
Verification of Site Control (Execution of Affidavit and back-up documentation)	January 30, 2019 5:00 pm
Verification of State temporary license (Provide City with State license)	January 30, 2019 5:00 p.m.
Verification of Site distance	February 5, 2019
Review by Council subcommittee	January 31, 2019
Notice to qualified applicants	February 5, 2019
Payment of Expedited Screening Fee	February 11, 2019
Payment of Cannabis Development Agreement Fees with request for Agreement review meeting	February 11, 2019
Submittal of CUP application with payment of fees	March 5, 2019
Development Agreement and CUP processing	
CUP hearing before Planning Commission	Approximately 30 days from submittal of final Application
Review of Development Agreement by City Council	Approximately 15 days from CUP approval by PC

Upon approval of a CUP and Development Agreement, including compliance with all provisions of the Montebello Municipal Code, State laws and payment of all fees, the City, at its sole discretion, may issue a business license for the operation of a Cannibals business operation. All approvals are subject to the City Council and Planning Commission.

ATTACHMENT D

**COMMERCIAL CANNABIS ACTIVITIES
DEVELOPMENT AGREEMENT**

Agreement # _____

This Development Agreement ("Agreement") is made by and between and among the CITY OF MONTEBELLO ("City"); _____, a _____ ("Permittee"); and _____, a _____ ("Landlord") this _____ day of _____, 2018 ("Effective Date"), as required by Section 5.90.050(C) of the Montebello Municipal Code (the "Code") setting forth the terms and conditions under which Permittee shall operate a _____ (Type of Use)

_____ ("Facility") in addition to the requirements in Permittee's conditional use permit issued by the City, Chapter 5.90 of the Code, and Title 17 of the Code. The requirements set forth in Chapter 5.90 and Title 17 of the Code, and any conditions of approval in the Permittee's conditional use permit issued by the City, are incorporated herein by reference. City, Permittee, and Landlord may be referred to in this Agreement individually as a "Party" and collectively as the "Parties".

RECITALS

- A. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.
- B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.
- C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis.
- D. On February 28, 2018, the City Council of the City of Montebello ("City Council") adopted two ordinances relating to commercial cannabis activities: (1) an ordinance amending Chapter 5.90 of the Code, establishing baseline permitting and operating requirements for commercial cannabis cultivation, manufacturing, and testing facilities; and (2) a zoning code amendment making such facilities a conditionally permitted use in the M-1 (Light Manufacturing) and M-2 (Heavy Manufacturing) zoning districts.

- E. On May 23, 2018, the City Council adopted two ordinances amending Chapter 5.90 of the Code and the City's zoning code, respectively, which in combination (1) established baseline permitting and operating requirements for cannabis distribution and delivery-only retail in the City and (2) increased the sensitive uses to be buffered from permitted commercial cannabis activities within the City.
- F. Parties desire to enter into this Agreement to facilitate the orderly operation of any commercial cannabis activities, permitted by City and conducted by Permittee, and to protect and promote the public health, safety, and welfare of the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. Definitions. Unless otherwise specified herein, the definitions in Section 5.90.010 of the Code shall apply to this Agreement.

Section 1.2. Recitals. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement.

Section 1.3. Exhibits. The following "Exhibits" are attached to and incorporated into this Agreement:

<u>Designation</u>	<u>Description</u>
Exhibit A	Legal Description of Property
Exhibit B	Site and Floor Plans
Exhibit C	Property Owner Consent
Exhibit D	

Section 1.4. Effective Date of Agreement. This Agreement shall become effective upon the last date that all Parties have executed this Agreement ("Effective Date").

Section 1.5. Description of Property. The property subject to this Agreement, owned by Landlord in fee simple and leased by Landlord to Permittee for operation of the Facility, is that certain real property located at _____ in the City of Montebello, County of Los Angeles, State of California, more particularly described in Exhibit A ("Property").

Section 1.6. Permitted Commercial Cannabis Activities. Permittee shall not operate, cause, allow, assist, participate in, engage in, or in any way conduct any commercial cannabis activities at the Property. The prohibition in this section shall not apply to the following permitted commercial cannabis activities at the Property, so long as the

commercial cannabis activities permitted by this section are otherwise in strict accordance with this Agreement: _____ (“Facility”).

Section 1.7. Term. This Agreement shall start on the Effective Date and it shall end fifteen (15) years from the Effective Date (“Term”), and it shall remain in full force and effect unless otherwise terminated as set forth in this Agreement in Articles 6 and 8; provided, however, such use is not abandoned for a period of more than twelve (12) months. Unless otherwise agreed to in writing by all Parties, the Term may be extended for up to three, five (5) year extensions by mutual agreement of the Parties. The fees required under Article 4 of this Agreement shall apply to the entirety of the Agreement's Term. However, at the request of either Party, the fees required under Article 4 of this Agreement may be subject to re-negotiation during either, or each, of the three (3) five (5) year extension terms. In the event a Party wishes to re-negotiate fees during one, or each, of the five (5) year extension terms, it shall give notice to the other Party no less than 90 days before the end of the then-current term, and negotiations shall be concluded before the anniversary date. In the event the Parties fail to reach terms during the renegotiation period, the term shall cease without any further notice or right to the Permittee or Landlord to operate under the provisions of this Agreement.

Section 1.8. Permittee's Site and Floor Plans. Permittee's site plan and floor plan for the Facility are attached hereto as Exhibit B and incorporated by reference. The floor plan identifies the uses of each interior space, and is the basis for calculating the annual per-square-foot fee specified in Article 4 below. Permittee shall not operate the Facility until the Montebello Fire and Police Departments has approved the Permittee's site and floor plans, along with any other safety-related plans required by the Montebello Fire and Police Departments. Permittee shall proceed in substantial compliance with the approved site plan, floor plan, and any other required safety-related plan for the Facility.

Section 1.9. Landlord/Tenant Relationship. The Property Owner Consent executed by Permittee and Landlord for use of the Property for operation of the Facility is attached hereto as Exhibit C and incorporated by reference (“Consent”). Landlord hereby agrees to allow Permittee to operate the Facility at the Property, so long as such operation is in accordance with this Agreement and other applicable laws for the duration of the Term.

Section 1.10. Permittee's Proof of Lawful Possession. Permittee shall provide the City with proof of lawful possession of the Property for operation of the Facility, with such evidence consisting of properly executed deeds of trust, leases, or similar written documents (“Proof of Lawful Possession”). This Proof of Lawful Possession executed by Permittee and Landlord for use of the Property for operation of the Facility is attached hereto as Exhibit C and incorporated by reference (“Consent”).

Section 1.11. No transfer or change in ownership or location.

- A. Permittee, as owner and person responsible of the business conducting permitted commercial cannabis activities at the Property pursuant to the Code and this Agreement, shall not sell, transfer, pledge, assign, grant an option, or

otherwise dispose of his or her ownership interest in the Facility, business, or this Agreement, without the advanced approval of the City Council.

- B. The location of the Facility's operations shall only be the geographical area that is specifically and accurately described in the Lease and site and floor plans, described in Section 1.8, as memorialized in this Agreement. Permittee shall not relocate the Facility, including to unauthorized areas or structures within the Property, without first obtaining approval by the City Council. Permittee shall not make any physical change, alteration, or modification to the approved Facility that materially or substantively alters, in the discretion of the City's Building Department, the location, production estimates, or the usage of the Property from the plans approved by this Agreement, without first obtaining approval by the City Council.
- C. Permittee and Landlord shall not sublet any portion of the Facility or Property, without first obtaining the approval of the City Council.
- D. Landlord shall not sell, transfer, pledge, assign, grant an option, or otherwise dispose of his or her ownership interest in any part of the Property, or this Agreement, without the advanced approval of the City Council.

ARTICLE 2

GENERAL COMPLIANCE REQUIREMENTS

Section 2.1. Conditional Use Permit. Permittee shall not operate any Facility or conduct any commercial cannabis activities, unless and until a conditional use permit therefor has been approved by the City's Planning Commission or City Council, as applicable, in accordance with Chapter 17.70 of the Code ("CUP"). The execution of this Agreement shall be a condition precedent to such issuance of the CUP. Permittee shall comply with all conditions of approval within the CUP.

Section 2.2. Location Restrictions. Permittee shall not operate the Facility or otherwise conduct any commercial cannabis activities in the City within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, a day care center, a youth center, a property that is zoned R-A (Residential-Agricultural), R-1 (Single-Family Residential), R-2 (Two-Family Residential), R-3 (Multiple-Family Residential), or R-4 (High Density Residential), playground, recreational facility, amusement arcade or internet gaming center, park, or library, as of the Effective Date of this Agreement. The distance specified in this Section shall be the horizontal distance measured in a straight line from the property line of the sensitive use enumerated herein this Section to the closest property line of the Property on which the Facility is located, without regard to intervening structures.

Section 2.3. Zoning. Permittee shall only operate the Facility on the Property within the Light Manufacturing, M-1, or Heavy Manufacturing, M-2 zones of the City. Permittee shall comply with all requirements and standards, including but not limited to all development standards, within Title 17 of the Code.

Section 2.4. Outdoors Prohibited. Permittee shall only operate the Facility on the Property within a fully enclosed and permanent building. For purposes of this Agreement, “fully enclosed and permanent building” shall mean a structure having a roof that is enclosed on all sides and is intended and has a useful life appropriate for long-term use, as contrasted with a temporary, non-permanent, or semi-permanent building that is not designated or intended to be permanently located, placed, or affixed to the premises. No commercial cannabis activities shall be conducted or operated outdoors, in a greenhouse, in a nursery, or in any other temporary or non-permanent or semi-permanent building or structure.

Section 2.5. Compliance with State and City Law. Permittee shall comply with all State laws, including the Act and Regulations, in operating the Facility at the Property, including but not limited to any distribution or transport of cannabis within the City. Permittee shall comply with all City laws, including but not limited to Chapter 5.90 of the Code.

Section 2.6 Compliance with requirements for Non-storefront Retailer. If Facility is a delivery-only retailer, it is required that Facility is closed to the public and is only allowed to conduct retailer cannabis sales exclusively by delivery. Also, no distribution sites are allowed unless in conjunction with delivery only retail, cultivation, or manufacturing.

ARTICLE 3 GENERAL OPERATING REQUIREMENTS

Section 3.1. Prohibited Persons. Permittee shall prohibit all persons under the age of 21 from the Facility at all times.

Section 3.2. Required Notice to Patrons/Customers. Permittee shall post a sign in a conspicuous location at the Facility on the Property, notifying all patrons and customers that: (a) loitering on and around the premises is prohibited by California Penal Code § 647(e); (b) that patrons must immediately leave the Property upon concluding the reason for their visit, and may not consume cannabis or cannabis products on the Property; (c) that patrons may be subject to prosecution under federal law; and (d) that the use of cannabis or cannabis products may impair a person’s ability to drive a motor vehicle or operate machinery.

Section 3.3. Contact Information. Permittee shall provide the name(s) and phone number(s) of on-site staff to the Montebello Police Department and City Manager for notification if there are operational problems or emergencies associated with the Facility or the operation thereof.

Section 3.4. Permitted Space for Operation of Facility. Permittee shall operate all commercial cannabis activities, permitted under this Agreement, within the specific part of the Property specified in this Agreement or the CUP, and no commercial cannabis activities

shall exceed the square footage authorized in this Agreement or the CUP, whichever is most restrictive.

Section 3.5. Prevention of Unauthorized Entry. Permittee shall secure all exterior windows, doors, loading and unloading docks or bays, and any points of ingress or ingress into the Property in which commercial cannabis activities will be from unauthorized entry by commercial grade, nonresidential locks, and in a manner approved by the Montebello Police Department. Permittee shall illuminate the exterior of each of the foregoing areas during evening and early morning hours.

Section 3.6. Storage of Cannabis. Permittee shall lock and secure, at all times, the ingress and egress points of any storage areas for cannabis or cannabis products. Permittee shall maintain all storage areas for cannabis and cannabis products, under the control of and accessible only by Permittee's authorized personnel.

Section 3.7. Track-and-Trace System. Permittee shall implement a track-and-trace system, approved by the Montebello Police Department and compliant with the Act and Regulations, to record the chain of supply of all cannabis or cannabis products from inception through the end distribution and/or point-of-sale. Permittee shall maintain.

Section 3.8. Public Right-of-Way. Permittee shall not conduct or engage in any commercial cannabis activities at the Property that are visible from any public right-of-way. No cannabis or cannabis products shall be visible from the public right-of-way.

Section 3.9. Exterior Appearance of the Facility. Permittee shall comply with all standards applicable to the Facility's exterior appearance, including but not limited to the design, color, landscaping, screening, architectural treatments, and signage, under the Code, as may be modified by this Agreement or the CUP.

Section 3.10. Exterior Lighting of the Facility. Permittee shall comply with all lighting standards applicable to the Facility's exterior, including but not limited to the fixture type, wattage, illumination levels, shielding, and associated approvals and permits.

Section 3.11. Development Standards. Permittee shall comply with all development standards applicable to the Facility and Property, in accordance with the underlying zoning district.

Section 3.12. Waste Disposal. Permittee shall dispose of all waste generated by or resulting from any commercial cannabis activities on the Property, as required by the Act, Regulations, and Code. Pending disposal, Permittee shall store this waste in a locked and secure area that is under the control of and only accessible by Permittee's authorized personnel at the Facility.

Section 3.13. Alcohol and Tobacco Ban. Permittee shall prohibit all on-site sales of alcohol and tobacco products at the Property, and shall prohibit any on-site consumption of food, alcohol, tobacco, or cannabis products on the Property.

Section 3.14. Hours of Operation. The hours of operation of the Facility are Monday through Sunday, 8:00 a.m. to 8:00 p.m.

Section 3.15. Odor Control. Permittee shall provide an odor absorbing ventilation and exhaust system so that odor generated inside the Facility where commercial cannabis activities are operated is not detected outside the Facility, anywhere on adjacent property, public rights-of-way, or within any other unit or structure on the Property aside from the structure where commercial cannabis activities are operated.

Section 3.16. Fire Code. It is the sole responsibility of the Permittee to comply with the City's Fire Code in addition to the following requirements in this section:

- A. If hazardous materials, flammable gas, flammable liquefied gas, flammable and combustible liquids, or other flammable material, as those terms are defined in California Fire Code Section 202, are to be used in the operation of the Facility, then the provisions of California Fire Code Section 407 shall be applicable where hazardous materials subject to permits under California Fire Code Section 50 (Hazardous Materials) are located on the Property or where required by the Montebello Fire Department.
- B. Any storage, use and handling of compressed gasses in compressed gas containers, cylinders, tanks, and systems on the Property shall comply with California Fire Code Chapter 53. Partially full compressed gas containers, cylinders or tanks containing residual gases shall be considered as full for the purposes of the controls required. Compressed gasses classified as hazardous materials shall also comply with California Fire Code Chapter 50 for general requirements and California Fire Code Chapter 53 addressing specific hazards, including California Fire Code Chapter 58 (Flammable Gases), California Fire Code Chapter 60 (Highly Toxic and Toxic Materials), California Fire Code Chapter 63 (Oxidizers, Oxidizing Gases and Oxidizing Cryogenic Fluids), and California Fire Code Chapter 64 (Pyrophoric Materials). Prevention, control and mitigation of dangerous conditions related to storage, use, dispensing, mixing and handling of flammable and combustible liquids at the Property shall be in accordance with California Fire Code Chapters 50 and 57.
- C. All manufacturing sites, cultivation sites, and testing laboratories are Group F-1 (Factory Industrial Moderate-Hazard) Occupancy under the California Fire Code. All new construction, subject to prior City approval required by the Code, is required to be fire sprinkled pursuant to the Fire Code. An automatic fire sprinkler system shall be provided at the Property throughout all buildings contained in a Group F-1 Occupancy where one of the following conditions exist: (a) Group F-1 fire area exceeds twelve thousand square feet; (b) Group F-1 fire area is located more than three stories above grade plane; or (c) the combined area of all Group F-1 fire areas on all floors, including any mezzanines, exceeds twenty-four thousand square feet.

Section 3.17. Electric Code. All areas where commercial cannabis activities are operated are wet locations, and the electrical system in such areas shall comply with all City and California building codes, fire codes, electrical codes, and other applicable laws. It is the sole responsibility of the Permittee to comply with all codes listed in this section.

Section 3.18. Security Cameras. It is the sole responsibility of the Permittee to comply with the following requirements:

- A. Permittee shall install and maintain security cameras at the Facility on the Property in a good working condition, and capable of producing digitally recorded documentation in a format approved by the Montebello Police Department.
- B. Security cameras at the Facility on the Property shall be in use 24 hours per day, 7 days per week. Permittees are responsible for ensuring that all surveillance equipment is properly functioning and maintained so that the playback quality is suitable for viewing and the surveillance equipment is capturing the identity of all individuals and activities in the monitored areas.
- C. All video surveillance equipment shall have sufficient battery backup to support a minimum of four hours of recording in the event of a power outage.
- D. The areas of the Property required to be covered by the security cameras include, but are not limited to: all storage areas for cannabis and cannabis products; all areas where commercial cannabis activities are operated; each location where any weighing, packaging, transport, preparation, or tagging activities occur; the interior and exterior of all points of ingress or egress to storage areas; all doors and windows; loading and unloading bays, the interior and exterior of all points of ingress or egress to the Facility on the Property where commercial cannabis activities are operated, and all points of ingress or egress to the premises.
- E. Permittee shall house all surveillance recording equipment in a designated, locked, and secured room or other enclosure with access limited to authorized employees, serving personnel, or local law enforcement agencies for law enforcement purposes.
- F. Permittee shall record all entrances and exits to the Facility from both indoor and outdoor vantage points. At least one camera shall be dedicated to recording the access points to the secured surveillance recording area.
- G. Permittee shall keep a current list of all authorized employees and personnel who have access to the surveillance system and/or room on the Property. Permittee shall keep a surveillance equipment maintenance activity log to record all service activity, including the identity of the individual performing the service, the service date and time, and the reason for service. Such records shall be maintained on the Property and shall be made available to the City upon request.
- H. The system shall be capable of recording all pre-determined surveillance areas in any lighting conditions.
- I. Video surveillance equipment shall, at a minimum, consist of digital or network video recorders, cameras capable of meeting the requirements described in this

section, video monitors, digital archiving devices, a color printer, and the capability to produce still color photograph from any camera image, live or recorded. The date and time shall be embedded on all surveillance recordings without significantly obscuring the picture, and time is to be measured in accordance with the official United States time established by the National Institute of Standards and Technology and the U.S. Naval Observatory.

- J. Video surveillance systems must be equipped with a failure notification system that provides prompt notification to the Permittee of any prolonged surveillance interruption and/or the complete failure of the surveillance system.
- K. Permittee shall post a sign in a conspicuous place near each point of public access to the Facility which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than one inch in height, stating "All Activities Monitored by Video Camera" or "These Premises Are Being Digitally Recorded" or otherwise advising all persons entering the Facility that a video surveillance and camera recording system is in operation and recording all activity as provided in this section.
- L. Permittee shall keep all surveillance recordings for a minimum of 90 days in a format that can be easily accessed for viewing. Permittee shall archive all video recordings in a format that ensures authentication of the recording as legitimately-captured video and guarantees that no alteration of the recorded image has taken place.
- M. After the 90-day surveillance video retention period has lapsed, Permittee shall erase or destroy all surveillance video recordings prior to being discarded or disposed of for any other purposes. Permittee shall not destroy any surveillance video recordings if the Permittee knows or should have known of a pending criminal, civil, or administrative investigation or any other proceedings for which the recording may contain relevant information.
- N. Upon request, Permittee shall make available to the Montebello Police Department or local law enforcement agency, for law enforcement purposes, all information related to security alarm systems, recordings, monitoring, and/or system activity.
- O. Permittee may utilize off-site monitoring and video recording storage, or an independent third-party service, to satisfy the requirements of this section, provided the standards exercised at the remote location meet or exceed all standards for on-site monitoring set forth herein this section.

Section 3.19. Alarm System. It is the sole responsibility of the Permittee to comply with the following requirements:

- A. Permittee shall alarm the Facility with a reliable, commercial alarm system that is operated and monitored by a security company or alarm business that is operating in full compliance with the Code, including but not limited to Chapter 8.24 of the Code.
- B. Permittee shall maintain up to date and current records and existing contracts on the Property that describe the location and operation of each security alarm

system, a schematic of security zones, the name of the alarm company, and the name of any vendor monitoring the Facility.

- C. At a minimum, the alarm system shall monitor all exterior points of access into the Facility, including but not limited to windows and doors.

Section 3.20. Security Guard. At all times the Facility is open to the public, Permittee shall employ at least one on-site security guard who is properly licensed, possesses a valid Department of Consumer Affairs “security guard card”, and has a valid City of Montebello business license.

Section 3.21. Possession of Firearms. Except for licensed security personnel approved by the Montebello Police Department, no person employed by Permittee shall be in possession of any firearm while on the Property without having first obtained a license from the appropriate state or local agency authorizing the person to be in possession of such firearm. Every such person in possession of a firearm while on the Property must provide the City Manager and the Montebello Police Department, ten days before bringing the firearm onto the Property, with all of the following:

- A. A copy of the license issued to the person by the appropriate state or local agency authorizing him or her to possess such firearm
- B. A copy of his or her law enforcement identification (if he or she is employed by a law enforcement agency).
- C. A copy of his or her California driver's license or California identification card.
- D. Any other information reasonably required by the Montebello Police Department to show that the individual is in compliance with the provisions of all laws regarding the possession and use of a firearm.

Section 3.22. Records. Permittee shall maintain all records on the Property applicable to the surveillance system, alarm system, and track-and-trace system, and shall make them available for inspection upon request by the Montebello Police Department or other local law enforcement personnel for law enforcement purposes or to ensure compliance with the Code, the Act, and the Regulations.

Section 3.23. Public Outreach. Permittee shall administer an effective public outreach to the City of Montebello's community, including but not limited to outreach and interface with public and private schools, youth organizations, religious organizations, health care providers, drug abuse treatment centers, and mental health and drug counseling providers.

Section 3.24. Resources Efficiency. The design of the Facility shall include significant water and energy conservation measures to minimize resource consumption, to the extent feasible. The design shall incorporate solar, wind, high efficiency lighting, and water recycling systems and technology, to the extent feasible. High efficiency LED lighting systems for the exterior lighting shall be used. If economically and technologically feasible, grow lights shall be high efficiency LED lighting systems. Automated, digitally controlled watering and fertilization systems shall be used for all plant cultivation. All water mixed

with nutrients will be recycled, to the extent feasible. Storm water shall be collected and recycled to the extent feasible.

Section 3.25. Inspections. Permittee and Landlord hereby agree that the City Manager, Montebello Police Department, City Code Enforcement, or their authorized designees shall have the right to enter any and all portions of the Property from time to time, without notice, during the Facility's operating hours for the purpose of making reasonable inspections to observe and enforce compliance with this Agreement and the Code, to inspect and copy records required to be maintained, or to inspect, view, and copy security recordings, without a requirement for a search warrant, inspection warrant, subpoena, or court order.

Section 3.26. Violations. The City may initiate abatement proceedings as authorized by the Code or State law to correct or cure any violation of the Code or State law. The City shall be entitled to recover its court costs and reasonable attorneys' fees in the event of a successful court order or judgment of abatement. Any person violating any of the provisions of Chapter 5.90 of the Code shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by the maximum penalties available at law. The penalties and remedies provided herein are in addition to other remedies available at law, and the City shall have the discretion to pursue and prosecute any such available remedy against Permittee and/or Landlord, as applicable.

ARTICLE 4 COMMUNITY BENEFITS, FEES, RECORD KEEPING, REPORTING AND RELATED MATTERS

Section 4.1. Intent. The Parties acknowledge and agree that this Agreement confers substantial private benefits on the Permittee or Landlord that will place burdens on City infrastructure, services, and neighborhoods and that the private benefits provided to the developer should be balanced with commensurate public benefits for the community ("Community Benefits"). The Parties agree that the payment of Community Benefits Fees are proportionate to the amount Permittee would pay in the form of an applicable tax on Commercial Cannabis Activities in the City related to the Project.

Section 4.2. Community Benefits Fees. In addition to Developer's obligation to compensate the City through its Regulatory Fees, Developer shall be obligated to provide Community Benefits as follows, which shall collectively be referred to as "Community Benefit Fees":

- a. "Quarterly Community Benefits Fees." Within twenty (20) days following the conclusion of each fiscal year quarter following the City's issuance of a Commercial Medicinal Cannabis Business Permit for the Project, Developer make payment to the City equivalent to its percentage of Gross Receipts, or other applicable fee metric, pursuant to the following fee schedule:

Cultivation: Twelve Dollars (\$12) per square foot of Canopy Space.

Manufacturing: Two Percent (2%) of Gross Receipts.

Distribution: One Percent (1%) of Gross Receipts.

Should the Developer cease one (1) of the three (3) Commercial Cannabis Activities referenced above, the Developer shall notify the City in writing within five (5) days of such cessation and the Developer shall make payments of Quarterly Community Benefits Fees to the City in accordance with the following schedule:

Cultivation/Manufacturing: Twelve Dollars (\$12) per square foot of Canopy Space/Four Percent (4%) of Gross Receipts

Cultivation/Distribution: Twelve Dollars (\$12) per square foot of Canopy Space/One and One-Half Percent 15 (1.5%) of Gross Receipts

Manufacturing/Distribution: Four Percent (4%) of Gross Receipts/One and One-Half Percent (1.5%) of Gross Receipts

Should the Developer cease two (2) of the three (3) Commercial Cannabis Activities referenced above, the Developer shall notify the City in writing within five (5) days of such cessation and the Developer shall make payments of Quarterly Community Benefits Fees to the City in accordance with the following schedule:

Cultivation: Twelve Dollars (\$12) per square foot of Canopy Space

Manufacturing: Six Percent (6%) of Gross Receipts

Distribution Two and One-Half Percent (2.5%) of Gross Receipts

The City reserves the right to deem the Developer's cessation of Cannabis Cultivation, Cannabis Manufacturing, or Cannabis Distribution as a default of this Agreement subject to Article 8 of this Agreement, notwithstanding the City's acceptance of Quarterly Community Benefits Fees.

- b. "Annual Community Benefits Fees." Within thirty (30) days the City's issuance of a Commercial Medicinal Cannabis Business Permit for the Project, and on the anniversary of such date, Developer shall make a payment to the City in the amount of Fifty Thousand Dollars (\$50,000), which the City shall deposit into a separate City fund (the "Community Benefits Fund") exclusively dedicated to investment in Community Benefits related to the Project, including, but not limited to those Community Benefits discussed with the Developer in the City's approved application process.

Section 4.3. Additional Community Benefits.

a. Developer agrees to provide additional Community Benefits as set forth in Exhibit “E” to this Agreement, including, but not limited to those Community Benefits discussed with the Developer in the City’s approved application process; and

b. The additional Community Benefits referenced in Subsection (a) of Section 4.3 and contained in Exhibit “E” shall include the following labor and employment-related elements:

1. The Developer’s shall provide a Living Wage (as defined in the Recitals, above) to its employees;

2. If Developer employs ten (10) or more employees, it shall enter into a Labor Peace Agreement, as defined in the Recitals, above; and

3. The Developer shall utilize its reasonable best efforts to ensure that at least fifteen percent (15%) of its employees are persons domiciled in the City, but the Developer warrants that at least ten percent (10%) of its employees shall be persons domiciled in the City.

Section 4.4. Quarterly Reports. In addition to the recordkeeping requirements set forth in Montebello Municipal Code, within twenty (20) days following the conclusion of each fiscal year quarter following the City’s issuance of a Commercial Medicinal Cannabis Business Permit for the Project, Developer shall submit a “Quarterly Report” to the City showing:

a. Gross Receipts for the immediate prior fiscal quarter received by the Developer; and

b. A calculation of Quarterly Community Benefits Fees due to the City from Developer for the immediate prior fiscal quarter.

Section 4.5. Penalty. If Developer fails to make a payment concerning Community Benefits Fees, as required by this Agreement, the City may impose a “Non-Payment Penalty.” A NonPayment Penalty of one percent (1%) shall be applied to all past due Community Benefits Fees. The City shall deliver to Developer a “Notice of Non-Payment Penalty.” Payment of the NonPayment Penalty shall be in a single installment due on or before a date fifteen (15) days following delivery of the Non-Payment Penalty.

Section 4.6. Interest on Unpaid Non-Performance Penalty. If Developer fails to pay the Non-Performance Penalty after City has delivered the Notice of Non-Performance Penalty, then, in addition to the principal amount of the Non-performance Penalty, Developer shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Penalty, from a date fifteen (15) days following delivery of the Notice of Non-performance Penalty.

Section 4.7. Recordkeeping. Records shall be maintained in accordance with Montebello Municipal Code Section 5.18.180 and the California Cannabis Laws.

Section 4.8. City Cannabis Tax. Should the City voters enact a tax or taxes applicable to the Developer with regard to its carrying out of Cannabis Cultivation, Cannabis Manufacturing, or Cannabis Distribution business in the City, the parties shall meet and confer in good faith to amend this Article in light of such tax,.

Section 4.9 Change in Space or Canopy Space of Facility. If Permittee makes any material changes to the interior of the Facility that increases the amount of space allocated to those uses to which the per-square-foot fee applies, Permittee shall notify City of such changes at least fourteen (14) calendar days prior to making such changes. If Permittee fails to give City notice as required herein, Permittee shall be responsible for paying to City a per-square-foot fee based on any increase in the amount of space allocated to those uses to which the per-square-foot fee applies retroactive to the Effective Date.

Section 4.10. Development Agreement Fee. Permittee shall pay to the City a development agreement fee in the amount of \$ _____ for the cost to the City of preparing this Agreement, City Council review and approval of this Agreement, and preparation and issuance of this Agreement as authorized by the City Council, due and payable in full following City Council approval and no later than ten (10) days after the Effective Date.

Section 4.11. Monitoring Fees. Monitoring fees for the Facility are based upon the direct and indirect costs City incurs in confirming the use of the Property in accordance with the Code, this Agreement, and the Act and Regulations, including but not limited to any inspections and investigations of the Facility. The monitoring fees shall be based only on costs that are necessary for conducting these reviews. "Necessary for" means that but for the Facility, the costs would not have been incurred. The monitoring fees shall not include costs for other City management objectives.

Section 4.12. Other Processing Fees.

- A. Amendment fees. Amendment fees for this Agreement are based upon the direct and indirect costs City incurs in reviewing and/or approving any amendments or changes to plans, location, or other changes to the approved Facility and operation on the Property or provisions in this Agreement. The amendment fees shall be based only on costs that are necessary for conducting these reviews. "Necessary for" means that but for the Facility, the costs would not have been incurred. The amendment fees shall not include costs for other City management objectives.
- B. Renewal fees. Renewal fees for this Agreement are based upon the direct and indirect costs City incurs in processing any request or application by Permittee to renew this Agreement. The renewal fees shall be based only on costs that are necessary for conducting this processing of any request or application by Permittee. "Necessary for" means that but for the request or application for renewal of this Agreement by Permittee, the costs would not have been incurred. The renewal fees shall not include costs for other City management objectives.

Section 4.5. Reporting of Gross Receipts from Commercial Cannabis Activities.

- A. Quarterly Receipts. No later than _____, and within fifteen (15) business days of the last day of each subsequent quarter of each calendar year during the Term hereof, Permittee shall deliver to City a report (the "Quarterly Report") showing (i) Gross Receipts from commercial cannabis activities at the Property for the immediate prior quarter received by Permittee, and a cumulative total of all amounts of Gross Receipts from commercial cannabis activities at the Property received by Permittee for the calendar year, (ii) a calculation of the quarterly payment due to City for the prior quarter, and (iii) a calculation of the cumulative total of all quarterly payments for the calendar year.
- B. Permittee shall keep complete, accurate and appropriate books and records of all receipts from commercial cannabis activities at the Property in accordance with generally accepted accounting principles. For purposes herein, "books and records" shall mean all bookkeeping or accounting documents Permittee utilizes in managing its business operations relating to the Facility. Such books and records, as well as all other relevant documents as City shall reasonably require, shall, upon reasonable written notice, be open for inspection by City, its auditors or other authorized representatives. If at any time during the term such books and records prove inadequate in the reasonable judgment of City to record the Gross Receipts from commercial cannabis activities at the Property as herein required, Permittee shall, upon the written request of City, procure and maintain such books and records as shall be of a character and from adequate for such purpose. City shall have the right to audit and examine such books, records and documents and other relevant items in the possession of Permittee, but only to the extent necessary for a proper determination of Gross Receipts from commercial cannabis activities at the Property, and all such books, records, documents and other items shall be held available for such audit and examination. Upon request by City, Permittee shall make all such books, records and documents available to City, and provide removable copies thereof, within thirty (30) days of the date of City's request. The cost for any audit shall be shared equally by the Permittee and City. Permittee shall preserve such books, records, documents, and other items in the City for a period of not less than seven (7) years for the purpose of auditing or re-auditing these accounts upon reasonable notice; except that, if an audit is made within the seven-year period and Permittee claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. City shall keep strictly confidential all statements of revenue furnished by Permittee and all other information concerning Permittee's operation of the Property obtained by City as a result of the inspection audit and examination privileges of City hereunder (i.e., receipts and tax filings), except as otherwise required by a court order. If City receives a request for such information pursuant to the Public Records Act (California Government Code

Section 6250, et seq.), City shall provide Permittee notice of any such request and shall refuse to disclose such information. Within seven (7) years after the receipt of any statement of receipts under this Agreement, City at any time shall be entitled to carry out an audit of such revenue either by City or agent to be designated by City. If it shall be determined as a result of such audit that there has been a deficiency in any payment due under this Agreement made on the basis of such statement, then such deficiency shall become immediately due and payable. If such statement of revenue for the relevant year shall be found to have understated receipts by more than two percent and City is entitled to any additional payment as a result of said understatement, then Permittee shall, in addition, pay all of City's reasonable costs and expenses connected with such audit, including the expense incurred in retaining such agent; otherwise City shall bear the cost and expense of such audit.

- C. Copies of Tax Filings. Permittee shall provide City with copies of any reports Permittee is required to provide to the County of Los Angeles or the State of California for sales, use, or other tax purposes.

Section 4.6. Billing and Payment. Permittee shall pay all fees as set forth herein. City shall bill Permittee the fees on the first day of each quarter (March, June, September, and December) of each calendar year during the Term with an invoice providing an hourly breakdown of hours expended by City and its representatives. Owner shall pay each invoice for fees described in Sections 4.3 and 4.4 within thirty (30) days of the date each of these invoices is received by Permittee.

ARTICLE 5 INSURANCE AND INDEMNITY

Section 5.1. Insurance. Permittee shall require all persons doing work on or at the Facility, including its contractors and subcontractors, to obtain and maintain insurance of the types and in the amounts described in this article with carriers reasonably satisfactory to City.

Section 5.2. General Liability Insurance. Permittee shall maintain commercial general liability insurance or equivalent form with a limit of not less than Two Million Dollars (\$2,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall also:

- A. Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as "Additional Insureds" by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insured;
- B. Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives; and
- C. Contain standard separation of insured provisions.

Section 5.3. Automotive Liability Insurance. Permittee shall maintain business automobile liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

- A. Name City, its elected and appointed officials, boards, commissions, officers, agents, employees, and representatives as "Additional Insureds" by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insureds;
- B. Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives; and
- C. Contain standard separation of insured provisions.

Section 5.4. Workers' Compensation Insurance. Permittee shall take out and maintain during the Term of this Agreement, workers' compensation insurance for all of Permittee's employees employed at or on the Facility, and in the event any of the work is subcontracted, Permittee shall require any general contractor or subcontractor similarly to provide workers' compensation insurance for such contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Permittee. In case any class of employee engaged in work at or on the Facility is not protected under any workers' compensation law, Permittee shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Permittee hereby indemnifies City for any damage resulting from failure of Permittee, its agents, employees, contractors, or subcontractors to take out or maintain such insurance. Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) each accident shall be maintained.

Section 5.5. Other Insurance Requirements. Permittee shall do all of the following:

- A. Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidence all insurance required in this article, including evidence that such insurance will not be canceled, allowed to expire, or be materially reduced in coverage without thirty (30) days prior written notice to City.
- B. Provide to City, upon request, and within seven (7) calendar days of said request, certified copies of endorsements and policies, and properly executed certificates of insurance evidencing the insurance required herein.
- C. Replace or require the replacement of certificates, policies and endorsements for any insurance required herein expiring prior the termination of this Agreement.
- D. Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the term or the mutual written termination of this Agreement.

- E. Place all insurance required herein with insurers licensed to do business in California with a current Best's Key Rating Guide reasonably acceptable to City.

Section 5.6. Indemnity. Permittee agrees to indemnify, defend, and hold City, and its elected and appointed council, boards, commissions, officers, agents, employees, consultants, and representatives, harmless from any and all claims costs and liability for any personal injury or property damage which may arise as a result of any actions or negligent omissions by Permittee or Permittee's contractors, subcontractors, agents, or employees in connection with the construction, improvement, or operation of the Facility.

ARTICLE 6 TERMINATION

Section 6.1. Termination upon Completion of Term. This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the terms of this Agreement. It is the City's intention to renew this Agreement with operators who have performed in good faith under the Agreement. Upon termination of this Agreement, City shall record a notice of such termination and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 6.2. Termination upon Failure to Obtain and Retain State License. This Agreement shall terminate upon Permittee's failure to obtain and retain a State License to operate the Facility at the Property.

Section 6.3. Effect of Termination on City's Obligations. Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

ARTICLE 7 REVIEW FOR COMPLIANCE

Section 7.1. Annual Review. At least once every twelve (12) months, Permittee shall demonstrate its good faith compliance with the terms hereof by providing written correspondence addressed to the City Manager demonstrating such good faith compliance. "Good faith compliance" shall mean that Permittee has sufficiently followed the terms of this Agreement so as to carry out the intent of the Parties in entering into it. After receiving and reviewing Permittee's written submission, if the City Manager finds that Permittee is not acting in good faith compliance with this Agreement, the City Manager shall schedule a hearing before the Planning Commission in order to evaluate Permittee's good faith compliance with the terms of the Agreement. The City shall provide Permittee with notice of such hearing and a copy of all staff reports and related exhibits as soon as available, but in no event later than five days prior to the hearing. The Planning Commission's determination following such hearing shall be based on substantial evidence, and shall be

subject to appeal to the City Council. If the Planning Commission or City Council, as applicable, finds that the Permittee is not in good faith compliance with the terms of this Agreement, the provisions of Article 8 shall govern the Parties' rights.

Section 7.2. Procedure. Each Party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other Parties a justification of its position on such matters. If, on the basis of the Parties' review of any terms of the Agreement, either Party concludes that another Party has not complied with the terms of the Agreement, then such Party may issue a written "Notice of Non-Compliance" specifying the grounds therefore and all facts demonstrating such non-compliance. The Party receiving a Notice of Non-Compliance shall have forty-five (45) days to cure or remedy the non-compliance identified in the Notice of Non-Compliance, or if such cure or remedy is not reasonably capable of being cured or remedied within such forty-five (45) days period, to commence to cure or remedy the non-compliance and to diligently and in good faith prosecute such cure or remedy to completion. If the Party receiving the Notice of Non-Compliance disputes that it is in non-compliance with the terms of this Agreement, that Party shall respond in writing to the Notice of Non-Compliance within forty-five (45) days after receipt of the Notice of Non-Compliance. If a Notice of Non-Compliance is disputed, the Parties shall, for a period of not less than fifteen (15) days following receipt of the response to the Notice of Non-Compliance, seek to arrive at a mutually acceptable resolution of the dispute. In the event that a cure or remedy is not timely effected or, if the Notice of Non-Compliance is disputed and the parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the fifteen (15) day period described above, the Party alleging the non-compliance may thereupon pursue the remedies provided in Article 8. Neither Party hereto shall be deemed in breach if the reason for non-compliance is due to a "force majeure" event as defined in, and subject to the provisions of, Section 9.7.

ARTICLE 8 DEFAULTS AND REMEDIES

Section 8.1. Termination by Default.

- A. Termination of Agreement for Material Default of Permittee. City, in its discretion, may terminate this Agreement upon written notice to Permittee for any material failure of Permittee to perform any material duty or obligation of Permittee hereunder or to comply with the terms of this Agreement (hereinafter referred to as "default" or "breach"); provided, however, City may terminate this Agreement pursuant to this section only after following the procedure set forth in Section 7.2. In the event of a termination by City under this section, Permittee acknowledges and agrees that, unless otherwise set forth below, City may retain all fees, including the fees described in Article 4 of this Agreement, as applicable, paid up to the date of termination, and Permittee shall pay the prorated amount of any fees described in Article 4 of this Agreement, as

- applicable, within sixty (60) days after the date of termination that equates to the percentage of time elapsed in the year of the Term at the time of termination.
- B. Termination of Agreement for Material Default of City. Permittee, in its discretion, may terminate this Agreement upon written notice to City for any material failure of City to perform any material duty or obligation of City hereunder or to comply in with the terms of this Agreement; provided, however, Permittee may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 7.2. In addition, Permittee may terminate this Agreement upon written notice to City, if despite Permittee's good faith efforts, it is unable to secure the necessary permits and/or compliance with requirements under laws necessary to effectuate the legal operation of the Facility. In the event of a termination by Permittee under this section, Permittee acknowledges and agrees that, unless otherwise set forth below, City may retain all fees, including the fees described in Article 4 of this Agreement, as applicable, paid up to the date of termination, and Permittee shall pay the prorated amount of any fees described in Article 4 of this Agreement, as applicable within sixty (60) days after the date of termination that equates to the percentage of time elapsed in the year of the Term at the time of termination.
- C. Rights and Duties Following Termination. Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder except with respect to (i) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, (ii) or any continuing obligations to indemnify other Parties.

Section 8.2. Remedies. In addition to the rights of termination set forth above in this article, in the event of a default by either Party, the non-defaulting party shall have the right to: (a) bring any proceeding in the nature of specific performance, injunctive relief, declaratory relief, or mandamus and/or; (b) bring any action at law or in equity to compensate the non-defaulting party for all the detriment proximately caused by the defaulting party's default; provided, however, that Permittee's sole and exclusive remedy shall be specific performance and Permittee shall not have the right to recover monetary damages (compensatory, consequential, or punitive) against the City other than attorneys' fees to the extent provided in Section 9.19 below, and the City shall only have the right to recover actual, direct damages (and not consequential or punitive damages) against Permittee, as well as attorneys' fees to the extent provided in Section 9.19 below.

ARTICLE 9 MISCELLANEOUS PROVISIONS

Section 9.1. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the Parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

Section 9.2. Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then that term, provision, covenant or condition of this Agreement shall be stricken and the remaining portion of this Agreement shall remain valid and enforceable if that stricken term, provision, covenant or condition is not material to the main purpose of this Agreement, which is to allow the Facility to be permitted and operated and to provide the fees required by Article 4 of this Agreement to the City; otherwise, this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

Section 9.3. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning, to achieve the objectives and purposes of the parties hereto. The rule of construction, to the effect that ambiguities are to be resolved against the drafting party or in favor of the non-drafting party, shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and hereof.

Section 9.4. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Section 9.5. Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by another party, or the failure by a party to exercise its rights upon the default of another party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

Section 9.6. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the Parties and their owner, successors and assigns, as permitted in accordance with this Agreement. No other person shall have any right of action based upon any provision of this Agreement.

Section 9.7. Force Majeure. Notwithstanding the contrary herein, no party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, rains, winds, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government actions and regulations (other than those of the City), court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur, the Term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the Term of this Agreement shall not be extended under any circumstances for more than five (5) years and further provided that if such delay is longer than six (6) months, Permittee may terminate this Agreement upon written notice to City and City shall return to Permittee any portion of the fees required herein for any period after the effective date of such termination.

9.8. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

9.9. Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same affected as if all of the Parties had executed the same instrument.

9.10. Jurisdiction and Arbitration. The law governing this Agreement shall be that of the State of California. Any suit brought by any party against any other party arising out of the performance of this Agreement shall be filed and maintained in the County of Los Angeles Superior Court. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Los Angeles, California before one arbitrator. Said arbitrator shall be chosen by mutual agreement of the Parties. If the Parties cannot agree on an arbitrator within 30 days of the first notice by either Party of the need for arbitration, each Party shall name one arbitrator, then the three arbitrators shall choose the one arbitrator who shall hear the case.

9.11. Covenant Not To Sue. The parties to this Agreement, and each of them, agree that this Agreement and each term hereof are legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, which is based on an allegation, or assert in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

9.12. Amendments in Writing. This Agreement may be amended only by written consent of all Parties specifically approving the amendment. The Parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved by the City Manager in writing upon approval by the City Attorney.

9.13. Corporate Authority. The person(s) executing this Agreement on behalf of each of the Parties hereto represent and warrant that (i) such Party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such Party is bound.

9.14. Notices. All notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested; and addressed to the respective parties as set forth below or as to such other

address as the parties may from time to time designate in writing by providing notice to the other party:

To City: City of Montebello
1600 West Beverly Boulevard
Montebello, CA 90640
Attn: City Manager

To Permittee: _____

To Landlord: _____

9.15. Joint and Several Liability. Any breach of this Agreement by Permittee or Landlord shall also constitute a breach of this Agreement by the other Party expressly described in this section.

9.16. Non-liability of City Officials. No officer, official, member, employee, agent, and/or representatives of City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, and/or representative.

9.17. Document Preparation. This Agreement shall not be construed against the Party preparing it, but shall be construed as if prepared by all Parties.

9.18. Advice of Legal Counsel. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

9.19. Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

9.20. Calculation of Time Periods. All time referenced in this Agreement shall be calendar days, unless the last day falls on a legal holiday, Saturday, or Sunday, in which case the last day shall be the next business day.

9.21. Constructive Notice and Acceptance. Every person who after the Effective Date owns or acquires any right, title, or interest to any portion of the Property or Facility in accordance with this Agreement, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property or Facility, and all rights and interests of such person in the Property or Facility shall be subject to the terms, requirements, and provisions of this Agreement.

9.22. Term Includes Extensions. All references to the Term in this Agreement shall include any extensions of such Term in accordance with this Agreement.

WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first set forth above.

Permittee

Landlord

CITY OF MONTEBELLO

Mayor

ATTEST

Irma-Bernal Barajas, City Clerk

APPROVED AS TO FORM:

Arnold M. Alvarez-Glasman, City Attorney

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

TO: Honorable Mayor and Members of the City Council

FROM: Paul Talbot, Acting City Manager

BY: Brad Keller, Chief of Police

SUBJECT: **Appropriation of Asset Forfeiture Funds to Purchase Two Leased Vehicles**

DATE: February 13, 2019

RECOMMENDATION

It is recommended that the City Council approve the appropriation of Drug Asset Forfeiture funds to purchase two (2) leased vehicles at the conclusion of the 4 year lease agreement (due to expire February 28, 2019).

The resolution would approve the transferring of funds from the Asset Forfeiture account to a Police Department Vehicle Lease Account.

BACKGROUND

The Investigations Unit conducts a great deal of surveillance activities that require dependable vehicles. These detectives are also on call 24 hours a day and require the use of a take home vehicle, which allows them to respond at a moment's notice. Detectives are also tasked with locating and apprehending violent offenders in our community or those that have fled to avoid capture for crimes committed in the City of Montebello. Many times this requires an immediate response and surveillance activities.

On February 25, 2015 (Resolution # 15-09), the Montebello Police Department entered into a lease with Enterprise Leasing Company, to lease vehicles for our Detective and Administration Fleet. This lease allowed the Police Department to update its aging fleet, while having preventative service and collision repair covered by the lease price. The lease agreement on two of the vehicles is set to expire.

The below vehicles are in superior working order and are fully outfitted with emergency equipment. Staff has determined that it is not financially beneficial to return these vehicles and lease and/or purchase replacement vehicles. It is recommended that asset forfeiture funds be used to purchase the vehicles at the end of the lease term.

The lease agreement is set to expire on:

- 2015 Ford Expedition, City Identification number 115200, VIN # 1FMJU1HT8FEF18975. (Lease expires 02/28/19). Mileage 60740.
- 2015 Ford Taurus, City Identification number 115201, VIN # 1FAHP2E82FG138881. (Lease expires 02/28/19). Mileage 62610.

The requested funds will assure that our Investigations Bureau continue to have assigned vehicles that are dependable, which is essential in the 24 hour / 7 day a week nature of the assignment.

The purchase of the two (2) leased vehicles provides reliable vehicles for Detectives without having to purchase and/or lease two replacement vehicles. Federal law permits the use of drug asset forfeiture funds to purchase law enforcement equipment.

ANALYSIS

1. Detectives are assigned vehicles for use while on duty and as take home cars. They are subject to call out and have collateral duties that require them to drive into Montebello and throughout the County to conduct business. These vehicles are fully equipped with emergency equipment.
2. The purchase of these vehicles will not increase the size of the Police Department vehicle fleet, as no new vehicles will be added.
3. Replacing these vehicles with a new purchase or entering into a new lease would not be cost effective. The vehicles are in excellent condition and have low miles.
4. The total funds requested to purchase and register the vehicles is: **\$ 18,000.00.**
5. The use of Drug Asset Forfeiture funds to purchase equipment and or vehicles is listed as permissible use of equitable shared property in the Department of Justice (DOJ) guidelines.
6. This use of Drug Asset Forfeiture funds will supplement and not supplant existing budget appropriations.
7. The two Investigations Unit vehicles listed have a lease that will expire on February 28, 2019. In this case, the mileage and nature of use would make it appropriate to purchase them at the end of the lease. These vehicles are fully equipped with emergency equipment, at a cost of over \$ 6,000.00 per vehicle. If approved, these vehicles will remain in the fleet of the Investigation Unit

8. Funds requested to purchase the following vehicles from Enterprise - with a lease agreement ending in February 2019:
9. The Kelly Blue Book value for each vehicle indicated below does not include emergency equipment installed in each vehicle, which would increase the value of each vehicle.
 - 2015 Ford Expedition, City Identification number 115200 – **Cost to Purchase \$ 7871.45 (this is an estimate as Enterprise evaluates the value monthly – will use February valuation).** The Kelly blue book value for this vehicle, excluding emergency equipment is \$ 20,268.00 – \$ 22,561.00.
 - 2015 Ford Taurus, City Identification number 115201 – **Cost to Purchase \$ 6249.37 (this is an estimate as Enterprise evaluates the value monthly – will use February valuation).** The Kelly blue book value for this vehicle, excluding emergency equipment is \$ 8,462.00 - \$ 9,976.00.
10. These vehicles are already in our fleet, as part of a lease agreement that was approved by City Council resolution 15-09. This request is to purchase the vehicles from Enterprise (Lease Company) as the lease term is set to expire. The term on the listed vehicles was for four years.
11. The total cost to purchase the two vehicles is **\$ 14,120.82 (Approximate).**
12. These vehicles will need to be registered with the California Department of Motor Vehicles, along with other mandatory fees associated with the purchase. It is requested that **\$ 3000.00** be earmarked to complete the registration process with DMV. This is an approximation of the taxes and registration fee for each vehicle.
13. Use of Drug Asset Forfeiture funds requires approval by the Chief of Police and City Administrator prior to submission to the City Council for final approval.
14. The asset forfeiture account is approximately \$ 696,111.52.

FISCAL IMPACTS

This request for funds would have no fiscal impact to the general fund as the funds requested are proceeds of the drug asset forfeiture account.

SUMMARY

The lease(s) on two police department vehicles is due to reach the end of the lease term(s) on February 28, 2019. Staff has determined it would not be operationally or financially beneficial to lease and/or purchase replacement vehicles. Staff is requesting authorization to purchase two leased vehicles pursuant to the terms of the lease agreements. The funding source for the purchase of these vehicles is drug asset forfeiture funds (Account # 230-2920), which is a permissible use of these funds.

ATTACHMENTS

None

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MONTEBELLO
AUTHORIZING THE APPROPRIATIONS OF FUNDS

THE CITY COUNCIL OF THE CITY OF MONTEBELLO DOES HEREBY
RESOLVE AS FOLLOWS:

SECTION 1. That the Finance Director is hereby authorized to make the
following appropriation:

FROM		TO	
Account Number	Amount	Account Number	Amount
230-2920	\$ 18,000.00	230-99-847-6082	\$18,000.00
(Drug Asset Forfeiture Account)		(Drug Asset Lease for Vehicles account)	

SECTION 2. That the City Clerk shall certify to the adoption of this resolution.
ADOPTED AND APPROVED this **13th day of February, 2019**.

Jack Hadjinian, Mayor Pro Tem

ATTEST:

Irma Barajas, City Clerk

Lopez, Luis

From: Madatyan, Gia L <Gia.Madatyan@efleets.com>
Sent: Tuesday, January 22, 2019 4:11 PM
To: Lopez, Luis
Subject: Re: lease pay off

Hers are for the Jan payoff. Mine are for February

Thanks,

Gia Madatyan
Enterprise Fleet
Senior Account Manager
(c) 310-346-6962

On Jan 22, 2019, at 12:44 PM, Lopez, Luis <LLopez@cityofmontebello.com> wrote:

Gia,

I just want to confirm the correct numbers to use – Janae’s numbers and yours are different.....want to make sure I pull enough funds...

Thanks, Luis

From: Madatyan, Gia L [<mailto:Gia.Madatyan@efleets.com>]
Sent: Wednesday, January 16, 2019 11:28 AM
To: Varnado, Janae Y; Lopez, Luis; Chatmon, Judith A
Subject: RE: lease pay off

Captain,

Please use the below for the agenda report for February pay off.

LATD56 \$7871.45

LATD57 \$6249.37

Thanks,

Gia L Madatyan
Senior Account Manager
Enterprise Fleet Management
(310) 817-7377 Direct
Gia.Madatyan@efleets.com

From: Varnado, Janae Y
Sent: Wednesday, January 16, 2019 11:27 AM
To: Lopez, Luis <LLopez@cityofmontebello.com>; Chatmon, Judith A <Judith.A.Chatmon@efleets.com>
Cc: Madatyan, Gia L <Gia.Madatyan@efleets.com>
Subject: RE: lease pay off

Good Morning Luis,

The reduced book value of the units is listed below:

LATD56 = 8,569.32

LATD57 = \$6,802.30

When you're ready to purchase, please note that purchase paperwork is not sent towards the end of the month (try to get it in by the 20th), and It also takes 48 hours to issue.

Enjoy your Wednesday!

Janae Y Varnado

Account Fleet Coordinator
Enterprise Fleet Management
(310) 817-7383 Direct
Janae.Y.Varnado@efleets.com

From: Lopez, Luis [<mailto:LLopez@cityofmontebello.com>]

Sent: Wednesday, January 16, 2019 10:59 AM

To: Chatmon, Judith A <Judith.A.Chatmon@efleets.com>; Varnado, Janae Y <Janae.Y.Varnado@efleets.com>

Subject: lease pay off

Good morning, I hope that the new year is going well. The lease on two of our cars will be up in February, I am wondering if you could send me the payoff amounts, so that we can procure the funds to purchase them.

We will not be replacing them with leases and will just buy them. I need to request the funds via city council - so I need the amounts to prepare a staff report.

Thank you,

2015 Ford Expedition	Grey	115200	1452001	1FMJU1HT8FEF18975	LATD56	2/28/2019
2015 Ford Taurus	Grey	115201	1452002	IFAH P2E82FG138881	LATD57	2/28/2019

Luis Lopez – Captain
Patrol Services
1600 W. Beverly Boulevard
Montebello, CA 90640
(323) 887-1285
<image001.jpg>

"Dedicated to Superior Service"

Up-to-the-minute updates from Montebello Police by e-mail and cell phone: www.nixle.com

 **Please consider the environment before printing this email.**

CONFIDENTIALITY NOTICE: This e-mail message is intended only for the person(s) or entities to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed and may contain confidential and privileged information protected by law. If you received this e-mail in error, any review, use, dissemination, distribution, or copying of the e-mail is strictly prohibited. Please notify the sender immediately by return e-mail and delete all copies from your system.

*****PLEASE DO NOT CLICK ON UNKNOWN LINKS. Contact Montebello IT Division if you are unsure.*****

CITY OF MONTEBELLO

CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and City Council Members

FROM: Paul Talbot, Acting City Manager

BY: Brad Keller, Chief of Police

SUBJECT: Award Police Department HVAC Maintenance and Repairs RFP#19-11

DATE: February 13, 2019

RECOMMENDATION

It is recommended that City Council:

1. Award a contract in the amount of \$122,822 per year to F.M. Thomas Air Conditioning, Inc. for HVAC Maintenance and Repairs RFP#19-11 at the Police Department; and
2. Authorize the Acting City Manager to execute the Contract Agreement on behalf of the City.

BACKGROUND

On November 20, 2018, the City issued Request for Proposal (RFP) # 19-11 for Police Department HVAC Maintenance and Repairs. The solicitation was noticed on Planet Bids (via the City website). On December 18, 2018, the City received five (5) proposals in response to RFP #19-11. A copy of the RFP is available in the City Clerk's Office.

ANALYSIS

The following companies submitted responses to the RFP:

F.M. Thomas Air Conditioning, Inc.
Barr Engineering
Irvine Construction HVAC
Johnson Controls
Western Allied Corporation

A review panel evaluated the proposals based on the following scoring criteria:

- 1) Firm's experience with similar projects, similar scope of work, and a demonstrable understanding of the Trane System;

- 2) Proposal Fee (the score received is based on the rank when compared to the other proposals fees. In this RFP, the price of the annual cost accounted for 10 points, the per hour charge for emergency visits accounted for 5 points and the final 5 points were awarded based on minimal charge per visit);
- 3) Ability to work effectively with the City and handle customer support; with an understanding of facility standards;
- 4) References- Minimum number of references' contact information provided; and overall rating from references;
- 5) Responsiveness to scope of work, demonstrable plan for department maintenance and overall presentation of proposal.

All companies are registered with the Department of Industrial Relations in accordance with State law requirements, as confirmed by City staff.

Below are the average panel scores and final rank for each firm:

Company	Average Score	Yearly Price
F.M. Thomas Air Conditioning, Inc.	94.6	\$122,822
Western Allied Corporation	90.6	\$135,744
Barr Engineering	84.3	\$114,500
Johnson Controls	83.3	\$214,476
Irvine Construction HVAC	62.6	\$248,500

Based on the proposals submitted by each firm, the review panel scores (including proposed fee/price), and references, the firm with the best qualifications and experience that meets the needs of the Police Department is F.M. Thomas Air Conditioning, Inc.

FISCAL IMPACT

F.M. Thomas Air Conditioning, Inc. annual fee proposal to provide the services listed in RFP# 19-11 amounts to \$122,822. This amount is currently budgeted under Police Department, Support Services, Outside Contract (Account #100-80-815-6040.10). Staff recommends awarding the contract for the remainder of fiscal year 2018-2019 with the option to extend the contract for two (2) one-year terms.

SUMMARY

Upon review and analysis of the five responses to the City's RFP#19-11 for Police Department HVAC Maintenance and Repairs, staff recommends awarding the annual contract to F.M. Thomas Air Conditioning, Inc. The City Council will consider awarding this contract to F.M. Thomas Air Conditioning, Inc. and will consider authorizing the Acting City Manager to execute the contract on behalf of the City.

ATTACHMENT

Draft Contract Agreement

AGREEMENT NO. _____
BETWEEN THE CITY OF MONTEBELLO AND
F.M. THOMAS AIR CONDITIONING, INC
FOR HEATING VENTILATION AND AIR CONDITIONING (HVAC) PREVENTIVE
MAINTENANCE AND REPAIR SERVICES

THIS AGREEMENT ("Agreement") is made and entered into on _____, **2019**, by the CITY OF MONTEBELLO, a municipal corporation (hereinafter referred to as "CITY") and F.M. AIR CONDITIONING, INC. (hereinafter referred to as "CONTRACTOR"). CITY and CONTRACTOR are sometimes referred to herein individual as the "Party," and jointly as the "Parties."

RECITALS

WHEREAS, CITY desires to retain a qualified professional contractor to provide HVAC Maintenance and Services at the Police Station in the CITY; and

WHEREAS, CONTRACTOR represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

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

SECTION 1. SERVICES / COMPENSATION.

A. All terms, conditions, requirements, and provisions of the Request for Proposals for Police Station HVAC Maintenance and Repairs (November 18, 2018) ("Request for Proposals"), as such is set forth fully in **Exhibit "A"** hereto, are hereby incorporated fully herein by this reference and shall be binding on the Parties. To the extent of a conflict between the terms of this Agreement and that set forth in any exhibits or attachments hereto, the terms of this Agreement shall govern.

B. CONTRACTOR shall provide to CITY all labor, equipment, materials and incidental necessary for a turnkey design-build project as set forth fully in the **Request for Proposals**, as such is set forth fully in **Exhibit "A"** hereto and incorporated fully herein by this reference (hereinafter "Professional Services").

C. CONTRACTOR shall be compensated for performance of the Professional Services as set forth in the **Schedule of Compensation** attached hereto as **Exhibit "B"** and incorporated fully herein by this reference ("Compensation"). CONTRACTOR shall provide an itemized billing statement to CITY each month for Professional Services performed. CONTRACTOR shall not incur fees or costs which exceed the Compensation without the prior written consent of CITY.

SECTION 2. TERM.

This Agreement shall commence upon issuance of the Notice to Proceed by City ("Effective Date") and shall expire one (1) year from the Effective Date, unless terminated earlier as

hereinafter provided. This Agreement may be extended for up to two (2) additional years upon such terms and conditions mutually agreed upon by the Parties in writing.

SECTION 3. PERFORMANCE.

- a. CONTRACTOR shall at all times, faithfully, competently, and to the best of its ability, experience and talent, perform all tasks described herein.
- b. CONTRACTOR shall employ, at a minimum, generally accepted standards and practices utilized by companies engaged in providing similar services, as are required of Contractor hereunder, in meeting its obligations under this Agreement.
- c. CONTRACTOR shall be knowledgeable of and subject to all CITY ordinances, rules and regulations, standard operating procedures, and the supervisory chain of command.
- d. CONTRACTOR shall have the right to retain, subject to CITY's approval, additional individuals, consultants or subcontractors to assist in the completion of services as herein defined. Compensation for additional individuals, consultants or subcontractors shall be the sole and exclusive responsibility of CONTRACTOR.
- e. CONTRACTOR shall retain all original reports, field and office notes, correspondence, calculations, maps, and other documents specifically related to the services provided by CONTRACTOR pursuant to this Agreement, other than documents which are exempt from disclosure pursuant to the attorney-client privilege or any other law. Said documents shall be made available for inspection by CITY upon request.

SECTION 4. WORK PRODUCT.

- a. CONTRACTOR hereby agrees that all work product produced pursuant to this Agreement and provided to CITY during and upon completion of this Agreement, shall be the property of CITY, and ownership of said work product shall be retained by CITY. 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.
- b. 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 CITY. CITY shall grant such consent if disclosure is legally required. All such written products shall be returned to CITY 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.

SECTION 5. EXTRA SERVICES.

No extra services over and above the Compensation shall be rendered by CONTRACTOR under this Agreement unless such extra services first shall have been duly authorized in writing by the City Manager of CITY ("City Manager").

SECTION 6. CITY SUPERVISION.

The City Manager shall have the right of general supervision of all work performed by CONTRACTOR and shall be CITY agent with respect to obtaining CONTRACTOR's

compliance hereunder. No payment for services rendered under this Agreement shall be made without the prior approval of the City Manager.

SECTION 7. 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.

a. Termination for Cause. In the event that any of the provisions of the Agreement are violated by either party, the non-defaulting Party may terminate the Agreement by serving written notice upon the other Party, listing the violation(s) and its intent to terminate such Agreement unless within ten (10) days after the serving of such notice, such violation shall cease or be rectified, the Agreement shall upon the expiration of an additional thirty (30) days cease and terminate. Violations by CONTRACTOR which cannot be corrected within ten (10) days, said Agreement shall at the option of CITY cease and terminate upon the giving of like notice. In the event of any such termination for default by CONTRACTOR, CITY may take over the work and prosecute the same to completion by contract or otherwise for the account and at the expense of CONTRACTOR. CONTRACTOR and his sureties shall be liable to CITY for any excess cost occasioned in the event of any such termination. This change shall not be construed to prevent the termination, for other causes authorized by law or other provisions of this Agreement. In the event of a termination for cause, CONTRACTOR shall only be entitled to the Compensation for those Professional Services satisfactory performed on or before the effective date of termination.

b. Termination For Convenience. CITY shall have the option, at its sole discretion and without cause, to terminate this Agreement in whole, or in part, by giving ten (10) business days' written notice to CONTRACTOR. Upon the termination of this Agreement as provided herein, CITY 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 CITY, 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 CONTRACTOR prior to the date of termination, and (2) that CONTRACTOR provides CITY with adequate proof that CONTRACTOR incurred the costs, 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.

SECTION 8. EMPLOYMENT OF CITY EMPLOYEES.

No regular employee of CITY shall be employed by CONTRACTOR during the term of this Agreement.

SECTION 9. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES.

No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY, or for any amount which may become due to CONTRACTOR.

SECTION 10. INDEPENDENT CONTRACTOR.

a. CONTRACTOR is and shall, at all times, remain as to CITY a wholly independent contractor. Neither CITY nor any of its elected officials, officers, employees or agents shall have control over the conduct of CONTRACTOR except as expressly set forth in this Agreement. CONTRACTOR shall not at any time or in any manner represent that it is in any manner an elected official, officer, employee or agent of CITY. No employee benefits shall be available to CONTRACTOR in connection with the performance of this Agreement. Except as provided in this Agreement, CITY shall not pay salary, wages, or other compensation to CONTRACTOR for performance hereunder for CITY; CITY shall not be liable for compensation to CONTRACTOR, CONTRACTOR's employees or CONTRACTOR'S subcontractors for injury or sickness arising out of performing services hereunder.

b. The Parties further acknowledge and agree that nothing in this Agreement shall create or be construed to create a partnership, joint venture, employment relationship or any other relationship except as set forth in this Agreement.

c. CITY shall not deduct from the Compensation paid to CONTRACTOR any sums required for Social Security, withholding taxes, FICA, state disability insurance or any other federal, state or local tax or charge which may or may not be in effect or hereinafter enacted or required as a charge or withholding on the compensation paid to CONTRACTOR. CITY shall have no responsibility to provide CONTRACTOR, its employees or subcontractors with workers' compensation insurance or any other insurance.

SECTION 11. PERS ELIGIBILITY INDEMNITY.

a. In the event that CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR 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 CITY, CONTRACTOR shall indemnify, defend, and hold harmless CITY 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 CITY.

b. 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 CITY, including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contribution and/or employee contributions for PERS benefits.

SECTION 12. LEGAL RESPONSIBILITIES.

CONTRACTOR shall at all times observe and comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments including, but not limited to the Montebello Municipal Code. CITY, and its appointed or elected officers, employees, or agents, shall not be liable at law or in equity occasioned by failure of CONTRACTOR to comply with this section.

SECTION 13. INDEMNIFICATION.

CONTRACTOR agrees to, and shall defend, indemnify, protect and hold harmless, CITY, its elected and appointed boards, officers, officials, employees, agents and volunteers from and against any and all claims, demands, lawsuits, defense costs, civil, penalties, expenses, causes of action, and judgments at law or in equity, or liability of any kind or nature which the CITY, its elected and appointed boards, officers, officials, employees, agents and volunteers may sustain or incur or which may be imposed upon them for injuries or deaths of persons, or damage to property arising out of CONTRACTOR'S negligent or wrongful act, or omission under the terms of this Agreement, except only liability arising out of the sole negligence of CITY.

SECTION 14. INSURANCE COVERAGE.

During the term of this Agreement, CONTRACTOR shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with CONTRACTOR'S performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

☐ **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than **TWO MILLION DOLLARS AND NO CENTS** (\$2,000,000) per occurrence. If a general aggregate limit applies, the limit shall be twice the required occurrence limit.

☐ **Automobile Liability Insurance:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **ONE MILLION DOLLARS AND NO CENTS** (\$1,000,000) per accident for bodily injury and property damage.

☐ **Worker's Compensation** insurance as required by the laws of the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **ONE MILLION DOLLARS AND NO CENTS** (\$1,000,000) per accident for bodily injury or disease.

☐ **Professional Liability** insurance appropriate to the CONTRACTOR'S profession, with limit no less than **ONE MILLION DOLLARS AND NO CENTS** (\$1,000,000) per occurrence or claim, **TWO MILLION DOLLARS AND NO CENTS** (\$2,000,000) aggregate.

If the CONTRACTOR maintains higher limits than the minimums shown above, CITY requires and shall be entitled to coverage for the higher limits maintained by CONTRACTOR.

CONTRACTOR shall require each of its subcontractors, if any, to maintain insurance coverage that meets all of the requirements of this Agreement.

The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a current rating of at least A:VII in the latest edition of Best's Insurance Guide.

Each insurance policy required above shall state that coverage shall not be canceled,

except after thirty (30) days' prior written notice (ten (10) days for non-payment) has been given to the City. CONTRACTOR agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either (i) immediately terminate this Agreement for Cause; or (ii) take out the necessary insurance and pay, at CONTRACTOR'S expense, the premium thereon.

At all times during the term of this Agreement, CONTRACTOR shall maintain on file with Risk Manager of CITY ("Risk Manager") a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming CITY as an additional insured. CONTRACTOR shall, prior to commencement of work under this Agreement, file such certificate(s) with the Risk Manager..

CONTRACTOR shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two (2) weeks prior to the expiration of the coverages.

The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming CITY, its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days' prior written notice to CITY. CONTRACTOR agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

The insurance provided by CONTRACTOR shall be primary to any coverage available to CITY. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or volunteers, shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR, and CONTRACTOR'S employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against CITY.

Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONTRACTOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONTRACTOR shall procure a bond guaranteeing payment of losses and expenses.

Procurement of insurance by CONTRACTOR shall not be construed as a limitation of CONTRACTOR'S liability or as fall performance of CONTRACTOR'S duties to indemnify, hold harmless and defend under Section 9 of this Agreement.

SECTION 15. 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 CITY. 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 CITY 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.

SECTION 16. PREVAILING WAGES

CONTRACTOR is aware of the requirements of California Labor Code section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Professional Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, CONTRACTOR agrees to fully comply with such Prevailing Wage Laws. CITY shall provide CONTRACTOR with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. CONTRACTOR shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Professional Services available to interested parties upon request, and shall post copies at CONTRACTOR'S principal place of business and at the Project site. CONTRACTOR shall defend, indemnify and hold CITY, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. CONTRACTOR and each subcontractor shall forfeit as a penalty to CITY not more than **TWO HUNDRED DOLLARS AND NO CENTS** (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by CONTRACTOR.

SECTION 17. PAYROLL RECORDS

In accordance with the requirements of California Labor Code section 1776, CONTRACTOR shall keep accurate payroll records which are either on forms provided by the Division of Labor Standards Enforcement or which contain the same information required by such forms. Responsibility for compliance with California Labor Code section 1776 shall rest solely with CONTRACTOR, and CONTRACTOR shall make all such records available for inspection at all reasonable hours. In the event of noncompliance with the requirements of this Section, CONTRACTOR shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such CONTRACTOR must comply with this Section. Should noncompliance still be evident after such 10-day (10) period, CONTRACTOR shall, as a penalty to CITY, forfeit not more than **ONE HUNDRED DOLLARS AND NO CENTS** (\$100.00) for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this Section is on CONTRACTOR.

SECTION 19. HOURS OF WORK

Pursuant to the provisions of the California Labor Code, eight (8) hours of labor shall constitute a legal day's work, and the time of service of any worker employed on the work shall

be limited and restricted to eight (8) hours during any one calendar day, and forty (40) hours in any one (1) calendar week, except when payment for overtime is made at not less than one (1) and one-half (1-1/2) the basic rate for all hours worked in excess of eight (8) hours per day ("Eight-Hour Law"), unless CONTRACTOR or the Services are not subject to the Eight-Hour Law. Pursuant to section 1813 of the California Labor Code, CONTRACTOR shall forfeit a penalty of **TWENTY-FIVE DOLLARS AND NO CENTS** (\$25.00) per worker for each day that each worker is permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

SECTION 20. ACKNOWLEDGEMENTS: CONTRACTOR QUALIFICATIONS

20.1 Registration with the Department of Industrial Relations

CONTRACTOR acknowledges, understands and warrants that it is registered with the Department of Industrial Relations ("DIR") in accordance with Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public works on a public works project awarded on or after April 1, 2015, unless registered with the DIR.

20.2 Classification of Contractor's License

CONTRACTOR acknowledges and understands that it shall possess a C20 license to perform the public work. Public Contract Code section 3300. CONTRACTOR further acknowledges and understands that it shall possess the proper license at the time the contract is awarded, not at the time the bid is submitted or opened. Public Contract Code section 3300.

CITY acknowledges and understands that before a contract is awarded, it shall verify that CONTRACTOR was licensed at the time of submission of the bid. If a bid is awarded to a non-licensed contractor without verification, CITY may be liable for an administrative fine. Business and Professions Code section 7028.15.

20.3 Ineligible Contractor or Subcontractor

CONTRACTOR acknowledges and understands that performance of work on a public works project with a subcontractor who is ineligible to perform work pursuant to Section 1777.1 or 1777.7 of the Labor Code is prohibited. Public Contract Code section 6109(a).

20.4 Contract with Debarred Subcontractor is Void

CONTRACTOR acknowledges and understands that any agreement on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to CITY. CONTRACTOR shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on a project. Public Contract Code section 6109(b).

20.5 Affidavit of Non-Collusion

CONTRACTOR acknowledges and understands that it must execute an **Affidavit of**

Non-Collusion per Public Contract Code section 7106 attached hereto as **Exhibit “C”** and incorporated to this Agreement by reference.

SECTION 16. NO WAIVER.

Waiver by any party hereto of any term, condition or covenant of this Agreement shall not constitute the waiver of any other term, condition or covenant hereof.

SECTION 17. DISPUTE RESOLUTION; GOVERNING LAW.

This Agreement shall be interpreted in accordance with the laws of the State of California. 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, expert 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 County of Los Angeles, California. The Parties agree that the covenants contained in this Article shall survive the expiration or termination of this Agreement.

SECTION 18. ATTORNEY'S FEES AND COSTS.

If litigation is reasonably required to enforce or interpret the provisions of this Agreement, the prevailing party in such litigation shall be entitled to an award of reasonable attorney's fees and costs in addition to any other relief to which it may be entitled.

SECTION 19. WARRANTIES.

Each of the parties represents and warrants to one another as follows:

- a. It has received independent legal advice from its attorneys with respect to the advisability of entering into and executing this Agreement;
- b. In executing this Agreement, it has carefully read this Agreement, knows the contents thereof, and has relied solely on the statements expressly set forth herein and has placed no reliance whatsoever on any statement, representation, or promise of any other party, or any other person or entity, not expressly set forth herein, nor upon the failure of any other party or any other person or entity to make any statement, representation or disclosure of any matter whatsoever; and
- c. It is agreed that each party has the full right and authority to enter into this Agreement, and that the person executing this Agreement on behalf of either party has the full right and authority to fully commit and bind such party to the provisions of this Agreement.

SECTION 20. MISCELLANEOUS.

- a. The descriptive paragraph headings of this Agreement are included for purposes of convenience only and shall not control or affect the construction or interpretation of any of its provisions.

b. Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender, and the neutral and vice versa.

c. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

d. The representations and warranties made by the parties to this Agreement shall survive the consummation of the transaction herein described.

e. This Agreement may be signed in any one or more counterparts all of which taken together shall be but one and the same Agreement. Any signed copy of this Agreement or of any other document or agreement referred to herein, or copy or counterpart thereof, delivered by facsimile transmission, shall for all purposes be treated as if it were delivered containing an original manual signature of the party whose signature appears in the facsimile and shall be binding upon such party in the same manner as though an originally signed copy had been delivered.

f. Each of the parties acknowledges that it has been represented by independent counsel of its own choosing, or if it has not been so represented, it has been admonished to obtain independent counsel and has freely and voluntarily waived and relinquished the right to counsel. Each party who has not obtained independent counsel acknowledges that the failure to have independent legal counsel will not excuse such party's failure to perform under this Agreement or any agreement referred to in this Agreement.

SECTION 21. NOTICE.

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 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:

If to CITY: Brad Keller, Chief of Police
Police Department
City of Montebello
1600 West Beverly Boulevard
Montebello, California 90640
E-mail: bkeller@cityofmontebello.com

If to CONTRACTOR: Thomas Feyka
President
F.M. Thomas Air Conditioning, Inc.
213 Gemini Avenue
Brea, CA 92821
Email: tfeyka@fmthomas.com

SECTION 22. 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.

SECTION 23. CONFLICT OF INTEREST.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by CONTRACTOR under this Agreement, or which would conflict in any manner with the performance of its services hereunder. CONTRACTOR further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, CONTRACTOR shall avoid the appearance of having any interest that would conflict in any manner with the performance of its services pursuant to this Agreement.

CONTRACTOR covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to CITY as a result of the performance of this Agreement, or the services that may be procured by CITY as a result of the recommendations made by CONTRACTOR. CONTRACTOR's covenant under this section shall survive the termination of this Agreement.

SECTION 24. ENTIRE AGREEMENT.

This Agreement contains the entire understanding between CITY and CONTRACTOR. Any prior agreements, promises, negotiations or representations not expressly set forth herein are of no force or effect. Subsequent modifications to this Agreement shall be effective only if in writing and signed by each party. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement the day and year first above written.

CITY OF MONTEBELLO
(CITY)

F.M. THOMAS AIR CONDITIONING INC.
(CONTRACTOR)

Paul Talbot
Acting City Manager

Name

Title of Representative

Dated: _____

Dated: _____

ATTEST:

APPROVED AS TO FORM:

Irma Barajas
City Clerk

Arnold Alvarez-Glasman
City Attorney

EXHIBIT C

AFFIDAVIT OF NON-COLLUSION

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid. Public Contract Code section 7106.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR PUBLIC WORKS ARE TRUE AND CORRECT.

Dated this ____ day of _____, _____

(Name of Organization)

(Title of Person Signing) (Signature)

ACKNOWLEDGEMENT

STATE OF _____)
_____) ss
COUNTY OF _____)

Before me, a Notary Public, personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this _____ day of _____, _____.

Notary Public Signature

My Commission Expires: _____

CITY OF MONTEBELLO

CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and Members of City Council

FROM: Paul Talbot, Acting City Manager

BY: Tom Barrio, Director of Transportation

SUBJECT: **Approval of Disadvantaged Business Enterprise (DBE) Three Year Goal For Federal Fiscal Years 2019 Through 2021**

DATE: February 13, 2019

RECOMMENDATION

Staff recommends City Council adopt Resolution authorizing a three year Disadvantaged Business Enterprise (“DBE”) goal of three percent (3%) for Federal Transit Administration (“FTA”) contracting opportunities for Federal Fiscal Years 2019 through 2021.

BACKGROUND / ANALYSIS

Pursuant to Federal Regulation 49 CFR Part 26 - Disadvantaged Business Enterprise (DBE); all public agencies receiving U.S. Department of Transportation (USDOT) funds, that anticipate awarding \$250,000 or more in USDOT-assisted contracts, must establish a three-year overall DBE goal for potential contracting opportunities with certified suppliers.

The Montebello Bus Lines (MBL), as an FTA recipient must therefore meet the maximum feasible DBE participation overall goal by means of a voluntary race-neutral solicitation process. Race-neutral solicitation includes, but is not limited to: (1) arranging contracts in ways to facilitate small business participation such as unbundling large contracts or requiring prime contractors to subcontract portions of the work; (2) providing bonding, financing and technical assistance; (3) communicating contract opportunities to the small business community; or (4) providing business supportive and development services. For the three year period of FY 2018 thru FY 2022, MBL anticipates awarding \$10,188,500 in contracting opportunities assisted in whole or in part with FTA capital funds. A three percent (3%) base figure was calculated based on analysis of DBE availability (see Attachment A).

The overall goal must reflect the level of DBE participation absent the effects of discrimination. The overall goal is determined from an examination of DBE baseline availability in the recipients region and local market, using DBE directory information,

census data, bidders' lists, disparity or similar studies, historical information, and data on local market conditions.

FISCAL IMPACT

There is no material budget impact in the administration and implementation of this federally mandated DBE program.

SUMMARY

The approval of the Disadvantaged Business Enterprise (DBE) three-year goal for FFY 2019 through 2021 is required for MBL to continue to receive federal transit funds.

ATTACHMENTS

1. Resolution
2. Attachment A - MBL's Disadvantaged Business Enterprise Goal Calculation for Federal Fiscal Years 2019-2021

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MONTEBELLO TO ESTABLISH AN OVERALL
DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL FOR
ALL FEDERAL TRANSIT ADMINISTRATION FUNDED
PROJECTS FOR FISCAL YEARS 2018/19 – 2020/21**

WHEREAS, pursuant to the Federal Code of Regulation, 49 CFR Part 26, as amended, and regulations promulgated thereunder, in order to be eligible for Federal funds, the City of Montebello is required to have a Federal Transit Administration (FTA) approved Disadvantaged Business Enterprise (DBE) three year goal for Federal FY 2018/19 -2020/21.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTEBELLO
HEREBY DETERMINES, FINDS, AND RESOLVES AS FOLLOWS:**

Section 1. A Disadvantaged Business Enterprise (DBE) overall goal of three percent (3%) of FTA funded contracting opportunities is hereby approved and adopted for Federal FY 2018/19 through FY 2020/21.

Passed and approved this 13th day of February, 2019.

Jack Hadjinian, Mayor Pro Tem

ATTEST:

Irma Barajas, City Clerk

APPROVE TO FORM:

Arnold M. Alvarez-Glasman, City Attorney



City of Montebello

Proposed DBE Goal-Setting Methodology for FFY's 2019/21

Submitted in fulfillment of:

*Section 1101 of the Transportation Equity Act for the 21st Century
and 49 Code of Federal Regulations Part 26*

* This analysis is prepared exclusively for the City of Montebello, it is non-transferable and is not to be duplicated

City of Montebello
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
OVERALL DBE GOAL AND METHODOLOGY
FOR
FEDERAL FISCAL YEAR (FFY) 2019/21
(Covering the period of October 1, 2018 to September 30, 2021)

I. INTRODUCTION

City of Montebello herein sets forth its Proposed Overall Disadvantaged Business Enterprise (DBE) Goal and corresponding federally prescribed goal-setting methodology for the three-year Federal Fiscal Year (FFY) goal period of 2019/21, pursuant to Title 49, Code of Federal Regulations (CFR), Part 26 “Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation Financial Assistance Programs”; and the Federal Transportation Administration (FTA) Master Agreement.

II. BACKGROUND

Effective March 3, 2010, the United States Department of Transportation (“DOT”) issued a final rule affecting the implementation and management of the Department’s Disadvantaged Business Enterprise (“DBE”) program. The final rule, effectively amended the provision requiring annual submission of DBE goals and methodology, requiring submission of a goal-setting methodology on a three-year cycle. Pursuant to this final rule, the City of Montebello is still required to conduct an annual review to account for changes that may warrant an adjustment to the overall goal or make an adjustment based on changed circumstances (i.e. significant change in the legal standards governing the DBE program, new contracting opportunities presented by the availability of new or different grant opportunities, etc.) to ensure the goal and program as a whole are narrowly tailored throughout the goal period.

The City of Montebello herein presents its Proposed Overall DBE Goal Methodology for FFY 2019/21 goal period.

III. FTA-ASSISTED CONTRACTING PROGRAM FOR FFY 2019/21

Table 1 represents the City of Montebello’s U.S. DOT-assisted (FTA) defined contracting program, which includes eleven (11) projects considered in preparing its ***Proposed Overall DBE Goal-Setting Methodology***. The 11 projects have viable subcontracting possibilities and corresponding availability of DBEs, a required criterion for Overall Goal consideration, and are anticipated to be awarded within the respective goal period:

Table 1

PROJECT	Total Estimated Cost (Federal Share)
Tire Lease-FY 2019	\$240,000
Tire Lease-FY 2020	\$240,000

Tire Lease-FY 2021	\$240,000
Associated Capital Maintenance (Spare parts)-FY 2019	\$400,000
Associated Capital Maintenance (Spare parts)-FY 2020	\$400,000
Associated Capital Maintenance (Spare parts)-FY 2021	\$400,000
Preventive Maintenance-FY 2019	\$1,665,500
Preventive Maintenance-FY 2020	\$1,665,500
Preventive Maintenance-FY 2021	\$1,665,500
Radio System Upgrade-FY 2019	\$732,000
Surveillance System, Phase 2-FY 2019	\$2,540,000
TOTAL	\$10,188,500

Table 2 provides a summary of work grouped by three (3) primary categories: Construction Services, Professional Services, and Materials & Supplies utilizing the North American Industry Classification System (NAICS) primary work categories. Table 2 also serves to identify the estimated Federal Dollar Share and the Percent of Federal funding, as follows:

Table 2

CONTRACT CATEGORY	NAICS WORK CATEGORIES ¹	ESTIMATED FEDERAL DOLLAR SHARE	% OF FEDERAL FUNDING (Rounded)
Construction	238110, 238210, 238910, 238990	\$660,400	6.5%
Professional Services	488490, 541380, 541512, 61621, 811111, 811112, 811113, 811118, 811121, 811198	\$5,389,800	52.9%
Materials	423120, 423130, 423410, 23610, 423690, 423860, 424720, 441310, 441320	\$4,138,300	40.6%
TOTAL		\$10,188,500	100%

IV. GOAL METHODOLOGY

Step 1: Determination of a Base Figure (26.45)²

To establish the City of Montebello's Base Figure of the relative availability of DBEs to all comparable firms (DBE and Non-DBEs) available to propose on the City of Montebello's FFY 2019/21 FTA-assisted contracting opportunities projected to be solicited during the respective goal period, the City of Montebello followed one of the five prescribed federal goal-setting methodologies in accordance with 49 CFR Part 26 regulations. This was accomplished by accessing the **California Unified Certification Program (CUCP) Directory of Certified DBE Firms** and the **2016 U.S. Census Bureau County Business Patterns (CBP) Database**. Comparisons were made within the City of Montebello's market area (defined as Los Angeles County and Orange County, Riverside and San Bernardino) and by specified industries and types of businesses identified in Table 2. The City of Montebello's local market area represents where the substantial majority of

² 26.45 represents Title 49 CFR Part 26 regulatory goal setting methodology reference.

the City of Montebello’s contracting dollars are expended and/or where the substantial majority of contractors and subcontractors bids or quotes are received.

The Base Figure was further weighted by contract type and corresponding contract value. The Base Figure resulting from this weighted calculation is as follows:

The City of Montebello made a concerted effort to ensure that the scope of businesses included in the numerator was as close as possible to the scope included in the denominator. For corresponding detail of all work category classifications grouped, refer to *Table 3 Below*.

- ⇒ **For the numerator:** *California UCP DBE Database of Certified Firms*
 ⇒ **For the denominator:** *2016 U.S. Census Bureau’s Business Pattern Database (CBP)*

To determine the relative availability of DBEs, the City of Montebello divided the numerator³ representing the ratio of ready, willing and able DBE firms, by the denominator⁴ representing all firms (DBE and Non-DBEs) available in each work category. Application of this formula yielded the following baseline information:

$$\frac{\text{Number of Ready, Willing and Able DBEs}}{\text{Number of All Available Firms (including DBEs and Non-DBEs)}} = \text{DBE Availability \%}$$

To determine the appropriate weighting percent by NAICS, the estimated dollar value by NAICS was divided by the total estimated federal dollars for FFY 2019/21. The weighting percent by NAICS was then multiplied by the DBE Availability % to determine the Base Figure % by NAICS, see below:

$$\text{Weighting} \times \text{DBE Availability \%} = \text{Base Figure \% by NAICS}$$

To determine the Step 1 Base Figure, the City of Montebello added together all Base Figure % by NAICS in Table 3

Table 3

CATEGORY OF WORK	NAICS CODES	Weighting*	DBE Availability %	Base Figure % by NAICS
Poured Concrete Foundation and Structure Contractors	238110	0.249%	14.68%	0.037%
Electrical Contractors and Other Wiring Installation Contractors	238210	2.493%	4.08%	0.102%
Site Preparation Contractors	238910	1.247%	14.54%	0.181%
All Other Specialty Trade Contractors	238990	2.493%	12.53%	0.312%
Motor Vehicle Supplies and New Parts Merchant Wholesalers	423120	6.248%	0.63%	0.039%
Tire and Tube Merchant Wholesalers	423130	3.533%	1.15%	0.041%
Photographic Equipment and Supplies Merchant Wholesalers	423410	12.465%	3.33%	0.416%
Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	423610	4.278%	5.64%	0.241%
Other Electronic Parts and Equipment Merchant Wholesalers	423690	3.592%	9.05%	0.325%
Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	423860	2.844%	9.47%	0.269%
Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	424720	2.944%	10.53%	0.310%

Numerator represents all DBE firms established within the City of Montebello’s market area.
 Denominator represents all comparable available established firms.

Automotive Parts and Accessories Stores	441310	1.178%	0.28%	0.003%
Tire Dealers	441320	3.533%	0.42%	0.015%
Other Support Activities for Road Transportation	488490	2.452%	15.66%	0.384%
Testing Laboratories	541380	0.374%	17.47%	0.065%
Computer Systems Design Services	541512	0.803%	9.63%	0.077%
Security Systems Services (except Locksmiths)	561621	1.247%	5.01%	0.062%
General Automotive Repair	811111	24.520%	0.15%	0.037%
Automotive Exhaust System Repair	811112	2.452%	0.00%	0.000%
Automotive Transmission Repair	811113	4.904%	0.36%	0.018%
Other Automotive Mechanical and Electrical Repair and Maintenance	811118	8.793%	1.83%	0.161%
Automotive Body, Paint, and Interior Repair and Maintenance	811121	4.904%	0.33%	0.016%
All Other Automotive Repair and Maintenance	811198	2.452%	1.39%	0.034%
Total:		100%		3.15%
Base Figure 3.15% *70% (30% reduction to the percent Prime contractors are likely to Perform) = 2.18% 2% (Rounded to the nearest whole number)				

*Weighting based on estimated value per NAICS.

Step 2: Adjusting the Base Figure

Upon establishing the Base Figure, the City of Montebello reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within the City of Montebello's market area, in accordance with prescribed narrow tailoring provisions set forth under 49 CFR Part 26.45 Step 2; DBE Goal Adjustment guidelines.

Evidence considered in making an adjustment to the Base Figure included the City of Montebello's Past DBE Goal Attainments, other Local Agencies' *Disparity Studies within the City of Montebello's market area and Other Evidence, as follows:*

A. Past DBE Goal Attainments

The following table below reflects the demonstrated capacity of DBEs (measured by historical DBE participation) on FTA-assisted contracts awarded by the City of Montebello within the last three (3) Federal Fiscal Years:

Table 4

Year	Attainment
FFY 2015*	77%
FFY 2016	0%
FFY 2017	3%
Median of Past Awards = 0%, 3% , 77% = % Median Past Participation	

*FFY 2018 still in progress as of the date of methodology preparation, so FFY 2015 was used in lieu of FFY 2018

The City of Montebello considered an adjustment to the Base Figure based on the median DBE participation on DOT-assisted contracts completed within the past three FFYs (2015/17). As three years of DBE Participation data was reviewed and the years reviewed included projects with a similar variety in scope to the scopes projected for the 2019/21 period, the City of Montebello can reasonably assume that the rates of DBE participation reflected are an accurate reflection of DBE capacity to perform in the 2019/21 overall goal period. The adjustment is calculated in accordance with FTA guidance by averaging the Base Figure with the Median DBE Past participation, as shown below.

$$\begin{aligned} &2\% \text{ Base Figure} + 3\% \text{ Median Past Participation} = 5\% \\ &5/2 = 2.5\% \\ &\textbf{Adjusted Base Figure: 3\%} \text{ (Rounded to the nearest whole number)} \end{aligned}$$

B. Evidence from Disparity Studies

Barriers to Entry: Employment, Self Employment, Education and Training, Business Ownership Rates and Access to Capital

The City of Montebello did not find it feasible to conduct an independent availability/disparity study; however, the City of Montebello identified two (2) disparity studies, inclusive of market areas similar to the City of Montebello's, to consider whether a Race-Conscious DBE Program should continue to be implemented. The 2 identified Disparity Studies were the Caltrans Disparity Study and The Los Angeles County Metropolitan Transportation Authority (Metro) Disparity Study.

The first Disparity Study considered was that of the California Department of Transportation (Caltrans), completed in 2016 due to the timeliness of the contracts reviewed. The Caltrans Disparity Study reviewed Construction and Engineering contracts state-wide between the years January 1, 2011 to December 31, 2014. As the Caltrans' Disparity Study included thousands of contracts from areas outside of the City of Montebello's market area as well as projects that had no relation to the scopes included in the upcoming goal period, the City of Montebello opted to not utilize this Disparity Study to apply an adjustment to their current race-neutral/race-conscious DBE application measures.

The second Disparity Study taken into consideration was Metro's Disparity Study due to the similarities in market area and timeliness of the contracts reviewed. Where the Caltrans Study market area included the entire state of California, the Metro Study focused on Los Angeles County which is more aligned with the City of Montebello's market area. The Metro Disparity Study was initiated in November 2016 and included a five-year study period (January 1, 2011 through December 31, 2015) to determine any differences between the participation of minority- and woman-owned businesses in relevant contracts and the availability of those businesses to perform that work (referred to as *disparities*). Disparity analysis results indicated that most racial/ethnic and gender groups showed disparities on contracts where race- and gender-conscious measures were not in place during the study period. As a result, the Disparity Study recommended the use of contract DBE goals.

As Metro's Disparity Study satisfies the legal standards established by the Ninth Circuit Court of Appeals in *Western States Paving Co., Inc. v. Washington State Department of Transportation*, and guidance from the U.S. Department of Transportation/Federal Transit Administration (FTA) concerning the implementation of race-conscious application, the City of Montebello has elected to utilize this study as a basis for continuing to implement the race-conscious component of their Overall DBE goal. The City of Montebello will ensure that the use of race-conscious goals is narrowly tailored and consistent with other relevant legal standards.

The City of Montebello will continue to review applicable Disparity Studies as they become available and apply the appropriate adjustments to their Race-neutral/Race-Conscious DBE goal application.

C. Other Evidence

The City of Montebello did not receive any other anecdotal evidence nor is aware of any other factors or adverse considerations that would have had a material effect on DBEs availability within the City of Montebello's market place, or on DBEs ability to participate (meeting bonding, insurance and financial requirements) in the City of Montebello's FTA-assisted contracting programs. Therefore, no goal adjustment was made in consideration of this factor. However, the City of Montebello will continue to explore and consider all available evidence that materially would affect the opportunities for DBEs to form, grow, and compete in the City of Montebello's FTA-assisted contracting programs.

PROPOSED OVERALL DBE GOAL:

The Overall DBE Goal for FFY 2019/21 goal period for the City of Montebello's FTA-assisted contracts is 3%.

The proposed goal further serves to identify the relative availability of DBEs based on evidence of ready, willing, and able DBEs to all comparable firms, which are known to be available to compete for and perform on the City of Montebello's FTA-assisted contracts. The proposed goal reflects a determination of the level of DBE participation, which would be expected absent the effects of discrimination.

V. RACE-NEUTRAL MEASURES

The Overall DBE Goal for FFY's 2019/21 for the City of Montebello's DOT-assisted contract is 3%. The City of Montebello will implement race conscious measures, coupled with race-neutral measures based on the results received from the Southern California Regional Disparity Study, the City of Montebello's analysis of its past utilization data and an examination of similar market area Disparity Studies.

A. Consideration of the Amount by which City Has Exceeded Goals in the Past

DOT has identified the amount a recipient has exceeded their overall goals in the past years as a useful tool in projecting the race/gender-neutral participation one can expect in future Federal Fiscal Years.

The following table reflects the demonstrated capacity of DBEs on FTA-assisted contracts completed by the City within the last three (3) Federal Fiscal Years:

Table 5

Overall DBE Goal by Period	Federal Fiscal Year	DBE Attainment	% Goal Exceeded
% 3	FFY 2015*	77%	74%
% 3	FFY 2016	0%	0%
% 6	FFY 2017	3%	0%
Median % Goals Exceeded by = 0%, <u>0%</u> , 74% = 0%			
%** Median Participation above			

*FFY 2018 still in progress as of the date of methodology preparation, so FFY 2015 was used in lieu of FFY 2018

**Rounded to the nearest whole number

The City’s Historical Past Participation above the DBE goal produced a median of 0% DBE Participation (as illustrated in the table above). As the City’s historical DBE Participation did not exceed the projected DBE goal valid during the attainment periods, it is not reasonable to conclude that the FFY 2019/21 goal can be met race-neutrally based on this factor.

B. Past Participation by DBE Prime Contractors

DOT has identified that the amount of past participation obtained through the use of DBE primes should be considered achieved race/gender-neutrally and that those attainments can be used as a basis for estimating a similar level of race/gender-neutral participation in the next overall goal period.

Therefore, the City considered the amount of past DBE participation (based on awards) obtained through the use of DBE primes in FFYs 2015, 2016 and 2017 below:

Table 6

FFY	Total Dollar Value Awarded to DBE Prime	Reporting Period	Total Dollar Value of Awarded Contracts
2017	\$ 54,570	04/1/17-09/30/17	\$ 1,843,295
	\$0	10/1/16-03/31/17	\$ 0
2016	\$ 0	04/1/16-09/30/16	\$ 0
	\$ 0	10/1/15-03/31/16	\$ 4,025,000
2015	\$ 0	04/1/15-09/30/15	\$ 0
	\$ 49,874	10/1/14-03/31/15	\$ 64,981
Total:	\$		\$
% DBE Prime Participation	Total Dollar Value Awarded to DBE Prime (\$104,444) / Total Dollar Value of Awarded Contracts (\$5,933,276) = 1.76% DBE Prime Participation		2%*

*Rounded to nearest whole number

The City found that 2% of the DBE participation during FFYs 2015 through 2017 was produced by the utilization of DBE primes. This value was developed by dividing the total dollars awarded to DBE Primes (\$104,444) by the total dollars awarded on all Primes contracts (\$5,933,276) within FFYs 2015 through 2017, as displayed in the table above. The City confirmed that the projects completed during FFYs 2015 through 2017 were similar to the types of projects being procured in the upcoming overall goal period, a required criterion for consideration in utilizing DBE prime participation to validate race-neutral application. As 2% DBE participation was achieved on like-projects during the attainment period reviewed the City concluded that this rate of DBE participation would be an accurate reflection of DBE prime capacity in the primary types of work projected to be performed in the coming overall goal period.

C. Consider Past Participation by DBE Subcontractors on Contracts without Goals

DOT has identified that the amount of past participation obtained through the use of DBE subcontractors on contracts without DBE goals should be considered achieved race/gender-neutrally and that those attainments can be used as a basis for estimating a similar level of race/gender-neutral participation in the next overall goal period. Therefore, the City considered the amount of past DBE subcontractor participation on contracts without DBE goals in FFYs 2015, 2016 and 2017 below:

Table 7

FFY	Total Dollar Value Awarded to DBE Subcontractors on RN Contracts	Reporting Period	Total Dollar Value of Awarded Contracts
-----	--	------------------	---

2017	\$ 0	04/1/17-09/30/17	\$ 1,843,295
	\$ 0	10/1/16-03/31/17	\$ 0
2016	\$ 0	04/1/16-09/30/16	\$ 0
	\$ 0	10/1/15-03/31/16	\$ 4,025,000
2015	\$ 0	04/1/15-09/30/15	\$ 0
	\$ 0	10/1/14-03/31/15	\$ 49,784
Total:	\$		\$
Total Dollar Value Awarded to DBE Subs (\$0) /			0%* RN DBE Subcontract
Total Dollar Value Awarded on RN Contracts (\$5,933,276) = 0%			Participation

*Rounded to the nearest whole number

A DBE participation value of 0% was derived by the utilization of DBE subcontractors in the Race-Neutral (RN) periods above.

As 0% DBE subcontractor participation was achieved on like-projects during the attainment period reviewed the City concluded that this rate of DBE participation would be an accurate reflection of DBE subcontractor capacity in the primary types of work projected to be performed in the coming overall goal period.

D. Consider MBE/WBE/DBE Participation Pursuant to Race/Gender-Neutral State or Local Programs.

The City monitors Small Business participation but does not currently track MBE/WBE/DBE participation on Race/Gender-Neutral or Local Programs. The City will consider methods of tracking this information in the future for use in considering the proper race/gender-neutral application.

E. Past History of Inability to Achieve Goals

DOT has identified that a recipient's past inability to meet their goals in the past years as a powerful indicator that the recipient may be justified in applying race-/gender-conscious measures to achieve their goals in future Federal Fiscal Years. The following table below reflects the demonstrated capacity of DBEs (measured by historical DBE participation) on FTA-assisted contracts awarded by the City within the last three (3) Federal Fiscal Years:

Table 8

Overall DBE Goal by Period	FFY	DBE Attainment	% Below DBE Goal
3%	FFY 2015*	77%	0%
3%	FFY 2016	0%	3%
6%	FFY 2017	3%	3%

*FFY 2018 still in progress as of the date of methodology preparation, so FFY 2015 was used in lieu of FFY 2018

The City's historical DBE participation produced a shortfall in the City's ability to meet goals in Federal Fiscal Years 2016 and 2017 but did not produce a shortfall in Federal Fiscal Year 2015. Overall the median percent the City demonstrated in its inability to meet goals was 3%, which further supports the need for race/gender-conscious measures.

As three years of DBE Participation data was reviewed for projects with similar scopes and values to the projects in the upcoming goal period, the City can reasonably assume that the rates of race-neutral DBE participation reflected in the areas above are an accurate reflection of DBE capacity to perform race-neutrally in the 2019/21 overall goal period. Considering that the City's median rate for exceeding the DBE goal is 0% that the city was able to achieve 2% in race-neutral participation from DBE Primes on like projects and unable

to achieve any participation from DBE subs on like projects, the City added the three race-neutral percentages together and divided that number by three to find the average race-neutral participation.

The City has applied this to the proposed DBE Goal to project the necessary race-conscious/race-neutral breakout, as illustrated below:

% Goals Exceeded in Past = 0% RN DBE Prime Participation = 2% RN DBE Sub Participation = 0% 0% + 2 % + 0% = 2% 2% / 3 = .67% (Average RN Participation) 1% RN Projection (Rounded to the nearest whole number) DBE Goal: 3% RN Application 1% / RC Application 2 %
--

Consistent with the FTA guidance provided and the reasons delineated above the City has found it advisable to implement the race-neutral/race-conscious breakout illustrated above to meet the proposed Overall DBE Goal (3%) in accordance with 49 CFR Part 26.51.

F. Monitor DBE Participation to Determine Whether an Adjustment to the Use of Race/Gender-Conscious Measures is Necessary

The City will continue to monitor its DBE participation during the overall goal period to determine whether the application of the City’s race-neutral/race-conscious measures to meet the proposed Overall DBE Goal (3%) remains on target. The City will adjust the application of race/gender-neutral and race/gender-conscious measures, as necessary to ensure the City meets the maximum feasible portion the overall goal by using race/gender-neutral means of facilitating DBE participation.

VI. PUBLIC PARTICIPATION AND FACILITATION

As a part of the goal-setting public facilitation process, the City is required to solicit public comment, relative to the goal calculation and rationale. In accordance with Public Participation Regulatory Requirements of Title 49 CFR Part 26, minority, women, local business chambers, and community organizations within the City of Montebello’s market area will be provided an opportunity to review the goal analysis. The City of Montebello prepared and issued Outreach Consultation Letters advising the aforementioned business community of the proposed DBE goals analysis and availability for review.

The City of Montebello published a Public Notice on their website, informing the public that the proposed goal and rationale are available for inspection on the City of Montebello’s website and that the City of Montebello will accept comments on the goal analysis for 30 days from the date of the Public Notice. The City of Montebello will give full consideration to all comments and input and assess its impact on the proposed Overall DBE Goal. If no impact and/or comments are received during the public participation process the Goal will be considered final.

To further ensure that the City’s contracting community and stakeholders had in-person opportunities to communicate any feedback they had regarding effects of discrimination or barriers to DBE participation the City attended the local stakeholder meetings captured below:

Asian Business Association
767 North Hill Street, Suite 308
Los Angeles, CA 90012
Minority Business Opportunity Day, May 12, 2018

Los Angeles Area Chamber of Commerce
350 S. Bixel Street
Los Angeles, CA 90017
BIZ Con SoCal June 20, 2018

Formatted: Spanish (International Sort)

Southern California Minority Business Development Council
800 W 6th St #850
Los Angeles, CA 90017
MBE 2 MBE Meeting, May 23, 2018

Furthermore, the City consults and will continue to consult with minority groups and organizations year round via event attendance and facilitation to directly solicit the public in-person regarding input they have on DBE opportunities and any real and/or perceived barriers to DBE participation. Comments received from the City’s on-going consultation were reviewed and considered in determining whether an adjustment to the 3% Overall Goal (RN Application 1% / RC Application 2%) was necessary. Comment review produced the conclusion that the substantial bulk of input received involved procurement and contract monitoring procedures rather than numeric goal values or race-conscious/race-neutral breakouts, therefore an adjustment to the goal was not necessary. The City has incorporated input regarding procurement and monitoring procedures into their current procedures and will continue to consider all relevant input received moving forward.

APPENDIX

PUBLIC NOTICE

The City of Montebello

NOTICE IS HEREBY GIVEN, that the City of Montebello, (herein referred to as “City”) has established a Proposed Race-Conscious Overall Disadvantaged Business Enterprise (DBE) Goal of **3%** for Federal Fiscal Year (FFY) 2018/2020. The DBE goal is applicable to FTA-assisted contracts scheduled to be solicited and awarded during the period of October 1, 2017 through September 30, 2020.

The Authority’s Proposed Overall Goal and its rationale (developed in response to DOT’s Disadvantaged Business Enterprise Program Regulations published under Title 49 CFR Part 26 and U.S. DOT policy race neutral directives) is available for inspection and public review for thirty (30) days following the date of this Notice, from 8:30 a.m. to 5:00 p.m., Pacific Standard Time, Monday through Friday at our administrative office located at:

City of Montebello
400 S. Taylor Avenue
Montebello, CA 90640

The Authority will accept comments for forty-five (45) days from the date of this Notice. Comments can be forwarded to the Authority at above stated address or to the Regional Civil Rights Officer, U.S. Department of Transportation, Federal Transportation Administration, Region IX, 201 Mission Street, Suite 2210, San Francisco, California 94105-1800.

Tom Barrio,
Director of Transportation

Asian Business Association of Los Angeles

120 S. San Pedro Street, Suite 523
Los Angeles, CA 90012

Carson Chamber of Commerce
530 E. Del Amo Blvd.
Carson, CA 90746
Richard Chang, Chairman

Greater Los Angeles African American Chamber of Commerce

5100 W Goldleaf Cir # 203
Los Angeles, CA 90056

Latin Business Association
120 South San Pedro Street, Suite 530,
Los Angeles California, 90012

National Association of Women Business Owners

523 West 6th Street #516

Signal Hill Chamber of Commerce
2670 Cherry Avenue
Signal Hill, CA 90755
Melissa Guy, President

San Pedro Chamber of Commerce
390 West 7th Street
San Pedro, CA 90731
Elise Swanson, Executive Director

Alhambra Chamber of Commerce

104 S 1st St
Alhambra, CA 91801-3703
Maureen Aldrige, President/CEO

Black Business Association

4210 Wilshire Boulevard #200 Los
Angeles, CA 90010

Cerritos Chamber of Commerce
13259 South Street
Cerritos, CA 90703
Scott Smith, CEO/President

Japanese Chamber of Commerce of Southern
California

244 S. San Pedro St., #504
Los Angeles, CA 90012

Long Beach Chamber of Commerce
1 World Trade Center, #206
Long Beach, CA 90831
Randy Gordon, CEO/President

National Association of Women in Construction

P.O. Box 10756
Marina Del Ray, CA 90295-0756

Southern California Minority Business Development Council

800 W 6th St #850
Los Angeles, CA 90017

Claremont Chamber of Commerce

205 Yale Ave.
Claremont, CA 91711

Calabasas Chamber of Commerce

23564 Calabasas Rd Ste 101
Calabasas, CA 91302-1336
Pamela Kissel, President/CEO

ASIAN AMERICAN ECONOMIC DEVELOPMENT ENTERPRISES

216 West Garvey Ave., Unit E
Monterey Park, CA 91754

Chinese Chamber of Commerce
977 N. Broadway G/Fl., Suite E
Los Angeles, CA 90012

Korean Chamber of Commerce
3435 Wilshire Blvd # 2450
Los Angeles, CA 90010

Formatted: Spanish (International Sort)

Crescenta Valley Chamber of Commerce

3131 Foothill Blvd Ste D
La Crescenta, CA 91214-4226
Robyn Forrand, Executive Director

Los Angeles Area Chamber of Commerce

350 S. Bixel Street
Los Angeles, CA 90017

Formatted: Spanish (International Sort)

Century City Chamber of Commerce

2029 Century Park E
Los Angeles, CA 90067-2901
Nancy Wood,C President/CEO

Chatsworth/Porter Ranch Chamber of Commerce

10038 Old Depot Plaza Rd
Chatsworth, CA 91311-2943
Marnie Nemcoff, Board Chair

Granada Hills Chamber of Commerce

17723 Chatsworth St.
Grenada Hills, CA 91344
Madlena Minasian

Formatted: Spanish (International Sort)

Formatted: Spanish (International Sort)

Arcadia Chamber of Commerce

388 W Huntington Dr
Arcadia, CA 91007-3402
Karen MacNair, CEO

**Catalina Island Chamber & Visitors
Bureau**

PO Box 217
Avalon, CA 90704-0217
Jim Luttjohann, President/CEO

Covina Chamber of Commerce

935 W Badillo St Ste 100
Covina, CA 91722-4164
Dawn Nelson, President/CEO

Culver City Chamber of Commerce
6000 Sepulveda Blvd Ste 1260
Culver City, CA 90230-6425
Janice Beighey, Chair

Downey Chamber of Commerce
11131 Brookshire Ave
Downey, CA 90241-3860
Jonanna Peterson, President

Duarte Chamber of Commerce
P.O. Box 1438
Duarte, CA 91009-4438,
Sheryl Lefmann, President/CEO

El Monte/South El Monte Chamber of Commerce
PO Box 5866
El Monte, CA 91734-1866
Ken Rausch, Executive Director

El Segundo Chamber of Commerce
427 Main St
El Segundo, CA 90245-3003
Marsha Hansen, Executive Director

Encino Chamber of Commerce
4933 Balboa Blvd
Encino, CA 91316-3437
Mark Levinson, President

Glendale Chamber of Commerce
701 N Brand Blvd Ste 120
Glendale, CA 91203-4230
Judith Kendall, Executive Vice President/CEO

Glendora Chamber of Commerce
224 N Glendora Ave
Glendora, CA 91741-2617
Joe Cina, Executive Director

Hermosa Beach Chamber of Commerce & Visitors Bureau
1007 Hermosa Ave
Hermosa Beach, CA 90254-3717
Maureen Hunt, President/CEO

Hollywood Chamber of Commerce
6255 Sunset Blvd #150, Los Angeles
Hollywood, CA 90028-6000
Leron Gubler, President/CEO

Huntington Park Area Chamber of Commerce
6330 Pacific Blvd Ste 208
Huntington Park, CA 90255-4199
Leticia Martinez, Executive Director/CEO
La Canada Flintridge Chamber of Commerce
4529 Angeles Crest Hwy Ste 102
La Canada, CA 91011-3237
Pat Anderson, President & CEO

Industry Manufacturers Council
15651 Stafford St
City of Industry, CA 91744-3922
David Perez, President

Irwindale Chamber of Commerce
PO Box 2307
Irwindale, CA 91706-1168
Marlene Carney, President/CEO

Lancaster Chamber of Commerce
554 W Lancaster Blvd
Lancaster, CA 93534-2534
Mark Hemstreet, CEO

La Verne Chamber of Commerce
2078 Bonita Ave.
La Verne, CA 91750
Arun Tolia, Chairman

Conejo Valley Chamber of Commerce
600 Hampshire Rd. #200
Westlake Village, CA 91361
Jill Lederer, President

Altadena Chamber of Commerce
730 East Altadena Drive
Altadena, CA 91001
Doug Colliflower, President

Bell Gardens Chamber of Commerce
7535 Perry Rd
Bell Gardens, CA 90201

Bellflower Chamber of Commerce
16730 Bellflower Blvd., Ste. A,
Bellflower, CA 90706
Larry Wehage, President

Beverly Hills Chamber of Commerce
Santa Monica Blvd. 2nd Floor
Beverly Hills CA 90210
Todd Johnson, CEO

Boyle Heights Chamber of Commerce
5269 E. Beverly Blvd.
Los Angeles, CA 90022
Jennifer Lahoda, President

Burbank Chamber of Commerce
200 W Magnolia Blvd
Burbank, CA 90210
Tom Flavin, CEO

Formatted: Spanish (International Sort)

CITY OF MONTEBELLO

CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and City Council Members

FROM: Tom Barrio, Director of Transportation

BY: Paul Talbot, Acting City Manager

SUBJECT: **Approval of Agreements with the Los Angeles County Metropolitan Transportation Authority and Cubic Transportation Systems, Inc. to upgrade the Transit Access Pass Card systems on the Montebello Bus Lines fleet**

DATE: February 13, 2019

RECOMMENDATION

Approve and adopt the attached agreements (collectively, the “TAP Agreements”) with the Los Angeles County Metropolitan Transportation Authority (“Metro”) and Cubic Transportation Systems, Inc. (“Cubic” or “Contractor”):

1. Cooperative Transit Access Pass (TAP) Participant Agreement with Metro;
2. TAP Farebox Upgrade Reimbursement Agreement with Metro;
3. Farebox Upgrade Agreement with Cubic; and
4. Tap Systems Data Use and Non-Disclosure Agreement with Metro.

BACKGROUND

TAP is a regional smart-card program serving as an electronic transit fare collection system. TAP was developed in Los Angeles County (“County”) as a result of a cooperative effort among participating public transit operators (collectively, “**TAP Participants**”) of which Metro Bus Lines is also a part of. TAP provides for the electronic payment of inter- and intra- fares via the use of TAP devices on such TAP Participants’ universal fare system (UFS) Fareboxes, driver control unit light validators (DCU/LVs), bus mobile validators (BMVs) and other fare validators installed on TAP Participants’ transit fleet (e.g., bus, rail, among other transit vehicles).

As the lead agency, Metro: (1) manages the daily operations of TAP (including system configuration, testing, customer service, financial settlement, and operational oversight); (2) is the owner and distributor of any application that resides on the TAP card; and (3) is the owner of the software and data stored on the TAP cards or devices that are used for all transit automatic fare collection purposes.

Metro has established a third-party TAP vendor network for the sale and reloading of TAP fare products on to TAP cards. In 2002, Metro entered into a multi-year contract with Cubic (Contract No. OP02461010) to provide a countywide fare collection system. Cubic developed the Nextfare software application and related databases which is the core technology managing the entire TAP system in the County. As a sole source vendor, Metro and Cubic have continued to modify and expand their agreement since then.

Metro has implemented TAP on all of its bus and rail lines and has now installed the system in other regional and non-Metro transit agencies—the Montebello Bus Lines (“MBL”) fleet. Riders on any of the TAP Participants’ fleet, including MBL, are still able to pay with cash. The TAP readers simply give riders an additional payment option and allows for easier transfers to and from Metro bus and rail lines.

Since first being installed, TAP devices and reading equipment have exceeded their life expectancy and are no longer compatible with current and future fare collection technologies. In 2018, Metro’s Board approved Contract Modification No. 154 to Contract No. OP02461010 authorizing the purchase of new TAP equipment and updates to the Nextfare software (“Farebox Upgrades”). In order to employ a seamless transition, TAP Participants—including MBL, will be required to purchase, install and test the new Farebox Upgrades.

Metro received a grant from the State of California to reimburse nine (9) municipal agencies for costs associated with the Farebox Upgrades. The City is one of the nine (9) to be selected. In order to qualify for the reimbursement, the City must: (1) enter into a cooperative agreement with Metro to officially become a TAP Participant (“**Cooperative Agreement**”); (2) enter into an agreement with Metro whereby the City will pay for the Farebox Upgrade costs and remit invoices to Metro for reimbursement (“**Reimbursement Agreement**”); (3) contract with Cubic for the purchase, installation, and testing of the Farebox Upgrades (“**Upgrade Agreement**”); and (4) enter into a data use and non-disclosure agreement in exchange for use of the Nextfare software (“**Non-Disclosure Agreement**”).

ANALYSIS

Approval of all four (4) TAP Agreements is required before MBL can move forward with the purchase, installation and testing of the Farebox Upgrades.

Approval of four (4) TAP Agreements is recommended.

FISCAL IMPACTS

No impact to the General Fund. The City will allocate the costs associated with the Farebox Upgrades from its discretionary funds including grant funding awarded to the City for its Universal Fare System. The City will then be reimbursed for those costs by Metro pursuant the **Reimbursement Agreement**.

SUMMARY

Upon City Council approval, the Acting City Manager will execute the TAP Agreements with Metro and Cubic and will direct staff to coordinate the purchase, installation and testing of the Farebox Upgrades.

ATTACHMENTS

Attachment "A" – **Cooperative Agreement**
Attachment "B" – **Reimbursement Agreement**
Attachment "C" – **Upgrade Agreement**
Attachment "D" – **Non-Disclosure Agreement**

AGREEMENT NO. _____
**COOPERATIVE TAP PARTICIPANT AGREEMENT BETWEEN THE CITY OF
MONTEBELLO AND THE LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY**

1. IDENTIFICATION

This COOPERATIVE TAP PARTICIPANT AGREEMENT (“**Cooperative Agreement**”) is entered into as of _____, 2019 (“**Effective Date**”), by and between the City of Montebello, a California municipal corporation (the “City”) and the Los Angeles County Metropolitan Transportation Authority, a California county transportation authority existing under the authority of §§ 130050.2 *et seq.* of the California Public Utilities Code (“Metro”). The City and Metro are sometimes hereinafter referred to individually as “Party” or collectively as “Parties”.

2. RECITALS

WHEREAS, The TAP program (“TAP”) is a regional smart-card program developed as a cooperative effort amongst participating public transit operators (“TAP Participants”) in Los Angeles County providing for the electronic payment of inter- and intra- fares via the use of TAP devices on such TAP Participants’ universal fare system (UFS) fareboxes, driver control unit light validators (DCU/LVs), bus mobile validators (BMVs) and other fare validators installed on TAP Participants’ transit fleet (e.g., bus, rail, among other transit vehicles);

WHEREAS, The Metro Board took action on May 28, 1997, to facilitate the establishment a universal fare system, enabling TAP Participants to share a common fare media for use amongst public transit patrons riding on TAP Participants’ transit fleet;

WHEREAS, Metro: (1) manages the daily operations of TAP (including system configuration, testing, customer service, financial settlement, and operational oversight); (2) is the owner and distributor of any application that resides on the TAP card; and (3) is the owner of the software and data stored on the TAP cards or devices that are used for all transit automatic fare collection purposes;

WHEREAS, Metro has established a third-party TAP vendor network for the sale and reloading of TAP fare products to TAP cards;

WHEREAS, Metro and TAP Participants recognize that employing a seamless fare media for transit payment among TAP Participants has a beneficial impact on the customers served, and on the ability of TAP Participants to improve service;

WHEREAS, TAP Participants (inclusive of Metro) have created a TAP Operating Group (“**TOG**”), comprised of one (1) primary representative and one (1) alternate from each TAP Participant, and a set of committees (e.g., TOG Business Rules Working Group, TOG Marketing

ATTACHMENT “A”

and Communications Committees, among others) to work towards, among other things, unifying fare media into TAP, simplifying marketing messaging, and establishing regional rules;

WHEREAS, The rules for participation in TAP are outlined in the **TAP Regional Operating Rules** (revised October 20, 2018), which, among other things, sets forth the process for reconciling TAP revenues, including the monthly clearing and settlement process by which TAP Participants receive fare revenue or make payments in connection with the sale of regional or their own fare products on TAP (the “Positions and Settlement Process”);

WHEREAS, Amendments to the TAP Regional Operating Rules shall be approved by majority ruling of TAP Participants’ General Managers, with concurrence of Metro’s CEO;

WHEREAS, TAP shall configure the TAP enabled devices (i.e. UFS bus farebox, DCU/LVs, or other fare validator device) for Participants who meet the requirements set forth in the TAP Regional Operating Rules and this **Cooperative Agreement**;

WHEREAS, by entering into this **Cooperative Agreement**, the Montebello Bus Lines (“MBL”) fleet will become a TAP Participant establishing among other things, continued shared revenue and fare tables to allow for seamless regional travel on TAP Participants’ fleet including MBL;

WHEREAS, MBL’s primary responsibility is to provide transportation services to City residents and neighboring cities requiring a universal fare system;

WHEREAS, as a municipally-owned bus line, City has the authority to enter into this **Cooperative Agreement** for the purpose of participating in the TAP System;

WHEREAS, the City and Metro each desire to agree to the terms and conditions under which the City shall participate in TAP.

NOW, THEREFORE, in consideration of the above Recitals, and the agreements, representations, warranties, covenants, and conditions contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Metro, intending to be legally bound hereby, agree as follows:

3. AGREEMENT TERMS AND CONDITIONS

SECTION 1. PURPOSE.

The Parties agree that this **Cooperative Agreement**, among other things, establishes the respective roles and responsibilities of the Parties in connection with the City’s participation in the TAP System.

SECTION 2. TERM.

The term (“Term”) of this **Cooperative Agreement** shall commence on the Effective Date and shall terminate on the date on which this **Cooperative Agreement** is terminated pursuant to Section 0 of this **Cooperative Agreement**.

SECTION 3. TAP PARTICIPANT RESPONSIBILITIES.

As a “TAP Participant,” the City acknowledges and agrees to the following terms and conditions at all times during its participation in the TAP System:

- a. The City shall abide by the latest approved TAP Regional Operating Rules.
- b. The City shall comply with the Positions and Settlement Process by timely making of and accepting of payments as required and set forth in the Positions and Settlement Process section of the TAP Regional Operating Rules.
- c. The City acknowledges and agrees that Metro, as set forth in the TAP Regional Operating Rules, is: (1) the contracting entity responsible for the daily operations of TAP; (2) the owner and distributor of any application that resides on the TAP card; and (3) the owner of the software and data stored on the TAP cards or devices that are used for transit automatic fare collection purposes.
- d. The City understands, acknowledges, and agrees that Metro may, in its sole discretion, contract with third-party vendors for the sale of prepaid transit/fare products, including, but not limited to: TAP cards, TAP stored value, TAP pass products, TAP rides, and other transit fares/products (“**TAP Fare Products**”), and, upon the City’s request and agreement of a third-party vendor, any prepaid Participant-specific fare products (“**Participant Fare Products**”) (the TAP Fare Products and the Participant Fare Products may be referred to collectively hereafter as the “**Fare Products**”).
- e. The City understands, acknowledges, and agrees that Metro, as the contracting entity responsible for the daily TAP operations, may:
 - i. manage and operate all of the functions of TAP, as set forth in the TAP Regional Operating Rules, in its sole discretion, including the ability to contract functions to third parties;
 - ii. remit funds collected from any third-party vendor for the sale of TAP Fare Products and/or Participant Fare Products, as applicable, to the City, consistent with the Positions and Settlement Process, and the City shall not hold Metro liable for any funds deemed uncollectable from such third-party vendor.
- f. The City understands, acknowledges, and agrees that the TAP System is a fare collection system, and under no circumstances shall Metro be responsible for the City’s operation of its public transit services.

SECTION 4. METRO RESPONSIBILITIES.

g. Metro shall make Participant Fare Products available for sale/reload at select third-party vendor locations per the TAP Regional Operating Rules, and upon agreement of such third-party vendor.

h. Metro shall remit all TAP funds collected from the sale of fare products at all authorized sales outlets (including authorized third-party vendors) to the respective TAP Participant per the Positions and Settlement Process section of the TAP Regional Operating Rules, but shall not be held liable for any funds deemed uncollectable.

SECTION 5. TERMINATION.

This **Cooperation Agreement** shall terminate upon the occurrence of any of the following:

i. Thirty (30) days after written notice from a Party that such Party intends to terminate this **Cooperative Agreement**, without cause;

j. Thirty (30) days after written notice from a Party that such Party intends to terminate this **Cooperative Agreement** because of a breach of the **Cooperative Agreement** by the Party receiving the notice if such breach is not cured within said thirty (30) day period; provided, however, that, in the event that the breach is of a nature which cannot reasonably be cured within thirty (30) days, the **Cooperative Agreement** shall not terminate so long as the breaching Party has commenced to cure the breach within the thirty (30) day period and diligently prosecutes the completion of the cure to conclusion thereafter; or

k. The bankruptcy or insolvency of a Party or the commencement of proceedings of any kind by or against a Party under the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act.

SECTION 6. INDEMNIFICATION.

The City shall indemnify, defend (with counsel acceptable to Metro) and hold harmless Metro and its subsidiaries and their respective officers, agents, employees, and directors (collectively, "**Metro Parties**") harmless from and against any liability and expenses, including without limitation, defense costs, any costs or liability on account of bodily injury, death or personal injury of any person or for damage to or loss of risk of property, any environmental obligation, any legal fees and any claims for damages of any nature whatsoever (collectively, "**Claims**") arising out of the City's actions pursuant to this **Cooperative Agreement** and/or participation in the TAP System, except as caused by Metro's gross negligence. Metro shall, under no circumstance, be liable for special, incidental, exemplary or consequential damages suffered by the City in connection with the City's actions pursuant to this **Cooperative Agreement** and/or participation in the TAP System, including, but not limited to loss of projects, anticipated revenue, interest, loss of use or other such claims arising from any causes whatsoever, whether or not such loss or damage is based on contract, warranty, tort (including negligence), indemnity or otherwise.

SECTION 7. MISCELLANEOUS.

a. Governing Law. This **Cooperative Agreement** shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California applicable to agreements made and to be performed wholly within the State of California.

b. Attorney's Fees. Should any Party institute any action or proceeding to enforce or interpret this **Cooperative Agreement** or any provision hereof, for damages by reason of any alleged breach of this **Cooperative Agreement**, or for a declaration of rights hereunder, the prevailing Party in any such action or proceeding shall be entitled to receive from the other Party all costs and expenses, including reasonable attorneys' and other fees, incurred by the prevailing Party in connection with such action or proceeding. The term "attorneys' and other fees" means and includes attorneys' fees, accountants' fees, and any and all other similar fees incurred in connection with the action or proceeding and preparations therefore. The term "action or proceeding" means and includes actions, proceedings, suits, arbitrations, appeals and other similar proceedings.

c. Notice. Any notice required or permitted to be given under this **Cooperative Agreement** shall be in writing and shall be deemed to have been delivered, if hand delivered or deposited with a reputable overnight courier (such as Federal Express, UPS, DHL, or similar courier), postage prepaid, return receipt required, or three (3) business days after deposit into U. S. Mail, certified or registered, postage prepaid and return receipt requested, and shall be addressed as follows, unless otherwise notified in writing of change of address:

If to the City

Robert Portillo, Transit Administration Manager
Montebello Bus Lines
400 South Taylor Avenue
Montebello, CA 90640
Telephone: (323) 558-1625 Ext. 105
Email: rportillo@cityofmontebello.com
Fascimile: (323) 887-4643

If to Metro:

Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, Mail Stop 99/04/03
Los Angeles, CA 90012
ATTN: David Sutton, Executive Officer, TAP
Telephone: (213) 922-5633
Email: SuttonD@metro.net
Fascimile: (213) 922-4036

d. Time of Essence. Time is of the essence of this **Cooperative Agreement** and each and every term and provision hereof.

ATTACHMENT “A”

e. No Assignment. The City may not assign this **Cooperative Agreement**, in whole or in part, nor any of the rights, interests or obligations hereunder to another party without prior written approval of Metro’s Chief Executive Officer or his/her designee, and any assignment without said consent shall be void and unenforceable at Metro’s option.

f. Entire Agreement. This **Cooperative Agreement** supersedes all prior agreements between the Parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. Any oral representations or modifications concerning this **Cooperative Agreement** shall be of no force or effect.

g. Modification. This **Cooperative Agreement** shall not be amended, except in writing signed by the Parties who agreed to the original **Cooperative Agreement** or who have the same level of authority.

h. Further Assurances. Subject to agreement by the Parties of the terms thereof, the Parties each agrees to execute any and all other documents and to take any further actions reasonably necessary to consummate the transactions reasonably contemplated hereby.

i. Remedies. The obligations and duties of the Parties hereunder, including their representations, warranties, covenants and agreements, may be enforced by any and all available remedies, including without limitation, specific performance, injunction, damages and declaratory relief.

j. Several Liability. The Parties acknowledge and agree that this **Cooperative Agreement** is not an agreement pursuant to or subject to Government Code Section 895 *et seq.*, and that:

- a) The City shall have liability hereunder only for those obligations as a “TAP Participant” in the TAP System and shall have no liability with respect to Metro’s responsibilities as the: (1) manager of the daily operations of TAP (including system configuration, testing, customer service, financial settlement, and operational oversight); (2) as the owner and distributor of any application that resides on the TAP card; and (3) as the owner of the software and data stored on the TAP cards or devices that are used for all transit automatic fare collection purposes (collectively, “Metro’s Responsibilities”); and
- b) Metro shall have liability hereunder only for Metro’s Responsibilities and those responsibilities outlined in Section 4 of the **Cooperative Agreement**, and shall have no liability with respect to the City’s operation of its public transit services or the City’s obligations in connection with its participation in the TAP System.

k. Nonwaiver of Rights. No failure or delay of a Party in the exercise of any right given to such Party hereunder shall constitute a waiver thereof unless the time specified herein for

ATTACHMENT “A”

exercise of such right has expired, nor shall any single or partial exercise of any right preclude other or further exercise thereof or of any other right.

l. Construction. Headings at the beginning of each paragraph or subparagraph are solely for the convenience of the Parties and not a part of this **Cooperative Agreement**. Except as otherwise provided in this **Cooperative Agreement**, all exhibits referred to herein are attached hereto and are incorporated herein by this reference. Any reference to a Section herein includes all subsections thereof. This **Cooperative Agreement** shall not be construed as if it had been prepared by only one Party, but rather as if all Parties had prepared the same.

m. Severability. If any provision of this **Cooperative Agreement** shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be deemed severed from this **Cooperative Agreement**, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable provision had never been part of this **Cooperative Agreement**.

n. Duplicate Originals; Counterparts. This **Cooperative Agreement** may be executed in any number of duplicate originals, all of which shall be of equal legal force and effect. Additionally, this **Cooperative Agreement** may be executed in counterparts which, when taken together, shall form the entire **Cooperative Agreement** of the Parties.

o. Relationship. The City—its officials, agents, employees or staff—in the performance of the work described in this **Cooperative Agreement**, is not a contractor nor an agent, partner or employee of Metro. The City attests to no organizational or personal conflicts of interest and agrees to notify Metro immediately in the event that a conflict, or the appearance thereof, arises. The City shall not represent itself as an agent, partner, employee of Metro and shall have no powers to bind Metro in contract or otherwise.

[Signatures on Next Page]

ATTACHMENT "A"

TO EFFECTUATE THIS AGREEMENT, the Parties have caused their duly authorized representatives to execute this **Cooperative Agreement** on the dates set forth below.

CITY OF MONTEBELLO:

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION
AUTHORITY

Paul Talbot, Acting City Manager

Phillip A. Washington, Chief Executive
Officer

Dated: _____

Dated: _____

ATTEST:

Irma Barajas, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By : _____

Arnold M. Alvarez-Glasman, City Attorney

Deputy
Mary C. Wickham, County Counsel

ATTACHMENT “A”

ATTACHMENT “B”

AGREEMENT NO. _____

TAP© FAREBOX UPGRADE REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MONTEBELLO AND THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

1. IDENTIFICATION

This TAP FAREBOX UPGRADE REIMBURSEMENT AGREEMENT (“**Reimbursement Agreement**”) is entered into as of _____, 2019 (the “Effective Date”), by and between the City of Montebello, a California municipal corporation (the “City”) and the Los Angeles County Metropolitan Transportation Authority, a California county transportation authority existing under the authority of §§ 130050.2 *et seq.* of the California Public Utilities Code (“Metro”). The City and Metro are sometimes hereinafter referred to individually as “Party” or collectively as “Parties”.

2. RECITALS

WHEREAS, The TAP program (“TAP”) is a regional smart card program developed as a cooperative effort amongst participating public transit operators (“TAP Participants”) in Los Angeles County providing for the electronic payment of inter- and intra- fares via the use of TAP devices on such TAP Participants’ universal fare system (UFS) fareboxes, driver control unit light validators (“DCU/LVs”), bus mobile validators (BMVs) and other fare validators installed on TAP Participants’ transit fleet (e.g., bus, rail, among other transit vehicles).

WHEREAS, Metro Board took action on May 28, 1997, to facilitate the establishment of a universal fare system, enabling TAP Participants to share a common fare media for use amongst public transit patrons riding on TAP Participants’ transit fleet;

WHEREAS, Metro: (1) manages the daily operations of TAP (including system configuration, testing, customer service, financial settlement, and operational oversight); (2) is the owner and distributor of any application that resides on the TAP card; and (3) as between the City and Metro is the owner of the data stored on the TAP cards or devices that are used for all transit automatic fare collection purposes;

WHEREAS, Metro and TAP Participants recognize that employing a seamless fare media for transit payment among TAP Participants has a beneficial impact on the customers served, and on the ability of TAP Participants to improve service;

WHEREAS, the City is a TAP Participant and has entered into that certain Cooperative TAP Participant Agreement dated _____, 2019 (“**Cooperative Agreement**” incorporated herein by reference), which among other things, establishes the respective roles and responsibilities of the Parties in connection with Participant’s participation in TAP;

WHEREAS, the City and Metro agree that the City is in need of an equipment and software upgrade to address equipment obsolescence, add real time communications, enhance security of the fare collection system and ensure its fare collection equipment will be prepared for new technological advances in mobile and credit/debit card payment options (“**System Enhancement**”);

WHEREAS, Metro was awarded funding from the State of California to reimburse the City for actual costs associated with the Farebox Upgrades.

NOW, THEREFORE, in consideration of the above Recitals, and the agreements, covenants, and conditions contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Metro, intending to be legally bound hereby, agree as follows:

3. AGREEMENT

SECTION 1. FAREBOX UPGRADES.

The City agrees to perform the System Enhancement as to the installed and spare equipment listed in Exhibit I, by cooperating with and contracting with Cubic Transportation System, Inc. (“**Cubic**”) for purchase of design services, equipment components including software, and hardware installation work (collectively, “**Farebox Upgrades**”) at the per unit costs indicated in Exhibit I (“**Costs**”). The three (3) units of Farebox Upgrades available for reimbursement under this **Reimbursement Agreement** noted, if applicable to the City, in Exhibit I, and further itemized in Exhibit II, are the Driver Control Unit tablet, version 4 (“**DCU4**”), and new garage computer and the software that goes with garage computer (“**GC**”) and Exhibit of a DCU4 to the City’s currently owned driver control unit light validators (“**DCU/LV**”) for those agencies that rely on the driver control unit light validators.

SECTION 2. SCHEDULE.

It is the intent of the Parties that such Farebox Upgrades shall be completed by June 30, 2019.

SECTION 3. DISBURSEMENTS.

Metro hereby agrees to reimburse the City for the actual costs incurred by the City—not to exceed the dollar amount for the number of units set forth in Exhibit I (“Costs”) and otherwise in accordance with the provisions of this Agreement. Such Costs reimbursement is limited to the Costs of the number of units set forth in Exhibit I which shall reflect only replacement of or upgrade to the City’s inventory as of June 1, 2018. Disbursements shall be made on a reimbursement basis consistent with the progress and payment schedule (milestones) in the Farebox Upgrade agreement between Cubic and the City (“**Upgrade Agreement**”) if such progress and payment schedule is approved in writing by Metro prior to execution of the **Upgrade Agreement**. In the event Metro does not approve the progress and payment (milestone) schedule in the **Upgrade Agreement**, reimbursement will be made upon final acceptance by the City, with concurrence by Metro, of all Farebox Upgrades.

SECTION 4. TERM.

The term (“**Term**”) of this **Reimbursement Agreement** shall commence on the Effective Date and shall terminate on August 30, 2019. In the event the Farebox Upgrades or reimbursement therefore has not been completed by August 30, 2019, or any extended termination date, the City may apply prior to termination to Metro for an extension of the Term not to exceed 6 months, approval of which shall not be unreasonably withheld provided the City has contracted with Cubic and is proceeding diligently with Farebox Upgrades, or Metro may unilaterally extend the time for performance by notice to the City.

SECTION 5. CITY’S RESPONSIBILITIES.

The City agrees to the following in order to qualify for reimbursement of Costs for the Farebox Upgrades:

- a. The City shall use its best efforts to enter into an agreement with Cubic for the Farebox Upgrades by _____, 2019. The City shall not deliver a Notice-To-Proceed to Cubic prior to October 19, 2018.
- b. The City shall complete the Automated Clearing House (“ACH”) Form in Exhibit III and submit such form to Metro before reimbursements can be made;

c. The City shall remit payment in full to Cubic in the amount of each invoice before reimbursement can be granted;

d. The City shall submit invoice(s) on the City's letterhead with proof of payment and supporting documentation (such as contractor invoices, paid receipts, and final acceptance of work for the work covered by the invoice) to Metro Accounts Payable as shown below.

Electronically to:

AccountsPayable@metro.net (preferred)

- OR -

Mail to:

Los Angeles County Metropolitan Transportation Authority

Accounts Payable

P. O. Box 512296

Los Angeles, CA 90051-0296

All invoice material must contain the following information: [City's PO #, Project Manager: Mauro Arteaga, Jr.; TAP Department; Mail Stop 99-4-3]

e. The City shall pay for any additional equipment directly to Cubic for any items or services not included in Exhibit I at the City's own expense. Reimbursements will not be made by Metro for any additional equipment, parts or services.

SECTION 6. METRO RESPONSIBILITIES.

Metro shall make all disbursements electronically, unless an exception is requested in writing, within thirty (30) days following receipt of the City's reimbursement submittal. Disbursements via ACH will be made at no cost to the City.

SECTION 7. AUDIT REQUIREMENTS.

Metro, and/or its designee, shall have the right to conduct audits of the Farebox Upgrades, as deemed appropriate. Metro shall have the right to commence a final audit within three (3) months of receipt of an acceptable final invoice, provided the Farebox Upgrades are ready for final audit (meaning milestone costs and charges have been paid by the City and invoiced to Metro, and such costs, charges and invoices are properly documented and summarized in the accounting records to enable an audit without further

explanation or summarization including actual indirect rates for the period under review). The City agrees to establish and maintain proper accounting procedures and cash management records and documents in accordance with Generally Accepted Accounting Principles ("GAAP"). Whenever possible, in exercising its audit rights under this Agreement, Metro shall rely on the City's own records and audit work to minimize direct audit of contractors, consultants, and suppliers. The City shall reimburse Metro for any expenditure not in compliance with this **Reimbursement Agreement**. Any use of the funds which is expressly prohibited under this **Reimbursement Agreement** shall be an ineligible use of the funds and may be disallowed by the Metro audit. Findings of the Metro audit are final.

SECTION 8. TERMINATION.

This Agreement shall terminate as between the Parties upon the occurrence of any of the following:

- a. Thirty (30) days after written notice from a Party that such Party intends to terminate this **Reimbursement Agreement** because of a breach of the **Reimbursement Agreement** by the Party receiving the notice if such breach is not cured within said thirty (30) day period; provided, however, that, in the event that the breach is of a nature which cannot reasonably be cured within thirty (30) days, the **Reimbursement Agreement** shall not terminate so long as the breaching Party has commenced to cure the breach within the thirty (30) day period and diligently prosecutes the completion of the cure to conclusion thereafter;
- b. Upon the final disbursement of funds to the City; or
- c. Upon termination of the **Cooperative Agreement**, this Agreement will terminate concurrently.

SECTION 9. INDEMNIFICATION.

The City shall indemnify, defend (with counsel acceptable to Metro) and hold harmless Metro and its subsidiaries and their respective officers, agents, employees, and directors (collectively, "**Metro Parties**") harmless from and against any liability and expenses, including without limitation, defense costs, any costs or liability on account of bodily injury, death or personal injury of any person or for damage to or loss of risk of property, any legal fees and any claims for damages of any nature whatsoever arising out of the City's actions pursuant to this **Reimbursement Agreement**, and/or participation in TAP, except as caused by Metro's gross negligence. Metro shall, under no circumstance,

be liable for special, incidental, exemplary or consequential damages suffered by the City, including, but not limited to loss of projects, anticipated revenue, interest, loss of use or other such claims arising from any causes whatsoever, whether or not such loss or damage is based on contract, warranty, tort (including negligence), indemnity or otherwise.

SECTION 10. MISCELLANEOUS.

a. Governing Law. This **Reimbursement Agreement** shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California applicable to agreements made and to be performed wholly within the State of California.

b. Attorney's Fees. Should any Party institute any action or proceeding to enforce or interpret this **Reimbursement Agreement** or any provision hereof, for damages by reason of any alleged breach of this **Reimbursement Agreement**, or for a declaration of rights hereunder, the prevailing Party in any such action or proceeding shall be entitled to receive from the other Party all costs and expenses, including reasonable attorneys' and other fees, incurred by the prevailing Party in connection with such action or proceeding. The term "attorneys' and other fees" means and includes attorneys' fees, accountants' fees, and any and all other similar fees incurred in connection with the action or proceeding and preparations therefore. The term "action or proceeding" means and includes actions, proceedings, suits, arbitrations, appeals and other similar proceedings.

c. Notice. Any notice required or permitted to be given under this **Reimbursement Agreement** shall be in writing and shall be deemed to have been delivered, if hand delivered or deposited with a reputable overnight courier (such as Federal Express, UPS, DHL, or similar courier), postage prepaid, return receipt required, or three (3) business days after deposit into U. S. Mail, certified or registered, postage prepaid and return receipt requested, and shall be addressed as follows, unless otherwise notified in writing of change of address:

If to the City:

Robert Portillo, Transit Administration Manager
Montebello Bus Lines
400 South Taylor Avenue
Montebello, CA 90640
Telephone: (323) 558-1625 Ext. 105
Email: rportillo@cityofmontebello.com
Facsimile: (323) 887-4643

If to Metro: Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, Mail Stop 99-04-03
Los Angeles, CA 90053
ATTN: David Sutton
Telephone: (213) 922-5633
Email: SuttonD@metro.net

d. Time of Essence. Time is of the essence of this **Reimbursement Agreement** and each and every term and provision hereof.

e. No Assignment. The City may not assign this **Reimbursement Agreement**, or any interest in the right to reimbursement of Costs, in whole or in part, nor any of the rights, interests or obligations hereunder to another party without prior written approval of Metro's Chief Executive Officer or his/her designee, and any assignment without said consent shall be void and unenforceable at Metro's option.

f. No Third-Party Rights. This **Reimbursement Agreement** shall inure solely to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns. It is understood and agreed that this **Reimbursement Agreement** is solely for the benefit of the Parties hereto and gives no right to any other party. Nothing in this **Reimbursement Agreement**, whether express or implied, is intended to confer any rights or remedies under or by reason of this Reimbursement Agreement on any persons other than the Parties.

g. Entire Agreement. This **Reimbursement Agreement** supersedes all prior agreements between the Parties with respect to its subject matter and constitutes (along with the **Cooperative Agreement**) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. Any oral representations or modifications concerning this Reimbursement Agreement shall be of no force or effect.

h. Modification. This **Reimbursement Agreement** shall not be amended, except in writing signed by the Parties who agreed to the original **Cooperative Agreement** or who have the same level of authority.

i. Further Assurances. Subject to agreement by the Parties of the terms thereof, the Parties each agrees to execute any and all other documents and to take any further actions reasonably necessary to consummate the transactions reasonably contemplated hereby.

j. Remedies. The obligations and duties of the Parties hereunder, including their representations, warranties, covenants and agreements, may be enforced by any and all available remedies, including without limitation, specific performance, injunction, damages and declaratory relief.

k. Nonwaiver of Rights. No failure or delay of a Party in the exercise of any right given to such Party hereunder shall constitute a waiver thereof unless the time specified herein for exercise of such right has expired, nor shall any single or partial exercise of any right preclude other or further exercise thereof or of any other right.

l. Construction. Headings at the beginning of each paragraph or subparagraph are solely for the convenience of the Parties and not a part of this **Reimbursement Agreement**. Except as otherwise provided in this **Reimbursement Agreement**, all exhibits referred to herein are attached hereto and are incorporated herein by this reference. Any reference to a Section herein includes all subsections thereof. This Agreement shall not be construed as if it had been prepared by only one Party, but rather as if all Parties had prepared the same.

m. Severability. If any provision of this **Reimbursement Agreement** shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be deemed severed from this Agreement, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable provision had never been part of this Reimbursement Agreement. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS **REIMBURSEMENT AGREEMENT** WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED IN ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSION OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.

n. Duplicate Originals; Counterparts. This **Reimbursement Agreement** may be executed in any number of duplicate originals, all of which shall be of equal legal force and effect. Additionally, this **Reimbursement Agreement** may be executed in counterparts which, when taken together, shall form the entire **Reimbursement Agreement** of the Parties.

o. Relationship. The City—its officials, agents, employees or staff—in the performance of the work described in this **Reimbursement Agreement**, is not a contractor nor an agent, partner or employee of Metro. The City attests to no organizational or personal conflicts of interest and agrees to notify Metro immediately in the event that a conflict, or the appearance thereof, arises. The City shall not represent itself as an agent, partner, employee of Metro and shall have no powers to bind Metro in contract or otherwise.

[Signatures on Next Page]

TO EFFECTUATE THIS AGREEMENT, the Parties have caused their duly authorized representatives to execute this **Reimbursement Agreement** on the dates set forth below.

CITY OF MONTEBELLO:

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION
AUTHORITY

Paul Talbot, Acting City Manager

Phillip A. Washington, Chief Executive Officer

Dated: _____

Dated: _____

ATTEST:

Irma Barajas, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Arnold M. Alvarez-Glasman, City Attorney

By: _____
Deputy
Mary C. Wickham, County Counsel

Exhibit I – Equipment Quantity and Costs

Montebello Bus Lines

Type of Equipment	Installed Equipment	Spare Equipment	Cost Per Unit	Total
DCU4	71	14	\$8,206.00	\$697,510.00
GC	1	0	\$68,491.00	\$68,491.00

Total Cost \$766,001.00

Exhibit II – Farebox Upgrade Equipment List

No.	Item	Part No.
1	S/A CONTROLLER PCB-W SND COM	D25718-0004
2	S/A MOTHER BOARD, ODYSSEY	D21149-2006
3	S/A PCB, DCU INTERFACE	C25861-0001
4	S/A,CABLE,DCU ADAPTER	B25892-0001
5	S/A,CABLE,DCU POWER ADAPTER	C25893-0001
6	CABLE,TRI-RDR/MB(3' SHLD)	C23664-0006
7	S/A CABLE, DCU, CUBIC	B22263-0002
8	Lid with large color display	
9	Lid Locks	C04261-XXXX
10	Keys	C04789-XXXX
11	Packaging	
12	Getac T800 G2 Premium	TD98Y2DA5HX
13	LIND 12-32V DC Vehicle Adapter /Charger with Bare Wires	GAD2L1
14	T800 Havis Vehicle Mount with Tri-Pass Through	GDVWH7
15	Garage Computer Hardware/ Software/ Installation	
16	DCU Hardware Upgrade Kits and Installation for DCU1/LV systems	

Exhibit III – Automated Clearing House Form

Instructions for Automated Clearing House Invoice Payments

All suppliers that are awarded a contract/purchase order with Metro are required to sign up for Automated Clearing House payments unless a request for waiver is received in writing.

Please complete the Automated Clearing House (ACH) form on our website and email it to: **Pamela Kuo**, Accounts Payable Manager <KuoP@metro.net>

http://media.metro.net/projects_studies/call_projects/images/mou_ach_afv.doc

Metro has adopted the electronic ACH form of payment for the following reasons:

- To reduce the likelihood of lost checks. Checks can be lost in the mail, delivered to the wrong address, lost in interoffice mail or forgotten on someone's desk and not deposited.
- ACH electronic payments are processed daily by Metro. Once payments are scheduled and approved, they are credited to your account within one day after processing. Improved cash flow, better cash management, and improved internal control are achieved through this process. Moving from paper-based check payments to ACH payments is a great way to reduce check fraud. With ACH processing, you get timely deposits and no lost checks or delays.

Once Metro's Accounts Payable Department receives your completed form, you will be set up for electronic payment. Please allow thirty days for set-up and verification for ACH processing. To ensure timely processing, please indicate on all quarterly reports the MOU# and invoice number for ACH processing.

If you have any questions, please contact Pamela Kuo at (213) 922-6851.

LOS ANGELES COUNTY**METROPOLITAN TRANSPORTATION AUTHORITY****AUTOMATED CLEARING HOUSE (ACH) PAYMENT AUTHORIZATION**

SECTION I: <i>Supplier Information</i>		
Supplier Number:		
Company Name:		
Payment Address:		
City:	State:	Zip Code:
Contact Name:	Contact Phone Number:	
Email Address:		
SECTION II: <i>Banking Information</i>		
Tax ID:		
Bank Name (Required):		
Account Name:		
Account Type (Required): ☐ Checking ☐ Savings		
Account Number (Required):		
Routing Number (Required):		
SECTION III: <i>Authorization</i>		
Print Name of Authorized Person:		
Print Title :		
Phone Number:		
Signature of Authorized Person:		
Date:		
SECTION IV: <i>Approval - Metro Use Only</i>		
Approved by:	Date:	
Entered by:	Date:	

LOS ANGELES COUNTY**METROPOLITAN TRANSPORTATION AUTHORITY****AUTOMATED CLEARING HOUSE (ACH) PAYMENT AUTHORIZATION**

Field	Description
Supplier Number	If you know the supplier number, please enter. Not required if not available.
Company Name	Enter name of company doing business with L.A. Metro.
Payment Address	Enter address where payment may be mailed in accordance with Metro records.
Contact Name	Enter name of person from your company that Metro may contact for more information if required.
Contact Phone Number	Enter number where contact person may be reached.
Email Address	Enter the email address where payment detail information can be sent (i.e., information to include payment amount, payment date, description of invoices paid, etc.)
Tax ID Number	Enter company's tax identification number.
Bank Name	Enter the bank name where payments are to be sent (i.e. Bank of America, Washington Mutual, etc.)
Routing Number	Enter the first 9 numbers of the account to which you would like funds sent. This information is located on your check for the account. Do not use information from a deposit slip.
Account Name	Enter the official name of the account.
Account Number	Enter the account number to which funds are to be sent.
Account Type	Check the appropriate account type.
Authorized Person & Title	Enter name and title of person of your company authorized to approve ACH transactions.
Signature	Must be a wet signature.
Phone Number	Enter phone number where authorized person may be contacted.

+Please see check sample to find Routing No. and Bank Account No.

John Smith	101
1234 Walk of the Stars, Hollywood, CA. 90012	
Pay to the Order of _____	\$ _____
	Dollars
Bank of America	



Routing Number

Account Number

Please mail your completed form along with a copy of a voided check to:

**Metro Accounts Payable
P.O. Box 512296
Los Angeles, CA 90051**

Questions? Please feel free to contact:

- Remy Maranan at (213)922-6812
- Pamela Kuo at (213)922-6851

AGREEMENT NO. _____
**FAREBOX UPGRADE AGREEMENT BETWEEN THE CITY OF MONTEBELLO
AND CUBIC TRANSPORTATION SYSTEMS, INC.**

1. IDENTIFICATION

THIS FAREBOX UPGRADE AGREEMENT ("**Upgrade Agreement**") dated _____, 2019, is made and entered by and between the City of Montebello, a California municipal corporation ("City") and Cubic Transportation Systems, Inc., a California Corporation ("Contractor"). City and Contractor are sometimes hereinafter individually referred to as a "Party" and collectively referred to as "Parties."

2. RECITALS

WHEREAS, Contractor and the Los Angeles County Metropolitan Transportation Authority ("Metro") have entered into a multi-year agreement whereby Contractor will provide equipment, software, and service maintenance to Metro to manage its TAP program ("TAP");

WHEREAS, TAP is a regional smart card program developed as a cooperative effort amongst participating public transit operators ("TAP Participants") in Los Angeles County providing for the electronic payment of inter- and intra- fares via the use of the TAP devices on such TAP Participants' universal fare systems Fareboxes, driver control unit light validators, bus mobile validators and other fare validators installed on TAP Participants' transit fleet (e.g., bus, rail, among other transit vehicles);

WHEREAS, Metro: (1) manages the daily operations of TAP (including system configuration, testing, customer service, financial settlement, and operational oversight); (2) is the owner and distributor of any application that resides on the TAP card; and (3) as between the City and Metro is the owner of the data stored on the TAP cards or devices that are used for all transit automatic fare collection purposes;

WHEREAS, the City entered into a that certain Cooperative TAP Participant Agreement ("**Cooperative Agreement**" incorporated herein by reference) with Metro on _____ 2019, establishing among other things, shared revenue and fare tables to allow for seamless regional travel on TAP Participants' fleet including the Montebello Bus Lines ("MBL");

WHEREAS, in 2018, Metro's Board executed a change order to buy new and updated equipment and software from Contractor which will benefit City revenue sharing with Metro and improve service to public transportation riders on TAP Participants' fleet by employing seamless fare media for transit payment;

WHEREAS, Metro received a grant from the State of California to reimburse nine (9) municipal agencies—including City, for the purchase, installation and testing of new equipment for the upgrade of the TAP Farebox system;

WHEREAS, on _____, 2019, City entered into a (“**Reimbursement Agreement**” incorporated herein by reference) with Metro pursuant to its authority under the **Cooperative Agreement** whereby Metro agreed to disburse to City and City agreed to accept reimbursement for the purchase, installation and testing of new equipment for the upgrade to the TAP Farebox system;

WHEREAS, through and by the **Cooperative Agreement**, City has the Authority to enter into this **Upgrade Agreement** with Contractor to upgrade TAP Farebox systems in the MBL fleet for the sole purpose of processing TAP card transactions in accordance with the TAP Regional Operating Rules (last revised October 20, 2018) and incorporated by reference herein;

NOW, THEREFORE, in consideration of their mutual undertakings and agreements hereunder, and for other good and value consideration, the receipt and sufficiency of which are hereby acknowledged, City and Contractor undertake and agree as follows:

3. TERMS AND CONDITIONS

SECTION 1 COMMENCEMENT.

This **Upgrade Agreement** shall take effect and be binding upon City and Contractor immediately upon signature of this **Upgrade Agreement** (“Execution Date”).

SECTION 2 WORK.

Contractor agrees to procure, deliver, install and test the equipment as described within **Exhibit A: Statement of Work** (the “SOW”, or the “Work”) of this **Upgrade Agreement**. City and Contractor will work cooperatively with Metro in executing this SOW in conjunction with Modification 154 to Contract No. OP02461010 between Contractor and Metro, through which City shall be granted access to the upgraded software related to the Work (the “Regional Contract”) **Exhibit B: Regional Contract**.

In addition to the Regional Contract Work and as described in the SOW, Contractor agrees to procure and install extra equipment as described in below in Section 4(C), “Extra Equipment Payments.”

SECTION 3 PERIOD OF PERFORMANCE.

A. Period of Performance. The period of performance shall be for two (2) years from the Execution Date of the **Upgrade Agreement**, unless amended by mutual agreement of both parties through a written amendment to this **Upgrade Agreement**, or unless earlier terminated pursuant to the provisions of this **Upgrade Agreement**.

B. Notices to Proceed. City shall provide one (1) or more “Notice-to-Proceed” to Contractor for all obligations related to the Regional Contract, prior to which no related Work will be completed. The notices shall encompass 100% of the Work under the Regional Contract. As it relates to the Extra Equipment, a “Notice-to-Proceed” shall be presumed granted upon the execution of the **Upgrade Agreement**.

C. Project Schedule. Within 45 days of receipt of a “Notice-to-Proceed,” Contractor shall issue a Project Schedule for the Work.

SECTION 4 FEES AND PAYMENTS.

A. Compensation. City agrees to pay, and Contractor agrees to receive and accept, **NINE HUNDRED ONE THOUSAND FOUR HUNDRED AND NINETY-ONE DOLLARS AND NO CENTS** (\$901,491.00) as full and fixed compensation for performing all Work and obligations hereunder (“Contract Price”). The total Contract Price may be subject to revision pursuant to change orders as provided in Section 5 herein. The elements of the Work are priced as follows:

Contract	DCU/Farebox Upgrades	Unit Price	Farebox Lids	Unit Price	Garage Computer	Total
Regional Contract Work	85	\$ 6,575.00	85	\$ 1,631.00	\$ 68,491.00	\$ 766,001.00
Extra Equipment - Genfare Vault, Cashbox, Install Kits	N/A					\$ 135,490.00
Contract Total						\$ 901,491.00

B. Regional Contract Payments. City shall make milestone payments (each a "Milestone Payment") to the Contractor in accordance with the following schedule. Each Milestone Payment shall equal the percentage shown multiplied by the Contract Price for the Work under the Regional Contract, set at **SEVEN HUNDRED SIXTY-SIX THOUSAND AND ONE AND NO CENTS** (\$766,001.00).

Payment Number	Milestone Type	Milestone Payment Description	Percent of Contract Price
1	Design	Project Schedule – Submission of Project	10%

		Schedule to City	
2	Construction	All Equipment Orders Placed – Demonstrated by Contractor submittal to City for Engineering Release Authorization (ERA) for equipment	60%
3	Design	Software Release Phase 1 – Demonstrated by Metro written acknowledgment of achievement related to Regional Contract	10%
4	Construction	Equipment Installed – Installation Acceptance Testing signed off by City	20%

C. Extra Equipment Payments. City shall make milestone payments (each a "Milestone Payment") to Contractor in accordance with the following schedule. Each Milestone Payment shall equal the percentage shown multiplied by the Contract Price for the Extra Equipment, set at **ONE HUNDRED THIRTY-FIVE THOUSAND FOUR HUNDRED AND NINETY AND NO CENTS (\$135,490.00)**.

Payment Number	Milestone Type	Milestone Payment Description	Percent of Contract Price
1	N/A	Cubic submission to City of documentation of all hardware orders placed	50%
2	N/A	Equipment Delivered and/or Installed – Installation Acceptance Testing signed off by City	50%

D. Request for Milestone Payments. Contractor shall submit invoices to City, which will be based on the completion of the events described in the Milestone Payment schedule set forth above. Invoices shall not exceed the stated percentages of the total Contract Price. City shall, within thirty (30) days, review and pay the invoice. The **Upgrade Agreement** number noted above must be included on all invoices. Neither payment of amount due by City nor acceptance of any such payment by Contractor shall constitute a waiver of any claim for errors or omissions in invoices or payments.

E. Los Angeles Metropolitan Transportation Authority. Due to the nature of the funding and payment reimbursement under this **Upgrade Agreement**, both Parties may share invoice and payment details with Metro.

SECTION 5 CHANGES AND CHANGE ORDERS.

A. Change Orders and Modifications. The Parties may agree to amend, change, or modify the **Upgrade Agreement** to correct errors, omissions, or discrepancies, to expand or reduce the scope of the **Upgrade Agreement**, or to direct other changes in contract execution to meet unforeseen field, regulatory, or market conditions. Amendments, changes, and modifications to the **Upgrade Agreement** shall be effective and binding only if made in writing and executed by City and Contractor.

B. Change Orders, Response Time. Within thirty (30) calendar days after receipt of a written change order request from City, Contractor shall assess and describe the impact of the change request on both time and compensation, and provide information, in writing, on cost and schedule change proposed to City. Upon agreement between the designated City Representative and the Contractor as to the extent of such impacts on time and compensation, an amendment to the Work and other appropriate provisions of this **Upgrade Agreement** shall be executed by City and Contractor in writing. Execution of the amendment by both Parties shall constitute the Contractor's notice to proceed with the revised Work.

SECTION 6 REPRESENTATIVES AND NOTICES.

A. City Representative. The designated City Representative for supervision, direction, control, authorization and approval of the Work of the Contractor shall be _____.

B. Contractor's Representative. The designated Representative for supervision, direction, control, authorization and approval of the Work of the Contractor shall be Stacy Schievelbein.

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

Contractor: Cubic Transportation Systems, Inc.
5650 Kearney Mesa Road
San Diego, CA 92111
Attention: Stacy Schievelbein, Contracts Manager

City: Robert Portillo, Transit Administration Manager
Montebello Bus Lines
400 South Taylor Avenue

Montebello, CA 90640
Telephone: (323) 558-1625 Ext. 105
Email: rportillo@cityofmontebello.com
Facsimile: (323) 887-4643

Any notices required by this **Upgrade Agreement** shall be deemed received on: (a) the day of delivery if delivered by hand (including overnight courier service) during the receiving Party's regular business hours or by facsimile or email before or during the receiving Party's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses set forth above, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to the provisions of this Section. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

SECTION 7 ASSIGNMENT.

Contractor shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this **Upgrade Agreement** to any party other than the named Contractor unless City provides prior written consent.

SECTION 8 INSPECTION AND ACCEPTANCE.

A. General. Contractor's Work will be subject to inspection and acceptance by City. As used in this **Upgrade Agreement**, the term "acceptance" means City has provided written notification to Contractor's Representative evidencing City's determination that the Work provided by the Contractor under this **Upgrade Agreement** meets all specifications, is operational, and is in full conformance with all requirements and provisions herein.

B. Non-conformance. If Contractor's Work does not conform to the requirements of the **Upgrade Agreement**, City will have the right to require the Contractor to correct the Work at no increase in the total Contract Price. In the event the Contractor fails to promptly correct, City will have the right to terminate the **Upgrade Agreement** for default as provided in Section 11(B), "Termination for Default."

C. Timeliness. If the City fails to cite specific non-conformance or fails to accept Contractor's Work in accordance with the above subsections, acceptance will be deemed granted on the 30th day following the Work being made available to City for inspection, review and acceptance.

SECTION 9 DISPUTES.

A. General. Any dispute between City and Contractor relating to the implementation or administration of the **Upgrade Agreement** shall be resolved in accordance with this Section.

B. Governing Law. This **Upgrade Agreement** shall be governed and construed in accordance with the laws of the State of California.

C. Resolution. The parties shall first attempt to resolve the dispute informally in meetings or communications among City and Contractor Representatives. If the dispute remains unresolved fifteen (15) days after it first arises, the Contractor may request that the City Representative issue a recommended decision on the matter in dispute. The City Representative shall issue the recommended decision in writing and provide a copy to Contractor. The recommended decision of the City Representative will become final unless, within fifteen (15) days of receipt of such recommended decision, the Contractor submits a written request for review to the City Manager. In connection with any such review, the Contractor and City Representative shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the City Manager, either Party may seek judicial resolution of the dispute in an appropriate court in the County of Los Angeles in the State of California.

D. Court Costs. Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any Party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such Party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the Party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Los Angeles County, California.

E. Diligent Performance. Pending final resolution of a dispute under this Section, both Parties shall proceed diligently with performance in accordance with the **Upgrade Agreement** and the recommended decision of the City Representative.

SECTION 10 FORCE MAJEURE.

The Contractor shall not be liable for any delay or failure to complete work caused by acts of God or the public enemy, wars, civil disturbances, fires, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, mechanical failures, strikes or weather more severe than normal, providing that: (1) the occurrence was not foreseeable and did not result from the fault or negligence of the Contractor; (2) the Contractor has taken reasonable precautions to

mitigate the effect(s) of the occurrence; and (3) the Contractor notifies City in writing of the occurrence within ten (10) days from the beginning of any such delay.

SECTION 11 TERMINATION.

A. Termination for Convenience and Any Other Reason. The **Upgrade Agreement** may be terminated by City in accordance with this Section in whole, or from time to time in part, whenever City determines that such termination is in the best interest of City or for any other reason. City shall have the right to terminate this **Upgrade Agreement** for convenience and any other reason on sixty (60) calendar days' written notice to Contractor specifying the extent to which the **Upgrade Agreement** is terminated and the date upon which such termination becomes effective.

Upon receipt of a notice of termination, and except as otherwise directed by City, Contractor shall: (1) stop work under the **Upgrade Agreement** on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the **Upgrade Agreement** as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; (4) assign to City in the manner, at the times, and to the extent directed by City, all of the rights, title and interest of the **Upgrade Agreement** under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of City's governing body, to the extent City may require, which approval or ratification shall be final for all the purposes of this Section and will not be unreasonably withheld or delayed; (6) transfer title to City and deliver in the manner, at the times, and to the extent, if any, directed by City, supplies, equipment, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and any information and other property which, if the **Upgrade Agreement** had been completed, would have been required to be furnished to City; (7) complete any such part of the work as shall not have been terminated by the notice of termination; and (8) take such action as may be reasonably necessary, or as City may direct, for the protection and preservation of the property related to the **Upgrade Agreement** that is in the possession of the Contractor and in which City has or may acquire an interest.

Payments by City to Contractor shall be made for products delivered or work provided prior to the date of termination but not thereafter (with the exception of reasonable costs to wind down performance). Except as otherwise provided, settlement of claims by Contractor under this termination Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

B. Termination for Default

1. General. Subject to the provisions in this Section, City may terminate the whole or any part of the **Upgrade Agreement** in any one of the following circumstances (absent a good faith dispute by the Contractor): (a) if the Contractor materially fails to provide the products or services in the manner required by the **Upgrade Agreement** or (b) if the Contractor materially fails to make progress in the prosecution of the Work under the **Upgrade Agreement** so as to endanger such performance.

2. Conditions upon Termination. In the event City terminates the **Upgrade Agreement** in whole or in part as provided in this subsection, City may procure, upon such terms and in such manner as City may deem appropriate, supplies or services similar to those so terminated. Contractor shall be liable to City up to **ONE MILLION DOLLARS AND NO CENTS** (\$1,000,000.00) for the costs associated with the procurement of replacement supplies or services by City, any excess costs of such similar supplies or services, and any increase in the total Contract Price as a result of the re-procurement of services from the date of termination to the expiration date of the original Contract. Contractor shall continue the performance of the **Upgrade Agreement** to the extent not terminated under the provisions of this Section. Any disputes arising under this Section that cannot be resolved by City and Contractor are subject to resolution pursuant to Section 9.

3. Notification. If City reasonably determines that an event of default under this Section has occurred, it shall immediately notify the Contractor in writing and provide the Contractor with thirty (30) days in which to cure such default. If the Contractor fails to cure within such timeframe, City may declare Contractor to be in default and terminate the **Upgrade Agreement** in whole or in part.

4. Settlement. Except as otherwise provided, settlement of claims by the Contractor under this termination Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

SECTION 12 RESPONSIBILITIES OF CONTRACTOR.

A. Control and Payment of Subordinates. Contractor shall, at all times during the term of the Contract, perform all work diligently, carefully, and in a skillful and competent manner; and shall furnish all labor, supervision, material, machinery, equipment, and supplies necessary therefor.

B. Personnel. Contractor shall be responsible to City for acts and omissions of the Contractor's employees, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of Work under this **Upgrade Agreement** under direct or indirect contract with the Contractor or any of its subcontractors.

Any person who is reasonably determined by City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Work described in the **Upgrade Agreement's** specifications, a threat to the safety of persons or property, or any employee who fails or refuses to perform work in a manner acceptable to City, shall be promptly removed by Contractor and shall not be re-employed to perform any Work under this **Upgrade Agreement**.

SECTION 13 INDEPENDENT CONTRACTOR.

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

The Parties further acknowledge and agree that nothing in this **Upgrade Agreement** shall create or be construed to create a partnership, joint venture, employment relationship or any other relationship except as set forth in this **Upgrade Agreement**.

City shall not deduct from the Compensation paid to Contractor any sums required for Social Security, withholding taxes, FICA, state disability insurance or any other federal, state or local tax or charge which may or may not be in effect or hereinafter enacted or required as a charge or withholding on the compensation paid to Contractor. City shall have no responsibility to provide Contractor, its employees or subcontractors with workers' compensation insurance or any other insurance.

SECTION 14 PERS ELIGIBILITY INDEMNITY.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this **Upgrade 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 the City, Contractor shall indemnify, defend, and hold harmless City 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 City.

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 **Upgrade 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 City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

SECTION 15 INDEMNIFICATION AND LIMITATION OF LIABILITY.

A. Mutual Indemnification. Each Party will indemnify, defend and hold the other Party and its assignees, agents, officers and employees harmless from and against any claims, suits, proceedings, costs, liabilities, expenses (including court costs and reasonable legal fees), or damages (Claims) to real or tangible personal property and/or bodily injury to persons, including death, resulting from its or its employees, Clients or agents negligence or willful misconduct arising from or related to this **Upgrade Agreement**.

B. Limitation of Liability. The total aggregate liability of Contractor for claims asserted under this **Upgrade Agreement** shall be limited to the total Contract Price. In no event shall the Contractor be liable in tort, contract or otherwise for any consequential, incidental, special, indirect or punitive damages, including but not limited to loss of revenue or profit, even if Contractor was aware of the possibility of such damages.

SECTION 16 INSURANCE.

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

A. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (a) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (b) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (c) Workers' Compensation and Employers' Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than: (a) General Liability: **ONE MILLION DOLLARS AND NO CENTS** (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance

or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Contract/location or the general aggregate limit shall be twice the required occurrence limit; (b) Automobile Liability: **ONE MILLION DOLLARS AND NO CENTS** (\$1,000,000.00) per accident for bodily injury and property damage; and (c) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California with Employers Liability limits of **ONE MILLION DOLLARS AND NO CENTS** (\$1,000,000.00) per accident for bodily injury or disease.

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

1. General Liability. The general liability policy shall be endorsed to state that: (A) City, its officers, officials, employees, agents, staff, and volunteers (hereinafter referred to as "Additional Insureds") shall be covered as additional insureds with respect to the services or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such Work; and (B) the insurance coverage shall be primary insurance as respects the Additional Insureds, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the Additional Insureds shall be excess of the Contractor's insurance and shall not be called upon to contribute with it.

2. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees, agents, staff, and volunteers for losses paid under the terms of the insurance policy, which arise from Work performed by the Contractor.

D. Acceptability of Insurers. Insurance is to be placed with insurers (i) with a current A.M. Best's rating no less than A Class VII and (ii) licensed to do business in California.

E. Verification of Coverage. Upon execution of this **Upgrade Agreement**, the Contractor shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and, for the general liability and automobile liability policies, naming the City as an additional insured. Contractor shall, prior to commencement of work under this **Upgrade Agreement**, file with City's Risk Manager such certificate(s).

Contractor shall provide proof that policies of insurance required herein expiring during the term of this **Upgrade Agreement** have been renewed or replaced with other policies providing at least the same coverage. Contractor shall provide such proof to City at least two (2) weeks prior to the expiration of the coverages.

SECTION 17 WARRANTY.

A. General. Contractor shall warrant all aspects of the Work and shall comply with the requirements as specified in the **Upgrade Agreement**, including, without limitation, the Statement of Work.

B. Warranty Period. Warranty of the equipment shall commence upon acceptance of the Work per Section 8 and shall continue for a period of one (1) year. The warranty period on the replacement of any equipment shall extend for the remaining period of the original warranty of the equipment that it replaces.

C. Warranty Coverage. The Contractor hereby warrants to City that all of the equipment furnished under this **Upgrade Agreement** shall be free from deficiencies under normal operating use and service for the term of the Warranty Period. The Contractor shall provide all labor and material to replace, during the period of this Warranty, without expense to City all equipment that may be damaged due to defects in the equipment or installation. Contractor shall be solely responsible for all materials and workmanship, including all specialties and accessories, whether manufactured by it or others, used in the construction of the equipment and for adequate installation and connection of all equipment. Contractor shall, at no additional charge, promptly correct any deficiency in the equipment or its installation so that it operates properly and in accordance with the SOW.

The Warranty will not apply to the extent that the failure of a piece of equipment arises out of improper maintenance, repairs or alterations by City where City failed to follow required repair procedures as described in Contractor Documentation, including without limitation manuals supplied by Contractor. The Warranty shall not apply to the extent that the equipment has been subjected to uses substantially more severe than the conditions that prevail in City's service area or damage caused by vandalism or abuse.

D. Consumable Items. The Warranty shall not cover the replacement of normal consumable items or items that are replaced in usual and scheduled preventative maintenance programs, such as light bulbs, belts and other wear-related items.

E. Assignment of Warranties. Contractor shall assign to City to the fullest extent permitted by Law or this **Upgrade Agreement** and shall otherwise ensure that the benefits of any applicable warranty or indemnity offered by any Subcontractor, Supplier or manufacturer of any hardware, software or any other product or service provided hereunder shall fully extend to and be enjoyed by City at no additional charge.

F. The only warranties made by the Contactor are those expressly provided herein. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM THE COURSE OF DEALING OR USAGE OF TRADE, SHALL APPLY. THE REMEDIES SET FORTH IN THIS **UPGRADE AGREEMENT** ARE THE SOLE AND EXCLUSIVE REMEDIES OF THE MTA FOR ANY CLAIMS, EXPENSES, OR DAMAGE ARISING OUT OF OR RELATED TO PRODUCTS AND SOFTWARE DELIVERED UNDER THIS **UPGRADE AGREEMENT**.

SECTION 18 CIVIL RIGHTS REQUIREMENTS.

The following requirements apply to the underlying **Upgrade Agreement**:

A. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, *et seq.*, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, *et seq.*, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations.

B. Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying **Upgrade Agreement**:

1. Race, Color, Religion, Sex, Sexual Orientation, Gender Identity, and National Origin. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal transit laws at 49 USC § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (“U.S. DOL”) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and Executive Order 13672, “Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity,” 42 USC § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the work.

Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, or age. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or age. 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.

2. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.

3. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

SECTION 19 AMERICANS WITH DISABILITIES ACT.

Contractor shall ensure that all activities under the terms of this **Upgrade Agreement** meet the applicable Accessibility Guidelines for Transportation Facilities set out as Appendix A to 49 C.F.R. Part 37.

SECTION 20 INSPECTION OF RECORDS.

Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this **Upgrade Agreement** in accordance with generally accepted accounting practices. All such records shall be clearly identifiable. Contractor agrees that City or any of its duly authorized representatives, shall, for the purpose of audit and examination, be permitted to inspect all work and materials relating to the performance of the **Upgrade Agreement** during reasonable business hours and upon reasonable notice. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities. Further, the Contractor agrees to maintain all required records for at least three (3) years after City has made final payment and all other pending matters are closed.

SECTION 21 GENERAL PROVISIONS.

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

B. Interpretation, Jurisdiction, and Venue. All contractual agreements shall be subject to, governed by, and construed and interpreted solely according to the laws of the State of California. The Contractor hereby consents and submits to the jurisdiction of the appropriate courts in the County of Los Angeles, California or of the United States having jurisdiction in

California for adjudication of any suit or cause of action arising under or in connection with the Contract, or the performance of such Contract, and agrees that any such suit or cause of action may be brought in any such court.

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

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

E. Construction. The headings appearing in this **Upgrade Agreement** have been inserted for identification and reference purposes only, and are not to be considered as defining or limiting in any way the scope or intent of the provisions hereof.

E. Time of Essence. Time is of the essence of this **Upgrade Agreement** and each and every term and provision hereof.

F. Severability. If any term or provision of this **Upgrade Agreement** or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this **Upgrade Agreement**, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this **Upgrade Agreement** shall be valid and be enforced to the fullest extent permitted by law.

F. Entire Agreement. All documents referenced as exhibits in this **Upgrade Agreement** are hereby incorporated in this **Upgrade Agreement**. In the event of any material discrepancy between the express provisions of this **Upgrade Agreement** and the provisions of any document incorporated herein by reference, the provisions of this **Upgrade Agreement** shall prevail. This instrument contains the entire **Upgrade Agreement** between City and Contractor with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the Parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Contractor.

[Signature on Next Page]

TO EFFECTUATE THIS AGREEMENT, the Parties have caused their duly authorized representatives to execute this **Upgrade Agreement** on the dates set forth below.

CITY OF MONTEBELLO:

CUBIC TRANSPORTATION SYSTEMS,
INC.:

Paul Talbot, Acting City Manager

By: _____

Title: _____

Dated: _____

Dated: _____

ATTEST:

APPROVED AS TO FORM:

Irma Barajas, City Clerk

Arnold M. Alvarez-Glasman, City Attorney

ATTACHMENT “D”

AGREEMENT NO. _____ DATA USE AND NON-DISCLOSURE AGREEMENT BETWEEN THE CITY OF MONTEBELLO AND THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (FOR THE USE OF TAP SYSTEMS)

1. IDENTIFICATION

This DATA USE AND NON-DISCLOSURE AGREEMENT (“**Non-Disclosure Agreement**”) is made effective as of _____ (the “Effective Date”) by and between the CITY OF MONTEBELLO, a California municipal corporation (the “City”) and the LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, a California county transportation authority existing under the authority of §§ 130050.2 *et seq.* of the California Public Utilities Code (“Metro”). Metro and the City are sometimes hereinafter referred to individually as “Party” or collectively as “Parties”.

2. RECITALS

WHEREAS, The Transit Access Pass (“TAP”) program is a regional smart-card program serving as an electronic transit fare collection system. TAP was developed as a result of a cooperative effort among participating public transit operators (collectively, “TAP Participants,” of which the City is a part of) in Los Angeles County providing for the electronic payment of inter- and intra- fares via the use of TAP devices on such TAP Participants’ universal fare system (UFS) fareboxes, driver control unit light validators (DCU/LVs), bus mobile validators (BMVs) and other fare validators installed on TAP Participants’ transit fleet (e.g., bus, rail, among other transit vehicles).

WHEREAS, the City is a TAP Participant, pursuant to that certain Cooperative TAP Participant Agreement dated _____, 2019 (“**Cooperative Agreement**”) by and between the City and Metro, by which, among other things set forth therein, the City agrees to abide by the terms and conditions of the latest approved Regional TAP Program and Service Center Operating Rules (“TAP Regional Operating Rules”) attached to the **Cooperative Agreement** and incorporated herein by reference.

WHEREAS, Metro manages the daily operations of TAP, including, but not limited to, providing customer service to TAP patrons, and managing TAP operating and data systems. Such TAP operating and data systems include TAPforce, Nextfare, and other data processing systems, which carry TAP patron information (including “personally identifiable information” (“PII”) as described in the California Streets and Highway Code Section 31490 *et seq.*).

WHEREAS, California Streets and Highways Code Sections 31490 *et seq.* (or any successor statute thereto, collectively, the “Code”) currently prohibits a transportation agency from providing any person or entity with PII of any person who subscribes to an electronic fare collection system; provided that the Code does not prohibit the sharing of data between transportation agencies for the purpose of interoperability between those agencies. A “transportation agency” for purposes of the Code, includes any entity administering an electronic

ATTACHMENT “D”

transit fare collection system and any transit operator participating in that system, or any entity under contract with such entities;

WHEREAS, In order to facilitate interoperability between Metro and the City, the City desires to have access to the TAP Nextfare and/or TAPForce system (“TAP Systems”), and Metro desires to provide the City with access to the TAP Systems for the Purpose described in this **Non-Disclosure Agreement**. The City acknowledges that by having access to the TAP Systems, the City will have access to certain Confidential Information (defined below), with access being provided to the City on a confidential basis, and the City agrees to handle such Confidential Information in conformance with the Code, only for the Purpose identified herein, and in compliance the terms and conditions contained in this **Non-Disclosure Agreement**.

NOW THEREFORE, the Parties hereby agree to the following:

3. TERMS AND CONDITIONS OF AGREEMENT

SECTION 1. Purpose.

This **Non-Disclosure Agreement** is entered into between the Parties specifically for the purpose of Metro granting the City, and its Authorized Personnel (as defined in this **Non-Disclosure Agreement**) with access to the TAP Systems and certain Confidential Information therein for the purpose of facilitating interoperability between Metro and the City with respect to the TAP program. The grant of access to the TAP Systems to the City will allow the City to respond to and/or remedy TAP patron inquiries and issues with their respective TAP card/TAP account (“Purpose”). No other purposes are permitted, unless otherwise specifically authorized in writing by Metro.

SECTION 2. Term of Agreement.

This **Non-Disclosure Agreement** shall commence on the Effective Date, and shall continue until termination upon the occurrence of any of the following:

- (a) Thirty (30) days after written notice from a Party that such Party intends to terminate this **Non-Disclosure Agreement**, without cause;
- (b) Upon termination of the **Cooperative Agreement**;
- (c) In the event of the City’s breach of any of the terms and conditions of this **Non-Disclosure Agreement**, Metro may terminate the City’s access to the TAP Systems and sharing of Confidential Information immediately without prior written notice.

SECTION 3. Definition of Confidential Information.

- 3.1 The Parties acknowledge and agree that all information disclosed to the City via its access to the TAP Systems or disclosed to the City in the course of performing the

ATTACHMENT “D”

Purpose is considered confidential, trade secret, proprietary and/or security sensitive, including, but not limited to:

- (a) PII of TAP patrons that Metro collects for the TAP program, examples of which include (but are not limited to) a patron’s name, mailing address, billing address, business name, telephone number, travel pattern data, bank account/credit card number;
- (b) Trade secrets;
- (c) Proprietary information;
- (d) Financial information;
- (e) Technical information, including research, development, procedures, algorithms, data, designs, customized software, source code, and know-how;
- (f) Proprietary business information;
- (g) Proprietary economic information; and
- (h) Other confidential information (such information, to the extent not readily available to or generally known by the public).

All such information shall collectively be referred to as “**Confidential Information**”. The type, amount, and format of the Confidential Information disclosed under this **Non-Disclosure Agreement** will be at the sole discretion of Metro.

3.2 The City agrees to protect the Confidential Information in accordance with the terms and conditions of this **Non-Disclosure Agreement** when:

- (a) The City gains access to the Confidential Information through its access to the TAP Systems; or
- (b) The City gains access to the Confidential Information in the course of performing the Purpose described in this **Non-Disclosure Agreement**.

SECTION 4. Metro Responsibilities.

Metro shall provide the City with licensed access to the TAP Systems, including the procurement of any license necessary to grant the access described in this **Non-Disclosure Agreement**.

SECTION 5. The City’s Responsibilities; Confidentiality and Non-Disclosure Covenants.

5.1 The City acknowledges and agrees that the TAP Systems software: (i) is a third-party provided software for which the City is being granted a user license to permit access by an Authorized Personnel (defined in Section 5.6) of the City, to perform the Purpose; and (ii) may not be distributed to any other unauthorized employee or a third party without prior written authorization from Metro.

ATTACHMENT “D”

5.2 The City shall access the TAP Systems on a secured platform (i.e., password protected, encrypted, and/or utilizing a secured system that prevents use and access by any parties not authorized to use/access the TAP Systems/Confidential Information pursuant to the terms of this **Non-Disclosure Agreement**), and shall only access the TAP Systems for the Purpose described in this **Non-Disclosure Agreement**. The City also agrees that it will not access the TAP Systems on any non-secure network enabled device which could result in unauthorized access of the TAP Systems or release of the Confidential Information.

5.3 The City agrees to preserve the confidentiality of the Confidential Information, and shall not use or disclose it except for the Purpose described in this **Non-Disclosure Agreement**. The City shall take all reasonable and necessary steps to protect and prevent disclosure of the Confidential Information to any unauthorized third party. Unauthorized use or disclosure includes, but is not limited to, the following:

- Any disclosure of Confidential Information to a third-party without written authorization from the owner of such Confidential Information (e.g., written authorization to disclose PII from the owner of the PII); or
- Use by, or disclosure to, another employee who is not an Authorized Personnel, or a third party.

5.4 The City agrees to comply with the handling and confidentiality requirements set forth in the Code (i.e., California Streets and Highways Code Sections 31490 *et seq.* or its successor statute) and Civil Code Sections 1798 *et seq.* (the California Information Practices Act or the “Act”), and as it may be revised from time to time, and shall not act in any manner that violates either the Code, the Act, or any other applicable law.

5.5 The City shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, that it uses to protect its own confidential information of a like nature to prevent its unauthorized use, dissemination or publication to any unauthorized third parties.

5.6 The City shall not disclose any Confidential Information or grant access to the TAP Systems to anyone, except to the City’s designated employee who is identified in writing as requiring direct access to the TAP System or Confidential Information to perform the Purpose described under this **Non-Disclosure Agreement** (“Authorized Personnel”). In accordance with the foregoing, Metro agrees that the City may grant access to the TAP Systems or disclose the Confidential Information to its Authorized Personnel after such Authorized Personnel has executed an acknowledgement and concurrence with the terms of this **Non-Disclosure Agreement** in the form attached hereto as **Exhibit A** (“Acknowledgement of Authorized Personnel”) which copy of such executed acknowledgement shall be provided to Metro by the City.

5.6.1 In the event the City changes the Authorized Personnel, the City agrees to notify Metro and provide Metro with the new executed Acknowledgement of Authorized Personnel. The City shall take appropriate action with its Authorized Personnel to satisfy the obligations under this **Non-Disclosure Agreement**. Furthermore, the City shall be

ATTACHMENT “D”

responsible for any act and/or omission of any Authorized Personnel in breach of this **Non-Disclosure Agreement**.

5.6.2 The City shall not disclose any Confidential Information or grant access to the TAP Systems to any party who is not an Authorized Personnel without first obtaining Metro’s written consent.

5.7 The City shall not print, make copies, generate reports, reduce Confidential Information to writing, or prepare any presentations using any Confidential Information. If the printing of any Confidential Information on paper is absolutely necessary to effectuate the Purpose, such paper copy(ies) of Confidential Information shall be protected in the same manner as the original Confidential Information, and shall be destroyed as soon as possible, by shredding the paper using a cross-cut shredder or secure shredding service. This does not include PII printed and distributed (e.g., put into the mail) directly to the TAP patron who is the owner of the PII.

5.8 The City shall not photograph screens of the TAP Systems (using any device capable of capturing images) or send any Confidential Information via any mechanism capable of transmitting data.

5.9 The City shall not decode or reverse engineer the TAP Systems software.

5.10 The City shall not store or save any Confidential Information on any workstation, CD/DVD, thumb drive or similar type of electronic storage device or system, or on any form of cloud based storage system (other than the secured system used at the City to conduct City business).

5.11 In the event the City becomes aware of any breach of the covenants set forth in this **Non-Disclosure Agreement**, including, but not limited to, that Confidential Information has been disclosed or unauthorized access to the TAP Systems has occurred, the City shall (i) notify Metro of such breach within one (1) business day of the City’s knowledge thereof; (ii) take all reasonable steps to recover the Confidential Information and/or terminate any unauthorized access to the TAP Systems; and (iii) obtain agreement by the party that gained unauthorized access to the TAP Systems and/or received the Confidential Information that it will not disclose the Confidential Information to any additional parties and cease its access to the TAP Systems or disclosure of any Confidential Information. The notification set forth in this Section 5.11 must describe the breach incident in detail and provide City contact information if different from the contact information provided in this **Non-Disclosure Agreement**. In addition, if requested by Metro, the City shall provide notification to all persons whose PII was, or is reasonably believed to have been, acquired by any unauthorized person, and the content, method, and timing of such notification shall be subject to the prior approval of Metro.

SECTION 6. Legal Compulsion; Duty to Seek Protection.

In the event the City (including its Authorized Personnel) is served with a search warrant, subpoena, administrative or court order, or other legal process that imposes on the City an obligation to produce or provide Confidential Information, the City shall promptly provide Metro

ATTACHMENT “D”

with a copy of the search warrant, subpoena, order or other legal process, so that Metro may seek (with the City’s cooperation, if requested by Metro) a protective order or other appropriate remedy to preclude the City from compliance therewith before the time specified for the City’s compliance. In the event that a protective order or other remedy is not obtained, Metro waives compliance with the provisions of this Section 6, or the Code requires disclosure of the Confidential Information requested, the City will furnish only that portion of the Confidential Information which is legally required and will exercise its best efforts to obtain assurance that Confidential Information will be treated as confidential.

SECTION 7. Termination of Access to TAP Systems; Return of Confidential Information.

Metro may terminate the City’s access to the TAP Systems at any time, at its sole discretion, upon thirty (30) days prior written notice; provided that in the event of a breach of any of the terms and conditions of this **Non-Disclosure Agreement**, Metro may terminate the City’s access to the TAP Systems immediately without prior written notice. Upon such termination, the City will promptly collect all copies of any Confidential Information in the possession or control of the City and Authorized Personnel (if any copies exist), destroy such Confidential Information, and provide Metro with written certification of such destruction within five (5) days of the termination.

SECTION 8. Indemnification.

The City shall indemnify, defend (with counsel acceptable to Metro) and hold harmless Metro and its subsidiaries and their respective officers, agents, employees, and directors (collectively, “Metro Parties”) harmless from and against any liability and expenses, including without limitation, defense costs, any costs or liability on account of bodily injury, death or personal injury of any person or for damage to or loss of risk of property, any environmental obligation, any legal fees and any claims for damages of any nature whatsoever (collectively, “Claims”) arising from or related to this **Non-Disclosure Agreement**, except as caused by Metro’s gross negligence. Metro shall, under no circumstance, be liable for special, incidental, exemplary or consequential damages suffered by the City in connection with the City’s actions pursuant to this **Non-Disclosure Agreement** and/or breach of this **Non-Disclosure Agreement**.

SECTION 9. General.

5.12 Notices. All notices required or permitted hereunder shall be delivered in person, by messenger, by overnight courier or by registered or certified mail, postage prepaid, return receipt requested to such Party at its address as shown below or to any other place designated in writing by such Party, with an optional additional courtesy copy by facsimile transmission or electronic email.

If to the City:

Robert Portillo, Transit Administration Manager
Montebello Bus Lines
400 South Taylor Avenue
Montebello, CA 90640

ATTACHMENT "D"

Telephone: (323) 558-1625 Ext. 105
Email: rportillo@cityofmontebello.com
Fascimile: (323) 887-4643

If to Metro: Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, Mail Stop 99/04/03
Los Angeles, CA 90012
ATTN: David Sutton, Executive Officer, TAP
Telephone: (213) 922-5633
Email: SuttonD@metro.net
Fascimile: (213) 922-4036

Any such notice shall be deemed received: (i) upon delivery, if delivered personally or by messenger; (ii) the next business day after delivery if delivered by courier; or (iii) three (3) days after deposit into the United States Mail, if delivered by registered or certified mail.

5.13 Modification. The **Non-Disclosure Agreement** shall not be amended, except in writing signed by the Parties who agreed to the original **Non-Disclosure Agreement** or who have the same level of authority.

5.14 No Assignment. The City shall not assign or transfer any of its rights or obligations hereunder.

5.15 No Waiver. No failure or delay of any Party in the exercise of any right given to such Party hereunder or the waiver by any Party of any condition hereunder for its benefit shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be waiver of any other or any subsequent breach hereof

5.16 Continuing Obligations. Confidential Information disclosed by Metro may constitute a special category of public records that are exempt from release under the California Public Records Act and/or each Party's records management policy, and shall not be deemed releasable to any third party under the terms of this **Non-Disclosure Agreement**. Therefore, regardless of when the **Non-Disclosure Agreement** expires, the City shall not release any Confidential Information to any third party not a designated as an Authorized Personnel covered by the terms of this **Non-Disclosure Agreement**. Each Party's rights and obligations hereunder, including without limitation with respect to confidentiality obligations, will survive the expiration of the Term of this **Non-Disclosure Agreement**.

5.17 Governing Law and Application. The Parties agree that this **Non-Disclosure Agreement** will be construed in accordance with the laws of the State of California without regard to its conflicts of laws and that any dispute arising hereunder shall be submitted only to a state court of competent jurisdiction in the Central District of the Superior Court in the County of Los Angeles, to whose jurisdiction the Parties consent.

ATTACHMENT “D”

5.18 Remedies. The obligations and duties of the Parties hereunder, including all covenants and agreements, may be enforced by any and all available remedies, including without limitation, specific performance, injunction, damages and declaratory relief.

5.19 Several Liability. The Parties acknowledge and agree that this **Non-Disclosure Agreement** is not an agreement pursuant to or subject to Government Code Section 895 et seq., and that: (a) the City shall have liability hereunder only for those obligations of the City in connection with its responsibilities hereunder and shall have no liability with respect to Metro’s responsibilities in connection with the TAP system; and (b) Metro shall have liability hereunder only for the obligations of Metro, and shall have no liability with respect to the City’s operation of its public transit services or the City’s responsibilities hereunder.

5.20 Severability. If any provision of this **Non-Disclosure Agreement** shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be deemed severed from this **Non-Disclosure Agreement**, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable provision had never been part of this **Non-Disclosure Agreement**.

5.21 Relationship. The City and Metro are independent contractors to each other. The City, in the performance of the Purpose described in this **Non-Disclosure Agreement**, is not an agent, partner or employee of Metro. The City shall not represent itself as an agent, partner, or employee of Metro and shall have no powers to bind Metro in contract or otherwise.

5.22 Representation on Authority of Parties/Signatories. Each Party represents and warrants that the person signing this **Non-Disclosure Agreement** on its behalf is duly authorized and has legal capacity to execute and deliver this **Non-Disclosure Agreement**. Each Party represents and warrants to the other that the execution and delivery of the **Non-Disclosure Agreement** and the performance of such Party’s obligations hereunder have been duly authorized and that the **Non-Disclosure Agreement** is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

5.23 Counterparts and Signatures. This **Non-Disclosure Agreement** may be executed in any number of counterparts, by either an original signature or signature transmitted by facsimile or electronic transmission or other similar process, each of which may be deemed an original and all of which collectively shall constitute a single instrument; provided, however, that such counterparts shall have been delivered to both Parties to this **Non-Disclosure Agreement**.

[SIGNATURES ON NEXT PAGE]

ATTACHMENT "D"

TO EFFECTUATE THIS AGREEMENT, the Parties have caused their duly authorized representatives to execute this **Non-Disclosure Agreement** on the dates set forth below.

CITY OF MONTEBELLO:

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION
AUTHORITY

Paul Talbot, Acting City Manager

Phillip A. Washington, Chief Executive
Officer

Dated: _____

Dated: _____

ATTEST:

Irma Barajas, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Arnold M. Alvarez-Glasman, City Attorney

By: _____
Deputy
Mary C. Wickham, County Counsel

ATTACHMENT “D”

EXHIBIT A

ACKNOWLEDGEMENT OF AUTHORIZED PERSONNEL

I, Robert Portillo (“**Authorized Personnel**”), am employed as a Transit Administration Manager by the Transportation Department of the City of Montebello (the “**City**”).

I have been provided with and have read the **DATA USE AND NON-DISCLOSURE AGREEMENT (TAP SYSTEMS)** between the City and the Los Angeles County Metropolitan Transportation Authority (“**Metro**”) dated _____, _____ (hereinafter the “**Non-Disclosure Agreement**”).

I understand that as an employee of the City, I am being provided with access to the TAP Systems and/or Confidential Information, as such terms are defined in the aforementioned, **Non-Disclosure Agreement** for the Purpose described in the **Non-Disclosure Agreement**.

I acknowledge that I will be bound by the terms and conditions contained in the **Non-Disclosure Agreement**, and that failure to do so may include, but is not limited to, the imposition of disciplinary action and sanctions, and/or the institution of legal action seeking injunctive relief, monetary and/or criminal penalties for violation of any applicable local, state and/or federal laws.

In addition to abiding by all requirements set forth in the **Non-Disclosure Agreement**, I agree to abide by the following:

- Upon initial access to the TAP Systems, I will change my initial assigned temporary password. I will select and use passwords that are at least ten (10) characters in length; are not based on any easily guessable or memorable data (such as names, nicknames, aliases, dates of birth, or telephone numbers); are not identical, or in any way related to the logon ID, system or application it is associated with; are not keyboard sequences such as “12345,” “ABCDEF,” or “QWERTY;” are not dictionary words; and include at least three of the following four categories of characters:
 - English uppercase alphabet characters (A–Z);
 - English lowercase alphabet characters (a–z);
 - Base 10 digits (0–9); and
 - Non-alphanumeric characters (for example: !\$,%,).
- I will keep my password secret and will not, under any conditions, divulge it to or share it with anyone nor will I write it down and leave it anywhere that it can easily be found by someone else. I will not store passwords in any automated logon process. I will change my password when prompted by automated access control systems. I will not attempt to reuse any of my last five (5) previously used passwords. If I believe my password has been compromised, I will immediately change my password and notify my supervisor.
- I will comply with all the City’s requirements with respect to securing my computer, and its use, including all rules and practices directly relating to privacy and data protection requirements.

ATTACHMENT "D"

- While I am not in attendance, I shall password lock my computer work station or shut down my system before leaving my work station for any reason.
- I will not disable or override any of the installed software on my workstation, including anti-malware software, firewalls, and automatic updating services. I will contact my own Agency IT staff when there are issues with accessing any of the TAP Systems.
- I will terminate active computer sessions and connections to any TAP Systems (i.e., NextFare or TAPForce) by logging out of such systems when I have finished using them, and completely log off of my computer (i.e., not just turn off the monitor screen) whenever I am finished working with the TAP Systems for extended periods of time.
- I will not connect any devices (including, but not limited, to: personal storage media, MP3 players, digital cameras, tablet computers, personal computers, wireless access points, mobile phones, or other similar devices) to any system or work station operating the TAP Systems.

To the extent that I currently have access to, or have previously had access to, the TAP Systems and/or any Confidential Information as it relates to the aforementioned **Non-Disclosure Agreement**, I agree to conform my handling procedures for the TAP Systems or Confidential Information to the practices and procedures set forth and defined in the **Non-Disclosure Agreement**, or risk loss of access to said TAP Systems and/or Confidential Information, removal from work requiring access thereto, and/or subjecting myself to the aforementioned disciplinary actions and/or civil and criminal penalties. I agree to report to my immediate supervisor any and all violations of the **Non-Disclosure Agreement** by myself and/or by any other person of whom I become aware.

Signature: _____

Print Name: _____

Title: _____

Date: _____

CITY OF MONTEBELLO
CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Paul Talbot, Acting City Manager

BY: Tom Barrio, Director of Transportation

SUBJECT: **Partnership Agreement between the City of Montebello and The Shops of Montebello**

DATE: February 13, 2019

RECOMMENDATION

It is recommended that the City Council approve the proposed Partnership Agreement between the City and The Shops, and authorize the City Manager to execute the agreement on the City's behalf.

BACKGROUND

In 2012, the City of Montebello (the "City") and The Shops of Montebello ("The Shops") entered into a partnership agreement that allowed the Transportation Department also known as Montebello Bus Lines ("MBL") to partner with The Shops to build an educational soft play area, advertise on transit buses and sell MBL fare media. Both parties would like to continue this partnership by entering into a new agreement because the partnership has been beneficial to the parties.

The City has taken aggressive steps towards reducing costs without compromising services, reducing greenhouse emissions, and improving sustainability at the Transportation Department. Other ways to improve sustainability include advertising on transit buses and other partnerships with private businesses promoting the use of public transit.

Currently, the Transportation Department has various agreements with local Montebello businesses to sell tokens and distribute bus schedule information. These programs enhance revenues without increasing operating costs.

Annually, The Shops is visited by approximately 10 million shoppers. The partnership will provide multiple public outreach opportunities for both parties. The play area will continue to be operated and provide an excellent amenity for Montebello shoppers and

residents. Combining the Shops and MBL's marketing targets and efforts will enhance revenue growth for the City.

FISCAL IMPACT

The total contract amount of the proposed agreement is \$180,000, to be paid over a term of three (3) years. The agreement will be funded 100% with state funding and will have no impact on the City's General Fund. Approval of the agreement will continue MBL sponsorship of the Soft Play Area at The Shops, the sale of MBL fare media and distribution of MBL information to afterhours and weekends without increasing operating costs.

Additionally, The Shops will purchase \$30,000 worth of advertising annually (for a total of \$90,000 worth of advertising for the term of the Agreement) on MBL buses.

SUMMARY

The City Council will consider approval of a Partnership Agreement between the City and The Shops for continued sponsorship of the Soft Play Area at The Shops, the sale of MBL fare media and distribution of MBL information.

ATTACHMENTS

Proposed Partnership Agreement and Exhibits

THE SHOPS AT MONTEBELLO

Advertising Agreement

City of Montebello

State of California

This Advertising Agreement ("Agreement") is executed on this 16 day of December, 2018 ("Effective Date"), between MONTEBELLO TOWN CENTER INVESTORS, LLC ("Owner," "We", "Our," "Us"), and Montebello Bus Lines ("Advertiser," "You", or "Your"), doing business as Montebello Bus Lines ("Trade Name").

The following references furnish data as further set forth in this Agreement:

- (1) **Advertising Location:** The Shops at Montebello Play Area
- (2) **Advertising Period:**
 - (i) Commencement Date: December 16, 2018
 - (ii) Expiration Date: December 16, 2021
- (3) **Advertising Fee:** 180,000.00
- (4) **Guarantor:** City of Montebello

Notice addresses for each party to this Agreement are as follows:

Advertiser:	Owner:	Agent Contact:
City of Montebello 400 S. Taylor Avenue Montebello, CA 90640	Montebello Mall Management PR, LLC c/o Pacific Retail Capital Partners 100 N. Pacific Coast Highway, Suite 1925 El Segundo, California 90245 Attn: Gary Karl with a copy to: The Shops at Montebello 2134 Montebello Town Center Drive Montebello, California 90640 Attn: Mall Manager Phone Number: 323-722-1776	Kristina Zendzhiryan KZendzhiryan@cityofmontebello.com

By signing this document, We are giving You the limited, non-exclusive, revocable license to advertise your products and/or services (collectively the "Products") in Our Shopping Center. You cannot transfer this right to anyone else. This Agreement does not give You a leasehold interest.

I. ADVERTISING ELEMENTS

By the "Delivery Date" specified on Exhibit D, You must deliver to Us all materials listed therein, which may include, without limitation, camera-ready artwork, advertising collateral, signs, copy, electronic files, video footage, installation hardware, display media, equipment and/or such other materials, logos, trademarks and designs that You wish to display (collectively, the "Advertising Elements"), for Our review and approval. We will review and approve or reject in writing, in Our sole discretion, all Advertising Elements. You may use the Advertising Location (defined below) only for the purpose of displaying the Advertising Elements. We reserve the right to reject any or all Advertising Elements for any reason or no reason, and to curtail or regulate any or all Advertising Elements. You are solely responsible for the payment of any charges or other costs associated with changes to the Advertising Elements that are the result of mistakes or negligence on Your part, including, without limitation, production mistakes. Upon Our request, You must timely provide replacement Advertising Elements in the event the original Advertising Elements are damaged or destroyed.

II. LOCATION OF ADVERTISING ELEMENTS

You may advertise your Products during the Advertising Period (defined below) in the spaces/locations shown on Exhibit D, or on the display media set forth more specifically in Exhibit D (collectively the "Advertising Location"), which is located at **The Shops at Montebello** ("Shopping Center"), the address and telephone number of which are **2134 Montebello Town Center Drive, Montebello, California 90640; (323) 722-1776**.

This Advertising Location is subject to Our review and approval at all times.

We cannot guarantee any particular location, and may require that the Advertising Location be changed one or more times during the Advertising Period.

If We do require that You relocate, We will give You at least twenty-four (24) hours' prior written notice. If, after receiving such notice, You decide that you do not want to relocate, You may terminate this Agreement immediately upon written notice to Us, and We will reimburse You for the unearned portion of the Advertising Fee (if any). Such reimbursement (if any) is Your sole and exclusive remedy if You terminate because You do not agree to relocate.

III. INSTALLATION OF ADVERTISING ELEMENTS

You must coordinate the set up and take down of all Advertising Elements with the Agent Contact set forth on the first page of this Agreement. The parties' respective responsibilities for installation, maintenance and removal of the Advertising Elements are set forth in Exhibit D.

IV. ADVERTISING FEE

The fees payable hereunder (collectively, the "Advertising Fee"), due date(s), and payment information are set forth in Exhibit A. The Advertising Fee and any additional charges payable to Owner must be paid on or before the designated due dates and must be paid via certified check. Payments will be considered "made" when We actually receive them. Any overdue amount from You will accrue interest from the date due through the date of payment at the rate of 1 1/2% per month or the highest rate permitted by law, whichever is less. In addition to interest, if any of Your payments hereunder is more than 10 days late, You must pay Us a late charge equal to 5% of the amount due or \$50.00, whichever is greater. Your payment of interest and late charges will not prejudice Our rights to pursue other remedies available under this Agreement, at law or in equity.

The first (1st) month's Advertising Fee is due upon Your execution of this Agreement.

V. ADVERTISING PERIOD

You may use the Advertising Location from 12/16/18 (the "Commencement Date") 12/16/21 (the "Expiration Date") (this entire period will be called the "Advertising Period"), unless this Agreement is terminated earlier by either party.

WE HAVE THE RIGHT TO REVOKE OR TERMINATE THIS AGREEMENT AT ANY TIME FOR ANY REASON, OR NO REASON AT ALL, IMMEDIATELY UPON WRITTEN NOTICE TO YOU.

VI. ADDITIONAL PROVISIONS

The Terms and Conditions and Exhibits A through D attached hereto are a part of this Agreement and are hereby incorporated herein. Time is of the essence.

SEE EXHIBIT D

VII. TERMS AND CONDITIONS

- Condition of Advertising Location. You have inspected the Advertising Location and accept it "as is" and "where is" with no representation or warranty by Us as to its condition, or its suitability or fitness for advertising your Products. You understand that We have no obligation to improve or repair the Advertising Location unless stated otherwise elsewhere in this Agreement.
- No Exclusives. This Agreement does not give You any exclusive right to promote any particular product or service. Other occupants of the Shopping Center may sell or promote the same products or services that You do.
- Operation. You must observe and comply with all laws, ordinances, rules, regulations and code requirements. You are required to follow Our operating rules, as set forth in Exhibit A.

4. Contractors. You are responsible for any and all of Your contractors and service providers (each a "Contractor" and collectively the "Contractors") and their respective employees, agents, affiliates or subcontractors who participate in the installation, maintenance or removal of the Advertising Elements. You must provide us with a list of all proposed Contractors at least five (5) business days prior to commencement of the Advertising Period. The list shall specify the names, addresses and services to be provided by each Contractor. Only Contractors that We approve in writing will be permitted to provide services at the Shopping Center. We will not approve of, or permit, any such Contractor to perform any services at the Shopping Center, until We have received from such Contractor (i) a certificate of insurance evidencing coverage required by this Agreement, listing Owner and Agent as an additional insured, and (ii) an original of Exhibit C attached hereto, signed by an authorized representative of each Contractor, without any modification. Any exception or modification to the foregoing requirements shall be at Our sole and absolute discretion. Subject to Our approval of the Advertising Elements, We will provide to You and each authorized Contractor access to the Advertising Location during the Advertising Period in accordance with this Agreement. You and each authorized Contractor shall be allowed access to, and use of, the loading dock and parking lot at reasonable times, as determined by Us, and as needed to perform Your obligations under this Agreement.

5. Termination. Upon expiration or termination of this Agreement, no further obligations shall accrue hereunder, provided that each party will remain liable for obligations arising prior to the date of termination and for all obligations and duties thereafter as specifically provided herein. This Agreement will terminate automatically if the Advertising Location is damaged due to fire or any other event of casualty or condemnation. You will have no recourse against Us or Our affiliates as a result of any such casualty or condemnation. Upon termination of this Agreement for any reason, You must vacate the Shopping Center, and Your occupancy or activity thereafter at the Shopping Center is a trespass. **YOU HEREBY WAIVE THE RIGHT TO A TRIAL BEFORE A JURY AND THE RIGHT TO ASSERT ANY NON-COMPULSORY COUNTERCLAIMS IN ANY ACTION FOR EVICTION OR FOR PAYMENT OF SUMS DUE UNDER THIS AGREEMENT.**

6. Intellectual Property Rights. Each party owns and shall retain all right, title and interest in and to its trademarks and service marks (collectively "Marks"). Neither party shall, in any way directly or indirectly do or cause to be done any act or thing contesting or in any way challenging any part of the other party's right, title and interest in such party's Marks. You shall not, while this Agreement is in effect or thereafter, use or permit the use of Our name or the name of any affiliate of Ours, or the name, address or any picture or likeness of, or reference to, the Shopping Center in any advertising, promotional, or other materials without Our prior written consent. You agree that We may make still, digital, video and/or photographic images or recordings of the Shopping Center which may include the Advertising Elements, Your Marks and/or other materials displayed at the Shopping Center during the Advertising Period. You agree that We shall have the right to use such images or recordings for purposes of promoting the Shopping Center and marketing activities at the Shopping Center. You represent and warrant that the production, operation, broadcasting, and display of the Advertising Elements as provided in this Agreement will not violate the trademark rights, copyrights, the right of privacy or publicity or constitute a libel or slander, or involve plagiarism or violate any other rights of any person or entity.

7. Insurance. You must maintain, and require Your Contractors to maintain, as applicable, the insurance set forth in Exhibit B. By requiring insurance herein, Owner and Advertiser do not represent that coverage and limits will necessarily be adequate to protect Advertiser. The purchase of appropriate insurance coverage by Advertiser or the furnishing of certificate(s) of insurance shall not release Advertiser from Advertiser's obligations or liabilities under this License or in any way modify Advertiser's indemnification of Owner.

You hereby waive all subrogation rights of Your insurance carrier in favor of Owner and its partners, beneficiaries, trustees, officers, employees and agents with respect to the property damage insurance required to be carried hereunder. If You breach Your obligation to obtain and keep in effect any insurance required by this paragraph, You shall indemnify and hold Owner harmless against any loss that would have been covered by such insurance. The certificates required by this paragraph will provide either that (i) "Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail thirty (30) days' written notice to the Certificate Holder"; or (ii) "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions."

8. Indemnity. Except for Our gross negligence or willful misconduct, You agree to indemnify, hold harmless and defend Us, Our managing agent, and any of our respective successors, heirs and assigns and their directors, officers, employees and agents from and against all claims, actions, liabilities, damages, losses (including economic losses), costs, expenses, and liens, including but not limited to attorney's fees, arising in whole or in part out of (i) any violation of law, statute, ordinance, governmental administrative order, rule, regulation or infringement of patent, copyright or other intellectual property rights, statutory or otherwise, in association with the use of any and all materials, trademarks, logos and licenses provided by Advertiser; (ii) breach of Advertiser's obligations under this Agreement; or (iii) claims or actions arising from Your acts or omissions or the acts or omissions of Your Contractors, employees, or anyone else for whom You are responsible hereunder.

9. Waiver and Release. Unless and then solely to the extent that such damage is caused by Our negligence or willful misconduct of Owner, or that of Our management agent or any of our respective agents, servants, employees or contractors, neither We, nor Our management agent nor any of our respective agents, servants, employees or contractors shall be liable for, and You hereby waive and release all claims for loss of life, personal injury or damage to property or business sustained by You or any person claiming through You resulting from any accident, casualty or occurrence in or upon any part of the Shopping Center, including but not limited to claims or damage resulting from: any equipment or appurtenances becoming out of repair; Our failure to keep any part of the Shopping Center in repair; injury done or caused by wind, water or other natural element; any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water, steam pipes, stairs, porches, railings or walks; broken glass; the backing up of any sewer or downspout; the bursting, leaking, or running of any tank, tub, washstand, water closet, waste pipe, drain or any other pipe or tank in or about the Advertising Location; the escape of steam or hot water; water, snow or ice being upon or coming through the roof or any other place on or near the Advertising Location; the falling of any fixture, plaster, ceiling tile or stucco; damage to or loss by theft or otherwise of Your property or that of others; delay or cessation in the start or conduct of Your business; and acts or omissions of persons in the Advertising Location or other tenants or occupants of the Shopping Center. In addition, You hereby waive any and all right of recovery, claim, action or cause of action against Us, Our agents, servants, employees, invitees and contractors, for any loss or damage that may occur to the Advertising Location and any contents therein by reason of fire, the elements or any other cause which is insured or required to be insured pursuant to this Agreement, regardless of cause of origin.

10. Assignment. You may not sell, assign, mortgage, pledge, sublicense, concession, or in any manner transfer, this Agreement or any interest herein, nor sublicense or license all or any part of the Advertising Location, by operation of law or otherwise. Any unauthorized assignment shall be null and void.

11. Default. If You fail to perform any of the obligations herein, do not timely pay any sums required hereunder, or in the event We should have a dispute with You, We may immediately revoke, cancel and terminate this Agreement and remove the Advertising Elements, all at Your cost and expense, including, without limitation, attorneys' fees incurred in enforcing Our rights hereunder. You shall reimburse Us for any such costs. The remedies specifically provided for in this Agreement are cumulative and are in addition to any other remedies available to Us under applicable law.

12. Waiver. Failure by either party to require the other to perform any terms of this Agreement will not prevent the party from later enforcing that term. No term of this Agreement will be deemed waived unless waived in writing by the waiving party. If We accept a payment of any money due from You under this Agreement, We are not waiving any prior breach by You of any term of this Agreement, other than Your failure to make the particular payment that We accepted. This is true whether or not We knew that You had breached this Agreement at the time We accepted payment from You.

13. Miscellaneous. The submittal of this Agreement to You does not constitute an offer between the parties and becomes valid and effective only when signed and delivered by both parties. This Agreement supersedes all prior discussions, licenses and other agreements of the parties, oral or written, relating to the transaction represented hereby. This Agreement may be modified only by a written instrument executed by both parties. This Agreement shall be governed and construed in accordance with the laws of the state or commonwealth where the Shopping Center is located. In the event of litigation or other dispute resolution process, You agree to pay us all of our attorneys' fees and costs, in the event that we prevail in such litigation or process. We have no personal liability with respect to this Agreement. If We breach this Agreement, You can look only to Our equity in the Shopping Center to satisfy any claim against Us. We may be a party to one or more agreements with a mortgagee, beneficiary of Ours, department store, mall occupant, or other party. This Agreement is subject and subordinate to all the provisions in those agreements, as they may be amended from time to time. If any provision of this Agreement is held by the final judgment of any court of competent jurisdiction to be illegal, invalid or unenforceable, the validity of the remaining portions or provisions shall not be impaired or affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain that part, term or provision held to be illegal, invalid or unenforceable.

14. Notices. Notices to Advertiser may be sent by delivery in person, or by certified mail, return receipt requested, postage pre-paid, by express mail or delivery service, addressed to Advertiser's address(es) set forth in the first paragraph on page 1 of this Agreement, or to such other address as notified in writing by Advertiser. Notices to Owner may be sent only by delivery in person, or by certified mail, return receipt requested, postage pre-paid, or by express mail delivery service, addressed to Owner's address(es) set forth in the first paragraph on page 1 of this Agreement, or to such other address as notified in

writing by Owner. Notice will be deemed given as of the date of receipt, rejection or inability to deliver shown on the return receipt or similar advice of delivery or attempted delivery, or if delivered in person, the affidavit of the person making such delivery shall be conclusive proof of the delivery and the date and time of delivery.

15. Construction. The parties agree that this Agreement was a result of their joint representation and negotiations. IN THE EVENT THAT ANY PARTY TO THIS AGREEMENT IS NOT REPRESENTED BY AN ATTORNEY, THEY ARE HEREBY ADVISED THAT THEY SHOULD CONSULT WITH AN ATTORNEY TO REVIEW THIS VALID AND BINDING AGREEMENT. The parties hereby agree that no provision shall be construed against a particular party to this Agreement on the basis that this Agreement or any particular provision in this Agreement was proposed, negotiated or written by such party. This rule of construction is important so that none of the parties are discouraged from drafting this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their duly authorized officers or representatives on the day and year written above.

OWNER: MONTEBELLO TOWN CENTER INVESTORS LLC,
a Delaware limited liability company

ADVERTISER: City of Montebello

By: MONTEBELLO MALL MANAGEMENT PR, LLC,
a Delaware limited liability company
Its: Authorized Agent

DBA: Montebello Bus Lines

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

EXHIBIT A

1. ADVERTISING FEE

In consideration of the rights granted to Advertiser under this Agreement, Advertiser shall pay to Owner the following fees (collectively, the "Advertising Fee"):

Base Advertising Fee

[illegible]

The Base Advertising Fee and Charges listed below are due and payable on each date listed in the "Due Date" column.

[illegible]

Submission of Payments

Make checks payable to:
and send them one of the following address(es):

MONTEBELLO TOWN CENTER INVESTORS LLC
P.O. Box 748283
Los Angeles, California 90074-8283

2. DELIVERY DATE FOR ADVERTISING ELEMENTS BY ADVERTISER:
SEE EXHIBIT D

3. ADVERTISING ELEMENTS
SEE EXHIBIT D

4. INSTALLATION AND MAINTENANCE OF ADVERTISING ELEMENTS
You have the sole responsibility for the installation, maintenance and removal of certain of the Advertising Elements, as set forth in the table above. At Our request, You will provide an on-site coordinator for set-up and tear-down of the activities governed by this Agreement. The scheduling of all set up and take down is subject to Our absolute discretion. You shall submit in advance all plans related to the location of equipment, set-up and take-down, time and dates of display. You shall install the Advertising Elements which are Your responsibility (as set forth below) and promptly repair at Your sole cost and expense any damage to the Shopping Center that is caused by You or any of Your Contractors. Upon termination of this Agreement You must remove all Advertising Elements from the Shopping Center for which you are responsible, repair damage caused by such removal, and return the Advertising Location to Owner in good order, repair, and condition. If You do not do so within 48 hours of termination, We may immediately remove the Advertising Elements at Your expense. We may dispose of the Advertising Elements in any way We may deem appropriate, without obligation or liability to You or parties claiming by or through You.

If the Owner has agreed to install and maintain any of the Advertising Elements, this service will be at Your expense. If Owner is responsible for any of the Advertising Elements, Owner will remove and dispose of all Advertising Elements upon termination of this Agreement.

- 5. OPERATING RULES**
- (a) You must not market any unlawful or counterfeit goods or services, or otherwise infringe or confuse another party's trademarks, trade dress or other intellectual property rights.
 - (b) Your employees and Contractors must wear appropriate professional attire at all times while at the Shopping Center.
 - (c) You may not permit loudspeakers, televisions, radios, flashing lights or other devices to be used in a manner so as to be heard or seen outside of the Advertising Location without our prior written consent.
 - (d) You may not distribute any handbills or other advertising material at the Shopping Center or on automobiles parked in the parking lots serving the Shopping Center.
 - (e) No hazardous, flammable or combustible materials may be brought onto the Advertising Location or any other part of the Shopping Center.
 - (f) You shall furnish and pay for all labor needed to set up and take down displays, if any.
 - (g) You shall furnish the Shopping Center's Marketing Manager or General Manager with emergency telephone numbers and a forwarding address for future reference.
 - (h) You shall abide by all rules and regulations that We establish with respect to the common areas, facilities, sidewalks and tenant relations.
 - (i) No electrical wiring will be laid that would create a hazard to pedestrian traffic. Approved tape or appropriate floor covering is mandatory to secure electrical cords and must be no less than 3" in width.
 - (j) You must provide a minimum clearance of fifteen (15) feet from any store front or kiosk.
 - (k) Unless otherwise provided herein, We will not provide tools or equipment. These are Your responsibility.
 - (l) In no event will You or Your Contractors create a nuisance in the Shopping Center.

EXHIBIT B

ADVERTISING INSURANCE REQUIREMENTS

You must keep the following insurance in force with companies licensed to do business in the state or commonwealth where the Shopping Center is located, during the Advertising Period and such other times as Advertiser occupies the Advertising Location:

- (i) Commercial General Liability Insurance on the Advertising Location and the business operated in or from the Advertising Location, including coverage against assumed or contractual liability under this Agreement on the 1986 (or its current equivalent) ISO Commercial General Liability Form, with minimum limits for bodily injury, property damage or personal and advertising injury of \$1,000,000 per occurrence and \$3,000,000 general aggregate and \$1,000,000 Products/Completed Operations Aggregate;
- (ii) Workers Compensation Insurance in statutory limits for all employees and Employers Liability Insurance which affords limits of not less than \$1,000,000 each coverage and policy limit;
- (iii) "All Risk" property insurance, covering all of Advertiser's inventory, trade fixtures, furniture, furnishings, and equipment not affixed to the Advertising Location, and covering all of the improvements installed in the Advertising Location by or for the Advertiser in an amount equal to the greater of \$500,000, without co-insurance, or the full replacement cost value of all such equipment, furniture and trade fixtures;
- (iv) If You are serving alcohol at the Event, liquor liability insurance, including coverage for bodily injury or property damage with minimum limits of \$2,000,000 per occurrence and \$5,000,000 general aggregate; and
- (v) You shall maintain property insurance covering all personal property, materials and equipment that are used in connection to its Advertising Location. We will seek to cause the agreement with You to include a waiver of claims against Us, and a waiver of subrogation rights by Your insurer, for claims covered by property insurance.

All Contractors must keep the following insurance in force with companies licensed to do business in the state or commonwealth where the Shopping Center is located, during the Advertising Period and such other times as the Contractor occupies the Shopping Center:

- (i) Workers Compensation Insurance in statutory limits for all employees and Employers Liability Insurance which affords limits of not less than \$1,000,000 each coverage and policy limit;
- (ii) Employer's Liability - minimum of \$500,000 each accident; \$500,000 disease, policy limit; \$500,000 disease, per employee;
- (iii) Commercial General Liability (naming Owner and Manager as additional insureds) - \$1,000,000 per occurrence Combined Single Limit; \$2,000,000 aggregate (i.e., such insurance shall include contractual liability, personal injury protection and completed operations coverage);
- (iv) Auto Liability (if deemed appropriate by Manager) - \$1,000,000 minimum;
- (v) Property Insurance coverage for tools and equipment brought onto and/or used on the Shopping Center by the contractor – an amount equal to the replacement costs of all such tools and equipment; and
- (vi) For any Contractors that are providing armed security services for the Advertising Event, Commercial General Liability (naming Owner and Manager as additional insureds) which affords limits of not less \$2,000,000 per occurrence Combined Single Limit; \$5,000,000 aggregate (i.e., such insurance shall include contractual liability, personal injury protection and completed operations coverage, and be primary and non-contributory to coverage carried by Owner and its managing agent).

You shall deliver to Us certificates of the insurance required by this Exhibit B. The insurance company or companies providing the insurance required hereunder must have a Best Rating of A-VIII or better. You hereby waive all subrogation rights of Your insurance carrier in favor of Owner and its partners, beneficiaries, trustees, officers, employees and agents with respect to the property damage and rental loss insurance required to be carried hereunder. If You breach Your obligation to obtain and keep in effect any insurance required by this paragraph, You shall indemnify and hold Owner harmless against any loss that would have been covered by such insurance.

The certificates required by this Exhibit B will provide either that (i) "Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail thirty (30) days' written notice to the Certificate Holder"; or (ii) "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions." Your Commercial General Liability Insurance policies shall name Owner and its management agent (and any other person or entity as may be requested by Owner in writing) as additional insureds, as their respective interests may appear, and will be primary, non-contributory and not in excess of any other coverage maintained by Owner or any other party.

Showing as certificate holder:
The Shops at Montebello

- Showing as additional insured:
- 1. Montebello Town Center Investors LLC
 - 2. UBS Realty Investors LLC
 - 3. Montebello Mall Management PR, LLC
 - 4. Pacific Retail Acquisitions, LLC
 - 5. Pacific Retail Capital Partners, LLC
 - 6. Pacific Retail Holdings, LLC

EXHIBIT C

CONTRACTOR HOLD HARMLESS AGREEMENT

The undersigned, _____ ("Contractor"), in connection with the _____ ("Advertising Display") to be conducted at The Shops at Montebello, 2134 Montebello Town Center Drive, Montebello, California 90640 (the "Shopping Center") on or about _____ will indemnify, protect, defend and hold harmless Montebello Town Center Investors LLC and Montebello Mall Management PR, LLC, their parent companies, subsidiaries and affiliates, and their respective employees, officers, members, partners and directors, ("Indemnified Parties") from and against any and all claims, damages, actions, liabilities and expenses, including, without limitation, reasonable attorneys' fees and court costs arising from or in connection with the acts or omissions of the undersigned, its officers, agents, partners, affiliates, contractors, or employees (collectively "Contractor Parties") in connection with the Event and/or the presence of Contractor Parties at the Shopping Center. Contractor waives any claim against any and all of the Indemnified Parties for any damage to Contractor's property while at the Shopping Center.

Contractor: _____

Name: _____

Date: _____

If a corporation

By: _____

EXHIBIT D

(SEE ATTACHED)

GUARANTY

THIS GUARANTY (the "Guaranty") is made this 16 day of December, 2018 by the undersigned City of Montebello ("Guarantor") to and for the benefit of **MONTEBELLO TOWN CENTER INVESTORS LLC** ("Owner").

WHEREAS, Owner and , City of Montebello ("Advertiser") have entered into that certain Advertising Agreement dated the 16 of December 2018 (the "Agreement") for Advertising Location located in Montebello, California, as more fully described in the Agreement; and

WHEREAS, it is a condition precedent to all the obligations of Owner pursuant to the Agreement that Guarantor shall have executed and delivered this Guaranty.

NOW, THEREFORE in consideration of and an inducement to the execution of this Agreement by Owner, the Guarantor hereby covenants and agrees as follows:

A. The Guarantor hereby guarantees the full, faithful and timely payment and performance by Advertiser of all the payments, covenants and other obligations of Advertiser under or pursuant to the Agreement. If Advertiser shall default at any time in the payment of any Advertising Fee or any other sums, costs or charges whatsoever, or in the performance of any of the other covenants and obligations of Advertiser, under or pursuant to the Agreement, then the Guarantor, at its expense, shall on demand of Owner fully and promptly pay all Advertising Fee, sums, costs and charges to be paid by Advertiser, under or pursuant to the Agreement, and in addition shall, upon Owner's demand therefor, pay to Owner any and all sums due to Owner, including (without limitation) all interest on past due obligations of Advertiser, costs advanced by Owner, and any and all damages and expenses, which may arise as a consequence of Advertiser's default. The Guarantor hereby waives all requirements of notice of the acceptance of this Guaranty and all requirements of notice of breach or nonperformance by Advertiser.

B. The obligations of the Guarantor hereunder are independent of, and may exceed, the obligations of Advertiser. A separate action or actions may, at Owner's option, be brought and prosecuted against the Guarantor, whether or not any action is first or subsequently brought against Advertiser, or whether or not Advertiser is joined in any such action, and the Guarantor may be joined in any action or proceeding commenced by Owner against Advertiser arising out of, in connection with or based upon the Agreement. The Guarantor waives any right to require Owner to proceed against Advertiser or pursue any other remedy in Owner's power whatsoever, any right to complain of delay in the enforcement of Owner's rights under the Agreement, and any demand by Owner and/or prior action by Owner of any nature whatsoever against Advertiser, or otherwise.

C. This Guaranty shall remain and continue in full force and effect and shall not be discharged in whole or in part notwithstanding (whether prior to or subsequent to the execution hereof) any alteration, renewal, extension, modification, amendment or assignment of, or subletting, concession, franchising, licensing or permitting under, the Agreement. The Guarantor hereby waives all requirements of notice of all of the foregoing, and agrees that the liability of the Guarantor hereunder shall be based upon the obligations of Advertiser set forth in the Agreement as the same may be altered, renewed, extended, modified, amended or assigned. For the purpose of this Guaranty and the obligations and liabilities of the Guarantor hereunder, "Advertiser" shall be deemed to include any and all concessionaires, Advertisers, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Advertising Location, as fully as if any of the same were the named Advertiser under the Agreement.

D. The Guarantor's obligations hereunder shall remain fully binding although Owner may have waived one or more defaults by Advertiser, extended the time of performance by Advertiser, released, returned or misapplied other collateral at any time given as security for Advertiser's obligations (including other guaranties) and/or released Advertiser from the performance of its obligations under the Agreement.

E. This Guaranty shall remain in full force and effect notwithstanding the institution by or against Advertiser of bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or the disaffirmance of the Agreement in any such proceedings or otherwise.

F. If this Guaranty is signed by more than one party, their obligations shall be joint and several, and the release of one of such guarantors shall not release any other of such guarantors. If this Guaranty is signed on behalf of a corporation, partnership or other entity, the signer is duly authorized to execute this obligation on behalf of such corporation, partnership or other entity.

G. This Guaranty shall be applicable to and binding upon the heirs, executors, administrators, representatives, successors and assigns of Owner, Advertiser and the Guarantor. Owner may, without notice, assign this Guaranty in whole or in part.

H. This Guaranty shall be governed by and construed in accordance with laws of the state where the Advertising Location are situated. If any provision of this Guaranty or the application thereof to any person or circumstances shall, to any extent be invalid or unenforceable, such provision shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties, to the extent possible; in any event, all other provisions of this Guaranty shall be deemed valid and enforceable to the full extent. Venue shall lie in the county in which the Advertising Location are situated.

I. Owner and Guarantor desire and intend that any disputes arising between them with respect to or in connection with this Guaranty and/or Agreement be subject to expeditious resolution in a court trial without a jury. Therefore, Owner and Guarantor each hereby waive the right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or other hearing brought by either Owner against Guarantor or Guarantor against Owner or any matter whatsoever arising out of, or in any way connected with, this Guaranty, the Agreement, the relationship of Owner, Guarantor and Advertiser, any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

J. If either Owner or Guarantor institutes any action or proceeding against the other relating to the provisions of this Guaranty or the Agreement or any default hereunder, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable expenses of attorneys' fees and all costs and disbursements incurred therein by the prevailing party, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding. Subject to the provisions of local law, the prevailing party shall recover all such fees, costs or disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the necessity for a cross-action by the prevailing party.

K. Any notice, demand, request or other instrument which may be or is required to be given under this Guaranty shall be in writing and sent by (i) United States certified mail, return receipt requested, postage prepaid, (ii) telegram, mailgram, or other electronic medium using a third party carrier, (iii) United States express mail, (iv) air courier (such as Federal Express), (v) personal delivery or (vi) any other method creating a receipt, waybill or other indication of delivery, and shall be addressed (a) if to the Owner, at the address set forth below, or such other address or addresses as Owner may designate by written notice, together with copies thereof to such other parties designated by Owner and, (b) if to Guarantor, at the address set forth below, or such other address or addresses as Advertiser shall designate by written notice, provided that Advertiser's address for notice shall be a street address and not a post office box.

Owner: Montebello Town Center Investors LLC
c/o Pacific Retail Capital Partners
Attn: Gary Karl
100 N. Pacific Coast Highway, Suite 1925
El Segundo, California 90245

Owner

Advertiser

with a copy to: Montebello Town Center Investors LLC
The Shops at Montebello
2134 Montebello Town Center Drive
Montebello, California 90640

Guarantor: _____

L. Guarantor represents and warrants to Owner that Guarantor and Guarantor’s constituent Owners or affiliates are currently in compliance with, and Guarantor covenants that it shall at all times during the term of this Guaranty (including any extension thereof) be and remain in compliance with, the regulations of the U.S. Department of the Treasury Office of Foreign Asset Control (“OFAC”) and any statute, executive order (including (i) the September 23, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism, to be referred to herein as the “Executive Order”, and (ii) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, being Public Law 107-56 and sometimes referred to herein as the “USA Patriot Act”) or other governmental action relating thereto, including, without limitation, any and all other laws related to terrorism or money laundering (all of the foregoing being herein referred to collectively as the “Anti-Terrorism Laws”). Guarantor further hereby covenants with Owner that neither Guarantor nor any of Guarantor’s respective constituent Owners or affiliates is or shall be during the term of this Guaranty a “Prohibited Person”, which is defined as follows: (i) a person or entity that is listed in the Annex to, or is otherwise subject to, the provisions of the Executive Order; (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) a person or entity with whom Owner is prohibited from dealing with or otherwise engaging in any transaction by any Anti-Terrorism Law, including, without limitation, the Executive Order and the USA Patriot Act; (iv) a person or entity who commits, threatens or conspires to commit or support “Terrorism” as defined in Section 3(d) of the Executive Order; (v) a person or entity that is named as a “specially designated national and blocked person” on the then-most current list published by OFAC at its official website or at any replacement website or other replacement official publication of such list; and (vi) a person or entity who is affiliated with a person or entity listed in items (i) through (vi) above. At any time and from time to time during the term of this Guaranty, Guarantor shall deliver to Owner, within ten (10) business days after receipt of a written request therefor, a written certification or such other evidence reasonably acceptable to Owner evidencing and confirming Guarantor’s compliance with this Paragraph L. Guarantor hereby agrees to defend, indemnify and hold harmless Owner and all Owner Parties from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys’ fees and costs) arising from or related to any breach of the foregoing certification. The indemnification obligations set forth in this Paragraph L shall survive the expiration or earlier termination of this Guaranty.

M. The execution of this Guaranty prior to execution of the Lease shall not invalidate this Guaranty or lessen the obligations of the Guarantor(s) hereunder.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty this _____ day of _____, 20__.

GUARANTOR:

EXHIBIT D
MARKETING AND SPONSORSHIP COMPONENTS

For the sum of One Hundred Eighty Thousand and 00/100 dollars (\$180,000.00) for the duration of the three (3) year agreement between CITY OF MONTEBELLO (as "Licensee") and MONTEBELLO TOWN CENTER INVESTORS, LLC (as "Licensor") (collectively, the "parties") the MONTEBELLO BUS LINES will receive the following promotional elements as being designated the presenting sponsor of the indoor Soft Play Area at THE SHOPS AT MONTEBELLO:

1. The indoor Soft Play Area is located on the second level of The Shops at Montebello shopping center, outside of the Forever 21 department store entrance, and is approximately 1076 square feet in size (hereinafter the "Soft Play Area"). The Soft Play Area will have a Montebello Bus Lines component that will be the center focal point and most prominent item within the Soft Play Area.
2. Inclusion of the Montebello Bus Lines Logo on all eight (8) Light board directories within The Shops at Montebello Shopping Center. The logo shall be placed on the light board directories at locations mutually-agreed upon by both the Parties. Licensor further agrees that the logo shall be in a size and location that is easily visible to passers-by.
3. Inclusion of the Montebello Bus Lines Logo on all handheld directories that are free and accessible to the public and available at all Light board directories and the Guest Services booth. Handheld directories are also distributed during community events in which The Shops at Montebello marketing team participates.
4. Presenting sponsorship signage on the exterior and interior of the Soft Play Area. Signage will be placed at locations mutually agreed-upon by both the Licensor and the Licensee. The Licensor will be responsible for the new production, shipping, and installation of the signage at the Licensor's sole expense.

5. The sale of Montebello Bus Lines fare media and distribution of bus timetables, system map and public transit information at The Shops at Montebello Guest Services operation in Center Court.
6. The inclusion of up to two (2) Montebello Bus Lines interactive kiosks on the property of The Shops at Montebello. The kiosk(s) will provide Montebello Bus Lines route, schedule, and public transit information and will feature The Shops at Montebello directory information. Licensors is to have approval rights of the design of the kiosk content and will be location at up to two (2) locations mutually agreed-upon by both the Licensor and the Licensee. The Licensee will be responsible for the purchase, shipping, and on-going maintenance of the kiosk(s).
7. The opportunity for the Licensee one time per month for the duration of the Agreement (beginning December 16, 2018), to set up a table or booth in close proximity of the Soft Play Area and distribute information about various programs and operations. The Parties agree that stickers will not be passed out at any time for the duration of the sponsorship.
8. In consideration of the above, the Licensor will purchase \$30,000 worth of advertising annually (for a total of \$90,000 worth of advertising for the term of the Agreement) on the Montebello Bus Line buses. The Licensor will have the right to design and choose which active routes the advertising will run. The Licensor will be responsible for the creation and production of said advertising pieces, and the Licensee will install such advertising graphics, provided that the advertising pieces confirm to all of Licensee's guidelines and regulations for advertising. Licensee shall provide proof of performance to Licensor.

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

TO: Honorable Mayor and Members of City Council

FROM: Paul Talbot, Acting City Manager

BY: Tom Barrio, Director of Transportation

SUBJECT: Resolution Authorizing the Filing of Applications with The Federal Transit Administration for Federal Transportation Assistance

DATE: February 13, 2019

RECOMMENDATION

It is recommended that the City Council adopt a Resolution authorizing the filing of applications with the Federal Transit Administration for the City of Montebello, through the Montebello Bus Lines, to receive federal transportation assistance.

BACKGROUND

At the end of 2015, the Federal Transit Administration (“FTA”) launched a new platform to award and manage federal grants. The new system is called the Transit Award Management System (TrAMS). As part of TrAMS’ new legal requirements, the FTA requires that the City adopt a resolution authorizing the filing of applications for these grants. To receive funding awarded by the FTA, the City of Montebello must adopt a resolution designating the representative authorized to execute FTA grants on behalf of the City. The Acting City Manager or his/her designee is the official authorized to execute such grants.

FISCAL IMPACT

No fiscal impact to the General Fund.

SUMMARY

The City Council will consider approving the resolution authorizing the filing of applications with the Federal Transit Administration as is required for the Montebello Bus Lines to receive federal transit assistance.

ATTACHMENT

1. Resolution

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING APPLICATIONS TO THE FEDERAL TRANSIT
ADMINISTRATION FOR FEDERAL TRANSPORTATION ASSISTANCE PURSUANT
TO 49 U.S.C. CHAPTER 53, TITLE 23 OR OTHER FEDERAL STATUTES
ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION**

WHEREAS, the Federal Transit Administrator has the authority to award federal financial assistance for a transportation project;

WHEREAS, the grant or cooperative agreement for federal financial assistance will impose certain obligations upon the applicant and may require the applicant to provide the local share of the project cost; and

WHEREAS, the applicant has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
MONTEBELLO AS FOLLOWS:**

Section 1. The Acting City Manager or his/her designee is authorized to execute and file an application for federal assistance on behalf of the City of Montebello with the Federal Transit Administration authorized by 49 U.S.C. Chapter 53, Title 23, United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration.

Section 2. The Acting City Manager or his/her designee is authorized to execute and file with its applications the annual certifications and assurances and other documents the Federal Transportation Administration requires before awarding a federal assistance grant or cooperative agreement.

Section 3. The Acting City Manager or his/her designee is authorized to execute grant and cooperative agreements with the Federal Transit Administration on behalf of the City of Montebello.

Section 4. The undersigned duly qualified City Clerk, acting on behalf of the City of Montebello, shall certify to the adoption of this Resolution and enter this Resolution into the book of original resolutions and it shall become effective immediately upon its approval.

APPROVED AND ADOPTED this 13th day of February 2019 by members of the City Council of the City of Montebello.

Jack Hadjinian, Mayor Pro Tem

ATTEST:

APPROVED TO FORM:

Irma Barajas, City Clerk

Arnold M. Alvarez-Glasman, City Attorney

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

TO: Honorable Mayor and City Council Members

FROM: Paul Talbot, Acting City Manager

BY: Danilo Batson, Assistant City Manager / Director of Public Works

SUBJECT: **City Council Agenda Packets & Weekly Newsletter – Conversion to Electronic Production and Distribution**

DATE: February 13, 2019

RECOMMENDATION

That the City Council approve electronic production and distribution of City Council Agenda Packets.

BACKGROUND/ANALYSIS

The City's current method for the production and distribution of the City Council Agenda Packets (binders) and the Weekly Newsletter is costly and inefficient. Currently, staff must copy the usually voluminous agenda, place each agenda in 3-ring binders and then deliver the binders to each City Councilmember, the City Clerk, the Deputy City Clerk, the City Manager, the City Treasurer and the City Attorney. The Weekly Newsletter is copied and delivered to City Councilmembers every week, regardless of whether there is a City Council Meeting or not.

Annually, the City spends approximately \$14,614.08 (not including paper and leased copier and vehicle fuel used in the delivery of the packets), as shown in the table below.

**Estimated Labor Cost to Copy & Distribute City Council Agenda (approx. 26 times per year) and
Weekly City Council Newsletter (52 times per year)**

Positions	Combined Hourly Wage	Approx. No. of Hours per Occurrence	Estimated No. per Calendar Year	Totals
CITY COUNCIL AGENDA				
Labor to copy and package agenda (4 employees)	\$134.35	3	26	\$10,479.30
Labor to deliver packets	\$33.80	2.5	26	\$2,197.00
			SUBTOTAL	\$12,676.30
CITY COUNCIL WEEKLY NEWSLETTER				
Labor to copy and package weekly newsletter	\$23.83	0.50	52	\$619.58
Labor to deliver packets	\$33.80	1.5	26	\$1,318.20
			SUBTOTAL	\$1,937.78
			TOTAL	\$14,614.08*

*Labor Cost only, does not include paper, leased copier, vehicle depreciation and vehicle fuel cost.

Many surrounding municipalities have purchased Apple iPads to produce and deliver agenda packets, which has proven to be more cost effective and economical. The estimated one-time cost, to produce and distribute City Council Agenda and Weekly Newsletter to City Council, is \$17,274.72 (including iPads or Microsoft-equivalent for 8 Department Directors).

By changing to iPads, the City will be savings approximately \$1,217.84 per month of staff time, which means that the iPads will be fully paid in approximately 14 months after implementation. In subsequent years, there would be almost no cost, except for occasional replacement needs.

iPads for City Council Agenda

Positions	No.	I-Pad Cost per unit*	Totals
City Council Member	5	\$1,016.16	\$5,080.80
City Clerk	1	\$1,016.16	\$1,016.16
City Treasurer	1	\$1,016.16	\$1,016.16
City Manager	1	\$1,016.16	\$1,016.16
Deputy City Clerk	1	\$1,016.16	\$1,016.16
Department Directors	8	\$1,016.16	\$8,129.28
		TOTAL	\$17,274.72

*11-inch I-Pad Pro, with 2-year AppleCare and taxes

FISCAL IMPACT

The cost to purchase seventeen (17) iPads as indicated above can be absorbed in the FY 2018/19 Maintenance & Operation Budget Finance Department – Information Technology, Account No. 100-40-420-6010.50 (16 units); and Transit Department – Information Technology, Account No. 600-90-6010.50 (1 unit).

SUMMARY

The City Council will consider approving the electronic production and distribution of City Council Agenda Packets and Weekly Newsletter to streamline and reduce overall cost, by purchasing i-Pads for City Councilmembers, City Clerk, City Treasurer, Acting City Manager, Deputy City Clerk and Department Directors at a one-time cost of \$17,274.72.

CITY OF MONTEBELLO
CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Paul Talbot, Acting City Manager

BY: Bob Franco, Director of Human Resources

SUBJECT: Continuation of CalPERS Contributions

DATE: February 13, 2019

RECOMMENDATION

Staff recommends that the City Council approve the attached resolution and side letter agreements, substantially in form, continuing the CalPERS Contributions for non-represented classic member employees, for non-safety and safety units, during the City's labor negotiations with the various employee organizations.

BACKGROUND/ANALYSIS

For the past several years, the City has agreed and contributed 8% (non-safety) and 9% (safety) of the employee member contribution to CalPERS for all employee organizations' classic CalPERS members. The applicable employee organizations are: Unrepresented Employees, SMART-TD UTU, Montebello City Employees Association, Montebello Supervisor's Association, Montebello Mid-Management Association, Montebello Police Officers Association, Montebello Police Management Association, Montebello Firefighters Association, and Montebello Fire Management Association.

Currently, labor negotiations between the City and the various employee organizations are underway. As a sign of good faith and understanding, it is recommended that the City contribute the classic CalPERS members' employee member contributions at the outset of these negotiations. Upon authorization from the City Council, the Acting City Manager will have signing authority to execute side letter agreements for each bargaining unit to reflect this limited continuation of CalPERS contribution to April 30, 2019, while labor negotiations continue.

Staff is recommending that the City Council approve the non-represented resolution indicating the City's desire and willingness to continue the CalPERS contribution for classic CalPERS members in each of the other employee organizations for the limited period of March 1, 2019 to April 30, 2019.

FISCAL IMPACT

The proposed CalPERS contributions will be paid solely from the Retirement Special Revenue Fund, as codified in Montebello Municipal Code Section 3.28.020 and the Transit Enterprise Fund where applicable. No General Fund revenues will be used to pay for the CalPERS contributions.

SUMMARY

The City Council will consider approval of the resolution and side letter agreements continuing the CalPERS contributions for employees while labor negotiations are underway between the City and the various employee organizations.

ATTACHMENTS

Non-Represented Resolution
Sample Side Letter Agreement – (8%) Non-Safety
Sample Side Letter Agreement – (9%) Safety

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MONTEBELLO ESTABLISHING MODIFICATIONS TO TERMS AND
CONDITIONS OF EMPLOYMENT AFFECTING DESIGNATED
NON-REPRESENTED EMPLOYEES**

**THE CITY COUNCIL OF THE CITY OF MONTEBELLO DOES RESOLVE
AS FOLLOWS:**

SECTION 1. EMPLOYEE CALPERS CONTRIBUTION - The City has agreed to contribute 8% (non-safety) and 9% (safety) of the employee member contribution to CalPERS for all non-represented classic CalPERS members for the limited period of March 1, 2019 to April 30, 2019. All such member contributions will be paid solely from funds from the Retirement Special Revenue Fund, as codified in Montebello Municipal Code section 3.28.020 and the Transit Enterprise Fund where applicable. The Parties agree that in no event shall General Fund revenues be obligated to pay the employee member contribution to CalPERS.

This benefit shall consist of paying 8% (non-safety) and 9% (safety) of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable (excluding Government Code Section 20636(c)(4)) as additional compensation.

That the City Clerk shall certify to the adoption of this Resolution and distribute copies of the Resolution to the Director of Human Resources and the Director of Finance and that the same shall be in full force and effect.

APPROVED AND ADOPTED this 13th day of February 2019.

Jack Hadjinian, Mayor ProTem

ATTEST:

APPROVED AS TO FORM:

Irma Barajas, City Clerk

Arnold M. Alvarez-Glasman,
City Attorney

SAMPLE SIDE LETTER OF AGREEMENT

Between THE CITY OF MONTEBELLO

and

THE MONTEBELLO BARGAINING UNIT / NON-SAFETY

WHEREAS, the City of Montebello (“City”) and The Montebello Bargaining Unit (“XXXX”) are Parties to a current Side Letter Agreement identified as Agreement No. XXXX;

WHEREAS, the current Side Letter Agreement includes a provision that addresses the City’s obligations with respect to its contributions towards the employee member contribution to CalPERS retirement benefits for eligible employees;

WHEREAS, the City’s obligation under the current Side Letter Agreement to make contributions to the employee member contribution for eligible employees does not continue after February 28, 2019;

WHEREAS, at the expiration of the current Side Letter Agreement, the Parties desire to establish a new obligation in the form of a new Side Letter Agreement for the City to contribute to the employee member contribution for the limited period of March 1, 2019 to April 30, 2019; and

WHEREAS, the undersigned Parties are authorized representatives of the City and UNIT.

THEREFORE, the Parties acknowledge and agree to the following:

1. Effective March 1, 2019, the City agrees to contribute the entire employee member contribution equal to 8% of pensionable income to CalPERS for all classic members in the bargaining unit from March 1, 2019 to April 30, 2019. All such contributions shall be paid solely from the Retirement Special Revenue Fund, as codified by Montebello Municipal Code section 3.28.020. The Parties agree that in no event shall General Fund revenues be obligated to pay the employee member contribution to CalPERS. The City will no longer make contributions toward the employee member contribution to CalPERS after April 30, 2019, unless mutually agreed upon by the Parties.
2. Any new members in the bargaining unit considered “New CalPERS members” under the Public Employees’ Pension Reform Act (PEPRA), shall continue to pay their obligatory “half the normal cost.” The City is prohibited by PEPRA from paying any portion of the member contribution for New CalPERS members.
3. The Parties agree that this new Side Letter of Agreement does not constitute a waiver of any other rights regarding the mutual obligation to meet and confer over the terms and conditions of employment for a successor MOU.

THE BARGAINING UNIT

By:_____

Name
President

Date:_____

CITY OF MONTEBELLO

By:_____

Paul Talbot
Acting City Manager

Date:_____

Approved as to form:

Arnold M. Alvarez-Glasman
City Attorney

ATTESTED:

Irma Barajas
City Clerk

SAMPLE SIDE LETTER OF AGREEMENT

Between THE CITY OF MONTEBELLO

and

THE MONTEBELLO BARGAINING UNIT / SAFETY

WHEREAS, the City of Montebello (“City”) and The Montebello Bargaining Unit (“XXXX”) are parties to a current Side Letter Agreement identified as Agreement No. XXXX;

WHEREAS, the current Side Letter Agreement includes a provision that addresses the City’s obligations with respect to its contributions towards the employee member contribution to CalPERS retirement benefits for eligible employees;

WHEREAS, the City’s obligation under the current Side Letter Agreement to make contributions to the employee member contribution for eligible employees does not continue after February 28, 2019;

WHEREAS, at the expiration of the current Side Letter Agreement, the Parties desire to establish a new obligation in the form of a new Side Letter Agreement for the City to contribute to the employee member contribution for the limited period of March 1, 2019 to April 30, 2019; and

WHEREAS, the undersigned Parties are authorized representatives of the City and UNIT.

THEREFORE, the Parties acknowledge and agree to the following:

1. Effective March 1, 2019, the City agrees to contribute the entire employee member contribution equal to 9% of pensionable income to CalPERS for all classic members in the bargaining unit from March 1, 2019 to April 30, 2019. All such contributions shall be paid solely from the Retirement Special Revenue Fund, as codified by Montebello Municipal Code section 3.28.020. The Parties agree that in no event shall General Fund revenues be obligated to pay the employee member contribution to CalPERS. The City will no longer make contributions towards the employee member contribution to CalPERS after April 30, 2019, unless mutually agreed upon by the Parties.
2. Any new members in the bargaining unit considered “New CalPERS members” under the Public Employees’ Pension Reform Act (PEPRA), shall continue to pay their obligatory “half the normal cost.” The City is prohibited by PEPRA from paying any portion of the member contribution for New CalPERS members.
3. The Parties agree that the new Side Letter of Agreement does not constitute a waiver of any other rights regarding the mutual obligation to meet and confer over the terms and conditions of employment for a successor MOU.

THE BARGAINING UNIT

By:_____

Name
President

Date:_____

CITY OF MONTEBELLO

By:_____

Paul Talbot
Acting City Manager

Date:_____

Approved as to form:

Arnold M. Alvarez-Glasman
City Attorney

ATTESTED:

Irma Barajas
City Clerk

CITY OF MONTEBELLO

CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Paul Talbot, Acting City Manager

BY: Robert Mescher, Finance Director

SUBJECT: **Ordinance Amending Chapters 3.20 and 3.21 of the Montebello Municipal Code Relating to Procurement**

DATE: February 13, 2019

RECOMMENDATION

That the City Council Approve the Ordinance Amending Chapters 3.20 and 3.21 of the Montebello Municipal Code Relating to Procurement.

BACKGROUND

The City's Municipal Code contains local laws regarding City procurements, including limits to various procurements, in Chapters 3.20 and 3.21. There are three other administrative documents in addition to Resolution 17-40 and Municipal Code Chapters 3.20 and 3.21 that provide guidance and limits for procurements. The documents are Administrative Policies VI-B-1 and VI-B-2 and Standard Operating Procedure 600. These documents, when analyzed together, have contradicting and confusing limits and procedures.

The 2018 State Audit requires these policies and procedures be updated to reflect best practices in purchasing and procurement, and to resolve ambiguities and inefficiencies.

As a first step, the City Council rescinded Resolution 17-40 at the January 23, 2019.

The policies and procedures in the attached Ordinance to Amend Chapters 3.20 and 3.21 will be more clear and efficient, and will supersede the prior Administrative Policies and Standard Operating Procedures.

ANALYSIS

The proposed amendments are:

3.20.050 (E) Bidding Procedures – Requires contracts to not exceed five years.

3.20.060 (A) Purchase Orders – Increases the limit from \$500 to \$2,000 for procurements requiring a purchase order, and clarifies additional exceptions. The existing limit of \$500 is inefficient because it causes delays in procurement and administrative costs for approval.

3.20.060 (C) Purchase Orders – Allows the Finance Director to authorize variances of the original purchase order price up to 10% for unanticipated costs.

3.20.060 (D) Purchase Orders – Requires commitments to not exceed five years.

3.20.080 Formal Contract – Clarifies that Public Contract Code requires a formal bid process for public works contracts of \$5,000 or more, and increases the limit from \$25,000 to \$50,000 for all other contracts.

3.20.080 (H) Formal Contract – Requires contracts to not exceed five years.

3.20.090 Open Market (Informal Bids) – Clarifies that Public Contract Code requires a formal bid process for public works contracts of \$5,000 or more, and increases the limit from \$25,000 to \$50,000 for all other contracts.

3.20.090 (H) Open Market (Informal Bids) – Requires contracts to not exceed five years.

3.20.140 Federally Funded Procurement – Clarifies that the federal government grants require the City to verify that contracting entities are not debarred from federally funded procurements.

3.21 Professional Services – Requires contracts to not exceed five years.

These amendments will implement best practices in purchasing and procurement, and resolve ambiguities and inefficiencies.

FISCAL IMPACT

There is no significant direct fiscal impact with this item.

SUMMARY

The proposed Municipal Code amendments will increase internal controls, reduce the risk of noncompliance with regulating agencies and grantors, while decreasing the processing time and labor costs to procure goods and services.

ATTACHMENTS

Attachment 1 – Ordinance

Attachment 2 – Purchasing Guideline

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MONTEBELLO, CALIFORNIA, AMENDING
CHAPTERS 3.20 AND 3.21 OF THE MONTEBELLO
MUNICIPAL CODE RELATING TO PROCUREMENT**

WHEREAS, the City of Montebello (“City”) is a general law city, incorporated under the laws of the State of California, and has the power to make and enforce within its jurisdictional limits all local, purchasing, police, sanitary, and other ordinances and regulations not in conflict with general laws of the state; and

WHEREAS, collectively, Chapters 3.20 and 3.21 of the Montebello Municipal Code encompass the City’s purchasing policies and procedures; and

WHEREAS, the City’s purchasing policies and procedures require periodic updates to reflect best practices in purchasing and procurement, and to resolve current ambiguities and inefficiencies;

WHEREAS, the City Council has already taken steps to resolve some of its procurement ambiguities and inefficiencies by rescinding Resolution 17-40 at its January 23, 2019 meeting;

WHEREAS, the City Council desires to amend the City’s purchasing policies and procedures in Montebello Municipal Code Chapters 3.20 and 3.21 to reflect best practices in purchasing and procurement, and to further resolve current ambiguities and inefficiencies.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTEBELLO
DOES ORDAIN AS FOLLOWS:**

SECTION 1. Incorporation of Recitals

The City Council for the City of Montebello, based on the entire record before it, finds and declares that the foregoing recitals are true and correct, and incorporates said recitals fully into this Ordinance as substantive findings.

SECTION 2. Chapter 3.20, titled “Purchasing System,” of the Montebello Municipal Code, is hereby amended to read as follows in its entirety:

Chapter 3.20 - PURCHASING SYSTEM

3.20.010 - Adoption—Purpose.

In order to establish efficient procedures for the purchase of supplies and equipment, to secure the city supplies and equipment at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function and to assure the quality of purchases, a purchasing system is adopted.

3.20.020 - Purchasing officer.

The director of finance shall be ex officio purchasing officer under the direction of the city manager and the words "purchasing officer" as used in this chapter shall be deemed to refer to the director of finance or his or her duly authorized designee. The purchasing officer shall have the duty and authority to:

- A. Purchase or contract for supplies and equipment required by any using agency in accordance with purchasing procedures prescribed by this chapter, such administrative regulations as the purchasing officer shall adopt and such other rules and regulations as shall be prescribed by the city council;
- B. Negotiate and recommend execution of contracts for the purchase of supplies and equipment;
- C. Act to procure for the city the needed quality in supplies and equipment at least expense to the city;
- D. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;
- E. Prepare and recommend to the city council rules governing the purchase of supplies and equipment for the city;
- F. Prepare and recommend to the city council revisions and amendments to the purchasing rules;
- G. Keep informed of current developments in the ~~filed field~~ of purchasing, prices, market conditions and new products;
- H. Prescribe and maintain such forms as are reasonably necessary to the operation of this chapter and other rules and regulations;
- I. Supervise the inspection of all supplies and equipment purchased to insure uniform conformance with specifications;
- J. Recommend the transfer of surplus and unused supplies and equipment between departments as needed and the sale of all supplies and equipment which cannot be used by any agency or which have become unsuitable for city use;
- K. Maintain a bidders' list, vendors' catalog file and records needed for the efficient operation of the purchasing department.
- L. Maintain a list of duly authorized designees and the authorization limits, which shall be less than fifty thousand dollars for each designee.

3.20.030 - Exemptions from centralized purchasing.

The purchasing officer, with approval of the city council, may authorize, in writing, any agency to purchase or contract for specified supplies and equipment independently of the purchasing department, but he shall require that such purchases or contracts shall be made in conformity with the procedures established by this chapter and shall further require periodic reports from the agency on the purchases and contracts made under such written authorization.

3.20.040 - Requisitions.

Using agencies shall submit requests for supplies and equipment to the purchasing officer by standard requisition forms.

3.20.050 - Conformance with bidding procedures.

Purchases of supplies and equipment for city use shall be made and accomplished in conformity with Section 3.20.080 or Section 3.20.090 except:

- A. When an emergency, as determined by the purchasing agent with the approval of the city manager, is deemed to require that an order be placed with the nearest available source of supply; or
- B. When the supplies and equipment needed can be obtained from one source only; or
- C. When the city council by a four-fifths vote determines to dispense with such bidding and other procedures required by the above-mentioned sections in every individual instance upon a finding by the council that it would be impractical, useless, or uneconomical in such instance to follow the procedures, and that the welfare of the public would be promoted by dispensing with the same; or
- D. When the amount of the purchase involved is less than ~~twenty-five~~ fifty thousand dollars.
- E. Notwithstanding the exceptions under this Section, no commitment or contract term may exceed five years.

3.20.060 - Use of purchase orders.

- A. The purchase of goods and services including contracts totaling ~~five hundred~~ two thousand dollars or more shall be made by purchase order. Exceptions may be processed by request for warrant and shall be limited to dues and subscriptions; travel and meeting expense, telephone, utility, and postal services; pay for elected officials, commissions, police reserve and auxiliary firefighters; legal fees, FICA, PERS, employee group insurance, workers' compensation premiums, claims and expenses; insurance premiums, claims and expenses; reimbursements, refunds and replenishment of petty cash funds; contracts; debt payments; and payments to other government agencies.
- B. Also exempted is the purchase of inventory stock replenishment for all stores materials. Such purchases shall be transacted with a purchase requisition form.
- C. The Finance Director may authorize any variance up to 10% of the original purchase order price, in addition to sales tax and shipping.
- D. No commitment or contract term may exceed five years.

3.20.070 - Unencumbered funds required for purchase order issuance.

Except in cases of emergency, the purchasing officer shall not issue any purchase order for supplies or equipment unless there exists an unencumbered appropriation in the fund account against which the purchase is to be charged.

3.20.080 - Formal contract procedure.

Except as otherwise provided herein, purchases and contracts for supplies and equipment of an estimated value of five thousand dollars or more for a public project as defined by Section 20161 of the Public Contract Code, and fifty ~~twenty five~~ thousand dollars or more for contracts which do not constitute a public project as defined by Section 20161 of the Public Contract Code, shall be by written contract with the lowest responsible bidder pursuant to the procedure prescribed herein.

- A. Notice Inviting Bids. Notices inviting bids shall include a general description of the articles to be purchased, shall state where bid blanks and specifications may be secured and the time and place for opening bids.
 - 1. Published Notice. Notices inviting bids shall be published at least ten days before the date of opening of the bids. Notice shall be published at least once in a newspaper of general circulation, printed and published in the city, or if there is none, it shall be posted in at least three public places in the city that have been designated by ordinance as the places for posting public notices.
 - 2. Bidders' List. The purchasing officer shall also solicit sealed bids from all responsible prospective suppliers whose names are on the bidders' list or who have requested their name be added thereto.
 - 3. Bulletin Board. The purchasing officer shall also advertise pending purchases by a notice posted on a public bulletin board in the city hall.
- B. Bidders' Security. When deemed necessary by the purchasing officer, bidders' security may be prescribed in the public notices inviting bids. Bidders shall be entitled to return of bid security; provided that a successful bidder shall forfeit his bid security upon refusal or failure to execute the contract within ten days after the notice of award of contract has been mailed, unless the city is responsible for the delay. The city council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the city council awards the contract to the next lowest bidder, the amount of the lowest bidders' security shall be applied by the city to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.
- C. Bid Opening Procedure. Sealed bids shall be submitted to the purchasing officer and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty calendar days after the bid closing.
- D. Rejection of Bids. In its discretion, the city council may reject any and all bids presented and re-advertise for bids.
- E. Award of Contracts. Contracts shall be awarded by the city council to the lowest responsible bidder except as otherwise provided herein.
- F. Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay or re-advertising for bids, the city council may accept the one it chooses or accept the lowest bid made by negotiation with the tie bidders at the time of bid opening.
- G. Performance Bonds. The city council shall have authority to require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interests of the city. If the city council requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.
- H. No commitment or contract term may exceed five years.

3.20.090 - Open market procedure.

Purchases of supplies and equipment of an estimated value in the amount of less than five thousand dollars for a public project as defined by Section 20161 of the Public Contract Code, and fifty ~~twenty-five~~ thousand dollars or less for contracts which are not for a public project as defined by Section 20161 of the Public Contract Code, may be made by the purchasing officer in the open market without observing the procedure prescribed by Section 3.20.080.

- A. Minimum Number of Bids. Open market purchases shall, wherever possible, be based on at least three bids, and shall be awarded to the lowest responsible bidder.
- B. Notice Inviting Bids. The purchasing officer shall solicit bids by written requests to prospective vendors or by telephone or by public notice posted on a public bulletin board in the city hall.
- C. Written Bids. Written bids or quotations shall be submitted to the purchasing officer who shall open them and keep a record of all open market orders and bids for a period of one year after the submission of bids or the placing of orders. This record, while so kept, shall be open to public inspection.
- D. No commitment or contract term may exceed five years.

3.20.100 - Inspection and testing.

The purchasing officer shall inspect supplies and equipment delivered to determine their conformance with the specifications set forth in the order or contract. The purchasing officer shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

3.20.110 - Bidding procedure prescribed.

Whenever bids are required by law or by this code for the letting of contracts, the doing of work or the furnishing of supplies, equipment or materials, all of the steps, acts and proceedings required by law or by this code shall be fully complied with, and in particular and supplementary to the acts, steps and procedures, the procedure hereinafter set forth in this section regulating the notices inviting bids, the publication and posting of the notices, and the opening of the bids shall be followed:

- A. Notice—Contents. The notice inviting bids shall set a date for the opening of bids. All such notices, whether mailed, published, or posted, shall state the date, the hour, and the place at which the bids called for are to be opened, and shall also state the date, the hour, and the place of the council meeting at which the city council intends to take action on the bids.
- B. Bids—Opening. All bids shall be returnable to the purchasing officer or to the office of the city clerk, and at the hour and date stated in the notice, all bids shall be publicly opened at the office of the city clerk in the presence of the city clerk, purchasing officer, a representative of the department, or departments, to which the purchase or contract is to be charged, and all other interested parties who wish to attend and witness the opening of the bids. As each bid is opened, it shall be read aloud so that all persons interested in the bidding may hear the contents thereof, although no more of the bid need be read or announced than would ordinarily be announced in an open council meeting for the same purpose. From and after the time of their opening, the city clerk shall, upon request of any interested party, read or give such further information from the bid as may be requested.
- C. Bids—Compiling. After they have been opened, all bids shall be examined and studied by the city clerk, purchasing officer and any other officials necessary for the proper analysis of the bids to see if they comply with the notice inviting bids and are in all other respects in good order. A report shall then be made by the appropriate department to the city council announcing the results of the investigation and particularly designate which bid is found to be the lowest bid, the next lowest bid, and all of the other bids in ascending order of the figure or figures quoted.

- D. Bids—Report—Awarding.
 - 1. At the meeting of the city council at which the bids are acted upon, the report shall be read publicly and the bid of the lowest bidder shall be publicly announced.
 - 2. After having complied with the foregoing procedure, the city council shall proceed in accordance with applicable provisions of law or this code either to award the bid and to let the contract therein referred to, or to take such other action as may be authorized by law.
- E. Officer—Deputies. In the absence of the city clerk or purchasing officer, a duly authorized assistant or deputy may act in his place.

3.20.120 - Joint purchasing agreements.

- A. Whenever the council finds that the public interest and convenience require, it may enter into joint purchasing agreements for the acquisition of city supplies and equipment, with any other public agency; provided, that such agreements are authorized by the laws of the state.
- B. The provisions of this chapter shall not apply to purchases made under such an agreement; provided, that the council shall, by resolution, prior to the execution of such an agreement, establish rules for administrative practices to be followed by the purchasing agent with respect to such joint purchasing agreements.

3.20.125 – Piggybacking purchasing agreements.

- A. The purchasing officer may arrange for the City and enter into purchase contracts with a vendor(s) for the purchase of supplies, equipment, services, including but not limited to materials, vehicles and apparatus, the pricing and terms of which have been previously established by another local, County, State, federal or other public entity, school district, League of California Cities, California Communities Program, or other nonprofit association or group consisting of governmental entities, provided that:
 - 1. The purchase contract with the vendor(s) is the result of competitive bidding or negotiation and is made in compliance with the competitive bid or proposal requirements of any participating entity or organization; and
 - 2. The purchase is made within two years of the competitive bid or negotiation; and
 - 3. The purchase conforms to the City's specifications for the item or service; and
 - 4. The estimated price of the purchase is lower than that estimated for the purchase if made directly by the City pursuant to this chapter.
- B. Notwithstanding subsection 3.20.125(A), approval of a "piggyback" purchasing agreement pursuant to this section shall be obtained from City Council for an award of a purchase in an amount exceeding \$50,000.

3.20.130 - Local vendor preference.

- A. Whenever practical, the purchasing officer shall first ascertain the availability of goods and services from responsible local sources within city limits before considering outside sources and, if available, shall (as provided for in Section 3.20.050) solicit formal and/or informal bids from responsible local sources seeking the best price, quality, and delivery possible that best serves the interests of the city.
- B. The purchasing officer may seek competitive pricing outside the city when it is determined that the best interests of the city related to price, quality and delivery will not be served by local sources.
- C. The purchasing officer may establish competitively priced purchase agreements, open purchase, and blanket purchase orders with responsible local vendors via written quotes or negotiated agreement as provided for in Section 3.20.050.

- D. For purposes of determining final cost, Montebello vendors may be allowed a one percent allowance in determination of low bid based upon estimated sales and business tax return and local service convenience, except when such an allowance is prohibited by the grantor of funds to purchase such goods and services. All requests for sealed bids must include notification of local vendor allowance.

3.20.140 – Federally Funded Procurement.

Procurement of goods and services with Federal funds shall be in compliance with Title 2 U.S. Code of Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under Procurement Standards section 317 – 326. Prior to awarding a contract, the U.S. Government Services Administration's System for Award Management (SAM) will be searched. Any debarred entities will be disqualified from providing goods and services to the City.

SECTION 3. Chapter 3.21, titled “Contracts for Professional and Special Services,” of the Montebello Municipal Code, is hereby amended to read as follows in its entirety:

Chapter 3.21 - CONTRACTS FOR PROFESSIONAL AND SPECIAL SERVICES

Sections:

3.21.010 - Definitions.

For purposes of this chapter, the following words shall have the following meanings:

"Professional/special services" means services which require special performance criteria; special or specific equipment; specific experience, knowledge, training, personal judgment, quality of work or factors other than simply obtaining the service at the lowest cost to the city. Such services include, but are not limited to, those provided by attorneys, architects, engineers, land surveyors, construction managers, appraisers, experts, accounting firms, security firms, computer consultants/programmers and/or other specialized consultants. Professional/special services do not include services rendered by city officers or employees.

3.21.020 - Experience and qualifications of professional/special service providers.

- A. In contracting for professional/special services, such contracts should only be awarded to firms or persons who have demonstrated adequate levels of experience, competence, resources/equipment, staffing and other professional qualifications necessary for more than a satisfactory performance of the services required in the time period needed.
- B. Once the department requesting the professional/special service has determined a firm has an adequate level of competence, the cost of the service may be considered, however, price may not be the sole factor in determining to whom a contract shall be awarded. The city's best interests may be served by awarding the contract to a higher priced contractor based on the scope of services available, unique skills, staffing levels, timing, prior experience, past working relationship, and other factors required by the department or proposed by the contractor.
- C. No commitment or contract term may exceed five years.

3.21.030 - Request for proposals.

The acquiring of professional/special services shall be procured through a negotiated contract and should include a request for proposals ("RFP").

3.21.040 - Decentralized bid solicitation.

Soliciting bids for professional/special services is decentralized and shall be the responsibility of the department director requesting the service; however, the city manager may be contacted to assist with bids requiring the formal sealed RFP process set forth in Section 3.21.060.

3.21.050 - Contracts for less than fifty thousand dollars ~~or less~~.

The following procedure shall be used when seeking professional/special services estimated to have an annual cost of less than fifty thousand dollars ~~or less~~.

- A. In nonemergency situations, the requesting department should contact a minimum of three consultants or firms.
- B. Unless the city council authorized the entering into or the award of a specific contract for professional/special services, the city manager shall approve in writing the award of all such contracts, taking into consideration the recommendation of the department director requesting the professional/special services at issue.
- C. The city manager or his or her duly authorized designee is authorized to approve professional/special service contracts with an annual estimated cost of less than fifty thousand dollars ~~or less~~.

3.21.060 - Contracts ~~over~~ of fifty thousand dollars or more.

The following procedure shall be used when seeking professional/special services estimated to have an annual cost of ~~in excess~~ fifty thousand dollars or more.

- A. In nonemergency situations, departments should utilize the following formal sealed RFP process:
 - 1. A formal sealed RFP template should be developed for solicitation of professional services contracts of ~~over~~ fifty thousand dollars or more.
 - 2. The department should advertise in appropriate publications and/or use the professional services listings, as available, during the solicitation process.

3. Notice inviting RFP's should be posted at city hall and on the city's website at least fourteen calendar days before the due date of submission of the RFP.
 4. The notice shall at least describe the general type of service needed, how the RFP minimum scope of work can be obtained, the requirement of a written sealed proposal, state the closing date, place, and time for submission of the RFP.
 5. Sealed request for proposals should be submitted directly to the requesting department and need not be opened publicly.
 6. Departments shall analyze proposals for compliance with RFP requirements, value of the total scope of services and make a recommendation to city council for selection or for follow up interviews with those consultants/firms submitting proposals.
- B. Contracts for professional/special services of ~~in excess~~ fifty thousand dollars or more require the approval of the city council and the signature of the mayor, or in his or her absence, the mayor pro tempore, pursuant to the provisions of Gov. Code Sections 40601 and 40602.
- C. Contracts for professional/special services should be on the city's standard form and shall be reviewed and approved as to form by the city attorney.
- D. No commitment or contract term may exceed five years.

3.21.070 - City manager authority to execute certain contracts.

The city manager or his or her duly authorized designee shall be authorized to sign on behalf of the city all contracts for professional/special services, which are less than ~~do not exceed~~ a total contract amount of fifty thousand dollars in any one fiscal year period.

3.21.080 - Splitting purchases or contracts—financial interest prohibited.

- A. No officer or employee of the city or its agencies shall split or separate a purchase/procurement of professional/special for the purpose of evading the dollar amount bid threshold provisions of this chapter. The acquisition of professional/special services should be made with a single contract covering all services to be provided.
- B. No city employee who participates in the selection or approval of a professional/special service provider, nor any person who has supervisory responsibility for any such employee, shall have a financial interest in any professional/special service provider business entity under consideration.

SECTION 4. CEQA. The City Council, on the basis of the whole record and exercising independent judgment, finds that this Ordinance is not subject to environmental review pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State Guidelines for Implementation of the California Environmental Quality Act ("CEQA"). Sections 15060(c)(2) and 15060(c)(3) pertain to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a project under Section 15378. The operation and establishment of a commercial cannabis establishment in the City will be subject to future discretionary approval(s) by the Planning Commission and/or City Council.

SECTION 5. SEVERABILITY. If any section, 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. The City Council of the City of Montebello hereby declares that it would have passed 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.

PASSED, APPROVED AND ADOPTED this ____that day of _____, 2019.

Jack Hadjinian, Mayor Pro Tem

APPROVED AS TO FORM:

ATTEST:

Arnold M. Alvarez-Glasman
City Attorney

Irma Barajas
City Clerk

Formatted: Spanish (International Sort)

City of Montebello Purchasing Guideline History and Recommendation as of February 13, 2019

Procurement Element	1987 VI-B-1	2008 Code 3.20 & 3.21	June 2017 Res 17-40	August 2017 VI-B-2 (Fed)	June 2018 SOP 600	Amendments to Municipal Code
PO Required	\$ 500 or more	\$ 25,000 or more	N/A	N/A	\$ 500 or more	\$ 2,000 or more
PO Exceptions	Dues, subscriptions, travel, utilities, legal, payroll related, insurance claims, inventory; credit card charges for gasoline and telephone	Dues, subscriptions, travel, utilities, legal, payroll related, insurance claims, inventory	N/A	N/A	Dues, subscriptions, travel, utilities, legal, payroll related, insurance claims, inventory	Dues, subscriptions, travel, utilities, legal, payroll and related, insurance premiums and claims, refunds, contracts, elected officials' pay, debt, other government agencies, and emergencies
Formal RFP/Bid						
Professional Services	\$ 5,000 or more	Greater than \$ 50,000	Greater than \$ 50,000	\$ 100,000 or more	N/A	\$ 50,000 or more
Public Works	\$ 5,000 or more	Greater than \$ 5,000	Greater than \$ 5,000	\$ 100,000 or more	Greater than \$ 5,000	\$ 5,000 or more
All other	\$ 5,000 or more	Greater than \$ 25,000	Greater than \$ 25,000	\$ 100,000 or more	\$ 25,000 or more	\$ 50,000 or more
Informal RFP/Bid/Quote						
Professional Services	Less than \$ 5,000	\$ 50,000 or less (min 3	\$ 50,000 or less (min 3)	Between \$3K & \$100K	N/A	Between \$2K & \$50K
Public Works	Less than \$ 5,000	\$ 5,000 or less (min 3	\$ 5,000 or less (min 3)	Between \$3K & \$100K	N/A	Between \$2K & \$ 5K
All other	Less than \$ 5,000	\$ 25,000 or less (min 3	\$ 25,000 or less (min 3)	Between \$3K & \$100K	\$ 25,000 or less (min 3)	Between \$2K & \$50K
Exceptions to RFP/Bid	N/A	Emergencies, Sole Source, City Council Waives	Emergencies	\$ 3,000 or less	\$ 499 or less; emergencies	\$ 2,000 or less; emergencies
Local Preference 1%	N/A	Yes	N/A	N/A	Yes	Yes
Local Preference Exceptions	N/A	N/A	N/A	N/A	Federal Funding	Federal Funding
No procurement splitting	N/A	Yes	N/A	N/A	N/A	Yes
Budgeted funds available	N/A	Yes	N/A	N/A	Yes	Yes
City Council Authority	N/A	Greater than \$ 50,000	Greater than \$ 20,000	N/A	N/A	\$ 50,000 or more
City Manager Authority	N/A	\$ 50,000 or less	N/A	N/A	N/A	Less than \$ 50,000
Duly Authorized	N/A	N/A	N/A	N/A	N/A	Less than \$ 25,000
Joint Contract/Piggybacking	N/A	City Council pre-approval	N/A	Must state min & max qty	N/A	Any CA or CA local agency as long as it meets or exceeds City's Code for competitive bidding
May not exceed 5 years	N/A	N/A	N/A	Yes	N/A	Yes
Authorization of Routine Large Annual Procurements	N/A	N/A	N/A	N/A	N/A	Yes
Fin Dir PO var (ship & tax)	N/A	N/A	N/A	N/A	\$ 50 or less	Up to 10%

CITY OF MONTEBELLO

CITY COUNCIL AGENDA STAFF REPORT

DATE: February 13, 2019
TO: Honorable Mayor and City Council Members
FROM: Paul L. Talbot, Acting City Manager
BY: Danilo Batson, Assistant City Manager / Director of Public Works
SUBJECT: Claims Against The City

The following claim(s) fall under the City's Self-Insurance liability program and have been placed on the agenda for denial:

1. S. Chaves v. City of Montebello Claim # MBGA-2844C1

Claimant was a passenger on the City bus when it clipped a car parked along the curb as it passed on Whittier Avenue. The cars left rear wheel, rim and fender received damage. The City bus operator stopped and spoke to the passengers and asked if anyone needed medical attention and then was told "No" by passengers. The City received a claim from claimant's attorney alleging injury to left shoulder, ribs and lower back, and claimant was still being treating with a chiropractor. The attorney was making an unreasonable demand. The impact to the bus was very minor.

Amount claimed: \$250,000

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MONTEBELLO APPROVING AND ALLOWING CERTAIN CLAIMS AND
DEMANDS**

**THE CITY COUNCIL OF THE CITY OF MONTEBELLO DOES
HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1. That the reference is hereby made to that certain
Register of Audited Demand Nos. 1462, consisting of nine pages, and
including**

Warrant No. 581639 through 581893;

Warrant No. 1423

**on file in the office of the City Clerk, the same having been audited and
approved by the Controller as required by law.**

**SECTION 2. That the said City Council having examined each such
demand does hereby approve and direct the payment of same, as set forth
in said Register, except the following Warrant No.**

**SECTION 3. That the City Clerk shall certify to the adoption of this
resolution and thence forth and thereafter the same shall be in full force
and effect.**

APPROVED AND ADOPTED THIS 13th DAY OF February, 2019.

JACK HADJINIAN, Mayor Pro Tem

ATTEST:

IRMA BARAJAS, City Clerk



City of Montebello
Register of Demands No. 1462
From Payment Date: 1/17/19 - To Payment Date: 2/6/19

CHECK #	DATE	AMOUNT	ACCOUNT DESCRIPTION	VENDOR #	VENDOR NAME
4331 - General Account					
581639	01/17/2019	\$12,142.08	CONTRACT SERVICES	1950	ANDREW PASMANT
581640	01/23/2019	\$8,874.46	INSURANCE	55860	AFLAC
581641	01/23/2019	\$78.60	UTILITY SERVICES	39550	AT&T
581642	01/23/2019	\$638.72	UTILITY SERVICES	657	BIRCH COMMUNICATIONS
581643	01/23/2019	\$945.74	UTILITY SERVICES	657	BIRCH COMMUNICATIONS
581644	01/23/2019	\$638.72	UTILITY SERVICES	657	BIRCH COMMUNICATIONS
581645	01/23/2019	\$638.72	UTILITY SERVICES	657	BIRCH COMMUNICATIONS
581646	01/23/2019	\$427.38	UTILITY SERVICES	657	BIRCH COMMUNICATIONS
581647	01/23/2019	\$4,962.95	WATER PURCHASE RESALE	19120	CENTRAL BASIN MUNICIPAL WATER DISTRICT
581648	01/23/2019	\$40.00	TRAINING	2305	CPRS DISTRICT 13
581649	01/23/2019	\$66.17	MAIL/ POSTAL EXPENSE	22400	FEDERAL EXPRESS CORPORATION
581650	01/23/2019	\$8,103.00	CONTRACT SERVICES	1658	GOVERNMENT STAFFING SERVICES, INC./MUNITEMPS
581651	01/23/2019	\$13,089.28	CONTRACT SERVICES	1397	REILLY WORKPLACE INVESTIGATIONS
581652	01/23/2019	\$110.00	CONTRACT SERVICES	952	RELIANT IMMEDIATE CARE MEDICAL GROUP INC
581653	01/23/2019	\$1,422.59	UTILITY SERVICES	45630	SOUTHERN CALIFORNIA EDISON
581654	01/23/2019	\$300.00	TRAINING	29600	SOUTHERN CALIFORNIA PUBLIC LABOR RELATIONS
581655	01/23/2019	\$106.15	UTILITY SERVICES	23610	VERIZON WIRELESS
581656	01/23/2019	\$112.08	UTILITY SERVICES	23610	VERIZON WIRELESS
581657	01/23/2019	\$2,018.12	UTILITY SERVICES	23610	VERIZON WIRELESS
581658	01/23/2019	\$4,100.88	UTILITY SERVICES	23610	VERIZON WIRELESS
581659	01/24/2019	\$123.52	SUPPLIES	20620	LOS ANGELES TRUCK CENTERS, LLC
581660	01/24/2019	\$3,402.40	LIABILITY INSURANCE	42330	ALLIANT INSURANCE SERVICES, INC.
581661	01/24/2019	\$162.62	SUPPLIES	62880	AMERICAN EMBLEMATIC, LLC
581662	01/24/2019	\$12,194.71	CONTRACT SERVICES	26390	APPLE ONE EMPLOYMENT SERVICES

581663	01/24/2019	\$805.10	CONTRACT SERVICES	2057	CIGNA BEHAVIORAL HEALTH
581664	01/24/2019	\$3,224.51	CONTRACT SERVICES	47770	DUTHIE ELECTRIC SERVICE CORPORATION
581665	01/24/2019	\$4,167.00	CONTRACT SERVICES	21260	FLAIR DATA SERVICES, INC.
581666	01/24/2019	\$248.04	SUPPLIES	13010	PAR WEST TURF SERVICES, INC,
581667	01/24/2019	\$37.06	UTILITY SERVICES	36610	CITY OF PICO RIVERA
581668	01/24/2019	\$1,269.87	UTILITY SERVICES	23610	VERIZON WIRELESS
581669	01/24/2019	\$2,579.97	UTILITY SERVICES	1732	AT&T CORP.
581670	01/29/2019	\$2,050.00	VEHICLE MAINTENANCE/EXPENSES	72040	ALFONSO TIRES & REPAIRS, INC.
581671	01/29/2019	\$2,765.46	PERMITS AND FEES	2307	CALIFORNIA DEPARTMENT OF
581672	01/29/2019	\$39.83	PERMITS AND FEES	2307	CALIFORNIA DEPARTMENT OF
581673	01/29/2019	\$125.00	REIMBURSEMENT	3780	JACOB CASTILLO
581674	01/29/2019	\$330.96	SUPPLIES	10000	CLEAN SWEEP SUPPLY CO. INC
581675	01/29/2019	\$457.80	CONTRACT SERVICES	1354	DAILY JOURNAL CORPORATION
581676	01/29/2019	\$443.44	SUPPLIES	13360	DELL MARKETING L.P.
581677	01/29/2019	\$23.62	MAIL/ POSTAL EXPENSE	22400	FEDERAL EXPRESS CORPORATION
581678	01/29/2019	\$592.38	VEHICLE MAINTENANCE/EXPENSES	29680	INLAND KENWORTH, INC.
581679	01/29/2019	\$661.04	CONTRACT SERVICES	74640	MISSION LINEN SUPPLY
581680	01/29/2019	\$10,995.07	VEHICLE MAINTENANCE/EXPENSES	54300	SHAK ENTERPRISES, INC./MONTEBELLO TIRE PROS
581681	01/29/2019	\$569.08	DUES & SUBSCRIPTIONS	21420	MUNICIPAL CODE CORPORATION
581682	01/29/2019	\$362.08	SUPPLIES	523	PC INDUSTRIAL PRODUCTS LLC
581683	01/29/2019	\$909.52	CONTRACT SERVICES	53520	PRAXAIR
581684	01/29/2019	\$372.88	CONTRACT SERVICES	56260	PRUDENTIAL OVERALL SUPPLY
581685	01/29/2019	\$762.40	SUPPLIES	1925	CENTRAL SANITARY SUPPLY
581686	01/29/2019	\$121.71	REIMBURSEMENT	2106	KENNETH RESER
581687	01/29/2019	\$58.41	PERMITS AND FEES	4160	SOUTHERN CALIFORNIA MUNICIPAL ATHLETIC FED.
581688	01/29/2019	\$3,495.24	MACHINERY & EQUIPMENTS	1933	STRICTLY TECHNOLOGY LLC.
581689	01/29/2019	\$778.05	CONTRACT SERVICES	33250	DG ENGERY SERVICES, INC.
581690	01/29/2019	\$681.98	UTILITY SERVICES	72570	U.S. TELEPACIFIC CORP
581691	01/29/2019	\$115.00	ADVERTISING/PRINTING SERVICES	6460	TRANSIT TALENT.COM
581692	01/30/2019	\$269.48	TRAVEL & MEETINGS	2315	KIMBERLY COBOS-CAWTHORNE

581693	01/30/2019	\$319.48	TRAVEL & MEETINGS	29610	JACK H. HADJINIAN
581694	01/30/2019	\$320.64	TRAVEL & MEETINGS	2317	ANGIE JIMENEZ
581695	01/30/2019	\$270.64	TRAVEL & MEETINGS	2316	SALVADOR MELENDEZ
581696	01/30/2019	\$200.00	TRAVEL & MEETINGS	1950	ANDREW PASMANT
581697	01/30/2019	\$2,066.59	MACHINERY & EQUIPMENTS	1933	STRICTLY TECHNOLOGY LLC.
581698	01/30/2019	\$200.00	TRAVEL & MEETINGS	2318	PAUL TALBOT
581699	01/30/2019	\$20,304.25	CONTRACT SERVICES	37	U.S. SECURITY ASSOCIATES, INC.
581700	01/30/2019	\$200.00	TRAVEL & MEETINGS	1270	ERIC YAN
581701	01/30/2019	\$200.00	TRAVEL & MEETINGS	75560	KRISTINA ZENDZHIRYAN
581702	01/31/2019	\$502.74	SUPPLIES	62880	AMERICAN EMBLEMATIC, LLC
581703	01/31/2019	\$553.36	UTILITY SERVICES	38380	AT&T
581704	01/31/2019	\$3,906.77	UTILITY SERVICES	39550	AT&T
581705	01/31/2019	\$7,229.52	UTILITY SERVICES	39550	AT&T
581706	01/31/2019	\$1,667.03	UTILITY SERVICES	39550	AT&T
581707	01/31/2019	\$541.67	UTILITY SERVICES	47580	CALIFORNIA WATER SERVICE COMPANY
581708	01/31/2019	\$45.78	UTILITY SERVICES	55830	CHARTER COMMUNICATIONS
581709	01/31/2019	\$599.00	UTILITY SERVICES	55830	CHARTER COMMUNICATIONS
581710	01/31/2019	\$599.00	UTILITY SERVICES	55830	CHARTER COMMUNICATIONS
581711	01/31/2019	\$1,279.48	UTILITY SERVICES	55830	CHARTER COMMUNICATIONS
581712	01/31/2019	\$279.77	UTILITY SERVICES	55830	CHARTER COMMUNICATIONS
581713	01/31/2019	\$1,663.04	REIMBURSEMENTS	790	CITY OF MONTEBELLO PETTY CASH
581714	01/31/2019	\$37.50	SUPPLIES	1120	NESTLE WATERS NORTH AMERICA
581715	01/31/2019	\$823.82	UTILITY SERVICES	14730	SAN GABRIEL VALLEY WATER CO.
581716	01/31/2019	\$14,799.25	NOTES PAYABLE	45630	SOUTHERN CALIFORNIA EDISON
581717	01/31/2019	\$8,319.97	UTILITY SERVICES	40520	SOUTHERN CALIFORNIA GAS CO.
581718	01/31/2019	\$183.96	FUEL	2186	ACEGAS LLC
581719	01/31/2019	\$7,315.00	CONTRACT SERVICES	11820	ADCO SERVICES, INC.
581720	01/31/2019	\$47,006.85	CONTRACT SERVICES	37720	ADVANCED APPLIED ENGINEERING, INC.
581721	01/31/2019	\$1,491.41	VEHICLE MAINTENANCE/EXPENSES	74990	AUTOZONE, INC
581722	01/31/2019	\$2,286.25	CONTRACT SERVICES	38010	ADVANCED AVANT-GARDE CORPORATION

581723	01/31/2019	\$5,365.00	CONTRACT SERVICES	239	BEST BEST & KRIEGER, LLP
581724	01/31/2019	\$300.00	EDUCATION REIMBURSEMENT	319	MATTHEW J. BEVERIDGE
581725	01/31/2019	\$512.00	CONTRACT SERVICES	58240	STATE OF CALIFORNIA-DEPARTMENT OF JUSTICE
581726	01/31/2019	\$5,100.00	CONTRACT SERVICES	1624	CALIFORNIA PAVING AND GRADING, INC.
581727	01/31/2019	\$528.62	SALES TAX LIABILITY	950	CUMMINS PACIFIC, LLC
581728	01/31/2019	\$1,272.06	CONTRACT SERVICES	371	FLO-SERVICES, INC.
581729	01/31/2019	\$250.00	REFUND	2303	MARIA TERESA FLORES
581730	01/31/2019	\$70.00	REFUND	2309	RODOLFO GAMEZ
581731	01/31/2019	\$55.00	REFUND	2313	BIANCA GONZALEZ
581732	01/31/2019	\$1,063.18	SUPPLIES	9470	GRAINGER, INC.
581733	01/31/2019	\$1,759.01	SALES TAX LIABILITY	69140	HUNTINGTON BEACH MOTORSPORTS, INC.
581734	01/31/2019	\$5,150.50	CONTRACT SERVICES	2306	INTELLIGENT DISCOVERY SOLUTIONS, INC.
581735	01/31/2019	\$140.00	REFUND	2310	DAE HWAN KIM
581736	01/31/2019	\$2,624.74	SUPPLIES	26670	LIFE-ASSIST, INC.
581737	01/31/2019	\$250.00	REFUND	2308	LETICIA LOPEZ
581738	01/31/2019	\$500.00	TRAINING	43100	LUIS LOPEZ, JR.
581739	01/31/2019	\$343.41	SUPPLIES	585	KENNEY HOLDINGS, LLC
581740	01/31/2019	\$3,235.00	CONTRACT SERVICES	26880	SEBASTIAN WATERWORKS, INC./MR. ROOTER
581741	01/31/2019	\$131.40	CONTRACT SERVICES	53120	NATIONAL CONSTRUCTION RENTALS
581742	01/31/2019	\$35,507.87	CONTRACT SERVICES	35250	NATIONWIDE ENVIRONMENTAL SERVICES
581743	01/31/2019	\$385.00	CONTRACT SERVICES	26370	NAVARRO'S TOWING SERVICE
581744	01/31/2019	\$11,483.12	VEHICLE MAINTENANCE/EXPENSES	60710	THE AFTERMARKET PARTS COMPANY, LLC
581745	01/31/2019	\$704.43	SUPPLIES	15620	OFFICE DEPOT
581746	01/31/2019	\$8,889.94	CONTRACT SERVICES	1950	ANDREW PASMANT
581747	01/31/2019	\$511.48	FRINGE BENEFITS	42490	LINDA PAYAN
581748	01/31/2019	\$140.00	REFUND	2311	RAMIRO PEREZ
581749	01/31/2019	\$333.38	SALES TAX LIABILITY	1635	PSI REPAIR SERVICES, INC.
581750	01/31/2019	\$1,000.00	TRAINING	2264	RICKIE D. GEORGE
581751	01/31/2019	\$250.00	REFUND	2314	MICHAEL ROMERO
581752	01/31/2019	\$1,733.67	FRINGE BENEFITS	9340	GEORGE S. SIMONIAN

581753	01/31/2019	\$32.85	CONTRACT SERVICES	1963	SUEZ WTS SERVICES USA, INC.
581754	01/31/2019	\$480.43	FRINGE BENEFITS	27300	ROBERT C. TUFANO
581755	01/31/2019	\$2,080.00	CONTRACT SERVICES	74850	UNIQUE GENERAL SERVICES
581756	01/31/2019	\$980.00	CONTRACT SERVICES	328	ANNE L. DONOFRIO/WRITERANNE
581757	01/31/2019	\$71.18	ADVERTISING/PRINTING SERVICES	61850	X-IGENT PRINTING, INC.
581758	01/31/2019	\$20,994.67	CONTRACT SERVICES	1631	YORK RISK SERVICES GROUP, INC.
581759	01/31/2019	\$1,000.00	CONTRACT SERVICES	9070	ERVIN L. YOUNGBLOOD
581760	01/31/2019	\$250.00	REFUND	2302	ROSA ZIMMERMAN
581761	02/04/2019	\$697.71	CONTRACT SERVICES	26390	APPLE ONE EMPLOYMENT SERVICES
581762	02/04/2019	\$150.00	CONTRACT SERVICES	40970	ARAKELIAN ENTERPRISES/ATHENS
581763	02/04/2019	\$2,093.70	CONTRACT SERVICES	36870	CINTAS CORPORATION
581764	02/04/2019	\$1,712.85	SUPPLIES	10000	CLEAN SWEEP SUPPLY CO. INC
581765	02/04/2019	\$1,050.00	MACHINERY & EQUIPMENTS	802	CRASH DATA GROUP, INC.
581766	02/04/2019	\$3,825.00	CONTRACT SERVICES	2019	DEWEY SERVICES INCORPORATED
581767	02/04/2019	\$250.00	TRAINING	13340	JULIO MARTINEZ
581768	02/04/2019	\$115.05	VEHICLE MAINTENANCE/EXPENSES	54300	SHAK ENTERPRISES, INC./MONTEBELLO TIRE PROS
581769	02/04/2019	\$200.00	TRAINING	54160	MONIQUE NAVARRO
581770	02/04/2019	\$704.00	SUPPLIES	1120	NESTLE WATERS NORTH AMERICA
581771	02/04/2019	\$250.00	TRAINING	45050	OMAR RODRIGUEZ
581772	02/04/2019	\$42,756.03	FUEL INVENTORY	1059	AMBER RESOURCES LLC/SAWYER PETROLEUM
581773	02/04/2019	\$524.05	SUPPLIES	2253	WATER UTILITIES SERVICES, INC.
581774	02/04/2019	\$4,373.10	CONTRACT SERVICES	20060	WATER REPLENISHMENT DISTRICT
581775	02/04/2019	\$71.18	ADVERTISING/PRINTING SERVICES	61850	X-IGENT PRINTING, INC.
581776	02/04/2019	\$555.00	CONTRACT SERVICES	11820	ADCO SERVICES, INC.
581777	02/04/2019	\$40,733.50	CONTRACT SERVICES	37720	ADVANCED APPLIED ENGINEERING, INC.
581778	02/04/2019	\$87.10	SUPPLIES	31270	STARBOARD TACK SUPPLY INC./ASTRO PLUMBING
581779	02/04/2019	\$708.71	MACHINERY & EQUIPMENTS	74990	AUTOZONE, INC
581780	02/04/2019	\$1,476.48	CONTRACT SERVICES	1237	AZTECA LANDSCAPE
581781	02/04/2019	\$20,018.70	CONTRACT SERVICES	52070	TOM CAMACHO
581782	02/04/2019	\$6,785.00	CONTRACT SERVICES	1303	CERTIFIED ROOFING APPLICATORS, INC.

581783	02/04/2019	\$584.67	SUPPLIES	70920	DECALS BY DESIGN, INC.
581784	02/04/2019	\$674.15	SUPPLIES	7610	EWING IRRIGATION PRODUCTS, INC.
581785	02/04/2019	\$1,624.44	CONTRACT SERVICES	1760	SCOTT FAZEKAS & ASSOCIATES, INC.
581786	02/04/2019	\$172.90	SUPPLIES	3350	GARVEY EQUIPMENT COMPANY
581787	02/04/2019	\$686.57	VEHICLE MAINTENANCE/EXPENSES	33720	ARKAY ACQUISITION LLC/GILLIG
581788	02/04/2019	\$2,628.08	VEHICLE MAINTENANCE/EXPENSES	69140	HUNTINGTON BEACH MOTORSPORTS, INC.
581789	02/04/2019	\$8,145.00	CONTRACT SERVICES	16520	I.D.R., INC.
581790	02/04/2019	\$3,898.65	CONTRACT SERVICES	1923	LOS ANGELES CONSERVATION CORPS.
581791	02/04/2019	\$1,817.03	SUPPLIES	2072	MICROMED DIAMOND SEAL SYSTEMS LLC.
581792	02/04/2019	\$335.07	CONTRACT SERVICES	74640	MISSION LINEN SUPPLY
581793	02/04/2019	\$1,056.54	VEHICLE MAINTENANCE/EXPENSES	1385	MUNCIE RECLAMATION AND SUPPLY COMPANY
581794	02/04/2019	\$25,200.00	CONTRACT SERVICES	1658	GOVERNMENT STAFFING SERVICES, INC./MUNITEMPS
581795	02/04/2019	\$1,447.20	CONTRACT SERVICES	35250	NATIONWIDE ENVIRONMENTAL SERVICES
581796	02/04/2019	\$1,206.10	SUPPLIES	15620	OFFICE DEPOT
581797	02/04/2019	\$39,863.36	CONTRACT SERVICES	42180	PCAM, LLC
581798	02/04/2019	\$66.97	CONTRACT SERVICES	56260	PRUDENTIAL OVERALL SUPPLY
581799	02/04/2019	\$20,000.00	CONTRACT SERVICES	61050	REDFLEX TRAFFIC SYSTEMS
581800	02/04/2019	\$46.46	SUPPLIES	2244	STAN BONHAM COMPANY, INC.
581801	02/04/2019	\$42,049.75	CONTRACT SERVICES	14730	SAN GABRIEL VALLEY WATER CO.
581802	02/04/2019	\$8,937.50	CONTRACT SERVICES	14730	SAN GABRIEL VALLEY WATER CO.
581803	02/04/2019	\$4,039.63	CONTRACT SERVICES	14730	SAN GABRIEL VALLEY WATER CO.
581804	02/04/2019	\$9,959.68	CONTRACT SERVICES	14730	SAN GABRIEL VALLEY WATER CO.
581805	02/04/2019	\$11,084.88	CONTRACT SERVICES	36290	SIEMENS INDUSTRY INC.
581806	02/04/2019	\$6,598.37	CONTRACT SERVICES	2318	PAUL TALBOT
581807	02/04/2019	\$1,971.00	VEHICLE MAINTENANCE/EXPENSES	610	THE JANEK CORPORATION
581808	02/04/2019	\$122.20	CONTRACT SERVICES	57140	UNDERGROUND SERVICE ALERT OF SOUTHERN CA
581809	02/05/2019	\$110.60	FUEL	2186	ACEGAS LLC
581810	02/05/2019	\$40.00	CARPPOOL INCENTIVE	27220	ANTHONY ACEVEZ
581811	02/05/2019	\$40.00	CARPPOOL INCENTIVE	567	ARTHUR P ANCHONDO
581812	02/05/2019	\$40.00	CARPPOOL INCENTIVE	289	ANDREA ANDRADE

581813	02/05/2019	\$40.00	CARPOOL INCENTIVE	61470	ERIKA L. ANDRADE
581814	02/05/2019	\$40.00	CARPOOL INCENTIVE	2139	DANIEL ANTUNEZ
581815	02/05/2019	\$40.00	CARPOOL INCENTIVE	29630	RICHARD APARICIO
581816	02/05/2019	\$236,254.40	CONTRACT SERVICES	40970	ARAKELIAN ENTERPRISES
581817	02/05/2019	\$14,863.15	CONTRACT SERVICES	239	BEST BEST & KRIEGER, LLP
581818	02/05/2019	\$1,425.00	EDUCATION REIMBURSEMENT	1190	DONALD CADENA
581819	02/05/2019	\$40.00	CARPOOL INCENTIVE	3780	JACOB CASTILLO
581820	02/05/2019	\$40.00	CARPOOL INCENTIVE	68640	LAURA CASTRO
581821	02/05/2019	\$40.00	CARPOOL INCENTIVE	17880	ANI CHUKHURYAN
581822	02/05/2019	\$80.00	CARPOOL INCENTIVE	2322	GIOVANNA CISNEROS
581823	02/05/2019	\$1,146.85	SUPPLIES	10000	CLEAN SWEEP SUPPLY CO. INC
581824	02/05/2019	\$800.00	INCURRED CLAIMS	1643	COMPANY NURSE
581825	02/05/2019	\$40.00	CARPOOL INCENTIVE	29020	RAPHAEL DE LA TORRE
581826	02/05/2019	\$840.00	CONTRACT SERVICES	2075	HAROLD J. EDISON/EDISON LIGATION
581827	02/05/2019	\$40.00	CARPOOL INCENTIVE	8260	BEATRICE GOMEZ
581828	02/05/2019	\$40.00	CARPOOL INCENTIVE	38440	ANDREW GUZMAN
581829	02/05/2019	\$2,160.91	VEHICLE MAINTENANCE/EXPENSES	270	HARBOR DIESEL AND EQUIPMENT, INC.
581830	02/05/2019	\$40.00	CARPOOL INCENTIVE	568	JUAN M HERNANDEZ
581831	02/05/2019	\$40.00	CARPOOL INCENTIVE	4280	NADINE HERNANDEZ
581832	02/05/2019	\$387.26	CONTRACT SERVICES	1357	IRON MOUNTAIN INC.
581833	02/05/2019	\$40.00	CARPOOL INCENTIVE	48610	CRYSTAL JAIMEZ
581834	02/05/2019	\$9,298.40	UNIFORM EXPENSE	1106	GRP2 UNIFORMS, INC.
581835	02/05/2019	\$40.00	CARPOOL INCENTIVE	11280	MICHAEL LOPEZ
581836	02/05/2019	\$1,425.00	EDUCATION REIMBURSEMENT	1466	MANUEL P LUNA
581837	02/05/2019	\$80.00	CARPOOL INCENTIVE	71590	LUZ MARIA
581838	02/05/2019	\$80.00	CARPOOL INCENTIVE	1778	ILENE MARTINEZ
581839	02/05/2019	\$4,600.00	CONTRACT SERVICES	1797	MARTINEZ CONSULTING SERVICE LLC
581840	02/05/2019	\$1,425.00	EDUCATION REIMBURSEMENT	1636	BRYAN McHUGH
581841	02/05/2019	\$40.00	CARPOOL INCENTIVE	2048	STEPHANIE MEZA
581842	02/05/2019	\$5,049.00	CONTRACT SERVICES	1200	MOBILITY ADVANCEMENT GROUP

581843	02/05/2019	\$1,387.41	CONTRACT SERVICES	26880	SEBASTIAN WATERWORKS, INC./MR. ROOTER
581844	02/05/2019	\$475.00	DUES & SUBSCRIPTIONS	21420	MUNICIPAL CODE CORPORATION
581845	02/05/2019	\$40.00	CARPOOL INCENTIVE	2203	SAMANTHA NEVAREZ
581846	02/05/2019	\$89.26	SUPPLIES	15620	OFFICE DEPOT
581847	02/05/2019	\$40.00	CARPOOL INCENTIVE	138	BRIANNON PADILLA
581848	02/05/2019	\$40.00	CARPOOL INCENTIVE	59960	JO ANN PANOSIAN
581849	02/05/2019	\$7,301.48	CONTRACT SERVICES	1950	ANDREW PASMANT
581850	02/05/2019	\$55.00	CARPOOL INCENTIVE	1668	MEL PASTION
581851	02/05/2019	\$82.50	RECREATION CLASSES	2320	DANIELA PEDRAZA
581852	02/05/2019	\$40.00	CARPOOL INCENTIVE	65330	WENDY PEREZ
581853	02/05/2019	\$40.00	CARPOOL INCENTIVE	2138	ELVA PHAM
581854	02/05/2019	\$40.00	CARPOOL INCENTIVE	34240	ROBERT PORTILLO
581855	02/05/2019	\$40.00	CARPOOL INCENTIVE	13220	JESUS RABELERO
581856	02/05/2019	\$40.00	CARPOOL INCENTIVE	56830	ESTHER ROBLES
581857	02/05/2019	\$40.00	CARPOOL INCENTIVE	69960	NICOLE I. SAUCEDO
581858	02/05/2019	\$40.00	CARPOOL INCENTIVE	61140	MICHAEL SAVEDRA
581859	02/05/2019	\$40.00	CARPOOL INCENTIVE	24280	MARTIN SOLANO
581860	02/05/2019	\$55.00	REFUND	2321	RITA SOLIZ
581861	02/05/2019	\$40.00	CARPOOL INCENTIVE	33960	DAVID SOSNOWSKI
581862	02/05/2019	\$370.47	REFUND	2319	ERICK SOTO
581863	02/05/2019	\$7,743.00	CONTRACT SERVICES	13330	STATE WATER RESOURCES CONTROL BOARD
581864	02/05/2019	\$2,190.00	VEHICLE MAINTENANCE/EXPENSES	610	THE JANEK CORPORATION
581865	02/05/2019	\$40.00	CARPOOL INCENTIVE	1091	JANELLE TORRES
581866	02/05/2019	\$4,160.00	CONTRACT SERVICES	74850	UNIQUE GENERAL SERVICES
581867	02/05/2019	\$40.00	CARPOOL INCENTIVE	595	MATTHEW A VALENZUELA
581868	02/05/2019	\$40.00	CARPOOL INCENTIVE	395	MARIA TERESA VASQUEZ
581869	02/05/2019	\$40.00	CARPOOL INCENTIVE	1701	MATTHEW VEGA
581870	02/05/2019	\$389.00	CONTRACT SERVICES	183	WECK LABORATORIES ENVIRONMENTAL SERVICES, INC.
581871	02/05/2019	\$1,706.34	CONTRACT SERVICES	26390	APPLE ONE EMPLOYMENT SERVICES
581872	02/05/2019	\$2,048.75	ADVERTISING/PRINTING SERVICES	35980	SAEED RADMEHR/ARTE PRINTING

581873	02/05/2019	\$1,278.00	UTILITY SERVICES	55830	CHARTER COMMUNICATIONS
581874	02/05/2019	\$744.00	ADVERTISING/PRINTING SERVICES	1354	DAILY JOURNAL CORPORATION
581875	02/05/2019	\$48,462.11	OTHER GROUP INSURANCE PAYABLE	4110	DELTA DENTAL OF CALIFORNIA
581876	02/05/2019	\$516.25	ADVERTISING/PRINTING SERVICES	1847	DODGE DATA AND ANALYTICS LLC
581877	02/05/2019	\$512.46	UNIFORM EXPENSE	908	FIRE FIGHTERS SAFETY INC.
581878	02/05/2019	\$259.28	VEHICLE MAINTENANCE/EXPENSES	54300	SHAK ENTERPRISES, INC./MONTEBELLO TIRE PROS
581879	02/05/2019	\$23,695.25	FUEL INVENTORY	40520	SOUTHERN CALIFORNIA GAS CO.
581880	02/05/2019	\$364.17	FRINGE BENEFITS	1990	STANDARD INSURANCE COMPANY
581881	02/05/2019	\$13,008.87	FRINGE BENEFITS	25850	STANDARD INSURANCE COMPANY
581882	02/05/2019	\$2,805.15	UTILITY SERVICES	72570	U.S. TELEPACIFIC CORP
581883	02/05/2019	\$38.01	UTILITY SERVICES	23610	VERIZON WIRELESS
581884	02/05/2019	\$456.27	UTILITY SERVICES	23610	VERIZON WIRELESS
581885	02/05/2019	\$1,175.00	OTHER GROUP INSURANCE PAYABLE	58990	VISION SERVICE PLAN
581886	02/06/2019	\$33,873.92	FUEL INVENTORY	1059	AMBER RESOURCES LLC/SAWYER PETROLEUM
581887	02/06/2019	\$250.00	TRAINING	35540	BRAD KELLER
581888	02/06/2019	\$10,000.00	CONTRACT SERVICES	19040	MUNICIPAL CONTRACT ADMINISTRATORS, INC
581889	02/06/2019	\$200.00	TRAINING	54160	MONIQUE NAVARRO
581890	02/06/2019	\$200.00	TRAINING	2287	STACEY SMITH
581891	02/06/2019	\$118.90	CONTRACT SERVICES	57140	UNDERGROUND SERVICE ALERT OF SOUTHERN CA
581892	02/06/2019	\$27,930.73	CONTRACT SERVICES	36290	SIEMENS INDUSTRY INC.
581893	02/06/2019	\$6,241.50	SUPPLIES	69680	TRIANGLE SPORTS, INC.
Subtotal		\$1,159,583.59			
6093 - Successor Agency					
1423	01/31/2019	\$2,050.00	CONTRACT SERVICES	15180	STEARNS, CONRAD AND SCHMIDT CONSULTING ENG.
Subtotal		\$2,050.00			
Total		<u><u>\$1,161,633.59</u></u>			

MINUTES

THE CITY OF MONTEBELLO CITY COUNCIL MET AT THE ABOVE TIME AND PLACE IN A REGULAR SESSION.

OPENING CEREMONIES

1. **CALL MEETING TO ORDER:** Mayor Delgado called the meeting to order at the hour of 5:37 p.m.
2. **ROLL CALL:** City Clerk I. Barajas
MEMBERS PRESENT: Hadjinian, Romero, Molinari, Barajas, Delgado
STAFF PRESENT: Acting City Manager Pasmant, City Attorney Alvarez-Glasman, Assistant City Attorney Cardinale
3. **STATEMENT OF PUBLIC ORAL COMMUNICATIONS FOR CLOSED SESSION ITEMS:** Assistant City Attorney Cardinale

ORAL COMMUNICATIONS ON CLOSED SESSION ITEMS

None.

Mayor Delgado recessed the meeting into Closed Session at the hour of 5:38 p.m. At the hour of 6:36 p.m., Mayor Delgado reconvened the meeting. The City Attorney reported the following:

CLOSED SESSION

The City Attorney provided a briefing on the item listed for Closed Session as follows:

4. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Government Code section 54956.9(d)(2)
One Matter

All Councilmembers were present for discussion. No final action. Nothing further to report.

5. **PUBLIC EMPLOYEE DISMISSAL/DISCIPLINE/RELEASE**

Government Code Section 54957(b)(1)

All Councilmembers were present, received a briefing, nothing to report.

REGULAR SESSION

6. **INVOCATION** City Clerk Barajas

PLEDGE OF ALLEGIANCE Councilmember Molinari

7. **PRESENTATION**

- a. **INTRODUCTION OF ASHIYA JAPAN STUDENT AMBASSADORS**
- b. **INTRODUCTION OF NEW POLICE OFFICERS**

8. **STATEMENT OF PUBLIC ORAL COMMUNICATIONS:** City Attorney Alvarez-Glasman

9. PUBLIC ORAL COMMUNICATIONS ON OPEN SESSION ITEMS (30 MINUTES)

Raymond spoke about the August 5, 2018 Election and demanded the resignation of Mayor Delgado.

Gabriel asked for a budget review and asked that residents don't bring back Measure S.

Linda Nicklas congratulated Mayor Delgado for winning the Senate seat and stated that recall banners will be taken down when Mayor Delgado resigns.

David Matanga spoke about the City Treasurer position.

Alexandra Briseno spoke about the upcoming election.

Frank Thomas Morales thanked Mayor Delgado and Councilmember Barajas for attending the Veteran's Outreach, and congratulated Mayor Delgado for winning the Senate seat.

Elizabeth Arenas spoke about a special election.

Sergio Lopez, representing the Montebello City Employees' Association, asked that the City Council approve to continue paying the employees' portion of the Calpers contribution until October 2018 and in the future.

Rosie Vasquez spoke about being accused of approving the Athens agreement.

Tila Gregorian spoke about the City not being banner friendly and stated that no one voted at the elections for Measure S and the Water Company sale.

Edwina Garcia spoke about a special election for Vanessa Delgado's councilmember seat.

Cecilia Lopez, SMART TD, presented flowers to Mayor Delgado.

10. STAFF COMMUNICATIONS ON ITEMS OF COMMUNITY INTEREST

Director Sosnowski announced the 9-11 Ceremony taking place on Tuesday, September 11, 2018. March begins at 4:30 p.m.. on 10th Street and Whittier Blvd.

Chief Brad Keller announce that National Night Out was a success and that there were over 60 vendors that participated.

Assistant City Attorney Cardinale stated that 30 cannabis applications were received, and that HDL cannot move forward with their review. Assistant City Attorney Cardinale stated that direction was needed from Council to move forward with the cannabis process.

11. CORRECTIONS TO THE AGENDA – ACTING CITY MANAGER

- 12. APPROVAL OF AGENDA:** Any items a Councilmember wishes to discuss should be designated at this time. All other items may be approved in a single motion with the exception Item Nos. 13, 14, 15, 17, 19, 21 (continued to a later date), and 26. Item Nos. 16 and 18 were pulled from the agenda. Such approval will also waive the reading of any ordinance. Motion carried unanimously.

SCHEDULED MATTERS

13. PUBLIC HEARING: USER FEES RESOLUTION

The public hearing opened at the hour of 7:56 p.m. There being no public testimony, the public hearing closed at the hour of 7:56 p.m.

Discussion was held regarding the increase in paramedic called. Councilmembers Hadjinian and Delgado asked for an RFP to be issued regarding ambulance service.

Councilmember Barajas moved, seconded by Councilmember Molinari to adopt the Resolution No. 18-79 amending certain City fees, fines and penalties. Motion carried unanimously on the following roll call vote:

AYES: Hadjinian, Romero, Molinari, Barajas, Delgado

NOES: None

14. TAYLOR RANCH UPDATE

Rosie Vasquez spoke about the larger plan for the new building so that it can be rented for events, and stated her interest in serving on the Blue Ribbon Committee.

Councilmember Barajas moved, seconded by Councilmember Molinari to receive and file this report on a summary of the Taylor Ranch Cultural Arts Committee Meeting with City Staff and members of the Economic Development Ad-Hoc Committee, and move forward with RFPs for public outreach. Motion carried unanimously.

CONSENT MATTERS

15. PROFESSIONAL SERVICE AGREEMENT WITH ALL CITY MANAGEMENT SERVICES FOR SCHOOL CROSSING GUARD SERVICES

Councilmember Molinari asked why the City is paying. Staff stated that the City pays because of geographical locations.

Mayor Delgado asked if volunteers could be recruited.

Councilmember Molinari moved, seconded by Councilmember Barajas to approve Professional Services Agreement No. 3452 with All City Management Services to provide crossing guard services. Motion carried unanimously.

16. FARE RESTRUCTURING

This item was pulled from the agenda and not discussed.

17. RUN CUTTING AND SCHEDULING SOFTWARE - REQUEST FOR PROPOSAL NO.18-36

Councilmember Molinari asked questions regarding the bidding process.

Councilmember Molinari moved, seconded by Councilmember Barajas to award a contract to AVAIL Technologies, Inc. for installing Run Cutting and Scheduling Software for Montebello Bus Lines (MBL), as recommended by the Director of Transportation, and authorize the Acting City Manager to execute Agreement No. 3453 on behalf of the City. Motion carried unanimously.

18. CLEAN ENERGY

This item was pulled from the agenda and not discussed.

19. EXTERIOR BUS GRAPHICS DECAL REPLACEMENT AND BUS REPAINTING - REQUEST FOR PROPOSAL NO.18-37

award a contract to Complete Coach Works (CCW) for exterior bus repainting and a contract to Decals By Design INC. for exterior bus graphics decals replacement for Montebello Bus Lines (MBL), as recommended by the Director of Transportation, and authorize the Acting City Manager to execute the Agreements on behalf of the City.

20. SECOND AMENDMENT TO THE AGREEMENT WITH TYLER TECHNOLOGIES FOR THE EXTENSION OF SOFTWARE MAINTENANCE

COMMENT: The City Council will consider approving an extension of a software maintenance agreement with Tyler Technologies for ongoing maintenance of the City's financial and personnel management systems.

The cost of the agreement with Tyler for the current year is \$65,984.64. This amount is included within the FY 2018-2019 budget.

RECOMMENDATION: That the City Council approve a software maintenance agreement with Tyler Technologies for ongoing management and maintenance of the City's financial and human resources software systems.

21. CITY OF MONTEBELLO AD HOC CITIZENS BUDGET ADVISORY COMMITTEE

COMMENT: The City Council will consider the formation, staffing, and purpose of an Ad Hoc Citizens Budget Advisory Committee.

There is no direct impact to the General Fund associated with this action. However, administrative and staff expenses will be incurred in connection with preparing for, managing, operating, and staffing Committee meetings.

RECOMMENDATION: That the City Council create and approve a framework for an Ad Hoc Citizens Budget Advisory Committee (CBAC).

22. CITY WARRANTS, LOCAL AGENCY INVESTMENT FUND (LAIF) AND AUTHORIZED SIGNATURES

COMMENT: The City Council will consider updating the City's resolution related to authorized signatories on City Warrants, Checks, Bank Accounts and updating the authorize signatories for the Successor Agency and City LAIF accounts.

There is no impact to the Successor Agency or City's General Funds associated with these actions.

RECOMMENDATION: Approve and adopt the Resolutions related to authorized signatories for City Warrants, Checks, Bank Accounts and to update the authorized officers for the Successor Agency and City LAIF accounts.

23. CONTINUATION OF CALPERS CONTRIBUTIONS

COMMENT: The City Council will consider approval of various resolutions continuing the CalPERS Contributions for employees while labor negotiations are underway between the City and the various employee organizations.

The proposed CalPERS contributions will be paid solely from funds from the Retirement Special Revenue Fund, as codified in Montebello Municipal Code Section 3.28.020 and the Transit Enterprise Fund where applicable. No General Fund revenues will be used to pay for the CalPERS contributions.

RECOMMENDATION: Staff recommends that the City Council approve the attached resolution continuing the CalPERS Contributions for non-represented classic member employees, and the attached side letters, substantially in form, for non-safety and safety units, during the City's labor negotiations with the various employee organizations.

24. PROFESSIONAL SERVICES AGREEMENT FOR LABOR CONSULTANT AND CORRESPONDING BUDGET APPROPRIATION RESOLUTION

COMMENT: The City Council will consider approval of a Professional Services Agreement with Chris Birch for Labor Consultant Services and a budget appropriation for expenses related to the temporary staffing needs of the City which includes retaining a labor consultant to assist City Staff.

The temporary costs of the Labor Consultant will be allocated between the General Fund (75%) and Transit Fund (25%). A budget appropriation is needed in order to fund this service up to \$50,000 within FY 2018/19. The approved budget for FY 2018/19 includes the frozen position of a Director of Human Resources. Therefore, no general fund reserves will be requested to cover the cost. The Transit portion will be transferred From Transit reserves.

RECOMMENDATION: That the City Council approve a Professional Services Agreement for Labor Consultant with Chris Birch and a budget appropriation for estimated costs related to retaining a labor consultant to assist City Staff.

25. A REQUEST TO ACCEPT AS COMPLETE - ELLINGBROOK DRIVE STREET IMPROVEMENT PROJECT (FIRVALE AVENUE TO EASTERLY END CUL-DE-SAC) RFF # 18-15, CP 862, FY 2017/2018

COMMENT: The City Council will consider acceptance of the Ellingbrook Avenue Street Improvement Project, CP 862, Bid No. 18-15, Fiscal Year 2017/18, as complete and authorize the City Clerk to process the Notice of Completion.

This project is funded with Measure "R" funds. The project final cost was \$269,927.85, which is approximately 13% lower than the project allocation of \$309,831.00 and a project savings of \$39,903.15. There is no impact on the General Fund.

RECOMMENDATION: That the City Council accept the Ellingbrook Drive Street Improvement Project (Firvale Avenue to Easterly end Cul-de-Sac) RFF # 18-15, CP 862, FY 2017/2018, as complete and authorize the City Clerk to process the Notice of Completion.

26. CANCEL AUGUST 22ND MEETING

COMMENT: The second meeting in August is scheduled for August 22, 2018. The City Council has from time to time cancelled City Council meetings to allow for vacation schedules of staff and City Council.

There is no fiscal impact.

RECOMMENDATION: It is recommended that the City Council: Cancel the regularly scheduled City Council meeting of August 22, 2018.

27. CLAIMS AGAINST THE CITY

RECOMMENDED ACTION: Move to ***DENY*** the following claim: J. Garcia in the amount of \$25,000.00.

28. PAYMENT OF BILLS: RESOLUTION APPROVING THE CITY/SUCCESSOR AGENCY WARRANT REGISTER OF DEMANDS DATED AUGUST 8, 2018

RECOMMENDED ACTION: Adopt the proposed resolution approving the Warrant Register dated August 8, 2018.

29. PUBLIC ORAL COMMUNICATIONS ON OPEN SESSION ITEMS (CONTINUED IF NECESSARY)

COUNCIL ORALS

30. MAYOR PRO TEM HADJINIAN

None.

31. COUNCILMEMBER ROMERO

- a. Consensus to adopt an ordinance prohibiting utilities from digging up city streets after they have been repaved.
- b. Policies and procedures for naming and dedicating City facilities.

32. COUNCILMEMBER MOLINARI

None.

33. COUNCILMEMBER BARAJAS

None.

34. MAYOR DELGADO

None.

ADJOURNMENT

**CITY OF MONTEBELLO
1600 WEST BEVERLY BLVD.
MONTEBELLO, CA**

**SEPTEMBER 12, 2018
WEDNESDAY
5:30 P.M.**

THE CITY OF MONTEBELLO CITY COUNCIL DID NOT MEET AT THE ABOVE TIME AND PLACE DUE TO LACK OF QUORUM. THE MEETING WAS ADJOURNED TO WEDNESDAY, SEPTEMBER 19, 2018.

IRMA BARAJAS, City Clerk

THE CITY OF MONTEBELLO CITY COUNCIL MET AT THE ABOVE TIME AND PLACE IN A REGULAR SESSION.

OPENING CEREMONIES

- 1. CALL MEETING TO ORDER:** Mayor Pro Tem Hadjinian called the meeting to order at the hour of 5:30 p.m.
- 2. ROLL CALL:** City Clerk I. Barajas
MEMBERS PRESENT: Romero, Molinari, Barajas, Hadjinian
STAFF PRESENT: Acting City Manager Pasmant, City Attorney Alvarez-Glasman
- 3. STATEMENT OF PUBLIC ORAL COMMUNICATIONS FOR CLOSED SESSION ITEMS:** City Attorney Alvarez-Glasman

ORAL COMMUNICATIONS ON CLOSED SESSION ITEMS

None.

CLOSED SESSION

The City Attorney provided a briefing on the item listed for Closed Session as follows:

- 4. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Government Code Section 54956.9(d)(2)
One Matter

No final action, nothing to report.
- 5. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Government Code section 54957.9(d)(4)
Consideration of initiation of litigation – One Matter

No action to report.
- 6. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Government Code Section 54956.9(d)(1)
Name of Case: R. Rojas v. City of Montebello

Nothing to report.
- 7. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Government Code Section 54956.9(d)(1)
Name of Case: C. Wells v. City of Montebello

Nothing to report.
- 8. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Government Code Section 54945.9(d)(1)
Name of Case: A. Iglesias v. City of Montebello

No final action.

9. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Government Code Section 54956.8

Property: 501-525 Whittier Blvd. and 112, 114-116, 121, 124 and 132
South 6th St.

Agency negotiator: Andrew Pasmant

Negotiating Parties: Danny Ku

Under Negotiation: Terms of sale

No action taken.

10. PUBLIC EMPLOYEE APPOINTMENT/EMPLOYMENT

Government Code Section 54957(b)(1)

Title: Director of Finance, Human Resources Manager, Deputy City Clerk

No action taken.

11. PUBLIC EMPLOYEE DISMISSAL/DISCIPLINE/RELEASE

Government Code Section 54957(b)(1)

No action taken.

REGULAR SESSION

12. INVOCATION

13. PLEDGE OF ALLEGIANCE

14. STATEMENT OF PUBLIC ORAL COMMUNICATIONS: City Attorney Alvarez-Glasman

15. PUBLIC ORAL COMMUNICATIONS ON OPEN SESSION ITEMS (30 MINUTES)

Yvonne Watson spoke about recycled water.

Yvette Fimbres thanked Councilmember Molinari for attending Neighborhood Watch meetings and thanked Kimberly Cobos-Cawthorne for attending Council meetings.

Joe Zamora spoke about a public records request asking for a scope of work for Mr. Rooter, and stated that he has not been given a response.

Rosie Vasquez asked that the City stop paying the City Manager on administrative leave.

16. STAFF COMMUNICATIONS ON ITEMS OF COMMUNITY INTEREST

Manuel Mancha, new Community Development Director was introduced by Acting City Manager Pasmant.

Director David Sosonowski announced upcoming events, and Assistant City Manager Batson gave an update on capital improvement projects.

Captain Lopez spoke about a one day joint operation with the CHP regarding commercial truck routes, stating that they conducted 12 truck inspections and writing 69 citations.

17. CORRECTIONS TO THE AGENDA – ACTING CITY MANAGER

Item No. 22 had a corrected resolution and new inserts to the report, and Item No. 31 should reflect an extension of two months instead of one month.

- 18. APPROVAL OF AGENDA:** Councilmember Molinari moved, seconded by Councilmember Barajas that all items be approved in a single motion with the exception Item Nos. 19, 20, 21, 22, 29 and 34. Such approval will also waive the reading of any ordinance. Motion carried unanimously.

SCHEDULED MATTERS

- 19. PUBLIC HEARING: AN ORDINANCE ADDING CHAPTER 17.77 - "PARKLAND DEDICATION/QUIMBY FEE REQUIREMENTS FOR RESIDENTIAL DEVELOPMENT REQUIRING A TENTATIVE MAP OR PARCEL MAP" - TO THE MONTEBELLO MUNICIPAL CODE; RESOLUTION ESTABLISHING THE FEE AMOUNT.**

No public testimony received.

Councilmember Barajas moved, seconded by Mayor Pro Tem Hadjinian to (1) approve first reading of the Ordinance establishing the mechanism by which to adopt an in-lieu parkland fee under the Quimby Act; (2) schedule second reading of the Ordinance for the next meeting of the City Council; and (3) adopt a Resolution 18-86 establishing the fee amount. Additionally, staff recommends that the City Council authorize staff to conduct a comprehensive Development Impact Fee study relating to other fees. Motion carried unanimously.

- 20. PUBLIC HEARING: ORDINANCE TO PROHIBIT FEEDING OF WILD FOWL, PIGEONS, DUCKS, SQUIRRELS OR ANY OTHER ANIMAL NOT LICENSED, INCLUDING STRAY CATS AND DOGS**

Councilmember Molinari moved, seconded by Councilmember Romero to introduce an Ordinance regarding the prohibition of feeding of wild fowl, pigeons, ducks, squirrels or any other animal not licensed, including stray cats and dogs. Motion carried unanimously.

NEW BUSINESS

- 21. CONSIDERATION OF FILLING VACANT COUNCILMEMBER POSITION**

Councilmember Molinari moved, seconded by Councilmember Romero to direct staff to prepare the necessary documents and resolutions ordering a special election to fill the vacancy. In addition, that the City Council discuss the reorganization of City Council and discuss the vacant organizational appointments. Motion carried 3-1 as follows:

AYES: Romero, Molinari, Barajas
NOES: Hadjinian

CONSENT MATTERS

- 22. OPERATIONAL ANALYSIS OF THE MONTEBELLO GOLF COURSE**

Councilmember Barajas moved, seconded by Councilmember Romero to hold this item over to next regular meeting, and asked that a presentation be given by consultant, before consideration of approval.

- 23. FIRST AMENDMENT TO SERVICES AGREEMENT (AGREEMENT NO. 3302) WITH YORK SERVICES GROUP, INC., FOR THIRD PARTY ADMINISTRATOR (TPA) FOR THE CITY'S GENERAL LIABILITY CLAIMS ADMINISTRATION**

Councilmember Molinari moved, seconded by Councilmember Barajas, that the City Council approve a First Amendment to the Services Agreement (Agreement No. 3302) with York

Services Group, Inc., for General Liability Claims Administration; and authorize the Acting City Manager to execute the First Amendment on behalf of the City. Motion carried unanimously.

24. A REQUEST FOR THE CITY COUNCIL TO ADOPT A RESOLUTION APPROVING PROGRAM SUPPLEMENT AGREEMENT NO. R81 TO ADMINISTERING AGENCY-STATE MASTER AGREEMENT NO. 00383S (STATE FUNDING PROJECTS) RE: ATPSB-5247(026) FOR MONTEBELLO BOULEVARD.

Councilmember Molinari moved, seconded by Councilmember Barajas to adopt Resolution No. 18-87 approving Program Supplement Agreement No. R81 to Administering Agency-State Master Agreement for No. 00383S for ATPSB-5247(026) for Montebello Boulevard ("Agreement") and authorize the Acting City Manager or his designee to execute Agreement No. 3474 on behalf of the City. Motion carried unanimously.

25. A REQUEST FOR THE CITY COUNCIL TO ADOPT A RESOLUTION APPROVING PROGRAM SUPPLEMENT AGREEMENT NO. R18 TO ADMINISTERING AGENCY-STATE MASTER AGREEMENT NO. 00383S (STATE FUNDING PROJECTS) FOR SSARPL-5247(027)

Councilmember Molinari moved, seconded by Councilmember Barajas that the City Council adopt Resolution No. 18-88 approving Program Supplement Agreement No. R18 to Administering Agency-State Master Agreement No. 00383S for SSARPL-5247(027) for State funded projects at various locations in the City ("Agreement") and authorize the Acting City Manager, or his designee, to execute Agreement No. 3475 on behalf of the City. Motion carried unanimously.

26. APPROVAL OF AGREEMENT BETWEEN THE CITY OF MONTEBELLO AND THE LOS ANGELES GATEWAY REGION INTEGRATED WATER MANAGEMENT JOINT POWERS AUTHORITY (GWMA) FOR COST SHARING FOR THE MONITORING COSTS PURSUANT TO THE HARBOR TOXIC POLLUTANTS TOTAL MAXIMUM DAILY LOADS (TMDL)

Councilmember Molinari moved, seconded by Councilmember Barajas that the City Council approve an agreement between the City of Montebello and the Los Angeles Gateway Region Integrated Water Management Joint Powers Authority for Cost Sharing for the Monitoring Costs Pursuant to the Harbor Toxic Pollutants Total Maximum Daily Loads (TMDL) ("Agreement") and authorize the Acting City Manager to execute Agreement No. 3476 on behalf of the City. Motion carried unanimously.

27. ANNUAL SOFTWARE MAINTENANCE RENEWAL AGREEMENT FOR GOVCLARITY

Councilmember Molinari moved, seconded by Councilmember Barajas that the City Council approve a software maintenance agreement with Digital Map Products, Inc., as reviewed and approved by the City Attorney, for ongoing maintenance and support of the City's data and mapping software system; and authorize the Acting City Manager to execute Agreement No. 3477 on behalf of the City. Motion carried unanimously.

28. APPROVAL OF AGREEMENTS WITH THE CITY OF WHITTIER

Councilmember Molinari moved, seconded by Councilmember Barajas he City Council approve three (3) agreements between the City of Montebello and the City of Whittier: (1) Interoperable Radio System Subscriber Agreement No. 3478; (2) Radio Frequencies Use Agreement No. 3479; (3) Land Use Agreement No. 3480, and to authorize the Acting City Manager to execute these agreements on behalf of the City. Motion carried unanimously.

29. RADIO UPGRADES AND/OR PURCHASES AND BUDGET APPROPRIATE RESOLUTION

Councilmember Molinari moved, seconded by Councilmember Barajas that the City Council approve the following items: 1) budget appropriation, Resolution No. 18-88A for radio upgrades; and 2) approve Option 3 (lease option) with Motorola Solutions, to meet the radio communications needs of the City of Montebello.

30. ADOPT RESOLUTIONS PERTAINING TO TRANSPORTATION DEVELOPMENT ACT (TDA) FUNDS FOR FISCAL YEAR 2019

Councilmember Molinari moved, seconded by Councilmember Barajas that the City Council approve and adopt two (2) resolutions authorizing the Director of Transportation to submit Transportation Development Act (TDA) claim forms for Local Transportation Fund (LTF), Resolution No. 18-89 and State Transit Assistance (STA) funds for Fiscal Year 2019, Resolution No. 18-90. Motion carried unanimously.

31. BUILDING & SAFETY SERVICES AGREEMENT EXTENSION

Councilmember Molinari moved, seconded by Councilmember Barajas that the City Council approve a one-month agreement in an amount not to exceed \$12,000 with Transtech Engineers to continue providing Building and Safety Services, while staff completes the review of proposals received for Request for Proposals for Building and Safety Services (RFP No. 19-2), for which proposals were received on August 30, 2018; and authorize the Acting City Manager to execute the Second Amendment to the Agreement on behalf of the City.

32. MONTHLY INVESTMENT REPORT – JULY 2018

Councilmember Molinari moved, seconded by Councilmember Barajas to approve and file said report. Motion carried unanimously.

33. CLAIMS AGAINST THE CITY

Councilmember Molinari moved, seconded by Councilmember Barajas to **DENY** the following claims: F. Galarza in the amount of \$3,500.00; M. Orduno in the amount of \$5,000.00; F. Castillo in the amount of \$685.00; O. Monenegro in the amount of \$28,000.00; V. DeLucas in the amount of \$18,000.00; A. DeLucas in the amount \$28,000.00; S. Jiang in the amount of \$1,500.00. Motion carried unanimously.

34. PAYMENT OF BILLS: RESOLUTION APPROVING THE CITY/SUCCESSOR AGENCY WARRANT REGISTER OF DEMANDS DATED SEPTEMBER 12, 2018

Councilmember Molinari moved, seconded by Councilmember Barajas to adopt the Resolution No. 18- approving the Warrant Register dated September 12, 2018.

35. PUBLIC ORAL COMMUNICATIONS ON OPEN SESSION ITEMS (CONTINUED IF NECESSARY)

COUNCIL ORALS

36. COUNCILMEMBER ROMERO

a. Art in public places

Staff was directed to bring back a report to Council regarding the scheduling of art events in Montebello.

b. Discussion on Adhoc Committees

In the absence of the Mayor, the Mayor Pro Tem assumes the responsibilities of the Mayor. The committees can be brought back for review.

37. COUNCILMEMBER MOLINARI

- a. Consideration to implement a drone program for the Montebello Police Department Staff was directed to bring back a report regarding drones.
- b. Further review of responsibility of public utilities for properly repairing the street after they do repair work on their system.
A report will be brought back by staff.

38. COUNCILMEMBER BARAJAS

None.

39. MAYOR PRO TEM HADJINIAN

None.

ADJOURNMENT

Upon motion carried unanimously, Mayor Pro Tem Hadjinian adjourned the meeting at the hour of 9:20 p.m. in memory of Mrs. Wendy Hayakawa, former owner of the UPS store on Beverly Blvd. who recently passed away.

APPROVAL OF MINUTES: Upon motion carried unanimously, the minutes of September 19, 2018, were approved as written on February 13, 2019.

IRMA BARAJAS, City Clerk

MINUTES

THE CITY OF MONTEBELLO CITY COUNCIL MET AT THE ABOVE TIME AND PLACE IN A REGULAR SESSION.

OPENING CEREMONIES

1. **CALL MEETING TO ORDER:** Mayor Pro Tem Hadjinian called the meeting to order at the hour of 5:24 p.m.
2. **ROLL CALL:** City Clerk I. Barajas
MEMBERS PRESENT: Molinari, Barajas, Romero, Hadjinian
MEMBERS ABSENT: None
3. **STATEMENT OF PUBLIC ORAL COMMUNICATIONS FOR CLOSED SESSION ITEMS:** City Attorney Alvarez-Glasman

ORAL COMMUNICATIONS ON CLOSED SESSION ITEMS

Tom Pate, representative for SMART TD, spoke about the Transit Enterprise Fund and the General Fund.

CLOSED SESSION

The City Attorney provided a briefing on the item listed for Closed Session as follows:

4. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Government Code Section 54956.9(d)(2)
One Matter

Not discussed.

5. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Government Code Section 54956.9(d)(1)
Name of Case: A. Alvarez. City of Montebello

Councilmembers received a briefing, direction was provided but no final action.
Councilmember Romero did not participate.

6. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
Government Code 54956.8
Property: 1345 North Montebello Boulevard, Montebello
Agency's Negotiator: Acting City Manager Pasmant, City Attorney Alvarez-Glasman
Negotiating Party: Costco

Councilmembers received briefing from the City Attorney. No final action.

7. **REAL PROPERTY NEGOTIATIONS**
Government Code section 54956.8
Property: Various between N.6th Street to N. 5th Street (APN Nos. 6345-025-911, 912, 913; 6346-025-906, 907, 908, 909, 910, 916)
Agency Negotiation: Acting City Manager Pasmant
Negotiating Parties: Olson Company
Under Negotiation: Price and Terms

City Council gave authorization. No final action.

8. CONFERENCE WITH LABOR NEGOTIATOR

Government Code 54957.6

Agency designated representative: Andrew G. Pasmant, Acting City Manager

Employee organization: Smart TD UTU, Montebello City Employees Association, Unrepresented Employees, Montebello Supervisor's Association, Montebello Mid-Management Association, Montebello Police Officers Association, Montebello Police Management Association, Montebello Firefighters Association, Montebello Fire Management Association

The Acting City Manager and Special Counsel gave an update. No action taken.

REGULAR SESSION

9. INVOCATION

PLEDGE OF ALLEGIANCE

10. PRESENTATION:

a. OATH OF OFFICE – NEW POLICE OFFICER

b. SPECIAL RECOGNITION TO RESIDENT FERNANDO CHAVEZ

11. STATEMENT OF PUBLIC ORAL COMMUNICATIONS: Assistant City Attorney

12. PUBLIC ORAL COMMUNICATIONS ON OPEN SESSION ITEMS (30 MINUTES)

Brent Gerson, UCLA MBA Program, spoke about the cannabis business.

Rosemary Gurrola introduced the new Library Manager at the Chet Holifield Library, Charmetria Marshall.

Yvette Fimbres applauded Councilmember Molinari for his support to ban marijuana and stated support of Kimberly Ann Cobos Cawthorne.

Alfred Areya asked the City Council to allow residents to participate in the cannabis issue.

13. STAFF COMMUNICATIONS ON ITEMS OF COMMUNITY INTEREST

Acting City Manager Pasmant introduced new Finance Administrator, Robert Mescher.

14. CORRECTIONS TO THE AGENDA – ACTING CITY MANAGER

15. APPROVAL OF AGENDA: Councilmember Barajas moved, seconded by Councilmember Molinari that all items be approved in a single motion with the exception of any item of Item Nos. 16, 18 and 22. Such approval will also waive the reading of any ordinance.

CONSENT MATTERS

16. URGENCY INTERIM ZONING ORDINANCE ESTABLISHING TEMPORARY STANDARDS FOR ACCESSORY DWELLING UNITS

Interim Director Mancha gave a summary of the proposed ordinance.

Councilmember Barajas stated support of the ordinance.

Councilmember Molinari moved, seconded by Councilmember Romero that the City Council adopt the following ordinance: an Ordinance of The City Council of The City of Montebello, California, adopting Interim Urgency Ordinance No. 2406 relating to accessory dwelling units pursuant to Government Code Section 65858. Motion carried unanimously.

17. APPROVAL OF A CONTRACT WITH NEW FLYER OF AMERICA INC., FOR THE PURCHASE OF ONE (1) 40' LOW FLOOR COMPRESSED NATURAL GAS (CNG) POWERED FORTY-FOOT TRANSIT BUS AND OPTIONAL EQUIPMENT IN AN AMOUNT NOT-TO-EXCEED \$992,506.

Councilmember Barajas moved, seconded by Councilmember Molinari that the City Council take the following actions: (1) Approve a contract, Agreement No. 3482 with New Flyer of America, Incorporated for the acquisition of one (1) new CNG powered forty-foot (40') low floor bus and optional equipment in an amount not-to-exceed \$992,506; and (2) Authorize the Director of Transportation to approve change orders up to two percent of the contract amount. Motion carried unanimously.

18. MAXIMO CONFIGURATION AND CUSTOMIZATION - REQUEST FOR PROPOSAL NO.18-30

Councilmember Barajas moved, seconded by Councilmember Hadjinian to award a contract to AQUITAS Solutions for consulting services regarding the software MAXIMO Configuration and Customization for the Montebello Bus Lines (MBL), as recommended by the Director of Transportation, and authorize the Mayor to execute Agreement of behalf of the City. Motion failed on the following roll call vote:

AYES: Barajas, Hadjinian
NOES: Molinari, Romero

19. AWARD A LEASE AGREEMENT FOR A BACKHOE LOADER TO JCB OF SOUTHERN CALIFORNIA (RFQ 19-7)

Councilmember Barajas moved, seconded by Councilmember Molinari award a lease agreement to JCB of Southern California for a backhoe loader in the annual lease amount of \$19,680.36 and authorize the Acting City Manager to negotiate and execute Lease Agreement No. 3483 on behalf of the City. Motion carried unanimously.

20. APPROVAL OF A RADIO SUBSCRIBER AGREEMENT WITH THE CITY OF DOWNEY

Councilmember Barajas moved, seconded by Councilmember Molinari approve an Interoperable Radio System Subscriber Agreement between the City of Montebello and the City of Downey, and to authorize the Acting City Manager to execute Agreement No. 3484. Motion carried unanimously.

21. AQMD FUND APPROPRIATION

Councilmember Barajas moved, seconded by Councilmember Molinari to authorize the allocation of \$500,000 of the City's AQMD Fund Balance, Resolution No. 18-91A, for the purchase of qualifying vehicles through the AB 2766 Subvention Program for Fiscal Year 2018/2019. Motion carried unanimously.

22. APPROVE A RESOLUTION REJECTING ALL BIDS AS RECEIVED AND AUTHORIZING STAFF TO REISSUE THE RFP 19-1 FOR CITYWIDE LANDSCAPE MAINTENANCE

Councilmember Romero spoke about previous landscape services and added that language be added to the RFP that if a community partner, additional points may be added to their proposal scoring. Assistant City Attorney Cardinale will work on language for community partnership for the RFP.

Mayor Pro Tem Hadjinian added that he would like to see quality maintenance done by the Landscape Maintenance contractor.

Councilmember Romero moved, seconded by Councilmember Molinari to approve Resolution No. 18-92 rejecting all bids as received and authorize staff to rebid the Citywide Landscape Maintenance RFP #19-1. Motion carried unanimously.

23. CITY WARRANTS AUTHORIZED SIGNATURES

Councilmember Barajas moved, seconded by Councilmember Molinari to approve and-adopt Resolution No. 18-93 related to authorized signatories for City Warrants, Checks, and Bank Accounts. Motion carried unanimously.

24. HOLIDAY RESOLUTION

Councilmember Barajas moved, seconded by Councilmember Molinari to approve and adopt Resolution No. 18-94. Motion carried unanimously.

25. MONTHLY INVESTMENT REPORT – AUGUST 2018

Councilmember Barajas moved, seconded by Councilmember Molinari to approve and file said report. Motion carried unanimously.

26. CLAIMS AGAINST THE CITY

Councilmember Barajas moved, seconded by Councilmember Molinari to **DENY** the following claims: A. Haro in the amount of \$2,550.00; S. Guzman in the amount of \$2,500.00; and, V. Flores in the amount of \$10,500.00+. Motion carried unanimously.

27. PAYMENT OF BILLS: RESOLUTION APPROVING THE CITY/SUCCESSOR AGENCY WARRANT REGISTER OF DEMANDS DATED SEPTEMBER 12, 2018

Councilmember Barajas moved, seconded by Councilmember Molinari adopt Resolution No. 18-95 approving the Warrant Register dated September 12, 2018. Motion carried unanimously.

COUNCIL ORALS

28. COUNCILMEMBER MOLINARI

None.

29. COUNCILMEMBER BARAJAS

None.

30. COUNCILMEMBER ROMERO

- a. Update on recent meeting with the county and city staff on Taylor Ranch, San Gabriel Mission and landscape medians project.

Councilmember Romero gave updates on the above projects, stating that the project at Lincoln and San Gabriel has been completed and may get new plants on the hillside. Councilmember Romero met with a representative at the Metabolic Studio regarding a water system using condensation and evaporation, that may be used for the Taylor Ranch project.

- b. Ratification of certain contracts.

Councilmember Romero asked that contracts be brought back to the City Council for review after edits and/or changes.

31. MAYOR PRO TEM HADJINIAN

None.

ADJOURNMENT

Upon motion carried unanimously, Mayor Pro Tem Hadjinian adjourned the meeting at the hour of 8:10 p.m. in memory of former Lions Club President, Sally Torres who recently passed away, and for the young man gunned down in an alley this past Saturday, September 22, 2018.

APPROVAL OF MINUTES: Upon motion carried unanimously, the minutes of September 26, 2018, were approved as written on February 13, 2019.

IRMA BARAJAS, City Clerk

MINUTES

THE CITY OF MONTEBELLO CITY COUNCIL MET AT THE ABOVE TIME AND PLACE IN A REGULAR SESSION.

OPENING CEREMONIES

- 1. CALL MEETING TO ORDER:** Mayor Pro Tem Hadjinian called the meeting to order at the hour of 5:25 p.m.
- 2. ROLL CALL:** City Clerk I. Barajas
MEMBERS PRESENT: Barajas, Romero, Molinari, Hadjinian
STAFF PRESENT: City Attorney Alvarez-Glasman, Acting City Manager Pasmant
- 3. STATEMENT OF PUBLIC ORAL COMMUNICATIONS FOR CLOSED SESSION ITEMS:** City Attorney Alvarez-Glasman

ORAL COMMUNICATIONS ON CLOSED SESSION ITEMS

None.

Mayor Pro Tem Hadjinian recessed the meeting into Closed Session at the hour of 5:26 p.m. to discuss the following matters. At the hour of 6:27 p.m., Mayor Pro Tem Hadjinian reconvened the meeting.

CLOSED SESSION

The City Attorney provided a briefing on the item listed for Closed Session as follows:

- 4. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Government Code Section 54956.9(d)(2)
One Matter

No final action. Nothing further to report.
- 5. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
Government Code 54956.8
Property: 1345 North Montebello Boulevard, Montebello
Agency's Negotiator: Acting City Manager Pasmant, City Attorney Alvarez-Glasman
Negotiating Party: Costco

Councilmembers were briefed, no action taken, nothing to report.
- 6. PUBLIC EMPLOYEE DISMISSAL/DISCIPLINE/RELEASE**
Government Code Section 54957(b)(1)

Nothing to report.

REGULAR SESSION

- 7. INVOCATION**

PLEDGE OF ALLEGIANCE

8. PRESENTATION

- **LOS ANGELES COUNTY SUPERVISOR HILDA SOLIS'S REPRESENTATIVE WILL BE IN ATTENDANCE TO RECOGNIZE A CONSTITUENT AND PRESENT A SCROLL TO YOLANDA ROMERO**

9. STATEMENT OF PUBLIC ORAL COMMUNICATIONS: City Attorney Alvarez-Glasman

10. PUBLIC ORAL COMMUNICATIONS ON OPEN SESSION ITEMS (30 MINUTES)

David Della stated that marijuana is bad for the City, that he was okay with medical marijuana and that recreational use is impacting students.

Shannan Calland stated that medical marijuana use is okay and stated that is upset with a smear campaign during this election.

Michael Allen stated that he does not support marijuana in the City.

Rosemary Torres stated opposition to marijuana and that she is protecting her granddaughter from marijuana.

Avik Cordeiro, Vector Control representative for the City, stated that there is an increases in calls to Vector Control regarding mosquitoes, and that there is an increase in wait times.

David Matanga, candidate for City Treasurer, stated that he would like to be included in a candidate forum.

Yvette Fimbres stated that she would like the City to remain an All American City.

Celia stated opposition to marijuana.

Maribel Briseno asked who keeps record for use of City facilities and asked why there are no records on file for use of the band room.

11. STAFF COMMUNICATIONS ON ITEMS OF COMMUNITY INTEREST

Director Sosnowski announced the Halloween event in October 31, 2018, and the City Parade on October 20, 2018.

Assistant City Manager Batson spoke about upcoming improvements on Lincoln Avenue, Via Acosta and Poplar, and gave an update on the 6th Street project.

12. CORRECTIONS TO THE AGENDA – ACTING CITY MANAGER

None.

- 13. APPROVAL OF AGENDA:** Councilmember Molinari moved, seconded by Councilmember Barajas that items be approved in a single motion with the exception of Item Nos. 14, 17, 23 and 26. Such approval will also waive the reading of any ordinance. Motin carried unanimously.

CONSENT MATTERS

- 14. APPROVE PLANS AND SPECIFICATIONS FOR C.P. # 864 MONTEBELLO BOULEVARD BICYCLE AND PEDESTRIAN IMPROVEMENT PROJECT ATPBS1L-5247(026) AND FIND THE PROJECT EXEMPT FROM FURTHER CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CALIFORNIA PUBLIC**

RESOURCES CODE SECTION 21083.3 AND CEQA GUIDELINES SECTION 15183 AS THE PROJECT IS FULLY COVERED BY THE MONTEBELLO HILLS SPECIFIC PLAN EIR

Acting City Manager gave a summary on proposed improvement and timelines.

Councilmember Romero moved, seconded by Councilmember Molinari to (1) Find the project exempt from further California Environmental Quality Act (CEQA) pursuant to California Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183 as the project is fully covered by the Montebello Hills Specific Plan EIR; (2) Approve the Project Plans and Specifications as prepared by Infrastructure Engineers; and (3) Authorize the Public Works Department to advertise for bids and designate October 31, 2018 at 11:20 a.m., as the bid opening date and time. Motion carried unanimously.

15. RESOLUTION OF APPROPRIATION FOR BICKNELL PARK BOOSTER PUMP STATION PROJECT (RECYCLED WATER FOR THE MONTEBELLO GOLF COURSE)

Councilmember Molinari moved, seconded by Councilmember Barajas to approve Resolution No. 18-96 appropriating in the amount of \$238,233.00 for additional funds needed to complete the Bicknell Park Booster Pump Station Project (Recycled Water for the Montebello Golf Course). Motion carried unanimously.

16. APPROVAL TO AWARD BIDS FOR POLICE VEHICLE EQUIPMENT OUTFITTING AND DECALS AND REQUEST TO CARRYOVER PREVIOUSLY APPROVED FUNDS FROM THE GENERAL FUND RESERVE

Councilmember Molinari moved, seconded by Councilmember Barajas (1) Approve the Police Vehicle equipment outfitting to Black and White Emergency Vehicles; (2) Approve the Police Vehicle Decal Installation to Decals by Design; (3) Approve the carryover of previously approved funds (\$140,306.99) from the General Fund Reserve to outfit the police vehicles with emergency equipment and decals; (4) Approve the use of \$25,000.00 from the Asset Forfeiture Account for the specific outfitting of the Prisoner Transport Van; and (5) Approve the Budget Appropriation Resolution No. 18-97. Motion carried unanimously.

17. REQUESTED LETTER OF SUPPORT TO OBTAIN FINANCING FOR A RADIATION THERAPY PROJECT IN THE CITY OF MONTEBELLO

Councilmember Romero asked what the City would be responsible for and staff replied that the City would only be providing a letter of support.

Councilmember Molinari moved, seconded by Councilmember Barajas to prepare and provide a general letter of support to the applicant, Beverly Oncology & Imaging Center, Medical Group, Inc., of a proposed radiation therapy center project within the City, which will serve to assist the applicant in obtaining State financing for the proposed project. Motion carried unanimously.

18. SECOND READING: ORDINANCE ADDING CHAPTER 17.77 - "PARKLAND DEDICATION/QUIMBY FEE REQUIREMENTS FOR RESIDENTIAL DEVELOPMENT REQUIRING A TENTATIVE MAP OR PARCEL MAP" - TO THE MONTEBELLO MUNICIPAL CODE AND PROVIDE DIRECTION FOR A FEE AMOUNT FOR A RESOLUTION TO BE HEARD AT A FUTURE PUBLIC HEARING OR APPROVE THE ATTACHED RESOLUTION ESTABLISHING THE FEE AT \$2,500 DOLLARS

Councilmember Barajas moved, seconded by Councilmember Molinari to conduct a Second Reading of Ordinance No. 2407 adding Chapter 17.77 - "Parkland Dedication/Quimby Fee Requirements for Residential Development Requiring a Tentative Map or Parcel Map" - to

the Montebello Municipal Code and approve the Resolution No. 18-98 establishing the fee at \$2,500 dollars. Motion carried on a 4-0 roll call vote.

19. SECOND READING: ORDINANCE TO PROHIBIT FEEDING OF WILD FOWL, PIGEONS, DUCKS, SQUIRRELS, FERAL CATS, WILD DOGS AND UNLICENSED ANIMALS WHICH ARE NOT PERSONAL PETS IN THE CITY

Jeannette Broguiere, longtime resident, stated opposition to the ordinance.

Councilmember Barajas moved, seconded by Mayor Pro Tem Hadjinian to conduct a Second Reading of Ordinance No. 2408 to prohibit feeding of wild fowl, pigeons, ducks, squirrels, feral cats, wild dogs and unlicensed animals which are not personal pets in the city. Motion carried 3-1 on the following roll call vote:

AYES: Barajas, Molinari, Hadjinian

NOES: Romero

20. PURCHASE FOR THE MOTOROLA MULTIPROTOCOL LABEL SWITCH (MPLS) UPGRADE AND BUDGET APPROPRIATE RESOLUTION

Councilmember Molinari moved, seconded by Councilmember Barajas to approve a budget appropriation, Resolution No. 18-99 for the Multiprotocol Label Switch (MPLS) Upgrade, with Motorola Solutions, to meet the radio communications needs of the City of Montebello. Motion carried unanimously.

21. MAXIMO CONFIGURATION AND CUSTOMIZATION - REQUEST FOR PROPOSAL NO.18-30

This item was pulled from the agenda and not discussed.

22. APPROVAL OF BUS PURCHASE FROM CREATIVE BUS SALES FOR THE LOW CARBON TRANSIT OPERATIONS PROGRAM

Councilmember Molinari moved, seconded by Councilmember Barajas to (1) Waive competitive bidding procedures relating to use of allocated California Low Carbon Transit Operations Program funding for Montebello Bus Lines' Route 70 New Cutaway Bus for the Limited Stops Express, as authorized by the Montebello Municipal Code and State law, by finding that such use is in the best interest and convenience of the City; and 2) Approve/award the purchase of Montebello Bus Lines' Route 70 New Cutaway Bus for the Limited Stops Express from Creative Bus Sales in the amount of \$165,737.72. Motion carried unanimously.

23. AWARD VEHICLE BODY REPAIR AND PAINTING CONTRACT, REQUEST FOR QUOTES NO. Q-18-81

Councilmember Barajas moved, seconded by Councilmember Hadjinian to (1) Award a contract to Montebello Autocraft, Inc., and (2) Authorize the Acting City Manager to execute the Contract Agreement on behalf of the City. Motion failed on the following 2-2 roll call vote:

AYES: Barajas, Hadjinian

NOES: Romero, Molinari

24. PAYMENT OF BILLS: RESOLUTION APPROVING THE CITY/SUCCESSOR AGENCY WARRANT REGISTER OF DEMANDS DATED OCTOBER 10, 2018

Councilmember Molinari moved, seconded by Councilmember Barajas to adopt Resolution 18-100 approving the Warrant Register dated October 10, 2018. Motion carried unanimously.

25. APPROVAL OF MINUTES: REGULAR MEETINGS OF JUNE 27, JULY 11, AND JULY 25, 2018.

Councilmember Molinari moved, seconded by Councilmember Barajas to approve and file said minutes. Motion carried unanimously.

26. ELECTION COSTS – MARCH 5, 2019 SPECIAL ELECTION

Councilmember Hadjinian moved, seconded by Councilmember Barajas to add this item for discussion.

Councilmember Barajas moved to fill the vacancy of one Councilmember by appointment by the City Council. Motion failed for lack of a second.

Staff was instructed to move forward with requesting a quote for an all-mail ballot election and to contact election consultants that might be available for a stand alone election.

COUNCIL ORALS

27. COUNCILMEMBER BARAJAS

None.

28. COUNCILMEMBER ROMERO

- a. Updates on the walkthrough of Taylor Ranch and the Lincoln Avenue San Gabriel Mission Site.
Councilmember Romero gave an update and added that the County has not provided a timeline as to the Lincoln Avenue project.
- b. Update on Caltrans rehabilitation projects
Councilmember Romero spoke about the new landscape, vegetation, irrigation and new barriers.
- c. Discussion on Cannabis/Marijuana Processes, Analysis and Concerns
Councilmember Romero spoke about as conversation with HDL and state concerns regarding HDL given only 6 business days to review 38 Cannabis applications.
- d. Political Signs on Public Property and Code Enforcement rules
Councilmember Romero spoke about political signs on public medians and ask that staff pick up those signs. Councilmember Romero also asked about fining candidates.
- e. Public Dedications of Plaques
This oral was held over.

29. COUNCILMEMBER MOLINARI

- a. Status of review of marijuana applications for businesses and facilities, and recommendations.
Discussed under Item No. 28c.

30. MAYOR PRO TEM HADJINIAN

None.

ADJOURNMENT

Upon motion carried unanimously, Mayor Pro Tem Hadjinian adjourned the meeting at the hour of 8:50 p.m. in memory of fallen Montebello Police Officer, Henry Acuna, who was killed in the line of duty on October 6, 1971.

APPROVAL OF MINUTES: Upon motion carried unanimously, the minutes of October 10, 2018, were approved as written on February 13, 2019.

IRMA BARAJAS, City Clerk